



Hungarian MPs fined for their conduct in Parliament: violation of freedom of expression

In today's **Grand Chamber** judgment¹ in the case of **Karácsony and Others v. Hungary** (application nos. 42461/13 and 44357/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned fines imposed on Hungarian MPs from two opposition parties who had disrupted parliamentary proceedings by protesting against two bills being debated in Parliament.

The Court held in particular that at the relevant time there had been no provision under the domestic law enabling an MP sanctioned in disciplinary proceedings to be involved in those proceedings and to be heard.

It was noteworthy that an amendment to the Parliamentary Act, which had entered into force on 4 March 2014, now allowed a fined MP to seek a remedy and submit his or her arguments before a parliamentary commission. The necessary minimum procedural guarantees therefore appeared to have been put in place, but that amendment had not affected the applicants' situation.

The Court found that the interference with the applicants' freedom of expression had not been proportionate to the legitimate aims pursued because it had not been accompanied by adequate procedural guarantees.

Principal facts

The applicants, Gergely Karácsony, Péter Szilágyi, Dávid Dorosz, Rebeka Katalin Szabó, Bernadett Szél, Ágnes Osztolykán and Ms Szilvia Lengyel, are Hungarian nationals who were born between 1971 and 1985 and live in Budapest, Budakeszi and Gödöllő (Hungary). As the two applications initially lodged were similar on the facts and in law, the Court decided to join them (in accordance with Rule 42 § 1 of its Rules of Court).

At the relevant time Mr Karácsony, Mr Szilágyi, Mr Dorosz and Ms Szabó were members of parliament and of the opposition party *Párbeszéd Magyarországért* ("Dialogue for Hungary"). On 30 April 2013, during preliminary parliamentary debates, Mr Karácsony and Mr Szilágyi placed in the centre of the Chamber a large placard displaying the words "FIDESZ [the party in Government] You steal, you cheat, and you lie." Subsequently, they placed the placard next to the Secretary of State's seat.

The Speaker of Parliament presented a proposal to fine Mr Karácsony 50,000 Hungarian forints ((HUF); equivalent to EUR 170) and Mr Szilágyi HUF 185,520 (approximately EUR 600) for their conduct considered to be gravely offensive to parliamentary order.

On 21 May 2013, during the final vote on a tobacco-related Bill, Mr Dorosz and Ms Szabó displayed in the centre of the Chamber a large banner displaying the words "Here Operates the National Tobacco Mafia". The Speaker proposed to fine them HUF 70,000 (approximately EUR 240) each for their conduct.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Ms Szél, Ms Osztolykán and Ms Lengyel were members of parliament and of the opposition party LMP (*Politics Can Be Different*). On 21 June 2013, when Parliament held the final vote on a Bill transferring agricultural and forestry land, Ms Lengyel protested by placing a small, golden wheelbarrow filled with soil on the table in front of the Prime Minister while Ms Szél and Ms Osztolykán unfurled a banner displaying the words “Land distribution instead of land robbery!” in front of the Speaker’s pulpit. Ms Lengyel used a megaphone to speak. The Speaker proposed to fine Ms Szél and Ms Lengyel HUF 131,400 (approximately EUR 430) each and Ms Osztolykán HUF 154,000 (approximately EUR 510) for their conduct considered to be offensive to parliamentary order.

The Speaker’s three proposals were adopted without debate in plenary session.

Complaints, procedure and composition of the Court

Relying on Article 10 of the Convention, the applicants complained that the decisions to fine them for their conduct during the parliamentary session had violated their right to freedom of expression. They also complained, relying on Article 13 (right to an effective remedy) taken in conjunction with Article 10, that they had not had a remedy by which to challenge the disciplinary measures taken against them.

The applications were lodged with the European Court of Human Rights on 14 June and 5 July 2013.

In its two [judgments](#) delivered on 16 September 2014 the Chamber had concluded, unanimously, that there had been a violation of Article 10 and of Article 13 read in conjunction with Article 10.

On 15 December 2014 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 16 February 2015 the panel of the Grand Chamber accepted that request. Third-party observations were received from the Czech and the United Kingdom Governments, who had been given leave to intervene in the written procedure. A hearing was held on 8 July 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luis **López Guerra** (Spain), *President*,
András **Sajó** (Hungary),
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),
Angelika **Nußberger** (Germany),
Mark **Villiger** (Liechtenstein),
Boštjan M. **Zupančič** (Slovenia),
Khanlar **Hajiyev** (Azerbaijan),
Ján **Šikuta** (Slovakia),
Vincent A. **de Gaetano** (Malta),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Helena **Jäderblom** (Sweden),
Johannes **Silvis** (the Netherlands),
Valeriu **Grițco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 10

The Court dismissed, first of all, the Government's objection on grounds of non-exhaustion of domestic remedies. It found that a constitutional complaint could not be considered an effective remedy since, even if successful, it would not have been capable of redressing the alleged violation.

The Court observed that section 49(4) of the Parliament Act² regulated the conduct of MPs in Parliament. Members of parliament should normally be aware of the disciplinary rules which were aimed at ensuring the orderly functioning of Parliament. The Court found that the applicants, on account of their professional status of parliamentarians, must have been able to foresee, to a reasonable degree, the consequences which their conduct could entail, even if section 49(4) had never yet been applied. That provision had met the required level of precision and the interference with the applicants' freedom of expression had been prescribed by law. In the Court's view, the interference had pursued two legitimate aims: prevention of disruption to the work of Parliament, and thus the prevention of disorder, and protection of the rights of other members of parliament, and thus protection of the rights of others.

The Court had consistently underlined, in its case-law, the importance of freedom of expression for members of parliament. However, while the freedom of parliamentary debate was of fundamental importance in a democratic society, it was not absolute in nature. A Contracting State could make it subject to certain "restrictions" or "penalties", and it was for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10. Accordingly, the universally recognised principle of parliamentary immunity offered enhanced, but not unlimited, protection to speech in Parliament. Parliaments were entitled to react when their members engaged in disorderly conduct disrupting the normal functioning of the legislature.

The Court reiterated that the Convention established a close nexus between an effective political democracy and the effective operation of Parliament. The exercise of free speech in Parliament had to yield on occasions to the legitimate interests of protecting the orderly conduct of parliamentary business as well as the protection of the rights of other members of parliament. The rules governing the internal operation of Parliament illustrated the well-established constitutional principle of the autonomy of Parliament. In accordance with that principle, Parliament was entitled to regulate its own internal affairs. Parliamentary autonomy extended to Parliament's power to enforce rules aimed at ensuring the orderly conduct of parliamentary business.

However, the Court observed that the discretion available to the national authorities in sanctioning speech or conduct in Parliament that could be deemed abusive, albeit very important, was not unfettered. Parliamentary autonomy should not be abused for the purpose of suppressing the freedom of expression of MPs, which lay at the heart of political debate in a democracy. The Court considered it important to protect the parliamentary minority from any abuse by the majority.

The Court thus had no difficulties in accepting that it had been necessary to react to the applicants' conduct in Parliament, which had been a matter for the House to consider in the exercise of its autonomy. However, it had to determine whether the interference had been proportionate to the legitimate aims pursued and whether the reasons adduced by the national authorities to justify it had been relevant and sufficient.

The Court considered that displaying a placard or banner in Parliament was not a conventional manner for MPs to express their views on a given subject debated in the House. Having chosen this form of conduct, the applicants had disrupted order in Parliament. The Court was satisfied that the

² Parliament Act no. XXXVI of 2012, which entered into force on 20 April 2012

applicants had not received sanctions for expressing their views on issues debated in Parliament, but rather for the time, place and manner in which they had done so.

The Court emphasised that the exercise of Parliament's power to sanction disorderly conduct of a member had to respect the principle of proportionality inherent in Article 10, including in its procedural aspect. Compliance with that principle required that the sanction imposed should correspond to the severity of the disciplinary breach.

Bearing in mind the wide margin of appreciation to be afforded to the Contracting States, the Court found that the present case involved disciplinary sanctions imposed on MPs in a context in which they did not dispose of basic procedural safeguards under the parliamentary procedure to contest those measures.

At the relevant time the domestic legislation had not provided for a fined MP to be involved in the relevant procedure, notably by being heard. The procedure in the applicants' case had consisted of a written proposal of the Speaker to impose fines and its subsequent adoption by the plenary without debate. Thus, the procedure had not afforded the applicants any procedural safeguards. Furthermore, two of the proposals had not contained any relevant reasons why the applicants' actions had been considered gravely offensive to parliamentary order. While the applicants could have challenged the measures proposed by the Speaker before the plenary Parliament, the Court found that this had been merely a general possibility of making a statement in Parliament or petitioning certain parliamentary bodies – the House Committee or the Committee responsible for the interpretation of the Rules of Parliament – without any guarantee that the applicants' arguments would be considered in the relevant disciplinary procedure. It was noteworthy that an amendment to the Parliament Act introducing the possibility for a fined MP to seek a remedy and to make representations before a parliamentary committee had entered into force on 4 March 2014 and that the necessary minimum procedural safeguards thus appeared to have been put in place. However, that amendment had not affected the applicants' situation.

The Court considered that the impugned interference with the applicants' right to freedom of expression had not been proportionate to the legitimate aims pursued because it had not been accompanied by adequate procedural safeguards. The Court concluded that the interference with the applicants' right to freedom of expression had not been "necessary in a democratic society" and that, accordingly, there had been a violation of Article 10 of the Convention.

[Article 13 taken in conjunction with Article 10](#)

In the light of the Court's finding that there had been a violation of Article 10 and having regard to the reasons underlying that finding, the Court concluded that it was not necessary to examine separately the applicants' complaint under Article 13 read in conjunction with Article 10.

[Article 41 \(just satisfaction\)](#)

The Court held that Hungary was to pay EUR 170 to Mr Karácsony, EUR 600 to Mr Szilágyi, EUR 240 to Mr Dorosz, EUR 240 to Ms Szabó, EUR 430 to Ms Szél, EUR 510 to Ms Oszolykán and EUR 430 to Ms Lengyel in respect of pecuniary damage and EUR 12,000 to the applicants jointly for costs and expenses.

The judgment is available in English and French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.