



Displaying of flags: the judicial decisions failed to examine the facts in depth and lacked sufficient reasoning

In today's Chamber judgment¹ in the case of [Tórkés v. Romania](#) (applications nos. 15976/16 and 50461/17) the European Court of Human Rights held, by a majority, that there had been:

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

The case concerned a Romanian national, László Tórkés, who belongs to the Hungarian minority in Romania and who was elected as a member of the European Parliament in respect of Hungary. The Romanian authorities imposed sanctions on Mr Tórkés for flying the flags of Szeklerland² and the Partium (*Részek*) territory on the building housing his office in Oradea.

The Court did not agree with the applicant's view that the interference with his right to freedom of expression had lacked any legal basis. However, it found that the domestic courts had not examined in depth all the relevant evidence before them, and that the reasons given for their decisions had been insufficient. It noted that the reasons given for the judgments had been succinct and did not contain sufficient information to enable the Court to discern the reasoning behind the interference. The Court found a procedural violation of Article 10 of the Convention.

Principal facts

The applicant, László Tórkés, is a Romanian national who was born in 1952 and lives in Oradea (Romania). Mr Tórkés belongs to the Hungarian minority in Romania. He was elected as a member of the European Parliament on the list of the Democratic Union of Hungarians in Romania following the 2009 European elections, and subsequently on the list of the Hungarian Fidesz party following the European elections of May 2014. At the time of the events he had an office in Oradea.

In his first application (no. 15976/16), Mr Tórkés stated that on 18 June 2014 he had displayed a Szekler flag, measuring two metres by one metre, on the building housing his office in Oradea. On 20 August 2014 the local police in Oradea imposed a minor-offence sanction on him, in the form of a warning, for displaying a flag – the Szekler flag – for advertising purposes without first obtaining temporary permission to advertise, in breach of Law no. 185/2013 on the placement and authorisation of advertising materials. The applicant was requested to remove the flag. He challenged the minor-offence report in the Oradea Court of First Instance, which dismissed the challenge on 26 January 2015. Mr Tórkés appealed against that judgment.

In a final judgment of 27 November 2015 the Bihor County Court dismissed the appeal and upheld the reasoning of the first-instance judgment. According to the court, the applicant had flown the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

²Szeklerland is a historical and ethnographic region of Transylvania, in Romania, home to most of Transylvania's Hungarian-speaking Szeklers, who comprise a majority of the local population. In Romania, Hungarians are recognised as a national minority by the Law on the status of minorities; the Szeklers are an ethnic group within the Hungarian minority.

flag, which included Szekler symbols, in order to draw the public's attention to the use to which the space in question was being put, and the flag had thus been used for advertising purposes as defined by Law no. 185/2013. The court made clear that flying a flag such as the one in question in public, but on a privately owned building, was not prohibited by law. Nevertheless, the flag had to be displayed in accordance with the statutory provisions, including those requiring permission to be obtained in order to advertise.

In his second application (no. 50461/17) Mr Tórkés stated that in December 2015 he had displayed on the building housing his office the flag of the Partium territory, a white flag bearing a double cross and four red lines representing the four rivers running through the region. The flag had been flown alongside several others, namely the Szekler flag, the Romanian national flag, the Hungarian national flag and the flag of the European Union. On 16 December 2015 the police imposed a minor-offence sanction on the applicant in the form of a warning and requested him to remove the flag.

Mr Tórkés challenged the minor-offence record in the Court of First Instance, arguing that Law no. 185/2013 was not applicable to the case. He pointed out that he was a member of the European Parliament, that he spent most of his time in Brussels and Strasbourg and that he had rented an office in Oradea for the duration of his term. On 27 April 2016 the Court of First Instance dismissed the challenge, finding that the applicant had displayed a flag which included Szekler symbols and which thus did not fall into the category of flags belonging to a recognised State. The court held that in displaying the flag the applicant had sought to draw the public's attention to, and inform them about, activities and events; the flag was therefore to be regarded as "advertising material". According to the court, the flying of the Szekler flag in public, including on privately owned buildings, was governed by Law no. 185/2013 and was therefore subject to temporary permission to advertise.

Mr Tórkés appealed against that judgment. On 6 February 2017 the County Court dismissed the appeal and upheld the first-instance judgment.

On 24 February 2020, following a police check, Mr Tórkés himself removed the flags without any involvement by the authorities.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant alleged that the fact of being issued with warnings for displaying the flags of Szeklerland and the Partium territory on the building in which he worked in Oradea had infringed his right to freedom of expression.

The applications were lodged with the European Court of Human Rights on 9 February 2016 and 19 May 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
Tim **Eicke** (the United Kingdom),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Pere **Pastor Vilanova** (Andorra),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

Article 10

The Court observed that the applicant had been sanctioned for flying the Szekler flag and the flag of the Partium territory without first applying for permission to advertise. According to the minor-offence reports, which were subsequently upheld by the domestic courts, the applicant had acted in breach of Law no. 185/2013. Under Article 49 § 1 (a) of that Law, the placing of advertising materials without temporary permission to advertise constituted a minor offence. The Court did not agree with the applicant's view that the interference had lacked any legal basis, and proceeded to examine whether the measure had pursued a legitimate aim and had been necessary in a democratic society.

The Court noted that the aim referred to by the Government as justification for the measures in question was that of ensuring public safety and respect for the rights of others. The purpose of Law no. 185, as defined in Article 1, was to ensure that the built environment was coherent, harmonious, safe and healthy, in order to protect natural and man-made assets, preserve the quality of the landscape and conform to the required standards in terms of building quality. The Court accepted that the interference of which the applicant complained had been aimed at protecting the rights of others. The domestic courts had been called upon to strike a fair balance between the applicant's right to freedom of expression and the protection of the rights of others in the context of Law no. 185/2013, which was applicable in the present case.

In examining whether the interference had been necessary in a democratic society, the Court focused on the decisions handed down by the domestic courts. In that connection it observed that the courts had omitted to take into consideration the context of the applicant's complaints, namely his argument that the sanctions imposed had interfered with his right to freedom of expression as guaranteed both by the Constitution and by Article 10 of the Convention. The Court went on to note that in seeking to determine what legislation was applicable, the domestic courts had focused on their finding that the flags in question were to be equated with a form of advertising. They had not explained why they had rejected the applicant's claims that the flags had not been intended to promote his activities but had merely been a means for him to express his own identity. The Court noted that some of the definitions of the notion of advertising contained in Article 3 (o) of Law no. 185/2013 were closely linked to commercial activities in general and that their purpose was thus far removed from the message which the applicant was seeking to convey. Against that background the authorities had been under a duty to provide reasons for dismissing the applicant's arguments, in so far as the notion of advertising in domestic law was defined in broad terms and the national authorities had a degree of discretion in deciding which flags should be regarded as advertising materials.

The Court pointed out that it had consistently drawn a distinction between commercial advertisements and those aimed at contributing to a public debate on matters of general interest. In the present case it noted that, in classifying the flags in question as advertising materials, the domestic courts had not examined their content, nor had they furnished any example of the activities or events which the flags had purportedly advertised. While they were better placed to interpret the intention underlying a particular speech and to assess the way in which the public was likely to perceive it and react to it, the domestic courts had not explained in sufficient detail in the present case their decision to classify the flags in question as advertising materials.

The Court further observed that the domestic courts had not examined whether the use being made of the building, which the local authorities had designated as the applicant's parliamentary office, should be an important factor in the case. Likewise, they had not taken into consideration the applicant's status as a member of the European Parliament or his rights flowing from that status. In particular, they had not established with certainty whether the applicant was seeking to act in his

capacity as a politician presenting a political programme or as an ordinary citizen belonging to a national minority who wished to manifest his membership of that minority. The Court also noted that at the relevant time the applicant had sat in the European Parliament as a member of a Hungarian, rather than a Romanian, party and had therefore been a political representative of the Hungarian majority in Hungary rather than the Hungarian minority in Romania. These issues had been relevant to determining the nature of the speech in question; the domestic courts should have elucidated them but instead had ignored them.

Because they had failed to examine in depth all the relevant evidence before them, the domestic courts had been unable to determine, in the light of the criteria defined and applied by the Court in cases concerning freedom of expression, the nature of the message which the applicant had sought to convey and the context in which the speech should be situated.

Regarding the question of public safety and respect for the rights of others relied on by the Government, the Court noted that the domestic courts had not cited any evidence to suggest that the flying of the flags had been liable to give rise to any public-safety issues. Moreover, they had stated that the flying of the flags was not prohibited as such, but that it had to be done in accordance with the statutory provisions and after obtaining temporary permission to advertise. The Court also noted that the flag of the Partium territory had been displayed alongside other flags. The domestic courts had not explained why only that flag, and not the others, had been subject to prior permission to advertise in accordance with legislation that was designed to “ensure that the built environment was coherent, harmonious, safe and healthy, in order to protect natural and man-made assets, preserve the quality of the landscape and conform to the required standards in terms of building quality” . Furthermore, although he had been sanctioned in June 2014 and December 2015 the applicant had not been required to remove the flags until 24 February 2020. There was nothing in the case file to indicate that, over this period of several years, the flying of the flags had caused the authorities any problems in terms of public or environmental safety.

Lastly, the Court considered that, for the purposes of Article 10 of the Convention, the fact that the sanction had been a minor one did not in itself compensate for the lack of relevant and sufficient reasons for restricting the right to freedom of expression.

In view of the fact that the domestic courts had not taken due account of the criteria established in the Court’s case-law, those courts had not provided relevant and sufficient reasons to justify the interference with the applicant’s right to freedom of expression. Consequently, the interference complained of had not been “necessary in a democratic society”. The Court found a procedural violation of Article 10 on account of the way in which the domestic courts had examined the applicant’s complaints.

There had thus been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 2,112 euros (EUR) in respect of costs and expenses.

Separate opinion

Judges **Motoc** and **Kucsko-Stadlmayer** expressed a separate opinion which is annexed to the judgment.

The judgment is available only in French.

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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.