



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MAGYAR KÉTFARKÚ KUTYA PÁRT v. HUNGARY

(Application no. 201/17)

JUDGMENT

STRASBOURG

23 January 2018

Referral to the Grand Chamber

28/05/2018

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Magyar Kétfarkú Kutya Párt v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Paulo Pinto de Albuquerque,

Faris Vehabović,

Carlo Ranzoni,

Marko Bošnjak,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 19 December 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 201/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Magyar Kétfarkú Kutya Párt, a political party registered in Hungary (“the applicant political party”), on 16 December 2016.

2. The applicant was represented by Mr Cs. Tordai, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent at the Ministry of Justice.

3. The applicant political party alleged that its freedom of expression had been violated, in breach of Article 10 of the Convention, by the fact that it had been fined for having developed a mobile telephone application via which voters could post anonymous photographs of invalid ballot papers.

4. On 13 January 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant political party has its registered seat in Budapest.

6. On 2 October 2016 a referendum related to the European Union’s migrant relocation plan was held in Hungary. The referendum was initiated by the Government and posed the following question: “Do you want the

European Union to be entitled to order the mandatory settlement of non-Hungarian citizens in Hungary without Parliament's consent?"

7. In the course of the campaign several opposition parties called on voters to boycott the referendum or to cast invalid ballots that would not count in the final tally but could still be interpreted as rejecting the idea of the referendum. On 29 September 2016 the applicant political party made available a mobile telephone application to voters ("the cast-an-invalid-vote app") where they could upload, and share with the public, photographs taken of their ballots. It also enabled voters to comment on the reasons for how they cast their ballot. The posting and sharing of photographs were anonymous. The application was reported in major online journals.

8. On 29 September 2016 a private individual lodged a complaint with the National Election Commission (*Nemzeti Választási Bizottság*) about the application.

9. In a decision of 30 September 2016 the National Election Commission found that the application infringed the principles of fairness of elections, voting secrecy, and the proper exercise of rights (*rendeltetésszerű joggyakorlás*), and ordered the applicant organisation to refrain from further breaches of section 2(1)(a) and (e) of Act no. XXXVI of 2013 on Electoral Procedure and Article 2(1) of the Fundamental Law. Relying on a previous resolution issued in 2014, it held that voters could not treat ballot papers as their own [property], and therefore could neither take them out of the voting booths nor take a photograph of them. It held that taking photographs of ballot papers could lead to electoral fraud. Furthermore, although the principle of secrecy did not create any obligation on the voters' side, it nevertheless did not entitle them to abuse their situation, bearing in mind that voting secrecy could only be maintained with their cooperation. The Commission concluded that the phone application was capable of discrediting the work of election bodies and tallying systems in the eyes of the public.

10. The applicant sought judicial review of this decision before the *Kúria*.

11. By a judgment of 10 October 2016 the *Kúria* upheld the Commission's decision as to its finding regarding the infringement of the principle of the proper exercise of rights. The *Kúria* held that the purpose of the ballots had been to enable voters to express their opinion on the referendum question, and that taking photographs of ballots and subsequently publishing them had not been in line with this purpose. A ban on photographs and on publication had not infringed voters' freedom of expression, since they had been free to express their opinions by casting their ballots and to share with others how they had voted. The *Kúria* overturned the remainder of the Commission's decision on the infringement of the secrecy of the electoral process and on the discrediting of the work of the electoral bodies. It found that there was no regulation prohibiting voters

from taking photographs of their ballot papers in the voters' booths and that their identity could not have been revealed through the mobile telephone application.

12. Meanwhile, on 3 October 2016 the same private individual lodged a new complaint with the National Election Commission, in the light of the fact that the applicant political party had activated the "cast-an-invalid-vote app" on 2 October, the day of the referendum. The complainant maintained that by operating the mobile telephone application and by encouraging voters to make use of it, the applicant political party had infringed the principles governing the bona fide and proper exercise of rights, and also the principles of fairness and secrecy of elections.

13. In a decision of 7 October 2016 the National Election Commission reiterated its previous finding that taking photographs of ballot papers had infringed the principle of the secrecy of voters' ballots, the fairness of elections, and the proper exercise of rights, and fined the political party 832,500 Hungarian forints (HUF – approximately 2,700 euros (EUR)). The Commission supplemented its previous reasoning by noting that the mobile telephone application calling on voters to cast an invalid ballot could have influenced voters and had thus constituted unlawful campaigning.

14. The applicant political party sought judicial review of this decision as well.

15. By a decision of 18 October 2016 the *Kúria* upheld the Commission's decision as to the finding of an infringement of the principle of the proper exercise of rights. It explained that the purpose of the ballot papers had been for voters to express their opinion on the referendum question, and any other use of them had constituted a violation of the principle of the proper exercise of rights. The *Kúria* overturned the remainder of the Commission's decision as to a violation of the fairness and voting secrecy and the principle of the bona fide exercise of rights. It reiterated its previous finding that the identity of the individual voters had not been revealed, and emphasised that the conduct of the applicant political party had had no impact on the fairness of the referendum. It reduced the fine to HUF 100,000 (approximately EUR 330).

16. The applicant organisation lodged a constitutional complaint against the decisions of both 10 and 18 October 2016. In both complaints the applicant requested the Constitutional Court to "establish that the *Kúria*'s decision infringed its right recognised in Article IX (1) of the Fundamental Law". It argued that "under Article 27 of the Act on the Constitutional Court an organisation personally concerned by an unconstitutional judicial decision, after having exhausted all other remedies, may lodge a complaint with the Constitutional Court if the decision on the merits infringed its right ensured by the Constitution. The decision of the *Kúria* declared the applicant's conduct unlawful and obliged it to pay a fine, it was the applicant who lodged the petition for review with the *Kúria*, thus it was

individually concerned in the present case...By making the mobile phone application available the applicant reacted to the spreading of social media communication. Citizens regularly share events, thoughts and opinions on internet websites through photos taken with their mobile phones. In the context of elections, this led to the fact that all over the world, voters take photos of their ballot papers and share it through social media. By developing the mobile phone application the applicant wanted to enable voters to share photos of ballot papers (or in case of those who absented from the referendum photos of the activities undertaken instead of voting) and other messages in an anonymous way and exercise their right to freedom of expression in a way that the content of the vote could not be linked to the voter. ...In the applicant's view the impugned decision, its legal interpretation and the consequences applied by the *Kúria* infringe its right under Article IX (1) of the Fundamental Law. The conduct of voters taking photos of ballot papers and sharing it with others is an expression of an opinion in public matters and constitutes a conduct falling under the freedom of expression of opinions, and in particular, the most protected aspect of it, a discussion on matters of public interest. Thus, the applicant's activity, providing a forum for voters to express an opinion is also protected by the Article IX (1) of the Fundamental Law...In the applicant's opinion, the decision of the the *Kúria*, by invoking voters' right to freedom of expression, restrained in fact, the applicant's own conduct of exercising its right to freedom of expression without any constitutional reason." The applicant further submitted that, as established by the *Kúria*, the mobile phone application had not infringed the secrecy and fairness of the voting procedure and it had also not been capable of doing so, since the content of the ballot papers could not be linked to the voters. Thus, it argued that these aims could not serve as a legitimate basis for restricting the right to freedom of expression. In any event, even if the application could have infringed the secrecy of voting, the ban on the application had been disproportionate.

17. The Constitutional Court declared the complaints inadmissible on 24 October 2016, with identical reasoning, on the grounds that the cases did not concern the applicant organisation's right to freedom of expression. It reiterated the *Kúria*'s finding that although the case related to the freedom of expression of voters, this had not been infringed by the decision of the Election Commission, which had only found that the method used – that is to say uploading photographs to a mobile application – had not been in compliance with the obligation to exercise voting rights in accordance with their purpose. In the Constitutional Court's view the applicant political party had merely provided a forum for voters to share photographs of their ballot papers or their intention to abstain from voting, it had did not itself expressed an opinion. Since the applicant political party had only complained about the restriction of voters' right to freedom of expression, it had not been personally concerned by the decision of the *Kúria*.

II. RELEVANT DOMESTIC LAW AND PRACTICE

18. The relevant provision of the Fundamental Law read as follows:

Article 2

“Members of the National Assembly shall be elected by universal and equal suffrage in a direct and secret ballot, in elections which guarantee the free expression of the will of the voters, in a manner laid down in a cardinal Act.”

19. The relevant provisions of Act CCXXXVIII of 2013 on Initiating Referenda, the European Citizens’ Initiative and Referendum Procedure provide as follows:

Chapter I

General provisions

“1. § (1) General provisions of the Act XXXVI of 2013 on Electoral Procedure ... shall apply – with the differences included in this Act – to the procedures falling under the scope of this Act.

(2) The National Election Commission may issue guidelines for the election bodies to promote a unified interpretation of the legal provisions relating to procedures regulated by this Act.”

20. Act XXXVI of 2013 on Electoral Procedure contains the following provisions of relevance to the instant case:

The basic principles of electoral procedure

Section 2

“(1) The following principles shall prevail in the application of the rules of electoral procedure:

a) the protection of the fairness of the election;

...

e) proper exercising of rights in good faith;

...”

21. Guidelines no. 12/2014 of the National Election Commission on taking ballot papers out of polling station and taking photographs of ballot papers provides, in so far as relevant, as follows:

“1. Section 182 (1) of the Electoral Procedure Act provides that the voter places the ballot paper in an envelope and drops it in the ballot box; as can be seen from the grammatical and legal interpretation of this provision, also taking into account the protection of fair elections and the *bona fide* exercise of voting rights in accordance with their purpose, ballot papers are official documents whose purpose is to represent the choice of voters and to establish the results of voting.

2. Thus, if a voter treats a ballot paper as his or her own and takes it out of the polling station or takes a photograph of it before placing it in the envelope or dropping

it in the ballot box, he or she infringes the principle of the bona fide exercise of voting rights in accordance with their purpose. Taking ballot papers out of the polling station, or taking photographs, videos, etc. of them, can also lead to electoral fraud, the prevention of which [furthers] the public interest in protecting the fairness of elections.

3. The use of ballot papers [in a manner] contrary to their purpose can also infringe the principle of secrecy of elections, as enshrined in Hungary's Fundamental Law. The secrecy of elections also encompasses the secrecy of ballot papers; thus, taking photographs of voting or of ballot papers is in breach of the principles of the Act on Electoral Procedure. Voting secrecy does not only serve the safe expression of voters' will, but the realisation of the voting procedure, in accordance with the rule of law and the principles of democracy. Thus, its importance goes beyond the conduct of individual voters. Obviously, voting secrecy does not create an obligation of confidentiality on the voters' side, but the obligation to exercise rights in accordance with their purpose means that voters should not abuse the fact that voting secrecy can only be partially realised without their cooperation.

4. In the view of the National Election Commission neither the provisions of the Fundamental Law nor the provisions of the Act on Electoral Procedure mean that ballot papers would constitute the property of voters; therefore, they cannot treat ballot papers as their own [property] and can only use them for the purpose of voting. Voluntary participation in the voting procedure does not mean that a voter may take a ballot paper from the polling station."

Reasoning

"In the Commission's view ... official ballots do not constitute voters' property ... Not even spoilt ballot papers can be at the free disposal of voters. The National Election Commission therefore finds the only conduct that is in compliance with the principles of the bona fide exercise of voting rights in accordance with their purpose and voting secrecy, as enshrined in Article 2 (1) of the Fundamental Law..., is if the voter, while casting his or her vote, does not treat the ballot papers as his or her own but as a means to express his right to vote and to establish the outcome of the voting process. Thus, he or she cannot take the ballot paper out of the polling station and cannot take a photograph with either a telecommunication, digital or any other device with the purpose of showing it to another person.

The purpose of these guidelines is to counteract electoral fraud (for example, through so-called "chain voting") for the sake of the protection of the fairness of elections."

III. RELEVANT INTERNATIONAL MATERIAL

22. Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom provides as follows:

2.2. Freedom of opinion and the right to receive and impart information

"2.2.1. Any measure taken by State authorities or private-sector actors to block or otherwise restrict access to an entire Internet platform (social media, social networks, blogs or any other website) or information and communication technologies (ICT) tools (instant messaging or other applications), or any request by State authorities to

carry out such actions complies with the conditions of Article 10 of the Convention regarding the legality, legitimacy and proportionality of restrictions.”

23. Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet provides as follows:

“Member states should encourage the use of ICTs (including online forums, weblogs, political chats, instant messaging and other forms of citizen-to-citizen communication) by citizens, non-governmental organisations and political parties to engage in democratic deliberations, e-activism and e-campaigning, put forward their concerns, ideas and initiatives, promote dialogue and deliberation with representatives and government, and to scrutinise officials and politicians in matters of public interest.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

24. The applicant political party complained that the imposition of a fine on it for operating a mobile telephone application allowing voters to publish photographs of their ballot papers had violated its right to freedom of expression, as provided in Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

25. The Government submitted that the applicant political party could have lodged a constitutional complaint seeking the quashing of the decisions of the *Kúria* of 10 and 18 October 2016. In such proceedings they could have argued that the *Kúria*'s decisions had infringed its rights, as enshrined in the Fundamental Law, either because the *Kúria* had applied a law which was unconstitutional or because it had interpreted or applied a law in an unconstitutional manner. The Government maintained that the constitutional complaint which the applicant political party had actually

submitted had been declared inadmissible since it had not challenged an alleged violation of its own constitutional rights but that of voters, and had therefore not complied with procedural requirements.

26. The applicant political party argued that it had exhausted all available remedies. Its constitutional complaint had been dismissed on the grounds that providing a platform for voters to express their opinions had not fallen under the scope of freedom of expression. Thus, the merits of its complaint had been examined by the highest judicial forum.

27. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been lodged with the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law (see *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 116, ECHR 2015).

28. Turning to the present case, the Court notes that in its constitutional complaint the applicant political party did provide the domestic authorities with a complete account of the proceedings and complained that sanctioning it for operating the impugned mobile telephone application had infringed its right to freedom of expression, since that activity had fallen under the scope of Article IX (1) of the Fundamental Law (see paragraph 16 above). The Constitutional Court declared the complaint inadmissible, concluding that the case concerned voters' right to freedom of expression, for which the applicant political party had merely provided a platform, but had not itself expressed an opinion.

29. The Court therefore considers that the applicant political party raised the essence of its complaint before the Constitutional Court, which ruled on the question of whether the case concerned the applicant political party's exercise of its right to freedom of expression. In these circumstances the Court finds that the applicant political party made the domestic authorities sufficiently aware of its situation and gave them adequate opportunity to assess whether the imposition of a fine had been reasonable and proportionate in the circumstances (see *Džinić v. Croatia*, no. 38359/13, § 49, 17 May 2016).

30. The Court accordingly concludes that the applicant political party has complied with the obligation to exhaust domestic remedies and that the Government's objection must be rejected. It also notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicant political party submitted that the voters' posting photographs showing their participation in the referendum and the way they had cast their votes had constituted the expression of opinions on political matters, as protected under Article 10 of the Convention. It also maintained that providing a forum for voters to express their opinions, in the form of using a mobile telephone application, fell under the scope of the right to freedom of expression. Thus, the restriction on, and penalisation of, the use of the application had constituted an interference with its right to freedom of expression, which had neither been prescribed by law nor had pursued a legitimate aim.

32. According to the applicant political party, the interference had had no legal basis, since the provisions of the Act on Electoral Procedure did not prohibit the taking of photographs of ballot papers; moreover, the guidelines of the National Election Commission had no binding effect.

33. Moreover, the principle of the proper exercise of rights could not possibly serve as a legitimate reason for a restriction on the right to freedom of expression. At any rate, the posting of photographs of ballot papers had not violated the fairness or secrecy of the voting procedure.

34. The Government maintained that there had been no interference with the exercise of the applicant political party's right to freedom of expression, since it had only provided a mobile telephone application for voters to share their opinions with other users and had not engaged in political speech itself. They submitted, however, that even if the Court were to consider that there had been such interference, it had been in accordance with the second paragraph of Article 10. The interference with the applicant political party's freedom of expression had had a legal basis, as clarified in the National Election Commission's guidelines, and it had pursued the legitimate aim of ensuring the orderly conduct of the voting procedure and the proper use of ballot papers – notions falling under the scope of "the protection of the rights of others". As to whether the interference in question had been necessary in a democratic society and proportional, the Government highlighted the fact that the *Kúria* had considerably reduced the fine imposed on the applicant political party.

2. The Court's assessment

(a) Whether there was an interference with the applicant political party's freedom of expression

35. The Court notes at the outset that the applicant political party was sanctioned for running a mobile telephone application enabling users to share their comments and photographs taken of their ballot papers. The

Court notes the argument of the domestic courts, reiterated by the Government, that this measure had not infringed the applicant political party's right to freedom of expression since this latter had not engaged in political speech itself.

36. The Court has consistently emphasised that Article 10 guarantees the right to impart information and the right of the public to receive it (see, amongst other authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, §§ 59(b), Series A no. 216 and *Guseva v. Bulgaria*, no. 6987/07, § 36, 17 February 2015). It also held that the freedom of expression includes the publication of photographs (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 103, ECHR 2012). Moreover, Article 10 applies not only to the content of the information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information (see, for example, *Öztürk v. Turkey* [GC], no. 22479/93, § 49, ECHR 1999-VI).

37. The Court notes that the mobile phone application was developed by the applicant political party precisely for voters to share, by information and communication technologies, opinions through anonymous photos of invalid ballot papers. Thus the mobile phone application in the present case possesses a communicative value and thus, for the Court, constitutes expression on a matter of public interest, as protected by Article 10 of the Convention. Moreover, in the present case, the Court is satisfied that what the applicant political party was reproached for was precisely the provision of the means of transmission for others to impart and receive information within the meaning of Article 10 of the Convention. It considers that the actions taken by it are afforded protection under Article 10 § 1 of the Convention and that, consequently, its sanctioning interfered with its right to freedom of expression (see *Neij and Sunde Kolmisoppi v. Sweden (dec.)*, no. 40397/12, 20 June 2012). Such interference breaches Article 10 unless it was "prescribed by law" and pursued one or more of the legitimate aims referred to in Article 10 § 2.

(b) Whether the interference was justified

(i) Lawfulness

38. The Court reiterates that, according to its settled case-law, the expression "in accordance with the law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 169, ECHR 2017).

39. Although the applicant argued that the Guidelines of the National Election Commission had no binding force, the Court does not consider that

in the instant case it is necessary to pursue this point further, since in any case, as explained below, the measure in question breaches Article 10 for other reasons.

(ii) *Legitimate aim*

40. The Court reiterates that the number of exceptions to the right to freedom of expression contained in Article 10 is exhaustive. The definitions of those exceptions are necessarily restrictive and must be interpreted narrowly (see, within the context of both Articles 10 and 11, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX). For it to be compatible with the Convention, a limitation on this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision. The Court's practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention (see, *mutatis mutandis*, *S.A.S. v. France* [GC], no. 43835/11, §§ 113-114, ECHR 2014 (extracts)).

41. The Government submitted that the measure aimed to ensure the orderly conduct of the voting procedure and to secure the proper use of ballot papers. They contended that these aims could fall under "the protection of the rights of others" within the meaning of the second paragraph of Article 10 of the Convention. The applicant political party disagreed.

42. In respect of the Government's argument concerning the protection of the ordinary conduct of the voting procedure, the Court observes that the administrative authority was of the view that the uploading of photographs via the mobile telephone application should be balanced, as a matter of freedom of expression, against the competing interest of citizens lying in the fair conduct of referenda and the secrecy of the voting procedure. However, the *Kúria* held that the posting of photographs of ballot papers had had no impact on either. As to the secrecy of the voting, the *Kúria* emphasised that the identity of voters could not be discovered through the anonymously uploaded photographs. It also held that although posting photographs of the ballot papers on the mobile telephone application had constituted an infringement of the principle of the proper exercise of rights, it had had no repercussion on the fair conduct of the elections.

For its part, the Court sees no reason to hold otherwise and is satisfied that the conduct of the applicant political party was not conducive to any prejudice in respect of the secrecy or the fairness of the referendum.

43. Moreover, the Government have not pointed to any other actual rights of "others" that would or could have been adversely affected by the anonymous publication of imagery of marked or spoiled ballots. They have not provided any elements showing that there was a resultant deficiency in the voting procedure, facilitated by the posting of images of those ballot

papers, which should have been addressed through a restriction on the use of the mobile telephone application.

44. The Government's second argument focused on the violation of the principle of proper exercise of rights, laid down in section 2(1)(e) of the Act on Electoral Procedure, which, in their submissions, would also entail a violation of the rights of others. The Court is, however, not persuaded by this suggestion. While it is true that the domestic authorities established that the use of the ballot papers for any other purpose than casting a vote infringed that provision, the Government have not convincingly established any link between this principle of domestic law and the aims exhaustively listed in paragraph 2 of Article 10.

45. It follows that the Court is unable to accept that the interference complained of pursued any of the legitimate aims enumerated in Article 10 § 2.

46. Where it has been shown that an interference did not pursue a "legitimate aim", it is not necessary to investigate whether it was "necessary in a democratic society" (see, *mutatis mutandis*, *Erményi v. Hungary*, no. 22254/14, § 38, 22 November 2016).

(iii) *Conclusion*

47. The foregoing considerations are sufficient to enable the Court to conclude that the sanction imposed on the applicant political party for operating the mobile telephone application in question did not meet the requirements of Article 10 § 2 of the Convention.

48. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

50. The applicant political party did not submit any claim in respect of non-pecuniary damage. However, it claimed 100,000 Hungarian forints (HUF – approximately 330 euros (EUR)) in respect of pecuniary damage. This sum corresponded to the amount which it was ordered by the *Kúria* to pay as a fine.

51. The Government considered that the applicant's claim was reasonable as to quantum.

52. The Court accepts that there is a causal link between the violation found and the pecuniary damage alleged; it therefore awards the full sum claimed.

B. Costs and expenses

53. The applicant political party also claimed EUR 3,000 for the costs and expenses incurred before the Court. This amount corresponds to the legal costs charged by its lawyer for twenty hours of legal work billed at an hourly rate of EUR 150.

54. The Government considered that the applicant's claim was reasonable as to quantum.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed.

C. Default interest

56. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement]:
 - (i) EUR 330 (three hundred and thirty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 23 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President