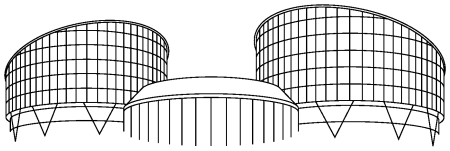

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KÖRTVÉLYESSY v. HUNGARY

(Application no. 7871/10)

JUDGMENT

STRASBOURG

5 April 2016

FINAL

05/07/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Körtvélyessy v. Hungary,

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

Vincent A. De Gaetano, *President,*
András Sajó,
Boštjan M. Zupančič,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 15 March 2016,

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

PROCEDURE

1. The case originated in an application (no. 7871/10) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Zoltán Körtvélyessy ("the applicant"), on 3 February 2010.

2. The applicant was represented by Mr T. Gaudi-Nagy, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant complained under Article 11 and other provisions of the Convention that the authorities had unjustifiably banned a political demonstration organised by him.

4. On 30 January 2015 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Budapest.

6. The applicant intended to organise a demonstration protesting against "the persecution of national radicalism". It was planned to take place between 4 p.m. and 7 p.m. on 15 August 2009. The venue was Venyige Street in Budapest Xth District, in front of Budapest Penitentiary.

7. Venyige Street is of a width of five metres in the Government's submissions and of eight in the applicant's. Parallel to the main driveway, there is a service lane, of a width equivalent to that of two cars; this area is normally used as a car park. In the applicant's submissions, this latter section could have accommodated largely all the participants, without them creating any major traffic incident.

8. The applicant, in the notification addressed to Budapest Police Department under Act no. III of 1989 on the Right of Assembly, indicated that a maximum of 200 participants were to be expected. This notification was made at 5.40 p.m. on 12 August 2009.

9. On 14 August 2009 Budapest Police Department banned the demonstration, in pursuit of its prerogatives under section 8(1) of Act no. III of 1989. It was of the view that there was no alternative route for the traffic in the neighbourhood, and consequently the demonstration would impede traffic inordinately. The applicant was reproached with the fact that the notification did not contain the agenda for the gathering.

10. Because of this prohibition, the demonstration did not take place.

11. On 17 August 2009 the applicant requested judicial review of the police decision. He explained *inter alia* that he had not specified the agenda because the meeting had been intended as a rather small one and that therefore the actual course of events, such as speeches or discussion, was hard to predict.

12. On 19 August 2009 the Budapest Regional Court rejected the applicant's complaint. It observed that the question of previous notification of the agenda was immaterial, since the only valid reason in the case was the disproportionate difficulties which would be caused to traffic by the demonstration.

13. The court relied on the expert opinion provided by the Traffic Division of Budapest Police Department, in whose view the demonstration would have significantly impeded the traffic heading to the shops located in Venyige Street, a dead end, to the local waste disposal site and to the suppliers' entrance of Budapest Prison; and the disruption caused by the crowd might have extended to Maglódi Road, a major thoroughfare in the vicinity with lines of city transport involved. Relying on that reasoning, the court endorsed the police decision.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

14. The applicant complained under Articles 11, 14 and 17 of the Convention that the authorities' overly restrictive interpretation of the

notion of "no alternative traffic route" had resulted in a disproportionate interference with his right to freedom of assembly.

15. The Court considers that this complaint falls to be examined under Article 11 of the Convention alone, which provides as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

16. The Government contested the applicant's argument.

A. Admissibility

17. The Court 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

18. The applicant argued that, while having been prescribed by law, the interference complained of had not pursued a legitimate aim. As regards its necessity, he argued that had the demonstration been authorised it would not have caused any disproportionate obstacle to the traffic. Venyige Street, with the service lane included, was wide enough to accommodate the expected number of participants, some 200; and the police could have secured access to the prison notwithstanding the on-going event. In sum, the applicant found abusive the Government's reliance on the traffic hindrance argument.

19. The Government submitted that the interference was prescribed by law, namely by the relevant provisions of Act no. III of 1989 on the Right of Assembly. Furthermore, it pursued the legitimate aim of securing the rights of others, that is, those of traffic users. As to its necessity, the Government referred to the expert opinion given by the Traffic Division of the Budapest Police Department and stressed that the police had had to balance between the right to assembly and the right to free movement. Since in the present case the event was likely to congest inordinately the traffic of both Venyige Street and perhaps that of Maglódi Road, the neighbouring major thoroughfare, as well, it was the police's call to restrict the applicant's

Article 11 rights: the measure was thus a necessary and proportionate restriction on the right to assembly.

20. The Court notes that the Government did not dispute that the applicant could rely on the guarantees contained in Article 11; nor did they deny that the ban on the demonstration had interfered with the exercise of his rights under that provision. The Court sees no reason to hold otherwise. The Government contended, however, that the interference was justified under the second paragraph of Article 11.

21. It must therefore be determined whether the measure complained of was "prescribed by law", was prompted by one or more of the legitimate aims set out in paragraph 2, and was "necessary in a democratic society" to achieve them.

22. There was no dispute between the parties that the restriction imposed on the applicant's freedom of peaceful assembly was based on the pertinent provisions of Act no. III of 1989 on the Right of Assembly; and, again, the Court sees no reason to hold otherwise. Therefore, the requirement of lawfulness was satisfied.

23. The Government submitted that the restriction on the right of peaceful assembly in public areas served to protect the rights of others, for example the right to freedom of movement or the orderly circulation of traffic. They applicant disagreed.

The Court is satisfied that the measure complained of pursued the legitimate aims of preventing disorder and protecting the rights of others.

24. As regards the question as to whether the interference was necessary in a democratic society, the Court reiterates that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions, as well as the need to secure a forum for public debate and the open expression of protest (see, most recently, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 86, ECHR 2015).

25. The expression "necessary in a democratic society" implies that the interference corresponds to a "pressing social need" and, in particular, that it is proportionate to the legitimate aim pursued. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with the rights protected by the Convention (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 87, ECHR 2001‑IX).

26. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they took. This does not mean that it has to

confine itself to ascertaining whether the State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine, after having established that it pursued a "legitimate aim", whether it answered a "pressing social need" and, in particular, whether it was proportionate to that aim and whether the reasons adduced by the national authorities to justify it were "relevant and sufficient. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Kudrevičius and Others*, cited above, § 143).

27. Moreover, it is not, in principle, contrary to the spirit of Article 11 if, for reasons of public order and national security, a High Contracting Party requires that the holding of meetings be subject to authorisation. Indeed, the Court has previously considered that notification, and even authorisation procedures, for a public event do not normally encroach upon the essence of the right under Article 11 of the Convention as long as the purpose of the procedure is to allow the authorities to take reasonable and appropriate measures in order to guarantee the smooth conduct of any assembly, meeting or other gathering. However, regulations of this nature should not represent a hidden obstacle to freedom of peaceful assembly as protected by the Convention (see *Kudrevičius and Others*, cited above, §§ 147 *et seq*.).

28. The Court observes that, in the domestic court decision dealing with the case, the basis for upholding the ban on the assembly related exclusively to traffic issues. It also observes that the Government's submissions have been, in essence, confined to the affirmation that the demonstration would have seriously hampered free traffic in the area. In this connection, the Court reiterates that a demonstration in a public place may cause a certain level of disruption to ordinary life (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, § 43, 18 December 2007; *Budaházy v. Hungary*, no. 41479/10, § 34, 15 December 2015).

29. Examining the materials submitted by the parties, the Court finds that the Government have not demonstrated that the national authorities based their decisions on an acceptable assessment of the relevant facts. It notes in particular that the applicant planned to organise a demonstration with an anticipated 200 participants. Even assuming that the eventual number of those present would have exceeded the volume initially envisaged, the Court is not convinced by the Government's explanation to the effect that Venyige Street, a road of five or eight metres in width, with a broad service lane adjacent, could not have helped to accommodate the demonstration without serious traffic disruption. Indeed, their arguments appear not to take into account that the street is a dead end; and the through traffic is thus of limited importance. For the Court, however, this fact cannot

be overlooked. Moreover, the Government's contention that the situation could have developed into blocking the major thoroughfare nearby is largely a matter of speculation.

29. Consequently, the Court concludes that the authorities, when issuing the prohibition on the demonstration and relying on traffic considerations alone, failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all (see *Patyi and Others v. Hungary*, no. 5529/05, § 42, 7 October 2008).

30. Moreover, the Court notes that there is no evidence in the case file to suggest that the demonstration would have been violent or represented a danger to public order. The Court reiterates that, "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance" (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 41‑42, 5 December 2006). Such tolerance has not been shown in the present case (see *Patyi and Others*, cited above, § 43).

31. Having regard to the above considerations, the Court finds that the basis for the ban on the planned peaceful assembly was, if at all relevant, not sufficient to meet any pressing social need. The ban has therefore not been shown to have been necessary in a democratic society in order to achieve the aims pursued.

32. Accordingly, there has been a violation of Article 11 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government contested this claim.

36. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered (see *Patyi and Others*, cited above, § 53).

B. Costs and expenses

37. The applicant also claimed the global sum of EUR 3,500 for the costs and expenses incurred before the domestic courts and the Court, combined.

38. The Government contested this claim.

39. 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 sum of EUR 3,000 covering costs under all heads.

C. Default interest

40. 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 11 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

4. *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, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Vincent A. De Gaetano
Registrar	President