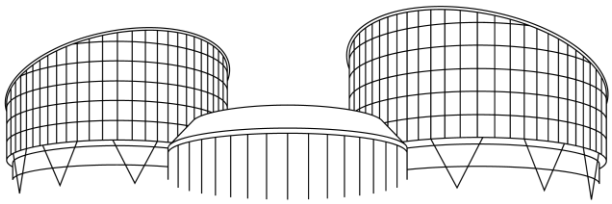

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SZERDAHELYI v. HUNGARY

(Application no. 30385/07)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Szerdahelyi v. Hungary**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 30385/07) against the Republic of 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, Dr Szabolcs Szerdahelyi ("the applicant"), on 4 June 2007.

2. The applicant was represented by Dr M. Róth, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant complained about the frustration of his right to peaceful assembly.

4. On 13 July 2009 the applicant died. The Registry was notified of this only on 23 August 2011, when Mr Szabolcs Szerdahelyi, the applicant's son and only heir, stated his intention to replace his father in the proceedings before the Court.

5. Meanwhile, on 9 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

6. On 5 November 2011 the applicant's lawyer submitted that Mr Szerdahelyi had joined the pending domestic proceedings (see paragraph 12 below).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1943 and lived in Budapest.

A. Proceedings initiated by the applicant

8. On 24 November 2006 the applicant announced, as required by the Assembly Act 1989, to the Budapest Police Department his intention to organise a demonstration on 9 December 2006 on Kossuth Square in Budapest, in front of Parliament.

9. On 26 November 2006 the Budapest Police Department refused to deal with the application. It observed that on 23 October 2006 the area in question had been declared, by the Police Department itself and for an indefinite period of time, a "security operational zone" (*biztonsági műveleti terület*), in view of the tumultuous events in Budapest in September 2006. It was as such outside the Police Department's jurisdiction as regards the prohibition of, or acquiescence in, a demonstration. On 6 December 2006 the Budapest Regional Court dismissed the applicant's request for judicial review, observing in essence that no decision on the merits of the case had ever been adopted by the administrative authorities – which excluded such a review.

10. On 11 December 2006 the Deputy Head of the National Police Department dismissed the applicant's further complaint. On 19 December 2006 the applicant filed an action with the Budapest Regional Court, challenging the decisions of both 23 October and 11 December 2006.

11. On 11 January 2007 the Head of Budapest Police dismissed the applicant's renewed complaint. On 12 February 2007 the Deputy Head of the National Police Department partly reversed this decision and instructed the Budapest Police Department to substitute the indefinite measure in question with one of definite duration. On 5 March 2007 the Regional Court dismissed the applicant's ensuing action, essentially endorsing the police authorities' earlier reasoning. It pointed out that the proceedings only concerned the police's decision on non-competence and did not constitute review of the police's original decision declaring Kossuth Square a "security operational zone".

12. Upon a further complaint, on 18 March 2008 the Regional Court quashed the decisions of 11 January and 12 February 2007 and remitted the case to the National Police Department. In reaction to the applicant's petition for review, on 29 April 2009 the Supreme Court quashed the decision of 18 March 2008 and remitted the case to the Regional Court. The latter's procedure was then interrupted on 1 October 2009 on account of the

applicant's death. The applicant's son and heir joined the proceedings as successor on 25 August 2011.

13. The Government submitted that the subject matter of the litigation pending before the Regional Court was the police's original decision declaring Kossuth Square a "security operational zone".

B. Proceedings initiated by Mr K.

14. In another case concerning the same area, on 29 January 2007 a Mr K. challenged the police's very decision to declare Kossuth Square a "security operational zone". On 14 March 2007 the Budapest Police Commander rejected his complaint, but this decision was quashed by the National Commander on 16 April 2007. In the resumed administrative proceedings, on 22 June 2007 the Budapest Commander again rejected the complaint. On 19 July 2007 the National Commander upheld this decision. Mr K. challenged this ruling in court.

15. Mr K.'s action was dismissed by the Budapest Regional Court. However, on appeal the Supreme Court quashed this decision, together with the one of 19 July 2007.

16. In the resumed second-instance administrative proceedings, on 23 December 2009 the National Commander again upheld the Budapest Commander's decision. Mr K. requested judicial review.

17. On 11 November 2010 the Regional Court quashed, in judgment no. 27.K.31.354/2010/9., both the first- and the second-instance administrative decisions and remitted the case to the Budapest Commander. The court pointed out that the impugned decisions did not contain any concrete elements establishing the necessity and proportionality of maintaining the "security operational zone" after the prolongation of 22 November 2006. Nor did they address the plaintiff's suggestion that the mere fencing-off of Parliament's immediate vicinity – rather than the global ban on Kossuth Square – would have been sufficient in the circumstances.

18. In the resumed first-instance administrative proceedings, on 4 April 2011 the Budapest Commander partly sustained Mr K.'s complaint, noting that, in the absence of evidence to the contrary, the proportionality of the impugned measure had successfully been challenged.

THE LAW

I. THE VICTIM STATUS OF THE APPLICANT'S SUCCESSOR

19. On 23 August 2011 the applicant's lawyer submitted that the applicant had died on 13 July 2009 and that his son and heir wished to take his place in the proceedings before the Court.

20. The Government submitted that the application should be struck out of the list of cases pursuant to Article 37 § 1 (c), since the applicant's son had shown no interest in continuing the domestic proceedings pending before the Regional Court.

21. The Court notes the submission of 5 November 2011 of the applicant's lawyer, according to which the applicant's son had joined the pending domestic proceedings on 25 August 2011. In these circumstances, the Court is satisfied that Mr Szerdahelyi has not lost interest in pursuing the case, either at the domestic level or before it.

22. The Court consequently considers that the applicant's successor has the requisite *locus standi* under Article 34 of the Convention in respect of the applicant's complaint.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

23. The Government submitted that the applicant's motion challenging in court the original police decision declaring Kossuth Square an "operational zone" was still pending which made the application premature (see paragraph 13 above and also paragraph 27 below). The applicant argued that he had exhausted domestic remedies by challenging both the original decision and the police's non-competence ruling.

24. The Court considers that the Government's objection concerning non-exhaustion of domestic remedies is inextricably linked to examination of the question whether there has been an interference with the applicant's right to freedom of assembly under Article 11, and therefore to the merits of the case. Accordingly, the Court joins this question to the merits and will examine it under Article 11 of the Convention.

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

26. The applicant complained that the police measure in question had prevented him from exercising his right to peaceful assembly. He relied on Articles 11 and 13 of the Convention. The Court considers that the

complaint falls to be examined under Article 11 of the Convention alone, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly ...
>
> 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. ..."

27. The Government contested this view. They noted that, in the applicant's view, it was the police decision on non-competence that violated his right to freedom of assembly. However, the interference in fact resulted from the original police measure declaring the area in question a "security operational zone". Against such a measure, a distinct complaint might be filed with the police body in charge, and the latter's decision could be appealed before the superior organ. The resulting administrative ruling was susceptible to judicial review, an effective remedy in the circumstances. However, the applicant's case pursuing this legal avenue was still pending. In respect of the area closure, successful proceedings, including judicial review, had already take place (case no. 27.K.31.354/2010/9.); and the applicant should have completed his own similar case, failing which he had not exhausted domestic remedies.

28. As to the merits, the Government pointed out that the venue of the intended assembly had not qualified at the material time as public area accessible to everyone and therefore the right to freedom of assembly could not be exercised on it.

29. The applicant argued that, to exhaust domestic remedies, he could reasonably be expected to challenge the police's non-competence decision in court, which he had done. The other case, which was still pending, represented no effective remedy to exhaust, since by the time it would be adjudicated, the demonstration becomes obsolete. The non-availability of Kossuth Square for the purposes of the intended demonstration had been an unlawful and disproportionate measure.

30. The Court observes that the Government did not dispute that the applicant could rely on the guarantees contained in Article 11. It considers that the non-acquiescence by the police in the demonstration effectively interfered with the exercise of the applicant's rights under that provision, as the individualised application of the original police decision referred to by the Government (see paragraph 27 above). It is further satisfied that the applicant exhausted the remedy available in this connection.

31. The Government can moreover be understood to base their preliminary objection of non-exhaustion of domestic remedies on the fact that the applicant did not complete the procedure challenging the original police decision, but been contented with challenging the one on non-

competence. However, the Court is not convinced that the proceedings which were pursued by Mr K. but not accomplished by the applicant can be considered in the circumstances an effective remedy whose omission falls foul of Article 35 § 1 of the Convention. Given the instantaneous nature of a political demonstration – the impact of which may rapidly diminish with the lapse of time from the triggering event – a judicial procedure, which in Mr K.'s instance included several remittals and decisions maintaining the ban and which produced at last a decision to the contrary only after more than four years, can hardly be regarded as effective or adequate and must be attributed a chilling effect on the freedom in question (see, *a fortiori*, *Bączkowski and Others v. Poland*, no. 1543/06, §§ 67 to 73, 3 May 2007). For the Court, the applicant's omission to exhaust this legal avenue in addition to the one fully utilised cannot be held against him, all the more so, since there appears to be no obstacle to the authorities' assessing proportionality also in those proceedings, of which the applicant has already availed himself. The Government's preliminary objection must therefore fail.

32. The Government contended that the interference was justified under the second paragraph of Article 11. It must therefore be determined whether the measure complained of was "prescribed by law", prompted by one or more of the legitimate aims set out in paragraph 2, and was "necessary in a democratic society" to achieve them.

33. As regards the question whether the non-availability of Kossuth Square for the purposes of the intended demonstration was "prescribed by law", the Court notes that the police declared it a "security operational zone" in 2006, and it remained so throughout the material period. However, on 11 November 2010 the Budapest Regional Court quashed the underlying police decisions, reproaching those authorities for failing to assess the necessity and proportionality of the measure as maintained subsequent to 22 November 2006. Consequently, on 4 April 2011 the Budapest Commander carried out the requisite scrutiny and found that the proportionality of the measure had not been proved (see paragraphs 17-18 above). For the Court, these court rulings have effectively, if retroactively, removed the legal basis of the impugned measure.

34. It is true that the above two decisions were adopted in a procedure initiated by Mr K. rather than the applicant. For the Court, however, this is immaterial when it comes to the notion of lawfulness in the context of Article 11 § 2.

35. The foregoing considerations are sufficient to enable the Court to conclude that the ban on Kossuth Square at the material time was devoid of a basis in domestic law and cannot as such be regarded as "prescribed by law". It is therefore not necessary to embark on an examination of its legitimate aim or necessity in a democratic society.

There has accordingly been a violation of Article 11 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested this claim.

39. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on the basis of equity, EUR 2,400.

B. Costs and expenses

40. The applicant also claimed EUR 1,100 for the costs and expenses incurred before the Court. This amount corresponds to 11 hours of legal work billable by his lawyer at an hourly rate of EUR 100.

41. The Government contested this claim.

42. 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

43. 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

1. *Decides* by a majority that the applicant's son has *locus standi* in the proceedings;

2. *Joins* to the merits the Government's objection concerning non-exhaustion of domestic remedies and *dismisses* it by a majority;

3. *Declares* the application admissible by a majority;

4. *Holds* by 6 votes to 1 that there has been a violation of Article 11 of the Convention;

5. *Holds* by 6 votes to 1
   (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 Hungarian forints at the rate applicable at the date of settlement:
      (i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,100 (one thousand one hundred 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;

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

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of the Court, the separate opinion of Judge Jočienė is annexed to this judgment.

F.T.
S.H.N.

DISSENTING OPINION OF JUDGE JOČIENĖ

I voted in this case against the Chamber's position that the applicant's son should be recognised as having *locus standi* in the proceedings before the European Court of Human Rights, and subsequently, against the finding of a violation of Article 11.

According to the jurisprudence of the Court, in cases where the direct *victim* died before or after the application was submitted to the Court, different criteria apply in order to recognise *locus standi*, which will then also depend on the nature of the Convention right at issue.

The Chamber in the present case relied on the fact that the Government did not dispute that the applicant could rely on the guarantees contained in Article 11 of the Convention (see paragraph 30 of the judgment) and that the applicant's son had been allowed to join the pending domestic proceedings (see paragraph 21 of the judgment), which have not yet finished.

For me, such an argument *is not in itself sufficient* to allow the next-of-kin or heir of the deceased applicant to continue the proceedings in the European Court of Human Rights, even though I accept that participation in the domestic proceedings is an important factor when resolving the *locus standi* issue before the Court (see, for example, *Nölkenbockhoff v. Germany*, 25 August 1987, Series A no. 123; and *Micallef v. Malta* [GC], no. 17056/06, 5 October 2009, § 49).

Furthermore, according to the Court's case-law, in a number of cases where an applicant has died in the course of the proceedings, it has taken into account the *statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court* (see *Karner v. Austria*, no. 40016/98, 24 July 2003, §§ 22-23, and all the case-law cited therein); on the other hand, it has been the Court's practice to strike applications out of its list where no heir or close relative has expressed the wish to pursue an application (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

In the case before us, the applicant's son clearly expressed his wish to continue the application, lodged by his father, before the European Court of Human Rights. But such background, whether this element is taken alone or even together with the fact of permission to participate in the domestic proceedings, is not in itself sufficient for *locus standi* to be granted in every case.

Where the applicant has died during the proceedings before the Court (introduced by himself/herself) the next-of-kin or heir may continue with the application if he or she has *sufficient interest in that case* (as, for instance, the widow and children in *Raimondo v. Italy*, 22 February 1994, § 2, Series A no. 281-A; and the nephew and potential heir in *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII).

The Court stated in the case of *Jėčius v. Lithuania* (no. 34578/97, § 41, ECHR 2000-IX) as follows:

> "The Court reiterates that, where an applicant dies during the examination of a case concerning the unlawfulness of his detention, his heirs or next of kin *may in principle* pursue the application on his behalf (see, among other authorities, *Krempovskij v. Lithuania* (dec.), no. 37193/97, 20 April 1999, unreported). The Court considers, like the Commission, that the applicant's widow has *a legitimate interest* in pursuing the application in his stead." (emphasis added)

Therefore, the Court's practice shows that in cases where the direct victim has died after the application was lodged with the Court, the next-of-kin or heir can pursue the application before the Court when he or she has a *legitimate or sufficient interest* in continuing the proceedings before it (see also, for example, *Léger v. France* (striking out) [GC], no. 19324/02, § 50, 30 March 2009, as regards the applicant's niece).

In cases where the direct victim died before the application was lodged with the Court, the Court applies stronger criteria for establishing *locus standi*. For example, in the case of *Fairfield v. the United Kingdom* ((dec.), no. 24790/04, ECHR 2005-VI), where a daughter filed a complaint two years after her father's death, claiming a violation of his rights to freedom of thought, religion and speech (Articles 9 and 10 of the Convention), even though the domestic courts had granted her leave to pursue the appeal after her father's death, the Court did not accept the daughter's victim status.

In the Hungarian case before us, I cannot see *any legitimate or sufficient interest* of the applicant's son in continuing the application before the Court under Article 11 of the Convention. According to the practice of the Court, the Convention does not allow an *actio popularis.* Under Article 34 of the Convention, the applicant as *a victim* (either direct or indirect) must bring *prima facie* evidence of being directly affected by the impugned measure (see, *mutatis mutandis*, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 90, 31 July 2008). In the present case, I cannot see how the deceased applicant's son could be affected by the alleged violation of Article 11 of the Convention, taking into account the nature of this Article, in so far as the deceased applicant had not received any answer from the police as regards his requested permission to hold a demonstration back in 2006 on Kossuth Square in Budapest, in front of the Parliament. In my opinion, in this particular case there is no *legitimate or sufficient interest* of the applicant's son in defending his late father's rights of association under Article 11 of the Convention.

I agree with the jurisprudence of the Court that in cases brought under Article 2 or 3, which protect the fundamental values of every democratic society, the Court can more easily justify the continuation of proceedings before it after the death of the direct victim, taking into account the "*particular situation governed by the nature of the violation alleged ...*" (see, among other authorities, *Varnava and Others v. Turkey* [GC],

nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 200, 18 September 2009; see also *Khadzhialiyev and Others v. Russia*, no. 3013/04, § 114, 6 November 2008, as regards Article 3 claims).

I would also note, however, that the Court's approach in ordinary Article 5 cases as regards *locus standi* has been much more restrictive (see, for example, *Biç and Others v. Turkey* (no. 55955/00, 2 February 2006, § 24), where the wife and children of the deceased victim were not granted the requisite standing, as they were *not directly affected* by the length of the detention on remand or the alleged unfairness of criminal proceedings brought against the deceased; contrast *Jėčius*, cited above). The Court reiterated in the *Biç and Others* case that the rights in Article 5 belonged to the category of *non-transferable rights* (see *Sanles Sanles v. Spain* (dec.), no. 48335/99, ECHR 2000-XI). Similar decisions had been given in the past by the Convention organs (see, for example, *Georgia Makri and Others v. Greece* (dec.), no. 5977/03, 24 March 2005; and *Nölkenbockhoff and Bergmann v. the Federal Republic of Germany*, no. 10300/89, Commission decision of 12 December 1984, DR 40, p. 9).

By contrast, Article 5 § 5 of the Convention (the right to compensation for unlawful detention) *is a pecuniary right and a transferrable one* (see *Houtman and Meeus v. Belgium*, no. 22945/07, §§ 27-31, 17 March 2009).

In Article 6 cases, in addition to participation in the domestic proceedings, the Court has also taken account of other alternative criteria in order to recognise the standing of relatives before it**:** *the transferability of the right, the legitimate interest and the direct effect on patrimonial rights* (see, for example, the above-mentioned case of *Sanles Sanles*, where the Court considered that the rights claimed under Articles 2, 3, 5, 8, 9 and 14 belonged to the category of non-transferable rights, declaring this part of the application incompatible *ratione personae*).

In the *Karner* case (cited above, §§ 25-26) the Court analysed whether the Convention right at issue (in its nature) could be regarded as *"transferable".* The Court stated as follows:

> "... as a rule, and in particular in cases which primarily involve *pecuniary*, and, for this reason, *transferable claims*, the existence of other persons to whom that claim is transferred is an important criterion, but cannot be the only one. As the Court pointed out ..., human rights cases before the Court generally also have *a moral dimension*, which must be taken into account when considering whether the examination of an application after the applicant's death should be continued ..."

This means that in cases where the Court is obliged to resolve the *locus standi* aspect, it must take into account such factors as: the clearly expressed wish by the next-of-kin or heirs to continue the application before the court, their participation in the domestic proceedings, a legitimate and/or sufficient personal interest in pursuing the individual application in the deceased applicant's stead, the Convention right at issue (its nature) and its

transferability; and, lastly, it must answer the question whether there are any common or public interests in terms of human rights protection or some moral dimension requiring it to continue the examination of the case.

The Court has also applied a more flexible approach when recognising *locus standi* in cases where the complaint was related to the reputation of the deceased person under Article 8, thus also potentially affecting the reputation of the family (see, for example, *Armonienė v. Lithuania*, no. 36919/02, § 29, 25 November 2008).

I would emphasise that the Court has always declared inadmissible applications from relatives raising complaints under Articles 9, 10 and 11, *in relation to proceedings and facts concerning the deceased victim*. In doing so, it has distinguished this type of complaints from those brought under Article 2 concerning the death of a relative (see, for Articles 9 and 10, *Fairfield*, cited above; as regards Article 11, see *Direkçi and Direkçi v. Turkey* (dec.), no. 47826/99, 3 October 2006, where the Court observed that there was no general interest in the case for the proceedings under Articles 6 and 11 to be continued, as those Articles did not fall within the fundamental provisions of the Convention).

As regards the *exception based on the general interest,* the Court noted in *Karner* (cited above) that, even in the absence of heirs wishing to continue the application, it could continue the examination of a case relying on *an important question of public interest*.

Therefore, taking into account the Court's case-law on the *locus standi* issue, I cannot see in this particular case that the applicant's son *has any legitimate or sufficient personal interest* in pursuing the application under Article 11 of the Convention. Furthermore, *Article 11 rights cannot be regarded as "transferable rights"* under the Court's jurisprudence.

Furthermore, no *general or moral interests* in protecting human rights can be found in this case. Thus, the continued examination of the present application would not contribute to elucidating, safeguarding or developing the standards of protection of Article 11 rights under the Convention (contrast *Karner*, cited above).

In my opinion there must be some strong *sufficient and/or justified personal interest* of the heir in continuing the proceeding before the Court after the applicant's death and that interest must depend on a reasonable relationship between the original actions undertaken by the applicant and his or her heir's wish to continue the proceedings. Such a relationship cannot be established with regard to the nature of Article 11 rights, which are not transferable. Logically, the question arises how the son in this particular case could have known what the applicant had wanted to express during the planned demonstration in 2006, permission for which he had never received from the police (in the Court's case-law, Articles 10 and 11 are very much interrelated, see *Women On Waves and Others v. Portugal*, no. 31276/05, § 28, 3 February 2009). For me, the requested continuation of the case

before the Court was based more on the pecuniary interests of the heir, but not on a legitimate interest in protecting the deceased applicant's rights of association under Article 11. For this reason I also voted against granting any just satisfaction in the case under Article 41 of the Convention.

In my opinion, the heir (the applicant's son) has no *locus standi* before the Court in the present case; therefore the case should have been struck out of the list of cases under Article 37 § 1 *in fine* of the Convention.