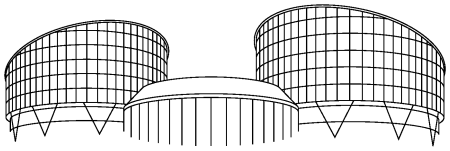

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KARÁCSONY AND OTHERS v. HUNGARY

(Applications nos. 42461/13 and 44357/13)

JUDGMENT

STRASBOURG

17 May 2016

This judgment is final but it may be subject to editorial revision.

In the case of Karácsony and Others v. Hungary,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Luis López Guerra, President,
András Sajó,
Mirjana Lazarova Trajkovska,
Angelika Nußberger,
Mark Villiger,
Boštjan M. Zupančič,
Khanlar Hajiyev,
Ján Šikuta,
Vincent A. De Gaetano,
Linos-Alexandre Sicilianos,
Erik Møse,
Helena Jäderblom,
Johannes Silvis,
Valeriu Griţco,
Ksenija Turković,
Branko Lubarda,
Yonko Grozev, *judges,*

and Johan Callewaert, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 8 July 2015 and 27 April 2016,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 42461/13 and 44357/13) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 June and 5 July 2013 respectively. The first application (no. 42461/13) was lodged by four Hungarian nationals, Mr Gergely Karácsony, Mr Péter Szilágyi, Mr Dávid Dorosz and Ms Rebeka Katalin Szabó, and the second (no. 44357/13) by three Hungarian nationals, Ms Bernadett Szél, Ms Ágnes Osztolykán and Ms Szilvia Lengyel ("the applicants").

2. The applicants were represented by Mr D. Karsai, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

3. The applicants, Members of Parliament, alleged that decisions to fine them for their conduct in Parliament had violated their right to freedom of expression in breach of Article 10 of the Convention. They also complained

under Article 13 of the Convention that there was no remedy available to them to contest the impugned decisions.

4. The applications were allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 16 September 2014 a Chamber of that Section composed of Guido Raimondi, President, Işıl Karakaş, András Sajó, Nebojša Vučinić, Egidijus Kūris, Robert Spano, Jon Fridrik Kjølbro, judges, and also of Stanley Naismith, Section Registrar, delivered its judgments in the two cases. In each case it unanimously declared the complaints under Article 10 and under Article 13 read in conjunction with Article 10 admissible and the reminder of the applications inadmissible. The Chamber held unanimously that there had been a violation of Article 10 and that there had been a violation of Article 13 read in conjunction with Article 10. A joint concurring opinion of Judges Raimondi, Spano and Kjølbro and a partly dissenting opinion of Judge Kūris were annexed to the judgments.

5. On 15 December 2014 the Government requested the referral of the cases to the Grand Chamber in accordance with Article 43 of the Convention. On 16 February 2015 the panel of the Grand Chamber granted that request.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicants and the Government each filed written observations on the merits.

8. In addition, third-party comments were received from the Czech and the United Kingdom Governments, who had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 8 July 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr B. BERKE, *Secretary of State, Ministry of Justice*,
Mr Z. TALLÓDI, *Agent*,
Ms A. BRUSZT, Legal Adviser, Ministry of Justice,
Mr T. BÁRÁNY, Deputy Director, Parliament Office,
Ms Z. TÓTH, Head, Codification Department, Parliament Office,
Ms N. SEBŐK, Legal Adviser, Codification Department, Parliament Office,
Mr A. VÁGI, Legal Adviser, Codification Department Parliament Office, *Advisers*;

(b) *for the applicants*
Mr D. KARSAI, *Counsel,*
Mr V. KAZAI,
Ms F. KOLLARICS, *Advisers.*

Two of the applicants, Ms Lengyel and Ms Szél, also attended.

The Court heard addresses by Mr Karsai and Mr Tallódi as well as their replies to questions put by Judges Nußberger and López Guerra.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants in case no. 42461/13

10. The applicants, Mr Gergely Karácsony, Mr Péter Szilágyi, Mr Dávid Dorosz and Ms Rebeka Katalin Szabó, were born in 1975, 1981, 1985 and 1977 respectively and live in Budapest.

11. At the material time the applicants were members of parliament and of the opposition party *Párbeszéd Magyarországért* (Dialogue for Hungary). Mr Szilágyi was also one of the notaries to Parliament.

1. Facts regarding applicants Mr Karácsony and Mr Szilágyi

12. At a plenary session on 30 April 2013, during a pre-agenda speech, an opposition member of parliament from the Hungarian Socialist Party criticised the Government and accused it of corruption with regard to, *inter alia*, the reorganisation of the tobacco market. Mr Zoltán Cséfalvay, the Secretary of State for the National Economy, was replying on behalf of the Government when the applicants Mr Karácsony and Mr Szilágyi carried into the centre of the Chamber a large placard displaying the words "FIDESZ [the party in Government] You steal, you cheat, and you lie." Subsequently, they placed it next to the Secretary of State's seat.

13. The minutes of the session read as follows:

> "Dr Zoltán Cséfalvay, the Secretary of State for the National Economy: ...
>
> Tell them that the increase of commodity wages particularly affects those with a minimum income, since the minimum income has been increased by 5.4 %, which is impossible to keep up with inflation lower than 3.5%. And tell them also ... *(Gergely Karácsony and Péter Szilágyi show a placard displaying the words "FIDESZ You steal, you cheat, and you lie.". – Interventions from the government MPs: - Rules of procedure! Doctor! The Speaker rings the bell.)*
>
> Speaker: Honourable Parliament! *(Constant interventions from the government MPs. Gergely Karácsony and Péter Szilágyi place the placard next to the speaker's*

pulpit.) I request Mr Gergely Karácsony to remove the placard in the same way as they brought it in. *(Gergely Karácsony and Péter Szilágyi leave the placard next to the speaker's pulpit. – Constant interventions from the government MPs. – The Speaker rings the bell.)* I request the ushers to remove the placard. *(Interventions from the government MPs, amongst others: That's all you can do.*). I request the ushers to remove the placard. (*The placard is removed.*)

Thank you very much. Please continue Mr Secretary of State! *(Interventions from the government MPs: How could they get that in? – [The Speaker] rings the bell.*)"

14. On 6 May 2013 the Speaker presented a proposal to fine Mr Karácsony 50,000 Hungarian forints ((HUF); equivalent to EUR 170) and Mr Szilágyi HUF 185,520 (EUR 600) for their conduct, as recorded in the minutes and considered to be gravely offensive to parliamentary order, in application of sections 49(4) and 49(7) of the Parliament Act. The Speaker proposed that as regards Mr Szilágyi the maximum fine (a third of his monthly remuneration) be applied, since he had been elected an official of Parliament and was not just an ordinary MP. No other reasons were given in the proposal. A decision approving the Speaker's proposal was adopted by the plenary on 13 May 2013, without debate.

2. Facts regarding applicants Mr Dorosz and Ms Szabó

15. On 21 May 2013 during the final vote on Bill no. T/10881 amending certain tobacco-related Acts the applicants Mr Dorosz and Ms Szabó carried into the centre of the Chamber and displayed there a large banner displaying the words "Here Operates the National Tobacco Mafia".

16. The minutes of the session read as follows:

"Speaker: ... I ask the Honourable Parliament whether it adopts Bill T/10881 in accordance with the consolidated proposal as amended just now. Please vote! (*Voting)*

I proclaim the decision: Parliament has (*Mr Dávid Dorosz and Ms Rebeka Szabó display a banner with the words "Here Operates the National Tobacco Mafia"*) adopted the Bill with 222 votes in favour, 81 against and 1 abstention. (*Applause from FIDESZ MPs).*

I call the attention of the two Members of Parliament to the fact that their conduct constitutes a grave disruption of the plenary proceedings. I inform you accordingly that the Rules of Procedure and section 49(4) of the Parliament Act (*continuous applause from members of the Hungarian Socialist Party*) sanction such conduct. (*Dr István Józsa. – We want legislation against the Mafia!)* I ask my colleagues to untie and remove the banner. (*Dávid Dorosz and Rebeka Szabó do not hand over the banner to the usher. – Short break. – Loud noise from the opposition MPs.)* Please help the lady and gentleman, Members of Parliament, to remove the draperies. (*Dávid Dorosz and Rebeka Szabó leave the session).* Thank you very much."

17. On 24 May 2013 the Speaker submitted a proposal to fine Mr Dorosz and Ms Szabó HUF 70,000 (EUR 240) each for their conduct, as recorded in the minutes and considered to be gravely offensive to parliamentary order, in application of sections 49(4) and 49(7) of the Parliament Act. The proposal stated that an increased fine was necessary

since similar seriously disruptive conduct had occurred before. No other reasons were specified in the proposal. The plenary adopted the proposal on 27 May 2013 without debate.

B. The applicants in case no. 44357/13

18. The applicants, Ms Bernadett Szél, Ms Ágnes Osztolykán and Ms Szilvia Lengyel, were born in 1977, 1974 and 1971 and live in Budakeszi, Budapest and Gödöllő respectively.

19. At the material time the applicants were members of parliament and of the opposition party LMP (*Politics Can Be Different*).

20. On 21 June 2013 Parliament held a final vote on a new law, Bill no. T/7979 on the Transfer of Agricultural and Forestry Land. The legislative proposal was quite controversial and generated heated reactions among opposition members. In protest during the final vote on the bill, Ms Lengyel placed a small, golden wheelbarrow filled with soil on the table in front of the Prime Minister, while Ms Szél and Ms Osztolykán unfurled a banner displaying the words "Land distribution instead of land robbery!" in front of the Speaker's pulpit; meanwhile, Ms Lengyel used a megaphone to speak. She had previously delivered two speeches during the detailed debate and one speech during the final debate on the bill, filing three amending motions, and introduced two amending proposals just before the final vote.

21. The minutes of the session read as follows:

> "Speaker: The next point on the agenda is the vote on the amendments submitted prior to the final vote on the Transfer of Agricultural and Forestry Land Bill and the final vote. Members of Parliament have received the Bill under number T/7979 and the consolidated text of the Bill under number T/9797/2610.
>
> First we shall vote on the amendments. Their adoption requires a qualified majority.
>
> (*continuous disruption of the session) ...*
>
> Speaker: Because the members of *Jobbik* [opposition party] do not allow me to take my position at the Speaker's pulpit, I will continue presiding over the session from here. *(Strong applause from the ruling parliamentary group).* Because members of *Jobbik* are not allowing the left-wing, opposition party member and notary to sit at [the Speaker's pulpit] during the vote by roll call and conduct the vote and proclaim the results (*Continuous noise).* I request Members of Parliament to take their seats and listen to me! I request Parliament to confirm that since the members of *Jobbik* are not allowing the vote by roll call to take place, we shall cast our vote electronically. (*Strong applause from the ruling parliamentary group. Interventions from the same side: Hurray!).*
>
> Honourable Members of Parliament! I request all of you who agree, given the unusual circumstances, to cast your votes by electronic voting instead of vote by roll call. (*Members of the parliamentary group* Jobbik *occupy the Speaker's seat, chanting "Traitors, traitors" for several minutes. Szilvia Lengyel places a small golden wheelbarrow filled with soil on the table in front of the Prime Minister. Dr Bernadett*

Szél and Ágnes Osztolykán [the applicants] unfurl a banner containing the words 'Land distribution instead of land robbery!' in front of the Speaker's pulpit).

I request technical assistance to enable the vote to take place. (*Short break. Members of the Jobbik group keep chanting: 'Traitors'. Szilvia Lengyel uses a megaphone to speak. Dr. András Schiffer applauds. Intervention from the FIDESZ group: - Where are the parliamentary guards? Laughter.)*

Ms Member of Parliament! I have to warn you as well that your methods are unacceptable under the rules of procedure. I therefore request you to terminate your speech using the megaphone. Again, I request technical assistance to overcome this problem so that the Members of Parliament can exercise their right to vote, since I am hindered in accessing my own voting card. ..."

22. On 25 June 2013 the Speaker presented a proposal to fine Ms Szél and Ms Lengyel HUF 131,400 (EUR 430) each and Ms Osztolykán HUF 154,000 (EUR 510) for their conduct, as recorded in the minutes and considered to be gravely offensive to parliamentary order, in application of sections 49(4) and 49(7) of the Parliament Act.

23. The Speaker proposed that the maximum fine be applied, given the extraordinary situation that had developed during the voting process and that the MPs had engaged in conduct gravely offensive to parliamentary order by displaying their banner and using a megaphone. A decision approving the proposal of the Speaker was adopted by the plenary on 26 June 2013, without debate.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Fundamental Law

24. The Fundamental Law of Hungary, which entered into force on 1 January 2012, provides, in so far as relevant:

Article C

"(1) The functioning of the Hungarian State shall be based on the principle of division of powers."

Article I

"(1) The inviolable and inalienable fundamental rights of man shall be respected. It shall be the primary obligation of the State to protect these rights.

(2) Hungary shall recognise the fundamental individual and collective rights of man.

(3) The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such a fundamental right."

Article IX

"(1) Everyone shall have the right to freedom of speech.

(2) Hungary shall recognise and protect the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion.

...

(4) The right to freedom of speech may not be exercised with the aim of violating the human dignity of others."

Article XXVIII

"(7) Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests."

Article 5

"(7) Parliament shall establish the rules of its operation and the order of its debate in the provisions of the Rules of Parliament (*Házszabály*) adopted with the votes of two-thirds of the members of parliament present. In order to ensure undisturbed operation of Parliament and to preserve its dignity, the Speaker shall exercise policing and disciplinary powers as laid down in the Rules of Parliament."

25. Paragraph 5 of the amended closing and miscellaneous provisions of the Fundamental Law, which entered into force on 1 April 2013, provides:

"The decisions of the Constitutional Court taken prior to the entry into force of the Fundamental Law are repealed. This provision shall be without prejudice to the legal effects produced by those decisions."

B. The Parliament Act

26. Parliament Act no. XXXVI of 2012 ("the Parliament Act"), which entered into force on 20 April 2012, provided at the material time, in so far as relevant:

1. The Speaker of Parliament
Section 2

"The Speaker shall ...

(2) (f) open the sessions, preside over the sessions impartially, and close them; call members of parliament to speak, ensure that the Rules of Parliament are observed, announce the results of the voting and preserve order and decorum during the sessions."

...

18. Maintenance of order and disciplinary powers
Section 46

"(1) The chair[1] of the session shall order any members who clearly digress from the point without any reason during their speech, or pointlessly repeat their own or other speakers' speeches during the same debate, to address the point, and simultaneously warn them of the consequences of non-compliance.

(2) The chair of the session may withdraw the right of members to speak if during their speech they continue to behave in the manner specified under section 46(1) after being warned for the second time."

Section 47

"The chair of the session may withdraw the right of members to speak, giving reasons, if they have used up the time allotted to them or to their parliamentary group."

Section 48

"(1) The chair of the session shall call speakers to order if they use an indecent expression that is indecent or offensive to the authority of Parliament or to a person or group, particularly any national, ethnic, racial or religious community, and shall simultaneously warn them of the consequences of using the offensive or indecent expression repeatedly.

(2) The chair of the session shall withdraw the right of members to speak if they persist in using an offensive or indecent expression after being called to order.

(3) If during his or her speech a member uses an expression that is gravely offensive to the authority of Parliament or to any person or group, particularly any national, ethnic, racial or religious community, or the offensive expression used by him or her causes grave disorder, the chair of the session may propose, without calling to order or issuing a warning, the exclusion of the member from the remainder of that day's sitting and the imposition of a fine against him or her.

(4) Parliament shall decide on the exclusion proposal without a debate. If Parliament does not have a quorum, the chair of the session shall decide on the exclusion. The chair of the session shall inform Parliament at its next sitting of the exclusion and the reasons. Parliament shall subsequently decide, without a debate, whether the decision of the chair of the session was legal.

(5) The member excluded from the sitting may not speak again during that sitting. A member excluded from the sitting day shall not be entitled to remuneration for the day of the exclusion.

(6) The chair of the session, in the absence of a proposal to apply any sanction referred to in subsection 3, may propose the imposition of a fine against the member within five days of his or her using the gravely offensive expression.

(7) Parliament shall decide on the proposal for the imposition of a fine referred to in subsections 3 and 6 during the session following the proposal, without a debate. The amount of the fine may not exceed one third of the member's monthly remuneration."

1. The chair is either the Speaker or a Deputy Speaker.

Section 49

"(1) The chair of the session may withdraw the right of members to speak if they object to any decision by the chair of the session or his or her chairing of the session, except for procedural motions. A speaker whose right to speak has been withdrawn by the chair of the session without warning may request an individual resolution of the case by the committee responsible for the interpretation of the Rules of the House.

(2) A member's right to speak shall not be withdrawn if the chair of the session has not warned him or her of the consequences of the call to order.

(3) Anyone whose right to speak has been withdrawn pursuant to subsection 1, section 46(2) or section 48(2) may not speak again during the same session day on the same matter.

(4) If a member's conduct is gravely offensive to the authority or order of Parliament, or violates the provisions of the Rules of Parliament on the order of debate or voting, the chair of the session may propose the exclusion of the member for the remainder of the session day without calling him or her to order or warning, and the imposition of a fine on him or her. The proposal shall contain the reason for the measure and ... the provision of the Rules of Parliament that has been violated.

(5) Parliament shall decide on the exclusion proposal without a debate. If Parliament does not have a quorum, the chair of the session shall decide on the exclusion. The chair of the session shall inform Parliament at its next sitting of the exclusion and the reasons. Parliament shall subsequently decide without a debate whether the decision of the chair of the session was legal.

(6) The member excluded from the sitting day may not speak again during that sitting day. A member excluded from the sitting day shall not be entitled to remuneration for the entire day of the exclusion.

(7) The chair of the session, in the absence of a proposal on any sanction referred to in paragraph (4), may propose the imposition of a fine on the member within five days of his or her engaging in conduct specified in paragraph (4).

(8) Parliament shall decide on the proposal on the imposition of a fine referred to in paragraphs (4) and (7) during the session following the proposal, without a debate. The amount of the fine may not exceed one third of the member's monthly remuneration."

Section 50

"(1) If a member has engaged in physical violence during the session of Parliament, threatened to use direct physical violence or called for the use of violence, the chair of the session may propose the member's exclusion from the sitting day, the suspension of the exercise of his rights and the imposition of a fine against him.

(2) Parliament shall decide on the exclusion proposal without a debate. If Parliament does not have a quorum, the chair of the session shall decide on the exclusion. If the member has been excluded from the sitting day pursuant to subsection 1, he or she may not participate in the session of Parliament or in the work of parliamentary committees, and shall not be entitled to remuneration during the period of exclusion. The chair of the session shall inform Parliament during its next session of the exclusion and the reasons. Parliament shall subsequently decide without a debate whether the decision of the chair of the session was legal.

(2a) The chair of the session, in the absence of a proposal to apply any sanction referred to in subsection 1, may propose the suspension of the member's rights and/or imposition of a fine against the member within five days of his or her engaging in conduct specified in subsection 1.

(3) Parliament shall decide on the suspension of the member's rights after requesting resolutions of the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials, with the votes of two-thirds of the members present. The rights of the member may be suspended for a maximum of three days.

(4) Parliament shall decide on the proposal for the imposition of a fine referred to in subsections 1 and 2a during the sitting following the proposal, without a debate. The amount of the fine shall not exceed one-third of the member's monthly remuneration.

(5) Parliament may suspend the member's rights with the votes of two-thirds of the members present if he or she persists in engaging in the conduct specified in subsection 1 during the same session

a) for six sitting days on the second occasion,

b) for nine sitting days on the third and every subsequent occasion.

(6) If the member's rights have been suspended, he or she may not participate in the session of Parliament or the work of the parliamentary committees during the period between the first and last sitting days of the suspension and shall not be entitled to remuneration.

(7) The first sitting day of the suspension is the sitting day following the day of the decision suspending the member. When calculating the period of the suspension, the recess between sessions shall not be taken into account.

(8) If the member has engaged in conduct specified in subsection 1 in a committee meeting, this fact shall also be considered when applying subsection 5."

Section 51

"If disorderly conduct occurs during the session of Parliament making it impossible to continue the proceedings, the chair of the session may suspend the session for a definite period of time or close it. When the session is closed, the chair of the session shall convene a new session. If the chair of the session is unable to announce his or her decision, he or she shall leave the chair's seat, which thus interrupts the session. When the session is interrupted, it may only continue if it is reconvened by the chair of the session."

27. Section 52 of the Act prescribes disciplinary sanctions that may be applied in respect of certain forms of expression or conduct in committee meetings.

C. Amendment to the Parliament Act

28. On 13 February 2014 Parliament passed an amendment to the Parliament Act, modifying the rules of disciplinary procedure for MPs (Act no. XIV of 2014, incorporating a new section 51/A into the Parliament Act).

The amendment introduced, *inter alia*, the possibility for a fined MP to seek a remedy before a committee. It entered into force on 4 March 2014.

29. The new section 51/A reads, in so far as relevant:

Section 51/A

"(1) Based on a proposal of any of its members, the House Committee (*házbizottság*)[2] – in the absence of any other legal consequences – may order the reduction of a member's allowance within fifteen days of the conduct specified in sections 48(3), 49(4) and 50(1). The decision shall contain the reasons for the measure and, if the conduct violated the rules on debating, voting or ..., the provision of the Rules of Parliament that was violated.

...

(3) The Speaker shall immediately inform the member concerned of the decision taken pursuant to subsection 1.

(4) Should the member disagree with the decision taken pursuant to subsection 1, he or she may request within five days of the notification specified in subsection 3 the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials to overrule the decision taken pursuant to subsection 1. Should the member not request the overruling of the decision within the specified time-limit, his allowance shall be reduced by the amount specified in the decision.

...

(6) The Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials shall decide on the request submitted pursuant to subsection 4 ... within fifteen days. Should the member request a hearing, the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials shall hear the member in person.

(7) Should the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials uphold the member's request, his allowance shall not be reduced and the proceedings specified in subsection 1 shall be discontinued.

(8) Should the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials dismiss the member's request or not render a decision within the time-limit specified in subsection 6, the member's allowance shall be reduced by the amount specified in the decision taken pursuant to subsection 1.

(9) Should the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials dismiss the member's request submitted pursuant to subsection 4 or not decide within the time-limit specified in subsection 6, the member may request Parliament to overrule the decision taken pursuant to subsection 1.

...

(11) The President of the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials shall immediately inform the member concerned and the House Committee of its decision taken pursuant to subsection 8 ... or of the expiry of the time-limit.

2. The members of the House Committee are the Speaker, the Deputy Speakers and the leaders of the parliamentary groups.

(12) A request under subsection 9 shall be submitted within five working days of the notice given by the President of the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials pursuant to subsection 11.

(13) Parliament shall rule on the decision taken pursuant to subsection 1 during the session following a request under subsection 9, without a debate. The amount of the fine may not exceed

a) one-third of the member's monthly remuneration if the reduction was due to conduct specified in section 48(3) or 49(4)

b) the member's monthly remuneration if the reduction was due to conduct specified in section 50(1)."

D. The Constitutional Court Act

30. The Constitutional Court Act no. CLI entered into force on 1 January 2012. It provides for the following types of constitutional complaint:

Section 26

"(1) In accordance with Article 24 (2) (c) of the Fundamental Law, persons or organisations affected by a specific case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings,

a) their rights enshrined in the Fundamental Law have been violated, and

b) the possibilities for legal remedy have already been exhausted or no possibility for legal remedy is available.

(2) By way of derogation from subsection 1, constitutional court proceedings may also be initiated in exceptional circumstances if

a) due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights have been directly violated, without a judicial decision, and

b) there is no procedure for obtaining a legal remedy designed to repair the violation, or the petitioner has already exhausted the possibilities for obtaining a remedy.

(3) ...

Section 27

In accordance with Article 24 (2) d) of the Fundamental Law, persons or organisations affected by judicial decisions contrary to the Fundamental Law may submit a constitutional complaint to the Constitutional Court if the decision made regarding the merits of the case or other decision terminating the judicial proceedings

a) violates their rights laid down in the Fundamental Law, and

b) the possibilities for obtaining a legal remedy have already been exhausted by the petitioner or no possibility for obtaining a legal remedy is available to him or her."

31. Section 30(4) of the Constitutional Court Act provides:

"No constitutional court proceedings may be initiated more than 180 days after the communication of the decision, the violation of the right guaranteed by the Fundamental Law, and, in cases defined in section 26(2), the entry into force of the legal regulation that is contrary to the Fundamental Law."

E. Constitutional Court judgment no. 3206/2013 (XI.18) AB of 4 November 2013

32. Mr E.N., an MP of the opposition party *Jobbik*, lodged a constitutional complaint under section 26(2) of the Constitutional Court Act against a number of provisions of the Parliament Act. He claimed that the impugned provisions unduly restricted the freedom of expression of MPs and did not provide for a remedy against decisions of Parliament. The Constitutional Court examined the constitutionality of sections 50(1) and 52(2)(a) of the Parliament Act and declared the remainder of the complaint inadmissible[3].

33. When reviewing the constitutionality of section 52(2)(a)[4], the Constitutional Court noted that parliamentary freedom of speech constituted an important element of freedom of expression, protected by Article IX(1) of the Fundamental Law. Parliament, as the decision-making forum for issues of direct relevance for the life of the nation, was of particular importance for the realisation of freedom of expression. The Constitutional Court observed that with regard to MPs' freedom of expression a distinction had to be made between freedom of expression as such and the form or manner in which that expression was communicated. In the latter respect, Parliament was entitled to enact rules which guaranteed its dignity and undisturbed functioning.

34. Under Article 5(7) of the Fundamental Law, the Speaker exercised policing and disciplinary powers as prescribed by the Rules of Parliament in order to ensure Parliament's undisturbed functioning and to preserve its dignity. In this way the Fundamental Law created the constitutional basis for parliamentary law-enforcement, which inevitably restricted the rights of MPs, including their right to freedom of expression. The Constitutional Court further referred to Parliament's autonomy, which was protected by the Fundamental Law. In the Constitutional Court's view, the effective

3. With regard to section 50(1) of the Parliament Act, the Constitutional Court found that the use of physical violence, threatening physical violence or calling on others to use physical violence were not protected under the ambit of freedom of expression. Such acts threatened the rights of others (especially other members of parliament), and limited the exercise of their fundamental rights, including the right to freedom of expression.

4. Under section 52(2)(a), if during a committee meeting a member of parliament uses an expression gravely offensive to the dignity of Parliament or to a third person or a group, in particular a national, ethnic, racial or religious community, or the offensive expression used seriously disrupts the order of debate, the committee may propose the member's exclusion for the remainder of the meeting or the reduction of his or her allowance.

functioning of Parliament and the preservation of its authority and dignity could thus represent constitutionally justified limitations on MPs' right to freedom of expression.

35. The Constitutional Court noted that a reduction of MPs' remuneration and their exclusion from Parliament's work were the most severe disciplinary sanctions, but were not unheard of historically or internationally. It held that the rule contained in section 52(2)(a) of the Parliament Act could not be regarded as a disproportionate restriction on the right to freedom of expression.

36. The Constitutional Court also examined the procedural aspect of section 52(2)(a), which, similarly to the conduct enumerated in section 48(3), regulated the most severe cases of "gravely offensive" expression. It found that if such an expression was used (as opposed to the "offensive or indecent" expressions mentioned in section 48(1)) or caused serious disorder, the possibility of applying the most severe disciplinary sanctions, even without issuing a call to order or a warning, could not be considered unconstitutional. The Constitutional Court noted that in such cases it could not be expected, or sometimes even envisaged, that an MP should be preliminarily warned of the consequences.

37. Secondly, the Constitutional Court examined the argument that the impugned sections of the Parliament Act did not provide for a remedy against disciplinary decisions. It noted that Article XXVIII (7) of the Fundamental Law established the right to a remedy against decisions of a judicial organ, State administration or an administrative authority. However, since disciplinary decisions of Parliament did not fall into any of the above categories, the lack of a remedy against them was not unconstitutional in itself. In addition, from a historical and comparative perspective, disciplinary powers with respect to MPs formed part of Parliament's autonomy. Having regard to the above, the Constitutional Court found that the disciplinary power of Parliament concerned the internal functioning of Parliament, and as such the conduct of members of parliament in the exercise of their mandate. Thus, no obligation to provide a remedy against such decisions could be derived from Article XXVIII (7) of the Fundamental Law.

38. The President of the Constitutional Court expressed a dissenting opinion, joined by two other judges[5]. He considered that the right to freedom of speech of MPs did not originate from freedom of expression as that freedom was a fundamental right of citizens against the State. The basis of the freedom of speech of MPs was the right of members of parliament to a free mandate enshrined in the Fundamental Law. Nonetheless, he found that, should regulations restrict the exercise of freedom of speech, it was

5. The case was heard by fifteen judges. One judge expressed a concurring opinion and six judges dissented.

reasonable to invoke an infringement of the freedom of expression as well. The President of the Constitutional Court noted that the Fundamental Law created the basis for Parliament's power to impose sanctions in the interests of the undisrupted functioning of Parliament. However, this did not mean that Parliament's right to create its own Rules also allowed it to disregard the core element of the right to freedom of expression. The President of the Constitutional Court found that qualifying an expression as gravely offensive or offensive entailing serious disorder and the exclusion of a member of parliament could only be considered proportionate if it was preceded by a call to order and a warning about the legal consequences. Currently this was not the case either in committee meetings (section 52(2)(a)) or in plenary sessions (section 48(3)).

F. Constitutional Court judgment no. 3207/2013 (XI.18) AB of 4 November 2013

39. The same petitioner, Mr E.N., lodged a constitutional complaint against section 48(3)-(4) and 48(7) of the Parliament Act. In its judgment of 4 November 2013, the Constitutional Court dismissed his constitutional complaint in respect of section 48(3)[6] and declared the remainder of the complaint inadmissible.

40. When reviewing section 48(3), the Constitutional Court noted that when intervening in Parliament, an MP did not express his or her views as a "private individual", but as a member of parliament, that is, a member of the country's supreme representative organ. Given this quality of a representative, the limits of expression were different from those concerning private individuals: because of an MP's immunity, those limits were wider on the one hand, and, given the parliamentary disciplinary rules, narrower on the other hand. Part of MPs' expressions were governed by the parliamentary disciplinary rules precisely because of the far-reaching immunity which MPs enjoyed in their parliamentary activities. It was therefore justified for the Speaker to have prerogatives in such cases so as to be able to prevent abuses of the right to freedom of expression by MPs. Furthermore, the Constitutional Court noted that the right to speak in Parliament was not only a personal right belonging to an MP; it was also a fundamental element of parliamentary debate which had to be regulated from the perspective of the effective functioning of Parliament.

41. The Constitutional Court found that the rationale behind regulating MPs' right to speak was to secure a proper balance between the rights of individual MPs and the guaranteeing of effective parliamentary activity. It held that section 48(3) of the Parliament Act did not disproportionately restrict the constitutional freedom of expression as it regulated the most

6. The text of section 48(3) of the Parliament Act is provided in paragraph 26 above.

extreme cases falling within Parliament's disciplinary powers. This provision, together with the preceding subsections of that section, adequately reflected the principle of gradual application of the sanctions (the more severe the disciplinary breach, the more severe the sanction that could be applied).

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. The Parliamentary Assembly of the Council of Europe

42. Article 28 of the Statute of the Council of Europe provides, in so far as relevant:

> "a. The Consultative [Parliamentary] Assembly shall adopt its rules of procedure and shall elect from members its President, who shall remain in office until the next ordinary session.
>
> b. The President shall control the proceedings but shall not take part in the debate or vote."

43. Rule 22 of the Rules of Procedure of the Assembly (Resolution 1202 (1999) adopted on 4 November 1999) with subsequent modifications of the Rules of Procedure concerning maintenance of order reads as follows:

> "22.1. The President shall call to order any member of the Assembly who causes a disturbance during proceedings.
>
> 22.2. If the offence is repeated, the President shall again call the member to order, and this shall be recorded in the report of the debates.
>
> 22.3. In the event of a further offence, the President shall direct the offender to resume his or her seat or may exclude him or her from the Chamber for the remainder of the sitting.
>
> 22.4. In serious cases the President may propose to the Assembly a motion of censure, which shall involve immediate exclusion from the Chamber for two to five sitting days. The member upon whom a motion of censure is proposed shall have the right to speak for a maximum period of two minutes before the Assembly decides.
>
> 22.5. The vote on a motion of censure shall be taken without debate.
>
> 22.6. Words or expressions which affront human dignity, undermine the right to respect for private life, or which may prejudice orderly debate may not be used. The President may order such words to be struck from the report of debates. He or she may similarly strike from the report words spoken by a member not called by him or her. The report of the debates shall record any such decision."

44. The complementary texts of the Rules of Procedure of the Assembly relating to Assembly debates (as amended) provide as follows:

> "viii. - Conduct of members of the Parliamentary Assembly during Assembly debates (Rule 22 of the Rules of Procedure)

1. Pursuant to Rules 20.1. and 22 of the Rules of Procedure, the President of the Assembly maintains order and decorum and ensures that debates are conducted in a civil and orderly manner, in conformity with the rules and practices in force.

2. Members of the Parliamentary Assembly shall behave in a courteous, polite and respectful manner towards each other and towards the President of the Assembly or any other person who is presiding. They shall refrain from any action that may disrupt the proceedings. This provision shall apply *mutatis mutandis* to meetings of the Bureau and of committees.

3. With regard to Assembly members' discipline and observance of the rules of conduct, paragraphs 17 to 21 of the code of conduct for members of the Parliamentary Assembly shall apply."

45. In its Resolution 1965 (2013) on the Discipline of the Members of the Parliamentary Assembly, the Assembly stated as follows:

"1. The Parliamentary Assembly reaffirms its commitment to the right to freedom of expression, which is the most important parliamentary privilege and an essential precondition for the independence of elected representatives of the people. There are various ways to express one's position in the context of a political debate, including by displaying symbols or logos or wearing a particular garment or costume, which are protected by the right to freedom of expression. Nonetheless, whoever exercises their freedom of expression also has duties and responsibilities, the scope of which will depend on the situation and the means used."

46. In the same resolution the Assembly noted that it was entitled, under Article 28 of the Statute of the Council of Europe, to adopt its rules and manage its internal affairs; and that it had therefore the right to discipline its members for misconduct and the power to impose penalties for any interference with its rules (paragraph 5).

47. In its Resolution 1601 (2008) on Procedural Guidelines on the Rights and Responsibilities of the Opposition in a Democratic Parliament, the Assembly noted:

"5. Granting the parliamentary opposition a status according to which it is entitled to rights contributes to the effectiveness of a representative democracy and respect for political pluralism, and thereby to the citizens' support for and confidence in the good functioning of institutions. Establishing a fair legal and procedural framework and material conditions enabling the parliamentary minority to fulfil its role is a prerequisite for the good functioning of representative democracy. Opposition members should be able to exercise their mandate in full and under at least the same conditions as those members of parliament who support the government; they shall participate in an active and effective manner in the activities of Parliament and shall enjoy the same rights. Equal treatment of members of parliament has to be ensured in all their activities and privileges."

B. The European Commission for Democracy through Law (the Venice Commission)

48. In its Report on the Role of the Opposition in a Democratic Parliament (Study No. 497/2008)[7], the Venice Commission noted, *inter alia*, the following:

> "88. As a general principle, the basic rules on parliamentary opposition and minority rights should therefore preferably be regulated in a form that the majority cannot alter or amend at its own discretion, at least not without some delay. ...
>
> ...
>
> 147. A basic obligation of the political opposition is to conduct its functions within the framework of the law, including the national constitution, ordinary civil and criminal law and parliamentary rules of procedure. Opposition parties may advocate changes to the law, but as long as these are not passed, they are obliged to respect the law, like everybody else. Subject to the modifications of parliamentary immunity, the opposition may be held accountable for any unlawful activity, like any other organization and individual. Most parliaments also have disciplinary internal sanctions for party groups and MPs breaking the rules of procedure, and this is appropriate as long as they are legitimately justified and proportionate. ...
>
> ...
>
> 149. In a well-functioning parliamentary democracy there is a balance between the majority and the minority, which creates a form of inter-play that ensures effective, democratic and legitimate governance. This cannot be taken for granted, and there are many countries also within Europe that present a different picture. ...
>
> 153. In its 2009 Code of Good Practice in the Field of Political Parties the Venice Commission pointed out the balance between the rights and responsibilities of opposition parties:
>
> > 53. [...] Opposition function implies scrupulous control, scrutiny and checks on authorities and officials behaviour and policies. However, good governance advises that parties in opposition (as well as ruling parties) should refrain from practices that may erode the democratic debate and which could eventually undermine the trust of citizens in politicians and parties."

49. In its Report on the Scope and Lifting of Parliamentary Immunities (Study No. 714/2013)[8], the Venice Commission noted, among other things, the following:

> "55. Rules on non-liability must be distinguished from rules on *internal disciplinary measures* within parliament itself, which are of a different nature, and which are usually not included in the concept of parliamentary immunity. Most parliaments have internal rules of procedure or codes of conduct (house rules) under which the members can be silenced or disciplinarily sanctioned for certain forms of remarks or behaviour, although the nature of such sanctions vary greatly, from a call

7. Adopted by the Venice Commission at its 84th Plenary Session (Venice, 15-16 October 2010).
8. Adopted by the Venice Commission at its 98th Plenary Session (Venice, 21-22 March 2014).

to order or curtailment of speaking time to reduction of remuneration, temporary exclusion, or in a few cases even stricter sanctions of a more penal nature. ...

...

100. The Venice Commission notes that even if members of parliament are protected from external legal action for their opinions and remarks, they may still be subject to internal disciplinary sanctions by parliament itself. This is so in most national parliaments, and it is legitimate as long as the sanctions are relevant and proportional and not misused by the parliamentary majority to infringe the rights and liberties of political opponents."

IV. RELEVANT EUROPEAN UNION DOCUMENTS

A. The Rules of Procedure of the European Parliament

50. Rule 11 §§ 2 and 3 of the Rules of Procedure of the European Parliament (8th parliamentary term, September 2015) provide as follows:

"2. Members' conduct shall be characterised by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises. Members shall comply with Parliament's rules on the treatment of confidential information. Failure to comply with those standards and rules may lead to application of measures in accordance with Rules 165, 166 and 167.

3. The application of this Rule shall in no way detract from the liveliness of parliamentary debates nor undermine Members' freedom of speech. It shall be based on full respect for Members' prerogatives, as laid down in primary law and the Statute for Members. It shall be based on the principle of transparency and be so undertaken that the relevant provisions are made clear to Members, who shall be informed individually of their rights and obligations."

51. Chapter IV on Measures to be taken in the event of non-compliance with the standards of conduct of members spells out the relevant disciplinary sanctions that are applicable to MPs for their conduct in parliament. The relevant provisions read as follows:

Rule 165 Immediate measures

"1. The President shall call to order any Member who disrupts the smooth conduct of the proceedings or whose conduct fails to comply with the relevant provisions of Rule 11.

2. Should the offence be repeated, the President shall again call the Member to order, and the fact shall be recorded in the minutes.

3. Should the disturbance continue, or if a further offence is committed, the offender may be denied the right to speak and may be excluded from the Chamber by the President for the remainder of the sitting. The President may also resort to the latter measure immediately and without a second call to order in cases of exceptional seriousness. The Secretary-General shall, without delay, see to it that such disciplinary

measures are carried out, with the assistance of the ushers and, if necessary, of Parliament's Security Service.

4. Should disturbances threaten to obstruct the business of the House, the President shall close or suspend the sitting for a specific period to restore order. If the President cannot make himself heard, he shall leave the chair; this shall have the effect of suspending the sitting. The President shall reconvene the sitting.

5. The powers provided for in paragraphs 1 to 4 shall be vested, *mutatis mutandis*, in the presiding officers of bodies, committees and delegations as provided for in the Rules of Procedure.

6. Where appropriate, and bearing in mind the seriousness of the breach of the Members' standards of conduct, the Member in the Chair may, no later than the following part-session or the following meeting of the body, committee or delegation concerned, ask the President to apply Rule 166."

Rule 166 Penalties

"1. In exceptionally serious cases of disorder or disruption of Parliament in violation of the principles laid down in Rule 11, the President, after hearing the Member concerned, shall adopt a reasoned decision laying down the appropriate penalty, which he shall notify to the Member concerned and to the presiding officers of the bodies, committees and delegations on which the Member serves, before announcing it to plenary.

2. When assessing the conduct observed, account shall be taken of its exceptional, recurrent or permanent nature and of its seriousness, on the basis of the guidelines annexed to these Rules of Procedure.

3. The penalty may consist of one or more of the following measures:

(a) a reprimand;

(b) forfeiture of entitlement to the daily subsistence allowance for a period of between two and ten days;

(c) without prejudice to the right to vote in plenary, and subject, in this instance, to strict compliance with the Members' standards of conduct, temporary suspension from participation in all or some of the activities of Parliament for a period of between two and ten consecutive days on which Parliament or any of its bodies, committees or delegations meet;

(d) submission to the Conference of Presidents, in accordance with Rule 21, of a proposal for the Member's suspension or removal from one or more of the offices held by the Member in Parliament."

Rule 167 Internal appeal procedures

"The Member concerned may lodge an internal appeal with the Bureau within two weeks of notification of the penalty imposed by the President. Such an appeal shall have the effect of suspending the application of that penalty. The Bureau may, not later than four weeks after the lodging of the appeal, annul, confirm or reduce the penalty imposed, without prejudice to the external rights of appeal open to the Member concerned. Should the Bureau fail to take a decision within the time limit laid down, the penalty shall be declared null and void."

52. Annex XV (Guidelines for the interpretation of the standards of conduct of Members) to the Rules of Procedure of the European Parliament read in so far as relevant:

> "1. A distinction should be drawn between visual actions, which may be tolerated provided they are not offensive and/or defamatory, remain within reasonable bounds and do not lead to conflict, and those which actively disrupt any parliamentary activity whatsoever."

53. An action for annulment concerning, *inter alia*, the imposition on an MP of forfeiture of entitlement to the daily subsistence allowance for a period of ten days was brought before the General Court of the European Court of Justice. On 5 September 2012 the court dismissed the action, *inter alia*, because it was submitted out of time[9].

B. The Charter of Fundamental Rights of the European Union

54. Article 41 § 1 of the Charter states:

> "1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union."

Article 41 § 2 (a) provides:

> "2. This right includes:
>
> (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken ..."

55. The Court of Justice of the EU held that the right to be heard guarantees every person the opportunity to make known his views effectively during an administrative procedure and before the adoption of any decision liable to affect his interests adversely (case C-277/11, *M. M.*, 22 November 2012, § 87, references to case-law omitted); see also joined cases C-129/13 and C-130/13, *Kamino International Logistics*, 3 July 2014; and case C-166/13, *Mukarubega*, 5 November 2014).

V. COMPARATIVE LAW MATERIAL

56. The Court carried out a comparative-law survey of the disciplinary measures applicable to members of parliament for disorderly conduct in Parliament in the law of forty-four of the forty-seven Member States of the Council of Europe[10]. All the surveyed member States have laid down such rules in the Rules of Procedure/Standing Orders of Parliament and/or a specific statute. In some member States, the Constitution explicitly authorises Parliament to establish its rules of procedure and ensure their

9. Case of T-564/11 Nigel Paul Farage v. European Parliament and Jerzy Buzek.
10. The survey did not cover Andorra, Monaco and San Marino.

observance. For example, in Germany, pursuant to the Rules of Procedure of the *Bundestag*, the President of the *Bundestag* has, *inter alia*, the power to name and call to order MPs who commit a breach of order or fail to respect the dignity of the *Bundestag* (Rule 36). Rules 37 and 38 of the same Rules of Procedure define sanctions in the case of a minor or a gross "violation of the order or the dignity of the *Bundestag*". In the Netherlands, according to the Rules of Procedure of the House of Representatives, the Speaker may take measures against a member who, *inter alia*, "causes a disturbance" (Rules 58 § 2 and 59).

57. The nature and the extent of the disciplinary measures applicable to MPs differ significantly from one State to another. These disciplinary measures may be grouped into the following categories:

(1) a call to order and/or warning, this being the most common measure which exists in thirty-three member States (Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Italy, Latvia, Liechtenstein, Moldova, Montenegro, the Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovenia, Spain, the Former Yugoslav Republic of Macedonia, Turkey and Ukraine);

(2) the denial or revocation of the right to speak applicable in twenty-six member States (Armenia, Austria, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Finland, Georgia, Germany, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, Moldova, the Netherlands, Norway, Poland (lower chamber), Portugal, Russia, Serbia, Spain, Sweden, the Former Yugoslav Republic of Macedonia and the United Kingdom);

(3) the most severe sanction in the majority (twenty-eight) of the surveyed member States is temporary exclusion, which can range from exclusion from the remainder of the sitting or session (Bosnia and Herzegovina, Croatia, Czech Republic, Georgia, Greece, Hungary, Montenegro, Norway, Poland, Romania, Serbia, Slovenia, Switzerland and the Former Yugoslav Republic of Macedonia) to exclusion from a number of parliamentary sittings or sessions (Albania, Armenia, Azerbaijan, Belgium, Bulgaria, Denmark, Finland, France, Germany, Italy, Latvia, Luxembourg, Moldova and Turkey). The exclusion of an MP from the session necessarily entails the impossibility of speaking during a debate.

58. Other types of disciplinary measures may include: an apology (Czech Republic and Slovakia), naming a member (Ireland, Malta and United Kingdom) or a reprimand (for example Estonia, Italy and Turkey).

59. With regard to the various forms of pecuniary sanctions applicable to MPs for disorderly conduct, these are provided for in the law of eighteen of the forty-four member States surveyed (Albania, Czech Republic, France,

Georgia, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Moldova, Montenegro, Romania (Chamber of Deputies), Poland, Serbia, Spain (the Congress of Deputies), Slovakia and the United Kingdom)[11]. In Germany (*Bundestag*), Georgia, Hungary and Slovakia pecuniary sanctions exist as a penalty in its own right. In the remaining fourteen of the surveyed member States the imposition of certain disciplinary sanctions entails, as an additional sanction, a reduction in the MP's salary for a specified period. No pecuniary sanctions appear to exist in the other twenty-six member States.

60. In so far as the authority that can impose disciplinary measures in the surveyed member States is concerned, it appears that it falls first and foremost on the Speaker of Parliament to maintain discipline and order in Parliament. In some member States the disciplinary powers are shared between the Speaker and Parliament or another parliamentary body (for example the Bureau or a relevant committee).

61. With regard to the applicable remedies, twenty-four member States do not apparently provide for a remedy to contest disciplinary measures imposed on MPs for disorderly conduct in Parliament (Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Estonia, Finland, France, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, Russia, Serbia, Sweden, the Former Yugoslav Republic of Macedonia, Turkey and the United Kingdom). In the following fourteen surveyed member States (Belgium (Senate), Bulgaria, Croatia, Georgia, Germany, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, and Ukraine) MPs have, in principle, a remedy to contest certain disciplinary measures imposed on them for their disorderly conduct in Parliament. In most of the aforementioned member States the remedy consists of some kind of internal objection procedure. In six member States (Czech Republic, Germany, Lithuania, Slovakia, Spain and Ukraine) a judicial remedy (a complaint to the Constitutional Court) is, in principle, available against a disciplinary measure imposed on an MP for his or her conduct in parliament as an addition or as an alternative to internal remedies. In a number of member States MPs enjoy certain procedural safeguards, notably, the possibility to provide explanations, mostly prior to, but sometimes also after, the imposition of disciplinary measures.

11. The survey did not deal with any pecuniary sanctions that may be applicable to MPs for failing to attend the various proceedings in Parliament.

THE LAW

I. JOINDER OF THE APPLICATIONS

62. Given their similar factual and legal background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

63. The applicants complained that the decisions to fine them for their conduct during the parliamentary session infringed their right to freedom of expression as provided for in Article 10 of the Convention. This provision 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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. The Government's preliminary objection

64. The Government objected that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention in respect of their complaint under Article 10. They could have challenged the relevant provisions of the Parliament Act itself by means of a constitutional complaint.

1. The Chamber judgments

65. The Chamber observed in both judgments that a constitutional complaint relating to a similar matter ("gravely offensive expression", regulated in section 48(3)) of the Parliament Act) had already been dismissed by the Constitutional Court (see paragraphs 32-41 above). The Constitutional Court concluded that restrictions of this kind were as such compatible with the Fundamental Law. Accordingly, the applicants could not have been expected to lodge a constitutional complaint, which would

have been futile. In conclusion, the Chamber dismissed the Government's objection.

2. The parties' submissions

(a) The Government

66. The Government objected before the Grand Chamber that the applicants had failed to exhaust domestic remedies in the form of a constitutional complaint provided for in section 26(2) of the Constitutional Court Act ("the CCA").

67. They submitted that the institution of constitutional complaints as a legal remedy for redressing a violation of constitutional rights had been enacted by the first democratically elected Parliament concurrently with the establishment of the Constitutional Court. In its early years of operation the Constitutional Court had confirmed this character of constitutional complaints. It had upheld the same principles following the entry into force of the Fundamental Law and the new CCA. In its ruling no. 3367/2012 (XII.15) the Constitutional Court had confirmed that pursuant to Article 24(2) of the Fundamental Law, the primary objective of a constitutional complaint was to protect individual subjective rights and to repair the damage caused by a statutory regulation that ran counter to the Fundamental Law. The Constitutional Court had dealt with complaints about the violation of individual rights through specific resolutions of Parliament on a number of occasions (for example ruling no. 65/1992 (XII.17) in which a member of parliament had requested the Constitutional Court to quash a decision to suspend his immunity). The Government also referred to the Constitutional Court's judgments nos. 3206/2013 and 3207/2013.

68. The Government maintained that a constitutional complaint under section 26(2) of the CCA would have been admitted for examination on the merits since it met all the formal and substantive requirements set out in the CCA. In particular, the Constitutional Court had not yet examined section 49(4) of the Parliament Act, which had been applied in the applicants' case.

69. The Government argued that a constitutional complaint under section 26(2) of the CCA was an effective remedy, referring, *inter alia*, to the Constitutional Court's judgments nos. 3206/2013 and 3207/2013 of 4 November 2013 (see paragraphs 32-41 above). As a general rule, a decision of the Constitutional Court declaring a legal regulation contrary to the Fundamental Law resulted in that regulation being annulled from the date of promulgation of the relevant decision (section 45(1) of the CCA). However, in certain situations referred to in section 45(4) of the CCA the Constitutional Court could declare the impugned legislation unconstitutional *ex tunc*. In such cases, the restoration of the *status quo ante* was called for.

The Constitutional Court had exercised this option in decision no. 33/2012 of 16 July 2012 in which it had found the provisions on the compulsory retirement age of judges unconstitutional and repealed the relevant regulation with retroactive effect. That decision had opened the way for a judicial remedy and subsequently three judges affected by the unconstitutional legislation had relied on the Constitutional Court's decision and succeeded in their claim for reinstatement.

70. The Government submitted that further individual consequences could follow from a decision declaring a legal regulation contrary to the Fundamental Law. The CCA did not contain specific provisions related to the individual consequences of a constitutional complaint under section 26(2) of the CCA, but the practice indicated that the Constitutional Court provided legal remedies tailored to the characteristics of the constitutional complainant. The Government relied on four examples from the Constitutional Court's practice: Resolution no. 32/1990 (XII.22) AB; Resolution no. 22/1991 (IV.26) AB; Resolution no. 34/1991 (VI.15) AB); and, in particular, Resolution no. 57/1991 (XI.8) AB in which the Constitutional Court had ordered A.J.'s name to be reinstated as the father of a child in the register of births. The latter resolution established that in individual cases the Constitutional Court had to determine the method of providing a remedy for the damage, even in the absence of statutory provisions describing the specific legal consequences. Thus, a successful constitutional complaint in the applicants' case could have led to an annulment of the fines imposed on them or have allowed them to request that these be annulled.

(b) The applicants

71. The applicants submitted that the new CCA, which had entered into force on 1 January 2012, established new procedures before the Constitutional Court. Accordingly, the previous case-law of that court could not have been relied on in the applicants' case. The new CCA introduced, *inter alia*, three types of constitutional complaint. The constitutional complaint procedures regulated in sections 26(1) and 27 of the CCA were not applicable in the applicants' case because they could be used only against a legal provision applied in court proceedings or against a final court decision respectively. The only type of constitutional complaint which could be relevant to the applicants' case was the one regulated in section 26(2) of the CCA.

72. In two judgments (nos. 3206/2013 and 3207/2013), the Constitutional Court had examined a constitutional complaint under section 26(2) of the CCA against the Parliament Act. This was the first decision in which the Constitutional Court had ever dealt with a constitutional complaint regarding parliamentary disciplinary law. The Constitutional Court found that the Parliament Act was in compliance with

the Fundamental Law. Therefore, in the applicants' view, the constitutional complaint under section 26(2) of the CCA had been tested in practice and had not provided even theoretical redress for the violation of the right to freedom of expression.

73. The applicants argued that a constitutional complaint under section 26(2) did not meet the requirements of effectiveness for a number of reasons. They referred, *inter alia*, to the vague threshold provided for in section 29 of the CCA, namely, that the Constitutional Court could hear constitutional complaints only if the case raised "constitutional-law issues of fundamental importance".

74. Furthermore, a constitutional complaint under section 26(2) of the CCA was ineffective, particularly regarding its inadequate remedial character. Referring to the decision in *Szott-Medyńska v. Poland* (no. 47414/99, 9 October 2003) concerning the effectiveness of Polish constitutional complaints, the applicants averred that a successful constitutional complaint under section 26(2) would not have led to the fines being annulled or even have opened the possibility of instituting proceedings with a view to having the fines annulled. Even if a constitutional complaint were to have been successful, it would have had no greater effect than the annulment of the relevant provisions of the Parliament Act. The applicants further argued that, unlike the Code of Criminal, Civil and Administrative Procedures, the Parliament Act or the Rules of Parliament did not contain any regulations concerning the consequences of a finding of unconstitutionality in the context of parliamentary disciplinary sanctions. There was no case-law to this effect either. It was, therefore, mere speculation to claim that it would have been possible to initiate a procedure with a view to having the disciplinary sanctions imposed on them annulled.

3. The Court's assessment

75. The Grand Chamber has jurisdiction to examine the preliminary objection as the Government previously raised that same objection before the Chamber in their observations on the admissibility of the application (see paragraphs 32 and 30 of the Chamber judgments of 16 September 2014 in *Karácsony and Others v. Hungary*, no. 42461/13 and *Szél and Others v. Hungary*, no. 44357/13 respectively), in accordance with Rules 54 and 55 of the Rules of Court (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 141, ECHR 2010 with further references).

76. The Court reiterates first of all that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity, in principle intended to be afforded to Contracting States, of preventing or putting right the violations alleged against them. That rule is based on the assumption that there is an effective remedy available in the domestic

system in respect of the alleged breach. The only remedies which Article 35 § 1 requires be exhausted are those that relate to the breach alleged and are capable of redressing the alleged violation. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, among many other authorities, *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; and *Parrillo v. Italy* [GC], no. 46470/11, § 87, 27 August 2015).

77. The Court notes that a constitutional complaint under section 26(2) of the CCA is an exceptional type of complaint applicable solely in cases where the petitioner's rights have been violated through the application of an unconstitutional provision and in the absence of a judicial decision or a legal remedy to redress the alleged violation. In addition, such a complaint must be lodged within 180 days of the entry into force of the legal regulation contrary to the Fundamental Law. The two other types of constitutional complaint were not available to the applicants. The standard constitutional complaint regulated in section 26(1) of the CCA could only be used when an unconstitutional provision was applied in court proceedings. A constitutional complaint under section 27 of the CCA is a complaint against final court decisions.

78. In dismissing the Government's objection, the Chamber relied on the Constitutional Court's judgments of 4 November 2013 in which that court had dismissed a constitutional complaint lodged by another MP in a case concerning an "expression gravely offensive to the authority or order of Parliament" regulated in section 48(3) of the Parliament Act (see *Karácsony and Others*, cited above, §§ 32-33, and *Szél and Others*, cited above, §§ 30-31).

79. The Grand Chamber notes that the constitutional complaint lodged by the MP E.N. in June 2013 was contemporaneous with the events arising in the present case. In addition, that complaint did not challenge the constitutionality of section 49(4) of the Parliament Act, which constituted the legal basis for the sanctions imposed on the applicants. The question whether in these circumstances the Constitutional Court's judgments of 4 November 2013 could constitute a precedent determining the outcome of any constitutional complaint which might have been lodged by the applicants can be left open, since, in any event, the decisive issue is the question of the consequences of a successful complaint under section 26(2), namely, that of the effectiveness of the proposed remedy. In the event of a successful constitutional complaint lodged under section 26(2), the Constitutional Court will declare a given provision unconstitutional but has no power to invalidate the individual decision based on that unconstitutional provision.

80. The Government submitted that the CCA contained no specific provisions related to the individual consequences of a successful constitutional complaint under section 26(2), but the Constitutional Court's practice nonetheless indicated that the court had provided redress for the successful complainants. The Court is not persuaded by this argument. It notes that the Constitutional Court's rulings invoked by the Government date back to the early jurisprudence of that court which, at the time, had different powers and that none of those rulings concerned matters related to parliamentary disciplinary proceedings. In addition, the amended closing provisions of the Fundamental Law repealed decisions of the Constitutional Court taken prior to the entry into force of the Fundamental Law (see paragraph 25 above).

81. Furthermore, the applicants' case should be distinguished from the case concerning the compulsory retirement age of judges (the Constitutional Court's ruling no. 33/2012 of 16 July 2012), invoked by the Government, since the Judicial Service Act contained specific rules whereby reinstatement could be sought in cases of unlawful dismissal. By contrast, in the applicants' case, there was no procedure prescribed in the Parliament Act whereby the applicants could obtain (within or outside Parliament) annulment or review of the fines imposed on them. It should be noted in this context that the Constitutional Court itself in judgments nos. 3206/2013 and 3207/2013 noted that the Fundamental Law excluded the possibility of an external review of disciplinary decisions taken by Parliament (see paragraph 37 above). Accordingly, a successful outcome of such proceedings did not offer the applicants a possibility to request any form of rectification of the disciplinary decisions since there were no regulations in Hungarian law to that effect.

82. Having regard to the above, the Court finds that the constitutional complaint under section 26(2) of the CCA could not be considered an effective remedy for the purposes of Article 35 § 1 of the Convention since, even if successful, it was not capable of redressing the alleged violation (see *Vučković and Others*, cited above, §§ 69-77, and, *mutatis mutandis*, *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, § 50, ECHR 2014 (extracts)).

83. The Court concludes that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

B. Compliance with Article 10

1. The Chamber judgments[12]

84. The Chamber held, unanimously, that there had been a violation of Article 10 of the Convention. It noted that the applicants had been fined for the expression of their opinion and found that these measures constituted an interference with their right protected under Article 10. The parties disagreed on whether the interference was "prescribed by law", but the Chamber considered that it was unnecessary to decide on this question in view of its conclusion regarding the necessity of the interference. The Chamber accepted that the interference in issue pursued the legitimate aims of protection of the rights of others and the prevention of disorder.

85. In assessing the proportionality of the interference, the Chamber considered four aspects of the case: (a) the nature of the speech, (b) the impact of the impugned expression on order in Parliament and the authority of Parliament, (c) the process applied and (d) the sanctions imposed. The Chamber found that the interference, which concerned political expression, had been devoid of a compelling reason since the interests of the authority of Parliament and order in Parliament had not been demonstrably seriously affected, nor had it been shown that these interests had on balance been weightier than the right to freedom of expression of the opposition. The sanctions had been imposed without consideration of less intrusive measures, such as warnings or reprimands. Moreover, the interference had consisted in the application of sanctions with a chilling effect on the parliamentary opposition, in a process where the procedural guarantees and those of the appearance of non-partisanship were insufficient. Therefore, the interference could not be considered "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

2. The parties' submissions

(a) The applicants

86. The applicants submitted that the coming to power of the governing coalition (Fidesz-KDNP) in 2010 had marked the beginning of a clear trend towards the weakening of the position and rights of the parliamentary opposition. The governing coalition, which enjoyed a two-thirds majority, had attempted to minimise the opposition's effective participation in the decision-making process. This was illustrated, *inter alia*, by the coalition's use of the exceptional urgent procedure in which important statutes could be

12. The Chamber delivered two judgments on 16 September 2014 in *Karácsony and Others* (no. 42461/13) and *Szél and Others* (no. 44357/13). The reasoning in both judgments was practically identical and in the summary which follows no distinction is made between the two judgments.

enacted in an extremely short time frame and in conditions precluding any meaningful examination of the legislative proposal. Not only domestic and international NGOs, but also international organisations and bodies such as the Venice Commission, the Commissioner for Human Rights of the Council of Europe and various bodies of the European Union, had criticised the Hungarian Government for changing the rules of democracy and for creating a political environment which was hostile to any criticism.

87. Moreover, the governing coalition had tightened the rules of parliamentary disciplinary procedure. The applicants submitted, *inter alia*, that the amendments to the Parliament Act passed in 2012 had excluded the Committee on Immunities from disciplinary procedures. Membership of that committee had been composed on the basis of parity and constituted an independent element in disciplinary procedures. Those amendments had further transferred the power to impose fines on MPs from the committee to the plenary Parliament, where the majority could decide without debate. Other amendments had provided for harsher penalties or extended the scope of punishable acts (for example section 49(4) of the Parliament Act).

88. The applicants maintained that the freedom of speech of opposition MPs should be protected not only against external but also against internal restrictions. A parliamentary majority could not hide behind the notion of parliamentary sovereignty when restricting the Convention rights of the opposition MPs since this would constitute a clear misuse of that notion. In their view, establishing Convention limits on parliamentary disciplinary law did not affect the essence of parliamentary sovereignty. In the applicants' submission, the present case concerned the question whether in a situation where opposition MPs were systematically deprived of the normal means of voicing their views in Parliament, they were allowed under Article 10 to express their opinion on subjects of major public importance by using symbolic speech (displaying placards) while causing no significant disruption to the functioning of Parliament.

89. The applicants agreed that the interference had formally been based on the Parliament Act, but pointed out that at the material time the relevant provisions had not yet been applied. The provisions governing disciplinary procedure had been significantly modified in 2012 and had come into force on 1 January 2013. The definition of the disciplinary offence in section 49(4) of the Act had been expanded to include "conduct offensive to the authority and order of Parliament", which the applicants considered vague. The applicants disagreed with the Chamber's finding that the meaning of those terms would subsequently become sufficiently clear in parliamentary practice.

90. They accepted that the interference in issue had pursued the aim of "maintaining the proper functioning of Parliament" and corresponded to the protection of the rights of others.

91. The applicants contended that the interference in issue had failed to meet the requirement of necessity in a democratic society. They emphasised that their expressions required the utmost protection on account of several factors and that the corresponding margin of appreciation of the State was consequently reduced. Firstly, the case concerned the freedom of expression, which was an exceptionally important right under the Convention and had a strong connection with democracy, one of the core Convention values. Secondly, it concerned political speech, which was the most protected kind of expression under the Convention. The applicants had wished to express their opinion in Parliament on highly controversial political issues and communicate it to the electorate. Thirdly, the applicants were politicians, for whom the free expression of political opinions was of particular significance. Fourthly, the political expression had occurred in Parliament, which was the most important forum of political debate in a representative democracy. Fifthly, the applicants' expression deserved the utmost protection since they belonged to the parliamentary opposition whose effective participation in the political process was a prerequisite for the proper functioning of a modern democracy.

92. The applicants argued that the emphasis had to be placed on the effectiveness of the expression of their opinion. They had needed to use a somewhat special means of communication so that their objections would be publicised in the media and reach a wider audience. Their means of communication (placard and banners) had been unusual, but not offensive, harmful, dangerous or likely to cause serious disturbance in Parliament. The applicants had actively used the ordinary means of parliamentary communication. However, the governing coalition had rendered the use of those means ineffective, which, in turn, had prompted the applicants to resort to the impugned measures. The use of symbolic speech was the only way in which the applicants could express their disagreement with the Government's actions in a visible manner. The applicants underlined that their protest had been related to highly controversial political issues and that their actions had caused only minor, if any, disturbance to the work of Parliament. Their actions had not deprived other MPs of their right to speak or to vote. The minutes of the relevant sessions clearly showed that after a short period of time the other MPs had been able to continue their speeches and vote.

93. The applicants, referring to the Chamber judgments, underlined that political speech in Parliament enjoyed enhanced protection and that the autonomy of Parliament was not in itself a reason to exclude the Court's supervision in this area. They noted that in a democratic society Parliament, apart from enacting laws, was the place where ideas and policies were presented and confronted in the democratic competition between political parties. They emphasised that their acts had not been aimed solely at

convincing other MPs but, more importantly, at communicating their opinions to voters.

94. They further underlined the role of the opposition in Parliament, relying on the Chamber judgments and the Report of the Venice Commission on the Role of the Opposition in a Democratic Parliament. In accordance with European standards, the proper functioning of Parliament presupposed the effective protection of the parliamentary opposition since otherwise Parliament could not fulfil its constitutional functions. Without proper formal guarantees or a high level of political culture the parliamentary majority could become tyrannical and suppress the opposition. Enhanced protection of the opposition was needed to counterbalance the dominance of the parliamentary majority.

95. The applicants maintained that financial penalties were severe measures for professional politicians whose only income was their salary from Parliament. Such penalties, which had been imposed despite the minor impact of the applicants' actions on the work of Parliament and in the absence of a prior warning, had been disproportionate and had had a chilling effect. Moreover, the application of more lenient sanctions had not been considered.

96. In conclusion, they submitted that their right to freedom of political expression had been violated, since the State had disproportionately overstepped its margin of appreciation when fining them – opposition MPs – for using symbolic speech during a parliamentary debate on issues of major public importance although they had not caused any significant disruption to the functioning of Parliament.

(b) The Government

97. The Government pointed out at the outset that parliamentary disciplinary law had been examined by the Court for the first time in the Chamber judgments. They argued that the case in issue should be reviewed not in isolation but with due regard to similar regulatory principles applied by other member States of the Council of Europe and the European organisations. Although there might be differences with regard to details, none of the disciplinary rules of the member States tolerated conduct of MPs which constituted a threat to the functioning of Parliament. The Government refuted the applicants' accusations regarding the operation of Hungarian parliamentary democracy.

98. The Government emphasised that in reviewing member State and European disciplinary regulations the Court's scrutiny should not be confined to parliamentary rules authorising the imposition of a fine. They underlined that the disciplinary laws of the member States, of the Parliamentary Assembly of the Council of Europe ("PACE") and of the European Parliament ("EP") allowed, in addition to the imposition of a fine, for the application of sanctions which, in contrast to a fine imposed *ex post*

facto, immediately and actually prevented an MP from expressing his or her opinion. Denial of the right to speak during a debate restricted an MP's right to freedom of expression, but certain more severe sanctions might prevent an MP from exercising the rights flowing from his mandate for an even longer period of time. These harsher sanctions – namely, exclusion from a session and/or suspension of the MP's rights – were applied in the majority of the member States[13] as well as in the PACE and in the EP. It was important to note that these harsher sanctions imposed a general limitation on MPs' rights and in respect of all parliamentary affairs for a specified time, and did not merely suspend an MP's right of expression in respect of the matter related to a disciplinary breach. In addition to the actual and immediate effects of these sanctions, financial consequences could also arise. In the majority of the member States[14] a temporary suspension of an MP's rights could, *ipso jure* or upon a decision to that effect, also entail the full or partial forfeiture of the MP's remuneration. In addition to those member States, the sanction of a direct fine was provided for in the disciplinary rules of the Czech Republic, Hungary, Germany and Slovakia.

99. The Government argued that in the realm of parliamentary law a wide margin of appreciation was left to member States (referring to *Kart v. Turkey* [GC], no. 8917/05, §§ 81-82, ECHR 2009 (extracts)). The wide margin of appreciation flowed from member State sovereignty and the functioning of Parliament was closely connected with the issue of sovereignty. In respect of all issues related to the effective functioning of national Parliaments and the organisation of their work, member States should enjoy the widest possible margin of appreciation. Therefore any interference with the disciplinary affairs of member States' Parliaments should be limited to cases where it was absolutely necessary.

100. The Government submitted that MPs participated in the performance of Parliament's constitutional functions (such as law-making and control of the Government) and that their rights and possible limitations of those rights were connected with those objectives. The limitations on the freedom of speech of MPs required a different assessment from the one applicable to freedom of expression as a fundamental right. Acting within its margin of appreciation, the State could determine the type of conduct which was considered unlawful and the applicable sanctions. In this respect the regulations of the various member States as well as of PACE and EP, like the Hungarian Rules of Parliament which spoke of "gravely offensive conduct", did not provide an exhaustive list of acts falling within this notion.

13. 31 member States of the Council of Europe are mentioned in the Government's submissions.

14. The Government listed 13 member States of the Council of Europe.

101. In the Government's opinion, the applicants' conduct had not made any contribution to the discussion of public affairs or the provision of information to the electorate and had expressly hindered effective law-making. As the above means had been used while other MPs were exercising their right to vote and speak, the applicant MPs had actually prevented the electorate from obtaining information about the views of other MPs who had expressed their opinions in conformity with the Rules of Parliament. The purpose of the applicants' conduct had been to express their opinion by suppressing the opinions of other MPs. The applicants had had the opportunity to express their opinions in compliance with the Rules, but most of them had failed to do so. Instead, they had preferred to attract attention to themselves through spectacular protest action interrupting the ongoing debate. They had knowingly used those forms of expression, whereby their conduct in violation of the Rules of Parliament had received media coverage and not the content of their expression. In the Government's opinion, the conduct in issue had gratuitously disrupted the functioning of Parliament.

102. The Government expressed their deep concern about the encouragement of similar conduct. A precedent granting wide-scale protection to demonstrative protest acts could give rise to tendencies adversely affecting the quality of parliamentary debate and the efficiency of parliamentary work. In addition, extreme conduct of MPs could result in the undermining of public trust in Parliament. Parliament was a very important forum for political communication but not the sole one.

103. The Government acknowledged that there were many ways of expressing an opinion in Parliament; however, the relevant rules on parliamentary order were applicable to all forms of communication and therefore unusual or symbolic expressions did not enjoy a higher level of protection than MPs' speeches. They pointed out that the majority of member States did not tolerate non-verbal forms of political expression and provided certain examples from the practice of the German *Bundestag* and the PACE. They also drew the Court's attention to the Report drafted by the Committee on Rules of Procedure, Immunities and Institutional Affairs for the PACE on 22 October 2013 on the discipline of the members of the PACE, which had subsequently been adopted by the Assembly in its Resolution 1965 (2013).

104. The Government accepted that the interference in issue had pursued two legitimate aims as identified in the Chamber's judgment, namely, the protection of the rights of others, which encompassed the rights of other MPs, and the prevention of disorder.

105. The Government maintained that the interference in issue had been proportionate. They submitted that the applicants' conduct had seriously disrupted the work of Parliament by causing interruption in the voting process and in the speeches. The applicants Mr Karácsony and Mr Szilágyi

had interrupted the speech of the Government's representative, while the other applicants had prevented the continuation of the voting process. In the Government's view, the means used by the applicants, even if primarily for the purpose of demonstration, had clearly disrupted Parliament's normal functioning.

106. The Government contested the Chamber's findings in respect of the alleged partisanship of the Speaker in the procedure and the political orientation of Parliament. In contrast to the Hungarian regulations, in the majority of the member States the Speaker did not only propose the application of a sanction, but imposed such sanction at his or her own discretion. A decision as to which conduct infringed the authority of Parliament fell within the discretion of the Speaker. In this respect they invoked, *inter alia*, the disciplinary provisions in the Rules of the *Bundestag* which were similar to the Hungarian regulations. Furthermore, under the Rules of Procedure of the PACE, a decision on exclusion was made by the President of the PACE or, in more severe cases, by the PACE upon the President's proposal, and no remedy against such decision was available.

107. The Government refuted the Chamber's finding that the sanction had been imposed without any previous warning. In each case the chair of the session had requested the MPs concerned to cease the disruptive conduct but to no avail. It had only been possible to restore the order of the meeting after several calls to order had been made. The applicants Ms Szabó and Mr Dorosz had not been willing to remove the banner stretched out in the middle of the Chamber even when the Speaker had warned them of the legal consequences, and their conduct had terminated only on the arrival of the parliamentary guard service. The applicants Mr Karácsony and Mr Szilágyi had placed a placard next to the rostrum and thus interrupted the Government's representative who was making a speech. Since they had not been willing to remove the placard despite having been requested to do so several times, it had been removed by the parliamentary guard service. The sanctioning of the applicants Ms Szél, Ms Osztolykán and Ms Lengyel had also been preceded by a call to order and a warning issued by the Speaker. Accordingly, in the Government's view, the sanctions had been applied gradually. In this respect the Government noted that the regulations of several member States allowed the Speaker or, upon the Speaker's proposal, Parliament to impose a severe sanction without a prior warning or prior application of a less restrictive measure where certain unlawful conduct was engaged in. In the event of grave disturbance immediate exclusion could be applied in the parliaments of Germany, Croatia, Lithuania, Malta, the United Kingdom, Georgia, Greece and Italy.

108. The Government further submitted that the MPs concerned could have challenged the measures proposed by the Speaker before several forums such as the plenary Parliament, the House Committee or the Committee responsible for the interpretation of the Rules of Parliament.

Furthermore, in European parliamentary law a disciplinary sanction was not preceded by a debate in the plenary. This was justified since a sanction for a conduct violating the Rules was applied in order to restore Parliament's proper functioning and the need to do so arose immediately.

109. The Government maintained that, contrary to the Chamber's finding, the sanctions in issue had had no chilling effect. The fines imposed on the applicants, in contrast to exclusion or suspension, had not actually prevented them from expressing their opinion. Moreover, the fines in question had not prevented some of the applicants from freely expressing their opinions during subsequent sessions of Parliament. In addition, in respect of some of the applicants Parliament had refrained from imposing the heaviest fine possible under the law. In the majority of member States the financial sanctions which could be imposed in addition to a suspension were much heavier than the fines that had been imposed on the applicants. The Government provided examples from Hungarian parliamentary practice in which non-verbal communication of MPs had disturbed the Parliament's work only to a minor extent and had not been sanctioned.

(c) The third-party interveners

(i) The Czech Government

110. The Czech Government provided information about the domestic regulation of parliamentary disciplinary proceedings. With regard to the Chamber of Deputies (lower house) of Parliament this issue was regulated by Act no. 90/1995 and the Rules of Procedure of the Chamber of Deputies which distinguished between procedural measures and disciplinary proceedings[15].

111. When a Deputy engaged in so-called "indecent behaviour" during a plenary session, the Chair could apply one of the following procedural measures: admonition or, in the case of repeated behaviour, exclusion from the Chamber until the end of the session day (Article 19 of the Rules). The Deputy concerned could appeal against such a decision to the plenary Chamber, which decided on it without a debate. In practice, these procedural measures had rarely been used.

112. In addition, disciplinary proceedings could be instituted against a Deputy whose speech in the Chamber could have resulted in his criminal prosecution (Article 13 § 1). The same applied to a Deputy's speech which offended another Deputy (Article 13 § 2). Disciplinary proceedings were formally conducted by the Mandate and Immunity Committee of the Chamber of Deputies. In the course of those proceedings, the Committee undertook the necessary investigation and the Deputy concerned had the right to state his opinion and to defend himself. The Committee could order

15. Similar rules were prescribed in the Rules of Procedure of the Senate.

a Deputy to issue an apology or to pay a fine in the amount up to his monthly remuneration. The Deputy could challenge any of those measures before the Chamber, which then held a debate and voted on the appeal.

113. Procedural or disciplinary measures taken by the Chamber could not be reviewed by the administrative courts. In addition, the Constitutional Court, in a recent decision, concluded that it was not competent to review – in constitutional appeal proceedings – a parliamentary disciplinary decision save in cases of Parliament acting clearly in excess of its powers[16].

(ii) The United Kingdom Government

114. The United Kingdom Government observed that in the House of Commons conduct similar to that engaged in by the applicants would be considered by the Speaker to be gravely disruptive and inappropriate. If persisted in, it could lead to temporary suspension from the House of Commons and forfeiture of salary for the period of the suspension. They submitted that a national legislature was entitled within its margin of appreciation to decide that: (a) political speech in Parliament was to be confined to reasoned oral argument and voting, under the control of the Speaker; (b) the use of megaphones to amplify speech was prohibited, as was the use of placards, billboards and signs; (c) accusations of deliberate dishonesty and other abusive language should be regulated; and (d) rules of conduct could be enforced against its members by proportionate but dissuasive financial penalties and the sanction of suspension.

115. The United Kingdom Government provided information about the United Kingdom law and practice regarding the right to freedom of speech in Parliament, starting with Article 9 of the Bill of Rights 1689[17]. Article 9 of the Bill of Rights served two complementary purposes. Firstly, it provided a guarantee of the right of members of parliament to freedom of speech during debates. They received immunity from all civil or criminal proceedings for anything said in the exercise of their right to freedom of speech. Secondly, to ensure that the right was not abused, members of parliament submitted to the authority and discipline of Parliament. Freedom of speech in Parliament was regulated by Parliament itself, which controlled its own procedure. It was an essential element of the doctrine of separation of powers that national courts did not seek to regulate the conduct of the legislature.

116. With regard to Article 10, the United Kingdom Government maintained that two complementary principles applied and both were essential to the proper functioning of a representative democracy. First, free

16. Decision of the Constitutional Court of the Czech Republic, Ref. no. PL. US 17/14 of 13 January 2015.

17. Article 9 of the Bill of Rights 1689 states: "The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

speech, protected from any fear of litigation or external sanction, was essential if MPs were to represent the people and debate matters of importance. Otherwise, there would be a powerful chilling effect on debate within the legislature. Parliament had to be free to organise and determine its own procedure and to hear robust debate on any subject, without fear of external interference. Second, as a counterbalance, there had to be a system of parliamentary discipline, under which the conduct of MPs was controlled by Parliament itself, to ensure that the right to freedom of speech of its members was not abused, and that the work of the legislature proceeded effectively. The Government maintained that the Court had recognised both of the above principles in *A. v. the United Kingdom* and *Kart v. Turkey*. The wide margin of appreciation applied, according to the Government, to whether to prohibit the use of items such as banners, billboards and megaphones as well as to national assessments as to the seriousness of such conduct.

117. The United Kingdom House of Commons had a long history of free reasoned oral debate under the control of a Speaker. MPs were entirely free to engage in symbolic public political protests, including marches, rallies and demonstrations, outside of Parliament. Such political speech received a high level of protection under Article 10. But within the House of Commons, all MPs limited their political expression to reasoned oral argument. Free speech was not prohibited: all MPs enjoyed an equal right to speak, question, intervene and vote. But a necessary and reasonable restriction was imposed on the time, place and manner of all MPs' political expression, in order that debates could take place in Parliament on a fair and equal basis. The Government underlined that such rules were essential to ensure that all sides of the argument were fairly heard. If the use of billboards, banners, megaphones and other such devices were permitted, it could lead to an escalation amongst MPs with the effect of inhibiting the very freedom of expression. A proportionate but dissuasive penalty was called for to ensure that parliamentary debate was confined to fair and reasoned oral debate, discussion and voting. Such rules promoted a high standard of political debate, and ensured that all MPs were treated equally and fairly. It would be contrary to this principle to give special privileges to cause disruption to any member, whether part of the majority or the minority. All elected MPs should be treated with equal respect by a Speaker, and the same rules of conduct should apply to each of them.

118. The United Kingdom Government was not aware of any national Parliament that permitted the type of disruptive conduct carried out by the applicants. A national legislature was within its wide margin of appreciation to decide that the proper forum for symbolic political demonstrations was outside Parliament. There was an exceptionally strong public interest in ensuring orderly conduct of proceedings in Parliament.

119. The United Kingdom Government further argued that there was a strong analogy to proceedings in this Court or a national court. Outside court litigants could well engage in symbolic, disruptive and offensive protest. Within court, in order that the issues could be fairly debated on their merits, a framework of rules governing oral debate had to be applied.

3. The Court's assessment

(a) Existence of an interference

120. The Chamber found that the fines imposed on the applicants amounted to an interference with their right to freedom of expression provided for in Article 10 of the Convention. This issue has not been contested by the parties and the Grand Chamber sees no reason to reach a different conclusion on this point. The Grand Chamber would only add that the applicants' expression consisted mainly of non-verbal means of communication, namely, displaying a placard and banners respectively. It will return later to the specific circumstances obtaining in the present case.

121. Such an interference with the applicants' right to freedom of expression must be "prescribed by law", pursue one or more legitimate aims in the light of paragraph 2 of Article 10, and be "necessary in a democratic society".

(b) Whether the interference was prescribed by law

122. In the present case the parties' opinions differed as to whether the interference with the applicants' freedom of expression was prescribed by law. The applicants argued that the terms employed in section 49(4) of the Parliament Act ("conduct gravely offensive to the authority or order of Parliament") were vague. Furthermore, there had been no previous application of section 49(4) as amended because the amended version of that provision had entered into force only in January 2013. The Government maintained that the interference had been based on the provisions of the Parliament Act.

123. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among other authorities, *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; *Korbely v. Hungary* [GC], no. 9174/02, §§ 72-73, ECHR 2008; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012).

124. One of the requirements flowing from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see, for example, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 141; and *Delfi AS v. Estonia* [GC], no. 64569/09, § 121, ECHR 2015).

125. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *Centro Europa 7 S.r.l. and Di Stefano*, § 142, and *Delfi AS*, § 122, both cited above). The Court has found that persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails (see *Lindon, Otchakovsky-Laurens and July*, cited above, § 41, with further references).

126. The Court notes that the amended section 49(4) of the Parliament Act regulated the conduct of MPs in Parliament. It appears that the applicants took part in the parliamentary examination of the amendment. By reason of their specific status, members of parliament should normally be aware of the disciplinary rules which are aimed at ensuring the orderly functioning of Parliament. Those rules inevitably include an element of vagueness ("gravely offensive conduct") and are subject to interpretation in parliamentary practice. The rules similar to those in Hungary exist in many European States and they are all couched in comparably vague terms (see examples in paragraph 56 above). The Court considers that the applicants, on account of their professional status of parliamentarians, must have been able to foresee, to a reasonable degree, the consequences which their conduct could entail, even in the absence of previous application of the impugned provision (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 115, 15 October 2015, and, *mutatis mutandis*, in relation to Article 7 of the Convention, *Huhtamäki v. Finland*, no. 54468/09, § 51, 6 March 2012, with further references).

127. The Court accordingly finds that the amended section 49(4) of the Parliament Act met the required level of precision and that, accordingly, the interference was "prescribed by law".

(c) Whether the interference pursued a legitimate aim

128. The parties had somewhat divergent views with regard to the aim of the interference in issue. The applicants agreed that the interference had pursued the aim of "maintaining the proper functioning of Parliament" and thus corresponded to the aim of protection of the rights of others. The Government maintained that the interference pursued two legitimate aims, namely the protection of the rights of others and the prevention of disorder. With regard to the former, they argued that this aim encompassed the rights of other members of parliament.

129. The Court is satisfied that the interference pursued two legitimate aims within the meaning of Article 10 § 2 of the Convention. Firstly, it was aimed at preventing disruption to the work of Parliament so as to ensure its effective operation and thus pursued the legitimate aim of the "prevention of disorder". Secondly, it was intended to protect the rights of other members of parliament, and thus pursued the aim of the "protection of the rights of others".

(d) Whether the interference was necessary in a democratic society

130. The applicants maintained that the interference in issue had failed to meet the requirement of necessity in a democratic society, while the Government argued that it had been proportionate to the legitimate aims pursued.

131. In the present case the Court is called upon for the first time to examine the compliance with Article 10 of the Convention of internal disciplinary measures imposed on MPs for the manner in which they expressed themselves in Parliament. In the examination of the present case the Court will therefore have regard to the principles governing freedom of expression in general and those which relate to the exercise of freedom of expression in Parliament.

(i) General principles

(α) On freedom of expression

132. The general principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows (see, among recent authorities, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013 (extracts); and *Delfi AS*, cited above, § 131):

"(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. 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 freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

(β) On procedural guarantees of freedom of expression

133. Apart from the above factors, the fairness of proceedings and the procedural guarantees afforded are factors which in some circumstances may have to be taken into account when assessing the proportionality of an interference with freedom of expression (see *Association Ekin v. France*, no. 39288/98, § 61, ECHR 2001 VIII; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005 II; *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 171 and 181, ECHR 2005 XIII; *Saygılı and Seyman v. Turkey*, no. 51041/99, §§ 24-25, 27 June 2006; *Kudeshkina v. Russia*, no. 29492/05, § 83, 26 February 2009; *Lombardi Vallauri v. Italy*, no. 39128/05, § 46, 20 October 2009; *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 100, 14 September 2010; *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, § 59, 8 October 2013; and *Morice v. France* [GC], no. 29369/10, § 155, 23 April 2015).

134. In *Association Ekin*, which concerned an administrative ban on the distribution and sale of a book of "foreign origin", the Court held that a legal framework should ensure, *inter alia*, effective judicial review of such bans to prevent any abuse of power (cited above, § 58). The Court noted that the administrative courts carried out only a limited review of the

reasons for such bans. In the applicant association's case the *Conseil d'Etat* carried out a full review, but its practical effectiveness was undermined by the excessive length of the proceedings. The Court considered that such a deficient judicial review provided insufficient guarantees against abuse (ibid., § 61).

135. In *Lombardi Vallauri*, in which the applicant's candidacy for a teaching post in a denominational university was refused on account of his alleged heterodox views, the Court noted that in the proceedings before the Faculty Board the applicant had not been provided with adequate procedural guarantees (cited above, §§ 46-48). In the judicial review proceedings, the administrative courts had limited their examination of the impugned decision to the fact that the Faculty Board had noted the existence of the Congregation's refusal to approve the applicant's candidacy. The fact that the applicant had not been given the exact reasons for that refusal ruled out any possibility of adversarial debate. Accordingly, the Court found that the judicial review had not been adequate (ibid., §§ 51 and 54).

136. In *Cumhuriyet Vakfi and Others*, which concerned an injunction against a national newspaper issued in the course of civil proceedings for protection of personality rights, the Court found that the applicants had not been afforded sufficient safeguards (cited above, § 75). It had regard to (i) the exceptionally wide scope of the injunction, (ii) its excessive duration, (iii) the failure of the domestic court to give any reasoning for the interim injunction and (iv) the applicants' inability to contest the measure before its being granted (ibid., §§ 62-74).

(γ) On the freedom of expression of members of parliament

137. In its case-law, the Court has consistently underlined the importance of freedom of expression for members of parliament, this being political speech *par excellence*. In the case of *Castells v. Spain* (23 April 1992, Series A no. 236), which concerned the conviction of a senator for insulting the Government in a press article, the Court held that "while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition member of parliament ... call for the closest scrutiny on the part of the Court" (ibid., § 42, and *Piermont v. France*, 27 April 1995, § 76 *in fine*, Series A no. 314). These principles have been confirmed in a number of cases concerning freedom of expression of members of national or regional parliaments (see, among other authorities, *Jerusalem v. Austria*, no. 26958/95, § 36, ECHR 2001-II; *Féret v. Belgium*, no. 15615/07, § 65, 16 July 2009, and *Otegi Mondragon v. Spain*, no. 2034/07, § 50, ECHR 2011) as well as in a series of cases concerning restrictions on the right of access to a court stemming from the operation of parliamentary immunity (see *A. v. the United*

Kingdom, no. 35373/97, § 79, ECHR 2002-X; *Cordova v. Italy (no. 1)*, no. 40877/98, § 59, ECHR 2003-I; *Cordova v. Italy (no. 2)*, no. 45649/99, § 60, ECHR 2003-I (extracts); *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII; *De Jorio v. Italy*, no. 73936/01, § 52, 3 June 2004; *Patrono, Cascini and Stefanelli v. Italy*, no. 10180/04, § 61, 20 April 2006; and *C.G.I.L. and Cofferati v. Italy*, no. 46967/07, § 71, 24 February 2009).

(δ) On the freedom of expression in Parliament

138. There can be no doubt that speech in Parliament enjoys an elevated level of protection. Parliament is a unique forum for debate in a democratic society, which is of fundamental importance. The elevated level of protection for speech therein is demonstrated, among other things, by the rule of parliamentary immunity. The Court has acknowledged that the long-standing practice for States generally to confer varying degrees of immunity on parliamentarians pursues the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. Different forms of parliamentary immunity may indeed serve to protect the effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the autonomy of the legislature and the parliamentary opposition (see, among other authorities, *Kart*, cited above, § 81 with further references, and *Syngelidis v. Greece*, no. 24895/07, § 42, 11 February 2010). The guarantees offered by both types of parliamentary immunity (non-liability and inviolability) serve to ensure the independence of Parliament in the performance of its task. Inviolability helps to achieve the full independence of Parliament by preventing any possibility of politically motivated criminal proceedings (*fumus persecutionis*) and thereby protecting the opposition from pressure or abuse on the part of the majority (see *Kart*, cited above, § 90). The protection afforded to free speech in Parliament serves to protect the interests of Parliament as a whole and should not be understood as protection afforded solely to individual MPs (see *A. v. the United Kingdom*, cited above, § 85).

139. That being said, while the freedom of parliamentary debate is of fundamental importance in a democratic society, it is not absolute in nature. A Contracting State may make it subject to certain "restrictions" or "penalties", but it is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (see *Castells*, cited above, § 46, and *Incal v. Turkey*, 9 June 1998, § 53, *Reports of Judgments and Decisions* 1998-IV). The exercise of freedom of expression in Parliament carries with it "duties and responsibilities" referred to in Article 10 § 2 in order to ensure the effective operation of Parliament. Parliaments are entitled under this provision to react when their members engage in disorderly conduct disrupting the normal functioning of the

legislature. Just as the generally recognised rule of parliamentary immunity offers enhanced, but not unlimited, protection to speech in Parliament, so some restrictions on speech in Parliament – motivated by the need to ensure that parliamentary business is conducted in an orderly fashion – should likewise be regarded as justified. It is relevant to note in this connection that the Venice Commission observed that in most national parliaments members could be subjected to internal disciplinary sanctions by Parliament (see paragraphs 48-49 above).

140. In this context, the Court finds it important to distinguish between, on the one hand, the substance of a parliamentary speech and, on the other hand, the time, place and manner in which such speech is conveyed. This distinction was referred to in the judgment of the Hungarian Constitutional Court (see paragraph 33 above). The Court considers that the States – or indeed Parliaments themselves – should, in principle, independently regulate the time, place and manner of speech in Parliament, and that, correspondingly the Court's scrutiny in this respect should be limited. By contrast, States have very limited latitude in regulating the content of parliamentary speech. However, some regulation may be considered necessary in order to prevent forms of expression such as direct or indirect calls for violence. In verifying that the freedom of expression remains secured, the Court's scrutiny in this context should be stricter. In any case, through the generally recognised rule of parliamentary immunity the States provide an increased level of protection to speech in Parliament, with the consequence that the need for the Court's intervention could nonetheless be expected to be rare.

141. The Court reiterates that democracy constitutes a fundamental element of the "European public order", and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see, among many other authorities, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 98 and 103, ECHR 2006-IV). Thus, the Convention establishes a close nexus between an effective political democracy and the effective operation of Parliament. Accordingly, there can be no doubt that the effective functioning of Parliament is a value of key importance for a democratic society and therefore the exercise of free speech in Parliament may have to yield on occasions to the legitimate interests of protecting the orderly conduct of parliamentary business as well as the protection of the rights of other members of parliament. Orderly debate in Parliament ultimately serves the political and legislative process, the interests of all members of the legislature, enabling them to participate on equal terms in parliamentary proceedings, and the interests of society at large. The Hungarian Constitutional Court considered in this context that the task was to find the right balance between the rights of individual MPs and the guaranteeing of effective parliamentary activity (see paragraph 41 above).

The Court agrees with that approach, adding that the rights of the parliamentary minority should also be part of the equation. In a more general vein, the Court reiterates that pluralism and democracy must be based on dialogue and a spirit of compromise (see *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, *Reports* 1998-I; *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 108, ECHR 2005-XI; and *Tănase v. Moldova* [GC], no. 7/08, § 178, ECHR 2010).

(ε) Autonomy of Parliament

142. The Court notes that the rules concerning the internal operation of Parliament are the exemplification of the well-established constitutional principle of the autonomy of Parliament. In the respondent State Parliament's autonomy is protected by Article 5 (7) of the Fundamental Law, which provides, *inter alia*, that the Speaker exercises policing and disciplinary powers in order to ensure the undisturbed operation of Parliament (see paragraph 24 above). In accordance with this principle, widely recognised in the member States of the Council of Europe, Parliament is entitled, to the exclusion of other powers and within the limits of the constitutional framework, to regulate its own internal affairs, such as, *inter alia*, its internal organisation, the composition of its bodies and maintaining good order during debates. The autonomy of Parliament evidently extends to Parliament's power to enforce rules aimed at ensuring the orderly conduct of parliamentary business. This is sometimes referred to as "the jurisdictional autonomy of Parliament". According to the Venice Commission, the majority of parliaments have internal rules of procedure providing for disciplinary sanctions against members (see paragraphs 48-49 above).

143. In principle, the rules concerning the internal functioning of national parliaments, as an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting States. The national authorities, most notably parliaments (or comparable bodies composed of elected representatives of the people), are indeed better placed than the international judge to assess the need to restrict conduct by a member causing disruption to the orderly conduct of parliamentary debates and which may be harmful to the fundamental interest of ensuring the effective functioning of Parliament in a democracy (see *Kart*, cited above, § 99, and, *mutatis mutandis*, *Kudrevičius and Others*, cited above, §§ 97 and 156, with further references).

144. As to the breadth of the margin of appreciation to be afforded to the respondent State, this depends on a number of factors. It is defined by the type of the expression in issue and, in this respect, the Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see, among other authorities, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR

1999-IV; *Stoll v. Switzerland* [GC], no. 69698/01, § 106, ECHR 2007-V; and *Perinçek v. Switzerland* [GC], no. 27510/08, § 197, 15 October 2015). The protection of free debate in Parliament is undoubtedly essential for a democratic society. The Court has noted above that, on the one hand, the protection afforded to free speech in Parliament serves to protect the interests of Parliament as a whole, but on the other hand, free speech should not be used in a way that undermines the effective functioning of Parliament.

145. The Court notes in this connection the position of the great majority of the Contracting States, which sanction speech or conduct interfering with the orderly conduct of parliamentary proceedings. From the comparative-law material available to the Court, it appears that most, if not all, member States have in place a system of disciplining members of parliament who breach the rules of Parliament by engaging in improper speech or conduct (see paragraph 56 above). Similar rules exist in the Parliamentary Assembly of the Council of Europe and in the European Parliament (see respectively paragraphs 42-44 and 50-52 above). It can be seen from the comparative-law survey that parliaments dispose of a varying range of disciplinary measures to ensure the orderly conduct of parliamentary proceedings, including, *inter alia*, a call to order or a warning, as well as certain far-reaching measures such as denial of the right to speak, exclusion from a session and financial sanctions. It may be inferred from this that, despite differences related to the nature and extent of the disciplinary measures, the member States generally accept the need for regulations sanctioning abusive speech or conduct in parliaments.

146. Bearing this in mind, the Court considers that there is an overriding public interest in ensuring that Parliament, while respecting the demands of a free debate, can function effectively and pursue its mission in a democratic society. Therefore, where the underlying purpose of the relevant disciplinary rules is exclusively to ensure the effectiveness of Parliament, and hence that of the democratic process, the margin of appreciation to be afforded in this area should be a wide one. The Court observes that it has already acknowledged that member States have a wide margin of appreciation in the context of the regulation of parliamentary immunity, which belongs to the realm of parliamentary law (see *Kart*, cited above, § 82).

147. However, at this juncture the Court would like to stress that, from the standpoint of the necessity test under Article 10 § 2 of the Convention, the national discretion, which is inherent in the notion of parliamentary autonomy, in sanctioning speech or conduct in Parliament that may be deemed abusive, albeit very important, is not unfettered. The latter should be compatible with the concepts of "effective political democracy" and "the rule of law" to which the Preamble to the Convention refers. The Court reiterates that pluralism, tolerance and broadmindedness are hallmarks of

a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position (see, among other authorities, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 90, ECHR 2004-I; and *Leyla Şahin*, cited above, § 108). Accordingly, parliamentary autonomy should not be abused for the purpose of suppressing the freedom of expression of MPs, which lies at the heart of political debate in a democracy. It would be incompatible with the purpose and object of the Convention if the Contracting States, by adopting a particular system of parliamentary autonomy, were thereby absolved from their responsibility under the Convention in relation to the exercise of free speech in Parliament (see, *mutatis mutandis*, *Cordova v. Italy (no. 1)*, cited above, § 58). Similarly, the rules concerning the internal operation of Parliament should not serve as a basis for the majority abusing its dominant position *vis-à-vis* the opposition. The Court attaches importance to protection of the parliamentary minority from abuse by the majority. It will therefore examine with particular care any measure which appears to operate solely, or principally, to the disadvantage of the opposition (see, with regard to the compatibility with Article 3 of Protocol No. 1 of restrictions on electoral rights, *Tănase*, cited above, § 179). The Court further notes that the Parliamentary Assembly of the Council of Europe has stressed the need for equal treatment of all members of parliament (see paragraph 47 above).

(ii) Application of these principles to the present case

148. As reiterated above (see paragraph 132 above), the adjective "necessary" in Article 10 § 2 implies the existence of a pressing social need. The Contracting States have a margin of appreciation in assessing whether such a need exists and, in the present case, the Court has established that the margin of appreciation is a wide one (see paragraph 146 above). The Court has no difficulties in accepting that in the instant case it was necessary to react to the applicants' conduct in Parliament, which was a matter for the House to consider in the exercise of its autonomy. Furthermore, the Court must determine whether the interference in issue was proportionate to the legitimate aims pursued and whether the reasons adduced by the national authorities to justify it were relevant and sufficient (see paragraph 132 above). The latter requirements will be examined by the Court below.

149. In the present case the applicants, in the course of a debate and a vote, brought a large placard and banners into the middle of the parliamentary chamber and displayed them there (see, respectively, paragraphs 12-13, 15-16 and 20-21 above). One of the applicants, Ms Lengyel, also used a megaphone to speak in the course of a vote (see

paragraphs 20-21 above). It appears that the applicants were given a warning by the Speaker (see, respectively, paragraphs 13, 16 and 21 above). The Court considers that displaying a placard or banner in Parliament is not a conventional manner for MPs to express their views on a given subject debated in the House. Having chosen this form of conduct, the applicants disrupted order in Parliament. They had been free to convey the same message in their parliamentary speech *stricto sensu* and had they done so the consequences of their actions might have been entirely different. The use of a megaphone in Parliament also obviously disrupts order.

150. The Court notes that in his three respective proposals to fine the applicants, subsequently adopted by Parliament, the Speaker referred to the applicants' conduct, as recorded in the minutes, which had been considered to be gravely offensive to parliamentary order (see, respectively, paragraphs 14, 17 and 22-23 above). In the case of the applicants Ms Szél, Ms Lengyel and Ms Osztolykán the Speaker observed that their conduct had been gravely offensive to parliamentary order on account of the display of their banner and the use of the megaphone (see paragraph 23 above). On the facts of the case, the Court is satisfied that the applicants did not receive sanctions for expressing their views on issues debated in Parliament, but rather for the time, place and manner in which they had done so. This conclusion is borne out by the fact that in the parliamentary proceedings there was no examination of the actual content of the applicants' expression.

151. Furthermore, having regard to the circumstances of the present case, the Court finds no reason to doubt that the impugned disciplinary sanctions which were imposed on the applicants were supported by reasons that were relevant for the legitimate aims pursued, namely, the prevention of disorder and the protection of the rights of other members of parliament. However, it sees no need to rule on whether, bearing in mind the State's wide margin of appreciation, those reasons as such were also sufficient to show that the disputed interference was "necessary". The Court finds it more appropriate to concentrate its review on whether the restriction on the applicants' right to freedom of expression was accompanied by effective and adequate safeguards against abuse. Indeed, as stated above (paragraph 133 et seq.), the fairness of proceedings and the procedural guarantees afforded are factors which may have to be taken into account when assessing the proportionality of an interference with freedom of expression. Furthermore, the Court has found above (see paragraph 140) that its scrutiny of how the time, place and manner of speeches in Parliament are regulated should be limited.

152. In this connection, it should be emphasised that the exercise of Parliament's power to sanction disorderly conduct of a member has to respect the principle of proportionality inherent in Article 10, including in its procedural aspect (see paragraph 133 above). Compliance with the principle of proportionality commands, *inter alia*, that a sanction imposed

should correspond to the severity of a disciplinary breach. At the same time the Court should pay due regard to the autonomy of Parliament, which ought to weigh heavily in the balancing of interests to be carried out under the proportionality test. Bearing this in mind, and the wide margin of appreciation to be accorded to the Contracting States in this context (see paragraph 146 above), two different situations should be distinguished here.

153. The first situation would obtain in the – presumably rather theoretical – event of Parliament acting clearly in excess of its powers, arbitrarily, or indeed *mala fide* by imposing a sanction not prescribed in the Rules or blatantly disproportionate to the alleged disciplinary breach. In such a context, Parliament could obviously not rely on its own autonomy in justifying the sanction it imposes, which would therefore be subjected to the Court's full scrutiny.

154. The second situation – relevant for the present case – would obtain when a sanctioned MP does not dispose of basic procedural safeguards under parliamentary procedure to contest the disciplinary measures imposed on him or her (see, *mutatis mutandis*, *Hoon v. the United Kingdom* (dec.), no. 14832/11, 13 November 2014). This would raise an issue from the standpoint of the procedural requirements under Article 10 (see paragraph 133 above).

155. In this connection the Government have made a distinction between immediate sanctions, such as denial of the right to speak and exclusion from a session, which instantaneously prevent an MP from expressing his or her opinion, and those, such as a fine in the present case, which were of an *ex post facto* nature. This distinction is reflected, for example, in the Rules of Procedure of the European Parliament (see paragraph 51 above). The Court considers that the procedural safeguards available regarding these different types of sanctions may vary too. Immediate sanctions (which are not in issue in the present case) are imposed in the case of grave disturbance of parliamentary order and in terms of procedural safeguards they would require a warning. However, it may also be envisaged that in extreme cases no warning will be required. In this context, the justification would be that clearly abusive speech or conduct of an MP nullifies the protection of his or her right to freedom of expression or may be considered an abuse of the right.

156. In the present case only *ex post facto* disciplinary sanctions are in issue. The Court reiterates that the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Golder v. the United Kingdom*, 21 February 1975, § 34, Series A no. 18; *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III; and *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The rule of law implies, *inter alia*, that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the

Convention (see, among other authorities, *Klass and Others v. Germany*, 6 September 1978, § 55, Series A no. 28, and *Malone v. the United Kingdom*, 2 August 1984, § 67, Series A no. 82). With regard to *ex post facto* disciplinary sanctions, the Court considers that the procedural safeguards available to this effect should include, as a minimum, the right for the MP concerned to be heard in a parliamentary procedure before a sanction is imposed. It notes that the right to be heard would indeed increasingly appear as a basic procedural rule in democratic States, over and beyond judicial procedures, as demonstrated, *inter alia*, by Article 41 § 2 (a) of the Charter of Fundamental Rights of the EU (see paragraphs 54-55 above).

157. The manner and mode of implementation of the right to be heard should be adapted to the parliamentary context, bearing in mind that, as already stated in paragraph 147 above, a balance must be achieved which ensures the fair and proper treatment of the parliamentary minority and precludes abuse of a dominant position by the majority. In the exercise of his or her functions, the Speaker ought to act in a manner that is free of personal prejudice or political bias. In addition, while, in the light of the generally recognised principles of parliamentary autonomy and the separation of powers, an MP who has been disciplinarily sanctioned cannot be considered entitled to a remedy to contest his sanction outside Parliament, the argument for procedural safeguards in this context is nonetheless particularly compelling given the lapse of time between the conduct in issue and the actual imposition of the sanction.

158. Furthermore, the Court considers that any *ex post facto* decision imposing a disciplinary sanction should state basic reasons, thus not only enabling the MP concerned to understand the justification for the measure but also permitting some form of public scrutiny of it.

159. At the material time the domestic legislation did not provide for any possibility for the MPs concerned to be involved in the relevant procedure, notably by being heard. The procedure in the applicants' case consisted of a written proposal of the Speaker to impose fines and its subsequent adoption by the plenary without debate. Thus, the procedure did not afford the applicants any procedural safeguards. Neither did the decisions of 6 and 24 May 2013 (see paragraphs 14 and 17 above) contain any relevant reasons why the applicants' actions were considered gravely offensive to parliamentary order. The Government asserted that the applicants could have challenged the measures proposed by the Speaker before the plenary Parliament, the House Committee or the Committee responsible for the interpretation of the Rules of Parliament. However, the Court finds that none of these options offered the applicants an effective means of challenging the Speaker's proposal. They were limited to a general possibility of making a statement in Parliament or petitioning certain

parliamentary bodies without any guarantee that the applicants' arguments would be considered in the relevant disciplinary procedure.

160. It should be noted that an amendment to the Parliament Act introducing the possibility for a fined MP to seek a remedy and to make representations before a parliamentary committee entered into force on 4 March 2014 and that the minimum procedural safeguards required in the present situation thus appear to have been put in place (see paragraphs 28-29 above). However, this amendment has not affected the applicants' situation in the present case.

161. Having regard to the foregoing, the Court considers that in the circumstances of the case the impugned interference with the applicants' right to freedom of expression was not proportionate to the legitimate aims pursued because it was not accompanied by adequate procedural safeguards.

162. In the light of the above considerations, the Court concludes that the interference with the applicants' right to freedom of expression was not "necessary in a democratic society" and that, accordingly, there has been a violation of Article 10 of the Convention on this account.

III. ALLEGED VIOLATION OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 10 OF THE CONVENTION

163. The applicants complained under Article 13 read in conjunction with Article 10 of the Convention that they had no remedy under domestic law to contest the disciplinary decisions imposed on them. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The Chamber judgments

164. The Chamber noted that parliamentary autonomy and sovereignty were important constitutional institutions of a democratic State. It did not find it necessary to determine an appropriate forum for redress under Article 13 since, contrary to the Governments submissions and in the light of the Constitutional Court's judgments of 4 November 2013 (nos. 3206/2013 (XI.18) AB and 3207/2013 (XI.18.) AB (see paragraphs 32-41 above), a constitutional complaint was not then available or capable of offering an effective remedy. Accordingly, the Chamber found that there had been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law for the applicants' grievance under Article 10.

B. The parties' submissions

1. The applicants

165. The applicants averred that their grievance under Article 10 met the requirement of "arguability" and therefore a remedy in domestic law should have been provided to them. In their view, a constitutional complaint could not have been considered an effective remedy since even a successful constitutional complaint would not have led to the annulment of their fines. No other effective remedy was available to them.

166. The parliamentary procedure followed in the applicants' case had clearly been in breach of Article 13 since it was not capable of redressing the injustice caused either in theory or in practice. Moreover, even the respondent State had acknowledged a violation of Article 13 by changing the relevant rules of the disciplinary procedure after the events leading to the present case.

167. The applicants invited the Court to find a violation of Article 13.

2. The Government

168. The Government submitted that in the field of effective remedies the Court had not laid down specific requirements for the member States as to the manner of complying with the obligations set forth in Article 13, and that in this respect States enjoyed procedural autonomy.

169. In view of the principle of separation of powers and of the autonomy of Parliament, the possibilities available for Parliament to secure an adequate remedy were extremely limited. The practice of many European States demonstrated that in disciplinary cases MPs had very limited possibilities of appeal. In such cases a remedy within Parliament was normally available. In line with the dominant European tradition, the Hungarian Parliament, or one of its organs, decided on such issues at its own discretion and no extra-parliamentary remedy was available against such decisions.

170. The Government asserted that the Chamber had not taken due account of the specific circumstances of the case. Parliament, as a State organ with the highest level of legitimacy, was in a special situation and could not be treated in the same way as other authorities. Since in the case in issue the decision had been made by the highest institution of Parliament – the plenary – remedies were limited *per se* and this was not a deficiency of the regulations or practice but a characteristic flowing from the operation of Parliament.

C. The third-party interveners' submissions

1. The Czech Government

171. The Czech Government referred to a recent decision of the Constitutional Court[18] which clarified that a constitutional appeal was generally not available against a decision of Parliament in disciplinary proceedings against an MP[19]. The Constitutional Court considered that it had to exercise judicial restraint in its review of disciplinary decisions, having regard, *inter alia*, to the general presumption of legality of the actions of State authorities. Deference to parliamentary autonomy represented a legitimate and proportionate aim justifying a limitation on the right to an effective remedy of an MP in this context. Such judicial restraint was not unlimited, however, and the Constitutional Court reserved the right to intervene if Parliament were to act in excess of its powers.

172. The Czech Government submitted that a carefully reasoned and proportionate exercise of judicial restraint by the Constitutional Court, in refusing to review a specific disciplinary measure imposed by Parliament, should not be considered to be in violation of Article 13. The Contracting Parties and their courts should enjoy a wide margin of appreciation in this context.

2. The United Kingdom Government

173. The United Kingdom submitted that the doctrine of separation of powers required that a Parliament was able to regulate its own affairs, permitting free debate subject to its right to discipline its members for misconduct.

D. The Court's assessment

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

18. Decision of the Constitutional Court of the Czech Republic, Ref. no. PL. US 17/14 of 13 January 2015.

19. In that case an MP had been accused of committing an administrative offence and had opted for that offence to be examined in disciplinary proceedings before Parliament.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. Mr Karácsony claimed 170 euros (EUR), Mr Szilágyi EUR 600, Mr Dorosz EUR 240, Ms Szabó EUR 240, Ms Szél EUR 430, Ms Osztolykán EUR 510 and Ms Lengyel EUR 430 in respect of pecuniary damage. These amounts correspond to the fines they were obliged to pay as disciplinary sanctions.

177. Each applicant also claimed EUR 20,000 in non-pecuniary damage related to the violation of their rights under Articles 10 and 13 of the Convention.

178. The Government contested these claims.

179. The Court reiterates that Article 41 empowers it to afford the injured party such satisfaction as appears to it to be appropriate (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 199, ECHR 2014 (extracts)).

180. As regards the claim in respect of pecuniary damage, the Court finds that the applicants suffered pecuniary loss as a result of the fines that they were ordered to pay (see paragraphs 14, 17 and 22 above). Having regard to the link between the fines imposed in domestic proceedings and the violation of Article 10 found by the Court, the applicants are entitled to recover the full amounts claimed by each of them respectively.

181. As regards the claim in respect of non-pecuniary damage, the Court, having regard to the particular circumstances of the present case, considers that the finding of a violation of Article 10 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

B. Costs and expenses

182. The applicants claimed, jointly, reimbursement of the legal fees incurred before the Court. They submitted that they would only be billed if the case was decided in their favour.

183. With regard to the Chamber proceedings, the applicants claimed, jointly, EUR 26,924 for 106 hours of legal work at an hourly rate of EUR 200 plus 27% value added tax (VAT), including 8 hours of client consultations, 10 hours of studying the file and the domestic law, 15 hours

of analysing the Court's case-law, 15 hours spent on preparing the applications and the rest on drafting submissions.

184. With regard to the Grand Chamber proceedings, the applicants claimed, jointly, EUR 33,528 representing 132 hours of legal work at the same hourly rate plus VAT, including 20 hours to study the file and the domestic legal background, 20 and 24 hours to study the case-law of the Constitutional Court and of the Court respectively and lastly 88 hours for drafting submissions. Furthermore, the applicants claimed EUR 1,223 for travel and accommodation expenses related to the hearing as well as 27 further hours of legal work at the same hourly rate plus VAT for preparation and participation at the hearing.

185. In total, the applicants claimed EUR 67,310 for 265 hours of legal work and EUR 1,223 for travel expenses.

186. The Government firstly noted that the applicants had incurred no legal costs. Pursuant to a prior agreement, the cost of their legal representation would only be billed if the Court found a violation of the Convention. A service agreement, although not prohibited by the Court's case-law, could give rise to abuse since the parties could indicate an unrealistically high sum for legal costs disregarding the domestic economic circumstances. In their view, the applicants had not submitted any document to the Court to prove that they would actually have to pay the legal fees in the event of a successful outcome of the case.

187. The applicants' claim for costs and expenses was excessive when compared with the similar awards made by the Grand Chamber. In the Grand Chamber case of *Jaloud v. the Netherlands* (no. 47708/08, 20 November 2014) the lawyers had charged an hourly rate of EUR 110, while in the Grand Chamber case of *Bouyid v. Belgium* (no. 23380/09, 28 September 2015) the lawyers had charged EUR 85 and 125 per hour respectively. The applicants' lawyer had charged an hourly rate of EUR 200, which was 12 times higher than the legal-aid rate in Hungary in 2015 and disproportionate to the average income in Hungary. The Government further disputed the number of hours of legal work. The total number of legal hours claimed (265) would correspond to one and a half months' work, which was not justified by the complexity of the case. The Government considered that the number of hours of legal work on a number of specific tasks was excessive. They pointed out, *inter alia*, that the applicants' lawyer had claimed 15 hours to study the Court's case-law in the Chamber proceedings and a further 24 hours for the same task in the Grand Chamber proceedings. Similarly, he had claimed 10 hours of work to study the file and the relevant Hungarian law before the Chamber and a further 40 hours for the same work before the Grand Chamber.

188. Lastly, the Government submitted that the amount of EUR 1,223 claimed for the expenses related to the participation at the hearing was only partially supported by invoices.

189. The Court reiterates its established case-law to the effect that an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *X and Others v. Austria* [GC], no. 19010/07, § 163, 19 February 2013). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (see *A, B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010).

190. The Court notes that the applicants did not submit a copy of their agreement with their lawyer, which would have been desirable. Nonetheless, they did submit documents describing the tasks performed by the lawyer and the amount of time spent plus information about the hourly rate. The Court finds, however, that the amount claimed appears to be excessive, having regard to the relevant economic circumstances and the examples from its case-law. Similarly, it finds that the number of hours claimed is excessive, seeing that the same legal work is claimed twice or that the number of hours spent on certain tasks is inflated.

191. The Court, having regard to the above considerations and the information in its possession, considers it reasonable to award the applicants jointly EUR 12,000 for the costs and expenses incurred before the Court plus any tax that may be chargeable to them.

C. Default interest

192. 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. *Decides* to join the applications;

2. *Dismisses* the Government's preliminary objection;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that it is not necessary to examine separately the complaint under Article 13 read in conjunction with Article 10 of the Convention;

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

6. *Holds* that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 170 (one hundred and seventy euros) to Mr Karácsony, EUR 600 (six hundred euros) to Mr Szilágyi, EUR 240 (two hundred and forty euros) to Mr Dorosz, EUR 240 (two hundred and forty euros) to Ms Szabó, EUR 430 (four hundred and thirty euros) to Ms Szél, EUR 510 (five hundred and ten euros) to Ms Osztolykán and EUR 430 (four hundred and thirty euros) to Ms Lengyel, plus any tax that may be chargeable, in respect of pecuniary damage;

7. *Holds* that the respondent State is to pay, within three months, EUR 12,000 (twelve thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;

8. *Holds* 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;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 17 May 2016.

Johan Callewaert	Luis López Guerra
Deputy to the Registrar	President