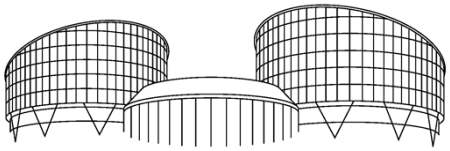

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF SZUROVECZ v. HUNGARY

(Application no. 15428/16)

JUDGMENT

STRASBOURG

8 October 2019

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

In the case of Szurovecz v. Hungary,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Iulia Antoanella Motoc,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 4 July 2017 and on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 15428/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Illés Szurovecz ("the applicant"), on 12 March 2016.

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

3. The applicant alleged a breach of his right to freedom of expression under Article 10 of the Convention, in particular the right to impart information, on account of the domestic authorities' refusal to grant him access to the Debrecen Reception Centre ("the Reception Centre"), which accommodated asylum-seekers. He also alleged a violation of Article 13 of the Convention in that he had no effective remedy to challenge this decision.

4. On 9 June 2016 the complaints concerning Articles 10 and 13 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. The applicant and the Government each filed written observations on the admissibility and merits. In addition, third-party comments were received from Media Legal Defence Initiative, Index on Censorship, The Reporters Committee for Freedom of the Press, the European Publishers Council, PEN International, the Hungarian Helsinki Committee, the Dutch Association of Journalists, and the European Centre for Press and Media Freedom, acting jointly, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1993 and lives in Mezőberény.

6. The applicant is a journalist at abcug.hu, an Internet news portal. On 7 May 2015 he contacted a civil society organisation with a view to covering their activities at the Vámosszabadi Reception Centre for asylum-seekers and refugees. He was informed that a request for authorisation to enter the Reception Centre should be addressed to the Office of Immigration and Nationality (hereinafter "the OIN").

7. The applicant's request was dismissed by the OIN's press department on 12 May 2015, relying on the personality rights of the people accommodated in the Reception Centre.

8. On 14 September 2015 the applicant lodged a new request with the OIN. He sought permission to enter the Debrecen Reception Centre to interview the people staying there and prepare a report on the living conditions, that would include pictures. He specified that photographs would only be taken with the permission of the individuals concerned and that should it be necessary he would obtain a written waiver each time. The reason for the applicant's choosing the Debrecen Reception Centre was to provide an objective account of the living conditions there, in particular since in April 2015 the Commissioner for Fundamental Rights had issued a report in accordance with the Optional Protocol to UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment condemning the living conditions there, which amounted to inhuman and degrading treatment. Furthermore, the Reception Centre was constantly presented in the State-owned media as part of the Government's anti-immigration campaign.

9. On 14 September 2015 the OIN rejected his request, relying on Article IV § 1 of the Fundamental Law and section 2(5) of Regulation no. 52/2007 (XII.11) of the Ministry of Justice and Law-Enforcement. The OIN noted that there was constant media interest in asylum-seekers and regular visits to the Reception Centre would infringe their private lives. Moreover, many people accommodated in the Reception Centre had fled from some form of persecution and information about them appearing in the press could endanger both their and their families' security. It was the domestic authorities' responsibility to ensure that persecutors could not receive information on the asylum-seekers' whereabouts through the press.

10. The applicant sought judicial review of the refusal of his request. On 12 November 2015 the Budapest Administrative and Labour Court declared his action inadmissible since the Office of Immigration and Nationality's reply had not been an administrative decision within the meaning of

section 12 of the Administrative Procedure Act no. CXL of 2004, thus it was not subject to judicial review.

11. In June 2016 the applicant intended to visit the Reception Centre in Körmend together with a Member of Parliament (MP). While the MP was allowed to enter that centre, the applicant was denied access. Subsequently, on 12 July 2016 the applicant published an article on the basis of the MP's account.

II. RELEVANT DOMESTIC LAW

12. Government Decree No. 301/2007 (XI.9.) on the implementation of the Act on Asylum, as in force the material time, provided as follows:

Section 12

"...

(3) A reception centre is a facility operated by the refugee authority in order to accommodate and care for person seeking recognition, refugees, beneficiaries of subsidiary or temporary protection and persons with tolerated stay.

..."

13. Decree no. 52/2007 (XII.11) of the Ministry of Justice on the organisational structure of the asylum system provides, in its relevant part, as follows:

Section 2

"...

(5) A visitor may enter and stay on the property of the reception centre with the permission of its director."

Annex to decree no. 52/2007
House rules of the reception centre

"1. Persons placed at the reception centre and visitors shall equally comply with the rules of conduct specified in the house rules.

2. Persons placed at the reception centre and visitors shall comply with the instructions of the staff of the reception centre. Visitors who breach the house rules shall be requested to leave the area of the reception centre.

3. Persons placed in the reception centre and visitors shall behave in such way as not to infringe the rights or disturb the peace of the other inhabitants of the reception centre.

...

16. Persons seeking recognition placed at the reception centre shall announce in advance to the officer of the asylum authority their intention to leave the centre."

III. RELEVANT INTERNATIONAL LAW MATERIAL

14. In its General Comment no. 34 on Article 19 (Freedoms of opinion and expression) of the International Covenant on Civil and Political Rights, published on 12 September 2011, the United Nations Human Rights Committee stated as follows:

> "45. It is normally incompatible with paragraph 3 to restrict the freedom of journalists and others who seek to exercise their freedom of expression (such as persons who wish to travel to human rights-related meetings) to travel outside the State party, to restrict the entry into the State party of foreign journalists to those from specified countries or to restrict freedom of movement of journalists and human rights investigators within the State party (including to conflict-affected locations, the sites of natural disasters and locations where there are allegations of human rights abuses)."

15. On 13 April 2016 the Committee of Ministers adopted Recommendation CM/Rec(2016)4 to member States on the protection of journalism and safety of journalists and other media actors, which, in its relevant part reads as follows:

> "26. The State should not unduly restrict the free movement of journalists and other media actors, including cross-border movement and access to particular areas, conflict zones, sites and forums, as appropriate, because such mobility and access is important for news and information-gathering purposes."

16. On 26 September 2017 the Declaration by the Committee of Ministers on the protection and promotion of investigative journalism was adopted, which contains the following:

> "The Committee of the Ministers of the Council of Europe
>
> ...
>
> II. Calls on member states to protect and promote investigative journalism, having regard to Article 10 of the European Convention on Human Rights, the relevant case-law of the European Court of Human Rights and other Council of Europe standards, and in this context:
>
> ...
>
> ii. to ensure the freedom of movement of media professionals and their access to information in line with Council of Europe standards and facilitate critical and in-depth reporting in service of democracy;
>
> ..."

IV. COMPARATIVE-LAW MATERIAL

17. All member States have national legislation that regulates immigration and asylum. However, not all specifically regulate access to and visiting rights in respect of centres. Additionally, national legislation differs in respect of the individuals and centres it applies to. Some national regulations apply to all types of immigrants and foreigners, while others are more specific regarding to which types of immigrants they apply. In many

cases, national legislation dealing with the rights of asylum seekers is supplemented by rules for individual centres or by additional (sometimes regional or local) regulation specifying the conditions for visits.

18. Whether visiting is possible as a result of national legislation, regional or local regulations, or centre-specific rules, most reception centres impose some practical conditions on access, such as visiting hours, time-limits, designated visiting areas, registration or prior authorisation. Many States also reserve the right of the centres to restrict access. The most common grounds invoked for restrictions on access are security, privacy, welfare and sanitary reasons.

19. In twenty-four member States, regulations are silent on media access to reception centres; they neither provide them with additional or easier access, nor do they outright limit their ability to visit the centres. In at least ten member States media representatives are required to gain prior authorisation or give prior announcement of their intent to visit reception centres (Armenia, Austria (under federal law), Bosnia and Herzegovina, Croatia, Estonia, France, Latvia, the Netherlands, Norway and Poland). In a few States, journalists are afforded somewhat broader access than ordinary visitors (Germany, Italy, Romania, Russia, Serbia and Turkey), mainly rooted in legislation concerning freedom of the press or freedom of information of public interest.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. The applicant complained under Article 10 of the Convention that by refusing his request to enter the premises of the Debrecen Reception Centre with a view to writing a report on the living conditions of asylum-seekers the domestic authorities had interfered with his right to impart information. Article 10 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. Admissibility

21. The Government argued that the applicant's complaint was based on a claim to a right of access to information which did not fall within the scope of Article 10. Any right of access to information under Article 10 could be construed only as a right to receive information willingly imparted by others. There was only a negative obligation on the part of the State not to unjustifiably hinder access to publicly available information and not to punish anyone for receiving information from public authorities.

22. The Government maintained that having regard to the wording of Article 10, as contrasted with the wording of other international human rights instruments concerning freedom of expression, as well as the *travaux préparatoires* of Article 10, the Vienna Convention on the Law of Treaties and the Court's long-standing case-law, Article 10 of the Convention was not applicable in the present case.

23. They further observed that the Committee of Ministers had adopted a separate, specific Convention on the right of access to official documents, thus indicating that the drafters of Article 10 had not intended to include in the Convention on the Protection of Human Rights and Fundamental Freedoms the right to seek information from public authorities.

24. The mere fact that High Contracting Parties had established in their domestic legislation the right to seek information did not justify the same right being interpreted as falling within the guarantees of Article 10, since States were free to adopt a higher level of protection of human rights in their domestic legal system than that afforded by the Convention. The applicability of Article 10 should under no circumstances go beyond requiring the enforcement of an established domestic right of access to information. Furthermore, the right of access to information was an autonomous right aimed at enhancing transparency and good governance and was not simply auxiliary to the right to freedom of expression.

25. Thus, the Government invited the Court to declare the application inadmissible *ratione materiae.*

26. The Government further argued that the applicant's complaint was inadmissible as being incompatible *ratione personae* with the provisions of the Convention. They disagreed that in the instant case the applicant could arguably claim that he had suffered interference with his right to freedom of speech, as he had never been prevented from, nor punished for, exercising that freedom. The denial of access to the Reception Centre had not affected his contribution to the debate on an issue of public interest. In support of this argument, the Government submitted that the applicant had published an article on the situation of asylum-seekers living in another reception centre (Körmend) without having had personal access to its premises.

27. The applicant contested the Government's objections. He submitted that the scope of Article 10 and the right to impart information should not

be limited to cover the range of information that the Government willingly permitted to be revealed. The right to receive and impart information should enable the press to observe the operations of public institutions and to report on the observations made. He further argued that the fact that eventually he had been able to find a way to prepare a single report on a Reception Centre did not undermine his victim status in the present case.

28. The Court points out that the core question to be addressed in the present case is whether the denial of the applicant's request for access the Reception Centre resulted, in the circumstances of the case, in an interference with his right to receive and impart information as guaranteed by Article 10.

29. The questions of whether the facts complained of fall within the scope of Article 10 and whether the applicant has been a victim of an interference with his rights under Article 10 are therefore inextricably linked to the merits of his complaint. Accordingly, the Court holds that the Government's objections should be joined to the merits of the application.

30. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

31. The Government submitted that should the Court find that Article 10 was applicable to cases concerning the denial of access to information, this was only so in situations where the lack of access to a particular piece of information effectively prevented an applicant from expressing an opinion in the absence of alternative means of obtaining that information and where the applicant was liable under civil or criminal law for the factual correctness of his or her statements.

32. Inasmuch as the applicant complained that the denial of access to the premises of the Debrecen Reception Centre had infringed his right to impart information and ideas, the Government were of the view that it was determinative that the applicant had not been prevented by the lack of access from publishing his opinion on the shortcomings of the functioning of the asylum system in Hungary and the living conditions of asylum-seekers.

33. According to the Government access to the Reception Centre had not been necessary for the applicant to express his opinion on an issue of public interest, since he had had access to information provided by international organisations and NGOs. Thus, he could have interviewed refugees outside

the premises of the Reception Centre and he could have obtained photographs taken by others. The fact that obtaining such information would have required cooperation with others and compilation of data did not refute the assertion that the information had been available from alternative sources.

34. The Government contended that the alleged interference – denying the applicant access – had had a legal basis, since the applicant had had no substantive right under domestic law to claim such access. Similarly, the Government argued that the interference had pursued the legitimate aim of protecting the rights of others, specifically the private lives of asylum-seekers, as envisaged by Article 8 of the Convention.

35. The Government highlighted the margin of appreciation enjoyed by the State in the present case and in granting access to the requested information. This margin was limited only by an applicant's overriding interest in supporting his or her statements with facts in order to fend off civil or criminal liability for statements concerning the exercise of public power and where there were no alternative means for an applicant to obtain the necessary information.

36. Moreover, there was no obligation on the State to impart information consisting of personal data when the disclosure of that information was not justified by a pressing social need. Any positive obligation under Article 10 ought to be construed in the light of the authorities' obligation to respect and ensure the enjoyment of other rights enshrined in the Convention and to strike a fair balance not only between private and public interests, but also between competing private interests – in the present case the applicant's right to receive information under Article 10 and asylum-seekers' right to respect for private life under Article 8, right to life and physical integrity under Articles 2 and 3, and right to personal liberty under Article 5 of the Convention.

37. Finally, referring to the case of *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, ECHR 2016) the Government pointed out that as far as the right to information was covered by Article 10, it did not require the information to be made available in a specific form or by specific means.

(b) The applicant

38. The applicant submitted that he had intended to report on the living conditions prevailing in Hungarian reception centres at the peak of the refugee crisis in Hungary.

39. In his understanding, the present case had not concerned the State's positive obligation to provide information of public interest but rather the question of to what extent and under which conditions States could impose physical restrictions on journalistic reporting and newsgathering. By denying the applicant access to the Reception Centre, the national

authorities had stood in the way of the free flow of information. Consequently, it had become impossible for the public to become acquainted with the moral and political implications of the refugee crisis.

40. The applicant agreed that, through the reports of NGOs, he had had indirect knowledge concerning and could have accessed second-hand information on the conditions in the Reception Centre. However, civil society organisations had been granted access to the premises of the Reception Centre to provide humanitarian and legal aid whereas the press, as purveyor of information and as public watchdog, was supposed to report on newsworthy events and to afford the public a means of discovering and forming opinions and ideas. The applicant also pointed out that journalists had unique professional standards to meet before publishing material that necessitated an "investigative mindset" to discover facts and details. Furthermore, NGOs had their own agenda and were bound by their professional obligations as regards the information they passed on to the public. Thus, it had been impossible to uncover the whole situation in the reception centres solely based on these accounts.

41. An absolute entry ban for journalists to reception centres exempted certain State actions from public scrutiny. Allowing the authorities to prohibit access to reception centres would also permit them to maintain a monopoly on information and opinion concerning these centres, depriving the public of balanced and objective information on asylum-seekers.

42. As regards the argument that he had not been prevented from publishing his opinion on the asylum system, as evidenced by the fact that he had published an article on a different reception centre, the applicant submitted that he had been systematically refused entry to reception centres and that he had been able to use only information obtained through the statements of third parties, without having a personal impression.

43. The applicant did not dispute before the Court that the restriction had had a legal basis in Hungarian law. He also accepted that the impugned measure had served the legitimate aim of protecting the privacy of people displaced from their homes owing to fear, as recognised by Article 8 of the Convention.

44. As regards the proportionality of the measure, the applicant maintained that the domestic authorities had failed to take into account the State's obligation to balance asylum-seekers' right to privacy with the respect for freedom of the press.

45. He submitted that in his request for access he had clarified that personally identifiable images and records of the residents would have been published only with their consent; however this had not been taken into consideration by the Office of Immigration and Nationality.

46. While the applicant agreed that certain restrictions should be enforced on reporting in refugee camps, in the present case a blanket, and thus disproportionate, prohibition on entry had been in place.

(c) Third-party interveners

47. The third-party interveners, Media Legal Defence Initiative, Index on Censorship, Reporters Committee for Freedom of the Press, European Publishers Council, PEN International, Hungarian Helsinki Committee, the Dutch Association of Journalists, and the European Centre for Press and Media Freedom ("the interveners"), jointly argued that newsgathering, a corollary to the right to freedom of expression and freedom of the press, was afforded protection under Article 10 of the Convention.

48. They submitted that the key component of effective investigative reporting was physical access to locations. Physical access enabled journalists to understand the context in which stories were taking place and to observe directly the conditions and conduct in such locations. In their opinion it was evident from the Court's case-law that specific forms of newsgathering activity fell within the Court's jurisdiction despite the fact that the cases did not involve restrictions on publication or a conviction.

49. The interveners also noted that the fundamental importance of newsgathering to the exercise of the right to freedom of expression had been recognised in the case-law of a number of common-law jurisdictions.

50. The interveners asserted that if journalists were prevented from entering and reporting from places where important events were unfolding, they could not effectively report on those events and could not fulfil their role as "public watchdog". Thus, a physical restraint on journalists accessing certain places or events amounted to an interference with their newsgathering activities, and to an interference with Article 10 of the Convention.

51. As to the necessity of the interference, the interveners submitted that State restrictions on a journalist's physical access to certain places or events should be subject to close scrutiny by the Court. When assessing the question of whether a restriction on accessing certain locations was necessary, the interveners suggested that the Court should have regard to the following factors: whether a) access to the location was for the purpose of covering a matter of general public interest; b) the State had an information monopoly; c) the refusal to grant access to the location interfered with the Article 10 rights of third parties; d) access was for the purpose of promoting the rights of vulnerable individuals; e) access would cause disruption to the legitimate public-interest activities of the authorities at the location; f) less restrictive measures would be capable of protecting the other interests or rights that might be at risk; and g) sufficient safeguards were in place to prevent arbitrary abuse.

2. The Court's assessment

(a) Whether there was an "interference" with the applicant's rights under Article 10

52. The Court has previously found that gathering of information is an essential preparatory step in journalism and is an inherent and protected part of press freedom (see *Dammann v. Switzerland*, no. 77551/01, § 52, 25 April 2006). Obstacles created in order to hinder access to information which is of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play their vital role as "public watchdogs," and their ability to provide accurate and reliable information may be adversely affected (see *Shapovalov v. Ukraine*, no. 45835/05, § 68, 31 July 2012 and see *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 38, 14 April 2009).

53. The Court points out that the applicant, a journalist, was denied access to the Reception Centre, where he wanted to conduct interviews for his article on the specific subject of asylum seekers' living conditions.

54. The Court considers that the refusal to authorise the applicant to conduct interviews and take photos inside the Reception Centre prevented him from gathering information first hand and from verifying the information about the conditions of detention provided by other sources and constituted an interference with the exercise of his right to freedom of expression in that it hindered a preparatory step prior to publication, that is to say journalistic research (see, *mutatis mutandis, Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34124/06, § 41, 21 June 2012, where the Court came to the same conclusion in respect of the refusal to authorise a private radio and television broadcasting company to film inside a prison to prepare a television programme and interview one of the detainees).

55. The Government's objections that the applicant's complaint is incompatible *ratione materiae* and *ratione personae* with the provisions of the Convention (see paragraphs 21-26 above) must therefore be dismissed.

56. It remains to be determined whether the interference was justified under paragraph 2 of Article 10 of the Convention.

(b) Whether the interference was "prescribed by law" and served a legitimate aim

57. The Court observes that the applicant did not dispute the lawfulness of the impugned measure. Thus, it is ready to accept that the restriction on the applicant's access to the Reception Centre was based on section 2 of Decree no. 52/2007 (XII.11) of the Ministry of Justice (see paragraph 12 above) and satisfied the requirement for the interference to be "prescribed by law".

58. Furthermore, it was not in dispute between the parties that the restriction on the applicant's freedom of expression pursued the legitimate aim of protecting the private lives of asylum-seekers and camp residents and the Court sees no reason to hold otherwise.

(c) Whether the interference was "necessary in a democratic society"

59. The general principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" were restated in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016):

> "(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 ..."

60. The Court notes that the article which the applicant intended to prepare concerned the conditions in which asylum-seekers were accommodated in the Reception Centre. At the material time there were a large number of asylum-seekers entering the territory of Hungary, a situation commonly characterised as a "refugee crisis" and widely reported in the media. The Reception Centre in question had been subject of an investigation by the Commissioner for Fundamental Rights, who had found that the living conditions therein had amounted to inhuman and degrading treatment (see paragraph 8 above).

61. The public interest in reporting from certain locations is especially relevant where the authorities' handling of vulnerable groups is at stake. The "watchdog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct (see, *mutatis mutandis, Pentikäinen v. Finland* [GC], no. 11882/10, § 89, ECHR 2015). The matter of how residents were accommodated in State-run reception centres, whether the State fulfilled its international obligations towards asylum-seekers and whether this vulnerable group had the ability to fully enjoy their human rights was therefore undisputedly newsworthy and of great public significance.

62. The Court is therefore satisfied that the article which the applicant intended to prepare concerned a matter of public interest, where there is little scope for restrictions on freedom of expression under Article 10 § 2 of the Convention (see *Bédat,* cited above § 49).

63. In the face of these considerations, the Court finds that the domestic authorities should have paid particular attention to the public interest attached to the applicant's request, which consisted primarily in providing a first-hand report on the conditions prevailing at the facility. However, the Court cannot but note that the conclusion of the OIN in refusing the applicant access to the Reception Centre (see paragraph 9 above) was reached without any sensible consideration of his interest as a journalist in conducting his research or of the interest of the public in receiving information on a matter of public interest.

64. As regards the respondent party's interest in preventing the applicant from interviewing asylum seekers and taking photos inside the Reception Centre, the domestic authorities and the Government considered that allowing the applicant access to the Reception Centre as a journalist might have impeded the safety and private lives of refugees and asylum seekers.

65. In the Court's view the reasons adduced by the OIN and the respondent Government were undoubtedly "relevant" for the purposes of the necessity test to be applied under Article 10 § 2. It will next examine whether they were also "sufficient".

66. The Court observes in this context that from the comparative-law data available to the Court, it appears that there is a lack of European consensus with regard to media access to facilities accommodating asylum seekers (see paragraphs 17-19 above). In so far as this absence of a European consensus emanates from different perceptions concerning the way the rights of asylum-seekers are best ensured in reception centres, the Court is prepared to accept a somewhat wider margin of appreciation than otherwise accorded with respect to restrictions on publications raising a matter of major public concern. The Court also reiterates that when the question involves the entry of journalists into facilities accommodating asylum-seekers, most member States require that some limitations be placed

on such visits as regards their time, place and manner for institutional considerations, as well as for the protection of the rights of the residents.

67. However, even having regard to this leeway, the Court is not persuaded that the domestic authorities gave sufficient consideration to whether the refusal of permission to access and conduct journalistic research inside the Reception Centre, for reasons concerning the private life and security of asylum seekers, was effectively necessary in practice in the present circumstances.

68. In the present case the material the applicant intended to gather, although by its very nature necessarily touching upon the private lives of others, did not concern information for sensationalist or similar purposes (see, *a contrario*, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 101 *in fine,* ECHR 2015 (extracts)), but rather those aspects of the asylum-seekers' lives that were of public interest, in particular their living conditions and their treatment by the Hungarian authorities.

69. Moreover, the applicant explained that he would only take photos of individuals who had given their prior consent and, if needed, he would also obtain written authorisation from them (see paragraph 8 above). The OIN does not appear to have taken any notice of this argument. In such conditions the reliance on the potential effects of research on the private lives of the people accommodated in the Reception Centre, although relevant, was not sufficient to justify the interference with the applicant's freedom of expression.

70. The same applies to the need to protect the safety of asylum-seekers. The Court notes that neither the domestic authorities nor the Government have indicated in what respect the safety of asylum-seekers would have been jeopardised in practice by the proposed research especially if it had taken place only with the consent of the individuals involved.

71. Lastly, the Court finds it necessary to address the Government's submission according to which the applicant might have had the possibility to gather information through further indirect sources and in another format, including taking pictures and conducting interviews outside the centre or through information published by international organisations and NGOs (see paragraph 33 above).

72. While it is true that certain information was available regarding the Reception Centre through the monitoring activities of NGOs, the Court has regard to the applicant's argument that those NGO reports necessarily focused on different subject areas and might not have covered the issues he intended to examine (see paragraph 40 above).

73. In a similar vein, information obtained outside the Reception Centre might not have had, in the eyes of the public, the same value and reliability as first-hand data that the applicant could have obtained by accessing the Reception Centre in person. Moreover, the information made available by

those sources might have been gathered for purposes other than that of the applicant, without him having the possibility to verify their authenticity.

74. In any event the Court has previously held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. It is therefore not for the national courts or indeed for the Court to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists (see *Stoll v. Switzerland* [GC], no. 69698/01, § 146, ECHR 2007-V). Thus, the existence of other alternatives to direct newsgathering within the Reception Centre did not extinguish the applicant's interest in having face-to-face discussions on and gaining first-hand impressions of living conditions there. In those circumstances the availability of other forms and tools of research were not sufficient reasons to justify the interference complained of or to remedy the prejudice caused by the refusal of authorisation to enter the Reception Centre.

75. Lastly, essentially for the reason that the decision of the OIN had not been an administrative decision within the meaning of section 12 of the Administrative Procedure Act no. CXL of 2004 (see paragraph 10 above), there was no legal possibility open to the applicant to argue for the necessity of his access to the Reception Centre in order to exercise his right to impart information; and the domestic courts were prevented from performing a proper proportionality analysis (see, *mutatis mutandis, Lombardi Vallauri v. Italy*, no. 39128/05, §§ 45-46, 20 October 2009; *Baka v. Hungary* [GC], no. 20261/12, § 161, 23 June 2016; and *Aydoğan and Dara Radyo Televizyon Yayıncılık Anonim Şirketi v. Turkey*, no. 12261/06, §§ 52-54, 13 February 2018).

76. In conclusion, the Court accepts that the domestic authorities are better placed than it is to say whether, and to what extent, access to the Reception Centre is compatible with the authorities' obligation to protect the rights of asylum-seekers. However, in view of the importance of the media in a democratic society and of reporting on matters of considerable public interest, the Court considers that the need for restrictions on freedom of expression must be convincingly established. In the present case, considering the rather summary reasoning put forward by the OIN and the absence in its decision of any real balancing of the interests in issue, in the Court's opinion the domestic authorities have failed to demonstrate convincingly that the refusal of permission to enter and conduct research in the Reception Centre, which was an absolute refusal, was proportionate to the aims pursued and thus met a "pressing social need".

77. It follows that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

78. The applicant complained of a violation of Article 13 of the Convention, as under domestic law no remedy existed in respect of the decisions complained of. 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. Admissibility

79. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

80. Having regard to its above finding that relating to Article 10 of the Convention (see paragraph 77 above), the Court considers that it is not necessary to examine the merits of the complaint under Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 4,000 euros (EUR) in respect of non-pecuniary damage.

83. The Government contested this claim.

84. The Court considers that in the circumstances of the present case the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage the applicant sustained.

B. Costs and expenses

85. The applicant also claimed EUR 2,625 plus VAT for the legal fees incurred before the domestic authorities and before the Court. This sum corresponds to 105 hours of legal work billed by his lawyer.

86. The Government contested this claim.

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

C. Default interest

88. 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. *Joins* to the merits the Government's preliminary objections as to the compatibility *ratione materiae* and *ratione personae* of the application, and *dismisses* them;

2. *Declares* the application admissible;

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

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

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

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,625 (two thousand six hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President