



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

SECOND SECTION

CASE OF SÁSKA v. HUNGARY

(Application no. 58050/08)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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

In the case of Sáska v. Hungary,

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

Guido Raimondi, *President*,

Danutė Jočienė,

Peer Lorenzen,

András Sajó,

Işıl Karakaş,

Nebojša Vučinić,

Helen Keller, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 58050/08) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Béla Sáska (“the applicant”), on 27 November 2008.

2. The applicant was represented by Ms R. Németh, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicant alleged that his right to freedom of assembly had been unjustifiably interfered with.

4. On 15 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant lives in Budapest.

6. On 13 October 2008 the applicant applied to the Budapest Police Department for authorisation for a political demonstration in front of Parliament, in Kossuth Square, a vast open area traditionally used for political demonstrations. The declared objectives of the demonstration were,

among others, commemoration of the revolution of 1956 and of the tumultuous events in Budapest in 2006 as well as to call attention to the perceived absence of legal certainty in the country. The event was scheduled for Friday, 17 October 2008.

7. According to Parliament's official and public activity log available on the Internet, the only event taking place on that date in Parliament's building was a conference and open day organised by the Hungarian Alliance for Enhancing Female Careers under the title "Employment – Equality of Chances – Competitiveness". No parliamentary session was scheduled.

8. On 14 October 2008 the Police Department proposed to the applicant that the planned demonstration be held in a secluded part of Kossuth Square, rather than its entirety. The applicant refused this suggestion.

9. On 15 October 2008 the Police Department forbade the demonstration. It was of the view that the planned demonstration would 'gravely endanger' the functioning of Parliament, which was a legitimate ground for prohibiting it under section 8(1) of the Assembly Act. In particular, the speeches and music – belonging in the programme and amplified – might disturb the MPs' work. Moreover, the participants – whose number was estimated at 150 to 200 persons – might physically impede the MPs' driving in and out of Parliament's car park, which, in the authority's view, amounted to restricting their freedom of movement and to inhibiting the functioning of the organ of the people's representation.

10. The applicant applied for judicial review. He submitted in particular that another demonstration with an agenda identical to his but scheduled for Wednesday, 15 October 2008, had not been forbidden on exactly the same location; this fact showed, in his view, discrimination against him and his planned event. According to Parliament's official and public activity log available on the Internet, on 15 October 2008 five parliamentary commissions were in session.

11. On 22 October 2008 the Budapest Regional Court dismissed his complaint, endorsing in essence the Police Department's reasoning.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

12. The applicant complained under Article 11 of the Convention about the refusal of his application to organise a demonstration. He also invoked Articles 1, 6, 9, 10, 13 and 14 of the Convention.

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

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.”

13. The Government contested that argument.

A. Admissibility

14. 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

15. The Government submitted in particular that the interference, lawful, had pursued the legitimate aim of securing the unimpeded operation of the representative bodies of the people (that is, public safety and the protection of the rights and freedoms of others). Furthermore, they argued that the applicant had been adamant in rejecting the police’s suggested compromise to limit the area in question to a secluded part of Kossuth Square, although this solution would have been reconcilable with the undisturbed work and the free movement of the MPs. The envisaged event, foreseen to involve 150 to 200 participants and sound amplification, would have constituted a large crowd in Kossuth Square, capable of disrupting Parliament’s activities if spread over the entire area. In the light of this, the interference had not been disproportionate in their view.

16. The applicant contested these arguments in general terms.

17. The Court observes that it is not in dispute between the parties that there was an interference with the applicant’s right to freedom of assembly, and it has no reason to hold otherwise. Such an interference will constitute a violation of Article 11, unless it was prescribed by law, pursued a legitimate aim for the purposes of Article 11 § 2 and was necessary in a democratic society.

18. The Court further notes that it is not in dispute between the parties either that the interference was prescribed by law, namely, by section 8(1) of the Assembly Act and that it pursued the legitimate aims of public safety and the rights and freedoms of others. Again, it has no reason to hold otherwise.

It remains to be ascertained whether the interference was necessary in a democratic society.

19. The Court recalls the relevant principles of its case-law, primarily enounced in cases concerning Article 10 of the Convention, according to which 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 the reasons adduced by the national authorities to justify it are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued". 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 (see, among many other authorities, *mutatis mutandis Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45 *in fine*, ECHR 2007-IV; *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI; *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68 to 71, ECHR 2004-XI; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 87, ECHR 2005-II; *Mamère v. France*, no. 12697/03, § 19, ECHR 2006-XIII; and *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

20. These principles have been found applicable in the context of Article 11 as well (see e.g. *Hyde Park and Others v. Moldova (nos. 5 and 6)*, nos. 6991/08 and 15084/08, §§ 42 to 47, 14 September 2010).

21. In the present case, the Court notes that the domestic authorities invited the applicant to exercise his right to demonstrate in cooperation with the authorities, limiting the area in question. For the Court, the right to freedom of assembly includes the right to choose the time, place and modalities of the assembly, within the limits established in paragraph 2 of Article 11. While the limitation proposed by the police may have respected as such the essence of the applicant's rights under Article 11, the Court finds that this was not demonstrated to be the case. It is not the role of the Court to carry out such assessments in the absence of a proper domestic consideration of the matter, in particular if the authorities did not provide "relevant and sufficient" reasons for the proposed restriction.

22. The Court notes the applicant's unrefuted assertion that another demonstration planned on exactly the same location for 15 October 2008 had not been forbidden by the authorities. For the Court, this is a remarkable element, since on that date – unlike on 17 October 2008 – five parliamentary commissions were in session (see paragraph 10 above), evidently entailing the presence and movement of numerous MPs.

23. In the light of this fact, the Court finds unconvincing the Government's argument that the restriction on the applicant's rights was necessitated by the requirement to secure the unimpeded work and movement of the MPs. This consideration cannot be regarded as a relevant or sufficient reason, especially since on the date of the event planned by the applicant no parliamentary activity was underway (see paragraph 7 above). Therefore, the Court cannot but conclude that the prohibition of the demonstration did not respond to a pressing social need, even in the face of the applicant's intransigence in considering the police's conciliatory suggestion (see paragraph 8 above). Thus, the measure was not necessary in a democratic society.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government contested this claim.

27. The Court considers, in the light of the circumstances of the present case, that the finding of a violation itself constitutes sufficient just satisfaction.

B. Costs and expenses

28. The applicant made no costs claim.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 11 of the Convention;
3. *Holds* that the finding of a violation itself constitutes sufficient just satisfaction;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Guido Raimondi
President