



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

FIRST SECTION

CASE OF IKOTITY AND OTHERS v. HUNGARY

(Application no. 50012/17)

JUDGMENT

Art 10 • Freedom of expression • Opposition members of parliament fined for displaying posters during an interpellation speech by party colleague without permission • Refusal of permission by the Speaker did not concern content but manner of expression for which Court's scrutiny was limited • Principle of parliamentary autonomy and discretion in setting up internal rules, including those concerning powers of its specialised bodies and Speaker • Wide margin of appreciation • Sufficient procedural safeguards available • Right to be heard by a parliamentary committee composed equally of ruling and opposition party members • Parliament and its designated bodies better placed to assess need to restrict conduct which could disturb the orderly conduct of parliamentary debates • Use of non-conventional means of communication could reasonably be regarded as carrying risk of obstructing aim of orderly conduct of parliamentary debate to ensure authority and effective functioning of Parliament • No indication restriction amounted to unequal or unfair treatment of applicants as opposition members • Speaker, in refusing permission, had not exercised discretion in a manner breaching applicants' right to freedom of expression • Dissuasive sanction called for given applicants knowingly breached rules of conduct which aggravated nature of disciplinary breach • Interference "necessary in a democratic society"

STRASBOURG

5 October 2023

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 Ikotity and Others v. Hungary,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Krzysztof Wojtyczek,

Lətif Hüseynov,

Péter Paczolay,

Gilberto Felici,

Erik Wennerström, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 50012/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Hungarian nationals, Mr István Ikotity, Ms Bernadett Szél and Mr Róbert Benedek Sallai (“the applicants”), on 4 July 2017;

the decision to give notice to the Hungarian Government (“the Government”) of the complaints concerning Articles 10 and 13 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

the decision to dismiss the Government’s request for enquiries to be made with the Bureau of the European Parliament under Rule A1 of the Annex to the Rules of Court;

Having deliberated in private on 5 September 2023,

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

INTRODUCTION

1. The case concerns the refusal to grant permission to the applicants – opposition members of parliament – to use posters during an interpellation speech by one of their colleagues, and ensuing sanctions relating to the use of such posters without permission. It raises issues under Article 10 of the Convention.

THE FACTS

2. The first applicant, Mr Ikotity, and the second applicant, Ms Szél, were born in 1977, and live in Baja and Pécs respectively. The third applicant, Mr Sallai, was born in 1974 and lives in Mezőtúr. The applicants were represented by Mr D. A. Karsai, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. At the material time, the applicants were members of the Hungarian Parliament (hereinafter “MPs”), of the opposition party *Lehet Más a Politika* (hereinafter “the LMP”). Ms Szél was the leader of the LMP parliamentary group.

I. REQUEST FOR PERMISSION AND THE APPLICANTS’ ACTIONS DURING THE INTERPELLATION

6. On 1 March 2017 the applicants – in their capacity as MPs – requested permission to use posters during an interpellation by their parliamentary group, addressed to the government with regard to its development plans for Budapest. The interpellation was scheduled for 6 March 2017. Their request, which was addressed to the Speaker of Parliament (“the Speaker”) and submitted by Ms Szél, read as follows:

“With reference to section 38/A of Act no. XXXVI of 2012 on Parliament, I hereby ask the House Committee’s permission for the members of ... [the LMP] parliamentary group to hold a visual presentation, using [eight] images of deforestation, during interpellation no. I/14255, entitled ‘Do you think it is possible to live without green landscape?’ under the interpellation agenda of the sitting [to be] held on 6 March 2017.”

7. The House Committee examined the request but did not reach the required consensus to permit the use of the posters. The issue was referred to the Speaker, who dismissed the request on 6 March 2017. The relevant part of the Speaker’s decision reads as follows:

“... Furthermore, in my opinion, no convincing arguments were put forward during the House Committee’s session justifying permission for the [posters].

The interpellation was submitted within the deadline, in line with the provisions of the Rules of Procedure; however, in this case the use of illustrations is not necessary for understanding the interpellation or expanding on its meaning. The [MP] may describe his point of view *via* oral communication, within the framework of the provisions of the Rules of Procedure regarding interpellations, therefore I have decided in favour of dismissing the ... [request for] permission.”

8. On 6 March 2017, after being informed in writing of the Speaker’s decision, the applicants simultaneously held up three posters during the speech of their colleague MP. The posters, measuring 50 cm by 60 cm, each contained two photographs of different Budapest city landscapes, prior to and after the alleged environmental degradation discussed in the interpellation, accompanied by the following text: “Dagály Strand [city bath] before, after”, “Orczy Garden before, after” and “Hajógyári Island [on the Danube] before, after”. Photographs of the applicants holding the posters were published in the Hungarian press.

II. SANCTIONS AND RELATED DECISIONS

9. Following the interpellation, the Chair presiding the session drew the applicants' attention to the fact that they had displayed the posters without permission and therefore in breach of the relevant provisions of the Parliament Act (see paragraph 15 below). Consequently, the House Committee considered the matter. However, no consensus was reached regarding the proposal to impose a sanction on the applicants and the matter was therefore referred to the Speaker. On 16 March 2017 he decided that as a result of their actions, each applicant's monthly salary, due that month, should be decreased by 100,000 Hungarian forints (HUF) (approximately 320 euros (EUR)). He relied essentially on the fact that the applicants had not had permission to display the posters.

10. According to publicly available data on Parliament's website, in 2017 an MP's gross basic monthly salary amounted to HUF 747,878 (approximately EUR 2,420) and the gross basic salary of the leader of a parliamentary group amounted to HUF 1,296,321 (approximately EUR 4,195). The monthly remuneration could be further increased on account of, *inter alia*, the roles performed by an MP in different parliamentary bodies.

11. The applicants challenged the Speaker's decisions before the Committee on Immunities, Conflict of Interest, Discipline and Verification of Credentials ("the Immunity Committee"), contesting in writing the constitutionality of the sanctions imposed on them, as well as the conformity of the relevant regulations with the Constitution. In their view, the display of posters in Parliament was guaranteed by freedom of expression; furthermore, their conduct had not disturbed the effectiveness and smooth operation of Parliament, had not violated its authority and dignity, was not self-serving and had not exceeded what was necessary for the expression of their views. They pointed out that the means of expression had been directly relevant to the exercise of their right to freedom of expression and argued that the use of visual tools, which had persuasive force, could have influenced the outcome of the vote. The applicants also criticised the Speaker's allegedly unlimited power to restrict the form of expression of MPs and the lack of any remedy against the Speaker's decision refusing to grant permission.

12. On 28 March 2017 the Immunity Committee, composed of three MPs from the ruling party alliance and three from the opposition, discussed the applicants' requests to have the Speaker's decisions of 16 March 2017 set aside. The second applicant – Ms Szél – attended the Immunity Committee's sitting. She was heard and was given an opportunity to present her arguments. With three votes in favour (all from the members of the opposition) and three against, the Immunity Committee did not reach the majority required to uphold the applicants' request. The decisions in the applicants' cases were

essentially the same. The relevant part of the decision regarding Mr Ikotity reads as follows:

“[The] Chairman of the Committee ... explained that, although the applicant’s position was that the Speaker’s decisions ... and the provisions of the Rules of Procedure on which they were based were not in accordance with the relevant provisions of the Fundamental Law, the Committee could not rule on the merits of the applicant’s request, because the Committee’s procedure cannot be guided by Act no. XXXVI of 2012 on Parliament (hereinafter ‘the Parliament Act’) in examining the constitutionality of the provisions of the Parliament Act. He also explained that section 38/A paragraph 1 of the Parliament Act provided as a general rule that the use of material, audio or visual aids was not permitted during sittings of Parliament or Committee meetings. The one possibility for the use of visual illustrations in plenary sittings is laid down in paragraph 2, which refers to the discretionary power of the House Committee. The extent of this discretionary power is also set out in the rule in paragraph 4, according to which the use of any visual illustration may be limited to the extent necessary to enable the person speaking to express his or her views. It follows from these provisions that the House Committee, or, in the absence of consensus, the Speaker, when considering the request ..., must exercise the statutory power to determine whether the [requested] illustration is necessary to enable the person speaking to express his or her views and, if so, whether it does not exceed what is necessary.

He also explained that, according to the decision of the Speaker rejecting the request ..., the use of the illustration requested by the LMP leader was ‘not necessarily required’ in order to understand the content of the interpellation and to expand on its meaning. That is to say, the request did not contain any additional information, facts or data which ... could not be sufficiently explained or understood within the [framework] of the interpellation [itself] within the limits provided by the Fundamental Law and the provisions of the Rules of Procedure. The institution of the interpellation allowed members to express their views properly and in accordance with the Constitution, and the refusal to allow the ... [illustration] did not prevent them from making their views known.

Therefore, the purpose of the ... illustration in this case was, contrary to what is stated in the application for redress, clearly not to properly express and substantiate the opinion of the interpellant, but [to use it] as a means of protest and political confrontation. Moreover, the provisions of the Parliament Act as applied are intended to protect the functioning and authority of Parliament, which is recognised by both the Constitutional Court and the European Court of Human Rights as a fundamental, constitutional and, where appropriate, legitimate aim of restricting the right of the members [of parliament] to speak. In the present case there was no restriction on the right to speak. However, the deliberate infringement of the right to speak by the [member of parliament], who deliberately disregarded the decision of the Speaker taken on the basis of his mandate, also constituted a violation of the values of the Parliament Act.

An MP from MSZP [the Hungarian Socialist Party – an opposition party] argued that the legislation was too strict and could be more permissive, taking into account international practice. He also considered it justified to accept the request to annul the Speaker’s decision because, in his view, there had been no disruption of the sitting.

In the vote following the debate, the request by István Ikotity ... for the Speaker’s decision to be annulled ... did not receive majority [support], and the Committee did not grant the request, which was rejected by a vote of three in favour to three against.”

13. On 30 March 2017 the applicants requested Parliament to set aside the Speaker's decisions, relying on the same arguments as those submitted in their earlier requests. On 3 April 2017 Parliament voted, at a parliamentary session without a debate, to uphold the Speaker's decisions on the imposition of sanctions. The applicants' remuneration was subsequently decreased.

RELEVANT LEGAL FRAMEWORK

14. The relevant provisions of the Fundamental Law of Hungary, which came into force on 1 January 2012, read as follows:

Article 4

“(1) Members of parliament shall have equal rights and obligations, shall perform their activities in the public interest and shall not be given instructions in that respect.”

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 the 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.

(8) The provisions ensuring regular sittings of Parliament shall be laid down in a cardinal Act.”

Article 7

“... ”

(2) Members of parliament may address interpellations or questions to the government or any of its members about any matter within their functions.

“... ”

15. The Parliament Act (no. XXXVI of 2012), which had come into force on 20 April 2012 and was subsequently amended, provided the following at the material time, in so far as relevant:

Section 2

“(1) The Speaker shall ensure the exercise of the rights of Parliament, and provide for safeguarding the authority of Parliament, for maintaining the order and security of Parliament, and for organising the work of Parliament.

(2) The Speaker shall

“... ”

(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 voting, and preserve order and decorum during sessions,

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...

(p) exercise his or her policing and disciplinary powers in the cases specified in this Act,
..."

Section 13

"...

(6) The House Committee shall take its decisions unanimously. In the absence of a unanimous decision, Parliament shall decide on the issues under section 11(1)(a) and (j), while other questions shall be decided by the Speaker."

Section 38/A

"(1) No presentation by way of showing objects, images or voice-recording (hereinafter 'presentation tools') shall be made at a sitting of Parliament or of a committee, subject to the exceptions specified in subsections (2)-(3).

(2) Presentation tools at a sitting of Parliament may be permitted by the House Committee. A request for permission [to use] a presentation tool shall be submitted at the latest one hour before the commencement of the House Committee's sitting.

...

(4) A presentation tool permitted under subsections (2) ... shall be limited to the extent necessary for elucidating the speaker's position."

Section 45

"Securing the undisturbed conduct of a sitting of Parliament shall be the task of the Chair presiding over the sitting, and to that end, the Chair presiding over the sitting or – upon the proposal of the Chair presiding over the sitting or the House Committee – Parliament may apply the measures specified in sections 46-51/A."

Section 49

"...

(4) If a member of parliament engages in conduct seriously violating the reputation or order of Parliament, or by means of his or her conduct infringes the provisions of the Rules of Parliament pertaining to the orderliness of discussions, voting or the use of presentation tools, the Chair presiding the sitting may, without a reprimand or warning, propose that the member be excluded from the remainder of the session day and/or, by application of section 51/A, the member's monthly remuneration may be decreased. The proposal shall contain the reasons for the measure and ... the provision ... of the Rules of Parliament that has been violated."

Section 51/A

"(1) On a proposal of any of its members, the House Committee – in the absence of any other legal consequences – may order the reduction of a member's monthly remuneration 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, the use of presentation tools or voting, the provision of the Rules of Parliament that was violated.

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...

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

(4) Should the member disagree with the decision taken under subsection (1), he or she may, within five days of the notification specified in subsection (3), request the Immunity Committee to set aside the decision taken under subsection (1). Should the member not request the setting-aside of the decision within the specified time-limit, his or her monthly remuneration shall be decreased by the amount specified in the decision.

...

(6) The Immunity Committee shall decide on a request submitted under subsection (4) ... within fifteen days. Should the member request a hearing, the Immunity Committee shall hear the member in person.

(7) Should the Immunity Committee uphold the member's request made under subsection (4), his or her monthly remuneration shall not be decreased and the proceedings specified in subsection (1) shall be discontinued. ...

(8) Should the Immunity Committee dismiss the member's request made under subsection (4), or not give a decision within the time-limit specified in subsection (6), the member's monthly remuneration shall be decreased by the amount specified in the decision taken under subsection (1).

(9) Should the Immunity Committee dismiss the member's request submitted under subsection (4) or not decide within the time-limit specified in subsection (6), the member may request Parliament to set aside the decision taken under subsection (1).

...

(11) The President of the Immunity Committee shall immediately inform the member concerned and the House Committee of its decision taken pursuant to subsections (8)-(10), or of the expiry of the time-limit for the decision.

(12) A request under subsection (9) shall be submitted within five working days of the notice given by the President of the Immunity Committee pursuant to subsection (11).

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

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

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

..."

16. The relevant provisions of Parliament Resolution no. 10/2014 (II.24.) OGY on certain provisions of the Rules of Parliament (hereinafter "the Resolution") read as follows:

Section 121

"(1) A member of parliament may address an interpellation to the persons specified in the Fundamental Law about any matter within their functions."

Section 148

“(1) The provisions of the Rules of Parliament laid down in a resolution shall apply to the handling of cases of discipline and policing of members with the exemptions specified in this Chapter.

(2) The Speaker shall submit to Parliament a proposal for a decision on the suspension of the exercise of the member’s rights or, in the case of a request submitted under section 51/A(9) of the Parliament Act, on the decrease of the remuneration payable to the member.

...

(5) The Chair of the Immunity Committee shall inform the member concerned of the discussion of a case relating to discipline or policing by indicating the date and place thereof. If the member ... requests to be heard, he or she shall be heard, but otherwise he or she may not be present at the Immunity Committee’s sitting.

(6) The Immunity Committee shall discuss cases relating to discipline or policing in camera.”

17. General Opinion no. 10/2014-2018 IÜB of the Justice Committee, adopted 2 October 2017, reads as follows, in so far as relevant:

“The Justice Committee ... at the request of the LMP parliamentary group, pursuant to section 61(4) of Act XXXVI of 2012 on Parliament (‘the Act’), hereby adopts the following general opinion:

...

The [Parliament] Act is clear on the issue of [the use of presentation tools] when it states that, as a general rule, the use of material, visual or audio means of illustration (hereinafter ‘presentation tools’) in plenary and committee meetings is not permitted. However, it provides for the possibility that, in exceptional cases where the use of such tools is indispensable to support, expand on or understand the position of the person speaking, the House Committee or the Parliament Committee may grant an exemption from the prohibition. The use of presentation tools ... is indispensable where it is not possible to understand the position of the person speaking without the use of a material, visual or audio aid.

The purpose of presentation tools is therefore to make the speaker’s position more complete and to facilitate its development to the extent strictly necessary. ... [T]he illustration must not be an end in itself, that is, it must not be aimed at deliberately obstructing parliamentary work, provoking attention or seeking press coverage for political gain. The latter is a fundamental violation of the rights of other parliamentary members and the authority of Parliament as an institution, while also undermining public confidence in representative democracy.

In the light of the above, the exercise of the parliamentary right to speak (the right to express one’s opinion) entails not only rights but also obligations and responsibilities, the extent of which depends on the situation, the means used and the context ... It is therefore not possible to establish an exact set of criteria for its assessment, which can only be examined individually in the light of all the circumstances of a given case.

These criteria have been recognised by the Council of Europe’s Parliamentary Assembly in its Resolution 1965 (2013) and have thus been incorporated into the Parliamentary Assembly’s Rules of Procedure ...

In addition to the Council of Europe, the parliamentary tradition of many European countries corresponds to Hungarian practice as regards the prohibition of direct or indirect visual illustrations, or the authorisation of such illustrations in exceptional cases. While only a few Council of Europe member States have explicit rules on the use of presentation tools, there are many more where parliamentary tradition and practice do not tolerate, or even explicitly prohibit the various forms of presentation tools.

...”

18. As regards the Constitutional Court’s relevant practice and international and comparative law material, see *Karácsony and Others v. Hungary* ([GC], nos. 42461/13 and 44357/13, §§ 32-61, 17 May 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

19. The applicants complained that the decisions refusing permission to display posters during the parliamentary session and the ensuing sanction on that account had infringed their right to freedom of expression as provided for in Article 10 of the Convention. That 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. Admissibility

20. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

(a) The applicants

21. The applicants submitted that provocative and attention-seeking forms of expressions were protected under Article 10 of the Convention. Moreover, the presentation tools they had used were not self-serving but absolutely indispensable to convey the message in support of their

colleague's speech, namely the change in landscape and the loss of vegetation. They had not obstructed the work of Parliament in any significant way. Their party colleague, who had been delivering the speech, would have been the only person to be bothered by the display, but she had in fact consented to the use of the posters. The interference with their freedom of expression therefore had not pursued a legitimate aim.

22. As concerned the sanction imposed on them, the applicants maintained that there had been other less restrictive means which would have achieved the same goal, such as warnings or reprimands. The high amount of the financial penalty had been obviously disproportionate.

23. The applicants argued that restricting speeches aimed at target voters was a very serious interference which could be allowed only in exceptional situations. The only way to express their opinion effectively had been by drawing the media's attention to it. Having regard to the political situation in Hungary, in particular the government's control of national television and radio and its overrepresentation in the media in general, the applicants were not in a position to perform their legitimate role as elected representatives with a reasonable chance of success by using ordinary means of communication.

24. The applicants emphasised that whenever the House Committee could not reach a consensus, the request for permission was decided by the Speaker, who was a member of the ruling party alliance. Moreover, for the Immunity Committee to overrule the Speaker's decision, at least one of the MPs from the ruling party alliance would have to vote in favour of the applicants, which was highly unlikely and had not happened in any other similar case before the Immunity Committee. They also submitted that Parliament, in which the ruling party alliance had had a two-thirds majority, had taken the decision upon the applicants' request without allowing any debate or hearing their views. The procedure therefore had not met the standards of procedural fairness and had allowed for the abuse of a dominant position by the majority.

(b) The Government

25. The Government did not dispute that the sanction imposed on the applicants amounted to an interference with their Article 10 right. However, they argued that the interference had been lawful and necessary to preserve the undisturbed functioning and effective operation of Parliament and the rights of other MPs. In the Government's view, the applicants had not used the posters as a necessary means of supporting the oral presentation by their colleague but rather as a means of drawing media attention to their actions. Such conduct was not just inconvenient for other members but required a coherent response to intentional breaches of the rules. They further argued that the rules on the use of presentation tools concerned only the manner of exercising the freedom of expression and applied to all MPs equally. The importance of the topic discussed could not exempt the applicants from

observing the rule, which was meant to ensure the orderly fashion of debates. The applicants were unrestricted in conveying the content of their ideas at plenary or committee sessions. Moreover, they could gain media coverage through other means, without violating the rules of Parliament.

26. As regards the procedural guarantees available to the applicants, the Government pointed out that the sanctions had been imposed by the House Committee or the Speaker irrespective of the MPs' political affiliation on the basis of reasoned decisions, of which the MPs concerned had been informed. The relevant law provided for a remedy before the Immunity Committee and Parliament, as well as the right to be heard before the Immunity Committee and to file written submissions which were made available to all MPs and the public. The Government referred to the margin of appreciation enjoyed by the States in respect of parliamentary discipline and to the autonomy of Parliament in exercising disciplinary powers, as well as the importance of the principle of the separation of powers. In their view, the only conceivable remedy was a procedure within Parliament involving majority decision-making, which was typical of parliamentary democracies, accompanied by the requisite procedural safeguards. They submitted that the multi-step remedy available to the applicants met the requirement of effectiveness, prescribed by the Court, and went beyond the standard of protection offered in many other European countries, as well as the European Parliament, where banners could not be displayed at all, and the sanctions that could be imposed for a breach of the disciplinary rules were more severe.

27. The Government argued that the applicants' request to use presentation tools had not referred to any additional information, facts and data which could not be conveyed without the use of such tools. In their view, a warning would not have been a suitable response, since the applicants had been aware that they had been displaying the posters without permission and moreover, a warning would have meant interrupting the speech at the very end of its time slot. More severe sanctions, such as exclusion from the session, were available, but had not been resorted to. The sanction imposed on the applicants was an *ex post facto* measure which had had no chilling effect on them.

28. The Government lastly submitted that there was an increasing trend towards using unconventional and spectacular forms of expression, in violation of the Rules of Parliament, with the aim of attracting media attention. In their view, this trend could not be reversed if no disciplinary sanctions were available. They submitted that in response to the above-mentioned trend, and with the aim of more efficient deterrence, the provisions of the Parliament Act relating to discipline had been comprehensively amended in 2019.

2. *The Court's assessment*

29. The Court notes that the applicants – opposition MPs – were each fined approximately EUR 320 (in the form of a reduction in their remuneration) for displaying posters containing photographs of the landscape before and after the alleged environmental degradation resulting from the Budapest development plans. They displayed the posters during an interpellation speech relating to that subject given by another MP from their political group. It has not been disputed that the sanction amounted to an interference with their right to freedom of expression provided for in Article 10 of the Convention, and the Court sees no reason to reach a different conclusion on this point. It further notes that the imposition of the sanction on the applicants related to the prior refusal by the Speaker to grant permission for the use of posters, which in principle represented a prior restraint on the exercise of the right to freedom of expression.

30. The Court notes that the interference with the applicants' right to freedom of expression could be justified only if it was "prescribed by law", pursued one or more legitimate aims in the light of paragraph 2 of Article 10, and was "necessary in a democratic society".

31. As regards the lawfulness of the interference, the Court notes that the procedure and the sanction imposed in the present case were based on sections 13, 38/A, 45, 49 and 51/A of the Parliament Act (see paragraph 15 above). The Court finds that those provisions were accessible and formulated with sufficient precision to enable the applicants to foresee the consequences which their conduct could entail. As regards the question of sufficient procedural safeguards, the Court will address it in the context of the proportionality of the interference.

32. The Court is further satisfied that the interference pursued a legitimate aim within the meaning of Article 10 § 2 of the Convention. 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 "prevention of disorder" (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 129 and 149, 17 May 2016).

33. It remains for the Court to determine whether the interference with the applicants' right to freedom of expression was proportionate to the legitimate aim it was meant to pursue. The general principles applicable to this assessment were set out in *Karácsony and Others* (cited above, §§ 132-47). In the present case the Court considers it appropriate to address two main questions: firstly, whether the applicable procedure was accompanied by sufficient procedural safeguards, and, secondly, whether the refusal of permission and the imposition of a sanction on the applicants for displaying the posters were in themselves disproportionate and thus unjustified. These questions are not unrelated because the nature and severity of the interference, on the one hand, and the nature and importance of freedom of expression in the circumstances of the case, on the other, might have an impact on the

assessment of both the reasons for the interference and the procedural safeguards required under Article 10. The Court will examine the procedural protection and the necessity of the interference in turn.

(a) Procedural protection

34. As regards the procedure relating to the applicants' request for permission to use the posters, the Court notes that this procedure and the grounds for allowing the use of presentation tools were set out in the Parliament Act (see paragraph 15 above). The applicants' request was examined by the House Committee, where it would appear to have been debated during a session in which MPs from the ruling party alliance and from the opposition parties participated (see paragraph 7 above). Because no consensus was reached, the decision to refuse permission was ultimately taken by the Speaker, who, under the Fundamental Law of Hungary and the Parliament Act, was tasked with maintaining order in Parliament (see paragraphs 14 and 15 above). While it is true that the reasons stated in the Speaker's decision were somewhat brief (see paragraph 7 above), it cannot be ignored that the request for permission was not elaborated upon either (see paragraph 6 above). It is further of relevance that the permission refused did not concern content but merely the manner of expression, a matter in respect of which the Court's scrutiny is limited (see paragraph 39 below, and *Karácsony and Others*, cited above, § 151, and *Szanyi v. Hungary*, no. 35493/13, § 33, 8 November 2016). Therefore, and having regard to the principle of the autonomy of Parliament and the wide margin of appreciation left to the member States in the realm of parliamentary law (see *Karácsony and Others*, cited above, § 142, and *Kart v. Turkey* [GC], no. 8917/05, § 82, ECHR 2009), the procedure for permission to display the posters as applied in the present case could not be considered to raise an issue under Article 10 of the Convention (compare *Szanyi*, cited above, § 43).

35. As regards the disciplinary sanctions, the Court found in *Karácsony and Others* (cited above, § 156) that the procedural safeguards available in respect of fines imposed in a parliamentary context should include, as a minimum, the right for the MPs concerned to be heard in a parliamentary procedure before a sanction was imposed. Furthermore, the Court considered that any decision imposing a disciplinary sanction should state basic reasons, thus not only enabling the MPs concerned to understand the justification for the measure but also permitting some form of public scrutiny of it (*ibid.*, § 158).

36. Unlike in *Karácsony and Others*, in the present case the Parliament Act provided for a remedy before the Immunity Committee, which the applicants used (see paragraph 15 and the relevant provision of the Resolution cited in paragraph 16 above). The applicants had a right to be heard before that committee and the second applicant availed herself of that right. The Immunity Committee issued a reasoned decision in each case. The applicants,

having been unsuccessful before the Immunity Committee, were able to have their objections to the sanctions decided by Parliament. In *Karácsony and Others* the Court observed that, by way of the above-mentioned procedure (which had not yet been in force at the time of the events concerned in that particular case), the minimum procedural safeguards required in respect of the disciplinary sanctions appeared to have been put in place.

37. The Court takes note of the applicants' argument that despite being available in theory, in practice those remedies could not be successful because the MPs of the ruling party alliance would outvote the opposition MPs (see paragraph 24 above). In this connection, the Court notes that while the ruling party alliance had a two-thirds majority in Parliament (*ibid.*), it had three out of six members in the Immunity Committee (see paragraph 12 above). It further finds that neither the reasons stated in support of the decisions in the applicants' case nor any other circumstance brought to the attention of the Court indicate that the applicants were not treated on a par with the MPs from the governing party alliance or that the sanctions were imposed with the aim of suppressing the opposition (see *Karácsony and Others*, cited above, § 147).

38. In view of the above and having due regard to the principle of the autonomy of Parliament and the latter's discretion in setting up its internal rules, including those concerning the powers of its specialised bodies and the Speaker (*ibid.*, § 142), the Court concludes that the procedural safeguards available to the applicants could be considered sufficient.

(b) Necessity of the interference in view of the reasons provided in support of the refusal of permission and the sanctions

39. The Court reiterates that the freedom of parliamentary debate is of fundamental importance in a democratic society. However, 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 v. Spain*, 23 April 1992, § 46, Series A no. 236). 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 impose restrictions on speech in Parliament that are motivated by the need to ensure that parliamentary business is conducted in an orderly fashion (see *Karácsony and Others*, cited above, § 139). As regards the permissible restrictions, it is 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. 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 (*ibid.*, § 140).

40. As regards the context of the applicants' complaint, the Court notes that the interpellation procedure constitutes an important minority right that needs special protection in the parliamentary activity of a democracy (see *Szanyi*, cited above, § 30). It observes in this connection that the present case does not concern the interpellation speech, which was given – apparently without hindrance – by the applicants' party colleague. The restriction complained of concerns only the use of posters during that speech.

41. The use of posters was regulated in section 38/A of the Parliament Act, which provided that no presentation tools should be used during parliamentary sessions save for when permission to that effect had been granted by the House Committee, in which case the presentation should be limited to the extent necessary for elucidating the position of the person giving the speech. In the present case the Speaker, who decided the matter after the House Committee had failed to reach a consensus, considered that the posters were not necessary for understanding the interpellation or expanding on its meaning. When imposing the sanction on the applicants, the Immunity Committee interpreted the applicable rules as allowing presentation tools to be used only exceptionally. In its view, the House Committee – or, in the absence of consensus, the Speaker – was called upon to exercise its statutory power to determine whether the respective presentation tool was necessary to enable the person giving the speech to express his or her views and whether it remained within the scope necessary to achieve this aim (see paragraph 12 above). The Court observes that this restrictive interpretation of section 38/A of the Parliament Act was later – after the applicants' case had been decided – endorsed in the opinion of the Justice Committee (see paragraph 17 above), which refers to a requirement that the presentation tool be indispensable to support, expand on or understand the position of the person giving the speech. While the Immunity Committee's interpretation of section 38/A of the Parliament Act (see paragraph 15 above) seems to entail rather limited possibilities for the use of presentation tools in Parliament, it does not appear arbitrary or manifestly unreasonable and there is nothing to suggest that its purpose was other than to ensure the effectiveness of Parliament.

42. The Court further observes that the posters displayed by the applicants did not appear provocative or insulting. The pictures they contained could reasonably have enhanced the point which the person giving the speech was trying to convey. However, Parliament and its designated bodies were better placed than the international judge to assess the need to restrict conduct which could disturb the orderly conduct of parliamentary debates. In this connection, the Court cannot lose sight of the above-mentioned restriction on the use of presentation tools in the Hungarian Parliament, the wide margin of appreciation enjoyed by States and the autonomy of parliaments in regulating

the use of means which concern the manner of expression rather than the substance of the speech (see paragraph 39 above). Given the lack of any specific reasons put forward by the applicants to the effect that the posters were not just useful but in fact necessary to enable the person giving the speech to convey the message (see paragraph 6 above) and the lack of any indication that the images displayed could not be provided to other MPs through some other channel, the Court does not consider that in refusing permission the Speaker exercised his discretion in a manner breaching the applicants' right to freedom of expression.

43. The Court must also address the applicants' argument that their intention in using the posters was to attract media attention, in view of their otherwise limited access to the audiovisual media in Hungary. The Court would emphasise in this connection that media pluralism and independence are indispensable for the proper functioning of democracy. Indeed, there can be no democracy without pluralism (for the related principles, see *Manole and Others v. Moldova*, no. 13936/02, §§ 95-102, ECHR 2009). Having said that, the Court would note, without prejudice to the applicants' argument concerning the opposition's allegedly limited access to the audiovisual media in Hungary, that the applicants did not provide sufficient information to show that potentially interested members of the public could not have been informed of the images in question other than by their display during the interpellation. The Court notes that the orderly conduct of parliamentary debate is aimed at ensuring the authority and effective functioning of Parliament and hence the efficiency of the democratic process. The use of non-conventional means of communication – though perhaps effective in attracting media attention – could reasonably be regarded as carrying a risk of obstructing that aim. In the present case the opposition MP was free to deliver her interpellation speech and there is no indication that the restriction imposed on the use of posters amounted to unequal or unfair treatment of the applicants as members of the opposition.

44. Lastly, the Court should consider the severity of the sanction imposed on the applicants, namely the reduction in their remuneration in the amount of HUF 100,000 (see paragraph 9 above). The applicants have not put forward any arguments showing the impact of the fine on their financial situation. The Court notes in this connection that while the fine may not have been negligible, it represented about one-seventh of the gross basic salary of a regular MP and the applicants' total monthly remuneration likely exceeded that of the basic salary (see paragraph 10 above). It further notes that the applicants did not contest with any specific arguments the Government's assertion that the warning would have meant interrupting the interpellation speech and would have not been suitable in the circumstances (see paragraph 27 above). The Court, having regard to the margin of appreciation afforded to the national bodies in this respect, will confine itself to noting that the applicants – being aware that their request for permission to use the

posters had been refused – knowingly acted in breach of the applicable rules of conduct, which aggravated the nature of the disciplinary breach. This could reasonably call for a sanction of a dissuasive nature aimed at maintaining an appropriate standard of political debate within Parliament and ensuring a consistent approach in the handling of cases of disciplinary violations. The applicants did not argue, let alone show, that the sanctions they had received were more severe than those imposed for disciplinary breaches on the MPs from the ruling party alliance.

45. Having regard to the foregoing, the Court finds that the reasons supporting the impugned decisions were relevant to the legitimate aim pursued and sufficient to show that the disputed interference was “necessary” in a democratic society.

(c) Conclusion

46. In view of the above considerations, the Court concludes that there has been no violation of Article 10 of the Convention.

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

47. The applicants complained under Article 13 read in conjunction with Article 10 of the Convention that the remedies available with respect to the disciplinary sanctions imposed on them had been ineffective.

48. The Court notes that this complaint overlaps with the complaint concerning the procedural protection under Article 10 of the Convention. In view of the reasons given and the conclusion reached in respect of Article 10 (see paragraphs 34 to 38 above), the Court does not consider it necessary to examine separately the admissibility or merits of this remaining complaint (see *Šeks v. Croatia*, no. 39325/20, § 74, 3 February 2022).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 10 of the Convention admissible;
2. *Holds* that there has been no violation of Article 10 of the Convention;
3. *Holds* that there is no need to examine separately the admissibility or merits of the complaints under Article 13 taken in conjunction with Article 10 of the Convention.

IKOTITY AND OTHERS v. HUNGARY JUDGMENT

Done in English, and notified in writing on 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President