

## European Court of Human Rights judgments on the right to freedom of expression

### Bulletin XL: ROUND-UP OF FREEDOM OF EXPRESSION JUDGEMENTS: SEPTEMBER 2014

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The European Court of Human Rights didn't decide any cases during August. In September, it adopted judgments in two related freedom of expression cases from Hungary:

- ***Szél and Others v. Hungary*** and ***Karácsony and Others v. Hungary***, application nos. 44357/13 and 42461/13, 16 September 2014 (fines for opposition MPs for symbolic protests during parliamentary sessions violated right to freedom of expression)

Furthermore, the Court decided to declare the following case inadmissible, holding that it did not fulfil the requirements for a case to be considered by it:

- ***Görgün v. Turkey***, application no. 42978/06, 16 September 2014 (small fine for trade union president meant he had not suffered a 'significant disadvantage' and his appeal to the European Court was inadmissible)

The three cases concerned the following issues:

- ***Szél and Others v. Hungary*** and ***Karácsony and Others v. Hungary***, application nos. 44357/13 and 42461/13, 16 September 2014 (fines for opposition MPs for symbolic protests during parliamentary sessions violated right to freedom of expression)

This concerned the members of two opposition parties who, during sessions of parliament, had conducted symbolic protests. The applicants in the case of Szél had up held billboards saying "FIDESZ [the governing party] You steal, you cheat and you lie" and (during the final vote on a law related to smoking) "Here operates the national tobacco mafia". The applicants in the case of Karácsony had placed a wheelbarrow full of soil in front of the prime minister during the final vote of a controversial bill on the

transfer of agricultural lands. The applicants were fined between €170 and €600 for disturbing Parliament's work. The fines were proposed by the Speaker of Parliament and adopted by the plenary without a debate. The applicants complained that these fines violated their right to freedom of expression, and that they had not had any opportunity to appeal against them.

The European Court of Human Rights considered that while the fine had pursued a legitimate aim – namely the protection of the rights of other parliamentarians and the prevention of disorder – they had not been “necessary” in a democratic society. The Court underlined that, in a democratic society, freedom of expression was especially important for elected representatives. The Court considered that the applicants, members of the parliamentary opposition, had expressed their views on public matters of the highest political importance. The symbolic element in their protest was an important part of their right to freedom of expression. Furthermore, the Court underlined the particular importance of ensuring the right of minority members and parties in Parliament to express their opinions, and the right of the public to hear them. The Court furthermore noted that the applicants had not delayed or prevented either the parliamentary debate or the vote. Finally, the Court noted that the sanctions against the applicants had been imposed without debate and that the Speaker had not given the applicants any warning.

Because the applicants had not been able to appeal or otherwise challenge the fines, the Court also found a violation of Article 13, which provides that everyone whose rights have been infringed should have an effective remedy under national laws and proceedings.

- **Görgün v. Turkey**, application no. 42978/06, 16 September 2014 (small fine for trade union president meant he had not suffered a ‘significant disadvantage’ and his appeal to the European Court was inadmissible)

This concerned the head of a trade union which had organised protests against social security reforms. Posters advertising the demonstration had been put up in various places around Ankara, and the applicant was fined 124 Turkish liras (around €75) by the Ankara municipality for putting them up without permission. The applicant objected to that decision, arguing that he had no involvement in the hanging of the posters in question, but the Ankara Magistrates’ Court rejected his objection without holding a hearing. The applicant then complained to the European Court of Human Rights.

The European Court of Human Rights held that the complaint was inadmissible. Firstly, with regard to the complaint about his right to freedom of expression, the Court considered that complaints about human rights violations should be made to national courts first, before appealing to the European Court of Human Rights. The Court noted that the applicant had not raised his complaint regarding his right to freedom of

expression before the Magistrates' Court or any other authority, not even implicitly. Instead, the applicant's arguments to the Ankara court had been focused on that he had had nothing to do with the hanging of the posters. Therefore, the application that his right to freedom of expression had been violated had to be rejected for non-exhaustion of domestic remedies.

The applicant had also complained that his right to a fair trial had been violated. However, the European Court held that the applicant had not suffered a "significant disadvantage", which is a requirement for any case to be heard. The Court reiterated that this criterion applies where, even where a violation of a human right has taken place from a purely legal point of view, the level of severity of the violation is so low that it does not warrant consideration by an international court. The absence of any significant disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. The Court observed that the applicant had been fined €75, as the representative of a trade union. This was a small amount and there was no evidence that it had had any undue financial impact on the applicant. The fine had been administrative and had not been registered in the applicant's criminal record. Furthermore, there were no other reasons why the case should be heard (for example, the case might have raised a point of general importance – but it did not).

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