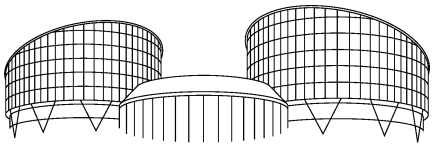

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

# CASE OF KARÁCSONY AND OTHERS v. HUNGARY

*(Application no. 42461/13)*

JUDGMENT

STRASBOURG

16 September 2014

*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 Karácsony and Others v. Hungary,**

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

Guido Raimondi, *President,*
Işıl Karakaş,
András Sajó,
Nebojša Vučinić,
Egidijus Kūris,
Robert Spano,
Jon Fridrik Kjølbro, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 8 July 2014,

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

# PROCEDURE

1. The case originated in an application (no. 42461/13) 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 four Hungarian nationals, Mr Gergely Karácsony, Mr Péter Szilágyi, Mr Dávid Dorosz and Ms Rebeka Katalin Szabó ("the applicants"), on 14 June 2013.

2. The applicants were represented by Mr D. Karsai, 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 applicants, Members of Parliament at the material time, alleged that the decisions to fine them for showing billboards during a plenary vote in Parliament had violated their right to freedom of expression under Article 10 of the Convention.

4. On 7 November 2013 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1975, 1981, 1985 and 1977 respectively and live in Budapest.

6. At the material time, the applicants were members of the Hungarian Parliament and the opposition party *Párbeszéd Magyarországért*. Mr Szilágyi was notary of Parliament.

7. At a plenary session on 30 April 2013, during a pre-agenda speech, Mr Karácsony and Mr Szilágyi showed a billboard in the session hall displaying the text "FIDESZ [the party on government]. You steal, you cheat, and you lie."

On the same day, Mr Szilágyi made a speech in the general debate on Bill no. T/10881 amending Certain Smoking-related Acts, accusing the government parties of corruption.

8. On 6 May 2013 the Speaker presented a proposal to fine Mr Karácsony 50,000 Hungarian forints (HUF) (approximately 170 euros (EUR)) and Mr Szilágyi HUF 185,520 (approximately EUR 600) for having gravely disrupted the plenary proceedings, in application of section 49(4) of Act no. XXXVI of 2012 on Parliament.

9. The Speaker proposed that the maximum fine as regards Mr Szilágyi (a third of his monthly remuneration) be applied, since he was an elected official of Parliament, not just an ordinary MP.

A decision approving the proposal of the Speaker was adopted by the plenary on 13 May 2013, without a debate.

10. On 21 May 2013 during the final vote on Bill no. T/10881 Mr Dorosz and Ms Szabó presented a billboard with the text "Here Operates the National Tobacco Mafia".

11. On 27 May 2013 the Speaker submitted a proposal to fine them HUF 70,000 (EUR 240) each, for gravely disrupting the plenary proceedings, in application of section 49(4) of Act no. XXXVI of 2012 on Parliament. The proposal stated that an increased fine was necessary, since similar, seriously disruptive conducts had occurred before.

The plenary adopted the proposal on 27 May 2013 without a debate.

12. A constitutional complaint was filed, concerning a sanction for disruptive conduct, by MP E.N., a member of the opposition party *Jobbik*, and rejected by the Constitutional Court on 4 November 2013 (decision nos. 3206/2013. (XI.18.) AB and 3207/2013. (XI.18.) AB, see paragraph 16 below).

The Constitutional Court found that MP E.N. had been fined under sections 48(3) and (6), 50(1) and 52(2) – rather than section 49(4) – of Act no. XXXVI of 2012 on Parliament. It held in particular that the restrictions imposed on him for conduct falling under the above provisions – that is, "gravely offensive expression" – were in compliance with the Fundamental Law. His complaint in respect of section 49(4) was rejected because this provision, concerning "gravely offensive conduct", was not applicable in that case.

The Constitutional Court went on to observe that there was no remedy available to that complainant against the measure.

Lastly, the Constitutional Court held that parliamentary disciplinary law concerned Parliament's interior business and the MPs' conduct as parliamentarians, rather than citizens' rights or obligations; and that therefore no requirement of a remedy against a parliamentary disciplinary measure could be deduced from Article XXVIII(7) of the Fundamental Law.

## II. RELEVANT DOMESTIC LAW

13. The Fundamental Law of Hungary provides as relevant:

**Article IX**

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

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

**Article XXVIII**

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

**Article 5**

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

(8) The provisions ensuring the regular sessions 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."

14. Act no. XXXVI of 2012 on Parliament ("Ogytv.") provides as follows:

**Section 2**

"The Speaker shall: ...

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

**Section 46**

"(1) The chair of the session shall call any Members who digress from the point obviously without any reason during their speech, or pointlessly repeat their own or other speakers' speeches during the same debate to get to the point, and simultaneously warn him of the consequences of non-compliance.

(2) The Speaker may deny Members the right to speak if during their speech they continue to behave in the way specified under paragraph (1) after being warned for the second time."

**Section 47**

"The Speaker may deny speakers the right to speak, giving the reason for the denial, if they have used the time allotted to them or their parliamentary group."

**Section 49**

"(2) A Member may not be denied the right to speak if the chair of the session has not warned him/her of the consequences of the calls.

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

(4) If a Member's conduct is gravely offensive to the authority or order of Parliament, or violates the provisions of the Rules of Parliament on the order of debate or voting, then the chair of the session may propose the exclusion of the Member for the remainder of the session day without calling him/her to order or warning, and the imposition of a fine on him/her. The proposal shall contain the reason of the measure and ... the provision of Rules of Parliament violated.[1]

...

(7) The Speaker, in the absence of a proposal on any sanction referred to in paragraph (4), shall be entitled to propose the imposition of a fine on the Member within five days of him/her engaging in a conduct specified in paragraph (4).

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

**Section 51**

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

[1] On 13 February 2014 Parliament adopted an amendment to this procedure, introducing the possibility for a fined MP to seek remedy before a committee (Act no. XIV of 2014, enacting a new section 51/A into this law).

15. The relevant general Resolutions of the Parliamentary Committee responsible for the interpretation of the Rules of Parliament provide as follows:

**Resolution No. 28/2010-2014 ÜB of 11 March 2013**

"On the basis of section 2(2) f) of the Act on Parliament, the chair of the session shall be responsible for ensuring the smooth running of the sessions of Parliament. Within the framework of the Act on Parliament, the chair of the session shall be entitled to discretion in communication and measures necessary for maintaining the order of the session."

**Resolution 22/2010-2014 AIÜB of 1 October 2012**

"The exercise of the Speaker's right to reject a motion, provided for in section 97 (4) of the Rules of Parliament, shall be supported by the fact that the motion is not suitable for debate or decision making. Having a debate on an obviously frivolous and offensive motion is incompatible with the authority of Parliament. It is the Speaker's right and obligation, pursuant to his/her duty specified in section 2 (1) of the Act on Parliament, to reject such motions."

16. The Constitutional Court examined Act no. XXXVI of 2012 in decision nos. 3206/2013. (XI.18.) AB and 3207/2013. (XI.18.) AB. It recalled that compared to other individuals, the limits of freedom of expression are wider in the case of MPs, as they are protected by parliamentary immunity. Nonetheless, to counterbalance this broad immunity, some of their conduct is subjected to disciplinary rules, for example in cases where they violate the rights and interests of a person or, in particular, of a national, ethnical, racial or religious group. While such conduct does not attain a level of severity entailing criminal responsibility or civil law sanctions, it nevertheless necessitates remedies. Thus, the Speaker should have the necessary means to prevent abuses of freedom of expression by MPs. Furthermore, the orderly and proper conduct of committee sittings was a prerequisite for the implementation of Parliament's tasks; and the protection of the latter's authority could, therefore, serve as a limit on MPs' right to free speech. According to the Constitutional Court's finding, the impugned statutory provisions prescribed a gradual application of disciplinary sanctions, ensuring that they were proportionate to the gravity of the disciplinary misdemeanour in that the most severe sanctions, the exclusion of an MP or the reduction of his or her monthly remuneration, could only be imposed for "particularly offensive expressions" or "particularly disturbing conduct". The Constitutional Court pointed out that parliamentary disciplinary law governs Parliament's internal business and primarily regulates MPs' conduct as parliamentarians, as opposed to the rights and obligations of citizens; hence, no obligation to secure a legal remedy against such decisions can be inferred from Article XXVIII(7) of the Fundamental Law (section 44 of decision no. 3206/2013. (XI.18.) AB).

In his dissenting opinion, the President of the Constitutional Court observed that the restrictions on MPs' parliamentary speech for using particularly offensive expressions or disturbing conduct could only be considered proportionate to the protection of the dignity of Parliament if the MP concerned had previously been called to order and warned about the consequences of his acts. He argued that in the absence of such a preliminary notice, the measures were disproportionate and contrary to the Fundamental Law.

## III. RULES OF PROCEDURE OF THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

17. Rule 21 of the Rules of Procedure of the Assembly (Resolution 1202 (1999) adopted on 4 November 1999 with subsequent modifications of the Rules of Procedure) concerning maintenance of order reads as follows:

> "21.1. The President shall call to order any member of the Assembly who causes a disturbance during proceedings.
>
> 21.2 If the offence is repeated, the President shall again call the member to order, and this shall be recorded in the report of the debates.
>
> 21.3 In the event of a further offence, the President shall direct the offender to resume his or her seat or may exclude him or her from the Chamber for the remainder of the session."

## IV. LAW OF THE EUROPEAN UNION

### A. Rules of Procedure of the European Parliament

18. Article 9 § 2 provides as follows:

> "Members' conduct shall be characterised by mutual respect, be based on the values and principles laid down in the basic texts on which the European Union is founded, respect the dignity of Parliament and not compromise the smooth conduct of parliamentary business or disturb the peace and quiet of any of Parliament's premises. Members shall comply with Parliament's rules on the treatment of confidential information. Failure to comply with those standards and rules may lead to the application of measures in accordance with Rules 152, 153 and 154."

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

**Rule 152 - Immediate measures**

> "1. The President shall call to order any Member who disrupts the smooth conduct of the proceedings or whose conduct fails to comply with the relevant provisions of Rule 9.

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

3. Should the disturbance continue, or if a further offence is committed, the offender may be denied the right to speak and may be excluded from the Chamber by the President for the remainder of the session. The President may also resort to the latter measure immediately and without a second call to order in cases of exceptional seriousness. The Secretary-General shall, without delay, see to it that such disciplinary measures are carried out, with the assistance of the ushers and, if necessary, of Parliament's Security Service.

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

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

6. Where appropriate, and bearing in mind the seriousness of the breach of the Members' standards of conduct, the Member in the Chair may, no later than the following part-session or the following meeting of the body, committee or delegation concerned, ask the President to apply Rule 153."

**Rule 153 - Penalties**

"1. In exceptionally serious cases of disorder or disruption of Parliament in violation of the principles laid down in Rule 9, the President, after hearing the Member concerned, shall adopt a reasoned decision laying down the appropriate penalty, which he shall notify to the Member concerned and to the presiding officers of the bodies, committees and delegations on which the Member serves, before announcing it to plenary.

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

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

(a) a reprimand;

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

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

(d) submission to the Conference of Presidents, in accordance with Rule 19, of a proposal for the Member's suspension or removal from one or more of the offices held by the Member in Parliament."

**Rule 154 - Internal appeal procedures**

"The Member concerned may lodge an internal appeal with the Bureau within two weeks of notification of the penalty imposed by the President. Such an appeal shall

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

**ANNEX XVI**

**Guidelines for the interpretation of the standards of conduct of Members**

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

2. Members shall be held responsible for any failure by persons whom they employ or for whom they arrange access to Parliament to comply on Parliament's premises with the standards of conduct applicable to Members. The President or his representatives may exercise disciplinary powers over such persons and any other outside person present on Parliament's premises."

20. The consolidated version of the Treaty on the Functioning of the European Union provides as follows:

**Article 263 (*ex* Article 230 TEC)**

"The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

...

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them."

21. An action for annulment concerning, *inter alia*, the imposition of the penalty of forfeiture of entitlement to the daily subsistence allowance for a period of 10 days on an MP was brought before the Order of the General Court (Third Chamber) of the European Court of Justice. On 5 September 2012 the court dismissed the action, *inter alia*, because it was submitted too late.[1] (Case of T-564/11 Nigel Paul Farage v. European Parliament and Jerzy Buzek).

[1] The President of the European Council, Mr Van Rompuy, addressed the Parliament during the plenary sitting of 24 February 2010. Following that speech, a number of

## V. LAW OF COUNCIL OF EUROPE MEMBER STATES

22. The Government submitted information concerning parliamentary practices on fines and other sanctions applicable for breach of parliamentary rules in various Member States. These submissions were not contested by the applicants and are as follows.

According to the Government, all Council of Europe Member States make use of means available under disciplinary law in order to secure undisturbed parliamentary work and to protect the authority and dignity of Parliament. The regulatory basis for restricting MPs' rights and prescribing obligations for them is Parliament's autonomy, under which the internal rules of Parliament may be determined independently, based on parliamentary self-governance.

23. Under the Rules of the House of the French *Assemblée Nationale*, where a warning recorded in the minutes is given to an MP, the latter automatically loses one quarter of his/her monthly remuneration. In a recent case, which took place in the *Assemblée Nationale* on 8 October 2013 when the speech of Ms V.M., a Green Party MP, was interrupted several times from the opposition benches by a UMP party MP who kept clucking like a chicken, Parliamentary group leaders unanimously sanctioned the latter by withholding one quarter of his monthly remuneration for the "sexist nature of his conduct".

24. Fines exist in Germany, Slovakia and the Czech Republic.

25. Examples of the restriction, suspension or withdrawal of MPs' rights for inappropriate conduct or for disturbing Parliament's order can be found in Bulgaria (exclusion), the United Kingdom (exclusion, withdrawal of mandate), Greece (reprimand, temporary suspension), France, Poland, Lithuania (exclusion), Luxembourg (suspension and reprimand), the Romanian Lower House and the Czech Republic.

26. An order to leave the chamber, suspension (mostly for a fixed period) and exclusion exist in many Member States, and the sanctions are made more severe by the fact that during the period of expulsion/suspension, in most Member States MPs are not allowed to perform any tasks related to their parliamentary work.

27. Where severe sanctions are imposed, in some Member States (the Czech Republic, Portugal, Slovenia) MPs may, as a legal remedy, turn to the plenary (or a committee) of Parliament as an appeal forum. In the Polish Lower House, MPs may seek a review of the Speaker's decision before the presidium and a review of the presidium's decision before the House (in case of exclusion or withdrawal of remuneration).

---

Members spoke, including the applicant, Mr Farage. By letter, the President of the Parliament, Mr Buzek, imposed a penalty on the applicant consisting in the forfeiture of entitlement to the daily subsistence allowance for a period of ten days.

28. Leave to make a speech in the form of giving an explanation or making an apology is generally secured for sanctioned MPs in order to enable them to present their opinion. Leave to make a speech – which can only be availed of in respect of misdemeanours of minor gravity – is also known as a moral disciplinary sanction (obligatory apology-making).

29. In view of the above, the Court notes that at least in a considerable minority of the Council of Europe Member States, a fine may be imposed on Members of Parliament or they may lose part of their salary in case of temporary expulsion (suspension). Among these States some form of gradualism is common. For example, any MP whose conduct is disorderly is called to order by the President of the House (Speaker). When an MP who has already been called to order is called to order again in the same sitting, the call to order is recorded in the minutes, etc. (see, for example, the French *Assemblée Nationale*; the Latvian Parliament; the House of Commons in the United Kingdom, the Polish Senate). There is often an appeal against the decision of the Speaker to one of the bodies of Parliament; and out of thirteen countries which impose financial sanctions as disciplinary measures constitutional court powers to hear disciplinary matters exist in certain circumstances in Portugal, Austria, Bosnia and Herzegovina, Slovakia and the Czech Republic.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. The applicants complained that the decisions to fine them for showing billboards during plenary votes had violated their right to freedom of expression under Article 10 of the Convention, which 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."

31. The Government contested that argument.

## A. Admissibility

32. The Government submitted that the applicants could have challenged the impugned legislation as such before the Constitutional Court in the form of a constitutional complaint, which constituted an existing remedy available in respect of parliamentary disciplinary law. In their view, they had not, therefore, exhausted the domestic remedies available.

33. The Court observes that a complaint relating to the matter had already been dismissed by the Constitutional Court (see paragraph 12 above). It is true that the case of MP E.N. concerned "gravely offensive expression" rather than "conduct". However, given the conclusions of the Constitutional Court, namely that restrictions of this kind were as such compatible with the Fundamental Law, the Court considers that the applicants cannot reasonably be expected to have made an attempt, in all likelihood futile, to pursue a constitutional complaint. Consequently, the Court is satisfied that this complaint cannot be rejected for non-exhaustion of domestic remedies.

34. It is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, either. The Court 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 applicants

35. The applicants submitted that the decision to fine them for showing billboards during votes of the plenary did not serve a legitimate aim and was disproportionate. They claimed that the impugned measures had had a chilling effect on Members of Parliament expressing their political opinion on issues of public interest, and had been meant to discourage open debate on the side of members of the opposition party.

36. In their view, any limitations on free expression should be applied narrowly, given the utmost importance of this right, even more so in the course of a public debate. They pointed out that they had not endangered the functioning of Parliament or prevented other MPs from performing their duties.

37. The applicants also maintained that they had simply expressed their views in a silent, peaceful manner which had not been explicitly intended to break the Rules of Parliament or to obstruct the activities of Parliament. Their behaviour had not been disruptive, unlike that of other MPs in previous terms. During the previous term of Parliament between 2006 and 2010, the then opposition (at the time of the events complained of forming a two-thirds majority) had chosen to leave the plenary session every time the

Prime Minister held a speech, in order to protest – an event that had lasted several minutes during which time the official work of Parliament had practically been at a standstill. On those occasions no one had been fined, as the right of the opposition to express its political views on the leader of the government had outweighed the obstruction it had caused.

38. In contrast, the applicants in the present case had merely expressed their viewpoints on important and symbolic matters of the government's policy, after which Parliament had carried on virtually uninterruptedly with its business as scheduled.

**b. The Government**

39. The Government submitted that although there had been an interference with the applicants' right to freedom of expression, the scope of application and the reasons for the imposition of the impugned measures had been sufficiently clear and precisely formulated, and the sanctions had been foreseeable under the regulation and the established practice of Parliament. The interference was necessary in a democratic society in order to achieve the legitimate aims of ensuring the proper functioning and the authority and dignity of Parliament, and was lawful under the Ogytv.

40. Under the Court's case-law concerning the duties and responsibilities mentioned in Article 10 § 2 of the Convention, such duties and responsibilities were to be understood as flowing from the specific situation of the person actually exercising the right to freedom of expression. In assessing those duties and responsibilities, the situation and legal status of the given person must be taken into account. Thus, the duties and responsibilities need to be assessed in the light of the societal and professional characteristics of the activities carried out by the person at issue. Hence, MPs also had to exercise their rights by paying due regard to their special situation.

41. In addition to the separation of powers and Parliament's autonomy, the political nature of these disciplinary decisions also excluded legal control over them. The regulation secured an on-the-merits discretionary right to Parliament as it ensured for it the right to regulate its members. A chair's actions inevitably flowed from political discretion. It should not be overlooked that in Parliament political dialogue was being conducted, that is, the speeches and conduct in the debate and violating the Rules of Parliament, the assessment of the injury caused, and the imposition of a sanction proportionate to the injury were issues requiring mostly political deliberation, whose review from a purely legal aspect would be difficult.

42. Furthermore, the sanctions imposed on the applicants were not disproportionate to the legitimate aims sought since in each case the MPs concerned had had the opportunity to express their opinion in a manner compatible with the Rules of Parliament.

*2. The Court's assessment*

**a. General considerations**

43. The Court notes on the outset that the fines in question were applied for acts committed by Members of Parliament, in Parliament, and during parliamentary business. It is common practice in Parliaments of the Member States of the Council of Europe that Parliaments exercise control over behaviour in Parliament.

44. The Court notes the need for such autonomous action in the context of parliamentary immunity (compare *A. v. the United Kingdom*, no. 35373/97, § 77, ECHR 2002-X), which is a personal aspect of the functional autonomy of the institution of Parliament. The immunity of members protects parliamentarians and Parliament from external interference, while internal autonomy in the management of Parliament's affairs protects Parliament against intrusion.

45. It is the long-standing practice for States generally to confer varying degrees of immunity on parliamentarians, which pursues the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. Different forms of parliamentary immunity may indeed serve to protect the effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the autonomy of the legislature and the parliamentary opposition. In the realm of parliamentary law a wide margin of appreciation is left to member States (see *Kart v. Turkey* [GC], no. 8917/05, §§ 81-82, ECHR 2009 (extracts)). The Court would add at this juncture that to sanction a conduct verging on abusing these rights by way of, for instance, gratuitously disruptive actions can be seen as justified under Article 10 § 2 of the Convention.

**b. Whether there was an interference**

46. The Court observes that the applicants were subjected to a fine as a sanction for the expression which they had made. It follows that there has been an interference with their right to freedom of expression.

**c. Prescribed by law**

47. The Government argued that the measure had been based on the provisions of the Ogytv. The applicants considered that the criteria of this law (e.g. "authority of Parliament"; "gravely offensive") were vague and did not satisfy the requirement of foreseeability.

48. The Court accepts that the meaning of such terms can become sufficiently clear in parliamentary tradition. However, given its conclusion below about the necessity of the interference (see paragraph 88 below), it considers that it is not necessary to decide on this question.

**d. Legitimate aim**

49. The Government argued that the interference pursued the legitimate aims of maintaining the proper functioning of Parliament, of ensuring, in doing so, respect for majority rule while observing minority rights as well, and of protecting the authority and dignity of Parliament.

50. The applicants underlined that limitations on speech could be based only on the grounds enumerated in paragraph 2 of Article 10. They were of the view that "maintaining the proper functioning of Parliament" did not fall within any of those categories within the meaning of the Court's case-law, either as a matter of national security or for preventing disorder or crime. They argued that there was no legitimate ground for the restriction imposed on them.

51. The Court considers that the notion of "the authority and dignity of Parliament" may in principle fall within the notion of protection of the rights of others, namely Parliament, a legitimate aim under paragraph 2 of Article 10. However, it finds relevant in the analysis of the proportionality of the interference (see paragraphs 63 to 87 below) that the dignity of an institution cannot be equated to that of human beings (see, *mutatis mutandis*, *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011). Concerning the "protection of Parliament's authority", as referred to by the Government, the Court considers that this is a mere institutional interest of Parliament, that is, a consideration not necessarily of the same strength as "the protection of the reputation or rights of others" within the meaning of Article 8 § 2.

52. The Court considers overly restrictive the interpretation of "prevention of disorder" as suggested by the applicants; and recalls that the prevention of disorder in Parliament, as a condition of the proper functioning of Parliament, is related to the functioning of Parliament in a democratic society, and the prevention of such disorder can be understood as being defined by the needs of democracy based on pluralism (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 89, ECHR 2003-II). In that sense, the maintenance of the proper functioning of Parliament falls within the notion of "prevention of disorder".

53. The Court therefore accepts that the interference pursued the legitimate aims of protection of the rights of others and the prevention of disorder, within the meaning of Article 10 § 2 of the Convention.

**e. Necessary in a democratic society**

*i. General principles*

54. The test of "necessity in a democratic society" requires the Court to determine whether the interference complained of corresponded to 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 (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V; and *Association Ekin v. France*, no. 39288/98, § 56, ECHR 2001-VIII).

55. The Court's task in exercising its supervisory function is to determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see, among many other authorities, *Zana v. Turkey*, 25 November 1997, § 51, *Reports of Judgments and Decisions* 1997‑VII).

56. Freedom of expression, as secured in paragraph 1 of Article 10, 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, 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 which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, e.g., *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204).

57. Although freedom of expression may be subject to exceptions, such exceptions "must be narrowly interpreted" and "the necessity for any restrictions must be convincingly established" (see, e.g., Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debate of questions of public interest (see, e.g., *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV; and *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001-VIII).

58. The fairness of the proceedings and the procedural guarantees afforded are factors to be taken into account when assessing the proportionality of an interference with respect to the freedom of expression guaranteed by Article 10 (see *Association Ekin*, cited above, § 61; *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II; *Lombardi Vallauri v. Italy*, no. 39128/05, §§ 45-46, 20 October 2009; *Igor Kabanov v. Russia*, no. 8921/05, § 52, 3 February 2011; and *Cumhuriyet Vakfi and Others v. Turkey*, no. 28255/07, § 59, 8 October 2013).

59. The Court has already found a violation of Article 10 of the Convention in its procedural aspect in circumstances where the scope of the measure restricting freedom of expression was vague, or was motivated by an insufficiently precise reasoning and its application was not subject to an adequate judicial review (see, *mutatis mutandis*, *Association Ekin*, cited above, § 58; *Saygılı and Seyman v. Turkey*, no 51041/99, §§ 24-25, 27 June 2006; and *Lombardi Vallauri*, cited above, § 46).

60. When the right to freedom of expression is exercised in the context of political speech through symbolic acts or expressive gestures, utmost care must be observed in applying any restrictions.

61. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed (see *Oberschlick*, cited above, § 57; and *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298).

62. Any measures interfering with freedom of expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it (see *Sergey Kuznetsov v. Russia*, no. 10877/04, § 45, 23 October 2008; *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, § 80, 21 October 2010).

*ii. Application of those principles to the present case*

63. The applicants were fined under section 49(4) of the Ogytv. for having seriously disrupted the plenary proceedings by way of conduct "gravely offensive to the authority or order of Parliament" (see paragraphs 8 and 11 above). They were members of a minority opposition party who felt the need to express their disagreement with the majority.

64. While in the realm of parliamentary law a wide margin of appreciation is left to member States (see *Kart*, cited above, §§ 81-82), parliamentary law concerns the organisation of the work in Parliament and does not change in itself the level of protection applicable to political speech. A wide margin of appreciation applies to the modalities of organising work in Parliament, including matters concerning parliamentary groups and the status of members, such as mandate, conflict of interest rules, rules on factions. The organisation of work in Parliament affects the exchange of views, that is, debates in Parliament, and entails limitations for the sake of reasonable and efficient deliberation and decision-making. This does not mean that freedom of expression rights of Members of Parliament in the political debate lose the highest protection that is required for the free exchange of ideas. Nevertheless, a certain margin of appreciation applies in particular to limitations of expression concerning time and manner dictated by the needs of the proper functioning of Parliament and the need to protect the debate itself. It is an inherent part of the proper functioning of Parliament that "members be allowed to engage in meaningful debate and to represent their constituents on matters of public interest without having to

restrict their observations or edit their opinions because of the danger of being amenable to a court or other such authority" (see *A. v. the United Kingdom*, cited above, § 75).

65. In assessing the proportionality of the interference, the Court will consider the nature of the speech in the context of the legitimate aim sought to be protected, the nature of the impact of the impugned expression on order in Parliament and the authority of Parliament, the process applied and the sanctions imposed.

α. The nature of the expression

66. The speech and expressions of democratically elected parliamentary representatives deserve very high level of protection because it is necessary to ensuring democratic principles and an open process, in addition to exemplifying the principles of pluralism "without which there is no democratic society" (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24). While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He or she represents the electorate, draws attention to their preoccupations and defends their interests. In a democracy, Parliament or such comparable bodies are the essential fora for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein (see *Jerusalem v. Austria* no. 26958/95, §§ 36 and 40, ECHR 2001-II).

67. In modern societies all forms of expression at the parliamentary level need to be considered in the light of potential media coverage and public access to differing viewpoints. In the determination of the need to protect speech in Parliament, it must be borne in mind that not only authorised speech, which is expressed in the deliberation process, constitutes communication contributing to the public debate of eminently political issues in society. In the Court's view, other communicative acts in Parliament (including votes, walk-outs and other informal expressions of agreement and disagreement) are also constitutive elements of the broader social communication originating from Parliament.

68. This applies even if all forms of political expression are not expressly tolerated within the rules of Parliament. In such situations, attention must be paid to the context of the intended expression which must be weighed against the legitimate aim of the restriction.

69. Contrary to the argument of the Government, according to which speech in Parliament does not fall under the ordinary standards of speech as it entails special responsibilities of members, the Court reiterates that freedom of expression is especially important for elected representatives of the people, interference with which can only be justified by very weighty reasons (see paragraph 66 above; and *A. v. United Kingdom*, cited above, § 79). Freedom of expression in Parliament must be understood not simply

as the expression of personal views of a member but also that of the member's constituency. Further, contrary to the arguments of the Government, political expression in Parliament does not deserve lesser protection because of the immunity granted to members. Immunity may justify a special procedure of accountability within Parliament but cannot diminish freedom of expression. The Court cannot accept this argument, which implies that because calling to account is limited, there should be less freedom of speech granted.

70. The Court notes that the applicants, members of the parliamentary opposition, expressed their views on the Government's project to re-regulate tobacco retail. The expressions concerned a public matter of the highest political importance that is directly related to the functioning of a democracy. For the Court, the symbolic element of their expression – including the harsh style used – is an important constituent part of the expression, whose main purpose was, for the Court, to criticise the parliamentary majority and the Government, rather than to personally attack one of the MPs or any other individual.

71. The applicants had an opportunity to express their views on the bill that was subject of the vote. However, given the functions of parliamentarians related to the representation of their constituents and the nature of parliamentary activities which go beyond debate in the period reserved for debate, the Court finds that the showing the billboards was part of the political expression. The expressive acts of protest cannot be equated in their function and effect with the speech opportunity that was granted to them during the debate time. It should be noted that the conditions of publicity were also different, given that the vote itself on a matter of considerable general interest may have higher publicity than a debate, and it is related to actual decision-making with finality and full parliamentary responsibility rather than to a moment of a debate which does not have the finality and therefore the importance of the actual casting of the votes.

72. In the consideration of the nature of the expression of parliamentarians, the Court finds that the protection of minority members and parties within Parliament is also of concern, and special weight must be paid to ensuring their ongoing right to express opinions, and the public's right to hear those viewpoints. Given the importance of public exposure to minority views as an integral function of democracy, minority members should have leeway to express their views, including in a non-verbal fashion, and considering the symbolic aspects of their speech, within a reasonable framework.

β. Impact on order in, and authority of, Parliament

73. The Court notes the importance of orderly conduct in Parliament and recognises the importance of respect for constitutional institutions in a democratic society. Its supervisory role consists in balancing those interests

in the specific circumstances of the case against the rights affected in order to determine the proportionality of the interference.

74. In terms of their actual impact and the infringement of the rights of others, the Court is satisfied that the applicants' expressions did not create a significant disturbance. They did not delay or prevent either the parliamentary debate or the vote. Thus the expressions at issue did not disturb the actual functioning of Parliament. The Court notes that, previously in the Hungarian Parliament, walk-outs of the then opposition party members (current majority) which might also be disruptive of the functioning of Parliament, causing delay in the proceedings, were not sanctioned (see the applicants' uncontested submissions in paragraph 37 above).

75. It is also of note that in the present circumstances the protection of the rights of others and the need to maintain decorum in parliamentary functions fall short of a convincing justification for substantial restrictions on expressive political speech of the highest importance. The offensive accusations directed against the Government's policies did not challenge the authority of Parliament. It has not been demonstrated that the impugned conduct undermined the authority of Parliament or the authority of its office holders, nor did it expose Parliament to ridicule or disrespect.

γ. The process leading to the interference

76. The Court has noted that, in some systems, the autonomy of Parliament implies that no outside body be granted the power to review its decisions concerning internal order. However, in several Member States, which accept the constitutional autonomy of Parliament, there is review by external bodies of the fines or other sanctions.

The Court concludes that in principle such review by an external, judicial organ is not incompatible with Parliamentary autonomy, but falls within the margin of appreciation of the State.

77. The Court noted the importance of unedited opinions in Parliament (see *A. v United Kingdom*, cited above, § 75). It considered the danger to such free expression inherent in the fact of being amenable to a court or other such authority. The Court finds that in the circumstances of the present case Parliament itself is one such authority.

78. The Court recalls that the Convention does not require States or their institutions to comply with any specific judicial order (see *Campbell and Fell v. the United Kingdom*, 28 June 1984, § 76, Series A no. 80). In particular, it cannot be interpreted as imposing on States any theoretical constitutional concepts regarding the permissible limits of the powers' interaction. The decision of the legislature to preserve the autonomy and independence of Parliament by granting it immunity from the jurisdiction of ordinary courts cannot in itself be considered contrary to the Convention. The question is always whether, in a given case, the requirements of the

Convention are met (see *Demicoli v. Malta*, 27 August 1991, § 39, Series A no. 210). In the present case the Court has to determine whether the Speaker who suggested the sanctioning of the applicants had the required independence and impartiality (see *Savino and Others v. Italy*, nos. 17214/05, 20329/05 and 42113/04, §§ 91-93, 28 April 2009).

79. The parliamentary traditions of the Member States vary considerably as to the understanding of the role of the Speaker. In certain countries, once elected, the Speaker severs all ties with his or her former party and is, in all aspects of the position, a non-partisan figure. This much emulated model emerged in the English (United Kingdom) Parliament after a long historical process. In other countries, while impartiality is required (see section 2(2) of the Ogytv. in paragraph 14 above), the tradition of non-partisanship is not necessarily prevalent.

80. Non-partisanship in matters of disciplinary action in Parliament can be achieved in many ways, and the State has a large margin of appreciation in this regard. For example, in the 2013 incident in the French National Assembly, referred to by the Government (an affront to the personality rights of another member; see paragraph 23 above), the sanction imposed was unanimous, that is, it was endorsed also by the representatives of the opposition.

81. The Court considers that in the consideration of the risk of partisanship originating in the parliamentary tradition in Hungary it is also of relevance that the sanction was imposed by Parliament without debate, which did not offer any protection to members of the opposition at the material time.

82. The Court has recognised in the context of Article 6 § 1 that the requirements of impartiality are applicable in the adjudication of a civil right even within Parliament (see *Savino*, cited above, 93). Nevertheless, given the margin of appreciation in this context and in view of the fact that the Court shall not consider the situation in the abstract, it finds that the arguably partisan nature of the sanctioning procedure does not in itself constitute a violation of the Convention.

83. In the applicants' case, the Speaker gave neither a first nor a second warning to the applicants; rather, they were at once sanctioned through the imposition of a fine (compare and contrast section 49 (4) of the Ogytv. quoted in paragraph 14 above).

84. The Government admitted that the imposition of sanctions was of a political nature. While attributing due respect to the authority of Parliament and the need for parliamentarians to respect the rules of procedure, the Court considers that the above shortcomings in the procedure undermine the fairness of the imposition of the sanction and, in the circumstances of the case, do not provide sufficient protection of impartiality against political bias in the decision-making which endangers freedom of expression. While this does not in itself result, in the specific circumstances of the case, in a

partisanship that is *per se* incompatible with the procedural requirements of Article 10 of the Convention, the Court will take this matter into consideration in the overall determination of the necessity of the interference in a democratic society.

85. The Court further notes that the impugned decision of Parliament relied on a proposal of the Speaker that referred in a clear manner to the actions of the applicants but it did not specify, even less give reasons, why such conduct was "gravely offensive". Given that the decision of Parliament was the result of a procedure without debate at the plenary meeting, it cannot be considered an appropriate forum for examining issues of fact and law, assessing evidence and making a legal characterisation of the facts (compare and contrast *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 122, ECHR 2013).

δ. The sanctions imposed

86. In the determination of the proportionality of the interference with freedom of expression, the Court attributes importance to the severity of the sanctions, and this in contrast with the fact that little disturbance of Parliament's ability to function actually occurred.

87. For the Court, the fines imposed on the applicants (see paragraphs 8 and 11 above), while not atypical in parliamentary law in matters of personal affront, were could be seen to have a chilling effect on opposition or minority speech and expressions in Parliament.

ε. Conclusion

88. The Court concludes that the interference which concerned political expression was devoid of a compelling reason, since the interests of the authority of Parliament and order in Parliament were not demonstrably seriously affected, nor was it shown that these interests were on balance weightier than the right to freedom of expression of the opposition. The sanctions were imposed without consideration of less intrusive measures, such as warnings or reprimands. Moreover, the interference consisted in the application of sanctions with a chilling effect on the parliamentary opposition, in a process where the procedural guarantees and those of the appearance of non-partisanship were insufficient. Therefore, the interference cannot be considered "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

There has accordingly been a violation of Article 10 of the Convention.

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

89. The applicants complained of a violation of Article 13 of the Convention read in conjunction with Article 10, as under domestic law no

remedy lay against the decisions proposed by the Speaker and adopted by the plenary. 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."

90. The Government contested that argument.

91. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

## A. The parties' submissions

### *1. The applicants*

92. The applicants maintained that under domestic law no remedy lay against the decisions proposed by the Speaker and adopted by the plenary. They argued that the right to an effective remedy as established in the Fundamental Law referred to the right to challenge a decision made by a court, a public authority or the executive. The mere fact that they could address the issue of the fines during the plenary session or bring the issue before particular committees of Parliament were not effective remedies as they did not present an actual opportunity to contest the decision. In the present case the availability of a constitutional complaint could not be considered an effective remedy, either, since even a successful complaint could not have annulled the fine imposed on them. Finally, it was an unreasonable exaggeration to claim that judicial review of an individual sanction would harm the integrity of the legislative power, as it would be to say that parliamentary immunity was unlimited.

### *2. The Government*

93. The Government argued that to provide a remedy before an external body against a decision of Parliament, the organ having the highest-level legitimacy, would violate the principle of the separation of powers and Parliament's autonomy. The application of parliamentary disciplinary law to MPs basically fell, both historically and in international comparison, within Parliament's self-governing powers.

94. The Government also noted the availability of a constitutional complaint, as a legal institution and a real and existing remedy available in respect of parliamentary disciplinary law, and that the applicant MPs had had the opportunity to file a constitutional complaint within a given time limit but they had failed to do so.

### B. The Court's assessment

95. The Court reiterates that Article 13 requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). Given the conclusion reached in the context of Article 10 (see paragraph 88 above), the Court considers that the applicants' grievance met that requirement.

96. The Court reiterates that Article 13 of the Convention guarantees to anyone who claims, on arguable grounds, that his or her rights and freedoms as set forth in the Convention have been violated, an effective remedy before a national authority. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (cf. *Ilhan v. Turkey* [GC], no. 22277/93, ECHR 2000-VII, § 97). Article 13 requires a mechanism to be available for establishing any liability of State officials or bodies for acts or omissions in breach of the Convention and that compensation for the non-pecuniary damage flowing therefrom should also be part of the range of available remedies (see *Z. and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

97. The Court has already examined several cases concerning legal proceedings of members of national parliaments in relation to the right to a fair trial (see, for example, *A. v. the United Kingdom*, cited above; *Cordova v. Italy (no. 1)*, no. 40877/98, ECHR 2003-I; *Cordova v. Italy (no. 2)*, no. 45649/99, ECHR 2003-I (extracts); *Tsalkitzis v. Greece*, no. 11801/04, 16 November 2006; and *C.G.I.L. and Cofferati v. Italy*, no. 46967/07, 24 February 2009).

98. Through this case-law, the Court, acknowledging the applicability of Article 6, verified the conformity of parliamentary immunities with the Convention, against the benchmark of the right to a court guaranteed by the Convention. It was an opportunity for the Court to temper the effects of the immunity from legal proceedings enjoyed by MPs by establishing the principle that it would not be consistent with the rule of law in a democratic society if a State could remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (see *A. v. the United Kingdom*, cited above, § 63; *Cordova (no. 1)*, cited above, § 58; *Cordova (no. 2)*, cited above, § 59;

and *Tsalkitzis*, cited above, § 46). In principle the same logic applies to the rights of parliamentarians vis-à-vis the immunity of Parliament.

99. Notwithstanding the above considerations, the Court notes that Parliamentary autonomy and sovereignty are important constitutional institutions of the democratic order of the State. It does not find it necessary to determine the appropriate forum for redress under Article 13 of the Convention for the following reasons. The Government argued that in principle the Constitutional Court was enabled to provide such a remedy without raising an issue of separation of powers. The Court notes at the same time that, in view of the Constitutional Court's decisions of 18 November 2013 (nos. 3206/2013 (XI. 18.) AB and 3207/2013 (XI. 18.) AB) (see paragraphs 16 and 33 above), this remedy is currently not available or capable of offering effective remedy, including compensation for the pecuniary and non-pecuniary damage flowing from the violation.

100. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law for the applicants' grievance under Article 10.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. The applicants further complained that sanctions imposed on for their political speech showed that they were discriminated against on account of their political opinion, contrary to Article 14 of the Convention, which provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

102. The applicants submitted that only opposition members of Parliament were subjected to disciplinary sanctions by the Speaker. They also maintained that the Speaker had expressed on several occasions his disapproval of the communication methods used by opposition parties in Parliament.

103. The Government observed that the applicants' arguments in this connection relied only on the general statement that opposition members were more frequently found to have violated the Rules of Parliament. However, for the Government, such an overall consideration could not justify a conclusion that the applicants were discriminated against, since such figures simply flow from the fact that opposition party MPs more frequently express their opinion by means violating the Rules of Parliament.

104. The Court's case-law establishes that where a general policy or measure has proportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding

that it is not specifically aimed or directed at that group (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 154, ECHR 2001 III (extracts)).

105. Even assuming that the majority of MPs sanctioned for their alleged disturbing behaviour in Parliament were members of the opposition, the Court does not consider that this in itself discloses a practice which could be classified as discriminatory within the meaning of Article 14. Having regard to all the materials in the case file, there is no substantiation of the applicants' allegation that they were discriminated against in the enjoyment of any of their Convention rights.

106. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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

108. The applicants claimed, respectively, 170 euros (EUR), EUR 600, EUR 240 and EUR 240, in respect of pecuniary damage. These amounts correspond to the fines they were obliged to pay.

109. Each applicant claimed EUR 20,000 in respect of non-pecuniary damage.

110. The Government contested these claims.

111. The Court considers that the applicants suffered pecuniary losses on account of the amounts they were ordered to pay to as disciplinary sanctions (see paragraphs 8 and 11 above). It awards them the entire amounts claimed respectively.

112. Moreover, it considers that the applicants must have suffered some non-pecuniary damage and awards them each, on the basis of equity, EUR 3,000 under this head.

### B. Costs and expenses

113. The applicants also claimed, jointly, EUR 10,600, plus 27% value added tax, for the legal fees incurred before the Court. This figure corresponds to 52 hours' of legal work billable by their lawyer.

114. The Government disputed this claim.

115. 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 information in its possession and the above criteria, the Court awards EUR 6,000 to the applicants jointly.

## FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Article 10 and Article 13 read in conjunction with Article 10 admissible and the remainder of the application inadmissible;

2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

3. *Holds*, unanimously, that there has been a violation of Article 13 read in conjunction with Article 10 of the Convention;

4. *Holds*, unanimously, that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: EUR 170, 600, 240 and 240 (one hundred and seventy, six hundred, two hundred and forty and two hundred and forty euros) to Mr Karácsony, Mr Szilágyi, Mr Dorosz and Ms Szabó, respectively, plus any tax that may be chargeable, in respect of pecuniary damage;

5. *Holds*, by six votes to one, that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

6. *Holds*, unanimously, that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) to the applicants jointly, plus any tax that may be chargeable to the applicants, 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;

7. *Holds*, unanimously, that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stanley Naismith | Guido Raimondi |
| Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint concurring opinion of Judges Raimondi, Spano and Kjølbro;
(b) Partly dissenting opinion of Judge Kūris.

G.R.A.
S.H.N.

# JOINT CONCURRING OPINION OF JUDGES RAIMONDI, SPANO AND KJØLBRO

## I.

1. We agree with our colleagues that there has been a violation of Article 10 and Article 13 of the Convention. However, we are unable to subscribe to parts of the reasoning.

2. In our view, the Court adopts an overly abstract approach to the resolution of the case in the light of the facts as set out in the application.

3. The reasoning of the Court may be understood as finding that Article 10 forbids, in general, the imposition of a sanction on a member of Parliament who deems it necessary to express his or her disagreement on an important issue by disrupting parliamentary sessions and acting contrary to the internal disciplinary rules of Parliament. In our view, the case presents an issue which is more limited in scope. The problem raised is rather *to what extent* Article 10 of the Convention protects members of Parliament who have recourse to such methods of expressing their views.

4. It follows that we consider several issues raised in the judgment to be of limited or no legal significance for the resolution of the case. We refer here, in particular, to paragraphs 44-45 (concerning the relevance of case-law on parliamentary immunity), paragraphs 63-65 (concerning the level of protection in cases involving a breach of a parliament's internal rules), paragraphs 67-72 (concerning the importance of the nature of the expression in cases involving a breach of a parliament's internal rules), paragraphs 73-74 (concerning the significance of the disturbance of the parliament's work), and paragraphs 76-85 (on misgivings as to the procedure followed in this case). We stress that in our view the reasoning in these paragraphs should be considered *obiter dicta* with limited or no value as precedent for future cases decided by the Court.

## II.

5. We fully agree with our colleagues that there has been an interference with the applicants' freedom of expression (see paragraph 46 of the judgment).

6. However, unlike our colleagues, we have no hesitation in reaching the conclusion that the interference was prescribed by law (see paragraph 48). Sanctions were imposed on the applicants on the basis of section 49(4) of the Act on Parliament. Taking into account the fact that this provision concerns the work of Parliament, is addressed to members of Parliament and regulates their conduct, the interference was adequately prescribed by law, even though the provision uses vague terms such as "gravely offensive", whose interpretation is a question of practice (see, *inter alia*, *Lindon,*

*Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV).

7. Furthermore, the interference clearly pursued a legitimate aim (see paragraphs 51-53 of the judgment), as it had the aim of protecting the rights of other members of Parliament and thus the rights of others. Furthermore, the interference was aimed at preventing disruption of the work of Parliament and thus preventing disorder.

8. The only material question to be decided in this case is whether the interference was necessary in a democratic society and was thus proportionate to the aim pursued, as required by paragraph 2 of Article 10 of the Convention.

9. As a general rule, it falls within the margin of appreciation of member States, and in particular national parliaments, to decide upon their internal working methods, including how members can participate in their work and in debates during sessions. Thus, for example, parliaments may decide how members may address them, when and how often members may take the floor, the order of speeches during debates, the time allocated for such speeches, whether there should be equal representation of different parties and views, whether interruptions and comments are permitted during a speech by another member, and whether the use of non-verbal expressions or signs is allowed.

10. Furthermore, as a general rule, parliaments are entitled under paragraph 2 of Article 10 to react and interfere when their elected members fail to comply with disciplinary rules governing the work of Parliament during sessions. Such interferences may take a variety of forms, including a call for order, a formal warning, a temporary denial of the right to speak, exclusion from a session, suspension of a session and, in exceptional situations, the use of pecuniary sanctions.

11. The enforcement of rules on the internal work of Parliament, and the use of certain measures in response to a failure to comply with such rules, should, however, respect the principle of proportionality, as has also been recognised by the Hungarian Constitutional Court (see paragraph 16 of the judgment). Thus, disciplinary sanctions should be applied on a gradual basis.

12. We fully agree that freedom of expression is of particular importance to members of Parliament (see, *inter alia*, *Castells v. Spain*, 23 April 1992, § 42, Series A no. 236, and *Jerusalem v. Austria*, no. 26958/95, § 36, ECHR 2001-II). Indeed, freedom of elected members of Parliament to express their views during parliamentary sessions lies at the core of the democratic process.

13. In the present case, the applicants did not receive sanctions for expressing their views on issues debated in Parliament, nor for criticising the Government or expressing disagreement with the parliamentary majority. In fact, as members of Parliament, the applicants were free to

participate in parliamentary debate and voting and thus to express their views. Thus, the applicants were not given sanctions for expressing their views as such, but rather for the time and the manner in which they did so.

14. It is clear from the facts of the case that the applicants did not receive immediate sanctions for their behaviour using traditional measures such as those described in paragraph 10 above. Therefore, the only question to be decided in this case is whether the use of a pecuniary sanction was proportionate in the specific circumstances of the case.

15. The applicants were fined for gravely disrupting the plenary proceedings, in application of section 49(4) of the Act on Parliament concerning "gravely offensive" conduct. The sanctions were imposed without prior warning and without giving consideration to or having recourse to other less serious sanctions. Furthermore, even though the sanctions were imposed days after the incidents in question, the applicants were not given a chance to explain themselves before the sanctions were imposed. On this basis, and having regard to the applicants' conduct, the close nexus between their status as elected parliamentarians and the core of Article 10, and the severity of the sanctions, the Government have not demonstrated that the interference with the applicants' freedom of expression constituted a proportionate measure, based on relevant and sufficient grounds, that conformed to the requirements of paragraph 2 of Article 10 of the Convention.

16. As regards the lack of effective remedies, we agree with the reasoning of the Court, apart from paragraphs 97 and 98, which should not have been included in the judgment in our view.

# PARTLY DISSENTING OPINION OF JUDGE KŪRIS

1. I respectfully disagree with the majority that three thousand euros should be paid to each of the applicants in respect of non-pecuniary damage. Consequently, I voted against point 5 of the operative part of the judgment.

2. I have no hesitation in concurring with the majority that there have been violations of Article 10 of the Convention and Article 13 in conjunction with Article 10, but at the same time I have no hesitation in finding that the normal work of the Hungarian Parliament was disrupted by the applicants' conduct which gave rise to those violations. A proper balance must be struck between these two aspects of the factual situation at hand. However, this balance is not present, because awarding substantial financial "satisfaction" to the applicants for the non-pecuniary damage which they allegedly sustained encourages, even if indirectly, political conduct of such a kind that should normally be avoided in a parliamentary democracy.

3. This case is a political one in the sense that it arose out of a political confrontation, as well as in the sense that the Court's finding in it will inevitably have political consequences. Without any prejudice either to the political position of the applicants in the factual situation in which this confrontation occurred, or to that of their opponents, one can reasonably expect that that outcome will be favourable to the applicants rather than to their adversaries against whom they protested. For members of Parliament (as well as for most other politicians), winning such a case before the Court is, in itself, a satisfaction far greater than the money awarded in the present case for whatever non-pecuniary damage the applicants might have sustained. Thus, having regard to the particular political nature of this case, the non-pecuniary damage allegedly sustained by the applicants is already more than sufficiently compensated for by the findings of violations of Article 10 of the Convention and Article 13 in conjunction with Article 10.