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

SECOND SECTION

CASE OF BUKTA AND OTHERS v. HUNGARY

(Application no. 25691/04)

JUDGMENT

This version was rectified on 25 September 2007 under Rule 81 of the Rules of Court

STRASBOURG

17 July 2007

FINAL

17/10/2007

In the case of Bukta and Others v. Hungary,

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

Françoise Tulkens, *President*,
András Baka,
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Antonella Mularoni,
Danutė Jočienė,
Dragoljub Popović, *judges*,
and Sally Dollé, *Section Registrar*,

Having deliberated in private on 26 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 25691/04) 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 three Hungarian nationals, Mrs Dénesné Bukta, Mr Ferdinánd Laczner and Mr Jánosné Tölgyesi ("the applicants"), on 13 April 2004.

2. The applicants were represented by Mr. L. Grespik, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by their Agent, Mr L. Hötzl, Ministry of Justice and Law Enforcement.

3. The applicants alleged that their peaceful assembly had been disbanded by the police in breach of Articles 10 and 11 of the Convention.

4. On 4 September 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicants are Hungarian nationals who were born in 1943, 1945 and 1951 respectively and live in Budapest.

A. The circumstances of the case

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On 1 December 2002 the Romanian Prime Minister made an official visit to Budapest and gave a reception on the occasion of Romania's national day, which commemorates the 1918 Gyulafehérvár National Assembly when the transfer of hitherto Hungarian Transylvania to Romania was declared.

8. The Hungarian Prime Minister decided to attend the reception and made that intention public the day before the event.

9. The applicants were of the opinion that the Hungarian Prime Minister should refrain from attending the reception, given the Gyulafehérvár National Assembly's negative significance in Hungarian history. Therefore, they decided to organise a demonstration in front of the Hotel Kempinski in Budapest where the reception was to be held. They did not inform the police of their intentions.

10. In the afternoon of 1 December 2002, approximately 150 people, including the applicants, assembled in front of the hotel. The police were also present. There was a loud noise, whereupon the police decided to disband the assembly, considering that it constituted a risk to the security of the reception. The police forced the demonstrators back to a park next to the hotel where, after a while, they dispersed.

11. On 16 December 2002 the applicants sought judicial review of the action of the police and requested the Pest Central District Court to declare it unlawful. They asserted that the demonstration had been totally peaceful and its only aim had been to express their opinion. Moreover, the applicants pointed out that it had obviously been impossible to inform the police about the assembly three days in advance, as required by Law no. III of 1989 on the right of assembly (the "Assembly Act"), because the Prime Minister had only announced his intention to attend the reception the day before.

12. On 6 February 2003 the District Court dismissed the applicants' action. Concerning the circumstances of the event, it noted that the demonstration had been disbanded after a minor detonation was heard.

13. The District Court also noted that the three-day time-limit for informing the police of a planned assembly could not possibly be observed if the demonstration had its roots in an event that had occurred less than three days beforehand. In the court's view, the possible shortcomings of the Assembly Act could not be remedied by the courts. Therefore, the duty to inform the police about such meetings applied to every type of demonstration, including spontaneous ones. The court also noted that there might be a need for more precise and sophisticated regulations in respect of such events but said that this was a task for the legislator, not the courts.

14. The court also found that the duty to inform the police in advance about assemblies held in public served to protect the public interest and the rights of others, namely, the free flow of traffic and the right to freedom of movement. It observed that the organisers of the demonstration had not even attempted to notify the police. The District Court went on to say:

> "... under the relevant provisions of the domestic law in force, the fact that an assembly is peaceful is not by itself enough to dispense with the duty to inform the police. ... The court has not dealt with the issue whether or not the assembly was peaceful, since the lack of notification made it illegal *per se* and, therefore, the defendant dissolved it lawfully, pursuant to section 14(1) of the Assembly Act."

15. The applicants appealed. On 16 October 2003 the Budapest Regional Court upheld the first-instance decision. It amended part of the District Court's reasoning, omitting the remarks concerning the possible shortcomings of the relevant domestic law. Moreover, the Regional Court found, referring, *inter alia*, to the case-law of the Court and decision no. 55/2001. (XI. 29.) of the Constitutional Court:

> "... in the application of the relevant domestic law, the approach is obviously authoritative in that there is no exemption from the duty of notification and, therefore, no difference between 'notified' assemblies and 'spontaneous' ones – the latter are unlawful owing to the failure to respect the above-mentioned duty of notification."

16. In sum, the Regional Court found that the restrictions imposed on the applicants were necessary and proportionate.

17. The applicants lodged a petition for review which the Supreme Court dismissed on 24 February 2004, without examining its merits, since it was incompatible *ratione materiae* with the relevant provisions of the Code of Civil Procedure.

B. Relevant domestic law

18. Article 62 of the Constitution guarantees the right to freedom of peaceful assembly and secures its free exercise.

19. Section 6 of the Assembly Act requires the police to be informed of an assembly at least three days before the date of the event.

20. Section 14(1) of the Assembly Act requires the police to disband *(feloszlatja)* any assemblies held without prior notification.

21. Section 14(3) of the Assembly Act provides that if an assembly is dissolved its participants may seek judicial review within fifteen days.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

22. The applicants complained that their peaceful demonstration had been disbanded merely because of a lack of prior notification, in breach of Article 11 of the Convention, which reads in so far as relevant as follows:

> "1. Everyone has the right to freedom of peaceful assembly ...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime, ... or for the protection of the rights and freedoms of others. ..."

A. Admissibility

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

B. Merits

1. Whether there was an interference with the exercise of freedom of peaceful assembly

24. The Government did not dispute that the applicants could rely on the guarantees contained in Article 11; nor did they deny that the dispersal of the demonstration had interfered with the exercise of the applicants' rights under that provision. The Court sees no reason to hold otherwise. The Government contended, however, that the interference was justified under the second paragraph of Article 11.

2. Whether the interference was justified

25. It must therefore be determined whether the sanction complained of was "prescribed by law", prompted by one or more of the legitimate aims set out in paragraph 2, and was "necessary in a democratic society" for achieving them.

(a) "Prescribed by law"

26. There was no dispute between the parties that the restriction imposed on the applicants' freedom of peaceful assembly was based on section 14 of

the Assembly Act, the wording of which is clear. Therefore, the requirement of foreseeability was satisfied. The Court sees no reason to depart from the parties' view.

(b) "Legitimate aim"

27. The applicants did not address this issue.

28. The Government submitted that the restrictions on the right of peaceful assembly on public premises served to protect the rights of others, for example the right to freedom of movement or the orderly circulation of traffic.

29. They further submitted that freedom of peaceful assembly could not be reduced to a mere duty on the part of the State not to interfere. On certain occasions, positive measures had to be taken in order to ensure its peacefulness. The three-day time-limit was therefore necessary to enable the police, *inter alia*, to coordinate with other authorities, to redeploy police forces, to secure fire brigades, and to clear vehicles. They drew attention to the fact that if more than one organisation notified the authorities of their intention to hold a demonstration at the same place and time, additional negotiations might be necessary.

30. In the light of these considerations, the Court is satisfied that the measure complained of pursued the legitimate aims of preventing disorder and protecting the rights of others.

(c) Necessary in a democratic society

31. The applicants submitted that their spontaneous demonstration had been peaceful and was disbanded solely because the police had not had prior notice, pursuant to section 14 of the Assembly Act. Such a measure could not be justified by the fact that a minor detonation had been heard; to hold otherwise would enable the police to dissolve any assembly on such grounds, without any further justification.

32. The Government submitted that the applicants' assembly was dispersed not because of the lack of prior notice but because of the detonation, which the police classified as a security risk to the State officials present at the Hotel Kempinski.

33. The Court observes that paragraph 2 of Article 11 entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly.

34. The Court finds, in the domestic court decisions dealing with the lawfulness of the events, that the legal basis for the dispersal of the applicants' assembly lay exclusively in the lack of prior notice. The courts based their decision to declare the police measures lawful solely on that argument and did not take into account other aspects of the case, in particular, the peaceful nature of the event.

35. The Court reiterates that the subjection of public assemblies to a prior-authorisation procedure does not normally encroach upon the essence of the right (see *Rassemblement Jurassien and Unité Jurassienne v. Switzerland*, no. 8191/78, Commission decision of 10 October 1979, Decisions and Reports 17). However, in the circumstances of the present case, the failure to inform the public sufficiently in advance of the Prime Minister's intention to attend the reception left the applicants with the option of either foregoing their right to peaceful assembly altogether, or of exercising it in defiance of the administrative requirements.

36. In the Court's view, in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.

37. In this connection, the Court notes that there is no evidence to suggest that the applicants represented a danger to public order beyond the level of the minor disturbance which is inevitably caused by an assembly in a public place. The Court reiterates that, "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance" (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 41-42, ECHR 2006-XIV).

38. Having regard to the foregoing considerations, the Court finds that the dispersal of the applicants' peaceful assembly cannot be regarded as having been necessary in a democratic society in order to achieve the aims pursued.

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

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

40. The applicants relied on Article 10 of the Convention, which provides:

> "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. ...
>
> 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, ... for the prevention of disorder or crime, ... [or] for the protection of the ... rights of others ..."

41. The Court considers that, in the light of its finding of a violation of Article 11 of the Convention in the circumstances of the present case (see paragraph 39 above), it is unnecessary to examine the applicants' complaint under Article 10 separately (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. Each of the applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government found the applicants' claims excessive.

45. The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicants may have suffered.

B. Costs and expenses

46. The applicants also claimed the global sum of EUR 2,000 for the costs and expenses incurred before the Court.

47. The Government found the applicants' claim excessive.

48. 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 were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the amount claimed, EUR 2,000, to the applicants jointly.

C. Default interest

49. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 11 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 10 of the Convention;

4. *Holds* that the finding of a violation constitutes sufficient just satisfaction for any moral damage the applicants may have suffered;

5. *Holds*
   (a) that the respondent State is to pay the applicants, jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé Registrar	Françoise Tulkens President