FOURTH SECTION

**CASE OF KÖRTVÉLYESSY v. HUNGARY (No. 3)**

*(Application no. 58274/15)*

JUDGMENT

STRASBOURG

3 October 2017

FINAL

03/01/2018

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

In the case of Körtvélyessy v. Hungary (No. 3),

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

Ganna Yudkivska, *President,* Vincent A. De Gaetano, Egidijus Kūris, Iulia Motoc, Carlo Ranzoni, Georges Ravarani, Péter Paczolay, *judges,*  
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1.  The case originated in an application (no. 58274/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr Zoltán Körtvélyessy (“the applicant”), on 21 September 2010.

2.  The applicant was represented by Mr T. Gaudi-Nagy, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3.  The applicant alleged, in particular, that the ban imposed on a demonstration planned by him had infringed his rights under Articles 11, 14 and 17 of the Convention.

4.  On 14 March 2016 the complaint concerning Article 11 was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1965 and lives in Budapest.

6.  On 14 April 2010 the applicant notified the police that he planned to organise a demonstration from 2 to 7 p.m. on 17 April 2010 in front of the Venyige Street prison in Budapest, in order to draw attention to the “situation of political prisoners”. Venyige Street is a broad cul-de-sac with a service lane.

7.  On 16 April 2010 the head of the Budapest Police Department banned the demonstration on the grounds that traffic could not be diverted to alternative routes (section 8(1) of the Assembly Act). In the decision, he referred to Article 21 of the International Covenant on Civil and Political Rights, Article 11 of the Convention and Decision no. 55/2001.AB of the Constitutional Court.

8.  On 19 April 2010, within the statutory time-limit, the applicant sought a judicial review of the decision.

9.  On 22 April 2010 the Budapest Regional Court dismissed the applicant’s case. It noted that in assessing whether or not traffic could be diverted to other routes, the authority had reckoned on the participation of some 200 demonstrators, as per the applicant’s notification, and that – after having obtained the opinion of a traffic expert – it had established that lawful parking and traffic circulation in the neighbourhood would become impossible should the event take place. The court agreed with the police’s decision in that although the right to assembly was a constitutional fundamental right, it was not absolute and must not give rise to a violation of the fundamental rights of others, and could therefore be restricted. The court was satisfied that the decision had been lawful as the police had adequately established the facts, complied with the procedural rules and applied clear assessment criteria, and the assessment of the evidence had been logical.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

10.  The applicant complained under Article 11 of the Convention that the authorities’ overly restrictive interpretation of the notion of   
“no alternative traffic route” had resulted in a disproportionate interference with his right to freedom of assembly.

11.  Article 11 of the Convention provides as follows:

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

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

A.  Admissibility

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

B.  Merits

13.  The applicant argued that the interference complained of had not been lawful, since the authorities had stretched the relevant provision of the Assembly Act so as to be able to ban the event. Nor had it pursued any legitimate aim, since the reasons underlying the ban were purely political. As regards its necessity, he argued that had the demonstration been authorised, it would not have caused any disproportionate obstruction to the traffic. Venyige Street, with the service lane included, was wide enough to accommodate the expected number of participants, some 200; and the police could have secured access to the prison notwithstanding the on-going event.

14.  The Government submitted that the interference was prescribed by law, namely by the relevant provisions of the Assembly Act. Furthermore, it pursued the legitimate aim of securing the rights of others, that is, those of other road users. As to its necessity, the Government stressed that the police had had to balance the right to assembly and the right to free movement. Since in the present case the event was likely to cause inordinate traffic congestion in both Venyige Street and the neighbouring major thoroughfare, it was the police’s prerogative to restrict the applicant’s Article 11 rights: the measure was thus a necessary and proportionate restriction on the right to assembly.

15.  The Court notes that the Government did not dispute that the applicant could rely on the guarantees contained in Article 11; nor did they deny that the ban on the demonstration had interfered with the exercise of his rights under that provision. It sees no reason to hold otherwise.

16.  It must therefore be determined whether the measure complained of was “prescribed by law”, was in furtherance of one or more of the legitimate aims set out in paragraph 2, and was “necessary in a democratic society” to achieve them.

17.  The Court observes that the ban was based on section 8(1) of the Assembly Act and considers that it was thus prescribed by law.

18.  Moreover, the Court is satisfied that the measure complained of pursued the legitimate aims of preventing disorder and protecting the rights of others.

19.  As regards the question as to whether the interference was necessary in a democratic society, the Court refers at the outset to the principles enounced in paragraphs 24 to 27 of the judgment *Körtvélyessy v. Hungary* (no. 7871/10, 5 April 2016).

20.  The Court observes that in the domestic court decision dealing with the case, the basis for upholding the ban on the assembly related exclusively to traffic issues. The Government’s submissions were, in essence, confined to the affirmation that the demonstration would have seriously hampered the free flow of traffic in the area. In this connection, the Court reiterates that a demonstration in a public place may cause a certain level of disruption to ordinary life including disruption of traffic. However, where demonstrators do not engage in acts of violence, it is important for public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 is not to be deprived of all substance (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02 and 6 others, § 43, 18 December 2007, and *Budaházy v. Hungary*, no. 41479/10, § 34, 15 December 2015).

21.  Concerning the assessment of the relevant facts of the present case, the Court bases its findings on those in the *Körtvélyessy* case (see paragraphs 29 and 30 of that judgment, cited above), which concerned a similar problem relating to the very same location. For essentially the same reasons as in that case, the Court finds that the reason for banning the planned peaceful assembly was, if at all relevant, not sufficient to meet any pressing social need. The ban has therefore not been shown to be necessary in a democratic society in order to achieve the aims pursued.

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

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

23.  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

24.  The applicant claimed 10,000 euros (EUR) in respect of   
non-pecuniary damage.

25.  The Government contested the claim.

26.  The Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicant may have suffered (see *Körtvélyessy*, cited above, § 36).

B.  Costs and expenses

27.  The applicant also claimed EUR 3,500 for the costs and expenses incurred before the Court, without itemising this claim.

28.  The Government contested the claim.

29.  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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads.

C.  Default interest

30.  The Court considers it appropriate that the default interest rate 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 the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4.  *Holds,*

(a)  that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, 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;

(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;

5.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 3 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Ganna Yudkivska  
 Registrar President