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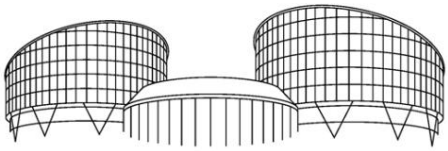

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

BIG ROOM

**AFFAIRE CHRISTMAS ET AUTRES c. HUNGARY**

*(Applications Nos. 42461/13 and 44357/13)*

STOP

STRASBOURG

May 17, 2016

*This judgment is final.*

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**In the case of Karácsony and others v. Hungary,**

The European Court of Human Rights, sitting as a Grand Room composed of:

Luis López Guerra, *president,*
András Sajó,
Mirjana Lazarova Trajkovska,
Angelika Nussberger,
Mark Villiger,
Boštjan M. Zupanÿiÿ,
Khanlar Hajiyev,
Ján Šikuta,
Vincent A. De Gaetano,
Linos-Alexandre Sicilianos,
Erik Møse,
Helena Jäderblom,
Johannes Silvis
Valeriu Gritco,
Ksenija Turkoviÿ,
Branko Lubarda,
Yonko Grozev, *judges,*

et de Johan Callewaert, *clerk adjoint de la Grande Chambre,*

After having deliberated in private on July 8, 2015 and April 27, 2016,

Renders the following judgment, adopted on the latter date:

# PROCEDURE

1. The case arose from two applications (nos. 42461/13 and 44357/13) against the Republic of Hungary under Article 34 of the Convention for the Protection of Human Rights and fundamental freedoms (“the Convention”) on June 14 and July 5, 2013 respectively. The first application (no. 42461/13) was lodged by four Hungarian nationals, Mr Gergely Karácsony, Mr Péter Szilágyi, Mr Dávid Dorosz and Ms Rebeka Katalin Szabó, and the second (no. 44357/13) by three Hungarian nationals , Ms Bernadett Szél, Ms Ágnes Osztolykán and Ms Szilvia Lengyel (“the applicants”).

2. The applicants were represented by Mr D. Karsai, lawyer in Budapest. The Hungarian Government (“the Government”) was represented by its Agent, Mr. Z. Tallódi, of the Ministry of Justice.

3. As MPs at the material time, the applicants saw in the decisions to impose fines on them for their behavior within the confines of the Hungarian National Assembly (“the Assembly”) a

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violation of their right to freedom of expression contrary to Article 10 of the Convention. Under Article 13, they further considered that no recourse had been available to them to challenge the contested decisions.

4. The applications were assigned to the Second Section of the Court (Article 52 § 1 of the Rules of Court – “the Rules”). On September 16, 2014, a chamber of this section, composed of Guido Raimondi, president, Iÿÿl Karakaÿ, András Sajó, Nebojša Vuÿiniÿ, Egidijus Kÿris,
Robert Spano, Jon Fridrik Kjølbro, judges, as well as Stanley Naismith, section clerk, delivered a judgment in each of the two cases. In both judgments, the chamber unanimously declared the application admissible with regard to the complaints of violation of Article 10 and Article 13 taken together with Article 10 and inadmissible for the remainder, before concluding unanimously that there was a violation of Article 10 and Article 13 combined with

Article 10. Attached to each of the judgments was the statement of the joint concurring opinion of Judges Raimondi, Spano and Kjølbro and the partially dissenting opinion of Judge Kÿris.

5. On 15 December 2014, in accordance with Article 43 of the Convention, the Government requested the referral of the cases to the Grand Chamber. On February 16, 2015, the panel of the Grand Chamber granted this request.

6. The composition of the Grand Chamber was decided in accordance with the provisions of Articles 26 §§ 4 and 5 of the Convention and 24 of the Rules.

7. Both the applicants and the Government submitted observations written on the bottom.

8. In addition, the governments of the Czech Republic and the United Kingdom, authorized by the President to intervene in the written procedure (Articles 36 § 2 of the Convention and 44 § 3 of the Rules), each produced third party observations.

9. A hearing took place in public at the Human Rights Palace man, in Strasbourg, July 8, 2015 (article 59 § 3 of the regulations).

Appeared:

– *for the Government*
MM.B. BERKE, *Secretary of State, Ministry of Justice,*
Z. TALLÓDI, *agent,*
Mrs. A. BRUSZT, lawyer, Ministry of Justice,
MT BÁRÁNY, deputy director, Bureau de l'Assemblée,
Ms Z. TÓTH, Director, Codification Department, Bureau of the Assembly,
N. SEBÿK, Legal Officer, Codification Department, Bureau of the Assembly,

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MA VÁGI, lawyer, codification department,
Assembly Office *advisors ;*

*– for the applicants*
MM. D. KARSAI, V. KAZAI, *advice,*
Mme F. KOLLARICS, *advisors.*

Two applicants, Ms Lengyel and Ms Szél, were also present.
The Court heard Mr. Karsai and Mr. Tallódi in their statements as well as their responses to questions asked by Judges Nußberger and López Guerra.

ACTUALLY

I. THE CIRCUMSTANCES OF THE CASE

**A. The authors of application no . 42461/13**

10. The authors of this request, MM. Karácsony, Szilágyi, Dorosz and Ms Szabó, were born in 1975, 1981, 1985 and 1977 respectively, and live in Budapest.

11. At the material time, they were deputies and members of the opposition party Dialogue for Hungary *(Párbeszéd Magyarországért).*
Mr. Szilágyi was also one of the “notaries” of the Assembly.

*1. Faits relatifs à MM. Christmas and Szilágyi*

12. On April 30, 2013, during debates prior to those scheduled on the agenda which took place in the plenary session of the Assembly, an opposition deputy from the Hungarian Socialist Party criticized the government and accused it of of corruption linked in particular to the reorganization of the tobacco market. While the Minister of National Economy, Mr. Zoltán Cséfalvay, responded on behalf of the government, MM. Karácsony and Szilágyi placed a large sign in the center of the room reading “FIDESZ [the ruling party] thief, cheater and liar,” and placed it next to the minister's seat.

13. Here are the relevant extracts from the meeting minutes:

“Zoltán Cséfalvay, Minister of the National Economy: “Tell them that the increase in purchasing power particularly affects people receiving the minimum income, since this has been increased by 5.4%, which is untenable with inflation below 3.5%. And tell them also (...)” (Gergely *Karácsony and Péter Szilágyi display a sign on which one can read “FIDESZ thief, cheater and*

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*liar ". Exclamations from the ranks of the majority deputies: “Apply the internal regulations ! ” Minister ! » The president rings his bell.)*

The President: “Ladies and gentlemen deputies! *(Continuous exclamations in the ranks of the majority deputies; Gergely Karácsony and Péter Szilágyi place the sign near the speaker's platform.)* I ask Mr. Gergely Karácsony to remove the sign in the same way as they 'have brought. *(Gergely Karácsony and Péter Szilágyi leave the sign near the speaker's platform. Continuous exclamations in the ranks of the majority deputies. The president rings his bell.)*
I ask the bailiffs to remove the sign. *(Exclamations in the ranks of the majority deputies, in particular, who say: “That's all you can do! ”*) I ask the ushers to remove the sign. *(The sign is removed.)*

Thank you so much. Please continue, Minister! » (Exclamations *in the ranks of the majority deputies: “How could they get that in?” [The president] rings his bell.)*

14. On 6 May 2013, pursuant to Article 49 §§ 4 and 7 of the Law on the Assembly, the President of the Assembly (“the President”) presented a proposal to impose on Mr Karácsony a fine in the amount of 50,000 Hungarian forints (HUF), or approximately 170 euros (EUR), and to Mr Szilágyi a fine in the amount of 185,520 HUF, or approximately 600 EUR, for their behavior, such as reported in the minutes, deemed seriously offensive to parliamentary order. The maximum amount (one third of his monthly emoluments) was offered in Mr Szilágyi's case because he was an elected officer of the Assembly, not a simple MP.
No other reason was given. A decision approving this proposal was adopted in plenary session on May 13, 2013, without debate.

*2. Facts relating to Mr Dorosz and Ms Szabó*

15. On 21 May 2013, during the final vote on draft law No T/10881 amending certain tobacco laws, Mr Dorosz and Ms Szabó brought and displayed in the center of the room a large banner on which could read “This is the work of the national tobacco mafia”.

16. Here are the relevant extracts from the meeting minutes:

“The President: “(...) Ladies and Gentlemen, I am putting to the vote Bill No. T/10881 on the basis of the summary proposal as it has just been amended. Please vote! *(Vote)*

I announce the decision: the Assembly has *(Dávid Dorosz and Rebeka Szabó bring a banner reading “This is the work of the national tobacco mafia.”)* adopted bill no. T/10881 by 222 votes against 81 and one abstention.
*(Applause from the ranks of FIDESZ deputies.)*

I would like to point out to the two deputies that their behavior constitutes a serious disruption of the work in plenary. I therefore inform them that the internal regulations and article 49 § 4 of the law relating to the Assembly *(sustained applause in the ranks of the Hungarian Socialist Party)* sanction such behavior. *(István Józsa: “We want legislation against the mafia! ”*) I ask my colleagues to untie and remove this banner. *(Dávid Dorosz and Rebeka Szabó do not hand the banner to the usher. Short pause. Loud exclamations in the ranks of*

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*opposition MPs.)* Please help Ms. and Ms. MPs to remove the banner. *(Dávid Dorosz and Rebeka Szabó leave the room.)* Thank you very much. »

17. On 24 May 2013, pursuant to Article 49 §§ 4 and 7 of the Law on the Assembly, the President presented a proposal to impose a fine of HUF 70,000 each on Mr Dorosz and Ms Szabó , or approximately 240 EUR, for their behavior, as reported in the minutes, deemed seriously offensive to the parliamentary order. It was stated in the proposal that an increased amount was necessary because similar, very disruptive behavior had already been observed before. No other reason was given. A decision approving this proposal was adopted in plenary session on May 27, 2013, without debate.

### B. The authors of application no. 44357/13

18. The authors of this request, Mrs. Szél, Osztolykán and Lengyel, were born in 1977, 1974 and 1971 and lived in Budakeszi, Budapest and Gödöllÿ, respectively.

19. At the material time, they were deputies and members of the opposition party Politics May Be Different *(Lehet Más a Politika,* LMP).

20. On June 21, 2013, the Assembly proceeded to the final vote on a new text, Bill No. T/7979 on the transfer of agricultural land and forest land. Very controversial, this project provoked strong reactions among members of the opposition. During this vote, as a protest, Ms Lengyel placed a small golden wheelbarrow filled with earth on the Prime Minister's table, while Ms Szél and Ms Osztolykán unfurled a banner in front of the President's rostrum on which one could read "Distribute the lands instead of stealing them! » ; Ms. Lengyel spoke using a megaphone. She had previously spoken twice during the clause-by-clause debates and once during the final debate on this bill, and she had tabled three requests for amendments to other MPs' amendments and two proposed amendments just before the final vote.

21. Here are the relevant extracts from the meeting minutes:

“The President: “The next item on the agenda is the vote on the amendments presented before the final vote on the bill on the transfer of agricultural land and forest land as well as the final vote. MEPs received this project under the symbol T/7979 and the summary text of the project under the symbol T/9797/2610.

We will first vote on the amendments. They must be adopted by qualified majority. *(Constant disruptions of the session.)* (...)

The members of Jobbik [opposition party] will not let me take my place in my platform, I will continue to chair the session from where I am.
*(Sustained applause in the ranks of the ruling parliamentary group.)* Jobbik members not allowing the notary, a member of a left-wing opposition party, to take his place in [the president's gallery] during the roll-call vote ,

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to conduct the ballot and announce the results *(continuous noise)* I ask the deputies to sit down and listen to me! I ask the Assembly to confirm that, since Jobbik members are obstructing the roll call vote, we will vote electronically. *(Sustained applause in the ranks of the ruling parliamentary group. Exclamations in these same ranks: "Hurray! "*)

Ladies and Gentlemen, I pray to those of you who, in these unusual circumstances, approve of this method of voting electronically rather than by roll call. *(Members of the Jobbik parliamentary group occupy the president's gallery, chanting "traitors, traitors" for several minutes. Szilvia Lengyel places a small golden wheelbarrow filled with soil on the Prime Minister's table. Bernadett Szél and Ágnes Osztolykán [the applicants] unfold in front of the president's platform a banner reading "Distribute land instead of stealing it! "*)

I am requesting technical assistance so that the vote can take place. *(Short pause. Members of the Jobbik group continue to chant "traitors". Szilvia Lengyel speaks using a megaphone. András Schiffer applauds. Intervention by the FIDESZ group: "Where are the guardians of the Assembly ? » Laughs.)*

Madam Deputy, I must also warn you that your methods are unacceptable with regard to the provisions of the internal regulations. I therefore ask you to stop expressing yourself using a megaphone. Here again, I am requesting technical assistance to resolve this problem so that MPs can exercise their right to vote, since I am being prevented from accessing my own voting card (...)"

22. On 25 June 2013, under Article 49 §§ 4 and 7 of the law relating to the Assembly, the President presented a proposal to impose a fine of 131,400 on Ms Szél and Ms Lengyel . HUF each, or approximately 430 EUR, and to Ms Osztolykán a fine in the amount of 154,000 HUF, or approximately 510 EUR, for their behavior, as reported in the minutes, deemed seriously offensive to the parliamentary order.

23. The maximum amount was proposed due to the situation extraordinary which had occurred during the vote and because, by displaying a banner and using a loudspeaker, the deputies had engaged in behavior seriously offensive to parliamentary order. On June 26, 2013, a decision approving the president's proposal was adopted in plenary session, without debate.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The fundamental Loi

24. The Hungarian Basic Law, which entered into force on January 1 , 2012, provides in its relevant parts:

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**Article C**

“1. The functioning of the Hungarian State is based on the principle of separation of powers. »

**Article I**

“1. Respect for fundamental human rights, inviolable and inalienable, is ensured. Their protection is the primary obligation of the State.

2. Hungary recognizes fundamental human rights, both individual and collective.

3. The rules applicable to fundamental rights and obligations are set out in a law. A fundamental right may only be restricted in order to allow the effective exercise of another fundamental right or to protect a constitutional principle, provided that this restriction is absolutely necessary and proportionate to the aim pursued and that it fully respects the content essential of the restricted fundamental right. »

**Article IX**

“1. Everyone has the right to freedom of expression.

2. Hungary recognizes and protects the freedom and diversity of the press, and ensures the presence of conditions conducive to the free dissemination of information necessary for the formation of democratic public opinion.

(...)

4. The right to freedom of expression cannot be exercised with the aim of violating the dignity of others. »

**Article XXVIII**

“7. Everyone may lodge an appeal against any decision of an authority, judicial, administrative or otherwise, which would infringe their rights or legitimate interests. »

**Article 5**

“7. The National Assembly establishes its operating rules and governs the conduct of its debates in the provisions of its internal regulations *[Házszabály],* adopted by a two-thirds majority of the deputies present. The President exercises the police and disciplinary powers conferred on him by the internal regulations in order to ensure that the functioning of the Assembly is not disrupted and to preserve its dignity. »

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25. Paragraph 5 of the final and miscellaneous provisions of the Law fundamental, which entered into force on April 1 , 2013, reads as follows:

“The decisions of the Constitutional Court prior to the entry into force of the Basic Law are repealed, without prejudice to their legal effects. »

### B. The law relating to the National Assembly

26. Law No. XXXVI of 2012 relating to the National Assembly (“the Law relating to the Assembly”), which entered into force on 20 April 2012, provided, in its relevant parts at the material time:

**1. The President of the Assembly**
**Article 2**

" President : (...)

2 f) pronounces the opening of the sessions, directs them impartially and declares their adjournment; he gives the floor to the deputies, ensures compliance with the internal regulations, announces the results of the votes and maintains order and decorum in session.

(...) »

**18. Maintaining order and disciplinary powers**
**Article 46**

"1. The chairman of the session1 orders to return to the question under consideration any Member who, during his intervention, manifestly and without reason deviates from it or unnecessarily repeats his remarks or those of his colleagues during the same debate and, in at the same time, warns him of the consequences if he does not comply.

2. The chairman of the session may withdraw the floor from any Member who, during his speech, persists in behaving in the manner indicated in paragraph 1 of this article after having received a second warning. »

**Article 47**

“The chairman of the session may, giving reasons, withdraw the right to speak from any MP whose speaking time, allotted to him or his parliamentary group, has been exhausted. »

**Article 48**

"1. The chairman of the session calls to order any Member who, in his speech, uses an expression that is indecent or offensive to the authority of the Assembly or to a person or group, in particular national, ethnic, racial or religious, and, at the same time, warns him of the consequences if he uses this expression repeatedly.

2. The chairman of the session withdraws the right to speak from any Member who persists in use an indecent or offensive expression after being called to order.

3. The chairman of the session may propose, without call to order or warning, to exclude for the remainder of the day's session and to punish with a fine any member who,

1. The chairman of the session is either the president or one of the vice-presidents of the Assembly.

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during his intervention, would use an expression seriously offensive to the authority of the Assembly or to a person or group, in particular national, ethnic, racial or religious, or an offensive expression causing serious disturbance.

4. The Assembly decides, without debate, on the exclusion proposal. If the quorum is not reached, the chairman of the meeting decides. During the following session, he informs the Assembly of the exclusion and the reason for it, then the Assembly decides, without debate, on the legality of the decision of the president of the session.

5. An excluded Member cannot speak again on the day of the session from which he or she is excluded. He is not entitled to his emoluments for this day.

6. In the absence of a proposal to apply one of the sanctions provided for in paragraph 3 of this article, the chairman of the session may propose to impose a fine on the deputy in question within five days from the use by this one of the seriously offensive expression.

7. The Assembly decides, without debate, on the proposed fine referred to in paragraphs 3 and 6 of this article during the session following that of the submission of the proposal. The amount of the fine cannot exceed one third of the MP's monthly emoluments. »

**Article 49**

"1. The chairman of the session may withdraw the right to speak from any Member who, unless he files a procedural motion, contests one of his decisions or the fact that he is chairing the session. Any MP whose right to speak is thus withdrawn, without warning, may ask the committee responsible for interpreting the internal regulations to rule on their individual case.

2. A Member cannot have his right to speak withdrawn if he has not been informed of the consequences of a call to order by the chairman of the meeting.

3. A Member who has been deprived of the right to speak under paragraph 1 of this article, paragraph 2 of article 46 or paragraph 2 of article 48 may no longer speak again on the same day of session on the same question.

4. The chairman of the session may propose, without call to order or warning, to exclude for the remainder of the day's session and to punish with a fine any deputy who adopts behavior seriously offensive to the authority of the session. Assembly or for order within it or who violates the provisions of the internal regulations of the Assembly governing order in debates or voting. The proposal specifies the reason for the measure and (...) the provision of the internal regulations violated.

5. The Assembly decides, without debate, on the exclusion proposal. If the quorum is not reached, the chairman of the meeting decides. During the following session, he informs the Assembly of the exclusion and the reason for it, then the Assembly decides, without debate, on the legality of the decision of the president of the session.

6. An excluded Member cannot speak again during the session on the day of his exclusion. He is not entitled to his emoluments for the entirety of that day.

7. In the absence of a proposal to apply one of the sanctions provided for in paragraph 4 of this article, the President may propose to impose a fine on the deputy within five days from the adoption by the latter of the behavior referred to in the same paragraph.

8. The National Assembly rules, without debate, on the proposed fine referred to in paragraphs 4 and 7 of this article during the session following that of the filing of the

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proposal. The amount of the fine cannot exceed one third of the MP's monthly emoluments. »

**Article 50**

"1. The chairman of the session may propose to exclude from the session, suspend his rights or punish with a fine any member who, in session, resorts to physical violence, threatens to resort to direct physical violence or would call for recourse to it.

2. The Assembly decides, without debate, on the exclusion proposal. If the quorum is not reached, the chairman of the meeting decides. A member excluded from the session under paragraph 1 of this article cannot sit either in session or in committee and is not entitled to his emoluments during the period of his exclusion. During the following session, the president of the session informs the Assembly of the exclusion and the reason for it, then the Assembly decides, without debate, on the legality of the decision of the president of the session.

2 a) In the absence of a proposal to apply one of the sanctions referred to in paragraph 1 of this article, the chairman of the session may propose to suspend his rights and/or punish the Member in question with a fine. within five days from the adoption by the latter of the behavior referred to in the same paragraph.

3. The Assembly decides, by two thirds of the votes of the deputies present, on the suspension of the rights of the deputy in question after having requested resolutions from the Assembly committee on immunities, conflicts of interest, discipline and verification of powers. The deputy may have his rights suspended for a maximum period of three days.

4. The Assembly decides, without debate, on the proposed fine referred to in paragraphs 1 and 2 a) of this article during the session following that of the submission of the proposal. The amount of the fine cannot exceed one third of the MP's monthly emoluments.

5. The Assembly may, with two thirds of the votes of the deputies present, suspend the rights of any deputy who, during the same session, persists in the behavior referred to in paragraph 1 of this article, and this

(a) for a duration of six sitting days the second time, and

(b) for a duration of nine sitting days the third time and all other times.

6. From the first to the last day of his suspension, a deputy suspended in his rights cannot sit in session or in committee and is not entitled to his emoluments.

7. The first day of suspension is that of the session following that on which the suspension was pronounced. The calculation of the duration of suspension does not take into account vacations between sessions.

8. Any behavior contrary to paragraph 1 that the Member in question may have adopted in committee is also taken into account in the application of paragraph 5 of this article. »

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**Article 51**

"If, during a session, disruptive behavior makes it impossible to continue the debates, the chairman of the session may suspend it for a fixed period or declare its adjournment. When the session adjourns, he calls a new one. If he is unable to announce his decision, he leaves the platform, which interrupts the session. An interrupted session can only be resumed if the chairman of the session convenes it new. »

27. Article 52 of the Law relating to the Assembly set out the disciplinary sanctions applicable for certain types of expressions and behavior occurring in committee.

### C. Modification of the law relating to the Assembly

28. On 13 February 2014, the Assembly made an amendment to the Assembly Law reforming the rules of disciplinary procedure for MPs (Law No. XIV of 2014, which added a new Article 51/A to the Law relating to the Assembly). This modification now allows any MP punished with a fine to submit an appeal to a committee. It came into force on March 4, 2014.

29. New Article 51/A provides, in its relevant parts:

**Article 51/A**

"1. On the proposal of any of its members, the Assembly committee *[Házbizottság2 ]* may, if this does not entail any other legal consequence, order the reduction of the emoluments of a Member within fifteen days from the adoption by the latter of a behavior referred to in articles 48 § 3, 49 § 4 or 50 § 1 of this law. The decision specifies the reasons for the measure and, if the behavior in question violated the rules of the debate, the vote or (...), the provisions of the regulations violated.

(...)

3. Any Member affected by a decision taken on the basis of paragraph 1 of this article shall be immediately informed by the President.

(...)

4. Any Member who contests a decision taken on the basis of paragraph 1 of this article may request its annulment, within five days from the notification referred to in paragraph 3 of this article, to the Assembly committee on immunities, conflicts of interest, discipline and verification of credentials.
If he does not make this request within the deadline, his emoluments are reduced according to the terms set out in the decision.

(...)

6. The committee on immunities, conflicts of interest, discipline and verification of powers shall decide, within fifteen days, on any request made in

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2. The Assembly committee consists of the president, the vice-presidents of the Assembly and the heads of parliamentary groups.

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under paragraph 4 of this article (...) It may hear the Member concerned in person if he so requests.

7. If the committee on immunities, conflicts of interest, discipline and verification of powers grants the request of the deputy, the latter's emoluments are not reduced and the procedure provided for in paragraph 1 is closed. of this article is pronounced.

8. If the committee on immunities, conflicts of interest, discipline and verification of credentials rejects the request of the deputy or does not rule within the period provided for in paragraph 6 of this article, the emoluments of the deputy are reduced according to the modalities set out in the decision taken on the basis of paragraph 1 of this article.

9. If the Committee on Immunities, Conflicts of Interest, Discipline and Verification of Credentials rejects the Member's request made under paragraph 4 of this article or does not rule within the time limit provided for in paragraph 6 of this article , the deputy may request the Assembly to annul the decision taken on the basis of paragraph 1 of this article.

(...)

11. The chairman of the committee on immunities, conflicts of interest, discipline and verification of credentials shall immediately notify the Member concerned and the Assembly committee of any decision taken on the basis of paragraph 8 of this article ( ...) or the expiration of the deadline.

12. Any request based on paragraph 9 of this article must be made within five working days from the date of the notification sent, under paragraph 11 of this article, by the chairman of the committee on immunities, conflicts of interest, discipline and verification of powers.

13. The Assembly rules, without debate, on any decision taken on the basis of paragraph 1 of this article and covered by a request based on paragraph 9 of this article. The amount of the fine cannot exceed:

a) one third of the MP's monthly emoluments if the reduction is justified by a behavior referred to in articles 48 § 3 or 49 § 4,

b) the MP's monthly emoluments if the reduction is justified by behavior referred to in Article 50 § 1 of this law. »

### D. The law relating to the Constitutional Court

30. Law No. CLI on the Constitutional Court (“the LCC”) entered into force on January 1 , 2012. It provides for the following types of constitutional appeals:

**Article 26**

"1. In accordance with Article 24 § 2 c) of the Basic Law, any natural or legal person harmed by the application, in a proceeding to which they are a party, of a legal provision contrary to the Basic Law may seize the Constitutional Court of an appeal:

a) if his rights enshrined in the Basic Law have been violated, and

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b) if the possibilities for legal recourse have already been exhausted or if no such possibility exists.

2. By way of derogation from paragraph 1 of this article, the Constitutional Court may also be entered exceptionally:

a) if, by the application or entry into force of a legal provision contrary to the Basic Law, the rights of the person making the referral are directly violated, in the absence of a court decision, and

b) if there is no procedure allowing for an appeal capable of remedying said violation or if the author of the referral has already exhausted the possibilities of recourse.

(...) »

**Article 27**

"In accordance with Article 24 § 2 d) of the Basic Law, any natural or legal person harmed by a court decision contrary to the Basic Law may submit an appeal to the Constitutional Court:

a) if the decision rendered on the merits or the decision to close the judicial proceedings violates his rights set out in the Basic Law, and

b) if the possibilities of legal recourse have already been exhausted by it or if it has no possibility of appeal. »

31. Article 30 § 4 of the LCC provides:

"The Constitutional Court can no longer be seized after the expiration of a period of one hundred and eighty days from the notification of the decision, of the violation of rights guaranteed by the Basic Law and, in the cases set out in Article 26 § 2 of this law, of the entry into force of the legal provision contrary to the Basic Law. »

## E. Judgment No. 3206/2013 (XI.18) AB rendered on November 4, 2013 by the constitutional Court

32. MP EN, a member of the opposition Jobbik party, filed a constitutional appeal on the basis of Article 26 § 2 of the LCC against certain provisions of the law relating to the Assembly. He argued that these unduly restricted the freedom of expression of deputies and did not provide recourse against the decisions of the Assembly. The Constitutional Court examined the constitutionality of Articles 50 § 1 and 52 § 2 a) of the law relating to the Assembly and ruled the remainder of the appeal inadmissible3 .

3. With regard to Article 50 § 1 of the law relating to the Assembly, the Constitutional Court ruled that the use of physical violence, the threat of physical violence or the call to use physical violence was within the scope of freedom of expression. According to her, such acts threatened the rights of others (in particular other MPs) and obstructed the exercise of fundamental rights, including the right to freedom of expression.

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33. Analyzing the constitutionality of article 52 § 2 a) of this same law[4]
the Constitutional Court considered that parliamentary freedom of expression formed an important element of freedom of expression, protected by Article IX § 1 of the Basic Law. She underlined the particularly important role of the Assembly, a decision-making body ruling on questions directly affecting the life of the nation, in the realization of this freedom. It considered that, with regard to the freedom of expression of MPs, a distinction must be made between freedom of expression itself and the means used to achieve it. According to her, the Assembly was justified in adopting provisions in its internal regulations intended to guarantee its dignity and proper functioning.

34. The Constitutional Court recalled that, under the terms of Article 5 § 7 of the Basic Law, the President exercised his police and disciplinary powers, as set out in the internal regulations, so as to ensure the proper functioning of the Assembly and to preserve its dignity. She deduced from this that the Basic Law represented the constitutional basis for respect for the rules within the Assembly, which inevitably implied a restriction of the rights of deputies, including that of freedom of expression. It also relied on the principle of parliamentary autonomy, protected by the Basic Law. According to her, the proper functioning of the Assembly and the preservation of its authority and dignity could therefore lead to constitutionally justified limitations on the right of deputies to freedom of expression.

35. The Constitutional Court observed that a reduction in the emoluments of deputies and their exclusion from parliamentary work were the heaviest disciplinary sanctions, but that they were not without precedent from a historical or international point of view. According to her, the rule set out in article 52 § 2 a) of the law relating to the Assembly could not be seen as a disproportionate restriction on the right to freedom of expression.

36. The Constitutional Court also examined the procedural aspect of Article 52 § 2 a) which, like the conduct punished in Article 48 § 3, targeted the most serious forms of “seriously offensive” expressions.
It found that the possibility of applying the heaviest disciplinary sanctions, even without a call to order or warning, was consistent with the Constitution when an expression of this nature (as opposed to an “indecent or offensive” expression referred to in the Article 48 § 1) was used or caused serious disturbances. She indicated that, in such cases, it could not be

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4. Under the terms of Article 52 § 2 a), a committee may propose the exclusion for the remainder of the meeting or the reduction of the emoluments of any Member who, during one of its meetings, uses an expression which would be seriously offensive for the dignity of the Assembly or for a third party or a group, in particular national, ethnic, racial or religious, or which would seriously disrupt the order in the debates.

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expected or even sometimes envisaged that a deputy would be warned in advance of the consequences incurred.

37. The Constitutional Court then examined the argument based on the absence, in the contested provisions of the law relating to the Assembly, of appeal against disciplinary decisions. It noted that Article XXVIII § 7 of the Basic Law had created a right of appeal against any decision of a judicial, administrative or other authority. However, it considered that, since the disciplinary decisions taken by the Assembly did not fall into any of these categories, the lack of recourse in the matter was not unconstitutional in itself. She added that, from a historical and comparative point of view, the exercise of disciplinary power against deputies fell within the autonomy of the Assembly. She concluded that the disciplinary power of the Assembly affected its internal functioning and therefore the behavior of the deputies in the exercise of their mandate. Therefore, according to her, no obligation to provide for an appeal against these decisions could be inferred from Article XXVIII § 7 of the Basic Law.

38. The President of the Constitutional Court, joined by two other judges5 , wrote a dissenting opinion. He considered that the right to freedom of expression of deputies took its origin not from freedom of expression, this being a fundamental right of citizens enforceable against the State, but from the right of deputies to freely exercise their mandate , guaranteed by the Basic Law. However, he judged that, since the internal regulations restricted the exercise of freedom of speech, it was reasonable to also invoke a violation of freedom of expression. He noted that the Basic Law formed the basis of the Assembly's power to take sanctions in the interest of its proper functioning. He nevertheless concluded that the right of the Assembly to establish its own internal regulations did not authorize it to disregard the right to freedom of expression at the same time. He considered that the classification of an expression as seriously offensive or offensive and a source of serious disturbance and the exclusion of a deputy could only be considered proportionate measures if the person concerned had first been called to order and warned of the legal consequences incurred. However, he noted that nothing of the sort had been planned, whether for comments made in committee (article 52 § 2 a)) or in plenary session (article 48 § 3).

5. The appeal was examined by fifteen judges. One of them wrote a concurring opinion and six others submitted a dissenting opinion.

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### F. Judgment No. 3207/2013 (XI.18) AB rendered on November 4, 2013 by the constitutional Court

39. The same MP, EN, filed a constitutional appeal against Articles 48 §§ 3 and 4 and 48 § 7 of the law relating to the Assembly. By a judgment delivered on November 4, 2013, the Constitutional Court rejected this appeal with regard to Article 48 § 36 and declared the remainder inadmissible.

40. In its analysis of Article 48 § 3, the Constitutional Court ruled that a deputy speaking in the Assembly expressed his views not as a “simple individual” but as a deputy, that is to say say a member of the country's supreme representative body. She considered that, in this capacity of representative, the limits of freedom of speech for a deputy were not the same as for an individual: on the one hand, parliamentary immunity widened these limits and, on the other, parliamentary disciplinary rules restricted them. She said some of the MPs' comments fell under parliamentary disciplinary rules precisely because of the extensive immunity they enjoyed in connection with their activities in the Assembly. It therefore considered it justified that the president had prerogatives to use in such cases so as to be able to prevent any abuse of the right to freedom of expression by deputies. Furthermore, according to her, the right to speak within the Assembly was not only a personal right of the deputy: it was also a fundamental attribute of parliamentary debate which had to be regulated with a view to 'proper functioning of the Assembly.

41. The Constitutional Court considered that the regulation of MPs' right to speak aimed to strike the right balance between respecting the rights of each MP and protecting the proper conduct of parliamentary work. It found that section 48 § 3 of the Assembly Act did not disproportionately restrict the freedom of expression provided for by the Constitution, because it only governed extreme cases falling within the disciplinary powers of the Assembly. According to her, this provision, combined with the previous paragraphs of this same article, duly respected the principle of progressiveness of the applicable sanctions (the more serious the disciplinary offense, the heavier the sanction).

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6. The text of article 48 § 3 of the law relating to the Assembly is reproduced in paragraph 26 above.

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# III. RELEVANT COUNCIL OF EUROPE TEXTS

## A. The Parliamentary Assembly of the Council of Europe

42. Article 28 of the Statute of the Council of Europe provides, in its relevant parties:

> “a) The Consultative (Parliamentary) Assembly adopts its internal regulations. It chooses its president from among its members, who remains in office until the following ordinary session.
>
> b) The president directs the work, but does not take part in the debates or the vote. (...) »

43. Article 22 of the Rules of Procedure of the Parliamentary Assembly (Resolution 1202 (1999) adopted on 4 November 1999 with subsequent amendments to the rules), devoted to discipline, provides:

> “22.1. The President calls to order any member of the Assembly who disrupts the session.
>
> 22.2. In the event of a repeat offense, the president calls him to order again with registration in the minutes of the debates.
>
> 22.3. In the event of another repeat offense, the president withdraws the person from speaking or may exclude him from the room for the rest of the day of the session.
>
> 22.4. In the most serious cases, the President may propose to the Assembly to pronounce censure which involves immediate exclusion from the room and a ban on appearing there for a period of two to five sitting days. The member against whom this disciplinary measure is requested has the right to speak for a maximum of two minutes before the Assembly decides.
>
> 22.5. Censorship is pronounced without debate.
>
> 22.6. Words which constitute an affront to human dignity, violate the right to respect for private life or are likely to harm the proper conduct of debates are prohibited. The president can have these words removed from the record of the debates. He may act in the same way with regard to the interventions of members who have not previously been given the floor. The minutes of the meeting mention this decision. »

44. The additional provisions of this same regulation relating to the debates of the Assembly (as amended) provide:

> “viii. Conduct of members of the Parliamentary Assembly during debates the Assembly (article 22 of the regulations)
>
> 1. In accordance with articles 20.1 and 22 of the regulations, the President of the Assembly maintains order and good parliamentary practices, and ensures that the debates take place in a civil and disciplined manner, in compliance with the rules and practices in force.
>
> 2. Members of the Parliamentary Assembly behave courteously, politely and respectfully towards each other, and towards the President of the Assembly or any other person presiding. They refrain from any action likely to disrupt the session. This provision applies *mutatis mutandis* to meetings of the Bureau and committees.

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3. With regard to discipline and compliance with the rules of conduct by members of the Assembly, paragraphs 17 to 21 of the Code of Conduct for Members of the Parliamentary Assembly apply. »

45. In Resolution 1965 (2013) on the discipline of members of the Parliamentary Assembly, the latter said:

"1. The Parliamentary Assembly reaffirms its attachment to the right to freedom of expression, which is the most important of parliamentary privileges and an essential prerequisite for the independence of representatives elected by the people. There are several ways to express one's point of view in the context of a political debate, such as displaying symbols or logos or wearing a specific outfit or item of clothing, which is protected by the right to privacy. freedom of expression. However, everyone who exercises freedom of expression also assumes duties and responsibilities, the extent of which depends on the situation and the means used. »

46. In paragraph 5 of the same resolution, the Parliamentary Assembly recalled that, under Article 28 of the Statute of the Council of Europe, it was entitled to establish its rules and manage its internal affairs and that it therefore had the authority to take disciplinary measures against its members who engaged in reprehensible conduct, and the power to impose sanctions in the event of an infringement of its regulations.

47. In its Resolution 1601 (2008) setting out procedural guidelines on the rights and duties of the opposition in a democratic parliament, the Parliamentary Assembly of the Council of Europe said:

"5. Granting the parliamentary opposition a status with rights contributes to the effectiveness of representative democracy and respect for political pluralism, and, in doing so, to the support and confidence of citizens in the proper functioning of the institutions. Establishing a fair legal and procedural framework and material conditions enabling the parliamentary minority to fulfill its functions is a condition for the proper functioning of representative democracy. Members of the opposition must be able to fully exercise their mandate at least under the same conditions as those of members of parliament who support the government; they must be able to participate in parliamentary activities actively and effectively, and enjoy the same rights. Equal treatment of members of parliament must be guaranteed in all their activities and prerogatives. »

### B. The European Commission for Democracy through Law (the Venice Commission)

48. In its report on the role of the opposition within a democratic parliament (study no. 497/2008)7 , the Venice Commission noted in particular:

"88. As a general rule, it is appropriate that the essential provisions which relate to the rights of the opposition and parliamentary minorities should preferably be regulated

7. Report adopted by the Venice Commission at its 84th plenary session (Venice, 15-16 October 2010).

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in a form that the majority cannot alter or modify arbitrarily, at least immediately.

(...)

147. The political opposition has a fundamental obligation to exercise its functions within the framework of the law, including respecting the Constitution, traditional civil and criminal laws, as well as the Rules of Procedure of Parliament. Opposition parties can advocate for changes to the law, but until these are adopted they are required to respect the law, like everyone else. Once its parliamentary immunity has been modified, the opposition can be held liable for any illicit act, like any other organization or person. Most parliaments also have internal disciplinary sanctions applicable to parliamentary groups and parliamentarians who do not respect the rules; they are relevant as long as they are legitimately justified and proportionate. (...)

(...)

149. The proper functioning of a parliamentary democracy presupposes the existence of a balance between the majority and the minority, which creates a form of reciprocal action conducive to effective, democratic and legitimate governance. In this area, nothing can be taken for granted and there are many countries, including in Europe, where the situation is different. (...)

(...)

153. In its 2009 Code of Good Conduct for Political Parties, the Venice Commission underlines (...) the fair balance that must be struck between the rights and responsibilities of opposition parties:

53. [...] The opposition function involves scrupulous controls, observations and verifications of the actions and actions of public authorities and officials. However, the principle of good governance suggests that opposition parties (as well as ruling parties) should refrain from any action that could erode democratic debate and which could therefore compromise citizens' trust in those responsible. politicians and parties. »

49. In its report on the extent and lifting of parliamentary immunities (study no. 714/2013)8 , the Venice Commission highlighted in particular:

“55. Irresponsibility should not be confused with the *internal disciplinary regimes* of parliament itself, of a different nature, and which the notion of parliamentary immunity does not usually cover. Most parliaments have regulations or codes of conduct under which an MP can be banned from speaking or subject to disciplinary sanctions for certain comments or behavior; the nature of these sanctions varies considerably, from a call to order or a reduction in speaking time to a reduction in remuneration, temporary exclusion, and sometimes even more serious sanctions of a criminal nature. (...)

(...)

8. Report adopted by the Venice Commission at its 98th plenary session (Venice, 21-22 March 2014).

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100. The Venice Commission observes that while parliamentarians are protected from external legal action for the opinions they express or the comments they make, they can still be subject to disciplinary sanctions from parliament itself. This is the case in most national parliaments, and it is legitimate as long as the sanctions are relevant and proportionate, and not misused by the parliamentary majority to restrict the rights and freedoms of their political adversaries. »

## IV. RELEVANT EUROPEAN UNION TEXTS

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

50. Article 11 §§ 2 and 3 of the Rules of Procedure of the European Parliament (8th legislature, September 2015) provides:

"2. The behavior of Members of Parliament is inspired by mutual respect, is based on the values and principles defined in the fundamental texts of the European Union, preserves the dignity of Parliament and must not compromise the smooth running of parliamentary work or peace. throughout the Parliament buildings.
Members of Parliament comply with Parliament's rules governing the handling of confidential information. Failure to comply with these elements and rules may lead to the application of measures in accordance with Articles 165, 166 and 167.

3. The application of this article in no way hinders the liveliness of parliamentary debates or the freedom of speech of deputies. It is based on full respect for the prerogatives of deputies, as defined in primary law and in the statute applicable to deputies. It is based on the principle of transparency and guarantees that any provision in this matter is brought to the attention of MPs, who are individually informed of their rights and obligations. »

51. Chapter 4, relating to measures for non-compliance with the rules of conduct applicable to Members, sets out the relevant disciplinary sanctions applicable to Members for their behavior within the European Parliament. Here are the relevant provisions:

**Article 165**
**Immediate measures**

“1. The President calls to order any Member who undermines the smooth running of the session or whose behavior is not compatible with the relevant provisions of Article 11.

2. In the event of a repeat offense, the president calls the deputy to order again, with entry in the minutes.

3. If the disturbance continues, or in the event of a further recurrence, the President may withdraw the floor of the Member concerned and exclude him from the room for the remainder of the day of the session. The president can also resort to this last measure immediately and without a second call to order in cases of exceptional gravity. The Secretary General shall immediately ensure the execution of such a disciplinary measure with the assistance of the bailiffs and, if necessary, Parliament security personnel.

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4. When there is an agitation which compromises the continuation of the debates, the president, to restore order, suspends the session for a fixed period or closes it. If the president cannot be heard, he leaves the presidential chair, which results in a suspension of the session. It is resumed upon summons from the president.

5. The powers defined in paragraphs 1 to 4 are attributed, *mutatis mutandis,* to the chairman of the meetings of the bodies, commissions and delegations, as defined in these regulations.

6. If necessary, taking into account the seriousness of the violation of the rules of conduct, the chairman of the session may submit a request to the president for the implementation of Article 166, at the latest before the next session period. or the next meeting of the body, commission or delegation concerned. »

**Article 166**
**Sanctions**

"1. In the event that a Member disrupts the session in an exceptionally serious manner or disrupts the work of Parliament in violation of the principles defined in Article 11, the President, after hearing the Member concerned, issues a reasoned decision pronouncing the appropriate sanction, a decision which he notifies to the person concerned and to the presidents of the bodies, commissions and delegations to which he belongs, before bringing it to the attention of the plenary session.

2. The assessment of observed behavior must take into consideration their one-off, recurring or permanent nature, as well as their degree of seriousness, on the basis of the guidelines annexed to this regulation.

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

a) a reprimand;

b) loss of right to subsistence allowance for a period of between two and ten days;

c) without prejudice to the exercise of the right to vote in plenary session, and subject in this case to strict compliance with the rules of conduct, a temporary suspension, for a period which may range from two to ten consecutive days during which the
Parliament or any of its bodies, committees or delegations meet, participation in all or part of the activities of the
Parliament;

(d) the presentation to the Conference of Presidents, in accordance with Article 21, of a proposal for the suspension or withdrawal of one or more mandates that the person concerned holds within Parliament. »

**Article 167**
**Internal remedies**

“The MP concerned may submit an internal appeal to the Bureau within two weeks of notification of the sanction imposed by the President, an appeal which suspends its application. The Office may, no later than four weeks after lodging the appeal, cancel the sanction adopted, confirm it or reduce its scope, without prejudice to the external rights of appeal available to the person concerned. In the absence of a decision from the Bureau within the time limit, the sanction is deemed null and void. »

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52. Annex XV (Guidelines on the interpretation of the rules of conduct applicable to Members) to the Rules of Procedure of the European Parliament provides, in its relevant parts:

> "1. It is appropriate to distinguish between behaviors of a visual nature, which can be tolerated, provided that they are not offensive and/or defamatory, that they maintain reasonable proportions and that they do not generate conflict, those leading to active disruption of any parliamentary activity. »

53. Seized of an appeal seeking in particular the annulment of the sanction of loss of his right to subsistence allowance for a period of ten days pronounced against a Member of the European Parliament, the Court of the Union European Union rejected this appeal on September 5, 2012, among other things for time-bar9 .

### B. The Charter of Fundamental Rights of the European Union

54. Article 41 § 1 of the Charter provides:

> “Everyone has the right to have their affairs dealt with impartially, fairly and within a reasonable time by the institutions and bodies of the Union. »

Article 41 § 2 provides:

> “This right includes in particular:
>
> – the right of every person to be heard before an individual measure which would adversely affect them is taken against them;
>
> (...) »

55. The Court of Justice of the European Union (CJEU) has said that the right to be heard guarantees everyone the opportunity to make their point of view known, in a useful and effective manner, during an administrative procedure. and before the adoption of any decision likely to adversely affect its interests (judgment of the CJEU of 22 November 2012 in *MM v Minister for Justice, Equality and Law Reform and others,* C-277/11, EU:C: 2012:744, point 87, references to case law omitted; see also the judgment of the CJEU of 3 July 2014 in *Kamino International Logistics BV and Datema Hellmann Worldwide Logistics BV v Staatssecretaris van Financiën,* C-129/13 and C-130 /13, EU:C:2014:2041, and the judgment of the CJEU of November 5, 2014 in *Sophie Mukarubega v Préfet de police et Préfet de la Seine-Saint-Denis,* C-166/13, EU:C:2014 :2336).

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9. Order of the General Court of 5 September 2012 in *Nigel Paul Farage v European Parliament and Jerzy Buzek,* T-564/11, EU:T:2012:403.

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## V. ELEMENTS OF COMPARATIVE LAW

56. The Court conducted a comparative law analysis of the disciplinary measures applicable to parliamentarians who have engaged in disruptive behavior in parliamentary precincts which are contained in the laws of forty-four of the forty-seven member states of the Council of Europe10 . The Member States studied all provide for measures of this nature in the internal regulations or instructions of parliament, and/or sometimes in an *ad hoc law.* In some, the constitution expressly empowers parliament to establish its own internal regulations and ensure compliance with them. Thus, in Germany, the internal regulations of the *Bundestag,* in article 36, allow the president of the Bundestag to call to order any member who disrupts the work or undermines the dignity of the *Bundestag.* Articles 37 and 38 of the same regulation set the sanctions to be applied in the event of “undermining the order or dignity of the *Bundestag* ”, minor or major. In the Netherlands, under the rules of procedure of the Chamber of Deputies, the President of the Chamber of Deputies can take measures against any MP who, in particular, “causes a disturbance” (Articles 58 § 2 and 59).

57. The nature and severity of disciplinary measures applicable to parliamentarians vary greatly from one State to another. These measures can be grouped into the following categories:

a) call to order and/or warning: this is the most common measure, used by thirty-three Member States (Albania, Germany, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Cyprus, Croatia, Denmark, Spain, the former Yugoslav Republic of Macedonia, Finland, France, Georgia, Greece, Hungary, Italy, Latvia, Liechtenstein, Republic of Moldova, Montenegro, Norway, Netherlands, Poland, Czech Republic, Romania, Russia, Serbia, Slovenia, Turkey and Ukraine);

b) the refusal or withdrawal of the right to speak, which is found in twenty-six Member States (Germany, Armenia, Austria, Belgium, Bosnia-Herzegovina, Croatia, Denmark, Spain, Former Yugoslav Republic of Macedonia, Finland, Georgia, Greece, Hungary, Iceland, Latvia, Liechtenstein, Luxembourg, Republic of Moldova, Norway, Bas, Poland (lower house), Portugal, United Kingdom, Russia, Serbia and Sweden) ;

c) the heaviest sanction in the majority of Member States studied (twenty-eight) is temporary exclusion, which can range from exclusion from the remainder of the meeting or session (Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Georgia, Greece, Hungary, Montenegro, Norway, Poland, Czech Republic,

10. The study does not include Andorra, Monaco and San Marino.

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Romania, Serbia, Slovenia and Switzerland) up to the exclusion of a certain number of sitting days or sessions (Albania, Germany, Armenia, Azerbaijan, Belgium, Bulgaria, Denmark, Finland, France, Italy, Latvia, Luxembourg , Republic of Moldova and Turkey). The exclusion of a parliamentarian necessarily makes it impossible for him to speak during the debates.

58. Other types of disciplinary measures include an apology (Czech Republic and Slovakia), designation of a parliamentarian for disobedience (Ireland, Malta and the United Kingdom) or reprimand (e.g. Estonia, Italy and Turkey).

59. Regarding financial sanctions applicable to parliamentarians for disruptive behavior, eighteen Member States out of the forty-four studied provide different types in their laws (Albania, Germany, Spain (Congress of Deputies), France, Georgia, Greece , Hungary, Latvia, Lithuania, Luxembourg, Republic of Moldova, Montenegro, Czech Republic, Romania (Chamber of Deputies), Poland, United Kingdom, Serbia and Slovakia)11. In Germany *(Bundestag),* Georgia, Hungary and Slovakia, the financial penalty constitutes a sanction in itself. In the other fourteen of these eighteen states, the imposition of certain disciplinary sanctions is accompanied, in addition, by a reduction in the parliamentarian's emoluments for a certain period.
No disciplinary sanctions appear to exist in the twenty-six other Member States studied.

60. As regards the authority empowered to impose disciplinary sanctions in the Member States studied, it appears that the maintenance of discipline and order within each parliament is primarily the responsibility of its President. In some Member States, disciplinary powers are shared between the president and the parliament or another body thereof, for example the office or a competent committee.

61. As for the avenues of appeal available to parliamentarians to challenge the disciplinary measures to which they would be subject for disruptive behavior in parliamentary precincts, twenty-four Member States apparently do not provide for any (Armenia, Austria, Azerbaijan, Bosnia- Herzegovina, Estonia, the former Yugoslav Republic of Macedonia, Finland, France, Greece, Ireland, Iceland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, United Kingdom, Russia, Serbia, Sweden and Turkey). In fourteen of the Member States studied (Germany, Belgium (Senate), Bulgaria, Croatia, Spain, Georgia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Switzerland and Ukraine), any parliamentarian subject to disciplinary measures for disruptive behavior in the parliamentary enclosure

11. The study does not deal with financial sanctions applicable to parliamentarians for absence during parliamentary work.

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in principle benefits from a remedy allowing him to oppose it.
In most of the above Member States, the remedy consists of some form of internal challenge procedure. In six Member States (Germany, Spain, Lithuania, Czech Republic, Slovakia and Ukraine), a judicial appeal (referral to the Constitutional Court) is in principle available, alongside or in the alternative to internal appeal, against any disciplinary measure imposed on a parliamentarian who allegedly behaved badly in the parliamentary enclosure. In a number of Member States, parliamentarians enjoy certain procedural guarantees, notably the possibility of explaining themselves, especially before the imposition of disciplinary measures but sometimes also afterwards.

## PLACE

### I. ON THE JOINING OF THE REQUESTS

62. The two applications being similar in fact and in law, the Court decides to join them, as permitted by article 42 § 1 of its regulations.

### II. ON THE ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

63. The applicants see in the decisions to impose fines on them for their behavior in session at the Assembly a violation of their right to freedom of expression guaranteed by Article 10 of the Convention, which reads as follows:

> “1. Everyone has the right to freedom of expression. This right includes freedom of opinion and the freedom to receive or communicate information or ideas without interference from public authorities and regardless of borders. This article does not prevent States from subjecting radio, cinema or television undertakings to an authorization regime.
>
> 2. The exercise of these freedoms involving duties and responsibilities may be subject to certain formalities, conditions, restrictions or sanctions provided for by law, which constitute measures necessary, in a democratic society, for national security, territorial integrity or public safety, the defense of order and the prevention of crime, the protection of health or morals, the protection of the reputation or rights of others, to prevent disclosure confidential information or to guarantee the authority and impartiality of the judiciary. »

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## A. Preliminary objection raised by the Government

64. The Government submits that the applicants have not exhausted domestic remedies, contrary to what is required by Article 35 § 1 of the Convention, with regard to their complaint under Article 10. They would have could, according to him, challenge the relevant provisions of the law relating to the Assembly itself by means of a constitutional appeal.

### *1. Chamber judgments*

65. The chamber noted in both of its judgments that the Constitutional Court had already rejected a constitutional appeal which related to a similar issue, namely the "seriously offensive expression" referred to in Article 48 § 3 of the Law on the Assembly (paragraphs 32-41 above). She noted that the high court had found restrictions of this nature to be compatible in themselves with the Basic Law. It concluded that the applicants could not be expected to file a constitutional appeal which would have been futile. The chamber therefore rejected the exception formulated by the Government.

### *2. Theses of the parties*

#### a) The Government

66. Before the Grand Chamber, the Government argued that the applicants had failed to exhaust domestic remedies, on the grounds that they had not exercised the constitutional remedy provided for in Article 26 § 2 of the law relating to the Constitutional Court ("the LCC").

67. He maintains that, at the same time as the Constitutional Court, the first democratically elected Assembly created a constitutional remedy, namely a legal remedy allowing any violation of constitutional rights to be redressed. During the first years of its existence, the Constitutional Court confirmed that the constitutional appeal was indeed defined in this way. It would have stuck to the same principles after the entry into force of the Basic Law and the new LCC. In its decision no. 3367/2012 (XII.15), it confirmed that, under Article 24 § 2 of the Basic Law, the primary objective of a constitutional appeal was to protect the subjective rights of each person and to repair the harm caused by legal provisions contrary to the Basic Law. On several occasions, it was submitted to it with complaints of violations of individual rights caused by certain resolutions of the Assembly (for example in decision no. 65/1992 (XII.17), where a deputy requested it to annul the lifting of his immunity). The Government also relies on judgments Nos. 3206/2013 and 3207/2013 handed down by the Constitutional Court on November 4, 2013.

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68. The Government maintains that a constitutional appeal based on Article 26 § 2 of the LCC would have been deemed admissible for examination on the merits since, according to it, all the procedural and material conditions set out in the LCC were satisfied. He said in particular that the Constitutional Court had not yet examined Article 49 § 4 of the law relating to the Assembly which had been applied in the applicants' case.

69. Referring in particular to judgments nos. 3206/2013 and 3207/2013 delivered by the Constitutional Court on 4 November 2013 (paragraphs 32-41 above), the Government considers that a constitutional appeal based on Article 26 § 2 of the LCC constituted an effective legal remedy. He adds that in principle, a decision of the Constitutional Court declaring a legal provision contrary to the Basic Law invalidated it from the date of promulgation of the decision (article 45 § 1 of the LCC). However, in certain cases referred to in Article 45 § 4 of the LCC, the Constitutional Court could declare the disputed legislation unconstitutional *ex tunc,* in which case the restoration of the *status quo ante* would be required. The high court would have availed itself of this option in its decision no. 33/2012 of July 16, 2012, where it would have judged the provisions on the mandatory retirement age for magistrates to be unconstitutional and would have invalidated them with retroactive effect. This decision would have opened a legal avenue and, subsequently, three magistrates affected by this unconstitutional legislation would have relied on it and obtained their reinstatement.

70. The Government maintains that a decision declaring a legal provision contrary to the Basic Law may also have other individual consequences. He explains that, if the LCC does not contain any express provision on the individual consequences of a constitutional appeal filed on the basis of its article 26 § 2, the Constitutional Court would in practice offer means of redress adapted to the characteristics of the author of the appeal. It is based on four examples taken from the practice of the high court: Resolution No. 32/1990 (XII.22) AB, Resolution No. 22/1991 (IV.26) AB, Resolution No. 34/1991 (VI .15) AB) and, in particular, Resolution No. 57/1991 (XI.8) AB, by which the Constitutional Court ordered the re-registration of MAJ in the birth register as the father of a child. This last resolution would have said that, in each individual case, the Constitutional Court must determine the method of reparation for the damage even in the absence of a legal provision establishing the precise consequences in law. The Government concludes that, in the present case, if the applicants had lodged a constitutional appeal and been successful, they could have obtained the cancellation of the fines which had been imposed on them or requested such cancellation.

**b) The applicants**

71. The applicants maintain that the new LCC, which entered into force on January 1, 2012 , created new procedures before the Court

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constitutional. According to them, they could not therefore have relied on the previous case law of this court in this case. The new LCC would have notably established three types of constitutional appeals. The constitutional appeal procedures governed by articles 26 § 1 and 27 of the LCC would not have been applicable in their case, since they could only be directed respectively against a legal provision applied before the courts or against a court decision definitive. The only type of constitutional remedy possibly relevant in their situation would have been that provided for by Article 26 § 2 of the LCC.

72. The applicants state that, in its two judgments nos. 3206/2013 and 3207/2013 of November 4, 2013, the Constitutional Court examined a constitutional appeal against the law relating to the Assembly on the basis of Article 26 § 2 of the LCC. They add that these were the very first cases where the high court had to deal with complaints of unconstitutionality of parliamentary disciplinary rules and that it judged the law relating to the Assembly to be in conformity with the Basic Law. They conclude that the constitutional remedy provided for by article 26 § 2 of the LCC has already been tested in practice and that it has not even offered a theoretical legal remedy making it possible to remedy a violation of the right to liberty of expression.

73. The applicants maintain that the constitutional appeal based on Article 26 § 2 did not meet the requirements of effectiveness, for several reasons. They mention in particular the imprecision of the criterion set out in article 29 of the LCC, which limits referral to the Constitutional Court only to appeals raising “questions of constitutional law of fundamental importance”.

74. The applicants also maintain that the constitutional remedy provided for by Article 26 § 2 of the LCC was ineffective, in particular because of its inadequacies from a compensatory point of view. Relying on the decision *in Szott-Medyÿska and others v. Poland* (no. 47414/99, October 9, 2003), which concerned the effectiveness of Polish constitutional appeals, they argue that, if successful, the appeal provided for in Article 26 § 2 would not have made it possible to annul the appeals. fines or even to open proceedings for this purpose. They believe that, even if they had been successful, this would have had no effect other than the repeal of the relevant provisions of the Assembly Act. They add that, contrary to the codes of criminal, civil and administrative procedure, neither the law relating to the Assembly nor the internal regulations of the Assembly contained the slightest provision on the consequences of a finding of unconstitutionality in terms of sanctions. parliamentary disciplinary measures, and that there is no case law to this effect either. Declaring that it would have been possible to lodge an appeal in order to have the disciplinary sanctions imposed on them annulled is therefore, according to the applicants, pure conjecture.

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*3. Assessment of the Court*

75. The Government having already raised the same preliminary objection before the Chamber in its observations on the admissibility of the applications (paragraphs 32 and 30 of the Chamber judgments delivered on 16 September 2014 in the Karácsony and Others v. Hungary cases, no . 42461/13 , and *Szél and Others v. Hungary,* no. 44357/13, respectively), the Grand Chamber has jurisdiction to hear the matter, in accordance with Articles 54 and 55 of the Rules (see, in particular, *Gäfgen v. Germany* [GC], no. 22978/05 , § 141, ECHR 2010, with other references).

76. The Court firstly recalls that under the terms of Article 35 § 1 of the Convention, it may only be seized after all domestic remedies have been exhausted. Any applicant must have given the domestic courts the opportunity that this provision is intended to provide in principle to the Contracting States, namely to avoid or remedy the violations alleged against them. This rule is based on the assumption that the domestic order provides an effective remedy for the alleged violation. The provisions of Article 35 § 1, however, only prescribe the exhaustion of remedies both relating to the violations in question and capable of remedying them. They must exist with a sufficient degree of certainty not only in theory but also in practice, otherwise they lack the desired effectiveness and accessibility; it is for the respondent State to demonstrate that these requirements are met (see, among many others, *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010, *Vuÿkoviÿ and Others v. Serbia* (preliminary objection) [GC], os 17153/11 and 29 others, §§ 69-77, March 25, 2014, and *Parrillo v. Italy* [GC], o 46470/11, § 87, ECHR 2015).

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77. The Court notes that the constitutional appeal provided for in Article 26 § 2 of the LCC is an exceptional type of appeal applicable only to cases where the rights of the author of the appeal have been violated by the application of a provision unconstitutional and in the absence of a court decision or legal remedy allowing the alleged violation to be corrected. Such an appeal must also be lodged within one hundred and eighty days from the entry into force of the provision in question. The two other types of constitutional remedies were not open to the applicants, the standard remedy provided for in paragraph 1 of article 26 of the LCC being valid only in the event of application before the courts of an unconstitutional provision and that provided by article 27 of this same law valid only against final court decisions.

78. The chamber rejected the Government's objection, relying on judgments nos . 3206/2013 and 3207/2013 delivered on November 4, 2013 by the Constitutional Court, in which it had dismissed constitutional appeals lodged by a deputy , one of which concerned an "expression seriously offensive to authority or to order within

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the Assembly" referred to in Article 48 § 3 of the law relating to the Assembly *(Karácsony and others,* cited above, §§ 32-33, and *Szél and others,* cited above, §§ 30-31).

79. The Grand Chamber notes that the constitutional appeal filed by MP EN in June 2013 was contemporary with the events giving rise to the present case and that the constitutionality of Article 49 § 4 of the law relating to the Assembly, namely the legal basis of the sanctions imposed on the applicants, was not contested in this context. The question of whether, in these conditions, judgments Nos. 3206/2013 and 3207/2013 handed down by the Constitutional Court on November 4, 2013 could serve as precedents to be followed in ruling on a possible constitutional appeal by the applicants does not have to be be decided, because, in any event, the main question that arises is that of the consequences arising from the success of the proposed appeal – based on Article 26 § 2, that is to say that of its effectiveness. If such an appeal is successful, the Constitutional Court declares the provision in question unconstitutional, but has no power to invalidate the individual decision based on this provision.

80. The Government maintains that, although the LCC does not contain any particular provision on the consequences for its author of an appeal based on Article 26 § 2 which would be successful, the practice of the Constitutional Court nevertheless shows that it- This offers the author a means of repair. The Court is not convinced by this thesis. It notes that the decisions of the Constitutional Court invoked by the Government belong to old case law of the high court which, at the time, did not have the same powers, and that none of them relate to questions of parliamentary disciplinary procedure. Furthermore, the amended final provisions of the Basic Law repealed decisions of the Constitutional Court prior to the entry into force of the Basic Law (paragraph 25 above).

81. Furthermore, the present case must be distinguished from that relating to the mandatory retirement age for judges (decision of the Constitutional Court no. 33/2012 of July 16, 2012), invoked by the Government, because the law on judicial functions contains rules expressly allowing reinstatement to be sought in the event of unlawful dismissal. In the present case, on the other hand, the law relating to the Assembly does not provide for any procedure by which the applicants could have obtained (before the Assembly or not) the cancellation or review of the fines imposed on them. It should be noted in this regard that, in its judgments Nos. 3206/2013 and 3207/2013 of November 4, 2013, the Constitutional Court itself noted that the Basic Law excluded the possibility of an external review of the disciplinary decisions of the Assembly (paragraph 37 above). Therefore, even if successful, the above-mentioned appeal would in no way have enabled the applicants to request, in any form whatsoever, the rectification of the

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disciplinary decisions taken against them, Hungarian law being silent on the matter.

82. In view of these elements, the Court considers that the constitutional appeal based on Article 26 § 2 of the LCC could not be considered an effective remedy for the purposes of the application of Article 35 § 1 of the Convention, because, even if successful, it would not have made it possible to redress the alleged violation *(Vuÿkoviÿ and Others,* cited above, §§ 69-77, and, *mutatis mutandis, Magyar Keresztény Mennonita Egyház and Others v. Hungary,* nos. 70945/11 and 8 others, § 50, April 8, 2014).

83. Therefore, the Court rejects the exception of non-exhaustion of avenues of internal appeals formulated by the Government.

**B. Compliance with Article 10**

*1. Chamber judgments12*

84. The chamber unanimously concluded that there had been a violation of Article 10 of the Convention. It noted that the applicants had been fined for expressing their opinion and saw this as an interference with their right protected by Article 10. The parties differed on whether the interference was “intended by law", but the chamber considered it unnecessary to rule on this subject in view of its conclusion on the necessity of the interference. The chamber recognized that it pursued the legitimate aims of protecting the rights of others and defending order.

85. The chamber examined the proportionality of the interference based on four elements of the file: a) the nature of the comments made, b) their impact on the authority of the Assembly and on order within it, c ) the procedures followed, and d) the sanctions imposed. It ruled that the interference, which concerned the expression of political messages, did not respond to any pressing need, since it had not been demonstrated that the authority of the Assembly and the order within it had been seriously affected nor that, on balance, the interest in protecting them outweighed the opposition's right to freedom of expression. She added that the sanctions were imposed without consideration of any less severe measure, such as a warning or reprimand. She also said that the interference consisted of the application of sanctions having a dissuasive effect on the parliamentary opposition, following a process not surrounded by sufficient guarantees in terms of procedure and appearance of lack of partisanship. It concluded that the interference could not be considered “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

12. *Karácsony and others* and *Szél and others,* both cited above. The reasoning in both of these judgments is almost identical and, in the following summary, no distinction is made between them.

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*2. Theses of the parties*

**a) The applicants**

86. The applicants assert that the coming to power in 2010 of the FIDESZ-KDNP coalition marks the beginning of a clear trend of regression with regard to the situation and rights of the parliamentary opposition. With a two-thirds majority, this coalition would have worked to increasingly exclude the opposition from the decision-making process.
For example, she would have used the exceptional emergency procedure to pass important laws in an extremely short time and under conditions preventing any proper examination of the bill presented. Not only national and international NGOs, but also international organizations and entities such as the Venice Commission, the Commissioner for Human Rights of the Council of Europe, as well as various bodies of the European Union, have reportedly criticized the Hungarian government for having changed the rules of democracy and for having created a political climate hostile to any criticism.

87. The applicants add that the ruling coalition has tightened the rules of parliamentary disciplinary procedure. The modifications made in 2012 to the law relating to the Assembly would have notably excluded from this procedure the committee on immunities, a body of equal composition which would have constituted an element of independence in this framework. These modifications would also have taken away from this body the power to impose a fine on deputies and transferred it to the plenary formation of the Assembly, where the majority would have the ability to rule without debate. Other modifications would have increased the penalties or broadened the definition of punishable acts (for example article 49 § 4 of the law relating to the Assembly).

88. For the applicants, the freedom of expression of opposition deputies must be protected from not only external but also internal restrictions. A parliamentary majority could not restrict the rights guaranteed to opposition deputies by the Convention by hiding behind the notion of parliamentary sovereignty, because this would then be manifestly distorted. In their opinion, framing parliamentary disciplinary rules within the Convention would not deprive parliamentary sovereignty of its substance. The present case would concern the question of whether Article 10 gives opposition parliamentarians, systematically deprived of their normal means of expression within their institution, the right to express themselves on subjects of a major public importance through symbolic messages (by displaying signs) without significantly disrupting the functioning of the Assembly.

89. The applicants acknowledge that the interference was formally based on the law relating to the Assembly, but they emphasize that at the material time the relevant provisions had never been applied. The provisions governing the disciplinary procedure would have

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underwent significant modifications in 2012 and would have entered into force on January 1, 2013. The definition of the disciplinary offense given in article 49 § 4 of this law would have been broadened so as to encompass "behavior seriously offensive to the "authority of the Assembly or for order within it", a notion that the applicants consider vague. The latter disapprove of the chamber's conclusion that parliamentary practice would subsequently make it possible to sufficiently clarify the meaning of this notion.

90. The applicants admit that the interference in question pursued the aim of “guaranteeing the proper functioning of the Assembly” and was related to the protection of the rights of others.

91. In their view, this interference did not meet the requirement of necessity in a democratic society. Their comments would have called for the highest protection for several reasons and the concomitant margin of appreciation of the State would have been reduced accordingly. First, the case would concern freedom of expression, a right set out in the Convention which is of exceptional importance and closely linked to democracy, one of the essential values of the Convention. Secondly, it would relate to political speech, the most protected type of expression under the Convention. The applicants allegedly sought to express their opinions within the Assembly on highly controversial political issues and to communicate them to voters. Third, they would be politicians, therefore people for whom the free expression of political opinions would be of particular importance. Fourth, the political messages in question would have been expressed in the parliamentary chamber, the most important place for political debate in a representative democracy. Fifthly, these messages would have called for the highest protection, because the applicants belonged to the parliamentary opposition, whose effective association with the political process would be essential to the proper functioning of a modern democracy.

92. The applicants consider that the effective expression of their opinions is the important element. According to them, they had to use fairly specific means of communication so that their objections could be reported in the media and reach a wider audience. Certainly unusual, such means of communication (a sign and banners) would not have been insulting, damaging or dangerous nor likely to cause serious disturbances within the Assembly. The applicants had actively used ordinary parliamentary means of communication, but the ruling coalition had made them ineffective, which had forced them to resort to the measures in question. The use of symbolic means of expression would have been the only way for them to visibly demonstrate their disagreement with the government's action. The applicants emphasize that their protests related to questions

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eminently controversial policies and that their actions have not disturbed, or have only minimally disturbed, the work of the Assembly.
Their actions would not have deprived their colleagues of their right to speak or vote. It is clear from the minutes of the sessions in question that after a short time, the other deputies were able to continue to speak and vote.

93. Referring to the Chamber's judgments, the applicants emphasize that political discourse within Parliament calls for increased protection and that Parliament's autonomy does not in itself justify excluding the Court from exercising control over this matter. regard. In a democratic society, Parliament would not only be the place for the adoption of laws: it would also be the place for the expression and confrontation of ideas and policies within the framework of democratic competition between political parties. As for them, their actions would have aimed not only to convince the other deputies, but also and above all to express their opinions to the voters.

94. Citing the judgments of the Chamber and the report of the Venice Commission on the role of the opposition within a democratic parliament, the applicants also highlight the role of the parliamentary opposition.
In accordance with European standards, the proper functioning of Parliament would presuppose the effective protection of the opposition, otherwise this institution would not be able to fulfill its constitutional functions. In the absence of adequate formal guarantees or a sufficiently robust political culture, the parliamentary majority risks drifting towards tyranny and stifling the opposition. Further protecting the latter would be necessary to counterbalance the domination of the parliamentary majority.

95. The applicants maintain that a fine is a heavy sanction for political professionals whose only income is their parliamentary emoluments. Such a sanction, imposed despite the low impact of their actions on the work of the Assembly and without prior warning, would have been disproportionate and would have had a dissuasive effect. Furthermore, the application of more lenient sanctions would not have been considered.

96. The applicants conclude that there has been a violation of their right to freedom of political expression, the State having, according to them, disproportionately exceeded its margin of appreciation by imposing fines on them, deputies of the opposition, because they had used symbolic means of expression during parliamentary debates on questions of major public importance without significantly disrupting the functioning of the Assembly.

**b) The Government**

97. The Government points out at the outset that the Court examined for the first time in its Chamber judgments the question of disciplinary law

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parliamentary. He submits that the present case must be studied not in isolation, but with due regard to the guiding principles applied in this matter by other member States of the Council of Europe and by European organisations. Despite the differences that might exist as to their modalities, none of the disciplinary rules of the Member States would tolerate parliamentarians behaving in a way which constitutes a threat to the proper functioning of Parliament. The Government rejects the applicants' accusations regarding the functioning of Hungarian parliamentary democracy.

98. The Government emphasizes that the Court must not examine the disciplinary rules of the Member States and the European institutions by confining itself to the provisions of parliamentary law authorizing the imposition of a fine. He underlines that the disciplinary rules of the Member States, of the Parliamentary Assembly of the Council of Europe (PACE) and of the European Parliament allow, in addition to the fine, the application of sanctions which, unlike a fine imposed ex post facto , immediately and effectively prevent a parliamentarian from speaking. A withdrawal of the right to speak during a debate would certainly restrict a parliamentarian's right to freedom of expression, but certain heavier sanctions could, even for a longer period, prevent a parliamentarian from exercising the rights arising from its mandate. These heavier sanctions – namely exclusion from the session and/or suspension of the parliamentarian's rights – would be applied in the majority of Member States13 as well as within the PACE and the European Parliament. Importantly in his eyes, they would generally restrict the rights of the parliamentarian for all parliamentary activities for a certain period and they would not be limited to suspending his right to speak on the question subject to the disciplinary offense. In addition to the real and immediate effects of these sanctions, financial consequences could also be added. In the majority of Member States14, the temporary suspension of a parliamentarian's rights could, automatically or in application of an *ad hoc decision,* also result in the total or partial loss of his emoluments. In addition to these Member States, the direct imposition of a fine would be a sanction provided for by the disciplinary rules in Germany, Hungary, the Czech Republic and Slovakia.

99. For the Government, which cites the *Kart v. Turkey* ([GC], o n 8917/05, §§ 81-82, ECHR 2009), the Member States enjoy a wide margin of appreciation in the area of parliamentary law. This would arise from the sovereignty of the Member State, to which the functioning of Parliament would be closely linked. Member States should enjoy the widest possible margin of appreciation therefore

13. In its observations, the Government mentions thirty-one member States of the Council of Europe.
14. The Government lists thirteen member states of the Council of Europe.

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what is at stake is the proper functioning of their parliament and the organization of its work. Any interference in the disciplinary affairs of their parliament should therefore be limited to cases of absolute necessity.

100. The Government says that parliamentarians contribute to the exercise of the constitutional powers of Parliament (for example the adoption of laws and the control of the government) and that their rights as well as possible restrictions on them relate to these functions . A restriction on the freedom of speech of a parliamentarian would not call for the same assessment as that relating to freedom of expression as a fundamental right. While remaining within its margin of appreciation, a State would be able to say what type of behavior is considered unlawful and what sanctions are applicable. In this regard, the rules adopted by the various Member States, as well as by the PACE and the European Parliament, like the rules of procedure of the Assembly in Hungary which speak of "seriously offensive behavior", do not list restrictively acts falling under such notions.

101. The Government considers that the applicants' behavior contributed neither to debates on public affairs nor to the information of voters and that it clearly obstructed the smooth running of the legislative process. He adds that, the means of expression in question having been used while other deputies were exercising their right to vote and speak, the applicants had concretely prevented voters from obtaining information on the opinions of other deputies who spoke in accordance with the internal regulations. By their conduct, the applicants sought to express themselves by reducing other deputies to silence. Although they would have had the opportunity to express themselves without flouting the internal regulations, most of them would not have taken advantage of it. Instead, they would have preferred to draw attention to themselves with spectacular protests that would have interrupted the ongoing debates. They would have knowingly used these means of expression, as a result of which it would not be the content of their remarks, but rather their behavior contrary to the internal regulations which would have been reported in the media. This behavior would have gratuitously disrupted the functioning of the Assembly.

102. The Government is very concerned about the risk that similar behavior will be encouraged. A precedent granting extensive protection to demonstrative acts of protest could give rise to practices likely to harm the quality of parliamentary debates and the smooth running of parliamentary work. Furthermore, extreme behavior by MPs could undermine public confidence in Parliament. This institution would be a very important forum for political expression but it would not be the only one.

103. The Government recognizes that there are many ways of expressing oneself in parliament. However, the rules aimed at maintaining order

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in this framework would apply to all means of communication and those which are unusual or symbolic would therefore not call for greater protection than the interventions of parliamentarians. The Government emphasizes that the majority of member states do not tolerate non-verbal forms of political expression, and provides certain examples from the practice of the *Bundestag* and PACE. It also draws the attention of the Court to the report of the PACE Committee on Rules, Immunities and Institutional Affairs, of 22 October 2013, on the discipline of its members, subsequently adopted by it in its Resolution 1965 ( 2013).

104. The Government accepts that the interference in question pursued the two legitimate aims cited in the Chamber judgments, namely the protection of the rights of others, which includes the rights of other deputies, and the defense of order.

105. He maintains that this interference was proportionate. He considers in fact that the behavior of the applicants seriously disrupted the work of the Assembly by interrupting the vote and the interventions. MM. Karácsony and Szilágyi allegedly cut off the government representative in his speech, while the other applicants prevented the vote from continuing. The means used by the applicants, even mainly intended for demonstration purposes, would obviously have disrupted the normal functioning of the Assembly.

106. The Government dissociates itself from the chamber when it reports a partisan spirit on the part of the president during the procedure and the political orientation of the Assembly. In the majority of Member States and contrary to what would be provided for in Hungarian law, the President of Parliament would not simply propose the application of a sanction: he would also impose it sovereignly. It is he who would have full latitude to decide what behavior contravenes the authority of Parliament. In this regard, the Government cites in particular the disciplinary provisions of the *Bundestag's internal regulations,* which it believes are similar to the Hungarian regulations. He adds that, under the rules of the PACE, the exclusion of a deputy is decided by the president of the PACE or, in more serious cases, by the latter on a proposal from its president, and that this decision is not subject to appeal.

107. The Government challenges the Chamber's finding that the sanction was imposed without the slightest notice. Each time, the president of the session would have asked the deputies in question to stop behaving badly, but in vain. Order could only have been restored during the session after several calls to order. Ms. Szabó and Mr. Dorosz would not have been willing to remove the banner displayed in the middle of the room even once they had been warned by the president of the legal consequences of their actions, and it was only when the security guards arrived Assembly that they would have stopped behaving like this. MM. Karácsony and Szilágyi allegedly put up a sign at

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side of the podium, thus interrupting the government representative who had spoken. As these two applicants were not prepared to remove the sign although they had been asked to do so several times, the guards of the Assembly took care of it. Furthermore, the sanctions imposed on Ms Szél, Ms Osztolykán and Ms Lengyel were allegedly preceded by a call to order and a warning from the President. The sanctions in question would thus have been applied gradually. In this regard, the regulations of several Member States would allow the President of the Parliament or, at his request, the Parliament itself, to impose a heavy sanction without prior notice or application of a less severe measure for certain irregular behaviors. In some countries (Germany, Croatia, Georgia, Greece, Italy, Lithuania, Malta and the United Kingdom), serious disruptions in parliament could lead to the immediate expulsion of the troublemaker.

108. The Government adds that the deputies in question could have challenged the measures proposed by the President before several bodies such as the Plenary Assembly, the Assembly committee or the committee responsible for interpreting the internal regulations. Furthermore, under European parliamentary law, the imposition of a disciplinary sanction would not be preceded by a debate in plenary session. This would be justified, since a sanction repressing behavior contrary to the internal regulations would be applied for the purposes of a return to the proper functioning of Parliament and should be applied immediately.

109. The Government considers, contrary to the Chamber, that the sanctions in question had no deterrent effect. The fines imposed on the applicants, unlike an exclusion or suspension, would not have really prevented them from expressing themselves. Furthermore, they would not have prevented some of them from expressing themselves freely during subsequent sessions of the Assembly. Furthermore, with regard to some of the applicants, the latter would have refrained from imposing the heaviest fine provided for by law. In the majority of Member States, the financial sanctions with which a suspension can be attached would be much heavier than the fines imposed on the applicants. The Government gives examples taken from Hungarian parliamentary practice where non-verbal communications from deputies would have only slightly disrupted the work of the Assembly and would not have been sanctioned.

**c) Third parties**

*i. The government of the Czech Republic*

110. The Czech Government provided information on the system of parliamentary disciplinary procedure in force in its country. Concerning the Chamber of Deputies (the lower house of the Czech Parliament), this matter is governed by Law No. 90/1995 and its Regulations

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internal, which distinguishes procedural measures from disciplinary procedures15 .

111. The President of the Chamber of Deputies would have the right to apply one of the following procedural measures to any deputy who adopts “indecent behavior” in plenary session: a reprimand or, if the person concerned perseveres, exclusion from the room for the remainder of the sitting day (article 19 of the internal regulations). The MP in question could challenge this decision before the plenary chamber, which would rule without debate. These procedural measures would rarely be used in practice.

112. In addition, disciplinary proceedings could be opened against any MP who makes comments within the Chamber of Deputies which are liable to criminal prosecution (Article 13 § 1) or comments that are offensive to another MP (Article 13 § 2). It would be formally conducted by the Committee on Mandates and Immunities of the Chamber of Deputies. During this procedure, the said commission would be responsible for the necessary investigation of the file and the MP concerned would have the right to express himself and defend himself. It would have the power to order the MP to apologize or pay a fine of up to one month's emoluments. The MP could attack each of these measures before the Chamber of Deputies, which would then rule on the appeal by a vote following a debate.

113. Procedural or disciplinary measures taken by the Chamber of Deputies would escape the control of the administrative judge. Furthermore, in a recent decision, the Constitutional Court would have concluded that it had no jurisdiction to hear – within the framework of a constitutional appeal – a parliamentary disciplinary decision unless the Chamber of Deputies had clearly acted in excess of its power16 .

*ii. The United Kingdom Government*

114. The British Government states that the Speaker *of* the House of Commons would consider behavior similar to that adopted by the applicants to be seriously disruptive and inappropriate, and that any parliamentarian who persisted could be temporarily suspended from the House of Commons and lose his or her membership. emoluments during the duration of this measure. He maintains that a national parliament can, within its margin of appreciation, decide a) to limit political speeches within it to considered oral interventions and voting, under the control of its president; b) to prohibit the use of loudspeakers, as well as placards, posters and signs; c) to control accusations of deliberate dishonesty and other insulting remarks; and d) to ensure compliance with the rules of conduct by its

15. The internal regulations of the Czech Senate contain similar rules.
16. Decision of the Czech Constitutional Court of January 13, 2015, PL. US 17/14.

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members by means of proportionate but dissuasive financial sanctions or exclusion.

115. The British Government has provided information on the law and practice in force in the United Kingdom regarding the right to freedom of expression in Parliament, starting with Article 9 of the Bill of Rights . ) of 168917. This article would pursue two complementary goals. First, it would guarantee, during debates, the right to freedom of expression to parliamentarians, who would enjoy total immunity in civil and criminal matters for any comments made in the exercise of this right. Secondly, in order to avoid any abuse of this right, parliamentarians would be subject to the authority and discipline of Parliament. Freedom of expression within the latter would be regulated by Parliament itself, master of its own procedure. Removing the functioning of the legislative body from the control of the national judge would be an essential aspect of the principle of the separation of powers.

116. As regards Article 10, the British Government maintains that two complementary principles, both essential to the proper functioning of a representative democracy, apply. It specifies, firstly, that freedom of expression free from any fear of trial or external sanction is essential for parliamentarians to enable them to represent the people and debate issues of importance and that the absence Such freedom would have a powerful deterrent effect on debates within the legislative body. It would be necessary for the latter to be free to establish and apply its own procedure and to conduct high-level debates on any subject without fear of external influences.
Secondly, in return, there should be a system of internal discipline allowing Parliament itself to regulate the behavior of its members, so as to prevent abuse of their right to freedom of expression and to ensure the smooth running of his work. The Court would have recognized both of these principles in the *A. v. United Kingdom* (no. 35373/97, ECHR 2002-X) and *Kart,* cited above. Also the advisability of prohibiting the use of objects such as banners, placards and loudspeakers, as well as the assessment at national level of the seriousness of behavior of this type, would fall within the margin of extensive appreciation of the State.

117. The House of Commons would have a long tradition of free and reasonable oral debate under the control of its Speaker. Its members would be completely free to engage in symbolic political protests in public, for example by participating in a march, rally or demonstration outside Parliament. Political speeches of this type would enjoy high protection in the field of

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17. Article 9 of the Bill of Rights of 1689 states: “Freedom of speech, debate and proceedings within Parliament shall not be interfered with or impugned in any court or in any place outside Parliament. -even. »

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Article 10. However, within the House of Commons, MPs would all stick to reasoned oral debates when expressing themselves politically. Their freedom of expression would not be proscribed: each of them would also have the right to speak, to question, to intervene and to vote. But necessary and reasonable restrictions would be placed on when, where and how each parliamentarian is expected to exercise this freedom, so that debates within the House of Commons can take place on a fair basis. and fair.

These rules would be essential to ensure that all points of view are heard. Allowing the use of signs, banners, bullhorns and other such devices could lead to escalation among parliamentarians, which would ultimately harm freedom of expression itself. Proportionate but dissuasive sanctions would be necessary so that parliamentary debates are limited to thoughtful and fair debates, discussions and votes. Such a framework would promote high-level political debates and ensure that all parliamentarians benefit from the same treatment. It would be contrary to this principle to grant one of them, whether he is a member of the majority or not, the privilege of sowing trouble. The speaker of a parliament should treat all elected members of parliament with the same respect and the same rules of conduct should apply to each of them.

118. The British Government says it is not aware of any national parliament which would authorize disruptive behavior of the type adopted by the applicants. According to him, a national parliament which considers that its enclosure is not the appropriate place for symbolic political demonstrations would not go beyond its wide margin of appreciation. Ensuring the smooth running of parliamentary procedure would be an exceptionally strong public interest imperative.

119. The British Government also sees an important analogy with the procedure before the Court or that before a national court. Outside the courtroom, a litigant could well engage in symbolic, inappropriate and offensive acts of protest. In the courtroom, to allow a fair debate on the merits, the application of a body of rules governing the debates would be necessary.

*3. Assessment of the Court*

**a) Was there any interference?**

120. The Chamber found that the fines imposed on the applicants amounted to an interference with their right to freedom of expression guaranteed by Article 10 of the Convention. As no party disputes this, the Grand Chamber sees no reason to conclude otherwise. It will limit itself to adding that the applicants mainly expressed themselves through non-verbal means of communication, namely the display of a sign and

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banners. She will return later to the particular circumstances of the cause.

121. Such interference with the applicants' exercise of the right to freedom of expression must be "prescribed by law", pursue one or more of the legitimate aims listed in paragraph 2 of Article 10 and be " necessary in a democratic society.

**b) Was the interference prescribed by law?**

122. In the present case, the parties differ as to whether the interference with the applicants' freedom of expression was provided for by law. The latter consider the expression used in Article 49 § 4 of the law relating to the Assembly (“behavior seriously offensive to the authority of the Assembly or to order within it”) to be vague. They add that, having only entered into force in January 2013, this provision, in its modified version, had never yet been applied. The Government, for its part, maintains that the interference was based on the provisions of the law relating to the Assembly.

123. The Court recalls that the words “provided for by law” contained in paragraph 2 of Article 10 not only require that the measure in question have a legal basis in domestic law, but also refer to the quality of the law in question: thus , it must be accessible to litigants and predictable in its effects (see, among other precedents, *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V, and *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I). However, it is primarily for national authorities, in particular the courts, to interpret and apply domestic law (see, among other precedents, Waite *and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I, *Korbely v. Hungary* [GC], no . 9174/02, §§ 72-73, ECHR 2008, and *Centro Europa 7 Srl and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012).

124. One of the requirements that arises from the expression “prescribed by law” is foreseeability. Thus, we can only consider as a “law” within the meaning of Article 10 § 2 a norm stated with sufficient precision to allow the citizen to regulate his conduct; by surrounding himself with informed advice if necessary, he must be able to foresee, to a reasonable degree in the circumstances of the case, the consequences which may result from a specific act. Consequences need not be predictable with absolute certainty. Certainty, although desirable, is sometimes accompanied by excessive rigidity; However, the law must be able to adapt to changes in the situation. Many laws therefore use, by force of circumstances, more or less vague formulas whose interpretation and application depend on practice (see, for example, Lindon, Otchakovsky-Laurens and July v. *France* [ GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV, *Centro Europa 7 Srl and Di Stefano,* cited above, § 141, and *Delfi AS v. Estonia* [GC], no. 64569/09, § 121 , ECHR 2015).

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125. The level of precision of domestic legislation – which can by no means provide for all hypotheses – depends to a large extent on the content of the law in question, the area it is intended to cover and the number and status of those to whom it is addressed *(Centro Europa 7 Srl and Di Stefano,* § 142, and *Delfi AS,* § 122, both cited above). The Court has already said that professionals, accustomed to having to exercise great caution in the exercise of their profession, could be expected to take particular care in assessing the risks it entails (Lindon , *Otchakovsky-Laurens and July,* cited above, § 41, with other references).

126. The Court notes that amended Article 49 § 4 of the law relating to the Assembly governs the behavior of deputies within it. It appears that the applicants took part in the examination of this modification before the Assembly. The specificity of his mandate means that a parliamentarian is not supposed to ignore the disciplinary rules which aim to guarantee the proper functioning of his institution. It is inevitable that such rules will be somewhat vague (“seriously offensive behavior”) and open to interpretation in parliamentary practice. Rules similar to those in force in Hungary exist in many European states and they too are worded in similarly vague terms (see the examples given in paragraph 56 above). The Court considers that, as professional deputies, the applicants must have been able to foresee, to a reasonable degree, the consequences likely to result from their conduct, even though the provision at issue had never been applied before (Kudreviÿius and others *v . Lithuania* [GC], no. 37553/05, § 115, ECHR 2015, and, *mutatis mutandis,* under Article 7 of the Convention, *Huhtamäki v. Finland,* no. 54468/09, § 51, 6 March 2012 , with other references).

127. Therefore, the Court concludes that Article 49 § 4, in its amended version, of the law relating to the Assembly presented the desired level of precision and that the interference was thus “provided for by law”.

**c) Did the interference pursue a legitimate aim?**

128. The parties differ somewhat as to the purpose of the interference in question. The applicants admit that its purpose was to “guarantee the proper functioning of the Assembly” and was therefore linked to the protection of the rights of others. The Government, for its part, considers that the interference pursued two legitimate aims, namely the protection of the rights of others and the defense of order. According to him, the first of these goals included the rights of other MPs.

129. The Court considers that the interference pursued two legitimate aims within the meaning of Article 10 § 2 of the Convention, namely, firstly, the “defense of order”, since it aimed to prevent disruptions in the work of the Assembly to ensure its proper functioning

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and, secondly, the “protection of the rights of others”, since it was intended to protect the rights of other Members.

**d) Was the interference necessary in a democratic society?**

130. The applicants maintained that the interference in question did not meet the requirement of necessity in a democratic society, while the Government considered that it was proportionate to the legitimate aims pursued.

131. In the present case, the Court is called upon for the first time to examine the compliance with Article 10 of the Convention of internal disciplinary measures taken against MPs because of the way in which they had expressed themselves before Parliament. In its analysis, it must therefore take into account the principles governing freedom of expression in general and those relating to the exercise of freedom of expression within Parliament.

*i. General principles*

*ÿ) On freedom of expression*

132. The general principles on the basis of which the “necessity in a democratic society” of interference with freedom of expression is assessed are well established in the Court's case-law and are summarized as follows (see, among the precedents recent cases, *Animal Defenders International v. United Kingdom* [GC], no. 48876/08, § 100, ECHR 2013, and *Delfi AS,* cited above, § 131):

> “i. Freedom of expression constitutes one of the essential foundations of a democratic society, one of the essential conditions for its progress and the development of each individual. Subject to paragraph 2 of Article 10, it applies not only to “information” or “ideas” received with favor or considered inoffensive or indifferent, but also to those which offend, shock or worry: this is what pluralism requires. , tolerance and the spirit of openness without which there is no “democratic society”. As enshrined in Article 10, it is accompanied by exceptions which, however, call for a narrow interpretation, and the need to restrict it must be convincingly established (...)
>
> ii. The adjective “necessary”, within the meaning of Article 10 § 2, implies a “pressing social need”. The Contracting States enjoy a certain margin of appreciation in judging the existence of such a need, but this is coupled with European control relating both to the law and to the decisions which apply it, even when they come from an independent jurisdiction. The Court therefore has jurisdiction to make the final decision on whether a “restriction” is compatible with the freedom of expression protected by Article 10.
>
> iii. The Court's task, when exercising its control, is not to take the place of the competent domestic courts, but to verify from the angle of Article 10 the decisions which they have rendered by virtue of their power to appreciation. It does not follow that it must limit itself to determining whether the respondent State used this power in good faith, carefully and reasonably: it must consider the disputed interference in the light of the whole of the case to determine whether it was

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"proportionate to the legitimate aim pursued" and if the reasons invoked by the national authorities to justify it appear "relevant and sufficient" (...) In doing so, the Court must satisfy itself that the national authorities have applied rules consistent with the established principles in Article 10 and, moreover, based on an acceptable assessment of the relevant facts (...)"

*ÿ) On the procedural guarantees of freedom of expression*

133. In addition to the above considerations, procedural fairness and procedural guarantees are elements that, in certain circumstances, must also be taken into account when measuring the proportionality of an interference in the exercise of freedom of expression *(Association Ekin v. France,* no. 39288/98, § 61, ECHR 2001-VIII, *Steel and Morris v. United Kingdom,* no. 68416/01, § 95, ECHR 2005-II , *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 171 and 181, ECHR 2005-XIII, *Saygÿlÿ and Seyman v. Turkey,* no. 51041/99, §§ 24-25, June 27, 2006, *Koudechkina v. Turkey, no. Russia,* no. 29492/05, § 83, February 26, 2009, *Lombardi Vallauri v. Italy,* o 39128/05, § 46, October 20, 2009, *Sanoma* n *Uitgevers BV v. Netherlands*
[GC], no. 38224/03, § 100, September 14, 2010, *Cumhuriyet Vakfÿ and others v. Turkey,* no. 28255/07, § 59, October 8, 2013, and *Morice v. France* [GC], o n 29369/10, § 155, ECHR 2015).

134. In the *Association Ekin case,* cited above, which concerned the administrative ban on the distribution and sale of a work “from foreign origin”, the Court ruled in particular that bans of this type must be included in an effective legal framework with regard to judicial control against possible abuses *(ibidem,* § 58).
She noted that, in this case, the Council of State had exercised complete control over the reasons for the ban – whereas until then the administrative courts had only exercised limited control in the matter but that the duration excessive procedure had deprived it of practical effectiveness. It concluded that the control exercised had not offered sufficient guarantees against abuse *(ibidem,* § 61).

135. In the *Lombardi Vallauri case,* cited above, which concerned the rejection of the applicant's application for a teaching post in a religious university because of his opinions presented as heterodox, the Court held that, during the procedure conducted before the Faculty Council, the person concerned had not benefited from adequate procedural guarantees *(ibidem,* §§ 46-48). It also observed that, in the context of the appeal brought before them, the domestic administrative courts had limited their examination of the contested decision to the finding by the Faculty Council of the existence of the refusal of approval of this application by the congregation, and noted that the failure to communicate to the applicant the precise reasons for this refusal excluded any possibility of adversarial debate. The Court concluded that the control carried out had not been adequate *(ibidem,* §§ 51 and 54).

136. In the *Cumhuriyet Vakfÿ and Others* case , cited above, which concerned the provisional ban on the publication of a national newspaper,

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issued in the context of a civil trial in order to protect the personality rights of its author, the Court ruled that the applicants had not benefited from sufficient guarantees *(ibidem,* § 75). It took into account i) the exceptionally broad scope of the ban, ii) its excessive duration, iii) the lack of reasons for this measure by the domestic courts, and iv) the impossibility for the applicants to challenge it. before its adoption *(ibidem,* §§ 62-74).

*ÿ) On the freedom of expression of parliamentarians*

137. In its case law, the Court has constantly underlined the importance of the freedom of expression of parliamentarians, the vectors par excellence of political discourse. In the *Castells v. Spain* (April 23, 1992, Series A no. 236), which concerned the condemnation of a senator who had insulted the government in a press article, she said:

> "Precious for everyone, freedom of expression is particularly so for an elected representative of the people; he represents his constituents, raises their concerns and defends their interests. Therefore, interference in the freedom of expression of an opposition parliamentarian (...) requires the Court to carry out the strictest control. » (ibidem, § 42, and *Piermont v. France,* April 27, 1995, § 76 *in fine,* series A no. 314)

These principles have been confirmed in a number of cases relating to the freedom of expression of members of national or regional parliaments (see, among others, *Jerusalem v. Austria,* no. 26958/95, § 36, ECHR 2001-II, *Féret v. Belgium,* no. 15615/07, § 65, 16 July 2009, and *Otegi Mondragon v. Spain,* no. 2034/07, § 50, ECHR 2011), as well as in a series of cases concerning restrictions on the right of access to a court by virtue of parliamentary immunity *(A. v. United Kingdom,* cited above, § 79, *Cordova v. Italy (no. 1),* n o 40877/98, § 59, CEDH 2003-1, *Cordova c. Italy (no. 2),* nor 45649/99, § 60, CEDH 2003-I, *Zollmann v. Royaume-Uni* (déc.), no 62902/00, CEDH 2003-XII, *De Jorio c. Italy,* no 73936/01, § 52, 3 June 2004, *Patrono, Cascini et Stefanelli c. Italy,* no 10180/04, § 61, 20 April 2006, et *CGIL et Cofferati c. Italy,* no 46967/07, § 71, 24 February 2009).

*ÿ) On freedom of expression in the parliamentary enclosure*

138. There is no doubt that any remarks made within parliamentary precincts require a high degree of protection. In a democratic society, Parliament is a unique place for debate which is of fundamental importance. The rule of parliamentary immunity, in particular, attests to this high degree of protection. The Court has already recognized that the fact that States generally grant more or less extensive immunity to parliamentarians constitutes a long-standing practice which pursues the legitimate aims of protecting freedom of expression in Parliament and maintaining the separation legislative and judicial powers.
In its different forms, parliamentary immunity can in fact be used to

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protect a truly democratic political regime, which is the cornerstone of the Convention system, in particular insofar as it tends to protect the autonomy of the legislator and the parliamentary opposition (see, among others, Kart, cited above, § *81 ,* with other references, and *Syngelidis v. Greece,* no. 24895/07, § 42, February 11, 2010). The guarantees offered by parliamentary immunity in its two aspects (irresponsibility and inviolability) aim to ensure the independence of Parliament in the accomplishment of its mission. Inviolability contributes to allowing this full independence by preventing any possibility of criminal proceedings obeying political motives *(fumus persecutionis)* and thus protecting the opposition from pressure or abuse from the majority *(Kart,* cited above, § 90).

The protection granted to freedom of expression in Parliament aims to protect the interests of the latter in general and it should not be thought that it only benefits its members individually *(A. v. United Kingdom,* cited above, § 85 ).

139. That said, freedom of parliamentary debate may be of fundamental importance in a democratic society, but it is not absolute. A Contracting State may subject it to certain “restrictions” or “sanctions”, but it is up to the Court to ultimately rule on their compatibility with freedom of expression as enshrined in Article 10 (Castells, cited *above ,* § 46, and *Incal v. Turkey,* June 9, 1998, § 53, *Reports of Judgments and Decisions* 1998-IV). The exercise of freedom of expression in Parliament involves “duties and responsibilities”, as indicated in Article 10 § 2, a parliament can, without disregarding this provision, react when one of its members adopts disruptive behavior hindering the normal functioning of the legislative body.

Just as the universally recognized principle of parliamentary immunity gives increased but not absolute protection to parliamentary freedom of expression, certain restrictions on this freedom within the parliamentary precinct – based on the need to ensure the good order of parliamentary proceedings – must also be considered justified. It should be noted in this regard that the Venice Commission observed that most national parliaments could impose disciplinary sanctions on their members (paragraphs 48-49 above).

140. In these circumstances, the Court considers it important to distinguish, on the one hand, the content of the parliamentarians' interventions and, on the other hand, the manner in which they are expressed, as well as the time and place chosen. This is a distinction which was mentioned by the Hungarian Constitutional Court in its judgment (paragraph 33 above). The Court considers that it is the State – or even Parliament itself – which must in principle independently regulate the time, place and modalities of interventions in the parliamentary precinct, and that the control carried out by it in this matter must therefore be restricted. On the other hand, the State has very little latitude to regulate the content of comments made within the

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Parliament, although a certain amount of regulation may be considered necessary in order to curb means of expression such as direct or indirect calls for violence. In order to verify that freedom of expression remains preserved, the control carried out by the Court must in this case be more rigorous. In any case, by virtue of the universally recognized principle of parliamentary immunity, the State offers a higher level of protection to comments made in Parliament, such that the Court should only rarely be called upon to intervene .

141. The Court recalls that democracy represents a fundamental element of “European public order” and that the rights guaranteed by Article 3 of Protocol No. 1 are crucial for the establishment and maintenance of the foundations of a genuine democracy governed by the rule of law (see, among many others, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 98 and 103, ECHR 2006-IV). The Convention thus establishes a close link between the truly democratic character of a political regime and the effective functioning of Parliament. It is therefore indisputable that the effective functioning of Parliament is an essential value to a democratic society and that, therefore, the exercise of freedom of expression within it must sometimes give way to the legitimate interests of protecting the good order of parliamentary activities and the protection of the rights of other parliamentarians. Good order in parliamentary debate ultimately benefits the political and legislative process, all members of the legislature – by enabling them to participate on an equal footing in parliamentary procedure – and the society in general. The Hungarian Constitutional Court said that, in this matter, it was a question of finding the right balance between the rights of each MP and the efficiency of parliamentary work (paragraph 41 above).

The Court shares this approach, while adding that the rights of the parliamentary minority must also be taken into account. More generally, it recalls that pluralism and democracy must be based on dialogue and a spirit of compromise *(United Communist Party of Turkey and others v. Turkey,* 30 January 1998, § 45, *Reports* 1998-I, *Leyla ÿahin v . Turkey* [GC], no. 44774/98, § 108, ECHR 2005-XI, and *Tÿnase v. Moldova* [GC], no. 7/08, § 178, ECHR 2010).

*ÿ) On the autonomy of Parliament*

142. The Court notes that the rules governing the internal functioning of Parliament are an illustration of the well-established constitutional principle of parliamentary autonomy. This is protected in Hungary by Article 5 § 7 of the Basic Law, which provides in particular that the President of Parliament exercises police and disciplinary powers so as to ensure the proper functioning of the Assembly (paragraph 24 ci -above).
In accordance with this principle, commonly accepted among the member States of the Council of Europe, Parliament can, to the exclusion of other powers

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and within the limits of the constitutional framework, regulate its internal affairs, for example its organization, the composition of its organs and the maintenance of order during debates. Parliamentary autonomy obviously includes the power of Parliament to apply rules aimed at ensuring the proper conduct of its activities. This is what is sometimes called “the jurisdictional autonomy of Parliament”. According to the Venice Commission, the majority of parliaments have internal procedural rules which provide for disciplinary sanctions against their members (paragraphs 48-49 above).

143. In principle, the rules for the internal functioning of a national parliament, because they constitute an aspect of parliamentary autonomy, fall within the margin of appreciation of the Contracting State. National authorities, and particularly parliaments (or comparable bodies composed of elected representatives of the people), are in fact better placed than the international judge to assess the need to act in the face of a deputy whose behavior would disrupt the good order of the people. parliamentary debates and would risk harming the fundamental interest of ensuring the proper functioning of Parliament in a democracy *(Kart,* cited above, § 99, and, *mutatis mutandis, Kudreviÿius and Others,* cited above, §§ 97 and 156, with other references).

144. As for the extent of the margin of appreciation to be granted to the respondent State, it depends on a certain number of factors. It depends on the type of comments made and, in this regard, the Court recalls that Article 10 § 2 of the Convention leaves little room for restrictions on freedom of expression in the area of political discourse or questions of general interest (see, among others, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV, *Stoll v. Switzerland* [GC], no. 69698/01, § 106, ECHR 2007-V, and *Perinçek v. Switzerland* [GC], no. 27510/08, § 197, ECHR 2015). The protection of freedom of debate in Parliament is undoubtedly essential to any democratic society. The Court noted above that, on the one hand, the freedom must be protected to preserve the interests of Parliament overall, but on the other hand, it must not be used in a way that harms the good functioning of this institution.

145. The Court notes in this regard the position adopted by the vast majority of Contracting States, which consists of sanctioning comments or behavior harmful to the proper functioning of parliamentary procedure. It appears from the elements of comparative law available to it that most, if not all, of the Member States have put in place a system of sanctions against parliamentarians who, through inappropriate comments or behavior, violate parliamentary rules (paragraph 56 below). above). Similar arrangements exist within PACE and the European Parliament (see, respectively, paragraphs 42-44 and 50-52 above).
Comparative law analysis shows that parliaments have a whole range of disciplinary measures at their disposal to ensure the proper

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progress of their procedure, in particular the call to order or warning, as well as certain more severe measures such as withdrawal of the right to speak, exclusion from the session and financial sanctions. It can be deduced from this that, despite certain differences relating to the nature and extent of disciplinary measures, Member States generally recognize the need for rules intended to sanction inappropriate comments or behavior within parliamentary enclosures.

146. In view of these elements, the Court considers that there is a compelling public interest in ensuring that Parliament, while respecting the requirements of freedom of speech, can function properly and accomplish its mission in a democratic society. Consequently, when the sole purpose of the relevant disciplinary rules is to guarantee the proper functioning of Parliament, and thereby of the democratic process, the margin of appreciation granted in this matter must be extended. The Court observes that it has already recognized that Member States enjoy a wide margin of appreciation with regard to the supervision of parliamentary immunity, which falls under parliamentary law *(Kart,* cited above, § 82).

147. However, at this stage, the Court wishes to emphasize that, from the point of view of the criterion of necessity set out in Article 10 § 2 of the Convention, the latitude, inherent in the notion of parliamentary autonomy, enjoyed national authorities to sanction comments or behavior in Parliament that could be considered inappropriate, however important it may be, is not absolute. This latitude must be compatible with the notions of “truly democratic political regime” and “rule of law” to which the Preamble of the Convention refers. The Court recalls that pluralism, tolerance and a spirit of openness characterize a “democratic society” and that, although it is sometimes necessary to subordinate the interests of individuals to those of a group, democracy does not amount to constant supremacy. of the opinion of a majority, but requires a balance which ensures fair treatment of minority individuals and which avoids any abuse of a dominant position (see, among others, Young, James *and Webster v. United Kingdom,* August 13 1981, § 63, Series A no. 44, *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 90, ECHR 2004-I, and *Leyla ÿahin,* cited above, § 108). Therefore, parliamentary autonomy cannot be misused for the purpose of stifling the freedom of expression of parliamentarians, which is at the heart of political debate in a democracy. It would be incompatible with the aim and object of the Convention if, by establishing a particular regime of parliamentary autonomy, the Contracting States evade their responsibilities under the Convention with regard to the exercise of the freedom of expression in Parliament (see, *mutatis mutandis, Cordova (no. 1),* cited above, § 58). Likewise, the majority cannot rely on the rules governing the internal functioning of Parliament to abuse its dominant position with regard to the opposition. The Court considers it important to protect the parliamentary minority from any abuse by the ma

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with particular care any measure which appears to work solely or mainly to the disadvantage of the opposition (see, with regard to compatibility with Article 3 of Protocol No. 1 of restrictions on electoral rights, *Tÿnase,* cited above, § 179). She adds that PACE has stressed the need to treat all parliamentarians equally (paragraph 47 above).

*ii. Application in this case of the above-mentioned principles*

148. As noted above (paragraph 132), the adjective “necessary” used in Article 10 § 2 implies the existence of a pressing social need. Contracting States enjoy a margin of appreciation in judging the existence of such a need and the Court recognized that in the present case this margin was wide (paragraph 146 above). The Court has no difficulty in admitting that it was necessary in this case to react to the behavior adopted by the applicants within the precincts of the Assembly, a task which fell to the latter in the exercise of its autonomy. Furthermore, the Court must determine whether the interference in question was proportionate to the legitimate aims pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (paragraph 132 above), which it will do. use to do below.

149. In the present case, the applicants, during debates and votes, brought and displayed in the middle of the room a large sign and banners (see, respectively, paragraphs 12-13, 15-16 and 20- 21 above). Ms Lengyel, an applicant, also spoke using a loudspeaker during a vote (paragraphs 20-21 above). It appears that the applicants received a warning from the President (see, respectively, paragraphs 13, 16 and 21 above). The Court considers that displaying a sign or a banner in the precincts of a parliament is not a traditional way for a member of parliament to present his views on a subject debated in this place. By choosing to behave in this way, the applicants disrupted order within the Assembly. If they had conveyed the same message during their interventions *stricto sensu,* which they were free to do, the consequences of their actions could have been completely different. It is obvious that the use of a loudspeaker in the room also disturbs order.

150. The Court notes that, in his three proposals to impose fines on the applicants, subsequently approved by the Assembly, the President referred to their behavior, as recorded in the minutes, which had been described as seriously offensive to the public. parliamentary order (see, respectively, paragraphs 14, 17 and 22-23 above). As regards Ms Szél, Ms Lengyel and Ms Osztolykán, he observed that their behavior had been seriously offensive to the parliamentary order because they had displayed a banner and used a loudspeaker (paragraph 23 above). Having regard to the file, the Court is convinced that the applicants were sanctioned not for having expressed their point of view

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on the issues debated in the Assembly, but rather because of the time, place and methods they had chosen to do so. This conclusion is corroborated by the absence, in the parliamentary procedures in question, of examination of the actual content of the applicants' comments.

151. Furthermore, taking into account the circumstances of the case, the Court sees no reason to doubt that the contested disciplinary sanctions imposed on the applicants were based on reasons relevant to the legitimate aims pursued, namely the defense of order and protection of the rights of other deputies. However, it sees no need to rule on whether, having regard to the State's wide margin of appreciation, these grounds were also sufficient to demonstrate that the interference in question was “necessary”. It considers it more useful to focus its analysis on the question of whether the restriction on the applicants' freedom of expression was accompanied by effective and adequate guarantees against abuse. Indeed, as it indicated above (paragraphs 132 et seq.), the fairness of the procedure and procedural guarantees are elements which must sometimes also be taken into consideration when it comes to measuring the proportionality of an interference in the exercise of freedom of expression. Furthermore, the Court has previously said (paragraph 140 above) that its control over the manner of regulating the place, time and manner of interventions within Parliament must be restricted.

152. In this regard, it must be emphasized that the exercise by a parliament of its power to sanction in the event of disruptive behavior by one of its members must respect the principle of proportionality inherent in Article 10, including under its procedural aspect (paragraph 133 above). Respect for this principle requires in particular that the sanction imposed corresponds to the severity of the disciplinary offense. That said, the Court must also take due account of Parliament's autonomy, which must carry great weight in balancing the interests to be carried out under the criterion of proportionality. Therefore, and taking into account the wide margin of appreciation to be granted to the Contracting States in this matter (paragraph 146 above), it is appropriate to distinguish two scenarios.

153. The first scenario – probably quite theoretical – is that of a parliament which manifestly acts in excess of its power, arbitrarily, or even in bad faith, by imposing a sanction not provided for by its internal regulations or which is incontestably disproportionate to the offense alleged disciplinary action. This parliament could then certainly not rely on its own autonomy to justify the sanction it inflicts, over which the Court could therefore exercise complete control.

154. The second scenario – to be retained in this case – is that of a sanctioned parliamentarian to whom the parliamentary procedure does not offer the basic procedural guarantees enabling him to contest the disciplinary measure to which he is subject (see, *mutatis mutandis, Hoon v. the United Kingdom*

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*United* (dec.), no. 14832/11, November 13, 2014). This would raise a problem in terms of the procedural requirements of Article 10 (paragraph 133 above).

155. In this regard, the Government draws a distinction between immediate sanctions, such as withdrawal of the right to speak and exclusion from the session, which immediately prevent a parliamentarian from speaking, and *sanctions posteriori,* such as the fine imposed in this case. This distinction is found, for example, in the regulations of the European Parliament (paragraph 51 above). The Court considers that the procedural guarantees accompanying these different types of sanctions may also vary. Immediate sanctions (irrelevant in this case) are imposed in cases of serious disruption of parliamentary order and, from the point of view of procedural guarantees, they would call for a warning. However, we can also consider that, in extreme cases, no warning is necessary. The justification would then be that the parliamentarian's clearly inappropriate comments or behavior annihilate the protection of his freedom of expression or could be seen as an abuse of this right.

156. In the present case, only *ex post facto* disciplinary sanctions are at stake. The Court recalls that the rule of law, one of the fundamental principles of any democratic society, is a notion inherent in all the articles of the Convention. *(Golder v. United Kingdom,* 21 February 1975, § 34, Series A no. 18, *Amuur v. France,* 25 June 1996, § 50, *Reports* 1996-III, and *Iatridis v. Greece* [GC], no. 31107/96 , § 58, ECHR 1999-II). The rule of law implies in particular that domestic law must offer a certain protection against arbitrary attacks by public authorities on the rights guaranteed by the Convention (see, among others, Klass and others v. *Germany,* 6 September 1978, § 55, series A no. 28, and *Malone v. United Kingdom,* August 2, 1984, § 67, Series A no. 82). In matters of *ex post facto disciplinary sanctions,* the Court considers that the procedural guarantees offered for this purpose must provide, at a minimum, the right for the parliamentarian concerned to be heard within the framework of a parliamentary procedure prior to the imposition of the sanction. It notes that the right to be heard increasingly appears to constitute in democratic States an elementary procedural rule which is not limited to the judicial framework alone, as shown in particular by Article 41 § 2 a) of the Charter of Rights. fundamentals of the European Union (paragraphs 54-55 above).

157. The modalities for implementing the right to be heard must be adapted to the parliamentary context, bearing in mind that, as the Court has already indicated in paragraph 147 above, a balance must be struck to guarantee the minority parliamentary fair and adequate treatment and to prevent any abuse of a dominant position by the majority.
In carrying out his duties, the President of Parliament should act in a manner free from any personal prejudice or political bias. In

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Furthermore, if, taking into account the universally recognized principles of the autonomy of Parliament and the separation of powers, a parliamentarian subject to a disciplinary sanction is not supposed to enjoy a right of appeal outside the parliamentary framework to to oppose it, procedural guarantees are no less necessary in this context with particular force given the lapse of time between the behavior denounced and the imposition of the sanction itself.

158. Furthermore, the Court considers that any decision *a posteriori* imposing a disciplinary sanction must set out the essential reasons for it, so as to allow not only the parliamentarian concerned to understand its justification but also the public to exercise a certain right of scrutiny on this subject.

159. At the material time, national legislation did not provide a sanctioned MP with any means of being involved in the relevant procedure, and in particular of being heard. The procedure carried out in this case consisted of a written proposal from the President of Parliament to impose fines, then its adoption in plenary session, without debate.

Thus, it did not offer any procedural guarantees to the applicants. The decisions of 6 and 24 May 2013 (paragraphs 14 and 17 above) also did not contain any relevant reasons explaining why their actions were considered seriously offensive to the parliamentary order.

According to the Government, the applicants could have challenged the measures proposed by the President before the Plenary Assembly, the Assembly committee or the committee responsible for interpreting the internal regulations. However, the Court considers that none of these options would have allowed them to effectively challenge the President's proposal: they were limited to a general possibility of making a declaration before the Assembly or of seizing certain parliamentary bodies, without the slightest guarantee that their arguments were examined within the framework of the disciplinary procedure in question.

160. Note that an amendment to the law relating to the Assembly, which now allows any parliamentarian fined to lodge an appeal and present his arguments before a parliamentary committee, came into force on March 4, 2014. , and that the minimum procedural guarantees which were necessary in this case therefore appear to have been put in place (paragraphs 28-29 above). However, this modification has no impact on the applicants' situation in this case.

161. In view of the above, the Court considers that, in the circumstances of the case, the interference denounced in the exercise by the applicants of the right to freedom of expression was not proportionate to the legitimate aims pursued. in that it was not accompanied by adequate procedural guarantees.

162. Therefore, the Court concludes that the interference in the exercise by the applicants of the right to freedom of expression was not “necessary in a

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democratic society" and that there has therefore been a violation of Article 10 of the Convention on this ground.

## III. ON THE ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN COMBINATION WITH ARTICLE 10

163. Under Article 13 of the Convention taken in conjunction with Article 10, the applicants complain that domestic law did not provide them with a remedy to challenge the disciplinary measures taken against them. Article 13 of the Convention reads as follows:

> "Any person whose rights and freedoms recognized in the (...) Convention have been violated has the right to the granting of an effective remedy before a national authority, even if the violation was committed by persons acting in the exercise of their official functions. »

### A. The Chamber's judgments

164. The chamber noted that the autonomy and sovereignty of Parliament were important constitutional principles in a democratic State. It did not consider it necessary to say what would have been the appropriate remedy under Article 13, given that, contrary to what the Government maintained and in the light of the judgments rendered by the Constitutional Court (paragraphs 32-41 above), there was then no constitutional remedy available or capable of offering an effective legal remedy. It therefore concluded that there had been a violation of Article 13 of the Convention, as domestic law had not provided for a remedy by which the applicants could have asserted their complaint under Article 10.

### B. The parties' observations

#### *1. The applicants*

165. The applicants maintain that, their complaint of violation of Article 10 being "arguable", they should have benefited from an effective remedy under domestic law. In their eyes, a constitutional appeal could not be considered effective, since, even if successful, it would not have led to the cancellation of their fines. They add that no other effective remedy was available to them.

166. The applicants consider that the parliamentary procedures conducted in this case were manifestly contrary to Article 13 because, in their view, they were not capable of redressing the injustice caused, whether in theory or in practice. practical. Moreover, even the respondent State would have recognized the violation of Article 13 by modifying the relevant rules of

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disciplinary procedure subsequent to the events giving rise to the present case.

167. The applicants requested the Court to find a violation of Article 13.

*2. The Government*

168. The Government maintains that, in matters of effective remedies, the Court does not impose any particular requirements on Member States as to how to comply with the obligations set out in Article 13 and that they therefore enjoy procedural autonomy.

169. He argues that, given the principles of the separation of powers and the autonomy of Parliament, the possibilities for a parliament to open an adequate remedy are extremely limited and that it appears from the practice of many European States that , in disciplinary matters, the possibilities of appeal for parliamentarians are very limited. He specifies that, in this area, there is normally an internal appeal to Parliament. In his opinion, it is in line with the predominant European tradition that the Hungarian National Assembly, or one of its organs, decides sovereignly on these issues and that its decisions are not subject to external appeal.

170. For the Government, the chamber did not take due account of the particular circumstances of the case. The Assembly, an organ of the State enjoying the highest legitimacy, would find itself in a special situation and could not be put on the same footing as the other authorities. The decisions contested in this case having been taken in its most solemn setting – the plenary session – the appeals would necessarily have been limited and it would not be a matter of a gap in the rules or in practice, but of a characteristic arising from the way the Assembly operates.

**C. Third parties**

*1. The government of the Czech Republic*

171. The Czech Government refers to a recent decision of the Constitutional Court18, which clearly indicates that there is in principle no constitutional appeal against a disciplinary decision taken by a Chamber of Parliament against one of its members19. The Constitutional Court considered that it had to exercise its control over disciplinary decisions with restraint, taking into account in particular the general presumption of legality of the acts of state authorities. She would have added that respect for parliamentary autonomy

18. Decision of the Czech Constitutional Court of January 13, 2015, PL. US 17/14.
19. In this case, a deputy accused of an administrative offense had chosen to have the Chamber of Deputies rule on his case within the framework of a disciplinary procedure.

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represented a legitimate and proportionate aim justifying a restriction of the right of a Member to benefit from an effective remedy in the matter. She would have clarified that this judicial restraint was however not absolute and that she reserved the right to intervene if a chamber of Parliament were to commit an excess of power.

172. The Czech Government considers that when the Constitutional Court makes a carefully reasoned and proportionate exercise of its judicial restraint to refuse to take cognizance of a particular disciplinary measure imposed by a chamber of Parliament, there is no violation of Article 13. The Contracting Parties and their courts must enjoy a wide margin of appreciation in this matter.

*2. The United Kingdom Government*

173. The British government maintains that the principle of the separation of powers means that any parliament can regulate its internal affairs by allowing free debate while reserving the right to sanction those of its members who behave badly.

**D. Assessment of the Court**

174. Having regard to its finding of a violation of Article 10 of the Convention and the reasons justifying it, the Court concludes that there is no need to examine separately the complaint raised by the applicants on the ground of Article 13 of the Convention taken in conjunction with Article 10.

## IV. ON THE APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. Article 41 of the Convention provides:

> "If the Court declares that there has been a violation of the Convention or its Protocols, and if the domestic law of the High Contracting Party only imperfectly allows the consequences of this violation to be erased, the Court grants the party injured party, if applicable, just satisfaction. »

**A. Too bad**

176. Mr Karácsony claims 170 euros (EUR), Mr Szilágyi 600 EUR, Mr Dorosz 240 EUR, Ms Szabó 240 EUR, Ms Szél 430 EUR, Ms Osztolykán 510 EUR and Ms Lengyel 430 EUR for material damage. These amounts would correspond to the fines that they were obliged to pay as disciplinary sanctions.

177. Each of the applicants also requested EUR 20,000 for the non-pecuniary damage allegedly caused to them by the violation of their rights under Articles 10 and 13 of the Convention.

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178. The Government opposes these requests.

179. The Court recalls that Article 41 empowers it to grant the injured party, if necessary, the satisfaction which it considers appropriate *(O'Keeffe v. Ireland* [GC], no. 35810/09, § 199, ECHR 2014).

180. On the claim for material damage, the Court considers that the fines imposed on the applicants caused them pecuniary damage (paragraphs 14, 17 and 22 above). Taking into account the link which exists between the fines imposed during the domestic proceedings in question and the violation of Article 10 found by it, the Court holds that the applicants are entitled to reimbursement of the entire amounts respectively claimed by each of them. 'them.

181. As for the claim for moral damage, the Court considers, in view of the particular circumstances of the case, that the finding of a violation of Article 10 constitutes in itself just satisfaction for any moral damage which may have been suffered by the applicants.

**B. Fees and expenses**

182. The applicants jointly claim reimbursement of their costs and expenses incurred before the Court. They claim that these fees will only be charged if they win their case.

183. As regards the proceedings before the Chamber, the applicants jointly claim EUR 26,924 for one hundred and six hours of legal work at an hourly rate of EUR 200, plus 27% value added tax (VAT), broken down as follows: eight hours for consultations with clients, ten hours for studying the file and domestic law, fifteen hours for analyzing the Court's case law, fifteen hours for preparing applications and the rest for drafting observations.

184. As regards the proceedings before the Grand Chamber, the applicants jointly request EUR 33,528 for one hundred and thirty-two hours of legal work at the same hourly rate, plus VAT, broken down as follows: twenty hours for the study of the file and of the domestic legal regime, twenty and twenty-four hours, respectively, for the study of the jurisprudence of the Constitutional Court and the Court and, finally, eighty-eight hours for the drafting of observations. In addition, they claim EUR 1,223 for their travel and accommodation costs incurred by the hearings, as well as an additional twenty-seven hours of legal work at the same hourly rate, plus VAT, for preparation for the hearing and participation. to this one.

185. In total, the applicants request EUR 67,310 for two hundred and fifty-six hours of legal work and EUR 1,223 for their travel expenses.

186. The Government firstly maintained that the applicants had not incurred any legal costs. Under a prior contract, their costs

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representation in court would only be invoiced if the Court finds a violation of the Convention. Although not prohibited by the Court's case law, service contracts could risk giving rise to abuse, since the parties could indicate excessively high amounts for their costs and expenses without taking into account the economic conditions in the country. The applicants have not produced before the Court any document which would prove that they would actually have to pay their legal costs if they were to win their case.

187. The Government further considers the amounts requested by the applicants for costs to be excessive compared to similar cases brought before the Grand Chamber, namely *Jaloud v. Netherlands* (no. 47708/08, ECHR 2014), where lawyers allegedly charged EUR 110 per hour, and *Bouyid v. Belgium* (no. 23380/09, ECHR 2015), where they allegedly charged EUR 85 and EUR 125 per hour, respectively. The hourly rate claimed by the applicants' lawyer – 200 EUR – would be twelve times higher than that of legal aid in Hungary in 2015 and disproportionate to the average income in this country. The Government also disputes the number of hours of legal work. The total number of hours claimed (two hundred and fifty-six) would correspond to a month and a half of work, which would not be justified by the complexity of the case. The number of working hours for certain tasks would be excessive. The applicants' lawyer would request in particular fifteen hours for the study of the Court's case-law in the Chamber procedure and an additional twenty-four hours for the same task in the Grand Chamber procedure. Likewise, he would require ten hours of work for the study of the file and the relevant Hungarian law before the chamber and another forty hours for the same work before the Grand Chamber.

188. The Government finally maintains that the amount claimed for participation in the hearing (EUR 1,223) is only partially supported by invoices.

189. The Court recalls its established case law according to which an applicant is only entitled to reimbursement of his costs and expenses to the extent that their reality, their necessity and the reasonableness of their rate are established (see, for example, *X and others v. Austria* [GC], o 19010/07, n § 163, ECHR 2013). According to Article 60 § 2 of the Rules, any request presented under Article 41 must be quantified, broken down by section and accompanied by the necessary supporting documents, failing which the Court may reject it, in whole or in part (A , *B and C v. Ireland* [GC], no. 25579/05, § 281, ECHR 2010).

190. The Court notes that the applicants did not produce a copy of their contract with their lawyer, which would have been desirable. They nevertheless provided documents listing the tasks performed by the lawyer and the number of hours worked, as well as information on the rates applied. The Court judges, however, that the amount claimed appears excessive, taking into account

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relevant economic conditions and examples from its case law. She also considers the number of hours indicated excessive, noting that the same legal work is recorded twice or that the number of hours devoted to certain tasks is inflated.

191. In view of the above and the elements in its possession, the Court considers it reasonable to award the applicants EUR 12,000, jointly, for their costs and expenses incurred before it, plus any amount that may be owed by them as compensation. tax on this amount.

**C. Default interest**

192. The Court considers it appropriate to model the rate of default interest on the interest rate of the marginal lending facility of the European Central Bank increased by three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the requests;

2. *Rejects* the preliminary objection presented by the Government;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *Holds* that there is no need to examine separately the complaint raised under Article 13 of the Convention taken in conjunction with Article 10;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any moral damage that may have been suffered by the applicants;

6. *Holds* that the respondent State must pay to the applicants, within three months, the following sums, to be converted into the currency of the respondent State at the rate applicable on the date of settlement: 170 EUR (one hundred and seventy euros) to Mr Karácsony, 600 EUR (six hundred euros) to Mr Szilágyi, 240 EUR (two hundred and forty euros) to Mr Dorosz, 240 EUR (two hundred and forty euros) to Ms Szabó, 430 EUR (four hundred and thirty euros ) to Ms Szél, 510 EUR (five hundred and ten euros) to Ms Osztolykán and 430 EUR (four hundred and thirty euros) to Ms Lengyel, plus any amount that may be due as tax on these sums, for material damage;

7. *Holds* that the respondent State must jointly pay to the applicants, within three months, 12,000 EUR (twelve thousand euros), to be converted into the

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currency of the respondent State at the rate applicable on the date of settlement, plus any amount which may be payable by them as tax on that sum, for costs and expenses;

8. *Holds* that from the expiration of the said three-month period and until payment, these amounts will be subject to simple interest at a rate equal to that of the applicable marginal lending facility of the European Central Bank during this period, increased by three percentage points;

9. *Rejects* the request for just satisfaction for the remainder.

Done in French and English, then delivered in public hearing at the Human Rights Palace on May 17, 2016.

Johan Callewaert
Deputy Registrar

Luis Lopez Guerra
President