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

SECOND SECTION

CASE OF ÉVA MOLNÁR v. HUNGARY

(Application no. 10346/05)

JUDGMENT

STRASBOURG

7 October 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Éva Molnár v. Hungary,

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

Françoise Tulkens, *President,*
Antonella Mularoni,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş, *judges,*
and Françoise Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 16 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 10346/05) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms Éva Molnár ("the applicant"), on 14 February 2005.

2. The applicant was represented by Mr S. Sz. Molnár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that the dispersal of the demonstration in which she had participated because of a mere lack of prior notification to the police had infringed her freedom of peaceful assembly, within the meaning of Article 11 of the Convention.

4. On 27 November 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Engelskirchen, Germany.

A. The circumstances of the case

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

7. On 7 (first round) and 21 (second round) April 2002 legislative elections took place in Hungary. The coalition which had governed the country from 1998 and, therefore, had been in charge of organising the elections, lost their majority.

8. The official results of the elections were established by the local and regional electoral commissions following the second round. After the courts had ruled on certain complaints concerning the legality and outcome of the voting procedure, on 4 May 2002 the National Election Committee made a public statement in the Official Gazette, according to which the result had become final. As in previous Hungarian elections, they were virtually identical to the results of the exit poll carried out on the day of the second round and to the preliminary results announced by the Committee on the evening of 21 April 2002. Nevertheless, views were subsequently voiced in certain sections of the media that the elections had been "rigged".

9. International observers, in particular the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE), found that the parliamentary elections had been conducted in a manner consistent with international standards and that the Hungarian election system had provided the basis for a generally transparent, accountable, free, fair and equal process.[1]

10. A period of two months elapsed during which a new government, in a coalition of the ex-opposition parties, was formed which took up its functions on 27 May 2002. On the morning of Thursday, 4 July 2002 several hundred demonstrators started to protest against the statutory destruction of the ballots, scheduled for 20 to 22 July. They blocked the centrally located Erzsébet Bridge in Budapest with their cars. Their objective was to force a recount of the election votes. Since they brought the traffic to a complete standstill and had not given prior notice of their gathering to the police, as required by Act no. 3 of 1989 on Freedom of Assembly ("the Assembly Act"), the demonstration was dispersed after several hours.

11. Shortly afterwards, at around 1 p.m., more demonstrators, again without any prior notification, assembled at Kossuth Square in front of the Parliament building demanding a recount of the votes and expressing their support for the participants in the morning's events at the Erzsébet Bridge.

12. According to the applicant's submissions of 14 February 2005 and the Government's observations, these demonstrators had been at the Erzsébet Bridge and then relocated to Kossuth Square. However, in her

1. See the report of the OSCE: http://www.osce.org/documents/odihr/2002/06/1430_en.pdf

submissions of 23 December 2007, the applicant stated that they had merely been supporters of those who had blocked the Erzsébet Bridge.

13. Having learnt of these events from the news, the applicant joined the demonstration at around 7 p.m. By that time, traffic and public transport – including the circulation of trams and trolley-buses – had become seriously disrupted in the area of Kossuth Square. The estimated number of demonstrators ranged from several hundred to two or three thousand. The police initially attempted to allow the circulation of traffic to continue but eventually had to close some streets nearby. Finally, faced with an unmanageable situation, they broke up the demonstration at about 9 p.m. without using any force. The applicant participated in the demonstration until it was dispersed.

14. The Hungarian media reported in detail on the events, and the affair was the leading news in the country. In an official communiqué, the President of the Republic condemned the events of 4 July 2002, declaring them illegal. He underlined that Hungary was a stable parliamentary democracy where human rights were observed and where even critical views should be voiced in a lawful manner.[1]

15. The applicant sought judicial review of the actions of the police before the Budapest Central District Court. She asserted that the dispersal of the demonstration had been unlawful.

16. On 1 October 2003 the District Court dismissed the applicant's claim. It established that the duty to inform the police about planned assemblies was applicable to every type of demonstration, including spontaneous ones. Since the applicant did not deny that the demonstration in question had not been notified to the police, as required by section 14 of the Assembly Act, the latter had not had any other choice but to break it up.

17. Moreover, the court found that the duty to inform the police in advance about assemblies held in public served the protection of the public interest and the rights of others, namely the prevention of disorder and the undisturbed circulation of traffic. Therefore, it concluded that the measures taken by the police had been in compliance with the law.

18. The applicant appealed. On 13 July 2004 the Budapest Regional Court upheld the first-instance decision. Its judgment was served on the applicant's lawyer on 31 August 2004.

1. http://www.keh.hu/keh/elodok/madl_ferenc/kozlemenyek/20020705nyilatkozat_demonstraciok.html

B. Relevant domestic law

1. The Constitution of the Republic of Hungary

19. The Constitution of the Republic of Hungary (Act no. 20 of 1949 as amended) provides, in so far as relevant, as follows:

Article 62

"The Republic of Hungary acknowledges the right to peaceful assembly and secures its free exercise."

2. Act no. 3 of 1989 on Freedom of Assembly

20. The relevant provisions of Act no. 3 of 1989 on Freedom of Assembly ("the Assembly Act") read as follows:

Section 2

"(3) The exercise of freedom of assembly shall not constitute a crime or an incitement to crime; moreover, it should not result in the infringement of the rights and freedoms of others."

Section 6

"The organisation of an event held in the public domain shall be notified to the competent police headquarters according to the place of the event, and in Budapest to the Budapest Police Headquarters, three days prior to the planned date of the event. The obligation to notify the police lies with the organiser of the event."

Section 8 (as in force at the relevant time)

"(1) If the holding of an event subject to prior notification seriously endangers the proper functioning of the representative bodies or courts, or results in a disproportionate hindrance of the circulation of traffic, the police may ban the holding of the event at the place or time indicated in the notification, within 48 hours from the receipt of the notification by the authority."

Section 9

"(1) No appeal shall lie against the decision of the police, but the organiser may seek judicial review of the administrative decision within three days of its notification."

Section 14 (as in force at the relevant time)

"(1) The police shall disperse the event if the exercise of the right to freedom of assembly contravenes subparagraph 3 of section 2 or if the participants appear at the

event ... in possession of arms, or if an event subject to prior notification is held without notification, ... or despite a decision banning the event. ...

(3) If an event is dispersed, the participants may seek judicial review within fifteen days with a view to the establishment of the illegality of the dispersal."

THE LAW

ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

21. The applicant complained that the police had dispersed the peaceful demonstration in which she had participated because of the mere absence of prior notification, in breach of Article 11 of the Convention, which reads, in so far as relevant:

"1. Everyone has the right to freedom of peaceful assembly ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the prevention of disorder or crime ... or for the protection of the rights and freedoms of others. ..."

A. Admissibility

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

B. Merits

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

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

2. Whether the interference was justified

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

a. Prescribed by law

25. There was no dispute between the parties that the restriction imposed on the applicant's freedom of peaceful assembly was based on section 14 of the Assembly Act, the wording of which is clear. Therefore, the requirement of lawfulness was satisfied.

b. Legitimate aim

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

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

28. The applicant did not address this issue.

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

c. Necessary in a democratic society

(i) The arguments of the parties

30. The Government submitted that the present application was distinguishable from the case of *Bukta and Others v. Hungary* (no. 25691/04, ECHR 2007–...). In the present circumstances, the demonstration could not be considered to have been spontaneous, irrespective of what the participants' real aim was, whether to demand a recount of the votes or to express solidarity with the participants in the morning's events at Erzsébet Bridge. Since those aims could have been fulfilled through a properly notified demonstration, the afternoon demonstration at Kossuth Square – which in their view was the continuation

of the Erzsébet Bridge demonstration – could not be classified as an immediate response to a political event.

31. The Government also submitted that the doctrine of "immediate response" was not unconditionally applicable to all spontaneous demonstrations. In the circumstances of the present case, the dispersal of an unlawful event – the demonstration at the Erzsébet Bridge – had been followed by an unnotified demonstration, which was claimed by those participating in it to have been "spontaneous". The Government argued that the acceptance of this argument would lead to the unacceptable result of simply circumventing the statutory requirement of prior notification. They also pointed out that the impugned events had resulted in serious disturbance to the city's traffic.

32. Lastly, the Government underlined that the prior notification scheme was not an instrument for arbitrary use by the public authorities but a tool for the fulfilment of the positive obligations of the State, namely the protection of the rights of others, in particular the right to free movement.

33. The applicant contested these views and underlined that the only reason why the spontaneous demonstration had been dispersed had been the lack of prior notification. Moreover, she submitted that the demonstration had caused only minor disturbance to the traffic, especially by the time of its dispersal.

(ii) The Court's assessment

34. The Court observes that paragraph 2 of Article 11 entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly. The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic.

35. The Court reiterates that a prior notification requirement would not normally encroach upon the essence of that right. It is not contrary to the spirit of Article 11 if, for reasons of public order and national security, *a priori*, a High Contracting Party requires that the holding of meetings be subject to authorisation (see *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (joined), § 42, 18 December 2007).

36. However, in special circumstances when an immediate response might be justified, for example in relation to a political event, in the form of a spontaneous demonstration, to disperse the ensuing demonstration solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, may amount to a disproportionate restriction on freedom of peaceful assembly (see *Bukta and Others*, cited above, §§ 35 and 36). It is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly

guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Nurettin Aldemir and Others*, cited above, § 46).

37. Nevertheless, in the Court's view, the principle established in the case of *Bukta and Others* cannot be extended to the point that the absence of prior notification can never be a legitimate basis for crowd dispersal. Prior notification serves not only the aim of reconciling, on the one hand, the right to assembly and, on the other hand, the rights and lawful interests (including the right of movement) of others, but also the prevention of disorder or crime. In order to balance these conflicting interests, the institution of preliminary administrative procedures is common practice in Member States when a public demonstration is to be organised. In the Court's view, such requirements do not, as such, run counter to the principles embodied in Article 11 of the Convention, as long as they do not represent a hidden obstacle to the freedom of peaceful assembly protected by the Convention (see *Balçık and Others v. Turkey*, no. 25/02, § 49, 29 November 2007).

38. The Court therefore considers that the right to hold spontaneous demonstrations may override the obligation to give prior notification to public assemblies only in special circumstances, namely if an immediate response to a current event is warranted in the form of a demonstration. In particular, such derogation from the general rule may be justified if a delay would have rendered that response obsolete.

39. However, in the Court's view, the facts of the instant case do not disclose such special circumstances to which the only adequate response was an immediate demonstration. It is to be observed in this connection that the official results of the elections had been made public on 4 May 2002, two months before the impugned demonstration, and that the outcome of those elections had been objectively established. To the extent that the demonstrators' aim was to express solidarity with the protestors at the Erzsébet Bridge, the Court is not persuaded that this matter would have become obsolete had the demonstrators respected the notification rule.

40. Moreover, the Court observes that, at the material time, no authorisation was required in Hungary for the holding of public demonstrations; however, the notification of the police was required seventy-two hours prior to the event. If the police decided to ban a demonstration, the organisers could seek judicial review within three days. Therefore, the Court is satisfied that there were procedural safeguards in place preventing unreasonable restrictions on freedom of assembly.

41. Furthermore, the Court observes that the impugned events originated in an illegal demonstration (see paragraphs 10 and 14 above) blocking a main bridge in central Budapest. Irrespective of whether the subsequent demonstration at Kossuth Square included partly or entirely the same participants, the declared objective of this latter gathering, in which the applicant participated, was to support those who had illegally demonstrated

at the Erzsébet Bridge. The essentially disorderly character of this combination of events is therefore so manifest that the decision of the police to disband the gathering cannot be said to be at variance with the object and purpose of Article 11 of the Convention. The Court reiterates that those organising and participating in demonstrations, as actors in the democratic process, should respect the rules governing that process by complying with the regulations in force (see *Balçık and Others*, cited above, § 49).

42. The Court also emphasises that one of the aims of freedom of assembly is to secure a forum for public debate and the open expression of protest. The protection of the expression of personal opinions, secured by Article 10, is one of the objectives of the freedom of peaceful assembly enshrined in Article 11 (see *Ezelin v. France*, 26 April 1991, § 37, Series A no. 202). It observes in this connection that the demonstrators gathered at Kossuth Square at about 1 p.m. and the applicant joined them at about 7 p.m. However, the police did not break up the demonstration until about 9 p.m., with the result that the demonstrators had had several hours at their disposal to manifest their views.

43. In these circumstances, the Court considers that the applicant had a sufficiently long time to show solidarity with her co-demonstrators. Thus it finds that the ultimate interference with the applicant's freedom of assembly does not appear to have been unreasonable (see, *mutatis mutandis*, *Cisse v. France*, no. 51346/99, § 52, ECHR 2002-III). It is satisfied that the police showed the necessary tolerance towards the demonstration, although they had had no prior knowledge of the event (see, by contrast, *Balçık and Others*, cited above, § 51), which, in the Court's view, inevitably disrupted the circulation of the traffic and caused a certain disturbance to public order (see *Çiloğlu and Others v. Turkey*, no. 73333/01, § 51, 6 March 2007). In this respect, the instant case is different from others where the dispersal was quite prompt (see *Bukta and Others*, cited above, § 10; *Oya Ataman v. Turkey*, no. 74552/01, §§ 41-42, ECHR 2006-XIV; *Balçık and Others*, cited above, § 51).

44. As regards the potential chilling effect on the organisation of spontaneous demonstrations, the Court is satisfied that the demonstrators were able to exercise, for several hours, their right to peaceful assembly as guaranteed by the Convention (see *Bączkowski and Others v. Poland*, no. 1543/06, § 67, ECHR 2007-...).

45. Having regard to the foregoing considerations, the Court finds that the dispersal of the applicant's demonstration was necessary in a democratic society and cannot be regarded as having been a disproportionate measure in order to achieve the legitimate aims pursued.

46. Accordingly, there has been no violation of Article 11 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 11 of the Convention.

Done in English, and notified in writing on 7 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Deputy Registrar	Françoise Tulkens President