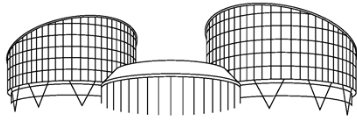

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
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The imposition of a fine for organising a commemoration of the *Székely* battalion on the day of the Romanian national holiday did not breach the Convention

In today's **Chamber** judgment[1] in the case of **Csiszer and Csibi v. Romania** (applications nos. 71314/13 and 68028/14) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 11 (freedom of assembly) of the European Convention on Human Rights.

The case concerned the imposition of an administrative fine on the applicants for organising a gathering on 1 December 2010, the day of the Romanian national holiday, to commemorate the founding of the *Székely* battalion. On 1 December 1918, in Cluj-Napoca, Hungarian military units had joined forces to form the *Székely* battalion to fight the Romanian army, which had entered Transylvania. In April 1919 the battalion surrendered to the Romanian army.

The applicants had been penalised for organising a prohibited gathering under Article 26 § 1 (a) of Law no. 60/1991. The national courts had observed that the gathering also contravened Article 9 of the Law, which prohibited public gatherings aimed, among other things, at propagating fascist and/or chauvinist ideas, denigrating the country and the nation, and inciting others to national hatred.

The Court considered that the applicants' conduct in deliberately refusing to comply with the rules laid down by domestic law had rendered the planned gathering unlawful under the national legislation. It noted that the national authorities had given relevant and sufficient reasons capable of justifying the interference with the applicants' exercise of their right to freedom of assembly.

With regard to the allegation of discrimination on grounds of ethnicity, the Court noted that the second applicant had not demonstrated in the proceedings before it that persons in the same situation as him – that is, seeking to organise commemorative gatherings in breach of Article 5 § 2 of Law no. 60/1991 – had not been penalised by the authorities. As to the reasons given by the domestic courts for upholding the penalty, the Court noted that the courts had not based their decisions on the second applicant's ethnic background.

Principal facts

The applicants, Lóránt Csiszer and Barna Csibi, are Romanian nationals who were born in 1978 and 1979 respectively and live in Miercurea Ciuc (Romania). They state that they belong to the Szekler (*Székely*) ethnic group, a Hungarian-speaking ethno-linguistic group mainly concentrated in Transylvania and with historic ties to the Hungarian people. On 1 December 2010 the Cluj-Napoca municipal council staged various events in the city centre to celebrate the Romanian national holiday, including a military parade and a series of open-air concerts.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 12 October 2010 Mr Csibi wrote to the mayor of Cluj-Napoca requesting assistance in organising a commemorative gathering to be held on 1 December 2010, from 5 p.m. to 6 p.m., on the city's Union Square. The purpose of the gathering was to commemorate "the founding and activity of the *Székely* battalion".

On 19 October 2010 the municipal council replied to Mr Csibi informing him that it was refusing his request because another event that had already been approved was due to take place at the same location. The council also refused to authorise the gathering at any other city-centre location. Mr Csibi brought an administrative action against the local council in the Cluj-Napoca County Court. The action was dismissed.

On 1 December 2010, at around 4.30 p.m., a number of police officers, together with a mobile gendarme unit, stopped Mr Csiszer and Mr Csibi as they and six other people were leaving a hotel and restaurant in a street perpendicular to Union Square.

The gendarmes drew up an administrative offence report the same day, fining Mr Csiszer 10,000 Romanian lei (RON) (approximately 2,200 euros (EUR)). The applicant contested the fine in the Cluj-Napoca District Court. The court dismissed the action and Mr Csiszer appealed. In a final judgment of 5 June 2013 the Cluj County Court dismissed the appeal as unfounded.

An administrative offence report was also drawn up the same day concerning Mr Csibi, who was ordered to pay a fine of RON 5,000 (approximately EUR 1,100). He brought administrative proceedings in the district court. The court dismissed the action and ruled that the offence report had been lawful and justified. The court noted at the outset that the *Székely* battalion, also referred to using the name of Albert Wass, was part of the "Hungarian Guard" whose command structure was based in Győr in Hungary and which subscribed to a fascist ideology. The court observed that when the applicants had been stopped, one of the members of the group had been carrying a flag bearing the Szekler insignia, and that a second person had been wearing a black jacket with the words "*Wass Albert szov*" written on the back and had been carrying a banner with the inscription "*Wass Albert Szovetseg"*. Lastly, the court noted that at the time Mr Csibi had been stopped, he had planned and organised a gathering that was prohibited under Article 9 (a) of Law no. 60/1991. Mr Csibi appealed against the judgment. The County Court dismissed the appeal and upheld the first-instance judgment.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly), the applicants complained that the penalties imposed on them had infringed their right to freedom of assembly. The first applicant also alleged a breach of his right to freedom of expression under Article 10. Relying on Article 14 (prohibition of discrimination), the second applicant alleged that he had been discriminated against in the enjoyment of his right to freedom of assembly because of the fact that he belonged to an ethnic minority within the country.

The applications were lodged with the European Court of Human Rights on 6 November 2013 and 6 October 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Jon Fridrik **Kjølbro** (Denmark), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar.*

Decision of the Court

Article 11

The Court noted that the applicants had been penalised for organising a prohibited gathering, on the basis of Article 26 § 1 (a) of Law no. 60/1991, which made the "organisation and conduct of undeclared, unregistered or prohibited public gatherings" an administrative offence. The domestic courts had also found the gathering to be in breach of Article 9 of Law no. 60/1991 prohibiting public gatherings aimed, among other things, at propagating fascist and/or chauvinist ideas, denigrating the country and the nation, and inciting others to national hatred. As justification for the penalties imposed, the national authorities had also mentioned in the administrative offence reports the fact that the applicants had organised a gathering despite its not having been approved because another public meeting was being held in the same place. That reason had subsequently been upheld by the domestic courts.

The Court reiterated that it was important for persons organising and taking part in demonstrations, as actors in the democratic process, to abide by the rules governing that process by complying with the regulations in force.

It reiterated that the national authorities had a wide discretion in determining what measures were appropriate in order to prevent disturbances at a gathering. Nevertheless, it observed that an unlawful situation did not justify an infringement of freedom of assembly. However, the limits of official tolerance towards an unlawful assembly depended on the specific circumstances of the case.

The Court noted that the national courts had confirmed that Article 5 § 2 of Law no. 60/1991 prohibited the simultaneous staging of two separate gatherings in the same place, and that the applicants had been alerted by the national authorities to the application of that statutory provision. Although the applicants had not been accused of any violent conduct, the Court could understand that the authorities may have feared a rapid deterioration of the situation. Given the scale of the lawfully planned events it would not have been easy for the national authorities to ensure the safety of two public gatherings being held simultaneously in the same part of the city.

In characterising the commemorative gathering in question as a "prohibited" gathering and thus reinforcing the necessity of imposing penalties on the persons concerned, the national courts had referred, in view of the subject matter of the commemoration, to Article 9 (a) of Law no. 60/1991. The courts had taken into consideration the historical significance of the *Székely* battalion and the fact that the applicants were members of the Szekler unit. The domestic courts had focused particularly on the fact that one of the participants in the commemorative gathering had worn insignia referring to the name of Albert Wass. The national courts had agreed that the reference to Albert Wass and to what he represented in Romania was apt to raise doubts as to the purpose of the commemorative gathering and made it necessary to clarify that purpose, and could even render the gathering illegal on the grounds that it was intended to propagate fascist ideas.

The Court had previously held that ideas or conduct could not be excluded from the protection provided by the Convention merely because they were capable of creating a feeling of uneasiness in groups of citizens or because some might perceive them as disrespectful. Nevertheless, in the context of the celebration of the Romanian national holiday, the holding of the commemorative gathering in question, which the applicants had sought to organise using symbols that cast doubt on the true purpose of their commemoration, had been liable to generate a degree of social tension conducive to violence, given the particular sensitivity of public opinion regarding their ideas, which could be perceived as contrary to those underlying the public events already being staged. Hence,

the Court did not find it unreasonable or arbitrary for the Romanian courts to conclude that the penalties imposed on the applicants were additionally justified by the fact that the commemorative gathering had been contrary to Article 9 (a) of Law no. 60/1991.

Lastly, the Court noted that the fact that they were not classified as criminal offences did not make the acts in question any less of a threat to public order. The mobile gendarme unit had imposed administrative fines on the applicants. Although the amounts had been different for each applicant, they had been within the limits laid down by Article 26 § 2 of Law no. 60/1991. Moreover, it had been open to the applicants to challenge the lawfulness and justification of the fines, and the amounts thereof, in the national courts. Consequently, they had enjoyed procedural safeguards against the imposition of illegitimate penalties.

The Court considered that the national authorities had not overstepped their margin of appreciation and that the penalties complained of could be regarded as "necessary in a democratic society" and "proportionate to the aim pursued".

There had therefore been no violation of Article 11 of the Convention.

Article 14 read in conjunction with Article 11 (application no. 68028/14)

The second applicant alleged that he had been discriminated against in the enjoyment of his right to freedom of assembly under Article 11 of the Convention because of the fact that he belonged to an ethnic minority within the country.

The Court reiterated that in order for an issue to arise under Article 14 of the Convention there had to be a difference in treatment between persons placed in analogous or comparable situations. Firstly, the Court noted that the second applicant had not demonstrated in the proceedings before it that persons in the same situation as him – that is, seeking to organise commemorative gatherings in breach of Article 5 § 2 of Law no. 60/1991 – had not been penalised by the authorities. Secondly, it observed that it was not the fact that one of the members of the group to which the applicant belonged had been carrying a flag that had led to the sanction in question, but the fact of organising a commemorative gathering contrary to the aforementioned Article 5 § 2.

Lastly, with regard to the reasons given by the domestic courts for upholding the penalty, the Court noted that they had not based their decisions on the second applicant's ethnic background.

Consequently, the Court held that, even assuming that there had been a difference in treatment in the present case, it had not been shown that it was based on the second applicant's ethnic background. This complaint was therefore rejected as being manifestly ill-founded.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.