A Comparative Analysis of the Hungarian Freedom of Expression Cases before the ECtHR

Gergely Gosztonyi – Daniella Huszár – Gergely Ferenc Lendvai[*]

Abstract

Almost 700 cases concerning Hungary have been decided by the ECtHR since it delivered its first 'Hungarian' judgment on 20 May 1999. In nearly 94 % of all the decisions concerning Hungary, the ECtHR has found against the State, confirming at least one violation of the ECHR. Around 4 % of cases concerned Article 10 ECHR. This article analyses all Hungarian freedom of expression cases before the ECtHR, discusses their merits, finding the comparative common grounds and unpacking the differences. This is all them more justified, as the Hungarian Article 10 cases have significantly contributed to the ECtHR clarifying its position, in particular, as these had covered a wide range of aspects of freedom of expression, from defamation and political speech to new forms of online communication.

Keywords: Article 10 ECHR, freedom of expression, Hungary, political speech, defamation,

* Gergely Gosztonyi: Habil. associate professor of law, ELTE Law School, Budapest, gosztonyi@ajk.elte.hu. He is supported by the János Bolyai Research Scholarship of the Hungarian Academy of Sciences.
Daniella Huszár: Ph.D. Candidate, ELTE Law School, Budapest; Junior Associate, CMS Budapest TMT, husz.daniella@gmail.com. She is supported by the ÚNKP-23–3 New National Excellence Program of the Ministry for Culture and Innovation from the source of the National Research.
Gergely Ferenc Lendvai: Ph.D. Candidate, Pázmány Péter Catholic University, Budapest, gergelylendvai@gmail.com. He is supported by the Rosztoczy Foundation.

1. Introduction

Freedom of expression (FoE) is the cornerstone of every free and democratic society. It is enshrined in Article 19 ICCPR and reflected in regional human rights conventions, such as the ECHR.[1] It is essential for a healthy and vibrant society and a fundamental condition for its progress and every individual's self-fulfilment.[2]

The exercise of FoE carries with it duties and responsibilities to ensure that co-existing rights are not impeded. Therefore, in certain cases, it may be subject to formalities, conditions, restrictions or penalties.[3] Over the years, regional human rights courts, such as the ECtHR, have contributed to elaborating detailed rules based on the wording of the conventions. *(i)* First, FoE applies not only to information or ideas favourably regarded as inoffensive or indifferent, but also to those that offend, shock or disturb.[4] *(ii)* Second, the value placed on uninhibited expressions is particularly high when having a (heated) public debate,[5] irrespective of how unpalatable

1 *Cf.* American Convention on Human Rights, Article 13; African Charter on Human and Peoples' Rights, Article 9.

2 *Jersild v Denmark*, No. 15890/89, 23 September 1994, para. 31; *Perna v Italy*, No. 48898/99, 6 May 2003, para 39.

3 Lóránt Csink, 'Constitutional Rights in the Time of Pandemic', *Hungarian Yearbook of International Law and European Law*, Vol. 9, Issue 1, 2021, pp. 43–50.

4 *Karataş v Turkey*, No. 23168/94, 8 July 1999, para. 48; *Erkizia Almandoz v Spain*, No. 5869/17, 22 September 2021, para. 37.

5 Jan Oster, *Media Freedom as a Fundamental Right*, Cambridge University Press, Cambridge, 2015, p. 144.

that perspective may be for the state.[6] *(iii)* Third, FoE also ensures the public's right to access[7] or receive information,[8] including even state-held information. *(iv)* Fourth, although there is no universally accepted definition of journalism, a wide range of contributors to the public debate are essential, since they serve as public watchdogs.[9] The heightened level of protection is also accorded to non-professional journalists, as the function of bloggers and popular social media users may be similar.[10] *(v)* Fifth, it is essential to note that unforeseeable legislation may have a chilling effect on FoE and constructive public debate.[11] *(vi)* Sixth, the new means of global communication, the Internet, provides an unprecedented platform for the exercise of FoE and has a crucial role in expressing and rapidly disseminating opinions, thereby significantly amplifying their impact on society.[12]

To decide disputes relating to FoE, the ECtHR developed a well-known three-part cumulative test based on international practice that must be applied to establish whether the interference was *(i)* prescribed by law; *(ii)* in pursuance of a legitimate aim; *(iii)* necessary in a democratic society.[13]

Hungary was the very first country in Eastern Europe to ratify the ECHR in 1992,[14] and as Eszter Polgári notes, "this remains a matter of national pride in spite of the growing number of condemnations from Strasbourg."[15] Almost 700 cases concerning Hungary have been decided by the ECtHR since it delivered its first 'Hungarian' judgment (*Rekvényi versus Hungary*) on 20 May 1999. In nearly 94 % of its decisions delivered concerning Hun-

6 *Erdoğdu and Ince v Turkey*, Nos. 25067/94 and 25068/94, 8 July 1999, para. 52.
7 *Autronic AG v Switzerland*, No. 12726/87, 22 May 1990, para. 45.
8 *The Sunday Times v the United Kingdom (No. 1)*, No. 6538/74, 26 April 1979, para. 65; *Thorgeir Thorgeirson v Iceland*, No. 13778/88, 25 June 1992, para. 63.
9 *Axel Springer AG v Germany*, No. 39954/08, 7 February 2012, para. 79; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, No. 931/13, 27 June 2017, para. 126.
10 *Falzon v Malta*, No. 45791/13, 20 June 2018, para. 57; Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 4, II. Principles, 10.
11 *Delfi AS v Estonia*, No. 64569/09, 16 June 2015, Joint Dissenting Opinion of Judges Sajó and Tsotsoria, para. 20.
12 *Ahmet Yildirim v Turkey*, No. 3111/10, 18 March 2013, para. 54; *Cengiz and others v Turkey*, Nos. 48226/10 and 14027/11, 1 March 2016, para. 52.
13 *Handyside v the United Kingdom*, No. 5493/72, 7 December 1976, paras. 44–46.
14 ECHR was promulgated and became part of the Hungarian legal system with the Act XXXIII of 1993.
15 Eszter Polgári, 'Hungary: 'Gains and Losses'. Changing the Relationship with the European Court of Human Rights' *in* Patricia Popelier *et al.* (eds.), *Criticism of the European Court of Human Rights. Shifting the Convention System: Counter-Dynamics at the National and EU Level*, Intersentia, Cambridge, 2016, p. 295.

gary, the Court has ruled against the State, finding at least one violation of the ECHR. Around 4 % of the cases concerned Article 10 ECHR, which states, "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." The Hungarian Article 10 cases have greatly helped the ECtHR to clarify its position on this provision, since they have covered a wide range of aspects of FoE: from defamation and political speech to new forms of online communication. This article analyses all Hungarian Article 10 FoE cases, discussing their merits, finding comparative common grounds and unpacking differences between them.

2. Cases concerning Political Speech

2.1. Rekvényi versus Hungary (1999)[16]

The case concerned a Hungarian police officer challenging a prohibition on police engagement in political activities imposed by national law. The *Független Rendőrszakszervezet* (Police Independent Trade Union) contested this prohibition before the Hungarian Constitutional Court (HCC), alleging that it violated constitutional rights and international law norms. However, the HCC dismissed the submission. The officer argued that the ban infringed his FoE guaranteed under Article 10 ECHR. The European Commission of Human Rights agreed, deeming the prohibition vague and failing the requirement of being 'prescribed by law' under Article 10(2) ECHR. While not disputing the legislative interference with FoE, the Hungarian government justified it under Article 10(2), claiming it was to depoliticise the police force during Hungary's transition to democracy. The Court recognised the political debate's importance under FoE and the need to maintain police neutrality, especially given its historical allegiance to the ruling party. It found the prohibition was indeed 'prescribed by law' and pursued legitimate aims, justifying the interference with FoE under Article 10(2). Ultimately, the Court upheld the prohibition to preserve police neutrality and effectiveness amid Hungary's transition to democracy and in the context of past experiences with totalitarianism.

16 *Rekvényi v Hungary*, No. 25390/94, 20 May 1999.

2.2. Bukta and Others versus Hungary (2007)[17]

The case revolved around a demonstration organised by the applicants in front of a hotel in Budapest, where a reception was held to commemorate Romania's national day. The applicants, disagreeing with the Hungarian Prime Minister's (PM) decision to attend due to the negative historical significance of the event, protested without informing the police as required by law. The police dispersed the peaceful assembly, citing security concerns and non-compliance with the notification requirement. The applicants sought judicial review, arguing that the short notice made compliance impossible and that the law needed refinement. However, both the District Court and the Budapest Regional Court upheld the police's actions, emphasising the duty to inform the police regardless of the assembly's peaceful nature. The Supreme Court dismissed the applicants' petition for review, concluding that it fell outside the scope of applicable procedural provisions.

The ECtHR examined whether the dispersal of a peaceful demonstration violated the applicants' freedom of assembly under Article 11 ECHR. The government acknowledged the interference but argued it was justified under Article 11(2) ECHR. The Court assessed whether the interference was lawful, pursued legitimate aims, and was necessary in a democratic society. The restriction was deemed lawful based on a clear provision of the Assembly Act, meeting the foreseeability requirement. Regarding legitimate aims, the government cited the need to protect public order and the rights of others, such as the freedom of movement and orderly traffic circulation. However, the Court found the dispersal disproportionate, as it solely resulted from the lack of prior notification and did not consider the peaceful nature of the assembly. It concluded that the dispersal was unnecessary to achieve the aims pursued, violating Article 11 ECHR. The Court decided not to separately examine the complaint under Article 10 ECHR, given the violation found under Article 11 ECHR. As for just satisfaction, the Court deemed the finding of a violation sufficient compensation for any non-pecuniary damage suffered by the applicants.

17 *Bukta and others v Hungary*, No. 25691/04, 17 July 2007.

2.3. Vajnai versus Hungary (2008)[18]

The case involved the then Vice-President of the *Magyar Munkáspárt* (Hungarian Workers' Party), a far-left party, who participated in a lawful demonstration in Budapest wearing a five-pointed red star, a symbol of the international workers' movement, on his jacket. The police, invoking the provision prohibiting totalitarian symbols of the old Criminal Code, instructed him to remove the star, which he complied with. Subsequently, the applicant faced criminal proceedings for wearing a communist symbol in public. He was convicted by the District Court but received no sanction for a probationary period. Upon appeal, the Budapest Regional Court referred the case to the CJEU to determine if Hungary's prohibition on such symbols amounted to discrimination under EU law. However, the CJEU declared it lacked jurisdiction to answer the question as the Hungarian provision fell outside the scope of EU law. Consequently, the Budapest Regional Court upheld the applicant's conviction, and the applicant lodged a complaint before the ECtHR, claiming that his FoE under Article 10 ECHR had been violated.

The government argued that the ban on the red star was justified under Article 17 ECHR, citing past cases where the Court rejected FoE claims when used to propagate ideologies against democratic values. However, the Court found the case distinct, as the applicant's display was within the context of a lawful political demonstration, not aimed at justifying totalitarian regimes. The Court rejected the government's argument that wearing the red star meant supporting totalitarianism, noting its historical association with left-wing political movements. While acknowledging past abuses under communist regimes, the Court found the ban overly broad, lacking a pressing social need, and disproportionately affecting political expression. The Court emphasised the importance of FoE in political speech, recognising its fundamental role in democratic societies. It stressed that restrictions on political speech should be narrowly interpreted, with any limitations requiring clear, pressing, and specific social needs. The Court found that the government had not demonstrated such a need in the case of the red star ban, especially given Hungary's stable democracy and the lack of evidence of any real threat from communist ideologies.

Furthermore, the Court noted that the ban's indiscriminate application failed to distinguish between legitimate and illegitimate uses of the red

18 *Vajnai v Hungary*, No. 33629/06, 8 July 2008.

star, potentially chilling political expression and leading to self-censorship. Ultimately, the Court concluded that the applicant's conviction for wearing a red star could not be justified under Article 10 ECHR. It deemed the interference with the applicant's FoE disproportionate and lacking a sufficient basis in a democratic society. Therefore, it found a violation of Article 10 and ruled in favour of the applicant.

2.4. Fratanoló versus Hungary (2011)[19]

Similarly to the Vajnai case, Fratanoló, a member of the *Magyar Munkáspárt* (Hungarian Workers' Party), was initially convicted for wearing a red star at a public demonstration in 2004 but was later acquitted on appeal, with due consideration to the judgment in *Vajnai*. However, the Pécs Court of Appeal overturned the acquittal, upholding the conviction and ordering the payment of a fine, arguing that the act posed a societal danger regardless of the wearer's political affiliation, as it violated the ban on the use of totalitarian symbols under Hungarian law.

The ECtHR applied the three-part cumulative test to examine the applicant's complaint. It was acknowledged that there was indeed an interference, and the Court assessed whether it was prescribed by law and pursued a legitimate aim. The Court found that the restriction on the use of totalitarian symbols was indeed prescribed by law and pursued the legitimate aims of preventing disorder and protecting the rights of others. The government argued that the applicant's use of the red star symbolised identification with totalitarian ideas, constituting a danger to society. However, the applicant contended that using the symbol was a form of political expression and was not intended to promote totalitarianism. The Court emphasised the importance of FoE, especially in political discourse, and noted that restrictions must be narrowly interpreted. The Court compared the present case with the *Vajnai* judgment regarding the displaying of the red star and concluded that the interference was unjustified. It found that the restriction on displaying a red star was too broad and could potentially limit legitimate forms of expression. Additionally, the Court noted that the domestic court did not adequately assess the proportionality of the interference, thus failing to demonstrate a pressing social need for the restriction. Consequently, the Court ruled that there had been a violation of Article 10

19 *Fratanoló v Hungary*, No. 29459/10, 3 November 2011.

and reserved the right to provide just satisfaction to the injured party under Article 41 ECHR.

2.5. Fáber versus Hungary (2012)[20]

The *Fáber* case centres on an event during a 2007 demonstration in Budapest, where Fáber silently displayed a so-called Árpádsávos zászló (Árpád-striped flag[21]) near an anti-racism protest organised by the *Magyar Szocialista Párt* (Hungarian Socialist Party). This occurred alongside a demonstration by MPs of the far-right party Jobbik. Following police instructions to remove the flag or leave, Fáber refused and was subsequently detained, interrogated for six hours, and fined for disobeying police orders.

The ECtHR deemed Fáber's conduct provocative and potentially disruptive to the anti-racism demonstration. Nonetheless, the Court emphasised fundamental principles governing necessity in the context of interfering with the applicant's FoE, especially when it concerns political speech. Though symbols associated with political movements are protected under Article 10 ECHR, the context is crucial in imposing restrictions, particularly when it comes to symbols of multiple meanings. In this regard, freedom of assembly protected even potentially offensive demonstrations, except those advocating for violence or rejecting democratic principles.

Acknowledging national authorities' broad discretion in managing assemblies to prevent disorder while upholding FoE, the Court stressed the need to protect the rights of all demonstrating groups, while using the least restrictive means. Assessing the case, the ECtHR found that the police intervention lacked sufficient justification, as, despite perceptions of provocation, the display of the Árpád-striped flag did not significantly disrupt the demonstration. Examining whether the display constituted a reprehensible act warranting restrictions, the Court noted subjective perceptions of offensiveness but emphasised that mere irritation or outrage could not justify limitations on FoE. While sensitive to symbols associated with totalitarian regimes, it asserted that FoE could not be restricted based solely on feelings

20 *Fáber v Hungary*, No. 40721/08, 24 July 2012.

21 It is the name of a flag which has been in constant use since the early 13th century in Hungarian heraldry. It generated lots of controversy in the 20th century, as the Hungarian Nazi government in 1944–1945 used a similar symbol as a component of their flag.

of unease or offence. Therefore, the Court found that Fáber's rights under Article 10 ECHR had been violated.

2.6. Karácsony and Others versus Hungary (2016)[22]

The *Karácsony and others* judgment of the ECtHR is a landmark case concerning political speech, focusing on fines imposed by the Hungarian Parliament on opposition Members of the Parliament (MPs) for disruptive conduct during parliamentary sessions. The Court examined two separate cases involving acts of protest by opposition MPs during parliamentary sessions. In the first case, Mr Karácsony and other opposition party MPs displayed a placard criticising the government's alleged corruption, while in the second case, three opposition MPs protested a land transfer law by placing a wheelbarrow filled with soil on the PM's table and using a megaphone to voice their opposition. The fines proposed by the Speaker and subsequently approved by Parliament ranged from negligible to substantial amounts, and the applicants challenged them before the ECtHR, alleging a violation of their FoE under Article 10 ECHR.

The Court conducted a comparative analysis of disciplinary measures in parliaments of Council of Europe Member States, highlighting various forms of sanctions and procedural mechanisms. The government argued that the applicants hadn't exhausted domestic remedies, specifically the constitutional complaint process. However, the Court dismissed this objection, citing limitations and lack of clarity in the domestic procedure.

Examining the Article 10 allegations, the Court acknowledged the interference with FoE but deemed it legitimate to maintain parliamentary order. However, it found the interference unnecessary due to insufficient procedural safeguards. The judgment emphasised the need to balance parliamentary autonomy with protecting MPs' FoE, stressing the importance of procedural fairness in such proceedings. It highlighted the delicate balance between individual rights and effective parliamentary functioning in a democratic society, underscoring the significance of pluralism, dialogue, and compromise. In conclusion, the Court found that the *ex post facto* decision to sanction Mr Karácsony and other MP's for their conduct was not proportionate with the principles governing the restriction of political speech.

22 *Karácsony and others v Hungary*, Nos. 42461/13 and 44357/13, 17 May 2016.

2.7. Szanyi versus Hungary (2016)[23]

In 2013, Mr Szanyi, an MP representing the *Magyar Szocialista Párt* (Hungarian Socialist Party), faced disciplinary actions for making an offensive gesture toward MPs of the Jobbik party during a parliamentary session. Citing parliamentary regulations, the Speaker proposed disciplinary proceedings against Mr Szanyi and suggested a fine for using a blatantly offensive expression. The plenary session affirmed the Speaker's proposal without offering Mr Szanyi any remedy, and his subsequent attempts to address government policies through interpellations were banned by the Speaker, who alleged that his statements were injurious to the Parliament's prestige. Mr Szanyi contested these measures, arguing that they infringed upon his FoE and aimed to stifle opposition voices, as his expressions addressed matters of public interest without intending to disrupt parliamentary proceedings.

The ECtHR examined whether actions taken against Mr Szanyi violated his rights under the ECHR. Recognising the interference with Szanyi's FoE in the fine and interpellation bans, the Court stressed the importance of maintaining order in Parliament in a proportionate and democratic way. Despite the Parliament's authority to regulate speech, the Court found the disciplinary measures disproportionate and unnecessary in a democratic society, criticising the lack of transparency and procedural safeguards. The Court emphasised the significance of protecting minority rights and political speech, even when controversial, concluding that the interference violated Article 10 ECHR. However, Mr Szanyi's claim of discrimination based on his political opinions lacked sufficient evidence and was dismissed. As far as remedies were concerned, the Court ordered the reimbursement of the fine and awarded compensation for legal expenses, stating that the finding of a violation itself provided adequate satisfaction for the non-pecuniary damage the MP had suffered.

2.8. Baka versus Hungary (2016)[24]

After serving for seventeen years as a judge at the ECtHR and then over a year at the Budapest Court of Appeal, Mr Baka was elected President of the Supreme Court of Hungary for a six-year term starting 22 June 2009.

23 *Szanyi v Hungary*, No. 35493/13, 8 November 2016.
24 *Baka v Hungary*, No. 20261/12, 23 June 2016.

In this role, he had both managerial and judicial responsibilities, including presiding over deliberations resulting in uniformity decisions and guidance decisions, as well as leading the National Council of Justice. His tenure was marked by significant legislative reforms affecting the judiciary, in respect of which he expressed various professional opinions and concerns. Notably, he criticised bills and amendments to the retirement age of judges, highlighting constitutional issues and potential risks to judicial independence. Despite his efforts to influence legislative outcomes, Parliament proceeded with enacting controversial laws, leading to the termination of his mandate as President of the Supreme Court in January 2012, well before its expected end. Consequently, he lost certain benefits associated with his position. In addition, the legislation governing post-term benefits for outgoing presidents of the Supreme Court was amended, affecting his entitlements.

After conducting a thorough international legal analysis on judges' FoE, the Court deliberated on whether the termination of Mr Baka's contract violated his FoE. Mr Baka contended that his premature dismissal resulted from his outspoken criticism of legislative measures affecting the judiciary. At the same time, the government argued that it was a result of structural reforms within the judiciary. The Court examined the evidence and found a clear connection between Mr Baka's expressions and dismissal, dismissing the government's justifications. It scrutinised whether the interference was prescribed by law, pursued a legitimate aim, and was necessary in a democratic society. Expressing doubts about the legitimacy of the law invoked, the Court highlighted that the termination compromised judicial independence and lacked adequate safeguards against abuse. Some judges concurred with the majority's decision, emphasising the importance of protecting judicial independence, while others dissented, questioning the assessment of legitimate aim and necessity in the interference.

2.9. Magyar Kétfarkú Kutya Párt (MKKP) versus Hungary (2020)[25]

The case tackled the legality of a mobile application developed by the so-called 'joke party'[26] *Magyar Kétfarkú Kutya Párt* (Hungarian Two-Tailed Dog Party, MKKP) during Hungary's 2016 referendum, which centred on

25 *Magyar Kétfarkú Kutya Párt v Hungary*, No. 201/17, 20 January 2020.

26 Péter Szegedi, 'Viccpártok menni Európa – A Magyar Kétfarkú Kutya Párt és a Die PARTEI európai parlamenti választási eredményei'. *Parlamenti Szemle*, Vol. 6, Issue 4, 2021, pp. 45–65.

the EU's proposal to relocate asylum seekers to Hungary amidst the migration crisis. The referendum triggered widespread concerns among opposition parties, who viewed it as potentially propagating disinformation and xenophobia. To contest the referendum, MKKP created an app called 'Cast an Invalid Vote', allowing users to share images of invalid ballot papers as a form of protest against what they perceived as an abuse of democratic processes. The *Nemzeti Választási Bizottság* (National Election Committee, NVB) swiftly condemned the app, arguing that it violated electoral laws and undermined the integrity of the voting process. The NVB's decision was partly upheld by the HCC, which deemed the sharing of photos of invalid ballot papers contrary to the fundamental purpose of a ballot paper. Subsequently, the case reached the ECtHR, where the focus shifted to the legality of restricting MKKP's FoE under Article 10 ECHR.

The ECtHR acknowledged the evolving role of digital media in political discourse and emphasised the need for restrictions on FoE to be prescribed by law and foreseeable to citizens. It scrutinised the Hungarian authorities' actions, particularly their reliance on vaguely articulated legal provisions, and concluded that the restriction on the MKKP's app was not sufficiently foreseeable and, hence violated its FoE. Furthermore, the Court underscored the significance of protecting political pluralism and media use in democratic processes, especially during sensitive electoral periods. It recognised the app as a platform for political expression, akin to traditional media outlets, and highlighted the importance of safeguarding such platforms from arbitrary restrictions. Consequently, the ECtHR decided that the applicant's rights under Article 10 had been violated. The ruling marked a significant precedent in regulating online communication during elections, emphasising the need for legal clarity and respect for fundamental rights in the digital sphere.

2.10. ATV Zrt. versus Hungary (2020)[27]

The dispute between the Budapest-based television channel ATV and the Hungarian government centred on ATV's use of the term 'far-right' in a news program discussing a statement by a *Jobbik* party's MP. Legal action ensued when the *Nemzeti Média- és Hírközlési Hatóság* (National Media and Infocommunications Authority) deemed the term a value judgment

27 *ATV Zrt. v Hungary*, No. 61178/14, 28 April 2020.

rather than a factual statement. Despite ATV's arguments, the *Médiatanács* (Media Council of the National Media and Infocommunications Authority), acting as a second-instance authority, upheld the decision, emphasising unbiased news reporting under the Hungarian Media Act. The Supreme Court of Hungary reinstated the Media Council's ruling, imposing fines and legal costs on ATV, despite the ruling's initial overturning by the Budapest Administrative and Labour Court. Later the HCC dismissed ATV's constitutional complaint.

In its decision the ECtHR concluded that the interference aimed to ensure balanced and unbiased news coverage, falling under the legitimate aim of protecting the rights of others. The pivotal question was whether the interference was necessary in a democratic society. As a premise, the ECtHR assessed whether the term 'far-right' used by ATV was a statement of fact or opinion, given the broad interpretation of 'opinion' under the national Media Act. Domestic courts differed in their interpretation of the term, leading to uncertainty about whether ATV could have foreseen the restriction. Despite various analyses by the courts, there was no consensus on whether the term constituted an opinion or a factual statement. Considering the lack of clarity in the legislation and the divergent approaches by domestic courts, the ECtHR found the interference disproportionate and not necessary in a democratic society. Therefore, it concluded that ATV's right to FoE under Article 10 ECHR was violated.

2.11. Ikotity and Others versus Hungary (2023)[28]

As per the facts of the case, the applicants, MPs of the Hungarian Parliament representing the opposition party *Lehet Más a Politika* (Politics Can Be Different, LMP) were fined for displaying posters without permission concerning environmental degradation in certain parts of Budapest during a session. Despite their objections, both the Immunity Committee and the Parliament upheld the fines, citing a breach of parliamentary rules. The Immunity Committee argued that the posters were unnecessary for expressing views and constituted a deliberate violation of parliamentary regulations. The Parliament voted to uphold the sanctions without debate, resulting in a reduction of the applicants' monthly salaries. The applicants lodged a complaint before the ECtHR after exhausting domestic remedies.

28 *Ikotity and others v Hungary*, No. 50012/17, 10 May 2023.

The ECtHR evaluated the opposition MPs' complaint concerning the restriction on their FoE during a parliamentary session. They examined whether the interference was lawful and necessary, considering the procedural safeguards and the legitimacy of the restrictions imposed. The ECtHR concluded that the restrictions were justified to maintain parliamentary order, emphasising the importance of parliamentary debate while acknowledging the limited latitude states have in regulating such matters. Ultimately, the Court found no violation of Article 10 ECHR, affirming the legitimacy of the parliamentary sanctions imposed on the MPs. While acknowledging the interference, the ECtHR found that the restrictions to maintain parliamentary order were proportionate. The Court examined procedural safeguards and necessity, concluding that the restrictions were justified to ensure the effectiveness of parliamentary proceedings. Therefore, the ECtHR ruled that there was no violation of Article 10 ECHR.

3. Cases Concerning Access to Information

3.1. Társaság a Szabadságjogokért versus Hungary (2009)[29]

Társaság a Szabadságjogokért (Hungarian Civil Liberties Union, TASZ) is a Hungarian NGO that sought access from the HCC to a petition submitted by a Member of Parliament regarding drug-related legislation. The HCC rejected TASZ's request on the grounds that it could not be made accessible to third persons without the petitioner's consent. The court of first instance dismissed TASZ's action against the HCC on the grounds that the MP's petition was not 'data' under the Hungarian Data Act of 1992. In the court of appeal, the first instance decision was upheld, as the court considered that the petition contained personal data of the MP and, therefore, the requested document could not be disclosed without his consent, even on the grounds of public interest.

In the proceedings before the ECtHR, TASZ argued that access to information and the dissemination of information are prerequisites of FoE, as it is not possible to form or maintain an informed opinion without knowledge of the relevant and accurate facts. TASZ stated that without the requested information, it could not take a position in a debate of public

29 *Társaság a Szabadságjogokért v Hungary*, No. 37374/05, 14 April 2009.

interest, and it also argued that its role in this respect is like that of the press.

In its judgment, the Court stated in principle that the function of the press includes the creation of forums for public debate, but this function is not limited to the media or professional journalists. Therefore, TASZ can also be considered a social watchdog. In support of this, the ECtHR used strong words when it noted that "authorities interfered in the preparatory stage of this process by creating an administrative obstacle. The Constitutional Court's monopoly of information thus amounted to a form of censorship." In examining the three-part cumulative test, the Court found the prescribed by law and the legitimate aim to be well founded but turned to a broader interpretation of the concept of freedom to receive information. Referring to its earlier case law, it confirmed that the right to freedom to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him, and that in the present case, the MP had even held a press conference on his original petition. In addition, the Court observed that the applicant had finally sought information on the MP's petition excluding his personal details. On this basis, the Court found a violation of Article 10 ECHR.

3.2. Kenedi versus Hungary (2009)[30]

Mr Kenedi is a historian who has focused his research on Soviet-style state structures and the state security services of dictatorships. In September 1998, he requested information from the *Belügyminisztérium* (Ministry of the Interior) on the operation of the *Állambiztonsági Szolgálat* (State Security Service) in the 1960s. The Ministry refused to comply with the request in November 1998, claiming that the requested material had been classified for 50 years in October 1998 for state security reasons. The court of first instance upheld the historian's claim, finding that the material requested was necessary for his scientific research. The Ministry wanted to appeal to the Supreme Court but was late in submitting its material. Thus, the appeal was rejected. The Ministry would then have given Mr Kenedi access if he signed a confidentiality agreement. The historian refused to do so.

30 *Kenedi v Hungary*, No. 31475/05, 26 May 2009.

Consequently, the Ministry continued trying to block the court's decision, and Mr Kenedi was denied full access to the requested documents.

In his application to the ECtHR, Mr Kenedi invoked Article 6 ECHR and complained of the lengthy non-enforcement of the court judgment authorising his access to documents dating back to the 1960s. He also invoked Article 10 ECHR and the Court held that the complaint also fell to be examined under the said Article. The Court found that the stubborn reluctance of the Hungarian authorities prevented Mr Kenedi from having full access to the documents necessary for his research so that the first element of the three-part cumulative test, prescribed by law, could not be met since the authorities' practice amounted to arbitrariness. The Court also observed that "access to original documentary sources for legitimate historical research was an essential element of the exercise of the applicant's right to freedom of expression."[31] In addition, the procedure was excessively long, and it violated both Articles 6 and 10 ECHR.

3.3. Magyar Helsinki Bizottság versus Hungary (2016)[32]

The *Magyar Helsinki Bizottság* (Hungarian Helsinki Committee, MHB) is an NGO that requested the names of public defenders and the number of their annual assignments from 28 police departments to be used for a national survey. 17 of these departments provided the requested data, and in 7 of the remaining 10 cases, the data were provided after first instance court proceedings. In the remaining three cases, the police departments argued that the data could not be released because, firstly, they were not of public interest and, secondly, the public defenders were not members of any state, municipal or public body. The cases were eventually referred to the Supreme Court, which ruled in all three instances that the requested data could not be disclosed because they were not of public interest but the personal data of the public defenders.

Before the ECtHR, the Hungarian government argued that the right of access to data of public interest cannot be derived from the ECHR. The Court noted a perceptible evolution in favor of the recognition, under certain conditions, of a right to freedom of information as an inherent element of the freedom to receive and impart information enshrined in

31 *Cf. Társaság a Szabadságjogokért v Hungary*, paras. 35–39.
32 *Magyar Helsinki Bizottság v Hungary*, No. 18030/11, 8 November 2016.

Article 10 ECHR. Although the Court has previously held that it is difficult to derive from the ECHR a general right of access to administrative data and documents, a decision to refuse access to administrative documents which are readily available may constitute an interference with Article 10 ECHR, in particular, where access to the information is instrumental for the individual's exercise of their right to FoE.

In this context, the ECtHR also established a set of test-like criteria,[33] parts of which can be examined to determine whether there has been interference. The elements are: the purpose of the information request, the nature of the information sought, the role of the applicant and whether the information is ready and available. Of particular note is the ECtHR's insistence that the social watchdog function can be exercised not only by the press and NGOs but also by academic researchers, authors of literature, bloggers and popular users of social media. In the light of this, although it found the conditions prescribed by law and legitimate aim to be fulfilled, the ECtHR held that the government had failed to demonstrate that the prohibition on the disclosure of data contributed to the protection of the personal data of the public defenders and was therefore not necessary in a democratic society.

3.4. Szurovecz versus Hungary (2019)[34]

Mr Szurovecz, a journalist from an online portal, approached the *Debreceni Befogadó Központ* (Debrecen Reception Centre) of the *Bevándorlási és Állampolgársági Hivatal* (Office of Immigration and Nationality, BÁH) under the Ministry of Interior with a request to write a newspaper article on the situation of refugees, including interviews with them and, if they clearly agree, their photos. The BÁH rejected the request because it would violate the refugees' privacy rights and endanger their safety. After exhausting national remedies, Mr Szurovecz turned to the ECtHR, complaining that the refusal to grant the permit – at the height of the refugee crisis – breached his right to FoE under Article 10 ECHR.

The ECtHR observed that Mr Szurovecz wanted to ascertain on the spot the inhuman and degrading situation revealed by other sources (such as the

33 It is interesting that in their concurring opinion Judges Sicilianos and Raimondi stated that although it looked like ECtHR's evolutive interpretation, it is not in reality a genuine innovation.

34 *Szurovecz v Hungary*, No. 15428/16, 8 October 2019.

Hungarian Commissioner for Fundamental Rights), and the Court stated that the gathering of information is an essential part of the exercise of the profession of journalist, a protected sub-prerogative of press freedom. Moreover, unnecessary obstacles to exercising this right have a chilling effect on media professionals, preventing them from fulfilling their role as public watchdogs. The Court found that Hungary satisfied the first two elements of the three-part cumulative test, but the necessity part of the test of pressing social need was not fulfilled. In fact, at the time of the application, a large number of refugees were arriving in Hungary, and the government was campaigning in paid spots in the media that there was a severe refugee crisis in the country. In the Court's view, in that situation, a newspaper article based on the journalist's personal experience could have helped inform the public about a very vulnerable group, namely refugees who are not even familiar with local customs and language.

Although the ECtHR found that there is no common practice among ECHR State Parties regarding refugee centres and access for journalists, and a wider margin of appreciation could, therefore, be envisaged, in this particular case, the Court found that the local authorities had not sufficiently weighed up the importance of the public interest. In the ECtHR's view, the refugees' privacy is, of course, important, but the journalist had made it clear that he would only publish their photos and words with their written consent.

Moreover, the Court noted in principle that Hungary's argument that Mr Szurovecz could have obtained the information from other sources (such as those published by the BÁH) was not acceptable since, on the one hand, personal investigation means a different perspective and, on the other hand, State Parties cannot decide for journalists on the technique they use to carry out their work. On this basis, the ECtHR ruled that the applicant's right to receive and impart information envisaged in Article 10 ECHR had been violated.

4. Cases concerning Defamation

4.1. Karsai versus Hungary (2009)[35]

Mr Karsai is a historian and university professor who has written numerous articles on the role of the Hungarian authorities in the extermination of Jewish and Roma communities during World War II (especially under PM Pál Teleki between 1939 and 1941). In 2004, Mr Karsai published an article in a weekly newspaper in which he criticised the right-wing and extreme right-wing media for praising the former PM, which he called "cautious Jew-bashing". The article referred several times to another historian, Mr Török, although the criticism was not explicitly directed at him. Mr Török brought an action against Mr Karsai for prejudicing his reputation. The Hungarian courts were not of the same opinion: the court of first instance dismissed the action, while the court of appeal and the Supreme Court found that, although the specific sentence did not name Mr Török, the article as a whole was capable of damaging his reputation.

The ECtHR found the first two elements of the three-part cumulative test to be satisfied by Hungary, but found the necessity part to be lacking the pressing social need criterion. The Court accepted the argument that the article in its entirety could apply to Mr Török but considered the main issue to be whether Mr Karsai's article constituted a statement of fact or value judgment. This is to be decided by the national authorities and courts, which have a wide margin of appreciation, but in the event of a dispute, the ECtHR can have the 'final say'. Although the ECtHR in the present proceedings considered that there were factual grounds for the allegation, as Mr Török had indeed taken an active role in publicly commenting the actions of the former PM, it nevertheless qualified Mr Karsai's writing as a value judgement, as it did not refer to the other historian, but to his role as represented and voiced by him in the right-wing media.

The Court also observed that the article was part of a heated public debate in which the press should enjoy the highest level of protection. Furthermore, the Court pointed out that Mr Török had written many articles on the subject, thereby voluntarily exposing himself to public criticism. The civil sanction (namely, the duty to retract in a matter which affects Mr Karsai's professional credibility as a historian) imposed by the Hungarian courts can also have a chilling effect on the debate surrounding history in

35 *Karsai v Hungary*, No. 5380/07, 1 December 2009.

the country. On this basis, the Court found that applicant's right to FoE had been violated.

4.2. Ungváry and Irodalom Kft. versus Hungary (2013)[36]

Mr Ungváry, a historian dealing with 20th century Hungarian history, published an article in 2007 on the relationship between state security and student movements in the 1980s. The article also presented Mr Kiss, who was a judge of the HCC at the time of the publication of the article. Mr Ungváry's research suggests that Mr Kiss acted as a 'hardliner' against the student peace movement Dialogue and was an 'official contact' of state security.[37] The magazine's next issue included Mr Kiss's position, who denied the allegations. A week later, Mr Ungváry reiterated what he had stated in the original article in a television interview and called Mr Kiss a 'bastard' and 'main bastard'. Mr Kiss initiated both criminal and civil proceedings: the first one against Mr Ungváry, the second one against him and the newspaper, asking for their joint responsibility to be established. The court of first instance found in favour of Mr Kiss, claiming that Mr Ungváry and the newspaper had damaged his reputation and published untrue statements. The court of appeal, however, took the view that the allegations were value judgments, not statements of fact. The Supreme Court followed the position of the first instance court and held the historian and the newspaper jointly liable.[38]

At the beginning of its decision, the ECtHR noted the prominent role of the press in democratic societies but also stressed that the press must 'refrain from pure sensationalism'. The Court concluded that the relevant article was mainly factual, although the judgment refers to the content of the article as constituting an opinion in several paragraphs, therefore, the wording of the judgment does not help clarify the legal qualification

36 *Ungváry and Irodalom Kft. v Hungary*, No. 64520/10, 3 December 2013.

37 Mr Kiss was the deputy secretary of the Communist Party Committee of the city of Pécs between 1983 and 1988. In the article, Mr Kiss was not described as an official agent by Mr Ungváry.

38 It should be noted here that in the criminal proceedings, the courts of different levels also reached different decisions, but the Supreme Court eventually acquitted Mr Ungváry, *i.e.* "the final outcome of the proceedings differed fundamentally between the civil and criminal cases: on the basis of the same facts, Mr Ungváry was convicted in the former and acquitted in the latter." András Koltay, 'Ungváry Krisztián perei Magyarországon és Strasbourgban', *In Medias Res*, Vol. 7, Issue 1, 2014, p. 135.

of the article. The ruling is based on the fact that Mr Kiss is a public figure with a duty of tolerance, especially when a historian criticises his 1980s' role. In addition, the Court stated that Mr Kiss also used the press to publicise his own position. As a third concept, the Court considered the notion of official contact to be broad in scope and described it as a fact-related value judgment. In addition, the ECtHR also observed that some of the allegations exceeded the limits of journalism, scholarship and public debate. Considering the above, it is not easy to understand why the ECtHR nevertheless concluded that there had been a violation of Article 10 ECHR.

By way of explanation, it should be mentioned that the Court considered it essential that Mr Kiss had indeed written reports (even if not addressed to the authority) and that he was also holding an elected public office at the time of the publication of the article. Moreover, according to the ECtHR, the Hungarian courts did not take sufficient account of the fact that the article did not deal solely with Mr Kiss's role but also sought to present a broader context. The Court found that the fine imposed (namely, the duty to pay a considerable amount of money in damages and legal costs) could also have a chilling effect. In relation to the other applicant, namely the newspaper, the ECtHR found that since the archived material on Mr Kiss was only available to private individuals, the press had no means of verifying its content, which, moreover, was provided by a respected historian. For this reason, the Court held that Article 10 ECHR had been violated in respect of both applicants.

4.3. Uj versus Hungary (2011)[39]

Mr Uj, a Hungarian journalist, wrote an article about a world-famous Hungarian state-owned company's wine claiming that "hundreds of thousands of Hungarians are proudly, even devoutly, drinking this shit; it is fed (watered) to the much-suffered people, and at least twice (tle: state-owned enterprise) paid for by them". The company sued Mr Uj and the Hungarian courts convicted him for defamation and then for libel, with the Supreme Court also upholding the conviction. The reasoning behind the judgments was that characterising a wine as shit was unnecessarily insulting and infringed the company's good reputation.

39 *Uj v Hungary*, No. 23954/10, 19 July 2011.

The ECtHR, in its judgment, stated that what Mr Uj described is within the scope of FoE, even if it was exaggerated and provocative. The Court observed that the company had the right to defend itself and its products from defamatory-like allegations, but there is a fundamental difference between the reputation and dignity of a person and the commercial reputation of a company: the latter has no moral dimension. The article, as a whole, was more about the problematic aspects of state ownership than the wine itself, and thus, it was of public interest. In light of the above, the Court decided that there was a breach of Article 10 ECHR.

5. Cases concerning Online Communication

5.1. Szima versus Hungary (2012)[40]

The applicant was a retired senior police officer who served as the chairperson of the *Tettrekész Magyar Rendőrség Szakszervezete* (Tettrekész Police Trade Union) at the time of the case and authored several articles on the Trade Union's website, which fell under her editorial control. Her articles covered topics such as underpayment of police officers, allegations of nepotism and undue political influence within the police, as well as qualification concerns regarding senior police officers. Following the publication of these articles, she was found guilty of incitement to insubordination and was fined and demoted. The applicant submitted a complaint because the condemnation of certain statements she had published on the Internet violated her right to FoE, in particular, because she could not prove the truthfulness of the allegations challenged.

The Court noted that the right to FoE under Article 10 ECHR was guanarteed for everyone, including members of the armed forces. However, in analysing the proportionality of the punitive measures restricting the applicant's right to express critical opinions, the Court must examine the extent to which the right to FoE of a member of the police is restricted to prevent disorder within the police force, which is organised as a hierarchical body requiring discipline essential to the performance of its duties. Therefore, concerning the views expressed on the senior police officers' management practices, the Court shared the view of the domestic courts and accepted that these allegations, even if they were predominantly value judgments, were

40 *Szima v Hungary*, No. 29723/11, 09 October 2012.

capable of causing disobedience by potentially discrediting the legitimacy of police action, in particular since the applicant had not provided any clear factual basis for her claims. Given these considerations, the punishment imposed on the applicant was deemed proportionate.

5.2. Magyar Tartalomszolgáltatók Egyesülete and Index Zrt. versus Hungary (2016)[41]

Magyar Tartalomszolgáltatók Egyesülete (Association of Hungarian Content Providers, MTE) and Index Zrt. judgment by the ECtHR is a landmark case concerning the liability of a self-regulatory body of Internet content providers (MTE) and an Internet news portal (Index.hu) for vulgar and offensive online comments posted on their websites. At the time of the case, both MTE and Index.hu allowed users to leave comments on the publications published on their portals without any editing or moderation by the applicant. In that context, both applicants included in their General Terms and Conditions a clause providing that the content of the comments was the responsibility of the authors. In addition, the applicants operated a Notice and Take-Down System (NTDS) whereby anyone could report unlawful comments for removal.

MTE published an opinion article on its website regarding the unethical and misleading business conduct of a company. Users also commented on the article under pseudonyms. Index.hu wrote about the opinion as well, including the full article, to which users also reacted in the form of comments. The company concerned filed a complaint before the national courts, arguing that the opinion was falsely offensive and that the subsequent comments infringed on its right to reputation. As a result, the applicants removed the contested comments and argued that they were an intermediary service provider under Hungarian law and, therefore, they should not be held liable for the comments made by users. The national court partially upheld the claim, maintaining that the company's right to reputation had been infringed, as the comments were offensive, defamatory and humiliating, and exceeded the acceptable limits of Article 10 ECHR. The court also rejected that the applicants were merely intermediaries and had an exclusive obligation to remove certain content in the event of a complaint since the comments constituted edited content and were the same as letters from readers, making the applicants legally liable for publishing the comments, even though they were subsequently removed.

41 *Magyar Tartalomszolgáltatók Egyesülete and Index.Hu Zrt v Hungary*, No. 22947/13, 2 May 2016.

After the national proceedings, the Court held that the Hungarian courts had not struck an appropriate balance between the competing rights, as they accepted at face value that the comments were unlawful because they damaged the reputation of the company. The Court highlighted that although the comments were offensive and vulgar, in the present case, they did not amount to clearly unlawful speech. Regarding the liability of the applicants, the Court held that the Hungarian courts had failed to carry out a proportionate analysis of the actual authors and the legal liability of the applicants. In the Court's view, the fact that the applicants provide a platform for third parties with an NTDS to exercise their FoE by publishing comments constituted a specific journalistic activity and, in that context, it pointed to its existing practice whereby

> "punishing journalists for promoting the dissemination of the opinions of others expressed in the context of an interview would seriously undermine the contribution of the press to public affairs and should not be envisaged without a particularly strong justification."

5.3. Magyar Jeti Zrt. versus Hungary (2019)[42]

The applicant company (*Magyar Jeti Zrt.*) is the operator of a Hungarian news portal (444.hu), which challenged the national courts' unnecessary restriction of its FoE by finding it liable for posting a YouTube hyperlink providing access to defamatory content on its website. The video in question contained an interview with the head of the Roma minority municipality, who expressed his concerns about the situation of the Roma community after a group of football supporters had earlier made racist statements and threats against the local students of a school who were mainly of Roma origin. In describing the events, the leader described the football supporters as members of a right-wing party, Jobbik. The interview was uploaded on YouTube by the media. The applicant company published an article about the incident on its website, including a YouTube video hyperlink. The political party *Jobbik* initiated defamation proceedings for linking the description of football supporters with the party by using the term 'Jobbik'.[43] It claimed that the party's right to reputation had been infringed by publishing a hyperlink to the YouTube

42 *Magyar Jeti Zrt. v Hungary*, No. 11257/16, 3 March 2019.
43 In Hungarian Jobbik means 'Better than others' and also 'Rightist'.

video. The applicant company was found liable for disseminating defamatory statements in breach of the political party's right to reputation.

The Court emphasised the vital role of hyperlinks in facilitating Internet functionality and distinguished their use from traditional publishing, highlighting that hyperlinks merely direct users to existing material rather than providing the content itself. The Court outlined factors to be considered under Article 10 ECHR regarding whether hyperlinking could incur liability, stressing the need for individual assessments in each case. It criticised Hungarian domestic law for imposing strict liability for disseminating defamatory material, which hindered a meaningful evaluation of the applicant company's right to FoE. The imposition of strict liability for hyperlink usage could impede the free flow of information online, discouraging authors and publishers from utilising such links if they lack control over the linked content.

5.4. Index Zrt. versus Hungary (2023)[44]

In another case, Internet news portal Index Zrt. brought a claim to the Court challenging a decision by national courts to order the company to pay compensation for the publication of a story told by a third party, which the courts found to be false and defamatory. The publication concerned was a story about the Hungarian President's conduct during military service, part of a media initiative to counter a smear campaign. The applicant complained that the article concerned a public figure and a matter of public interest; thus, the order to pay compensation violated its right to FoE.

The Court disagreed with the national courts' finding that FoE did not apply to the applicant company's conduct. The domestic courts did not examine the whole article published by the applicant company but focused on a part of it taken from its general context. The Court reiterated that, in proceedings such as the present case, national courts are called upon to consider whether the context of the case, the public interest or the intention of the author of the article challenged justified the possible use of a dose of provocation or exaggeration. However, having regard to the reasons given by the national courts in their decisions, the Court considered that the national courts unduly detached the contested statement from its context and its apparent purpose and failed to take into account in their assessment any

44 *Index.hu Zrt. v Hungary*, No. 77940/17, 7 September 2023.

contribution which the article might have made to the debate on a matter of public interest since the information in question was not entirely free of political significance and was likely to arouse public interest in the way in which the President approached and carried out his duties. As regards the accuracy of the information and how it was obtained, the Court stressed that the applicant company was bound by 'duties and responsibilities' under Article 10 and, therefore, had to act in good faith to provide accurate and reliable information in accordance with journalistic ethics. The Court therefore considered that imposing objective liability on the applicant company for the reproduction of statements made by third parties, irrespective of whether the author or publisher acted in good or bad faith and by the duties and obligations of journalists, was difficult to reconcile with existing case law. Finally, the Court concluded that the national courts had applied standards inconsistent with the Court's practice, and found a violation of Article 10 ECHR.

6. Cases concerning Other Aspects of FoE

6.1. Csánics versus Hungary (2009)[45]

The applicant worked as a trade union leader and had regular disputes with the managing director of the company that employed him. In the context of a planned acquisition of a company, the company's employees called on the trade union to protest by organising a demonstration in front of the Parliament building. The applicant, as the leader of the trade union, made a statement to a newspaper, following which the managing director of the company brought an action against the applicant for defamation of character and asked the court to prohibit the applicant from further infringement and to order him to make reparation for the facts complained of. The national courts finally found that there had been an infringement of reputation, ordering the applicant to publish a rectification and pay the proceedings' costs. The applicant submitted the case to the Court, claiming that the decisions of the domestic authorities had infringed his right to FoE under Article 10 ECHR.

In its examination, the Court held that the case consisted of two related statements, the first of which was a general assessment, while the second was a statement of fact. The Court pointed out that, as regards the statement of

45 *Csánics v Hungary*, No. 12188/06, 20 January 2009.

facts, the applicant should have been allowed to substantiate his allegation since well-founded and factual allegations may be published, irrespective of their tone and their offensive nature towards another person. The Court also stressed that, given the large number of employees and the expression of an opinion concerning a matter of public interest there was little scope for restricting it. Since the tone of such collective labour disputes is generally heated and they are in the employees' interests, the statements must be afforded a high level of protection. Consequently, the Court found that Hungary infringed Article 10 ECHR.

6.2. Tatár and Fáber versus Hungary (2012)[46]

In the *Tatár and Fáber* case, the interference with FoE was related to an 'illegal assembly'. In the context of an event that the applicants described as a 'political performance', they put dirty clothes on a rope attached to the cordons around the Hungarian Parliament. According to the applicants, the symbolic meaning of this expression of opinion was to show 'the nation's dirty laundry'. The applicants spent thirteen minutes on the site. During that time, they answered several questions addressed to them by journalists present. The applicants explained that the 'performance' was intended to be a provocative event and was therefore not announced to the police in advance and that the preparation of the event was also carried out in secret, with only a few journalists invited and no other protesters participating. After the event, the applicants left the site voluntarily. Later, one of the police departments in Budapest imposed a fine of 205 euros each on the applicants for the offence of abusing the right to assembly, as it considered that the event constituted an 'assembly' which should have been reported to the authorities three days earlier. During the national court proceedings, it was established that the event had been publicly announced and, therefore, constituted an 'assembly' under the Hungarian Assembly Act. Thus, the applicants should have been aware of the obligation to notify the authorities.

The Court pointed out that the rights of assembly guaranteed by Article 11 ECHR are specific to the rights guaranteed by Article 10 ECHR because the gathering of people in public places may raise certain public policy issues. However, the Court pointed out that the mere fact that an expression of opinion takes place in a public space does not necessarily render such an event

46 *Tatár and Fáber v Hungary*, Nos. 26005/08 and 26160/08, 12 September 2012.

an assembly. In this context, the Court notes that there are several definitions of assembly in different national legal systems. Given that, even though the event was announced on the Internet, there was no deliberate gathering of participants and that there is no evidence that the purpose of the announcement was to invite not only journalists but also other participants, the Court held that the purpose of the 'political performance' in question was to convey a message through the media and not to gather people directly. This, moreover, would have been practically impossible during the thirteen minutes of the performance. According to the Court, the approach taken by the national authorities to the concept of assembly is not consistent with the justification for the reporting obligation, since the application of the rule not only to assemblies but also to expressions of opinion would create a prior restriction incompatible with the free expression of ideas. This could undermine the right protected under Article 10 ECHR.

6.3. Matúz versus Hungary (2014)[47]

In the *Matúz* case, the Court examined the limits regarding the duty of loyalty of journalists working for state or public television companies and the restrictions that can be imposed on their access to public affairs. The applicant was a television journalist employed by the public service broadcasting company *(Magyar Televízió Zrt.)* and the head of the company's trade union. He worked as editor and presenter of a periodical and cultural programme, which concerned interviews with various figures of cultural life. Concerning his activities, the applicant was under a duty of professional secrecy and could not disclose any information which came to his knowledge in the context of his employment. Following the appointment of the new Director of Culture, the applicant alleged that the new Director had cut out parts of the programme, which constituted censorship.

Shortly afterwards, the applicant published a book containing parts and letters of recorded interviews, which he claimed that according to the instructions of the new cultural director had not been included in the cultural programme. In the introduction to the book, the applicant stated that the book described the censorship system in state television. Following the publication of the book, the applicant was dismissed because he had breached the non-disclosure clause in his employment contract by publishing the book. In the

47 *Matúz v Hungary*, No. 73571/10, 21 October 2014.

court hearing, the applicant argued against his dismissal, claiming that he had received the internal correspondence in his capacity as the head of the trade union to take action against the alleged censorship. However, the national court ruled that the applicant was not exempt from the duty of loyalty because of his position as a trade union leader. The applicant submitted to the Court that the dismissal of his publication had infringed his right to FoE. As a journalist and leader of the national television company's trade union, he had the right and the duty to inform the public of the alleged censorship within the company. The Court applied the test it had developed in its practice, which is used in cases where the restriction on FoE arises from the obligation of professional confidentiality concerning the employer's right to exercise control over its employees. Applying the test, the Court considered the following criteria: *(i)* public interest involved in the disclosed information; *(ii)* authenticity of the information disclosed; *(iii)* the damage, if any, suffered by the authority as a result of the disclosure in question; *(iv)* the motive behind the actions of the reporting employee; *(v)* whether, in the light of duty of discretion owed by an employee toward his or her employer, the information was made public as a last resort, following disclosure to a superior or other competent body; and *(vi)* severity of the sanction imposed. As a result of its examination, the Court highlighted the importance of the right to FoE on matters of general interest: the applicant's professional obligations and responsibilities as a journalist on the one hand, and the duties and responsibilities of employees towards their employers on the other. Having weighed the different interests involved in the case, the Court concluded that the dismissal of the applicant was in breach of the ECHR.

6.4. Kincses versus Hungary (2015)[48]

The applicant submitted to the Court that his right to FoE had been infringed as he had been fined for criticising a judge while acting as a legal representative in one of his cases. In the case concerned, the applicant, representing a hunting association, appealed to the national court requesting the court to open proceedings to examine the competence of the judge hearing the case at first instance. The court forwarded the request to the *Békés Megyei Ügyvédi Kamara* (Békés County Bar Association), which initiated disciplinary proceedings against the applicant based on his submission. The *Szegedi Ügyvédi*

48 *Kincses v Hungary*, No. 66232/10, 27 January 2015.

Kamara Fegyelmi Bizottsága (Szeged Bar Association Disciplinary Committee) subsequently imposed a fine of 770 euros on the applicant for a serious breach of discipline, considering that the tone and wording of the submission were unacceptable and prejudicial to the reputation of the Bar.

The Court first pointed out that Article 10 ECHR applies not only to information and ideas favourably received or not considered offensive or indifferent but also to information and ideas that are offensive, shocking or disturbing. It further stressed that FoE also protects not only the content of the ideas and information expressed but also the form in which they are communicated. However, in its examination of the necessity of the interference, the Court underlined that the expression 'authority of the court' implies, in particular, the view that the court is the appropriate forum, as accepted by the public, for the establishment of legal rights and obligations and the settlement of disputes in this respect. Moreover, the public has respect and confidence in the ability of the court to fulfil this function, and the work of the court, which guarantees justice and plays a fundamental role in the rule of law. It therefore, needs to enjoy public trust and be protected from unjustified attacks. The Court indicated that a clear distinction must be drawn between criticism and insult and that, therefore, if the sole purpose of the expression of an opinion is to insult the court or the members of that court, the appropriate sanction does not, in principle, constitute a violation of Article 10 ECHR. In the present case, the Court held that, although a legal professional is necessarily entitled to express an opinion on the administration of justice, his criticism cannot go beyond certain limits. Accordingly, the Court concluded that there was no infringement of FoE.

6.5. Herbai versus Hungary (2020)[49]

The *Herbai* case is particularly notable for the fact that, contrary to the majority position of the Second Instance Court and the HCC, the Court ruled that FoE does not only apply to public issues in the strict sense. The applicant at the time of the case was a bank employee who had started a blog on a subject related to his work activity. The bank dismissed him on the grounds of loss of confidence and the employer's legitimate interest. The applicant challenged the termination before the national courts, which ultimately dismissed the claim on the basis that the overlap between the subject matter of the blog and

49 *Herbai v Hungary*, No. 11608/15, 5 February 2020.

the applicant's professional activities suggested that the employee intended to share information on the blog relating to his professional activities. The applicant lodged a constitutional complaint against the decision, arguing that the professional blog and the articles published on it fall within the scope of the protection of the fundamental right to FoE and information, which the courts failed to consider.

The Court emphasised that the employment relationship cannot be excluded from the scope of Article 10 and that the State must, therefore, guarantee certain rights linked to FoE in the context of employment relationships between private parties. The practice of the Court recognises the importance of the principle of mutual trust and confidence in the employment relationship; however, it cannot imply unconditional and absolute loyalty. Furthermore, the Court stressed that national courts should balance the conflicting interests of the applicant and the employer, which was not adequately performed in the case at hand. Accordingly, the Court held that the State had failed to fulfil its obligation to protect rights in relations between private parties under Article 10, in breach of the ECHR.

6.6. Mándli and Others versus Hungary (2020)[50]

The applicants were journalists of various online news portals (including Index.hu, 24.hu, nol.hu and hvg.hu) who received accreditation from the *Magyar Országgyűlés Sajtóirodája* (Hungarian Parliament's Press Office) to report on one of the sessions. Although the applicants had been informed of the rules governing the reporting of events in the Parliament, they made recordings in an unauthorised manner and location, which were published on the news portals. Following the incident, the accreditation of the applicants was suspended, and the editors-in-chief of the relevant media outlets were informed of the decision, stating that the journalists had continued to record despite repeated warnings from the press office, resulting in the suspension of their access for violation of the rules.

The Court stressed that suspending the applicants' accreditation to enter the Parliament building for almost five months had adverse consequences, as it prevented them from obtaining first-hand and direct information on the work of the Parliament and the events taking place in the building based on their personal experience. These were essential aspects of the applicants'

50 *Mándli and others v Hungary*, No. 63164/16, 12 October 2020.

duties as journalists. The Court also emphasised that the reason for the sanction was not the disclosure of information on matters of a political nature but the place and manner in which it was obtained. As regards the method of imposing the sanction, the Court pointed out that the assessment of procedural safeguards must be adapted to the parliamentary context, bearing in mind the generally recognised principles of parliamentary autonomy and the separation of powers. Nevertheless, the Court concluded that the sanction imposed by the Parliament's bodies infringed the applicants' rights to FoE for lack of adequate procedural safeguards.

7. Comparison of Cases

The present article proposes different aspects to consider when comparing the Hungarian FoE cases and their assessment. First, it can be argued that there are systemic legal issues and challenges regarding the interpretation and safeguarding of rights enshrined in Article 10 ECHR when it comes to cases involving Hungary.

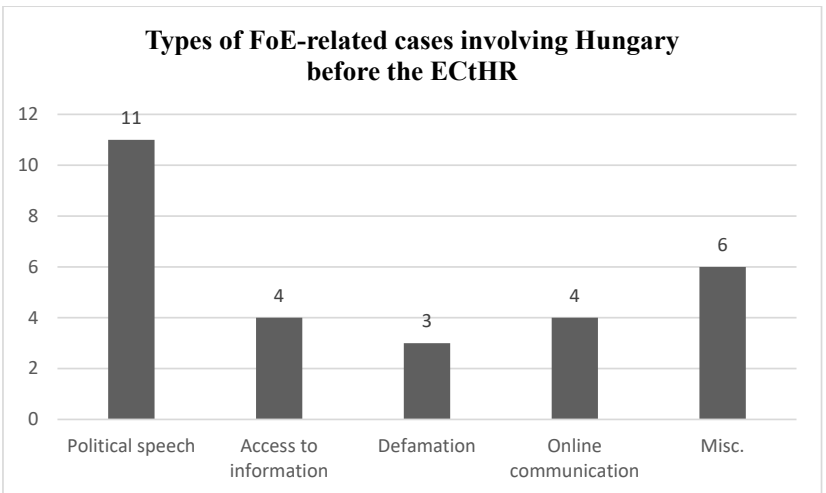


Figure 1: Composition of cases concerning Article 10 and Hungary
Source: own editing

Our analysis indicates that challenges related to FoE and communication are not limited to specific domains[51] but permeate various aspects of societal interaction, ranging from political speech to whistleblowing.[52] As for the former category, the ECtHR's case law has consistently emphasised the importance of freedom of public and political debate, highlighting the critical role of FoE in a democratic society.[53] Acknowledging broader limits of acceptable criticism, issues related to public debate and forms of political expression,[54] while laying down narrow limitations on denying access to information,[55] the Court's precedent system seems comprehensive and consistent. It asserts that in a democratic system, government actions must be subject to scrutiny not only by legislative and judicial authorities but also by the media[56] and public opinion.[57] Subsequently, it can be concluded that the abovementioned principles and judgments underscore the Court's commitment to upholding FoE as a fundamental pillar of democracy, ensuring accountability and transparency in governance.

Nonetheless, the consistent presence of violations across multiple categories suggests a systemic issue rather than isolated incidents in cases involving Hungary as the respondent.

51 János Tamás Papp, 'Recontextualizing the Role of Social Media in the Formation of Filter Bubbles' *Hungarian Yearbook of International Law and European Law*, Vol. 11, 2023, pp. 136–150.

52 Gergely Ferenc Lendvai *et al.*, 'Whistleblowing as a Form of Expression: Comprehensive Overview of the Concept of Whistleblowing and Its Freedom of Expression Aspects, with Particular Reference to the Case Law of the European Court of Human Rights', *Juridical Tribune*, Vol. 14, Issue 2, 2024, pp. 210–226.

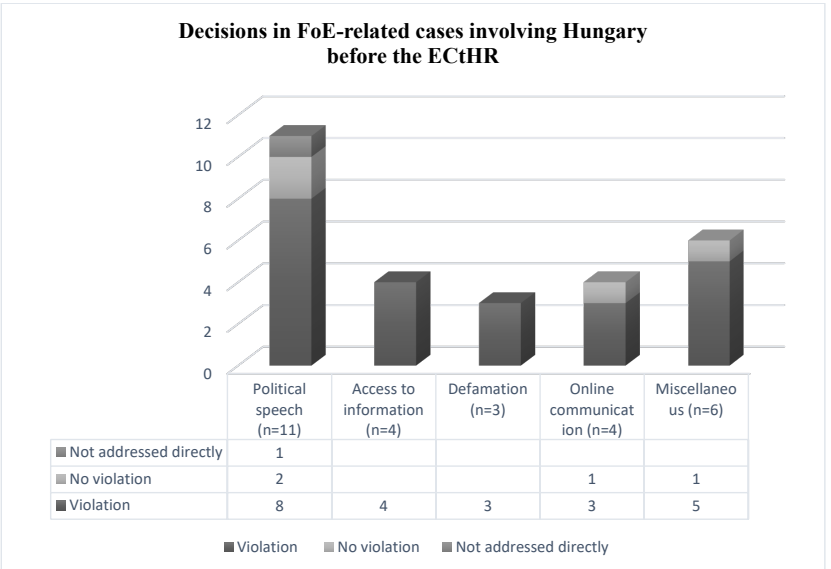
53 Dirk Voorhoof & Hannes Cannie, 'Freedom of Expression and Information in a Democratic Society. The Added but Fragile Value of the European Convention on Human Rights', *International Communication Gazette*, Vol. 72, Issue 4, 2010, pp. 413–414.

54 Gergely Ferenc Lendvai *et al.*, 'A politikai kampány láthatáron lévő uniós szabályozása', *Európai Jog*, Vol. 24, Issue 3, 2024, pp. 1- 9.

55 Wouter Hins & Dirk Voorhoof, Access to State-Held Information as a Fundamental Right under the European Convention on Human Rights', *European Constitutional Law Review*, Vol. 3, Issue 1, 2007, pp. 117–126.

56 Gergely Gosztonyi *et al.*, 'Hungarian Digital Media Cases Before Supranational European Courts', *Hungarian Yearbook of International Law and European Law*, Vol. 11, Issue 1, 2023, pp. 295–317.

57 Voorhoof & Cannie 2010, p. 413.



	Political speech (n=11)	Access to information (n=4)	Defamation (n=3)	Online communication (n=4)	Miscellaneous (n=6)
Not addressed directly	1				
No violation	2			1	1
Violation	8	4	3	3	5

Figure 2: Analytical statistics of the cases per categories
Source: own editing

Out of twenty-eight FoE cases since Hungary's accession to the EU in 2004, only in four cases did the Court find no violation of Article 10 ECHR, leaving a margin of circa 86 % that when Hungary acts as respondent in such cases, a violation will be found. Such a high rate is staggering, even more so in the context of access to information and defamation, where, in all cases, Hungary was found violating the rights guaranteed under Article 10 ECHR.

On another critical note, as seen from the above comprehensive presentation of cases, in most cases, the last part of the three-part cumulative test, namely, necessity, was scrutinised by the ECtHR. Though arguments can be made that the necessity segment of the three-part cumulative test can be improved,[58] the statistics envisage a troubling judicial pattern where applicants consistently face incorrect interpretation of laws and must wait multiple years for justice to be served when their FoE is in question.[59] The above pattern is even more alarming in cases related to political speech and access to

58 Janneke Gerards, 'How to improve the necessity test of the European Court of Human Rights', *International Journal of Constitutional Law*, Vol. 11, Issue 2, 2013, pp. 473–488. https://doi.org/10.1093/icon/mot004

59 Maria Filatova, *Reasonable Time of Proceedings: Compilation of Case-law of the European Court of Human Rights*, Council of Europe Publishing, Strasbourg, 2021.

information, categories where there is strong intersectionality with public issues, yet in both categories, the domestic courts apparently decide incorrectly on the issues presented. Especially in the case of the right to access to information, a novel pattern can be discerned where public bodies exercising their "censorial power of an information monopoly"[60] hinder the free flow of information, raising questions on the efficacy of the regulation on information gathering and the possible emergence of a chilling effect in the fields of journalism, legislation and historical research.

Lastly, it is worth emphasizing a rather technical perspective, namely, the costs of the continuous violation of Article 10 ECHR.

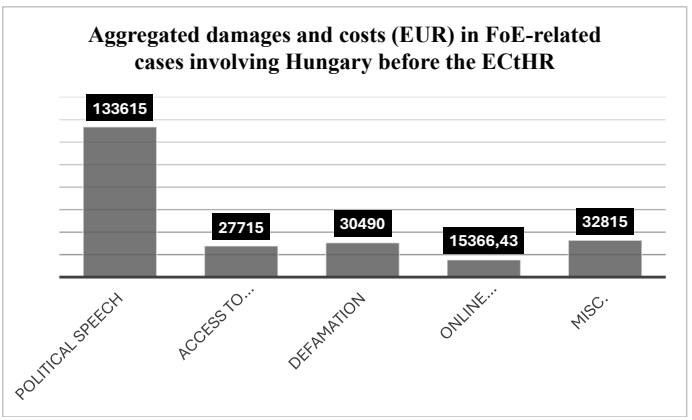


Figure 3: A detailed overview of the total amounts to be paid in euros without considering simple interest rates
Source: own editing

As illustrated by the figure above, the Court held that significant amounts are to be paid to the applicant in the majority of violation decisions. In total, Hungary was judged to pay 240,001.43 euros in 24 cases; however, it is to be underlined that the Baka judgment is an outlier in the statistics, as it involved an imposition of 100,000 euros in costs and damages alone. Nonetheless, from the above analysis, if one wishes to challenge the Hungarian domestic courts' decision concerning their FoE or right to access to information, one has an approximate 86 % success rate in doing so, and the

60 Dirk Voorhoof, 'European Court of Human Rights: Case of TASZ v. Hungary', *IRIS*, Vol. 7, Issue 1, 2009, p. 1.

process may result in around 8,125 euros on average in damages and costs to be paid by the government.[61]

8. Conclusion

Cases involving Hungary on issues regarding Article 10 ECHR had a significant effect in developing FoE case law. In the context of political speech, for instance, the facts of the *Fáber, Vajnai* and *Fratanoló* cases present high similarity as they all concern speech through symbols. The ECtHR also made efforts to develop and refine the interpretation of offensive symbols, resulting in a situation that no such cases had been presented before the ECtHR for over a decade now. After the *Delfi* case,[62] the MTE and Index.hu case also gave a clearer explanation on intermediary liability.[63]

On analysing the three-part cumulative test, it seems that "among the criteria used to protect Article 10 ECHR, the lack of a pressing social need in a democratic society is the most common reason for a violation,"[64] the first two parts (prescribed by law and legitimate aim) provided less frequent grounds for decisions against Hungary. Moreover, the ECtHR also designated numerous cases as 'key cases'[65] such as the *Karácsony and others* case or the *Magyar Helsinki Bizottság* case, where substantial theoretical developments of the interpretation of Article 10 were made by the Court, creating a more interconnected, thorough and from a scholarly standpoint, comprehensive guidance to understand and analyse cases at hand.

Considering all Hungarian Article 10 ECHR FoE cases, it seems clear that despite the fact that in the vast majority of the cases there was a breach of Article 10 ECHR, they have still significantly contributed to the ECtHR clarifying its position more accurately, as they have covered a wide range of aspects of FoE.

---

61 $\%_{\text{political speech}}$=14846,11; $\%_{\text{access to information}}$=6928,75; $\%_{\text{defamation}}$=7622,5; $\%_{\text{access to information}}$=5122,143; $\%_{\text{misc.}}$=6563.

62 *Delfi AS v Estonia*, No. 64569/09, 16 June 2015.

63 Gergely Gosztonyi, *Censorship from Plato to Social Media. The Complexity of Social Media's Content Regulation and Moderation Practices*, Springer Nature Switzerland AG, Cham, 2013, p. 126.

64 Judit Bayer, 'Az Emberi Jogok Európai Bíróságának 10. cikkel kapcsolatos joggyakorlatának egyes súlypontjai'. *Állam- és Jogtudomány*, Vol. 58, Issue 4, 2017, p. 128.

65 *Cf.* at www.echr.coe.int/selection-of-key-cases.