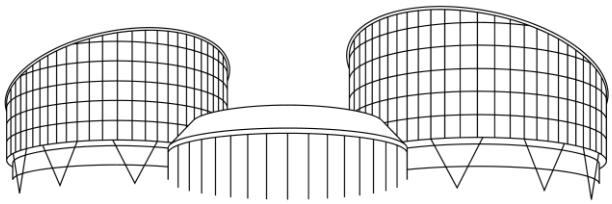

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PATYI v. HUNGARY

(Application no. 35127/08)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of Patyi v. Hungary**,**

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 35127/08) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr István Patyi ("the applicant"), on 24 July 2008.

2. The applicant was represented by Mr I. Barbalics, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Public Administration and Justice.

3. The applicant complained about the frustration of his right to peaceful assembly.

4. On 15 February 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicant intended to organise demonstrations in order to call attention to the situation of those having sustained damage originating in a major bankruptcy case which had attracted considerable media attention in Hungary. On 5 February 2007 he applied to the Budapest Police

Department for acquiescence in a demonstration on 10 March 2007 and in another one, of ongoing nature, from 10 March until 31 October 2007, both scheduled in Kossuth Square, in front of Parliament.

7. On 7 February 2007 the Budapest Police Department refused to deal with either of the applications. It observed that on 23 October 2006 the area in question had been declared by the Police Department itself a "security operational zone" (*biztonsági műveleti terület*) in view of the tumultuous events in Budapest in September 2006. Consequently, the measure – which was, after a prolongation, in place for an indefinite period of time – remained as such outside the Police Department's competence as regards the prohibition of, or acquiescence in, a demonstration.

8. On 5 March 2007 the National Police Commander upheld this decision.

9. On 14 January 2008 the Budapest Regional Court dismissed the applicant's request for judicial review, endorsing in essence the police authorities' reasoning. This decision was served on 26 January 2008.

10. In another case concerning the same area, on 29 January 2007 a Mr K. challenged the police's very decision to declare Kossuth Square a "security operational zone". On 14 March 2007 the Budapest Police Commander rejected his complaint, but this decision was quashed by the National Commander on 16 April 2007. In the resumed administrative proceedings, on 22 June 2007 the Budapest Commander again rejected the complaint. On 19 July 2007 the National Commander upheld this decision. Mr K. challenged this ruling in court.

11. Mr K.'s action was dismissed by the Budapest Regional Court. However, on appeal the Supreme Court quashed this decision, together with the one of 19 July 2007.

12. In the resumed second-instance administrative proceedings, on 23 December 2009 the National Commander again upheld the Budapest Commander's decision. Mr K. requested judicial review.

13. On 11 November 2010 the Regional Court quashed, in judgment no. 27.K.31.354/2010/9., both the first- and the second-instance administrative decisions and remitted the case to the Budapest Commander. The court pointed out that the impugned decisions did not contain any concrete elements establishing the necessity and proportionality of maintaining the "security operational zone" after the prolongation of 22 November 2006. Nor did they address the plaintiff's suggestion that the mere fencing-off of Parliament's immediate vicinity – rather than the global ban on Kossuth Square – would have been sufficient in the circumstances.

14. In the resumed first-instance administrative proceedings, on 4 April 2011 the Budapest Commander partly sustained Mr K.'s complaint, noting that, in the absence of evidence to the contrary, the proportionality of the impugned measure had successfully been challenged.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

15. The Government submitted that the applicant should have challenged in court the original police decision declaring Kossuth Square an "operational zone" (see also paragraph 19 below). The applicant argued that he had exhausted domestic remedies by filing a request for the judicial review of the police's non-competence decision.

16. The Court considers that the Government's objection concerning non-exhaustion of domestic remedies is inextricably linked to examination of the question whether there has been an interference with the applicant's right to freedom of assembly under Article 11, and therefore to the merits of the case. Accordingly, the Court joins this question to the merits and will examine it under Article 11 of the Convention.

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

18. The applicant complained that the police measure in question had prevented him from exercising his right to peaceful assembly. He relied on Articles 6, 9, 10, 11, 13, 14 and 17 of the Convention. The Court considers that the complaint falls to be examined under Article 11 of the Convention alone, which reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly ...
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

19. The Government contested this view. They noted that, in the applicant's view, it was the police decision on non-competence that violated his right to freedom of assembly. However, the interference in fact resulted from the original police measure declaring the area in question a "security operational zone". Against such a measure, a distinct complaint might be filed with the police body in charge, and the latter's decision could be appealed before the superior organ. The resulting administrative ruling was susceptible to judicial review, an effective remedy in the circumstances. However, the applicant had not pursued this avenue; instead, he had filed appeals against, and sought judicial review of, the police order on

non-competence. In other words, he had been challenging the wrong decision. In respect of the area closure itself, successful proceedings, including judicial review, had already been completed (case no. 27.K.31.354/2010/9.); and the applicant could have availed himself of the same, failing which he had not exhausted domestic remedies.

20. As to the merits, the Government pointed out that the venue of the intended assembly had not qualified at the material time as public area accessible to everyone and therefore the right to freedom of assembly could not be exercised on it.

21. The applicant argued that, to exhaust domestic remedies, he could reasonably be expected to challenge the police's non-competence decision in court, but do no more. The non-availability of Kossuth Square for the purposes of the intended demonstration had been an unlawful and disproportionate measure.

22. The Court observes that the Government did not dispute that the applicant could rely on the guarantees contained in Article 11. It considers that the non-acquiescence by the police in the demonstration effectively interfered with the exercise of the applicant's rights under that provision, as the individualised application of the original police decision referred to by the Government (see paragraph 19 above). It is further satisfied that the applicant has exhausted the remedy available in this connection.

23. The Government moreover based their preliminary objection of non-exhaustion of domestic remedies on the fact that the applicant had not filed another motion, against the original police decision, but been contented with challenging the decision on non-competence. However, the Court is not convinced that the proceedings which were pursued by Mr K. but not by the applicant can be considered in the circumstances an effective remedy whose omission falls foul of Article 35 § 1 of the Convention. Given the instantaneous nature of a political demonstration – the impact of which may rapidly diminish with the lapse of time from the triggering event – a judicial procedure, which included several remittals and decisions maintaining the ban and which produced at last a decision to the contrary only after more than four years, can hardly be regarded as effective or adequate and must be attributed a chilling effect on the freedom in question (see, *a fortiori*, *Bączkowski and Others v. Poland*, no. 1543/06, §§ 67 to 73, 3 May 2007). For the Court, the applicant's omission to pursue this legal avenue in addition to the one utilised cannot be held against him, all the more so, since there appears to be no obstacle to the authorities' assessing proportionality also in those proceedings, of which the applicant availed himself. The Government's preliminary objection must therefore fail.

24. The Government contended that the interference was justified under the second paragraph of Article 11. It must therefore be determined whether the measure complained of was "prescribed by law", prompted by one or

more of the legitimate aims set out in paragraph 2, and was "necessary in a democratic society" to achieve them.

25. As regards the question whether the non-availability of Kossuth Square for the purposes of the intended demonstration was "prescribed by law", the Court notes that the police declared it a "security operational zone" in 2006, and it remained so throughout the material period. However, on 11 November 2010 the Budapest Regional Court quashed the underlying police decisions, reproaching those authorities for failing to assess the necessity and proportionality of the measure as maintained subsequent to 22 November 2006. Consequently, on 4 April 2011 the Budapest Commander carried out the requisite scrutiny and found that the proportionality of the measure had not been proved (see paragraphs 13-14 above). For the Court, these court rulings have effectively, if retroactively, removed the legal basis of the impugned measure.

26. It is true that the above two decisions were adopted in a procedure initiated by Mr K. rather than the applicant. For the Court, however, this is immaterial when it comes to the notion of lawfulness in the context of Article 11 § 2.

27. The foregoing considerations are sufficient to enable the Court to conclude that the ban on Kossuth Square at the material time was devoid of a basis in domestic law and cannot as such be regarded as "prescribed by law". It is therefore not necessary to embark on an examination of its legitimate aim or necessity in a democratic society.

There has accordingly been a violation of Article 11 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

29. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government contested this claim.

31. The Court considers that the applicant must have suffered some non-pecuniary damage and awards him, on the basis of equity, EUR 2,400.

B. Costs and expenses

32. The applicant also claimed EUR 1,800 plus 25% VAT for the costs and expenses incurred before the Court. This amount corresponds to 20 hours of legal work billable by his lawyer at an hourly rate of EUR 90 plus VAT.

33. The Government contested this claim.

34. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 1,500 under this head.

C. Default interest

35. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* to the merits the Government's objection concerning non-exhaustion of domestic remedies and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 11 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Hungarian forints at the rate applicable at the date of settlement:

(i) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President