



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

SECOND SECTION

**CASE OF NOÉ, VAJNAI AND BAKÓ v. HUNGARY**

*(Application nos. 24515/09, 24539/09 and 24611/09)*

JUDGMENT

STRASBOURG

23 September 2014

*This judgment is final but it may be subject to editorial revision.*



**In the case of Noé, Vajnai and Bakó v. Hungary,**

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

Helen Keller, *President*,

András Sajó,

Robert Spano, *judges*,

and Abel Campos, *Deputy Section Registrar*,

Having deliberated in private on 2 September 2014,

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

**PROCEDURE**

1. The case originated in three applications (nos. 24515/09, 24539/09 and 24611/09) 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 three Hungarian nationals, Ms Krisztina Noé, Mr Attila Vajnai and Mr András Attila Bakó (“the applicants”), on 5 May 2009.

2. The applicants were represented by Mr G. Magyar, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Public Administration and Justice.

3. The applicants complained under Article 10 of the Convention that their convictions for displaying a red star were a breach of their right to freedom of expression.

4. On 13 March 2012 the applications were joined and communicated to the Government.

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1970, 1963 and 1989 and live in Paks and Budapest respectively.

6. At the material time, Mr Vajnai was Vice-President and Ms Noé and Mr Bakó were activists of the Workers’ Party (*Munkáspárt*), a registered left-wing political party. The party had no known intention of participating in Hungarian political life in defiance of the rule of law.

7. On 21 December 2008 the applicants organised an event in front of a shopping mall in Budapest, entitled “Anti-Capitalist Santa Claus”, with the

intention to demonstrate against consumerism, draw attention to poverty, point out the shortcomings of market economy, and demand free internet access for all.

8. To express their affiliation with Communism, four persons, including the applicants, displayed a sheet and a flag with a five-pointed red star and distributed leaflets with their political message, depicting red stars.

9. In application of section 269/B(1) of the Criminal Code, a police patrol which was present called on the applicants to terminate the demonstration, checked their identity and committed them to Budapest VI District Police Department for interrogation.

10. On 23 December 2008 the applicants lodged a complaint with the Independent Police Complaints Board against the police measures. They relied on the judgment of the European Court of Human Rights adopted in the case of *Vajnai v. Hungary* (no. 33629/06, ECHR 2008). They referred to the Court's finding that the prosecution for having worn a red star had amounted to a violation of Mr Vajnai's freedom of expression enshrined in Article 10 of the Convention.

11. The applicants' complaints were dismissed by the Complaints Board on 4 March 2009.

12. The applicants' further complaints against the measures were dismissed by the District Police Department on 22 May 2009. This decision was upheld by the Budapest Chief Police Commander, acting as a second-instance authority, on 17 November 2009.

13. On 29 June 2010 the Budapest Regional Court dismissed the applicants' requests for judicial review. The court held that the display of the red star contravened section 269/B of the Criminal Code, despite the *Vajnai* judgment, whose application in the circumstances had been no task of the police officers present on the premises. Consequently, the applicants' identity check and committal to the Police Department was justified under sections 29 (1) and 33 (1) of Act no. XXXIV of 1994 on the Police.

14. In review proceedings, the Supreme Court upheld the Regional Court's decision on 22 June 2011 (in the case of Mr Bakó), 27 June 2011 (in the case of Ms Noé), and 5 September 2011 (in the case of Mr Vajnai), endorsing in essence the first-instance decisions' reasoning.

15. The applicants, jointly (they had a lawyer in common), incurred altogether 2,760 euros in legal costs.

## THE LAW

16. The applicants complained that the police measures infringed their rights under Article 10, just like in the *Vajnai* case (cited above).

17. The Government submitted that the present cases were different from *Vajnai* – in that the issue here was whether or not the police officers had the duty or possibility to carry out the contextual scrutiny of the applicant’s conduct, as required by the *Vajnai* judgment. In the Government’s view, the police measure was lawful and justified, because the officers had acted under the reasonable assumption that the applicants’ conduct had constituted an offence under section 269/B of the Criminal Code, still prohibiting the display of a red star. They pointed out that the Police Complaints Board, an organ independent from the police, had found that the applicants’ fundamental rights had not been restricted in an objectionable manner.

18. The applicant contested these views, making reference to the *Vajnai* judgment.

19. The Court recalls that it has already found that the prosecution of Mr Vajnai for displaying the red star was an admissible complaint and constituted a violation of Article 10 (see *Vajnai*, cited above). The impugned provision of the national law was the same as in the present case and the circumstances of the interference virtually identical. Consequently, the Court finds no reason to depart from its earlier conclusion in the matter.

It follows that there has been a violation of Article 10 of the Convention.

20. Relying on Article 41 of the Convention, the applicants, jointly, claimed 2,760 euros (EUR) in respect of pecuniary damage (incurred as legal costs on the domestic level while attempting to prevent the violation, see paragraph 15 above). They also claimed EUR 4,000 each in respect of non-pecuniary damage.

The Government disputed these claims.

The Court awards the applicants the entirety of the legal costs and expenses incurred in the domestic proceedings, that is, EUR 2,760 jointly in pecuniary damage. Moreover, it considers that the applicants must have suffered some non-pecuniary damage and awards them, on the basis of equity, EUR 2,000 each under this head.

21. The applicants, jointly, also claimed EUR 2,000 plus VAT for the costs and expenses incurred before the Court. This figure corresponds to ten hours of legal work billable by their lawyer at an hourly rate of EUR 200 plus VAT.

22. The Government contested the claim.

23. Regard being had to the documents in its possession and to its case-law, the Court considers that the sum claimed should be awarded in full.

24. 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. *Declares* the applications admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) to the applicants jointly, EUR 2,760 (two thousand seven hundred and sixty euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) to each applicant, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) to the applicants jointly, EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, 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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos  
Deputy Registrar

Helen Keller  
President