

Press release issued by the Registrar

**CHAMBER JUDGMENT
VAJNAI v. HUNGARY**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Vajnai v. Hungary* (application no. 33629/06).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court held unanimously that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by Mr Vajnai, and awarded him 2,000 euros (EUR) for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, Attila Vajnai, is a Hungarian national who was born in 1963 and lives in Budapest. At the relevant time Mr Vajnai was the Vice-President of the Workers' Party (*Munkáspárt*), a registered left-wing political party.

The case concerned Mr Vajnai's complaint about his conviction for wearing the five-pointed red star, symbol of the international workers' movement, at a demonstration in Budapest.

On 21 February 2003 the police asked Mr Vajnai, a speaker at an authorised demonstration in the centre of Budapest, to remove the red star he was wearing on his jacket. Proceedings were subsequently brought against him for using a totalitarian symbol. He was convicted as charged in March 2004. Any sanction was postponed for a probationary one-year period. The applicant's conviction was upheld on appeal in November 2005.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 May 2006.

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

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Françoise **Tulkens** (Belgian), *President*,
Ireneu **Cabral Barreto** (Portuguese),
Vladimiro **Zagrebelky** (Italian),
Danutė **Jočienė** (Lithuanian),
András **Sajó** (Hungarian),
Nona **Tsotsoria** (Georgian),
Işıl **Karakaş** (Turkish), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

Relying on Article 10 (freedom of expression), the applicant complained about his conviction for wearing the symbol of the international workers' movement.

Decision of the Court

Article 10

The Court found that the applicant's conviction had amounted to an interference with his right to freedom of expression. That interference, based on Section 269/B of the Hungarian Criminal Code which restricted the use of totalitarian symbols, was "prescribed by law" and "pursued the legitimate aim" of the prevention of disorder and the protection of the rights of others.

The Court reiterated that there was little scope under Article 10 for restrictions on political speech or public debate. It considered that Mr Vajnai, a politician, had decided to wear the red star in public as a way to express his political views. Furthermore, when freedom of expression was exercised as political speech – as in the applicant's case – limitations were only justified if there was a clear, pressing and specific social need.

The Court accepted the fact that the well-known mass violations of human rights committed under Communism had discredited the red star and that the display of such a symbol might create uneasiness among past victims and their relatives.

However, almost two decades had gone by since the transition to pluralism in Hungary which, now a Member State of the European Union, had proved itself to be a stable democracy. Nor was there evidence to suggest that there was any real danger of a political movement or party restoring Communist dictatorship in Hungary. Furthermore, uneasiness alone, however understandable, could not set the limits of freedom of expression.

Moreover, the Court considered that the ban on totalitarian symbols under the Hungarian Criminal Code was indiscriminate. Merely wearing the red star could lead to a criminal sanction and no proof was required that the display of such a symbol amounted to totalitarian propaganda.

¹ This summary by the Registry does not bind the Court.

The ban was also too broad in view of the multiple meanings of the red star. Not only did the star symbolise the international workers' movement, which struggled for a fairer society, but also certain lawful political parties active in various Member States. The Government had not shown that the star exclusively represented Communist totalitarian rule. Indeed, the applicant had worn the star at a lawfully organised, peaceful demonstration in his capacity as vice-president of a registered political party, with no known totalitarian ambitions.

Finally, as regards the aim of preventing disorder, the Court observed that the Government had not referred to any instance where an actual or even remote danger of disorder triggered by the public display of the red star had arisen in Hungary.

The Court therefore concluded that the applicant's conviction for simply having worn a red star could not be considered to have responded to a "pressing social need". Furthermore, the measure with which his conduct had been sanctioned, although relatively light, came under criminal law, which could entail the most serious consequences. The sanction had therefore not been proportionate to the legitimate aim pursued. Accordingly, there had been a violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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