

The First Section of the European Court of Human Rights (ECHR), with a judgement of October 21st 2021, ruled against Hungary for a violation of art. 11 of the European Convention on Human Rights which guarantees the freedom of assembly and association.

The applicant alleged a violation of his right to freedom of peaceful assembly following the prohibition imposed on him by the Hungarian authorities from being able to organize a demonstration in certain places of the city in order to draw attention to the situation of those having foreign currency loans and to alleged fraudulent banking policies, and also to “put pressure on the decision-makers so that respect for the rule of law gains primacy over the interests of oligarchs”. The Court reiterated that the right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11: in fact, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact. In the present case, the competent authorities banned the demonstration planned by the applicant outside the Kúria (Supreme Court) and the homes of the Prime Minister and the CEO of one of the country's most important banks. Strasbourg judges considered that the ban on holding the demonstration at those locations constituted an interference with the applicant's right to freedom of peaceful assembly. Then, an interference constitutes a breach of Article 11 unless it is “prescribed by law”, pursues one or more of the legitimate aims referred to in paragraph 2 and is “necessary in a democratic society” for the achievement of such aim or aims. The planned demonstration in front of the Prime Minister's and CEO's house was banned by the Budapest Police Department as, in their view, it would have constituted a direct threat to the inhabitants' right to private and family life, to their right to property and to their right to move around freely. The Administrative and Labour Court upheld this decision, finding that the protection of the residents' private life and civil rights was a relevant reason to restrict assemblies. These decisions were based on arts. 2§3 and 8§1 of the Hungarian law on the right of assembly and association, namely the Assembly Act. The ECHR found that, as also explained by the Hungarian Constitutional Court, the provisions invoked by the police and the Administrative and Labour Court intended to disperse a demonstration already taking place where it infringed the rights of others and could not justify a total ban of demonstration in the case at issue: this was sufficient to enable the European Court to conclude that the interference was devoid of a basis in domestic law and cannot as such be regarded as “prescribed by law”. As regards the demonstration planned before the Kúria, the Court affirmed that a ban on holding public events in the immediate vicinity of court buildings may serve a legitimate interest, namely that of protecting the judicial process in a specific case from outside influence, and thereby protecting the rights of others, namely the parties to judicial proceedings. Having accepted that the restriction pursued one of the “legitimate aims” within the meaning of art. 11, paragraph 2, those of protecting the rights of others and preventing disorder, the Court then decided to establish whether it was “necessary in a democratic society”. The right to freedom of peaceful assembly is, like the right to freedom of expression, one of the foundations of any democratic society. Consequently, exceptions to the right to freedoms of association and assembly must be narrowly interpreted. The demonstration was not authorized on the basis of the assertion of the vice president of Kúria that the latter would endanger the independence and proper functioning of the judiciary. Nonetheless, the demonstration planned there was to last only a brief period of time and the demonstrators showed flexibility in changing the manner in which they intended to convey their message. Moreover, the domestic authorities relied on the statement of the vice-president of the Kúria without further inquiry into the circumstances of the planned demonstration, and in particular into its subject matter: this approach excluded any balancing of the interests of the demonstrators against the interest in preserving the appearance of an independent judiciary. In view of the foregoing, the ECHR found that the reason put forward by the national authorities of protecting the Kúria from external influences was relevant but not sufficient, in the circumstances of the present case, to justify an interference with the applicant's right to freedom of assembly. In conclusion, the prohibitions constituted a violation of art. 11 of the Convention.

Riferimenti Normativi:

- art. 11 Convenzione Europea dei Diritti dell'Uomo



The need to protect certain rights and interests does not justify an excessive restriction on the exercise of the freedom of assembly and association

Diritto civile Tutela dei Diritti

Denise Campagna

21 | 10 | 2021
