

With a judgement of December 2nd 2021, the First Section of the European Court of Human Rights (ECHR) ruled against Hungary for violating the right to freedom of expression (art.10 European Convention on Human Rights) of a member of the Hungarian Parliament.

During the parliamentary session on 6 July 2015, the applicant made a speech entitled "Workers are losing out every day with current Government". In protest against the Hungarian government's policy on wage settlements, the applicant, together with other members of parliament, also displayed banners relating to the same controversial topic. The Speaker of Parliament turned off the applicant's microphone and ordered the others to remove the banners, announcing that he had withdrawn her right to speak. However, the woman tried to carry on with her speech without success due to the turned off microphone. She was thus again invited to take her seat as her right to speak was definitively revoked during that session.

According to the applicant, the measure adopted by the Speaker of Parliament had constituted a very severe and direct interference with her right to express political opinions as an elected member of parliament: the measure did not have a legal basis, since the Parliament Act did not provide for the penalty imposed on her, nor did the measure serve a legitimate aim since displaying the banners had not caused any disruption to parliamentary work; moreover, in her opinion, the interference at issue had failed to meet the requirement of necessity in a democratic society.

The European Court has decided to focus on assessing the necessity and proportionality of the interference in a democratic society since the question of the lawfulness and that of the legitimate aim pursued by the denial of the applicant's right to speak are closely linked to this absorbing profile. The principles governing the issue are outlined in *Karácsony and Others v. Hungary* judgement ([GC], nos. 42461/13 and 44357/13, §§ 128-29, 17 May 2016), in which it is specified, inter alia, that «the exercise of Parliament's power to sanction disorderly conduct of a member has to respect the principle of proportionality inherent in Article 10, including in its procedural aspect». Strasbourg judges stressed that the Hungarian Parliament Act provides for measures to ensure the orderly conduct of parliamentary sessions and that the chairman of the session could deny members of parliament the right to speak without a prior warning only in cases where that member has objected to a decision taken by the Speaker of Parliament. In all other situations, the Speaker is required to warn the member concerned in advance of the possibility of withdrawing his or her right to speak. On the other hand, when parliamentary members adopt language or behavior that is grossly offensive towards parliamentary authority or in violation of the Parliament's Rules of Procedure, including the rules relating to the display of demonstration materials, the chair of the session has the right to propose the exclusion or the imposition of a pecuniary sanction without a prior warning against them. In the present case, the censorship was directly exercised, without being preceded by a prior call or warning, in violation of the provisions of the Parliament Act which provide as immediate disciplinary measures only the exclusion of the parliamentary member from the session or the imposition of a fine and not the denial of the right to speak. The disciplinary measure taken against the applicant did not therefore comply with those legislative provisions since it instantly prevented her from expressing her opinion. The application of less intrusive measures was not even considered; the Speaker directly adopted this measure, without stating his grounds and without explaining the specific reasons that led him to this choice, violating the principles of proportionality and denying the applicant the possibility of objecting to it. The European Court thus concluded that the interference with the applicant's right to freedom of expression was not proportionate to the legitimate purposes pursued by the national legislative provisions because it was not accompanied by adequate procedural safeguards, in violation of art. 10 of the Convention; in fact, the applicant was not even able to challenge the decision of the Speaker of Parliament because that possibility was not provided for by the Parliament Act in relation to immediate sanctions, such as that adopted against her.

Riferimenti Normativi:

- art. 10 Convenzione Europea dei Diritti dell'Uomo



The unjustified ban on expressing political opinions imposed on a parliamentary member violates the right to freedom of expression

Diritto civile Tutela dei Diritti

Denise Campagna

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