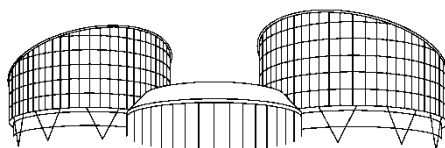


La Corte EDU sulla diffusione di informazioni inerenti alle condizioni di vita nei centri di accoglienza per richiedenti asilo
(CEDU, sez. I, sent. 9 marzo 2023, ric. n. 9720/17)

Con la decisione in oggetto la Corte Edu ha esaminato il ricorso promosso contro l'Ungheria da parte di una giornalista la quale si era vista negare dalle autorità interne (e, nella specie, dall'Ufficio per l'immigrazione e la nazionalità) una richiesta di autorizzazione per accedere in alcuni centri di accoglienza e riferire sulle condizioni di vita dei richiedenti asilo, lamentando quindi una indebita ingerenza nell'esercizio della libertà di espressione tutelata all'art. 10 della Convenzione.

Richiamandosi ai principi già enucleati in una precedente causa, la Corte ribadisce la sussistenza di un rilevante interesse pubblico alla conoscenza e alla diffusione di informazioni concernenti la gestione e il trattamento di gruppi vulnerabili all'interno dei centri di accoglienza; un interesse che non può essere sacrificato in virtù di una motivazione del tutto sommaria e assertiva, come quella fornita dalle autorità statali, circa l'esigenza di tutelare la sicurezza e il rispetto della vita privata e familiare dei residenti nei centri di accoglienza.

A giudizio della Corte, quindi, l'ingerenza subita dalla ricorrente nell'esercizio della libertà di espressione non era da reputarsi "necessaria in una società democratica", determinandosi per questa via una violazione dell'art. 10 della Convenzione Edu.



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

FIRST SECTION

CASE OF XXX v. HUNGARY

(Application no. 9720/17)

JUDGMENT

STRASBOURG

9 March 2023

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

In the case of XXX v. Hungary,

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

Alena Poláčková, *President*,

Péter Paczolay,

Gilberto Felici, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 9720/17) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 24 January 2017 by a Hungarian national, Ms XXX (“the applicant”), who was born in XXX, lives in XXX and was represented by Mr T. Fazekas, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government (“the Government”), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the Government’s observations;

Having deliberated in private on 14 February 2023,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the domestic authorities’ denial of a request made by the applicant to access and report on living conditions in reception centres for asylum-seekers.
2. The applicant is an investigative journalist who, at the material time, regularly published articles about migration and refugees on the Internet portal *atlatszo.hu*.
3. On 27 July 2016 the applicant lodged a request for authorisation from the Office of Immigration and Nationality (hereinafter “the OIN”) to enter and make recordings at the reception centres for asylum-seekers and refugees in Bicske, Vámoszabadi, Körmend and Kiskunhalas, and at the reception centre designated for minors in Fót.
4. On 28 July 2016 the applicant’s request in respect of the reception centres in Bicske, Vámoszabadi, Körmend and Kiskunhalas was denied by the OIN’s press department, who invoked the “safety and personal rights” of the people accommodated in the reception centres. She was advised that authorisation in respect of the reception centre in Fót should be requested from the Ministry of Human Resources.
5. The applicant complained under Article 10 of the Convention that by refusing her request to enter the premises of the reception centres with a view to reporting on the living conditions of asylum-seekers the domestic authorities had interfered with her right to impart information.

THE COURT’S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. Admissibility

6. The Government argued that the applicant had not suffered any significant disadvantage as the alleged violation had not, in their opinion, attained the requisite threshold of seriousness to justify examination by the Court. They argued that this was evidenced by the fact that following the

dismissal of her request to enter the reception centres, and in contrast to the journalist in the case of *Szurovecz v. Hungary* (no. 15428/16, 8 October 2019), the applicant had not pursued her case before the domestic courts. Furthermore, it was not necessary to examine the case on the merits in the interests of respect for human rights either, since the issue had subsequently been resolved at the domestic level. Following the adoption of the Court's judgment in the case of *Szurovecz* (cited above), Act no. CL of 2016 on the general rules for administrative proceedings had entered into force (on 1 January 2018) and had been considered applicable to decisions concerning access to reception centres. The National Directorate-General for Aliens Policing (the successor of the OIN) had adopted the practice of issuing detailed decisions when it denied requests to access reception centres.

7. The Court found in *Szurovecz* (cited above) that the decisions of the OIN had not constituted administrative decisions within the meaning of section 12 of the Administrative Procedure Act no. CXL of 2004, as in force at the material time, and that there had been no legal avenue open to the applicant in that case to argue before the courts in favour of the necessity of accessing the Vámoszabadi reception centre in order to exercise his right to impart information (*ibid.*, § 75).

8. Therefore, the Court does not consider the fact that the applicant in the present case had not pursued a futile legal avenue to be decisive for an assessment of whether she had suffered a significant disadvantage.

9. Furthermore, the applicant's subjective perception of the alleged violation was that the domestic authorities, by refusing her request to enter the premises of the reception centres with a view to reporting on the living conditions of asylum-seekers, had interfered with her right to impart information on a matter of public interest.

10. The Court reiterates the key importance of freedom of expression as one of the preconditions for a functioning democracy. In cases concerning freedom of expression, the application of the admissibility criterion contained in Article 35 § 3 (b) of the Convention should take due account of the importance of this freedom and be subject to careful scrutiny by the Court. This scrutiny should encompass, among other things, such elements as contribution to a debate of general interest and whether a case involves the press or other news media (see *Ringier Axel Springer Slovakia, a.s. v. Slovakia* (no. 4), no. 26826/16, § 28, 23 September 2021, with further references).

11. The Court considers that the refusal to authorise the applicant to make recordings in the reception centres prevented her from gathering information first-hand as a preparatory step prior to publication, that is to say, journalistic research. As the Court has held before, obstacles created in order to hinder access to information which is of public interest may discourage those working in the media or related fields from pursuing such matters. As a result, they may no longer be able to play their vital role as "public watchdogs", and their ability to provide accurate and reliable information may be adversely affected (see *Shapovalov v. Ukraine*, no. 45835/05, § 68, 31 July 2012). Furthermore, the domestic authorities' practice in assessing requests concerning entry into State-run facilities involved important questions of principle regarding the right of access, for journalistic purposes, to information held by the State.

12. The Court therefore concludes that, given what was at stake for the applicant, she suffered a significant disadvantage as a result of the denial of access to the reception centres, and does not

deem it necessary to consider whether respect for human rights compels it to examine the case (see, *mutatis mutandis*, *Margulev v. Russia*, no. 15449/09, § 42, 8 October 2019).

13. Consequently, the Government's objection in this respect must be dismissed. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

14. The relevant provisions of the domestic legislation in force at the material time, the relevant international and comparative-law material, and the general principles enshrined in the Court's case-law regarding Article 10 of the Convention, can be found in *Szurovecz* (cited above, §§ 12-19, 52 and 59).

15. The circumstances of the present case are similar to those in the case of *Szurovecz* (cited above, §§ 6-9). As in that case, in the case at hand the applicant was denied access to reception centres for asylum-seekers and migrants, and was therefore hindered in gathering information, which constituted an interference with the exercise of her right to freedom of expression.

16. The Court noted in *Szurovecz* that the public interest in reporting about the authorities' handling of vulnerable groups was especially relevant, and that the issue of how residents were accommodated in State-run reception centres was newsworthy and of great public importance. While recognising that the authorities' reliance on the potential effects of journalistic research on the safety and private life of refugees and asylum-seekers were relevant considerations, the Court found in that case that the domestic authorities should have paid particular attention to the public interest attached to the applicant's request.

17. The Court finds that the same consideration is applicable to the circumstances of the present case. It notes, however, the Government's argument that the applicant in the present case gave no assurance that she would conduct recordings only with the consent of the persons concerned to ensure the protection of the rights of the accommodated persons. They also submitted that, had the OIN granted the applicant's request, it would have had an obligation to do the same in respect of a number of other similar requests, putting an unreasonable burden on the authority.

18. Those considerations were, however, not apparent in the OIN's decision, which merely mentioned the safety and personal rights of those residing at the reception centres, without any further explanation as to how these would be affected by the applicant's journalistic activity. Nor can the Court agree with the assertion made by the Government that the applicant, as an experienced journalist, should have been aware of those factors without further details being given by the authority.

19. While it is true that the applicant as a professional journalist could have been expected to be aware of the privacy implications of her request, this did not exempt the domestic authorities from the requirement to convincingly establish the need for restrictions on her right to freedom of expression. However, besides the rather summary reasoning put forward by the OIN concerning the rights of those accommodated in the reception centres, it does not appear that the OIN attached any weight to the applicant's right as a journalist to impart information on a matter that was of public concern. In fact, the OIN's decision lacked any balancing whatsoever of the interests at issue.

20. Even having regard to the margin of appreciation left to the State to secure effective “respect” for the private and family life of residents of refugee reception centres, the Court is not persuaded that the domestic authorities gave sufficient consideration as to whether the refusal of permission to access and conduct journalistic research inside the reception centres, for reasons concerning the private life and security of asylum-seekers, was necessary in practice in the present circumstances.

21. The Court accordingly concludes that the interference with the applicant’s right to freedom of expression was not “necessary in a democratic society”. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicant also complained of a violation of Article 13 of the Convention, as no remedy existed under domestic law in respect of the decisions complained of.

23. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

24. Having regard to the above findings and conclusion under Article 10, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant did not submit a claim for just satisfaction in accordance with the requirements of Rule 60 of the Rules of Court. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there is no need to examine the merits of the complaint under Article 13 of the Convention.

Done in English, and notified in writing on 9 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar

Alena Poláčková President

