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Publication date

2019

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Voorhoof, D. (Author), & Ó Fathaigh, R. (Author). (2019). Denying journalist access to asylum-seeker 'reception centre' in Hungary violated Article 10 ECHR. Web publication/site, Strasbourg Observers. <https://strasbourgobservers.com/2019/11/04/denying-journalist-access-to-asylum-seeker-reception-centre-in-hungary-violated-article-10-echr/>

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Strasbourg Observers

Denying journalist access to asylum-seeker 'reception centre' in Hungary violated Article 10 ECHR

🕒 November 4, 2019October 30, 2019 👤 Guest Blogger 📁 Freedom of Expression, *Szurovecz v. Hungary*

By Dirk Voorhoof and Ronan Ó Fathaigh

In *Szurovecz v. Hungary* (<http://hudoc.echr.coe.int/eng?i=001-196418>), the European Court of Human Rights has held that a refusal to grant a journalist access to an asylum-seeker 'reception centre' in Hungary violated his right to freedom of expression under Article 10 ECHR. The ECtHR emphasised that newsgathering, including 'first-hand' observation by a journalist reporting on a matter of significant public interest, is an essential part of journalistic research and press freedom. The ECtHR found that the public interest in reporting from certain locations is especially relevant where the authorities' handling of vulnerable groups is at stake, and the presence of media is a guarantee that the authorities can be held to account for their conduct.

Facts

In 2015, the Hungarian journalist Illés Szurovecz, working for the Internet news portal abcug.hu, requested access to the Debrecen Reception Centre, a major housing centre for asylum-seekers entering Hungary. Szurovecz sought permission to visit the centre in order to interview asylum-seekers and take photographs, after serious concerns had been raised about their treatment. His request came after a report by the Commissioner for Fundamental Rights condemning the living conditions in the centre, amounting to inhuman and degrading treatment (see [here](https://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f) (https://www.ajbh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f)). Furthermore, the Reception Centre was constantly presented in the State-owned media as part of the Government's anti-immigration campaign. The Office of Immigration and Nationality ('OIN') however rejected Szurovecz's request, noting that there was constant media interest in asylum-seekers and regular visits to the Reception Centre would infringe their private lives. Moreover, many people accommodated in the Reception Centre had fled from some form of persecution and information about them appearing in the media could endanger both their and their families' security. Szurovecz appealed, but his action was declared inadmissible as the OIN's decision was not subject to judicial review.

The parties' submissions

Before the ECtHR, Szurovecz complained that the Hungarian authorities had violated his right to

impart information under Article 10 ECHR by refusing his request to enter the premises of the Debrecen Reception Centre with a view to writing a report on the living conditions of asylum-seekers. A coalition of international organisations, including the [Media Legal Defence Initiative](https://www.mediadefence.org/news/european-court-human-rights-finds-hungary%E2%80%99s-refusal-allow-journalist-access-asylum-seekers%E2%80%99) (<https://www.mediadefence.org/news/european-court-human-rights-finds-hungary%E2%80%99s-refusal-allow-journalist-access-asylum-seekers%E2%80%99>), Index on Censorship and the European Centre for Press and Media Freedom, supported Szurovecz's complaint. The third-party intervention emphasised that newsgathering, including physical access to the places where important events are developing, is an essential component of investigative journalism.

The Hungarian Government argued that the complaint was based on a claim to a right of access to information which did not fall within the scope of Article 10 ECHR. It was submitted that any right of access to information under Article 10 could be construed only as a right to receive information willingly imparted by others: there was only a negative obligation on the part of the State not to unjustifiably hinder access to publicly available information and not to punish anyone for receiving information from public authorities.

Furthermore the Government submitted that should the ECtHR find that Article 10 was applicable, access to the Reception Centre had not been necessary for Szurovecz to express his opinion on an issue of public interest, since he had had access to information provided by international organisations and NGOs, or other alternative sources. And anyway, he could have interviewed refugees outside the premises of the Reception Centre and he could have obtained photographs taken by others. For these reasons, the Hungarian Government argued that Szurovecz's application should be considered inadmissible *ratione materiae* and *ratione personae*. In addition, the Government argued that the interference with the right to receive information under Article 10 was justified referring to the asylum-seekers' right to respect for private life under Article 8, as well as their right to life, physical integrity and personal liberty (Articles 2, 3 and 5 ECHR).

The judgment

The ECtHR disagreed with the Hungarian Government on all points. First it referred to its earlier case law according to which the gathering of information is an essential preparatory step in journalism and an inherent and protected part of press freedom. The Court reiterates that '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'. The Court found that the Hungarian authorities had prevented Szurovecz from gathering information first hand and from verifying the information about the conditions of detention provided by other sources. This constituted an interference with the exercise of his right to freedom of expression in that it hindered a preparatory step prior to publication, that is to say journalistic research (see also *Dammann v. Switzerland* (<http://hudoc.echr.coe.int/eng?i=001-75175>), *Társaság a Szabadságjogokért v. Hungary* (<http://hudoc.echr.coe.int/eng?i=001-92171>), and *Schweizerische Radio- und Fernseh gesellschaft SRG v. Switzerland* (<http://hudoc.echr.coe.int/eng?i=001-111536>)). The Government's objections that Szurovecz's complaint was incompatible *ratione materiae* and *ratione personae* with the provisions of the Convention was therefore dismissed.

The ECtHR accepted that the interference at issue was prescribed by law and pursued the legitimate aim of protecting the private lives of asylum-seekers and 'camp residents'. However, in view of the importance of the media in a democratic society and of reporting on matters of considerable public interest, the ECtHR considered that the rather summary reasoning put forward by the OIN and the absence in its decision of any real balancing of the interests in issue, failed to demonstrate convincingly that the refusal of permission to enter and conduct research in the Reception Centre was necessary in a democratic society. Especially because the refusal was absolute it was not

proportionate to the aims pursued and did not meet a 'pressing social need'.

The ECtHR considered the matter of how residents were accommodated in State-run reception centres, whether the State fulfilled its international obligations towards asylum-seekers and whether this vulnerable group had the ability to fully enjoy their human rights as 'undisputedly newsworthy and of great public significance'. It emphasised that the 'public interest in reporting from certain locations is especially relevant where the authorities' handling of vulnerable groups is at stake. The "watchdog" role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct'. The ECtHR found that the conclusion of the OIN in refusing access to the Reception Centre was reached without any sensible consideration of Szurovecz's interest as a journalist in conducting his research or of the interest of the public in receiving information on a matter of public interest.

Although the ECtHR ultimately agreed that the reasons adduced by the OIN relying on the safety and private lives of refugees and asylum-seekers were undoubtedly 'relevant', it did not find them 'sufficient' in the light of the necessity test under Article 10 § 2 ECHR. The Court also considered that the material Szurovecz intended to gather, although by its very nature necessarily touching upon the private lives of others, did not concern information for sensationalist or similar purposes, but concerned rather those aspects of the asylum-seekers' lives that were of public interest, in particular their living conditions and their treatment by the Hungarian authorities. The ECtHR referred to the fact that Szurovecz explained that he would only take photos of individuals who had given their prior consent and, if needed, he would also obtain written authorisation from them, while the OIN has not taken any notice of this argument. Furthermore, neither the OIN nor the Government have indicated in what respect the safety of asylum-seekers would have been jeopardised in practice by the proposed research especially if it had taken place only with the consent of the individuals involved. The Court is also of the opinion that the existence of other alternatives to direct newsgathering within the Reception Centre did not extinguish Szurovecz's interest in having face-to-face discussions on and gaining first-hand impressions of living conditions there. Hence, the availability of other forms and tools of research were not sufficient reasons to justify the interference complained of or to remedy the prejudice caused by the refusal of authorisation to enter the Reception Centre. Finally, there was no legal possibility or judicial review open to Szurovecz to argue for the necessity of his access to the Reception Centre in order to exercise his right to impart information.

The Court accepted that the domestic authorities are better placed than it is to say whether, and to what extent, access to the Reception Centre is compatible with the authorities' obligation to protect the rights of asylum-seekers. However, in view of the importance of the media in a democratic society and of reporting on matters of considerable public interest, the ECtHR considers that the need for restrictions on freedom of expression must be convincingly established, and that in this case the domestic authorities have failed to demonstrate convincingly that the refusal of permission to enter and conduct research in the Reception Centre, which was an absolute refusal, was proportionate to the aims pursued and thus met a pressing social need. The Court unanimously concluded that Article 10 ECHR has been violated.

Comment

The unanimous judgment is not only a victory for Szurovecz, but is also a strategic victory for the third-party interveners, and European journalists and media organisations generally. It should serve a powerful precedent for journalists throughout Europe seeking access to asylum-seeker detention centres, and other immigration detention camps. Importantly, it should be noted that it is not just the Hungarian government that restricts media access to such detention centres, but as detailed by Reporters Without Borders, journalists are routinely 'denied access to migrant detention centres almost everywhere in Europe', including France, Italy, Spain and Greece (see [here \(https://rsf.org](https://rsf.org)

[/en/news/refugee-routes-blocked-reporters-well](#)), [here \(https://rsf.org/en/news/appeal-against-denial-access-immigrant-detention-centres\)](https://rsf.org/en/news/appeal-against-denial-access-immigrant-detention-centres)). Broadcasters such as Euronews and the BBC have reported on how media have been 'excluded for over two years' from the 'horrific' Moria detention camp by the Greek government (see [here \(https://www.euronews.com/2018/09/26/inside-moria-refugees-feel-trapped-on-the-greek-island-of-lesbos\)](https://www.euronews.com/2018/09/26/inside-moria-refugees-feel-trapped-on-the-greek-island-of-lesbos), [here \(https://www.bbc.com/news/world-europe-45271194\)](https://www.bbc.com/news/world-europe-45271194)). When journalists manage to gain rare access, the reports detail the appalling and 'inhuman' conditions for thousands of detainees, including many unaccompanied children (see *Le Monde* [here \(https://www.lemonde.fr/international/article/2019/09/29/en-grece-un-feu-meurtrier-dans-le-camp-de-refugies-de-moria-fait-au-moins-deux-morts_6013540_3210.html\)](https://www.lemonde.fr/international/article/2019/09/29/en-grece-un-feu-meurtrier-dans-le-camp-de-refugies-de-moria-fait-au-moins-deux-morts_6013540_3210.html), [here \(https://www.lemonde.fr/international/article/2019/10/04/migration-lesbos-un-echec-europeen_6014219_3210.html\)](https://www.lemonde.fr/international/article/2019/10/04/migration-lesbos-un-echec-europeen_6014219_3210.html), and *The Guardian* [here \(https://www.theguardian.com/world/2019/oct/05/the-truth-about-the-fire-in-greeces-notorious-refugee-camp\)](https://www.theguardian.com/world/2019/oct/05/the-truth-about-the-fire-in-greeces-notorious-refugee-camp)).

The Court's crucial holding was that 'den[ying] access' to the detention centre was an 'interference' with the journalist's freedom of expression, as it 'prevented him from gathering information first hand' and 'hindered a preparatory step prior to publication, that is to say journalistic research'. The Court is very explicit that the refusal to authorise a journalist to conduct interviews and take photos prevented him from gathering information and from verifying the information provided by other sources. The Court rightly relied upon its earlier judgment in *Schweizerische Radio- und Fernsehgesellschaft*, where it had also found a violation of Article 10 over a refusal to allow a Swiss broadcaster film inside a prison and interview a detainee; and applied the principle from the Court's *Dammann* judgment, that the gathering of information is an essential 'preparatory step in journalism and is an inherent, protected part of press freedom'.

It is remarkable, however, that the ECtHR finds authority in *Pentikäinen v. Finland* (<http://hudoc.echr.coe.int/eng?i=001-158279>), for the proposition that the 'watchdog' role of the media assumes particular importance since their presence is a guarantee that the authorities can be held to account for their conduct at certain locations where the authorities' handling of vulnerable groups is at stake. A majority of the Grand Chamber in *Pentikäinen*, for very specific reasons, did not find a violation of Article 10 ECHR with regard to the arrest, prosecution and conviction of a journalist who was removed by the police from the location where he was reporting on a demonstration that had become violent (post [here \(https://strasbourgobservers.com/2015/10/26/journalist-must-comply-with-police-order-to-disperse-while-covering-demonstration/#more-3017\)](https://strasbourgobservers.com/2015/10/26/journalist-must-comply-with-police-order-to-disperse-while-covering-demonstration/#more-3017)). The majority in *Pentikäinen* considered that there were other possibilities to report about the demonstration: if the journalist had obeyed the order given by the police to leave the cordoned-off area, he could have continued to exercise his professional assignment in the immediate vicinity of the cordoned-off area. However now, in *Szurovecz*, the Court has more pertinently emphasised that the 'existence of other alternatives to direct newsgathering within the Reception Centre did not extinguish the applicant's interest in having face-to-face discussions on and gaining first-hand impressions of living conditions there. In those circumstances the availability of other forms and tools of research were not sufficient reasons to justify the interference complained of or to remedy the prejudice caused by the refusal of authorisation to enter the Reception Centre'. It may have been more appropriate for the Court to have relied upon other case law, not cited in *Szurovecz*, where the Court has effectively valued the importance of the media and journalists' role as 'watchdog' being able to be present at locations and report about events of public interest; such as *Gsell v. Switzerland* (<http://hudoc.echr.coe.int/eng?i=001-94865>), where Court held a refusal to allow a journalist access to Davos in order to report on the meeting of the World Economic Forum was an 'interference', and indeed as a violation, of the journalist's freedom of expression (see also *Butkevich v. Russia* (<http://hudoc.echr.coe.int/eng?i=001-180832>) (post [here \(https://strasbourgobservers.com/2018/03/06/the-right-of-journalistic-newsgathering-during-demonstrations/#comments\)](https://strasbourgobservers.com/2018/03/06/the-right-of-journalistic-newsgathering-during-demonstrations/#comments)); and *Selmani and Others v. the Former Yugoslav Republic of Macedonia* (<http://hudoc.echr.coe.int/eng?i=001-170839>) (post [here \(https://strasbourgobservers.com/2017/02/14/selmani-and-ors-v-lyrom-influential-judgment-on-](https://strasbourgobservers.com/2017/02/14/selmani-and-ors-v-lyrom-influential-judgment-on-)

[press-galleries-and-parliamentary-reporting/](#)) and compare with *Endy Gęsina-Torres v. Poland* (<http://hudoc.echr.coe.int/eng?i=001-181812>)).

Notably, the Court roundly rejected the Hungarian government's argument that Article 10 does not include a 'right of access to information', and that Article 10 only guaranteed a right to 'receive information willingly imparted by others', with only a 'negative obligation on the part of the State not to unjustifiably hinder access to publicly available information'. This position taken by the government completely goes against the established case law of the ECtHR over the last decade on the issue of access to public documents and the right of newsgathering. The argumentation of the Hungarian government is particularly striking given the several occasions where Hungary has been found in violation of Article 10 ECHR because of refusing access to information requested by journalists or NGOs (see *Társaság a Szabadságjogokért v. Hungary* (<http://hudoc.echr.coe.int/eng?i=001-92171>), *Kenedi v. Hungary* (<http://hudoc.echr.coe.int/eng?i=001-92663>), and the Grand Chamber judgment in *Magyar Helsinki Bizottság v. Hungary* (<http://hudoc.echr.coe.int/eng?i=001-167828>)) (post here (<https://strasbourgobservers.com/2016/11/30/magyar-helsinki-bizottsag-v-hungary-a-limited-right-of-access-to-information-under-article-10-echr/>))).

Finally, it is hoped that the Court's reasoning in *Szurovecz* can be used as a shield, and help bring an end to the threats, intimidation, arrest, prosecution, denial of permits, rejection of interview requests, seizure of equipment and deportation, as the methods used by governments in Europe to obstruct media coverage of refugees.

[Disclosure: Dirk Voorhoof (Human Rights Centre UGent and Legal Human Academy) is also a member of the European Centre for Press and Media Freedom, a third-party intervener in this case]