European Court of Human Rights: Szurovecz v. Hungary

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In the case *Szurovecz v. Hungary,* the European Court of Human Rights (ECtHR) has held that a refusal to grant a journalist access to a reception centre for asylum seekers in Hungary violated his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ECtHR emphasised that newsgathering, including first-hand observation by a journalist reporting on a matter of significant public interest, was an essential part of journalistic research and press freedom.

In 2015, the Hungarian journalist Illes Szurovecz, working for the Internet newsportal 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. Indeed, the Commissioner for Fundamental Rights had issued a report condemning the living conditions in the centre, which amounted to inhuman and degrading treatment. 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 that 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 press could endanger both their own security and that of their families. Szurovecz appealed, but his action was declared inadmissible, as the OIN's decision was not subject to judicial review.

Before the Strasbourg Court, 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, 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 (see also *Butkevich v. Russia*, IRIS 2018-4/2 and compare with *Endy Gęsina-Torres v.*

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Poland, IRIS 2018-5/1).

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. 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, as well as other alternative sources. Furthermore, he could have interviewed refugees outside the premises of the reception centre and he could have obtained photographs taken by others. Finally, the government argued that the interference with the right to receive information under Article 10 was justified by 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 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 reiterated 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 *Dammann v. Switzerland,* IRIS 2006-6/3, *Társaság a Szabadságjogokért v. Hungary*, IRIS 2009/7-1 and *Schweizerische Radio- und Fernseh gesellschaft SRG v. Switzerland*, IRIS 2012-8/3).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 at 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. Above all, the fact that the refusal was absolute rendered it disproportionate to the aims pursued and did not meet a "pressing social need".

The ECtHR considered that the matter of how residents were accommodated in state-run reception centres, whether the state fulfilled its international obligations

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towards asylum seekers and whether this vulnerable group had the ability to fully enjoy their human rights, was ‘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 (see *Pentikäinen v. Finland*, IRIS 2016-1/2). 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, section 2 ECHR. 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, 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 was 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 to grant authorisation to enter the reception centre. Finally, there was no legal possibility or judicial review open to Szurovecz to allow him to argue for the need to gain access to the reception centre in order to exercise his right to impart information. The Court unanimously concluded that Article 10 ECHR has been violated.

ECtHR Fourth Section, Szurovecz v. Hungary, Application no. 15428/16, 8 October 2019

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