Law

Transnational Judicial Dialogue on International Law in Central and Eastern Europe

edited by
Anna Wyrozumska

WYDAWNICTWO
UNIWERSYTETU
ŁÓDZKIEGO

Transnational Judicial Dialogue on International Law in Central and Eastern Europe

WYDAWNICTWO
UNIWERSYTETU
ŁÓDZKIEGO

Law

Transnational Judicial Dialogue on International Law in Central and Eastern Europe

edited by
Anna Wyrozumska

WYDAWNICTWO
UNIWERSYTETU
ŁÓDZKIEGO
ŁÓDŹ 2017

Anna Wyrozumska – University of Łódź, Faculty of Law and Administration
Department of European Constitutional Law, 90-232 Łódź, 8/12 Kopcińskiego St.

INITIATING EDITOR
Monika Borowczyk

REVIEWER
Bartłomiej Krzan

LINGUISTIC EDITOR
Karolina Podstawa

PROOFREADING
Aneta Tkaczyk

TYPESETTING
AGENT PR

TECHNICAL EDITOR
Leonora Wojciechowska

COVER DESIGN
Stämpfli Polska Sp. z o.o.
Cover Image: © Shutterstock.com

The monograph is a result of the project nr 10-ECRP-028
International Law through the National Prism: the Impact of Judicial Dialogue
The research is based on laws being in force on 2nd August 2016

Publication distributed free of charge

Published by Łódź University Press
First edition. W.07527.16.0.K

ISBN 978-83-8088-707-7
e-ISBN 978-83-8088-708-4

Publisher's sheets 36.0; printing sheets 31.5

Łódź University Press
90-131 Łódź, 8 Lindleya St.
www.wydawnictwo.uni.lodz.pl
e-mail: ksiegarnia@uni.lodz.pl
tel. (42) 665 58 63

Table of contents

http://dx.doi.org/10.18778/8088-707-7.12

XI. Who is to Give Effects to the ECtHR Decisions? The *Vajnai* Saga

Erzsébet Csatlós*

1. Introduction

International law in the Hungarian domestic legal system can reach its objectives only if it is properly implemented. Such 'proper implementation' requires that two conditions are met. First, the legislator must effectively introduce international norms into the domestic legal order. In other words, international instruments must be more than isolated, marginalised legal texts without any effective connection to domestic norms. The necessary legal environment needs to be created for the effective enforcement of international legal norms: the existing domestic law should be modified to be in harmony with the newly undertaken obligations, and if it is necessary, new domestic legal regulations need to be issued for the execution of these obligations. One should expect that international law is given a priority over conflicting domestic laws and serves as guidance for the subsequent domestic legislation. Second, the law enforcement organs of a State should have a good knowledge of international legal obligations and apply them in the absence of the respective national rules.

* Dr iur., Senior Lecturer, Department of Administrative Law and Financial Law. Faculty of Law and Political Sciences, University of Szeged, Hungary.

The application of law and its enforcement mainly belongs to organs of the executive and the judiciary. In a vast majority of cases the application of international law takes place at the administrative level as public authorities are primarily responsible for implementation of state duties. Many cases before courts have also administrative background which means that decisions of administrative organs are often reviewed judicially. If one wishes to examine the enforcement of international legal norms, the research needs to start at the level of administrative organs.[1] The 2005 XC Act introduced the obligation for courts to make available only anonymised versions of all judgments and orders issued in the period starting on 1 July 2007 via an internet database,[2] so court decisions from that time and onwards can be easily accessed and examined.[3] The Act did not cover administrative decisions; therefore the content of an administrative decision can only be derived in the course of the judicial review procedure from relevant judicial decisions. Therefore, due to the lack of access to administrative decisions, general statements concerning application of international norms of administrative authorities cannot be made.

In fact, from the point of view of applicability of decisions of the European Court of Human Rights (ECtHR) one case, in particular, may draw a very vivid picture.[4] The case law born following Attila Vajnai's totalitarian symbol affair revealed many legal aspects of the application of ECtHR judgements by public administrative authorities. The paper aims to present and examine the background and the aftermath of the ECtHR judgement against Hungary (*Vajnai v Hungary*) with a special regard to the effective implementation of its argumentations and statements. Notably, it focuses on the legal consequences of an ECtHR judgement for the lowest level of law enforcement: the public administrative authorities (the police) who are in charge of enforcement of law in general against those who have allegedly breached it. But, in fact, who it is that breaches the law? The paper aims to reveal the answer to this question.

---

1 The Fundamental Law of Hungary, 25 April 2011 (FL). Art. XXVI (7) reads: "Everyone shall have the right to seek legal remedy against decisions of the courts, public administration or other authorities which infringe their rights or legitimate interests." The Fundamental Law of Hungary replaced the former Constitution of 1949 from 1 January 2012.

2 Act XC on freedom of electronic information 2005, Art. 3(1). This act is not in force anymore; its provisions were incorporated to Act CXII on informational self-determination and freedom of information 2011.

3 See: Bírósági Határozatok Gyűjteménye (Collection of Judicial Decisions), <http://www.birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara> (access: 11 March 2016). The website has no English version.

4 In Hungary, the ECHR entered into force on 5 November 1992. See: Status of the Convention for the Protection of Human Rights and Fundamental Freedoms, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (access: 19 November 2014).

2. The Background of the *Vajnai* Saga

On 21 February 2003 Attila Vajnai, the Vice-President of the Workers' Party, a registered left-wing political party, held a speech at a lawful demonstration. It took place in Budapest at the former location of a statue of Karl Marx, which had been removed by the authorities. Vajnai wore a five-pointed red star ('the red star') on his jacket as a symbol of the international workers' movement. A policeman, evoking Article 269/B (1)[5] of the Criminal Code in force at the time, called on Vajnai to remove the star, which the latter denied. His identity was examined, his clothes were searched and he was taken to a police station. Subsequently, criminal proceedings were instigated against him for having worn a totalitarian symbol in public.[6]

On 11 March 2004, the Pest Central District Court[7] convicted Vajnai for the offence of using a totalitarian symbol. It refrained from imposing a sanction for a probationary period of one year. Vajnai appealed to the Budapest Metropolitan Court stating that the restriction on the usage of red star as a symbol of workers violates freedom of expression. In his view, drawing an equality sign between the red star as a symbol of totalitarian regimes and that of the workers and the establishment of a total ban on its use is discriminative. As the principle of non-discrimination is also a basic value of the EU (at that time, the European Community), the *Vajnai* case was among the first Hungarian cases, which were submitted to the Court of Justice of the European Union (CJEU) on the basis of fundamental

5 Act IV Criminal Code 1998, Art. 269/B reads: "The use of totalitarian symbols (1) A person who (a) disseminates, (b) uses in public or (c) exhibits a swastika, an SS-badge, an arrow-cross, a symbol of the sickle and hammer or a *red star*, or a symbol depicting any of them, commits a misdemeanour – unless a more serious crime is committed – and shall be sentenced to a criminal fine. (2) The conduct proscribed under paragraph (1) is not punishable, if it is done for the purposes of education, science, art or in order to provide information about history or contemporary events. (3) Paragraphs (1) and (2) do not apply to the insignia of States which are in force."

6 Unfortunately, the Court's decisions of that time are not available to the public, therefore, the legal statements are to be inferred from the judgment: *Vajnai v Hungary*, App. no. 33629/06 (ECHR, 8 July 2008).

7 Levels of the Hungarian judicial system before the entry into force of the Fundamental FL (1 January 2012): 1) local courts together with administrative and labour courts; 2) county courts (19) and Budapest Metropolitan Court (it is also a court of first instance for the territory of the capital); 3) Appellate courts (4) and Budapest-Capital Appellate Court; 4) The Supreme Court. After the entry into force of the FL the names of the levels changed: 1) district courts together with administrative and labour courts (117); 2) tribunals (19) and Metropolitan Tribunal of Budapest; 3) the Appellate Courts (4) and Budapest-Capital Appellate Court; 4) The Curia.

rights infringement.[8] On 6 October 2005 the CJEU declared that it had no jurisdiction to answer the question referred by the Budapest Metropolitan Court as the national provisions fell outside the scope of Community law and "the subject-matter of the dispute is not connected in any way with any of the situations contemplated by the Founding Treaties"[9] Notably, the CJEU denied that there exists the relationship between the situation at stake with EU law, and so excluded the case from its jurisdiction. During the time of the proceedings before the CJEU, the domestic procedure was suspended. As the CJEU shortly delivered its decision, the domestic Court could continue without any useful indications from the European forum. Therefore, on 16 November 2005 the Budapest Metropolitan Court upheld the conviction. Vajnai alleged that the Hungarian judicial response to his humble act of wearing the red star was too much and constituted an unjustified interference with his right to freedom of expression, in breach of Article 10 ECHR.[10] Therefore, he initiated proceedings against Hungary before the ECtHR. The ECtHR was to give the final ruling on the following matters: (1) whether a restriction embodied in Hungarian criminal law is reconcilable with freedom of expression as protected by Article 10 ECHR; (2) whether the domestic legal interference was relevant and sufficient to protect higher principles than the one

8 In its order for reference the Budapest Metropolitan Court observed that in several Member States the symbol of left-wing parties is the red star or the hammer and sickle, whereas the Hungarian Criminal Code prohibits the use of those symbols. Therefore, the question arises whether a provision in one Member State prohibiting the use of symbols of the international labour movement on pain of criminal prosecution is discriminatory, whereas the display of those symbols on the territory of another Member State does not give rise to any sanction. The Budapest Metropolitan Court referred the following preliminary question to the CJEU: "Is Article 269/B, first paragraph, of the Hungarian Criminal Code, which provides that a person who uses or displays in public the symbol consisting of a five-point red star commits a minor offence, compatible with the fundamental Community law principle of non-discrimination?", case 328/04 *Criminal proceedings against Attila Vajnai* (CJEU, 6 October 2015), paras 7–8.

9 Ibidem, paras 12–14.

10 The Convention for the Protection of Human Rights and Fundamental Freedoms (The European Convention on Human Rights, the ECHR) Art. 10 reads:
"Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

expressed by Article 10(1) and (3) whether the measure taken were proportionate to the legitimate aims pursued.[11]

In line with its standing case law, the ECtHR held that the Hungarian regulation in force was not proportionate to the aim of protecting the interests of the society to which the red star symbolized the terror of the communist regime.[12] The symbol was not a real and present danger that needed to be interrupted by interference in the freedom of expression of an individual.[13] Therefore, the relevant regulation of the Criminal Code violated Article 10 ECHR.

---

11 *Vajnai v Hungary* (n. 7), para. 45.

12 The Government of Hungary argued that "in 1945 Hungary and other countries of the former Eastern bloc had been liberated from Nazi rule by Soviet soldiers wearing the red star. For many people in these countries, the red star was associated with the idea of anti-fascism and freedom from right-wing totalitarianism. It is before the transition to democracy in Central and Eastern Europe, serious crimes had been committed by the security forces of totalitarian regimes, whose official symbols included the red star." *Vajnai v Hungary* (n. 7), paras 36–37. The government even invoked the decision of the Hungarian Constitutional Court on the same subject, which had been delivered several years before the case in question. It fortified the government's argumentation, as it justified the legality of the ban on the use of the red star by the same historical background of the State. See: cases 14/2000 (V. 12.) ABH (Constitutional Court, decision, 2000) 92–101, available in English at <http://www.alkotmanybirosag.hu/letoltesek/en_0014_2000.pdf> (access: 9 July 2014). According to the reasoning of the ECtHR "two decades have elapsed from Hungary's transition to pluralism and the country has proved to be a stable democracy. […] Moreover, there is no evidence to suggest that there is a real and present danger of any political movement or party restoring the Communist dictatorship. The Government have not shown the existence of such a threat prior to the enactment of the ban in question." *Vajnai v Hungary* (n. 7), para. 49.

13 Cf. The case concerning the Árpád-striped flag, a fascist symbol in Hungary. On 9 May 2007 the Hungarian Socialist Party (MSZP) held a demonstration in Budapest to protest against racism and hatred. Simultaneously, members of Jobbik, a legally registered right-wing political party assembled in an adjacent area to express their disagreement. Fáber was silently holding a so-called Árpád-striped flag in the company of some other people, was observed by police as he stood nearby, at the steps leading to the Danube embankment (the location where in 1944/45, during the Arrow Cross regime, Jews were exterminated in large numbers). His position was close to the MSZP event and a few metres away from the lawn of the square where the Jobbik demonstration was being held. The police supervising the scene called on Fáber either to remove the banner or leave. He refused to do so, pointing out that this flag was a historical symbol and that no law forbade its display. Subsequently he was committed to the Budapest Gyorskocsi Police Holding Facility, where he was held in custody and under interrogation for six hours. After he had been released, the Budapest 5th District Police Department fined him the regulatory offence of disobeying police instructions. After unsuccesful judicial appeals the case was submitted to the ECtHR which condamned Hungary again arguing the same as several years ago in the *Vajnai* case. *Fáber v Hungary*, App. no. 40721/08 (ECHR, 24 July 2012), para. 5 and paras 54–57. On comparative analyses of "where memory and law intersect" see: A. Fijalkowski, 'The criminalisation of symbols of the past: Expression, law and memory' (2014) 10 International Journal of Law in Context 3 295.

One would think that the story ended with the necessary modification of the Hungarian criminal law, but it took another turn. Before going into depth in the analysis of the case, it is important to see how the relationship between international and domestic law in Hungary is regulated.

3. A Brief Introduction to the Status of International Legal Sources in the Hungarian Legal System

Since 2012, Hungary has had a new constitution called the Fundamental Law (FL). The content of rules regulating the relationship between international law and the domestic law correspond to the respective rules of the former Constitution (Act XX of 1949 on the Constitution of the Republic of Hungary as revised in 1989–90, in force until 31 December 2011 – 'the Constitution').[14] For this reason the present analysis will evoke the provisions of the two constitutive documents for the Hungarian State.

In line with Article 7(1) of the Constitution (currently Article Q[15] FL), which provides for the relationship between domestic law and international law,

14 N. Chronowski, E. Csatlós, 'Judicial Dialogue or National Monologue? The International Law and Hungarian Courts' (2013) 1 ELTE Law Journal 7. On the relation of international law and Hungarian law (before FL), see: N. Chronowski, T. Drinóczi, I. Ernszt, 'Hungary', [in:] Shelton D. (ed.), *International Law and Domestic Legal Systems – Incorporation, Transformation, and Persuasion* (OUP 2011) 261.

15 Art. Q FL reads:

"(1) In order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world.

(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.

(3) Hungary shall accept the generally recognised rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in legal regulations."

the Constitutional Court[16] found that international norms in the Hungarian legal system can be classified into three categories:[17]

(1) The 'generally recognised rules of international law', that is the customary international law, *jus cogens* and general principles of law recognised by civilised nations,[18] have at least constitutional rank in the Hungarian hierarchy of legal norms, because they can be regarded as a part of the Constitution, they formulate the part of it. Moreover, *jus cogens* norms have even a priority over it. Following the monistic approach, no further act is necessary to give these norms effects in domestic legal system.[19]

(2) As regards the so-called 'other sources' the FL does not declare their priority over the domestic law and requires their transformation evoking the dualistic doctrine into domestic legal norms. International norms must be transposed with the use of Hungarian legislative acts.[20] This rule is applicable to treaties, mandatory decisions of international organs and certain judgements of international courts.

---

16 The Constitutional Court is the principal organ for the protection of the Fundamental Law in Hungary; it is an independent organ. Although, according to the name it is a court, it is not a part of the judicial system. The Court has an important role in protecting democratic State governed by the rule of law, constitutional order and the rights guaranteed in the Fundamental Law and in safeguarding the inner coherence of the legal system. It has the monopoly of interpretation of fundamental law and to determine upon the coherence of legal norms in the legal system, notably, it has the right to declare the non-conformity of international obligations with domestic legal norms and it calls the legislator on the necessary modification of domestic norms. On the other hand, the Curia which is the highest instance court in the judicial system can also render uniformity decisions in cases of theoretical importance in order to ensure the uniform application of law within the Hungarian judiciary. Such decisions are binding on all Hungarian lower instance courts. The difference between the two courts is that while the Constitutional Court is responsible for the unity of legal system, it interprets legal norms in the view of the Fundamental law, and it has the monopoly of invalidation of legal norms that are not in conformity with the FL, the Curia helps legal practice by interpreting legal norms in context with each other by highlighting important judicial decisions that contain significant declarations (Author's comment).

17 It has to be noted that in the Hungarian legal system EU law is not treated as international law *sensu stricto*. It is a *sui generis* legal system regulated as such in the FL. See FL (n. 2) Art. E [it was Art. 2/A in the Constitution], Case 143/2010 (VII. 14.) (Constitutional Court, 14 July 2010), available in English: <http://www.alkotmanybirosag.hu/letoltesek/en_0143_2010.pdf> (access: 9 July 2014).

18 The category of 'generally recognised rules of international law' is explained and explored by the practice of the Constitutional Court. Case 53/1993 (X. 13.) (Constitutional Court, 13 October 1993), only the summary is available in English: <http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-1993-3-015?fn=document-frameset.htm$f=templates$3.0> (access: 9 July 2014) and case 30/1998 (VI. 25.) (Constitutional Court, 25 June 1998), available in English: <http://www.alkotmanybirosag.hu/letoltesek/en_0030_1998.pdf> (access: 9 July 2014).

19 T. Molnár, *A nemzetközi jogi eredetű normák beépülése a magyar jogrendszerbe* (Dialóg Campus, Budapest-Pécs 2013) 65.

20 Act L on the procedure related to international agreements 2005, Art. 9(1).

Decisions of the ECtHR are not considered as direct sources of international law. Instead, they are treated as acts interpreting the law. However, it is not always the case. The judgments of the ECtHR are granted a different treatment when the State was a party to the dispute in which a judgment was delivered. In 2003 the Constitutional Court declared that the decision of the International Court of Justice given in a dispute between Hungary and Slovakia (*Gabcikovo–Nagymaros case*)[21] can be treated neither as a norm of international law nor a treaty but it definitely obliges Hungary, as it is a sui generis category of international obligations under the current status of domestic law. In 2005, however, the new act on the procedure regarding treaties was adopted stating clearly that the international courts' decisions in cases the Hungary is a party to are binding and shall be executed in Hungary. In such cases the decision of the international court shall be promulgated in the Official Gazette.[22] This rule does not apply, however, to decisions in the proceedings involving individuals, like before the ECtHR.[23] Such decisions, instead, have to be taken into account in the course of interpretation of the treaty they are based on.[24] The ECtHR's decisions are not binding. Ultimately, they are only indirect sources of law, and can provide a significant guidance for the interpretation of the treaty-based obligations.[25] The Constitutional Court had put this approach forward already a year earlier when it had stated in the decision No. 18/2004 (V. 25.) that the jurisprudence of the ECtHR shapes the Hungarian legal practice and the Hungarian courts and other state organs are obliged to interpret the ECHR in line with the case law of the ECtHR.[26] Under such circumstances, effective implementation and enforcement of judgements involve a plurality of actors such as the government, the legislator, the judiciary, and local authorities.[27]

(3) The third category of international norms in the Hungarian legal system is international soft law (e.g. recommendations, declarations, final acts), which is not mentioned by the FL or other acts. These norms are not considered to be legal provisions but moral ones that are complementing the obligation of cooperation with the community of nations. The obligation itself is enshrined in the Constitution.[28]

---

21 *Gabcikovo–Nagymaros Project (Hungary v Slovakia*) (1997) ICJ Rep 7.

22 Act on the procedure related to international agreements L 2005, Art. 13.

23 T. Molnár (n. 20), p. 184.

24 L Act on the procedure related to international agreements 2005, Art. 13(1).

25 See: case 24.K.35.639/2006/25 (Budapest Metropolitan Court, 7 April 2009), [in:] N. Chronowski, E. Csatlós (n. 15) 27.

26 L. Blutman, 'A nemzetközi jog használata az Alkotmány értelmezésénél' (2009) 64 Jogtudományi Közlöny 7-8 301.

27 H. Keller, C. Marti, 'Reconceptualizing Implementation: The Judicialization of the Execution of the European Court of Human Rights' Judgments' (2015) 26 EJIL 4 829.

28 FL (n. 2), Art. Q(1). E. Csatlós, 'Alkotmánybírósági határozatok: a nemzetközi jog mint értelmezési tampon', [in:] L. Blutman (ed.), *A nemzetközi jog hatása a magyar joggyakorlatra* (HVG-ORAC 2014) 442 and E. Csatlós, 'A Kúria (Legfelsőbb Bíróság) gyakorlata és a nemzetközi jog',

4. The History Repeats Itself: the Administrative Authority versus Application of International Law

4.1. The Facts

Eight years after his initial conviction in the original *Vajnai* dispute, on 21 December 2008, Vajnai participated in a demonstration, held a speech again and handed out flyers decorated by five pointed red stars. The flyers were clearly directed against the capitalism when the Police intervened again, for the same reason as years before. The incident occurred six months after the proclamation of the ECtHR's judgment on *Vajnai v Hungary*. Vajnai was accused again of the offence of using a prohibited symbol of totalitarianism. The same police procedure was carried out again.[29]

Vajnai submitted a complaint to the Independent Police Complaints Board (IPCB) against the police action arguing that the police violated his fundamental rights and in particular his freedom of expression. The IPCB is an independent body; it can proceed and investigate certain police measures or acts, examine them in a fundamental right protective perspective and decide on whether the rule of law was breached.[30] Upon the examination of Vajnai's complaint, the IPCB declared the consistency of the police action with the fundamental rights.[31]

Vajnai appealed for the judicial review of this administrative decision arguing that the police action based on the Criminal Code violated his fundamental rights as it ignored the statements of the ECtHR's *Vajnai v Hungary* judgment. Contrary to the strict provisions of the Criminal Code, the ECtHR judgment definitely declared that the Hungarian regulation on total ban on the usage of red star is excessive and violates the freedom of expression.

The court of first instance held that the police action was consistent with the law as the policemen acting on site had a reasonable suspicion to consider Vajnai's behaviour illegal. In the view of the Metropolitan Court of Budapest Vajnai violated the ban on the usage of totalitarian symbols, which is provided for by the law in force, which has not been amended 2004.

As regards the freedom of expression guaranteed by Article 10(1) ECHR and the judgement of 8 July 2008 in the case of *Vajnai v Hungary*, the Metropolitan Court

---

[in:] L. Blutman (ed.), *A nemzetközi jog hatása a magyar joggyakorlatra* (HVG-ORAC 2014), p. 479.

29 See: case Kfv.VI.38.071/2010/4 (Supreme Court, 5 September 2011), not available in English.

30 Act XXXIV on the Police 1998, Art. 92.

31 Budapest Police Headquarters, VI. District Police 146–105/12/1/2009.P. not available, cited and referred to in case Kfv.VI.38.071/2010/4 (Supreme Court, 5 September 2011), Act IV on Criminal Code 1998 Art. 3, Arts. 7–8, Arts. 16–20 and Art. 21(2); Act CLXI on the organisation and administration of courts 2011, Arts. 163–133.

of Budapest acknowledged that the Hungarian regulation is contrary to the international standards and the ban on the usage of the red start is not proportional to the aim the norm seeks to attain.[32] However, the policemen were not obliged to verify the personal thoughts and beliefs concerning the meaning and symbol of the red star when they performed their duties in line with the provisions of the Police Act.[33] The reasonable suspicion of an offence was the base of their procedure. They were obliged to follow the legislation in force and they were not entitled to take the inconsistency of the legislation in force with the ECHR into account.[34]

Vajnai appealed against the decision of the Metropolitan Court of Budapest and asked for the revision of the judgment before the Supreme Court of Hungary. Vajnai argued that the circumstances made it unambiguous that the usage of the red star was meant to imply his party's leftist leanings. He submitted that his behaviour had not endangered in any way the society thus the act he committed was neither a crime nor an offence. The policemen working on the site of the demonstration or at least for the IPCB, which supervised their action, should have been acquainted with the reasoning of the judgment of *Vajnai v Hungary*.

The Supreme Court of Hungary upheld the judgment of the court of first instance. The Supreme Court emphasized that the handing of flyers with a banned totalitarian symbol can be considered as a sufficient reason for the policemen to act. In the view of the Court, the policemen did not have the duty to verify whether the behaviour of demonstrators and of Vajnai, in particular, created a danger to the society. The examination of the circumstances of the alleged crime or offence is the task of the future criminal proceedings; thus, the policemen should not be impeached for not knowing the *Vajnai v Hungary* judgment. In short, it is not their obligation to resolve the conflict between domestic law and international obligations. The ECtHR indeed expressed its opinion on the conformity of Hungarian criminal regulation concerning the red star with its standards. Yet, the judgment is addressed to the legislator thus it is the duty of the legislator to introduce the necessary amendments to the domestic law.

Subsequently, the statements of the judgment were taken into consideration during the criminal proceedings, as Vajnai was not condemned.[35] He tried to prove in vain that the policemen at site had made a mistake and initiated several proceedings to have the administrative decision annulled and so this way to gain jus-

32 On totalitarian symbol as a threat to the society and the reasoning of the judgment see: A. Koltay, 'A Vajnai-ügy. Az Emberi Jogok Európai Bíróságának ítélete a vörös csillag viselésének büntethetőségéről' (2010) 1 JeMa 77.

33 Act XXXIV on the Police 1998.

34 Case 27.K.30.848/2010/3 (Budapest Metropolitan Court, 29 June 2010), revised in case Kfv. VI.38.071/2010/4 (Supreme Court, 5 September 2011).

35 Case Kfv.VI.38.071/2010/4 (Supreme Court, 5 September 2011).

tice. Vajnai never succeeded. The administrative organs neither in first, nor in the second instance accepted to apply the findings of the ECtHR in relation to domestic criminal law provisions.[36]

4.2. The Police and the ECtHR judgment

In the Hungarian legal system, the law enforcement authorities such as the police belong to the executive power, and their structure is a part of the administration of the State.[37] Decisions elaborated by administrative organs are subject to an internal remedy within the administrative system provided by the body supervisory to the organ elaborating decision. In addition, the judicial remedy is also guaranteed by the FL, which states that "everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests."[38] The revision of administrative decisions is a task of twenty administrative and labour courts placed in each of Hungary's counties.

The administrative proceedings instigated by Vajnai would have been unnecessary if the administrative authorities (the police) would have been more flexible and move away from their duties expressed in the Police Act in favour of the relevant and obligatory statements of the judgment *Vajnai v Hungary*. In fact, the judgment obliges the State to modify its domestic law, it has no direct effect, but the findings incorporated in judgments should be given a respectful consideration. They interpret and clarify the Treaty-based obligations and due to this fact, they shall be applied when such obligations are to be enforced.[39] But how is it done in practice?

4.3. Doctrinal Background: the Non-harmonisation of Domestic Law with International Law as a Key Issue

After the 2008 ECtHR judgment of *Vajnai v Hungary*, the Hungarian Government refused the modification of the Criminal Code to deregulate the total ban on the usage of the red star. It declared that, in contrast with the reasoning of the ECtHR, the vividness of historical memories and experiences still requires this kind of a radical regulation. The Hungarian Government maintained its stance, even when on 3 November 2011 the ECtHR passed the second judgment on the same

36 See: case Kfv.II.38.073/2010/4 (Supreme Court, 22 June 2011), case Kfv.III.38.074/2010/4 (Supreme Court, 27 June 2011), and case Kfv.III.38.075/2010/4 (Supreme Court, 8 June 2011), case Kfv.II.37.798/2013/4 (Curia, 12 February 2014), case Kfv.II.37.814/2013/3 (Curia, 12 March 2014), case Kfv.II.37.800/2013/3 (26 February 2014), case Kfv.II.37.806/2013/3 (26 February 2014).

37 Act XLIII on central state organs and the status of the members of the Government and that of the state secretaries 2010, Art. 1(5)a).

38 FL (n. 2), Art. XXVIII(7).

39 C. Dominicé, 'The International Responsibility of States for Breach of International Obligations' (1999) 10 EJIL 2, p. 353; A.M. Slaughter, W. Burke-White, 'The Future of International Law is Domestic (or, The European Way of Law)' (2006) 47 Harvard International Law Journal 2 327.

issue in *Fratanoló v Hungary*.[40] The situation changed with the submission of Vajnai to the Constitutional Court to re-examine the ban on the red star in the view of the two ECtHR judgments. At the beginning of 2013 the Constitutional Court analysed Article 10 ECHR and the judicial practice on the freedom of expression in the view of the Strasbourg standards and subsequently reformulated its approach to the red star and its possible threat to society agreeing that it is the unreasonable restriction to the freedom of expression. Finally, it held that the prohibition of using the five-point red star is unconstitutional. It argued that the current regulation defines criminal conducts too widely as the use of the symbols is punished in general; however, the consideration of the purpose, the method or the result of the use for each symbol might be indispensable. Therefore, the provision of the Criminal Code prohibiting the use of symbols associated with totalitarian regimes was declared to be in violation with the requirement of legal certainty and, in Vajnai's case, the freedom of expression.[41] The Constitutional Court annulled the alleged provision of the Criminal Code (Article 269/B) with the effect as of 30 April 2013.[42]

4.4. Which Standard to Apply in the Lack of State's Implementation of the ECtHR Judgment?

Almost the same story happened to Fratanoló on 1 May 2004 in Pécs. He wore a red star on his jacket at a legitimate labour demonstration. He was condemned for the offence of usage of a banned totalitarian symbol.[43] He appealed and here

40 The Hungarian Parliament declared the compliance of the regulation of totalitarian symbols with the social needs and refused its modification. See: The Parliament, Report no. J/6853 on the issues related to the execution of obligations deriving from the *Fratanoló v Hungary* judgment of the ECtHR (Parliament, 2 July 2012), <http://www.parlament.hu/irom39/06853/06853.pdf> (access: 31 July 2013) and Decision 58/2012. On the acceptance of the report on the issues related to the execution of obligations deriving from the *Fratanoló v Hungary* judgment of the ECtHR (Parliament 2012): T. Molnár, 'Két kevéssé ismert nemzetközi jogforrás helye a belső jogban: a nemzetközi bíróságok döntései, valamint az egyoldalú állami aktusok esete a Magyar jogrendszerrel' (2012) 3 Közjogi Szemle 1, 3. K. Bárd, 'The Legal Order of Hungary and the European Convention on Human Rights', [in:] I. Motoc, I. Ziemele (eds), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives* (CUP 2016) 186; P. Bárd, S. Carrera, E. Guild, D. Kochenov, 'An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights' (2016) 91 CEPS Papers in Liberty and Security in Europe 81.

41 Case 4/2013 (II. 21.) (Constitutional Court, 21 February 2013) 142, summary is available in English: <http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm> (access: 14 July 2014).

42 Ibidem, 148. On the motifs of annulment see: J.Z. Tóth, 'Az önkényuralmi jelképek használata mint a véleménynyilvánítási szabadság korlátja? (A 4/2013 (II. 21.) AB határozat előzményei, indokai és következményei, valamint az új Btk.-szabályozás pozitívumai és fogyatékosságai)' (2013) 2 JESZ 1, <http://jesz.ajk.elte.hu/tothj54.pdf> (access: 29 February 2016) 18.

43 Case 12. B. 1482/2007/10 (Pécs Municipal Court, 2007) not available, it is cited and referred to in case 121/2008/5 (Baranya County Court, 23 September 2008).

came the turning point: the court of second instance acquitted him in the judgment of 23 September 2008 establishing that no crime was committed.[44] The court of second instance examined the possible danger of the symbol to the society and came to the same conclusion as the ECtHR in *Vajnai v Hungary*. Moreover, it referred to Article 3(b) of Protocol 9 to the ECHR according to which Hungary is obliged to acknowledge and accept the competence of the ECtHR to interpret ECHR and its protocols. The Court also declared *expressis verbis* the lack of danger to the society, so the wearing of the red star was neither a crime nor an offence. It also confirmed this reasoning in the *Vajnai v Hungary* case and put an emphasis on the fact that the international standard of interpretation is contrary to that of the Constitutional Court's one expressed in its decision of 2000.[45] The court of second instance applied international law in contrast to domestic legal provisions of the Criminal Code. In order to be able to issue a judgment which satisfies the international legal requirements of a democratic State that respects human rights at the level of the ECtHR, the court of second instance had to put aside domestic law to give effect to international legal provisions. This kind of legal practice is in harmony with the FL. International law is superior to domestic law and only by following this rule the effect of international obligations can be ensured. At the same time, the Court sustained that the harmonization of international legal obligations and domestic legal norms is primarily the task of the legislator. If the duty is not fulfilled, then the Constitutional Court is obliged to take action to restore the order in the legal system. In fact, before an international obligation is transformed into the domestic legal system and the process of ratification is concluded, the legislator should lay ground for the adjustment of the normative environment and introduce the necessary modifications of domestic law.

In fact, in Hungary the 'transformation' is the procedure of proclaiming international norms in the form of an act or decree. Nevertheless, if grain of sand slips into the machine or the legislator does not act in conformity with the international obligations by adopting necessary changes in legal norms, those entities, which apply law are confused as to which norms to apply. Those who do it law might face the problem of having two different norms applicable to the same situation: one, which expresses international obligations and another which is domestic in origins. Law enforcement authorities are not entitled to derogate norms in the name of the principle of priority of international law; that is the task of the Constitutional Court. Can they ignore and put aside the domestic originated norms in the favour of international ones? They should. Are all the forms of international law in the Hungarian legal system behaving the same in such situations? What about those norms, which are not transformed into the legal system such as ECtHR judgments but are significant sources for the ECHR interpretation? And what about

44 Case 121/2008/5 (Baranya County Court, 23 September 2008).

45 Ibidem.

the judgment especially delivered in Hungary's case condemning a Hungarian legal norm, which is to be applied in a given case?[46]

Such questions were posed during the procedure of the Pécs Court of Appeals, which in 2010 altered the judgment of the second instance and held that Fratanoló was guilty of usage of a totalitarian symbol. Due to this inconsistency of judicial practice, Fratanoló opened a procedure before the ECtHR, therefore, the ruling of the *Vajnai v Hungary* was reinforced by the ECtHR in its judgment of 3 November 2011.[47] The Hungarian Government was called upon again to derogate its legislation on the total ban on the usage of the red star.[48]

The Supreme Court, or as it is called since 2011, the Curia, pursued a supervision procedure in the view of the ECtHR judgement in *Fratanoló v Hungary*, and acquitted Fratanoló declaring the lack of crime or offence. It declared that wearing of the red star in the way Fratanoló did was neither a crime belonging to the sphere of criminal law, nor an offence meaning an act, which is less harmful for the society and thus belongs to the administrative power represented by the police. It held that Fratanoló expressed his political opinion while wearing the red star at a lawful demonstration of the labour party thus this act is protected by the freedom of expression guaranteed by Article 10(1) ECHR. His behaviour was not a threat to the society as it could not be associated with any motivation to restore the communist dictatorship. Moreover, the Curia drew the attention to the fact that the Hungarian State was not entitled to maintain such restriction to the freedom of expression.[49]

4.5. Which Organ is Obliged to Take International Obligations into Consideration?

On 29 July 2012, the *Vajnai* situation has repeated: the police action was conducted against a person wearing the red star and handling flyers with the red star at a lawful demonstration had to go through the same police action. This person submitted a complaint to the *Independent Police Complaints Board* (ICPB). In its decision the ICPB changed the reasoning, expanded its competences and stated that the provision of the criminal Code concerning the red star violates the Fundamental Law as well as the ECHR but the legal qualification of this fact is beyond the scope of the police action.[50] The National Police Headquarters, the supervisory body to the ICPD, refused the complaint arguing that it is not the task of the police to verify the circumstances, their duty is to act in the case of a reasoned suspi-

46 J. Laffranque, 'Who Has the Last Word on the Protection of Human Rights in Europe?' (2012) Juridica International XIX 119. Cf. Dudás D.V., 'Az Emberi Jogok Európai Bírósága és a hazai közigazgatási bíróságok közötti kölcsönhatás' (2014) Fundamentum 1–2 106.

47 *Fratanoló v Hungary*, App. no. 29459/10 (ECHR, 3 November 2011), para. 26.

48 Ibidem, paras 20–28.

49 Case Bfv.III.570/2012/2 (Curia, 10 July 2012).

50 Case 70/2013 (III. 13.) (Independent Police Complaints Board, 9 September 2014).

cion of a crime and that was the case when they realized the usage of a banned totalitarian symbol.[51]

However, this time, the judicial review of the administrative decision annulled the decision and ordered the administrative authority to open a new procedure.[52] The Court declared that the policemen in charge should have known that the act, namely the usage of the red star is not always a crime or offence.

What was different in this case? First, the Pécs Municipal Administrative and Labour Court declared that all the state organs, including the police, all other entities who apply law, are obliged to do it in conformity with the FL and the ECHR. The application of law in the view of international obligations can only reach the aim of elaborating decisions, which are in conformity with international obligations of Hungary, if the one who enforces law does it in a way, which ensures the respect for such norms. The main dispute between the parties in the *Vajnai* case, in the Court's point of view, whether the relevant provision of the Police Act can be the object of interpretation or not, because if it can be interpreted, then the international norms can prevail. The Court held that the provisions of the Police Act can be subject to interpretation.

The police decision stated that the acts of the police were grounded on the fact that they are obliged to intervene if someone is caught during the commitment of an intentional crime. In the discussed case, the organizer of a labour demonstration primarily notified the possibility of the use of banned symbols due to the nature of the movement and he assumed the criminal consequences. In this case, the police was aware of the potential use of the red star and the nature of the event, thus the inoffensive use of the banned symbol. This way, the checking of identity, screening of clothes and arresting people was absolutely disproportionate to the acts of the demonstrators. The police acts might have been lawful but under the above-mentioned circumstances they were not proportional. All these acts have as their objective the identification of perpetrators and ensuring their presence during the criminal procedure, but in this case, it was not necessary. The Court cited the *Vajnai v Hungary* and *Fratanoló v Hungary* judgments to highlight that the legal instruments to limit the freedom of expression should be well grounded and proportional to the aim of preventing harm to the society. It even referred to the recent decision of the Constitutional Court that finally abolished the provision of the Criminal Code in question, which entered into force on 30 April 2013.[53]

In the other similar case, the applicant wearing a red star badge participated in a demonstration on 1 May 2012. He was arrested by the police and held at

---

51 Case 29000-105/376-1/2013.RP (National Police Headquarters, 2013) not available, cited and referred to in case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013).

52 Case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013).

53 Case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013).

the police station for hours. No criminal procedure was opened because of the lack of crime, but the applicant submitted a complaint to the ICPB because of the hardship he experienced. The complaint was refused, as well as his appeal to the National Police Headquarters.[54] Therefore, he appealed for a judicial remedy following the administrative decision of the police.

The court of first instance referred to the fact that the annulment decision of the Constitutional Court which deregulates the ban on red star entered into force only on 30 April 2013, thus the authorities acted in conformity with the law in force at the time of the demonstration. The Court emphasized that the policeman at site was not in that position to examine the intentions of wearing the red star. Furthermore, the fact that no criminal procedure was opened against the plaintiff is not a ground for the revision of the police action taken against him at site and at the police station. It was the normal way of administrating his behaviour as he wore a banned totalitarian symbol. The Court evoked the ECtHR case law and emphasized that it is addressed to the legislator. The policeman is not a legislator therefore he was not entitled to resolve the conflict between international obligations and domestic legal provisions.[55]

The applicant appealed against this judgment. He argued that the police act was unlawful as the policemen at site did not examine the intentions of wearing the red star. In his point of view, it is not enough to prove that a behaviour formally violates the criminal law, the reasoned suspicion is not enough to arrest a person and keep him at the police station for an undetermined period especially when both of the ECtHR judgments against Hungary on the use of the red star and its relationship to the freedom of expression were well known at that time. Therefore, the policemen at site, or at least, the supreme administrative authority, the National Police Headquarter should have known that the applicant's behaviour is not in every case a danger to the society. The action of the police is unlawful not only because of this fact. If a criminal is captured, placing him in detention is to ensure that he does not abscond from participation in a criminal procedure. In the present case, the applicant did not want to impede the police procedure thus it was not necessary to hold him in custody.

The subsequent decision of the Curia reinforced the findings that had already been articulated in former decisions: it is not the duty of the policemen at site to verify neither the regulations of international conventions nor the Criminal Code; their duty was to arrest the one who is caught in the act of an intentional crime. Therefore, the police and its officers did not violate any legal provisions, including the ECtHR case law; they just respected and obeyed the rules, which referred to

54 Case 29000/105/547-56/2012.P (National Police Headquarters, 2012) not available, cited and referred to in case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013).

55 Case 20.K.31.328/2013/3 (Budapest Metropolitan Administration and Labour Court, 9 October 2013).

their activity.[56] They do it so faithfully, that Vajnai and his companion suffered the same whole procedure, which ended up before the ECtHR again where Hungary was condemned for the same.[57]

5. Problems Revealed by the *Vajnai* Saga

The domestic application of international law is challenging. The transformation of international legal provisions into domestic ones is regulated by constitutional provisions. In this vein, the Constitutional Court held that international law is not to be adjusted to the conditions of domestic law, but rather domestic law should be adjusted to comply with international law.[58]

However, conflicts of norms can always emerge in practice and it is even more problematic when the entity applying a given provision is not aware of the fact that the area in question is highly affected by international legal sources, which shall overwrite domestic ones in case of conflict. It derives from the primacy of international law, although in legal practice the international judicial interpretation of treaty based obligations cause problems. The application of a self-executing treaty causes fewer problems but as the direct effect of ECtHR judgments is not *expressis verbis* acknowledged, the effect of their content is challenged.

Since the entry into force of the modification of the law on the procedure relating to international treaties, the following provision is in force from 1 January 2012: the decisions of the organ having jurisdiction over the disputes in relation to a treaty or convention shall be obligatory in the course of interpreting it.[59] The Constitutional Court's decision 18/2004 (V. 25.) states that the jurisprudence of the ECtHR shapes and carries obligations for the Hungarian legal practice. This kind of obligation refers to the interpretation of the different provisions of the Convention, the findings of a judgment and not to the ruling of it.[60] However, there seems to be a little contradiction when the Constitutional Court stated almost ten years later, in 2013, that the judgment of the ECtHR is declarative, it does not change legal concepts. At the same time, it declares that these judgments help the interpretation and exploration of the content of fundamental rights. The content of the conventional rights is, in fact, embodied in the case law of the ECtHR, therefore they contribute to the uniform interpretation and application of the Convention

56 Case Kfv.II.37.807/2013/4 (Curia, 12 February 2014).

57 See: *Horváth and Vajnai v Hungary*, App. nos 55795/11 and 55798/11 (ECtHR, 23 September 2014).

58 Case 53/1993 (X. 13.) (Constitutional Court, 13 October 1993), p. 323.

59 Act L on the procedure related to international agreements 2005, Art. 13(1).

60 L. Blutman (n. 27), pp. 304, 310.

itself. The Strasbourg practice defines the minimum level of fundamental right protection, but it does not impede domestic law from applying at a higher level.[61] In the same decision, the Constitutional Court states that the Hungarian courts shall apply the domestic law in force even if the case before them is practically the same that has already been resolved by the ECtHR.[62] The judgement of the ECtHR condemning Hungarian legal provisions and demanding modifications can only be taken into account by the Curia while it opens an extraordinary supervisory procedure to modify a previous judgement whose object was submitted to the ECtHR. The problem emerges when the domestic judicial remedies system is exhausted and then the applicants turn to the ECtHR, which decides in favour of an applicant against Hungary. In such cases an applicant has the right to submit a claim to the Curia to open a supervisory procedure and to reinterpret the case in the view of the ECtHR judgment.[63] Invoking international obligations by judicial organs is significant not only because it helps to enforce them and interpret domestic legal norms in a way that they should correspond to the assumed international obligations but on the other hand, in a more conceptual way, such kind of behaviour of national courts contributes to the practice of States as an evidence to the existence of customary international law.[64]

The Hungarian law enforcement authorities are not to put aside domestic regulations in order to give effect to contrary international legal norms. The party to the dispute must follow the system of judicial remedies up to the Curia to which is the organ that is entitled to order to repeat the judicial procedure at first instance in the view of the insights of the ECtHR, as it happened to the case of Fratanoló.[65] According to the procedural law in force, formally this is the way of gaining justice if the ECHR guarantees a better protection of one's fundamental rights than the State regulations, whenever domestic law is not in conformity with the ECHR.

Even if remedies are available in specific and individual cases of Hungarian citizens decided at the ECtHR levels, analogous cases not taken to the Strasbourg court remain problematic. In these cases, it is up to the discretion of the judges whether they intend to pick the ECtHR standards over a contrary domestic regulation or not.

As the presented cases show, the administrative authorities and the police, do not even consider the fact that fundamental right issues might have not only domestic but international law sources that might help to explore and apply the law. However, as it is seen from the practice and the Constitutional Court statements, courts are not required at all to take into consideration ECtHR judgements even if it is clearly contrary to domestic law. The ECtHR judgments cannot have

61 Case 4/2013 (II. 21.) (Constitutional Court, 21 February 2013), para. 133.

62 Ibidem, para. 147.

63 Act XIX on criminal proceedings 1998, Art. 416(g).

64 A. Roberts, 'Comparative International Law? The Role of National Courts in Creating and Enforcing International Law' (2011])60 ICLQ 57.

65 Case Bfv.III.570/2012/2 (Curia, 10 July 2012).

direct effect and the long and costly way of gaining justice needs to be treaded even in those cases when the legal procedure was obviously superfluous and it could have been settled at the police level in the competence of administrative organs, instead of stepping to the ground of the judicial remedies.

Considering the present case of a totalitarian symbol, the new Criminal Code that entered into force on 1 July 2013 limited the ban on the use of totalitarian symbols and restricted its regulation. Now, only that activity can be qualified as crime, which is capable of disturbing public peace in a way that can hurt human dignity or memory of those who were victims of the regime represented by the symbol in question.[66] However, the list of banned symbols stayed the same and the argumentation concerning the effect of the totalitarian symbol on victims "seems to have been an additional, rather than the core, reason in the argumentation"[67] of the ECtHR judgment of *Vajnai*. Several ECtHR judgments since then stand as evidence that some Hungarian criminal courts refuse to alter their practice to bring it in line with the ECtHR case law.[68] It seems that in Hungary the complete transition to democracy is yet to come along with the proper enforcement of international obligation.

66 Act C of 2012 on Criminal Code, Art. 335.

67 A. Buyse, M. Hamilton, *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights* (CUP 2011), p. 137.

68 R. Uitz, 'The Illusion of a Constitution in Europe: The Hungarian Constitution Court after the Fifth Amendment of the fundamental Law', [in:] J. Bell, M.-L. Paris (eds), *Rights-Based Constitutional Review: Constitutional Courts in a Changing Landscape* (Edward Elgar Publishing 2016), p. 403.

Bibliography

I. Case law

International Court of Justice

Gabcikovo–Nagymaros Project (Hungary v Slovakia) (1997) Rep 7

European Court of Human Rights

Vajnai v Hungary, App. no. 33629/06 (8 July 2008)
Fratanoló v Hungary, App. no. 29459/10 (3 November 2011)
Fáber v Hungary, App. no. 40721/08 (24 July 2012)
Horváth and Vajnai v Hungary, App. nos 55795/11 and 55798/11 (23 September 2014)

Court of Justice of the European Union

C-328/04 *Criminal proceedings against Attila Vajnai* (6 October 2005)

Domestic case law

Constitutional Court

53/1993 (X. 13.) (13 October 1993), summary available in English: <http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/hun/hun-1993-3-015?fn=document-frameset.htm$f=templates$3.0> (access: 9 July 2014)
30/1998 (VI. 25.) (25 June 1998), available in English: <http://www.alkotmanybirosag.hu/letoltesek/en_0030_1998.pdf> (access: 9 July 2014)
14/2000 (V. 12.) (12 May 2000), available in English: <http://www.alkotmanybirosag.hu/letoltesek/en_0014_2000.pdf> (access: 9 July 2014)
143/2010 (VII. 14.) (14 July 2010), available in English: <http://www.alkotmanybirosag.hu/letoltesek/en_0143_2010.pdf> (access: 9 July 2014)
4/2013 (II. 21.) (21 February 2013), summary available in English: <http://www.codices.coe.int/NXT/gateway.dll?f=templates&fn=default.htm> (access: 14 July 2014)

Supreme Court

Kfv.VI.38.071/2010/4 (5 September 2011)
Kfv.II.38.073/2010/4 (22 June 2011)
Kfv.III.38.074/2010/4 (27 June 2011)
Kfv.III.38.075/2010/4 (8 June 2011)

Curia

Bfv.III.570/2012/2 (10 July 2012)
Kfv.II.37.807/2013/4 (12 February 2014)
Kfv.II.37.798/2013/4 (12 February 2014)

Kfv.II.37.814/2013/3 (12 March 2014)
Kfv.II.37.800/2013/3 (26 February 2014)
Kfv.II.37.806/2013/3 (26 February 2014)

Other Domestic Courts

12. B. 1482/2007/10 (Pécs Municipal Court, 2007), not available, it is cited and referred to in case 121/2008/5 (Baranya County Court, 23 September 2008)
Bf.121/2008/5 (Baranya County Court, 23 September 2008)
24.K.35.639/2006/25 (Budapest Metropolitan Court, 7 April 2009)
27.K.30.848/2010/3 (Budapest Metropolitan Court, 29 June 2010)
17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013)
20.K.31.328/2013/3 (Budapest Metropolitan Administration and Labour Court, 9 October 2013)
Bírósági Határozatok Gyűjteménye (Collection of Judicial Decisions), <http://www.birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara> (access: 9 July 2014)

The Police

146-105/12/1/2009.P (2009), after case Kfv.VI.38.071/2010/4 (Supreme Court, 5 September 2011)
29000/105/547-56/2012.P (National Police Headquarters, 2012), not available, cited and referred to in case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013)
29000-105/376-1/2013.RP (National Police Headquarters, 2013), not available, cited and referred to in case 17.K.31.995/2013/2 (Budapest Metropolitan Administration and Labour Court, 9 October 2013)
70/2013 (III. 13.) (Independent Police Complaints Board, 9 September 2014)

II. References

Books

Buyse A., Hamilton M., *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights* (CUP 2011)
Molnár T., *A nemzetközi jogi eredetű normák beépülése a magyar jogrendszerbe* (Dialóg Campus, Budapest-Pécs 2013)

Book Sections

Bárd K., 'The Legal Order of Hungary and the European Convention on Human Rights', [in:] Motoc I., Ziemele I. (eds), *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives* (CUP 2016)
Chronowski N., Drinóczi T., Ernszt I., 'Hungary', [in:] Shelton D. (ed.), *International Law and Domestic Legal Systems – Incorporation, Transformation, and Persuasion* (OUP 2011)
Csatlós E., 'A Kúria (Legfelsőbb Bíróság) gyakorlata és a nemzetközi jog', [in:] Blutman L. (ed.), *A nemzetközi jog hatása a magyar joggyakorlatra* (HVG-ORAC 2014)

Csatlós E., 'Alkotmánybírósági határozatok: a nemzetközi jog mint értelmezési tampon', [in:] Blutman L. (ed.), *A nemzetközi jog hatása a magyar joggyakorlatra* (HVG-ORAC 2014)

Uitz R., 'The Illusion of a Constitution in Europe: The Hungarian Constitution Court after the Fifth Amendment of the fundamental Law', [in:] Bell J., Paris M.L. (eds), *Rights-Based Constitutional Review: Constitutional Courts in a Changing Landscape* (Edward Elgar Publishing 2016)

Journal Articles

Bárd P., Carrera S., Guild E., Kochenov D., 'An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights' (2016) 91 CEPS Papers in Liberty and Security in Europe

Blutman L., 'A nemzetközi jog használata az Alkotmány értelmezésénél' (2009) 64 Jogtudományi Közlöny 301

Chronowski N., Csatlós E., 'Judicial Dialogue or National Monologue? The International Law and Hungarian Courts' (2013) 1 ELTE Law Journal 7

Dominicé C., 'The International Responsibility of States for Breach of International Obligations' (1999) 10 EJIL 2 353

Dudás D.V., 'Az Emberi Jogok Európai Bírósága és a hazai közigazgatási bíróságok közötti kölcsönhatás' (2014) Fundamentum 1-2 103

Fijalkowski A., 'The criminalisation of symbols of the past: expression, law and memory' (2014) 10 International Journal of Law in Context 3 295

Koltay A., 'A *Vajnai*-ügy. Az Emberi Jogok Európai Bíróságának ítélete a vörös csillag viselésének büntethetőségéről' (2010) 1 JeMa 77

Laffranque J., 'Who Has the Last Word on the Protection of Human Rights in Europe?' (2012) Juridica International XIX 117

Molnár T., 'Két kevéssé ismert nemzetközi jogforrás helye a belső jogban: a nemzetközi bíróságok döntései, valamint az egyoldalú állami aktusok esete a Magyar jogrendszerrel' (2012) 3 Közjogi Szemle 1

Roberts A., 'Comparative International Law? The Role of National Courts in Creating and Enforcing International Law' (2011) 60 ICLQ 57

Slaughter A.M., Burke-White W., 'The Future of International Law is Domestic (or, The European Way of Law)' (2006) 47 Harvard International Law Journal 2 327

Tóth J.Z., 'Az önkényuralmi jelképek használata mint a véleménynyilvánítási szabadság korlátja? (A 4/2013. AB határozat előzményei, indokai és következményei, valamint az új Btk.-szabályozás pozitívumai és fogyatékosságai)' (2013) 2 JESZ 1, <http://jesz.ajk.elte.hu/tothj54.pdf> (access: 29 February 2016)

III. International Treaties

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended)

'Status of the Convention for the Protection of Human Rights and Fundamental Freedoms' (Council of Europe), <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (access: 19 November 2014)

IV. Domestic Legislation and Other Documents

Act XX on the Constitution of the Hungarian Republic 1949
Act XXXIV on the Police 1994
Act IV on Criminal Code 1998
Act XIX on criminal proceedings 1998
Act L on the procedure related to international agreements 2005
Act XC on freedom of electronic information 2005
Act XLIII on central state organs and the status of the members of the Government and that of the state secretaries 2010
Fundamental Law of Hungary 25 April 2011
Act CLXI on the organisation and administration of courts 2011
Act CXII on informational self-determination and freedom of information 2011
Act C on Criminal Code 2012
Decision 58/2012 on the acceptance of the report on the issues related to the execution of obligations deriving from the *Fratanoló v Hungary* judgment of the ECtHR (Parliament, July 2012)
Report no. J/6853 on the issues related to the execution of obligations deriving from the *Fratanoló v Hungary* judgment of the ECtHR (Parliament, 2 July 2012), <http://www.parlament.hu/irom39/06853/06853.pdf > (access: 31 July 2013)