

Hungary, Supreme Court, Judgement of 29 October 2014

Deciding bodies and decisions

Supreme Court of Hungary, Kfv.III.37.848/2014/6, 29 October 2014

Area of law

Non-discrimination

Subject matter

Hate speech - definition of harassment under national law - personal and material scope of the Equal Treatment Act - limitations of free speech - publication of decision as a remedy

Summary Facts Of The Case

On 28 November 2008, following the murder of a teenage girl, the local government convened a meeting at which the mayor proclaimed that it was 'enough of the Roma violence ... we are still the majority.'

In the March 2009 edition of the local newspaper, he published an article in which he alluded to the fact that the government was responsible for continuing to discuss racism in the face of growing and brutal criminal acts evidently committed by the Roma. 'Unfortunately, we must state that in Kiskunlacháza overt, institutional racism is being inflicted on the Hungarians. We cannot condone the fact that certain individuals, under the pretense of minority existence, can access more rights than the majority society.'

In the October edition, the mayor published an open letter addressed to the Prime Minister, calling on him to ban Gypsy paramilitary groups in the same manner his government banned the Hungarian Guards - an extremist and openly racist paramilitary organization founded by the extreme right wing party leader.

On 19 October 2009, the Hungarian Helsinki Committee - intervening on the side of the ETA before the courts - launched a complaint with the latter, alleging that the mayor had committed harassment.

On 19 January 2010 the ETA adopted an administrative decision in which it established that the mayor's conduct amounted to harassment against individuals belonging to the Roma minority.

The Capital City Court (Fővárosi Bíróság), in its judgment No 8.K.31.232/2010/3. found the administrative decision null and void, ordering the ETA to repeat its proceedings. The Supreme Court in essence upheld this judgment in its judgment No. Kfv.III.39.302/2010/8. While agreeing that the Equal Treatment Act's personal scope covered the mayor in the particular case, the Supreme Court instructed the ETA to investigate whether his actions constituted a legal relationship otherwise falling under the Act's material scope. It noted the necessity of examining whether the definition of harassment prohibited under Article 10 paragraph 1 covered instances in which not only an individual, but a group of individuals suffered such treatment - bearing in mind that the Act specifically mentioned groups in certain other dispositions, but not in relation to harassment.

On 20 April 2012 the ETA once again established the mayor's liability for harassment against persons belonging to the Roma minority, imposed on him a prohibitive injunction and ordered the publication of the decision on its website for a period of 60 days.

The Capital City Court found the decision null and void in its judgment No. 12.K.31.431/2012/9. The Supreme Court, however, quashed this verdict in its judgment No. Kfv.III.37.773/2012/6. and ordered the retrial of the case, because the Capital City Court had not provided reasons for its finding purporting to establish that the prohibition of harassment did not extend to groups.

Following retrial, the Capital City Administrative and Employment Court (Fővárosi Közigazgatási és Munkaügyi Bíróság) rejected the mayor's claim and upheld the administrative decision with reference to, inter alia, the CJEU's judgment in the case *Firma Feryn* and the European Court of Human Rights' judgment in *Feret v Belgium*.

The Commentary attached to the Act supports a finding of harassment also in cases it is inflicted on a group, which clarifies the legislative purpose. This purposive interpretation is supported by the CJEU's judgment in *Feryn*.

The mayor sought this judgment's judicial review from the Supreme Court, claiming that the mayor's statements do not constitute a legal relationship under the Act, that harassment can only be inflicted on an individual and the Commentary cannot serve as a legal basis on a par with a legal act - nor can the *Feryn* judgment be invoked.

According to judgment No. Kfv.V.35.460/2011/5, the general judicial practice is that once a lower court is instructed to retry a case, it must also follow the guidelines provided for such retrial. This has been followed in the present case. It rightly concluded that the defendant mayor's claim is unfounded. Earlier, the Supreme Court had established that the mayor fell under the personal scope of the Act. The Supreme Court agrees with the ETA in that his conduct in the present case also falls under the material scope of the Act.

The definition of harassment under the Act cannot flow from the interpretation or analogy with definitions in criminal and civil law, because of the diverse personal and material scopes.

Other than the strict linguistic interpretation favored by the plaintiff, the Act must also be examined by way of purposive and doctrinal interpretation. No Act can be attributed a meaning that is

contrary to its purpose and it is relevant in this respect that the Equal Treatment Act under Article 1 sets out to prohibit discrimination against individuals as well as against groups of individuals. Moreover, Article IX paragraph 5 of the Fundamental Law curtails the freedom of expression if it aims at violating a national, ethnic or racial community. Limiting protection under the Act to an individual in case of harassment would run counter to the fundamental principles expressed in the Act. Thus, on 29 October 2014 the Supreme Court upheld the final judgment

Following a long legal battle, the Supreme Court upheld the ETA's decision in which it found the mayor liable for harassment against a member of the Roma national minority, and ordered the publication of its decision

Relation to the scope of the Charter

The case concerned the interpretation of the national law implementing the EU non-discrimination directives, hence it fell within the scope of the Charter for the purpose of article 51(1) therein.

Notes on the remedies dimension

The publication of the decision is in this case part of the set of remedies strengthening the idea that sanctioning hate speech implies sending a strong message to the community, of not condoning the discriminatory behaviour and preventing escalation.

Diagram



Case timeline representation

After a teenage girl was murdered in Kiskunlacháza, the local mayor whipped up anti-Romani sentiments through various speech acts. The Hungarian Helsinki Committee as act poplars claimant launched a complaint against him with the Equal Treatment Authority (hereafter “ETA”). Following a long legal battle, the Supreme Court upheld the ETA's decision in which it found the mayor liable for harassment against a member of the Roma national minority, and ordered the publication of its decision.

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Sources - CJEU Case Law

- CJEU, C-54/07 Firma Feryn
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Sources - ECtHR Case Law

- Féret v. Belgium, Application no. 15615/07 of 16 July 2009
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