

Communication concerning the decision of the Curia of Hungary
in the criminal case n° Bfv.II.590/2012

In its judgement n° 8.Fk.27.246/1010/83 rendered on 3 March 2011, the Pest Central Districts Court acting as a juvenile court condemned the first and second accused for contributing, as accomplices, to the commission of crimes of violence against a member of a community [Article 174/B, paragraph (1) and paragraph (2), points b) and e) of the Criminal Code], furthermore, it condemned the third, fourth, fifth, sixth and seventh accused for committing, as co-perpetrators, crimes of violence against a member of a community [Article 174/B, paragraph (1) and paragraph (2), points b) and e) of the Criminal Code] and other criminal offences.

With its judgement n° 31.Fkf.8472/2011/38 adopted on the basis of its public hearing held on 24 October 2011, the Metropolitan Court acting as a court of second instance modified the first instance decision and partially re-qualified the criminal offences attributed to the accused persons; thus condemned the first and second accused for contributing, as accomplices, to the commission of crimes of public nuisance [Article 271, paragraph (1) and paragraph (3), points a) and d) of the Criminal Code], while condemned the fourth, fifth, sixth and seventh accused for committing, as co-perpetrators, the above mentioned crimes.

As to the factual background of the case, on 23 September 2009 in the 8th district of Budapest, the accused persons found faults with and aggressively confronted the victim while verbally insulting him for daring to cross, as a person of Hungarian ethnicity, the accused persons' Roma neighbourhood. The accused persons and their supporters ceased their aggressive behaviour only upon the arrival of police patrol units. In the reasoning part of its judgement, the court of first instance stated without unreasonable doubt that, at the beginning of the conflict situation, the third and seventh accused started to verbally insult the victim for his Hungarian ethnicity, subsequently, the other accused persons joined them to verbally insult and physically abuse the victim, while the third and fifth accused threatened the victim with knives. The verbal insults accompanying the physical abuse and coercion unambiguously referred to the fact that the accused persons attacked the victim because of his different ethnicity. With regard to the aforementioned, the court of first instance condemned the accused persons for their involvement in crimes of violence against a member of a community, acts punishable by Article 174/B of the Criminal Code. The court of second instance modified the first instance decision and re-qualified the criminal offences attributed to the accused persons with the exception of the third accused. The appellate court argued that the first, second, fourth, fifth, sixth and seventh accused had confronted and abused the victim not for his different ethnicity, but because they had sought to avenge the victim's preceding insult to the third accused. In the course of the chase and assault, the agitated accused persons voiced their insults in connection with the victim's ethnicity presumably as a simple means of swearing.

The Metropolitan Prosecution Service submitted a petition for judicial review against the final court decision in order to request the Curia of Hungary to re-qualify the imputed crimes of public nuisance of the first, second, fourth, fifth, sixth and seventh accused as crimes of violence against a member of a community, and, consequently, to aggravate the criminal sanctions imposed on them.

With reference to Article 416, paragraph (1), point b) of the Code of Criminal Procedure, the General Prosecution Service upheld the above petition for judicial review. Pursuant to Article

420, paragraph (1) and Article 424, paragraph (1) of the Code of Criminal Procedure, the Curia held a public hearing, during which the representative of the General Prosecution Service reiterated the written statements contained in the petition for review.

The defence attorneys of the accused persons motioned for the Curia to reject the petition for judicial review and to uphold the final court decision.

The Curia agreed with the petition submitted by the Metropolitan Prosecution Service as regards all the accused persons, and dismissed the motions tabled by the defence attorneys.

Based on the petition for judicial review, the Curia had to decide whether the imputed acts of the first, second, fourth, fifth, sixth and seventh accused constituted crimes of public nuisance (crime against the public order) or violence against a member of a community (crime against persons).

According to Article 174/B of the Criminal Code, as adopted by Article 2, paragraph (1) of the Act n° LXXIX of 2008 and entered into force on 1 February 2009, any person who assaults another person for belonging, whether in fact or under presumption, to a national, ethnic, racial or religious group, or to a certain social group, or compels him by applying coercion or duress to do, not to do, or to endure something, shall be guilty of the crime of violence against a member of a community and shall be punishable by a term of imprisonment of no more than five years. This definition – broader than the one given by the previous regulation – provides criminal protection for the members of various groups or communities in the event that these persons, due to their actual or presumed membership statuses, are assaulted or compelled by applying coercion or duress to do, not to do, or to endure something. This provision aims at preserving human dignity and, in particular, protecting various minorities by prohibiting abuses against national, ethnic, racial, religious or other groups. In that respect, the Curia also noted that Article 174/B, paragraph (1a) of the Criminal Code, as adopted by Article 1 of the Act n° XL of 2011 and entered into force on 7 May 2011, provided an additional protection against apparently anti-social behaviours, and stipulated that any person who displays an apparently anti-social behaviour against others for belonging, whether in fact or under presumption, to a national, ethnic, racial or religious group, or to a certain social group, aiming to cause panic or to frighten others, shall be punishable by imprisonment.

The underlying reasons for the adoption of Article 174/B of the Criminal Code were the promotion of the elimination of discrimination in society and the protection of persons belonging to various groups and communities against abuses.

As a well-established matter of fact, the accused persons primarily sought to avenge the victim's preceding insult, namely a kick to the third accused. On the other hand, the third accused and his companion, the seventh accused with the subsequently joining other accused persons started to physically abuse the victim for his Hungarian ethnicity. The kicked third accused also actively participated in the commission of the imputed criminal acts. The accused persons confronted the victim despite the fact that they could observe that the third accused had not suffered any serious injury that would have justified their retaliation. Thus, the Metropolitan Prosecution Service correctly pointed out in its petition for judicial review that the decisive reason behind the accused persons' acts had been the victim's different ethnicity. With regard to the above, their acts constituted crimes of violence against a member

of a community, punishable by aggravated sanctions, since the imputed acts were committed in a group and with the use of potentially deadly weapons.

As regards the motives for committing the imputed acts, the Curia noted that it was irrelevant whether the accused persons other than the third accused primarily sought revenge, and subsequently turned violent because of the victim's different ethnicity or the above motives coexisted during their criminal acts. In the latter case, both motives should be examined and assessed.

Undoubtedly, the imputed acts also constituted crimes of public nuisance, committed in a group and with the use of potentially deadly weapons, leading to the disturbance of public peace. Pursuant to Article 271, paragraph (3), points a) and d) of the Criminal Code, these crimes shall be punishable by imprisonment between one to five years. On the other hand, public nuisance shall not be taken into account in the event that the imputed acts result at the same time in a criminal act of greater gravity. Thus in the present case, violence against a member of a community, punishable by imprisonment between two to eight years, shall override the qualification of the accused persons' acts as crimes of public nuisance. Consequently, the Curia established that the first and second accused had contributed, as accomplices [Article 21, paragraph (2) of the Criminal Code], to the commission of crimes of violence against a member of a community [Article 174/B, paragraph (1) and paragraph (2), points b) and e) of the Criminal Code], while the third, fourth, fifth, sixth and seventh accused had committed, as co-perpetrators [Article 20, paragraph (2) of the Criminal Code], the above mentioned crimes.

Given that the Curia re-qualified the criminal offences attributed to the accused persons, it also reviewed and aggravated the criminal sanctions imposed on them.

Budapest, the 20th of March 2013

Criminal Department of the Curia of Hungary