

Budapest Environs Regional Court
as a court of first instance
15.P.21.669/2016/35.

The Budapest Environs Regional Court, in the case brought by the **first plaintiff** (...), represented by attorney (...), case handler: (...), and **the second plaintiff** (...), represented by attorney (...), case handler: (...), against the first defendant (...), the second defendant (...), and the **third defendant** (...) for **violation of personality rights**, has rendered the following

j u d g m e n t .

The court **dismisses** the plaintiffs' claim.

The court orders the plaintiffs to jointly pay the defendants HUF 200,000 (two hundred thousand forints) in litigation costs within five days.

The court orders the plaintiffs to pay HUF 60,000 (sixty thousand forints) in procedural fees advanced by the state to the Hungarian State upon the request of the competent office of the National Tax and Customs Administration.

An appeal against this judgment may be filed within 15 days from the receipt of the judgment. The appeal must be addressed to the Budapest Court of Appeal but submitted in three identical copies to the present court.

The court informs the parties that if the appeal concerns only the deadline for performance, the appellate court shall decide on the appeal without a hearing. If the appeal concerns only the allocation or amount of litigation costs, unpaid fees, or state-advanced costs, or if the appeal is directed solely against the reasoning, the appellate court shall hold a hearing only upon an express request. Otherwise, the appeal shall be decided without a hearing. The parties may jointly request the appeal to be decided without a hearing before the expiry of the appeal deadline.

Legal representation is mandatory for the appealing party.

R e a s o n i n g :

The first defendant is the president of the second defendant, the German National Minority Municipality of (...).

The first defendant is the mayor of (...) Town Municipality, the second defendant is the president of (...) Town Roma Municipality, and the third defendant is the president of (...) National Minority Municipality.

In 2016, four small groups were launched at the Csicsergő Kindergarten operating in (...) town, one of which was a German national minority group. Each of the three Hungarian groups admitted 25 children. The German national minority group admitted 17 children whose parents had completed the German national minority declaration. Subsequently, three additional parents expressed their desire for their children to attend the group, and these three children were also admitted.

On 31 August 2016, the kindergarten principal met the first plaintiff at the financial department of the municipality. The first defendant addressed the kindergarten principal, stating that there was an issue with the enrolment in the German small group because parents had reported that three Roma children had been admitted and that someone had promised the parents that no Roma children would be admitted to the group.

The kindergarten principal then informed the first plaintiff that the national minority requirements had been met.

News of this conversation spread within the municipality and reached the mayor, the first defendant. The first defendant subsequently requested information from the kindergarten principal. In an email dated 19 September 2016, the kindergarten principal informed the mayor that, at the financial department, the first defendant had approached her about an issue with the "German" small group. When she asked why, she received the response that several parents of "Hungarian" children attending the group had complained that, although they had been told that no Roma children would be in the group, three Roma children had now been admitted. Furthermore, the kindergarten principal informed the mayor that, since the total number of children in the three small groups exceeded the maximum limit, it was necessary to fill the German national minority group as well. As several Roma parents also expressed their wish for their children to attend the national minority kindergarten, enrolling Roma children in the German national minority group did not constitute any professional or ethical violation.

Following this, the mayor consulted with the presidents of the Roma Municipality and the (...) Municipality, the second and third defendants, and together they wrote a letter to the president of the (...) German National Minority Municipality, the first defendant, with the following content: "Dear President,

It has come to my attention that you, as the president of the (...) German National Minority Municipality, on 31 August 2016, at the Financial Department of the Mayor's Office, in the presence of several employees, "held accountable" the principal of the kindergarten maintained by the municipality for the admission of three Roma children into the small German group. I enclose the report of the kindergarten principal, (...). At the same time, some parents also complained that they had been promised that if they enrolled their children in the German group, there would be no Roma children. Who made such a promise, Mr President?

Your behaviour is particularly surprising, as, according to our information, there are Roma adults among the German national minority in (...), and Roma children attend German classes in schools on a national minority basis.

This suggests that while "a Roma person could secretly be a Swabian in (...)", in your opinion, Roma children should not be publicly present in a kindergarten group. This attitude is unacceptable! Furthermore, it damages the general perception of German national minority municipalities and the Swabian community in Hungary.

Your conduct fundamentally violates Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, which states that "direct discrimination, indirect discrimination, harassment, unlawful segregation, victimisation, and instructions to engage in such conduct" are unlawful and punishable.

Moreover, your behaviour even more seriously violates the Fundamental Law of Hungary, which declares that "Hungary guarantees fundamental rights to everyone without discrimination, in particular on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status."

It is reasonable to assume that if anyone, then the President of the (...) German National Minority Municipality should be particularly aware of the content of the law and the obligation to uphold legality.

Unfortunately, your behaviour proves the opposite.

I In our institution, there is no preferential treatment, nor any intent to establish an elite group, whether German or otherwise— in short, there is no segregation. However, we condemn and reject the behaviour of anyone who suggests or encourages such actions or holds others "accountable" for this, especially when they have no authority as neither a maintainer nor an employer.

Based on the above, and particularly with the agreement and encouragement of the presidents of the (...) Roma and (...) National Minority Self-Governments, I call for much greater care and adherence to the law, ensuring conduct that does not harm others. Additionally, I inform you that, in accordance with the request of the president of the (...) Roma Self-Government, this letter will be forwarded for information to the National Self-Government of Germans in Hungary, the National Roma Self-Government, and the presidency of the National (...) Self-Government, as well as, with the intent of requesting an investigation, to the Equal Treatment Authority, the Office of the Parliamentary Commissioner, the Hungarian Helsinki Committee, and the Hungarian Civil Liberties Union (TASZ).

The defendants also forwarded the letter to the entities and authorities indicated in the letter.

The court established the above facts based on the personal statements of the litigating parties, the testimonies of witnesses (...) and Dr. (...), as well as the submitted and obtained documents.

The plaintiffs requested the court in their modified statement of claim to:

- 1.Establish that the defendants violated the reputation of the first and second plaintiffs by stating that "... held someone "accountable" for "why and how three Roma children were admitted to the small German group," thereby falsely implying that the plaintiffs had unlawfully discriminated against non-German national minority children. If the court does not uphold the primary claim, the plaintiffs requested, as a secondary claim, that the court establish that the defendants violated the honour of the first plaintiff by expressing the opinion that the first plaintiff "held someone accountable for why and how three Roma children were admitted to the small German group."

- 2.Establish that the defendants violated the reputation of the first and second plaintiffs by stating that, "in the kindergarten group, in their opinion, a 'Roma child' does not look good," creating the false impression that the plaintiffs had unlawfully discriminated against non-German national minority children. Alternatively, the plaintiffs requested that the court establish that the defendants violated the honour of the first plaintiff by expressing the opinion that "in the kindergarten group, in the first plaintiff's opinion, a 'Roma child' does not look good."

- 3.Establish that the defendants violated the reputation of the first and second plaintiffs by stating that "their behaviour fundamentally violates Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, which prohibits direct and indirect discrimination, harassment, unlawful segregation, retaliation, and orders for such actions," thereby creating the false impression that the plaintiffs had committed a legal violation. Alternatively, the plaintiffs requested that the court establish that the defendants violated the honour of the first plaintiff by stating that "their behaviour fundamentally violates Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities."

- 4.Establish that the defendants violated the reputation of the first and second plaintiffs by stating that "their behaviour even more seriously violates the Fundamental Law of Hungary, which declares that 'Hungary guarantees fundamental rights to everyone without discrimination, in particular on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth, or any other status.'" This, they argued, created the false impression that the plaintiffs had committed a legal violation. Alternatively, the plaintiffs requested that the court establish that the defendants violated the honour of the first plaintiff by expressing the opinion that "their behaviour even more seriously violates the Fundamental Law of Hungary."

5. Establish that the defendants violated the reputation of the first and second plaintiffs by stating that they "encouraged segregation" or "held someone accountable" for it, thereby creating the false

impression that the plaintiffs had unlawfully discriminated against non-German national minority children. Alternatively, the plaintiffs requested that the court establish that the defendants violated the honour of the first plaintiff by expressing the opinion that they "encouraged segregation" or "held someone accountable" for it. Furthermore, the plaintiffs requested that the court order the defendants to cease the unlawful conduct and prohibit further violations pursuant to Section 2:51(1)(b) of the Civil Code. Additionally, they sought an order requiring the defendants, jointly and severally, to pay compensation of HUF 600,000 to the first plaintiff and HUF 600,000 to the second plaintiff, along with late payment interest from the date of the violation (20 September 2016) until the date of payment, as prescribed in Section 6:48(1) of the Civil Code, as well as reimbursement of litigation costs.

The plaintiffs argued that the defendants' statements were based on a complete distortion of factual reality and were entirely unfounded, portraying falsehoods that harmed their reputation and honour. They contended that the defendants' statements were defamatory, malicious, and made in bad faith, unlawfully infringing upon their right to dignity and reputation under Sections 2:40 and 5:1-2 of the Civil Code. They further argued that the defendants had placed them in an unjustly disadvantageous position before various authorities and human rights organisations. The contested statements affected both plaintiffs, as the actions of the first defendant were closely linked to the activities of the municipality, and the statements negatively impacted the social perception of both plaintiffs, causing reputational harm. The plaintiff stated that they referred to the national minority laws when addressing inquiries regarding the national minority kindergarten group

The defendants requested the dismissal of the plaintiffs' claim.

They argued that they had neither infringed upon the plaintiffs' personality rights nor caused any other harm to their interests.

They pointed out that the phrase "held accountable" was placed in quotation marks in the letter. They also contended that the first defendant merely sought information and based on this, drafted the letter in compliance with their legal obligations by requesting the competent authorities to determine whether the plaintiff had engaged in unlawful conduct as described in the letter. He referred to the fact that if the plaintiffs' questions had been asked as to whether all applicants of German nationality had been admitted to the group in question, this lawsuit would not have been brought, but the question was asked as to what three gypsy children were doing in the German nationality group and the way the questions were asked raised the right to inform the competent authorities. This was not only a right but also an obligation for the defendants.

The plaintiffs' claims are unfounded.

The court, in response to the plaintiffs' first request for a declaration, considered whether the defendants violated the reputation of the first and second plaintiffs by stating that (...) "held someone accountable for why and how three Roma children were admitted to the small German group." Based on the evidence presented during the proceedings, including the email submitted by the plaintiff, written by (...), the personal statement of (...), as well as the personal statements made by the first plaintiff on 14 September 2018 and 8 February 2019, the court established that the quoted statement was indeed made. The first plaintiff did not contest this fact. Consequently, the defendants did not make or spread any false statements.

Defamation occurs when a person makes a statement that is injurious to another person and contains factual allegations that are either false or misrepresent reality.

A violation of reputation can only be established if the communicated facts are false. Therefore, a value judgment or critique may only be considered defamatory if it implicitly contains a factual allegation.

Defamation may also occur if true facts are grouped in a misleading manner to create a false impression. However, the court found that this was not the case in the defendants' statements.

As a leader of a national minority self-government, the first plaintiff had the right to inquire about the satisfaction of German national minority needs and to clarify related matters.

However, the first plaintiff's question to the kindergarten principal regarding the fulfilment of German national minority needs was phrased in such a way that it referenced other nationalities and objected to their admission into the group. As a result, an outsider could reasonably conclude that the plaintiff was objecting to the inclusion of Roma children in the group.

Regarding the term "held accountable", the court did not find it to be a false statement, particularly as the defendants placed it in quotation marks in their letter, indicating that it was not meant to be interpreted literally.

With respect to the contested statements in points 2 to 5 of the claim, the court found that they were not factual statements but expressions of opinion.

A statement regarding another person's honour or the lack thereof is, by its nature, a value judgment. While individuals have the right to express opinions, freedom of expression may be restricted to protect human dignity, honour, and reputation.

A violation of honour occurs when an expressed value judgment does not conform to the generally accepted principles of logical reasoning and assessment. The rules of judgment are violated if the evaluation expressed is excessive, exaggerated, unjustifiably offensive, degrading, or accusatory. A negative value judgment is not, in itself, unlawful. This remains true even if the opinion is unfavourable to the person concerned. A value judgment becomes unlawful only when the person expressing it exceeds the limits of free expression. These limits are defined by the principles of proper legal exercise, good faith, and fairness.

The court did not find the statements made by the defendants in points 2 to 5 of the plaintiffs' claim to be unlawful, unduly offensive, or degrading.

The defendants considered that the manner in which the plaintiff formulated their question to the kindergarten principal, including the reference to other nationalities, was contrary to the laws they cited.

As the president of the German National Minority Self-Government, the plaintiff is expected to uphold the principles of respecting national minority rights and the acceptance of peaceful coexistence among different nationalities. The court accepted that the defendants had assessed the plaintiff's manner of questioning in light of this heightened expectation.

Based on the above, the court found that the first plaintiff's honour was not violated by the defendants' statements.

The court determined that the defendants had fulfilled their burden of proof regarding the facts they presented. This conclusion was reached regardless of the fact that the two witnesses proposed by the defendants did not corroborate the claim, as the first plaintiff had already admitted to the truth of the statement in the hearing records cited above.

For this reason, the court did not grant the plaintiff's request for the testimony of (...) as a witness.

Due to the nature of the case, the plaintiff was entitled to fee deferral, and the amount of procedural fees advanced by the state was HUF 60,000.

Pursuant to Section 13 of Decree 6/1986 (VI.26) of the Ministry of Justice, the court ordered the losing plaintiffs to bear the procedural fees advanced by the state.

As the plaintiffs lost the case, they were also required to reimburse the defendants for the costs incurred in connection with the lawsuit under Section 78 of the Code of Civil Procedure.

According to Section 75(2) of the Code of Civil Procedure, litigation costs include the expenses and fees of the attorney representing the party.

The court considered the cost of attending hearings as an expense and calculated it at HUF 10,000 per hearing. The attorney's fee was determined in accordance with Section 2 of Decree 32/2017 (XII.27) of the Ministry of Justice, taking into account the value of the subject matter of the case.

Budapest, 17 May 2019

Dr Erika Sági Koppányné
Judge of the Regional Court
Judge of the Regional Court