

Budapest-Capital Regional Court
8.K.31.232/2010/3.

ON BEHALF OF THE REPUBLIC OF HUNGARY!

The **Budapest-Capital Regional Court**, represented by *Dr. Balsai Szabolcsügyvéd (title.)* , *Dr. Zelenkáné dr. Gyarmati Edit* head of department and *Dr. Kegye Adél* counsel represented by **Equal Treatment Authority (title reference number: EBH/187/1/2010.)**, represented by *Dr. Tamás Fazekas*, lawyer (**address**), **intervener in the proceedings**, intervener in support of the defendant, has decided as follows

JUDGMENT:

The Court *annuls* the defendant's Decision EBH/187/1/2010 and *orders the* defendant *to commence new proceedings*.

The action fee of HUF 20,000 (twenty thousand HUF) not levied by virtue of the right to record the fee in question shall be borne by the State, in view of the defendant's total personal exemption from the fee.

The court orders the defendant to pay the lawyer representing the plaintiff HUF 25,000 (twenty-five thousand), including VAT, within 15 days.

The judgment is not subject to appeal.

REASONING:

On October 19, 2009, the intervening defendant submitted a request to the defendant authority, asking it to initiate proceedings against the plaintiff, who was the mayor of According to the request, following the violent death of Person1 on November 23, 2008, a strong anti-... sentiment emerged among the local population. Simultaneously, the municipality organized a gathering titled "... " for November 28. The applicant claimed that even prior to the demonstration, on November 26, 2008, the plaintiff made statements clearly implying that the perpetrator of the homicide was ..., and asserted that the local ... community was significantly responsible for the deterioration of public safety in the settlement.

During the demonstration, the plaintiff stated: "Let those who commit violence, thieves, and murderers be afraid! ... There is no place for violence, no place for criminals, ... enough of the ... violence! ... and Hungary belongs to peaceful, law-abiding citizens. We will no longer allow our belongings to be stolen, our elderly to be beaten, and our children to be violated. Today, we are still the majority." According to the notifier, in the period following the demonstration, the plaintiff continuously held the ... responsible for ... crime, and therefore, in their view, the above statements, even through mere textual analysis, and especially in light of the public sentiment, can only be interpreted as having an ...-hostile undertone. According to the request, as a result of the plaintiff's statements, significant fear developed among the ..., as they exacerbated the emerging ...-hostility and contributed to the deterioration of public sentiment towards them, which had previously been considered peaceful. Several ... individuals experienced atrocities, and opinions supporting school segregation also emerged.

The applicant argued that the impact of the plaintiff's statements was not limited to ... but affected all ... in Hungary. The applicant also referred to the plaintiff's numerous other statements, speeches, comments, and video recordings, as well as articles from local and national media, which included the ... municipal council meeting on November 26, 2008, the forum on the ... website, several issues of the ... newspaper, a press conference held by the plaintiff as mayor on November 28, 2008, and several websites cited by the applicant. In the December 2008 issue of ... on page 13, a statement was published, in which the plaintiff denied the rumors that the municipality was planning to resettle 40-50 ... families. In the December issue on page 16, an open letter related to the tragedy, signed by the municipal council and the plaintiff, was published, which explicitly called on the country's political leaders to take action against violence, without making any reference to the

The authority found that several video-sharing portals had a recording of the plaintiff's speech at the demonstration of 28 November 2008, which was identical to the text on page 8 of the first issue of the newspaper "The ..." published by the municipality of ... in 2009. In the first part of the speech, the plaintiff expressly referred to the demonstration against violence as the purpose of the meeting, but the second part of the speech contains several references to the The final part of the speech, however, calls for a peaceful commemoration and a silent, dignified demonstration against violence. In the same issue there was a report on a press conference of the municipality, in which the plaintiff stated that he was organising a conference to develop peaceful coexistence with the ...k, and that the demonstration of 28 November 2008 was against violence and not racist. On page 9 of the February 2009 issue of ..., the plaintiff's opening remarks, which were made at the ..., are published, in which the plaintiff talks about the municipality's public works programme, adult learning opportunities, education and public safety. On the latter, he mentions that in recent years "relations between the ... and the Hungarian population have become quite strained ... But I would like to make one thing clear. Anyone who works honestly and with integrity and wants to live ... has a place in this municipality, but I will not allow anyone to abuse, rob, plunder or take from anyone else what is not theirs! This has no place ...!". In conclusion, the plaintiff said, "I hope that communication between the municipality and the local ... community will finally be established! To that end, I ask that you elect a leader who can represent you credibly, and then we can work together! So the outstretched hand is there. It is up to you to accept it or not!"

On page 9 of the March 2009 issue of ..., the plaintiff published an article entitled "...!", which was also published on 11 February 2009 in the newspaper ..., in which the plaintiff states that "More and more brutal crimes are coming to light, the perpetrators of which are proven to be of ... origin. Despite this, the bourgeois media and the responsible members of the government continue to talk about racism... Sad to say, today in Hungary there is open institutional racism against Hungarians... This is not only about us, but about all decent people who are trying to get along as human beings. They are also the victims of brutality. We must finally stop terrorising society and deliberately keeping it in fear. It is not acceptable that some people, hiding behind the mask of being a minority, should enjoy more rights than the majority society. The basis for a normal society is for people to feel safe. A world where, when I leave home at night, I come home on my own two feet and not in a body bag". According to the authority, it is worth mentioning that on page 12 of the October 2009 issue of ..., the plaintiff addressed an open letter to the Prime Minister of Hungary, in which he repeatedly refers to the crimes committed by ..., and then asks "How many ... more do you need?" Later in the letter, the plaintiff expresses the opinion that the authorities consider the safety of the ... more important than that of the Hungarians, and then asks: 'Do you know what the reality is in today's Hungary, of which you are the Prime Minister? ... are kicking people to death,

threatening Hungarian farmers with chainsaws because they want to protect their crops from thieves. Hungarian people are being held in slavery by some ...ok, children are being beaten for their mobile phones and to take their little pocket money. Old people who have grown old in their jobs are terrified of ... teenagers who attack with scythes those who speak out against violence and who threaten doctors to prescribe them narcotic drugs. Your Government has done its best to ban ... saying that it incites fear and hatred, but why not ban ... freebooters who, armed with weapons, terrorise whole counties, who can even attack police officers with impunity? ... All honest Hungarians and ... people want order in Hungary at last! ... Millions of people are terrified of the constant violence by a part of the ...".

Having examined the application, the respondent authority found that the **respondent intervenor** is a social and interest-representative body under Section 3 (e) of Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (Act on Equal Treatment and the Promotion of Equal Opportunities), and as such is entitled to assert a claim of public interest before the authority pursuant to Section 20 (2) of the Act on Equal Treatment and the Promotion of Equal Opportunities, and accordingly the respondent authority initiated the proceedings against the plaintiff and called upon it to make a statement.

The plaintiff asked for the application to be dismissed, pointing out that the reason for the demonstration was not so much "this terrible crime, but the fact that I can safely say that at a national level, we cannot talk about public safety... There was, and is, a huge outcry in the municipality, and this led us, together with the members of the municipal council, to organise this demonstration, where we would like to declare that we are fed up with being constantly afraid, fed up with violence and insults, and that we would like to live in our municipality in peace, in peace, as law-abiding citizens." In the plaintiff's view, the statements made at the meeting of the Council of 26 November 2008 do not prove that either he or one of his fellow Members ... suspected a perpetrator behind the murder, but merely drew attention to the fact that there was a strong anti ... feeling among the population.

He noted that three days after the murder, a gathering in the ... personally, the local ... had not been attacked in any way, neither by the population nor by the municipality's administration, while at the same time, during the period that had elapsed, several complaints had been filed with the police about crimes committed by ... against non ... He stressed that he himself had never mentioned any name in connection with the murder and denied that opinions in favour of school segregation had ever been published in the municipality. He explained that the reference to his openly anti-Hungarian attitude was false, since he had, for example, been the first in the country to organise a ...-Hungarian round table and had convened several minority forums for local ...ság in the past year. And according to the school's information, not a single parent had asked their child to leave the school in the week before the demonstration, on the day of the demonstration and in the week after. At the end of his statement, he explained that he had participated in the demonstration as a private person, exercising his right to express his opinion and to assemble, that his opinion was not official and therefore was considered to be the same as that of any voter, and referred to the decisions of the Court of Appeal No. 30/1992 (26 May 1992) and No. 18/2004 (25 May 2004).

The authority contacted the Pest County Regional ... Minority Self-Government, as well as, according to a newspaper article, the Democratic Alliance of ... in Hungary, which handles '... matters' in the town, but they did not respond to the inquiry.

Based on the above facts, the defendant authority, in its decision EBH/187/1/2010 dated January 19, 2010, concluded that the plaintiff violated the requirement of equal treatment and committed harassment against individuals belonging to the ... minority of the settlement through their speech at the November 28, 2008, demonstration, as well as through articles published in the municipal newsletter titled "..." in March and October 2009. Consequently, the authority prohibited the continuation of the unlawful behavior in the future and ordered the public publication of the binding and enforceable decision establishing the violation for a period of 60 days. According to the reasoning of the decision, the plaintiff did not commit a violation with the statement published on the municipal website or with the announcement on page 13 of the December 2008 issue of the ..., as these were responses to rumors circulating in the settlement. Furthermore, the plaintiff's remarks at the municipal council meeting on November 26, 2008, cited by the applicant, were also not considered harassment, as they addressed the issue of public safety and mentioned that the situation was extremely tense. Similarly, no comments indicative of harassment were found in the open letter signed by the municipal council and the plaintiff and published in the December 2008 issue of the ..., which explicitly called on the country's political leaders to take action against violence without making any reference to the ... community. However, the defendant authority held that the plaintiff's speech at the November 28, 2008, demonstration alone was likely to instill fear among the local ... population and create a hostile, intimidating environment. The plaintiff themselves admitted that on one occasion they had to personally dissuade young people from taking physical revenge against the ... community, indicating that the plaintiff was fully aware of the strong anti-... sentiment and heightened tensions in the settlement. According to the reasoning, the speech published on page 9 of the February 2009 issue of the ... did not constitute harassment either, although certain statements were deemed questionable. The convening of the minority forum, however, demonstrated a constructive approach aimed at seeking solutions to the problems.

In the March 2009 issue of ... on page 9, an article titled "..." was, according to the authority's position, unjustifiably one-sided, portraying representatives of ... as perpetrators of increasingly brutal crimes. In this way, the article was capable of creating a degrading, hostile, and, in some cases, aggressive environment against individuals of ... origin. The defendant authority did not accept the plaintiff's defense, which claimed that the writings and speeches were not directed against any specific group but were against violence in general. The authority also rejected the plaintiff's argument that he had not participated in the demonstration as a mayor, but rather as a private individual, stating that this was contradicted by the fact that his speeches and writings were published under the title "Mayor of (place)" or "Mayor of ...". This made it clear that the contested statements were made in his official capacity as mayor. The justification of the defendant's decision cited Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, proclaimed by Act XXXI of 1993, and referenced the Constitutional Court's Decision 30/1992 (V. 26.) AB, which established that human dignity can serve as a limitation on freedom of expression and press freedom. It also cited the Constitutional Court's Decision 96/2008 (VII. 13.) AB, the principles outlined in Decision 34/2009 (V. 27.) AB, and the preamble of the Ebtv. Additionally, the authority quoted the relevant legal regulations, emphasizing that the law prescribes a special exemption rule when discrimination arises from a conflict between two fundamental rights. According to the authority's position, the personality rights deriving from the right to human dignity are of such weight that they must, in certain cases, unequivocally

take precedence over freedom of expression. The contested speeches and writings became publicly known, making them capable of creating a hostile, aggressive, and degrading environment, primarily against ..., but also against ... individuals across Hungary in general. This environment negatively impacted the lives of those belonging to this group over a long period, harmed their social perception, and increased prejudice against them. The authority concluded that the plaintiff had committed harassment, as defined in Section 8(e) of the Ebtv., against individuals with a protected characteristic, and was unable to justify or excuse this conduct.

The plaintiff brought an action against the defendant's decision, seeking annulment of the defendant's decision and an order that the court should sit in a chamber of three. He submitted that, in the proceedings initiated at the request of the **defendant intervener**, he had refuted in detail the allegations made by the plaintiff in his application of 12 November 2009 and that the defendant's decision finding that harassment had occurred was, in his view, erroneous and unfounded. The decision did not put forward any new arguments in relation to the application, essentially reiterated the ideas of the application, and in its opinion the defendant authority did not provide any rebuttal to the arguments put forward, so that its previous reasoning is fully upheld. He stressed that the right to assembly is a fundamental constitutional right inextricably linked to the right to freedom of expression, that it may be exercised by any voter and cannot be exercised by any official, which implies that the mayor does not exercise the fundamental right to expression by virtue of his status, nor does he participate in a demonstration as mayor. The mayor's powers are regulated in detail in Act LXV of 1990 on local government, his other acts in office cannot be subject to a separate procedural procedure, and the decision is not only incorrect on the merits but also on the form.

He referred to AB Decision No.30/1992 (26.V.), according to which freedom of expression has a prominent role among the fundamental constitutional rights, being in fact the "mother right" of several freedoms, the so-called fundamental right of communication, while AB Decision No.18/2004 (25.V.) held that freedom of expression enables individual self-expression and the free development of personality on the one hand, and ensures the active and informed participation of the individual in social and political processes on the other. In its view, both of the two Constitutional Court decisions cited have made it clear that restrictions on freedom of expression can only be based on the "necessity-proportionality" test, i.e. the so-called first test for the protection of fundamental rights. The Constitutional Court has also consistently held that laws restricting freedom of expression must be interpreted restrictively. It stressed that the verbatim quotations in the contested decision, which are in quotation marks, not only do not support the discrimination, but also refute it, and it is noteworthy that the ideas on which the grounds of discrimination are based are only quotations in capital letters, since if the authority had quoted them verbatim, they would have been in bold, the whole context would clearly show an attitude of equal treatment, the facts would be different if discrimination did not arise at the level of words but in relation to the decisions of the municipality, but this is completely contradicted by the measures of the municipality as outlined.

At the first hearing of the case, the plaintiff submitted that the administrative procedure was initiated on behalf of the defendant intervener by the **person2** as the legal representative of the intervener, who is also a member of the defendant's advisory board, and that the initiation of the procedure was therefore incompatible with his dual position and was not examined by the defendant. It is of the firm opinion, also in the light of what is stated in its application in the context of the expression of an opinion, that, pursuant to the last sentence of Article 4 of

the Ebtv, the law does not apply to the case at issue, irrespective of whether the plaintiff made its statement as a private individual or as a mayor.

The defendant's statement was to dismiss the action, maintaining that its decision was well founded and lawful.

According to the defendant's internal regulations, if an organisation initiates a procedure before the public authority, its leader, if he is also a member of the advisory body, cannot act as a representative, and further explained that the mayor is a body of the municipality, and in this capacity he is obliged to respect the requirement of equal treatment in his actions and proceedings, and that the mayor's public statements, whether written or oral, must be considered as proceedings in public matters

The court in Pp. P. 332 (5), the court invited the **defendant** intervener to intervene in the proceedings in favour of the defendant, which the defendant exercised and intervened in the pending proceedings alongside the defendant and joined the defendant in the application for dismissal of the action.

During the proceedings, the plaintiff argued that, in his view, the defendant intervener had no right to bring an action, a matter which was not examined by the defendant, and that, according to the last sentence of Article 4 of the Ebtv., the scope of the Act did not extend to the case at hand, regardless of whether the plaintiff made his statement as a private individual or as a mayor. He noted that **Person2**, as a member of the defendant's advisory board, is the legal representative of the defendant intervener, which in his opinion is a conflict of interest.

The plaintiff's action *is well founded* as follows.

The court reviewed the defendant's decision on the basis of Section 324 (2) a) of Act III of 1952 on the Code of Civil Procedure (Act III of 1952 on the Code of Civil Procedure) and Section 109 (1) of Act CXL of 2004 on the General Rules of Administrative Procedure and Services (Act CXL of 2004 on the General Rules of Administrative Procedure and Services), and established the facts on the basis of the statements of the parties to the proceedings and the administrative documents submitted.

According to the Opinion of the Administrative Chamber of the Supreme Court of Justice No.31 CC, the client may request a review of the decision of the administrative body on the grounds of substantive and procedural law violation or misinterpretation of the law by the administrative body. A procedural violation may only result in the annulment (alteration) of the decision if there has been a serious procedural violation which also affects the merits of the case and which cannot be remedied in court proceedings.

In the case at hand, the court had to decide whether the defendant's decision was lawful in the context of the action.

Pursuant to Section 4 (b) of the Equal Treatment Act, local and minority self-governments and their bodies are obliged to observe the requirement of equal treatment in the establishment of their legal relations, in their legal relations, procedures and measures (hereinafter jointly referred to as "legal relations").

Pursuant to Section 7(2)(a) of the Equal Treatment Act, unless otherwise provided by this Act,

any conduct, measure, condition, omission, instruction or practice (hereinafter together referred to as "provision") shall not violate the requirement of equal treatment,

(a) which, in an unavoidable case, restricts a fundamental right of the prejudiced party in order to give effect to another fundamental right, provided that the restriction is suitable and proportionate for achieving the aim pursued,

(b) which, in cases not covered by point (a), *has a* reasonable and objective justification directly related to the legal relationship in question.

Pursuant to Section 8 (e) of the Ebtv., direct discrimination is deemed to be a provision as a result of which a person or group is, has been or would be treated less favourably than another person or group in a comparable situation because of his or her actual or perceived membership of a national or ethnic minority.

Pursuant to Section 10 (1) of the Ebtv., harassment is defined as conduct of a sexual or other nature that is offensive to human dignity, which is related to a characteristic of the person concerned as defined in Section 8, and which has the purpose or effect of creating an intimidating, hostile, humiliating, degrading or offensive environment towards a person.

Pursuant to Section 19 (1) of the Equal Treatment Act, in proceedings for breach of the requirement of equal treatment, the aggrieved party or the person entitled to pursue a claim in the public interest must establish that

(a) *the* person or group of persons who have suffered damage has been adversely affected or, in the case of public interest litigation, is in imminent danger of being so adversely affected; and

b) the person or group of persons who suffered the infringement possessed, at the time of the infringement, in fact or in the perception of the infringer, one of the characteristics specified in Article 8.

Pursuant to Section 19 (2) of the Ebtv., in the case of the probable cause referred to in paragraph (1), the burden of proof shall be on the other party to prove that

(a) *the* circumstances which the injured party or the person entitled to pursue the claim in the public interest considers likely to have occurred did not exist; or

b) has complied or was not obliged to comply with the requirement of equal treatment in relation to the relationship in question.

According to the Equal Treatment Act, the requirement of equal treatment is violated if a person or a group is treated less favourably than another person or group in a comparable situation because of a characteristic listed in Section 8 of the Act, and there is no reasonable justification for this according to objective assessment. In the proceedings, the aggrieved party must establish a *prima facie* case that he or she has suffered a disadvantage and that he or she possessed any of the protected characteristics listed in the Act at the time of suffering the disadvantage.

In the case at hand, the court had to examine primarily the procedural objections of the plaintiff, i.e. whether the defendant intervener, although undisputedly a social and representative organisation within the meaning of Article 3(e) of the Ebtv. As an interest representation organisation, it may be entitled to assert its claims before the authority, but it cannot disregard the plaintiff's observation that the defendant intervener is office-holder in a civil organisation according to documents at the Municipal Court of Budapest under no. Pk.60 .383/1989 and also member of the advisory board of the defendant, which raises the possibility of a conflict of

interest, which was not examined in the administrative proceedings, the defendant authority can only be held liable for the infringement of Article 3(e) of the Ebtv. 20(2) of the E.E.B., but failed to take into account the fact that the defendant intervener was a member of the advisory body representing **person 2**. The internal rules cited by the defendant, which are not part of the administrative file, are not interpreted by the Court as providing for the right to initiate proceedings (standing as a party). Without full knowledge of the internal rules in this regard, the defendant's argument that, to the knowledge of the defendant, the head of the organisation cannot act as a representative only if he is a member of the advisory body cannot be accepted. The interpretation of that rule, to which the defendant refers, requires a detailed review of the rules, and the defendant must be able to deduce from the applicable law or rules that, in view of the specific situation of the defendant intervener, it is not precluded from having representative powers in addition to membership of the advisory body.

The plaintiff further submitted that, in its view, it does not follow from the last sentence of Article 4 of the Ebtv. that the scope of the Act extends to the case at hand. The Court of First Instance, in its legal assessment, agreed with the plaintiff that it was indeed not clear from the defendant's decision whether the plaintiff's act fell within the scope of the Ebtv. According to the wording of the scope of the legislation cited in the decision, the existence of a legal relationship, some kind of procedure or measure on the part of the municipalities (their bodies) is a precondition. In the present case, the defendant has established the existence of harassment against the plaintiff in the ... minority. According to the court, the plaintiff's speech at the public demonstration organised by the municipality, which is not disputed, falls within the scope of the expression of opinion, the statements made by the plaintiff were not made at a meeting of the municipal council, and the plaintiff, although he was the mayor, participated in the public forum in a non-official capacity. What the defendant refers to in the decision does not indicate what the authority considers to be a procedure, measure or legal relationship which gives rise to the application of the Ebtv.

The fact that a speech was made by the plaintiff at the demonstration is not a measure, it obviously does not create a legal relationship, nor does it fall within the conceptual criteria of the procedure, as falling within the scope of the Ebtv. presupposes some kind of official, municipal procedure, measure, i.e. a concrete act, action or activity. In the light of the above, it is also necessary to examine to what extent the article and open letter published in the March and October 2009 issues of ... constitute an administrative procedure, since, according to the court, the writing of the article and open letter does not constitute a measure, a procedure or a legal relationship.

On the basis of the above and pursuant to Pp. § 339 (1), the court annulled the defendant's decision and ordered the defendant to examine the procedural issues set out above in the context of a new procedure.

The HUF 20,000 (twenty thousand HUF) action fee not levied by virtue of the right to record the subject matter of the fee shall be borne by the State in view of the personal exemption of the defendant from the duty pursuant to Article 14 of Decree No. 6/1986 (26.VI.) of the IM, the amount of which is based on Article 43 (3) of Act XCIII of 1990 on Fees, as amended by Article 63 (3) of Act L of 2009.

The defendant, in accordance with Pp. Pursuant to Section 78 (1) of the Civil Code, the

defendant is obliged to pay the legal costs of the lawyer representing the plaintiff, plus VAT.

The possibility to appeal against the judgment is provided for in Pp. Paragraph (1) of Article 340.

Budapest, this 4th day of October 2010

<i>Dr. Edit Réthy s.k.</i>	<i>Dr. Erzsébet Bogdányné Dr. Magyar s.k.</i>	<i>Dr. Ambrusné Miskolczy s.k.</i>
judge	presiding judge	judge

To the credit of the publication: