



Magyar Helsinki Bizottság

STANDARDS SET BY THE EUROPEAN COURT OF HUMAN RIGHTS ON THE PROSECUTION OF HATE CRIMES - HUNGARIAN CASES

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ARTICLES OF ECHR APPLIED IN HATE CRIME CASES BY THE ECtHR

- Art 2 – right to life
- Art 3 – prohibition of torture and inhumane or degrading treatment
- Art 8 – right to respect for private and family life
- Art 14 – prohibition of discrimination



VICTIM GROUPS IN CASES AT THE ECtHR

- Ethnicity: Roma
- Religion: Jehova' Witnesses, Hare Krishna
- Sexual orientation, gender identity: LMBTQI
- Mental or physical disability



CORE CONCEPTS BEHIND THE JUDGMENTS OF THE ECtHR

- Hate crime is a severe violation of human dignity,
- and has an extremely negative impact on the respect of human rights.
- Diversity is not a source of danger but enriches the society.
- Hate crimes demand special vigilance from the national authorities.
- Efficient prosecution serves not only repression but carries a message: bias motivated crimes are unacceptable.
- As such, it can restore the trust of affected communities.



STANDARDS APPLIED BY THE ECtHR

- Obligation to conduct efficient and prompt investigation
- Impartial assessment of evidences
- Obligation to unmask bias motivation
- ... also in case there's no specific provision on hate crimes in the domestic legislation
- ...also in case of mixed motivation



OBLIGATION TO CONDUCT EFFICIENT AND PROMPT INVESTIGATION

- Procedural obligation under Art 2, 3 of the ECHR in case of non-state perpetrators
 - Proper domestic legislation
 - Prevention
 - Efficient and expeditious justice
 - Duty of conduct, not of result
- ECtHR judgments:
- Nachova et al. v. Bulgaria, 2005
 - Angelova and Iliev v. Bulgaria, 2007
 - Šečić v. Croatia, 2007
 - M.F. v. Hungary, 2017



M.F. v. HUNGARY, 2017

- 12 Aug 2010. 1.50 a.m. Roma perpetrator caught on the scene, theft
- Detention at the police station until 2 p.m.
- Multiple ill-treatment (6 police officers, 2 security guards) – according to the applicant, racist slurs (ex.: „*I wouldn't mind if you died, there would be just one gypsy less.*”)
- Mother, brother and friend: the applicant left the station with injuries on his body (according to their testimony given at the court hearing, the police heard only the mother)
- General physician: pain at the ribs; emergency dept. of the hospital: bruises on multiple points of the body, including the sole.
- Prosecution service terminates the complaint procedure (based on GP and alibis)
- Private prosecution without success, applicant charged for false accusation
- ECtHR: violation of Art 3 and 14 (lack of hearing of the brother and friend by the police, alibis do not cover the whole term of detention, no reasonable justification for injuries; racist motivation is not proven, but measures to unmask potential bias motivation were lacking)



IMPARTIAL ASSESSMENT OF EVIDENCES

- The operation of investigative/judicial authorities cannot be influenced by bias against the victims or their community

ECtHR judgments:

- Stoica v. Romania, 2008
- Milanović v. Serbia, 2010



OBLIGATION TO UNMASK BIAS MOTIVATION

- Efficient investigation into potential bias motivation
- Even one bias indicator demands diligent investigation into the bias motivation, and all bias indicators have to be taken into consideration
- Special difficulties, not a duty of result

ECtHR judgments:

- R.B. v. Hungary, 2016
- Begheluri et al. v. Georgia, 2015
- Identoba et al. v. Georgia, 2015
- Király and Dömötör v. Hungary, 2017
- Đorđević v. Croatia, 2012
- M.F. v. Hungary, 2017



R.B. v. HUNGARY, 2016

- 1-16 March 2011. Hungarian Self-Defence for a Better Future, Outlaws' Army and other extremist organizations marching
- 10 March 2011. Roma women with a two year old child threatened by an axe and whip
- „Go back into your house, you stinky gypsies!”, „I'll build my house here in Gyöngyöspata out of your blood!”
- Disorderly behaviour (decision by the local court) for the acts creating the context (marching), victims heard as witnesses without notification of the legal representative
- Specific perpetrators charged for harrassment, prosecution refused the motion for correct qualification as hate crime, then procedure terminated (no criminal offense)
- Private prosecution, later withdrawn due to fear from persecution
- ECHR, Art. 8



KIRÁLY AND DÖMÖTÖR V. HUNGARY, 2017

- 5 Aug 2012. „*To live and to let live*” demonstration organized by Jobbik, 4-500 participants, 200 policemen
- Armed participants: iron sticks, whips, stones
- Online communication, aim of the event: to repress „*gypsy criminals unable to comply with norms of coexistence*”
- Speeches: „*where there are gypsies, there is destruction [...] we must fight them*”; „*all these garbages must be weeped out of the country*”; „*we trample down this phenomenon that we have to liquidate from our living space*”
- Marching to Roma populated area, throwing stones and glasses, 30 minutes
- Police remaining passive, lack of identification of perpetrators, „*essentially peaceful character of the event*”
- ECHR, Art. 8



... ALSO IN CASE THERE'S NO SPECIFIC PROVISION ON HATE CRIMES IN THE DOMESTIC LEGISLATION

- Bias motivation has to be taken into consideration throughout the procedure even in the lack of specific hate crime legislation,
- all necessary and possible measures have to be taken in order to unmask it,
- and in case of sufficient evidence, it has to be assessed as an aggravating circumstance.

ECtHR:

- *Angelova and Iliev v. Bulgaria*, 2007



...ALSO IN CASE OF MIXED MOTIVATION

- There can be multiple motivations behind the criminal acts of the perpetrator, not only crimes rooted „purely” in bias can be qualified as a hate crime.
- The obligation to unmask bias motivation is demanded already in the existence of one bias indicator independently from the other possible motivations.

ECtHR judgment:

- Balázs v. Hungary, 2015



BALÁZS V. HUNGARY, 2015

- 21 Jan 2011. 4:00 a.m. in front of a bar in Szeged
- Young Roma man and his girlfriend
- Three young persons insulting, joined by a guard from the local penitentiary institution
- „*Can't you beat up this little dirty gypsy?*”
- fight, interference of three friends
- Public posts of the perpetrator on Facebook: „*I was kicking the head of a gypsy.*” + other racial content
- Report to the police: investigation for violence against a member of a community. victim and his girlfriend heard by the police, termination of procedure: perpetrator could be motivated by other motives than bias
- Second procedure *ex officio*: disorderly conduct, perpetrator referring to self-defence, no racist motivation, 2012. local court's judgment: 1 year of probation
- ECHR, Art 3 and 14 (obvious misassessment of facts)





**THANK YOU FOR YOUR KIND
ATTENTION!**

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