



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

**Country:** Hungary  
**Title:** Curia decides racist speech by mayor constitutes harassment  
**Date:** 27 March 2015  
**Expert:** András Kádár  
**Update of flash report nr:** 1831-HU-54-Update on racist speech by mayor  
1703-HU-51-Reopening of case into racist speech by Mayor

#### Context

**Issue at stake:** Whether racist speech by public figure can be regarded as harassment  
**Ground of discrimination:** Race/ethnic origin  
**Source:** National court decision  
**Field:** Other  
**Applicable law:** Article 10 of the Equal Treatment Act

#### Content

**Case:** In 2009, the mayor of Kiskunlacháza (Middle-Hungary Region) in relation to the murder of a young girl (with regard to which a non-Roma person was indicted finally) spoke at a public demonstration about the town's population having had enough of 'Roma aggression' and made other statements – in the local newspaper and also in a national newspaper – giving the impression that in his view the murder had been committed by Roma people. Based on an *actio popularis* claim by the Hungarian Helsinki Committee (HHC), on 19 January 2010, the Equal Treatment Authority established that harassment had been committed. In a decision of 4 October 2010, the Metropolitan Court (MC) quashed the Authority's decision and ordered a new procedure. Upon a request for review, the Supreme Court upheld the MC's decision on 18 October 2011. In the repeated procedure the Authority maintained its earlier decision and established on 20 April 2012 that the mayor's statements had amounted to the harassment of the local Roma community. Upon the mayor's appeal, the Metropolitan Court again quashed the Authority's decision in a summary resolution and terminated the case. Upon the Authority's request, on 15 October 2013, the Curia (successor of the Supreme Court) reviewed and quashed the MC's decision, and ordered that the court procedure be restarted.

In a decision dated 17 June 2014, the Metropolitan Administrative and Labour Court (successor of the MC in discrimination matters) upheld the Authority's conclusion that the mayor violated the requirement of equal treatment. The Court concluded that when the mayor of a settlement makes a public statement in this capacity, he/she exercises a protocol function that creates a sufficiently strong link between him/her and the residents of the settlement to make such instances fall under the Equal Treatment Act's scope. Furthermore, the court stated that although the definition of harassment refers to actions creating a hostile environment vis a vis a single person, it is obvious that harassment can be committed against a group of persons. In arriving at this conclusion, the court

referred to the explanatory memorandum of the Equal Treatment Act and to the *Feryn* decision of the CJEU, which also interpreted a provision formulated in singular [Directive 2000/43/EC, Article 2(2)(a)] to refer to a group of persons. Finally, quoting relevant decisions of the Hungarian Constitutional Court and the ECHR's *Feret v. Belgium* judgment (application no. 15615/07), the court concluded that the mayor's speech had contributed to the creation of a hostile, threatening environment around the Roma residents of Kiskunlacháza, especially because his special powers within the community gave special weight to his words. Considering the special responsibility of public office holders, the court came to the conclusion that the mayor could not rely on the freedom of speech to exempt the violation of the requirement of equal treatment. Based on the above, the court stated that the Authority's decision establishing the committing of harassment by the mayor, was well-founded.

**Decision of the Court:** In its decision no. Kfv.III.37.848/2014/6. delivered on 29 October 2014 (but served in writing only in December 2014), the Curia upheld the decision of the Metropolitan Administrative and Labour Court. The Curia added only one aspect to the administrative court's analysis – in relation to the issue whether harassment can be committed in relation to a group of persons as well. In this regard the Curia took the stance that while the explanatory memorandum of the Equal Treatment Act cannot be attributed a decisive role in interpreting the text of the law, the Fundamental Law of Hungary has to be taken into account in this regard. Article IX (5) of the Fundamental Law stipulates that the exercise of the freedom of expression shall not aim at the violation of the dignity of the Hungarian nation and national, ethnic, racial or religious groups. When interpreted in the light of this provision, it is unquestionable that the Equal Treatment Acts shall be interpreted as prohibiting harassment committed against groups and not only individuals, even if the strict grammatical interpretation would suggest this. Otherwise the Curia found the conclusions of the administrative court well-grounded.

**Key points of analysis:** Harassment can be committed in relation to groups as well as individual persons, so the Equal Treatment Act can be applied in cases of hate speech by entities falling under the Act's scope. Persons acting as public figures at representative events cannot be exempted from their responsibilities under the Act on the basis that representative functions do not fall under their strictly interpreted official obligations.