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FLASH REPORT

Country:	Hungary
Title:	Curia rules that in the case of continuing violations the time-limit for filing complaints with the Equal Treatment Authority does not start until the violation comes to an end
Date:	7 May 2020
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<u>Context</u>	
Issue at stake:	Time-limit for filing complaints with the Equal Treatment Authority in the case of continuing violations starts when the violation ends
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	National court decision, decision no. Kfv.III.37.881/2018/6 of the Curia, 21 January 2020
Applicable law:	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Article 63

Content

Case: Csalad.hu is the Hungarian Government's information portal on family policy. In December 2015, the Hungarian LGBT Alliance asked the maintainers of the website that they include its member organisation, the Rainbow Families Foundation in the list of 'family organisations' published on the website. In January 2016, the website maintainers informed the Alliance that the press department of the Ministry of Human Capacities was responsible for the site's professional contents. Following this, the Alliance also approached the Ministry with the request on numerous occasions. Finally, in July 2016, the editor in chief of the website responded to the Alliance in a letter that implicitly but rather clearly stated that they had no intention of including the Rainbow Families Foundation in the list of 'family organisations'. Subsequently, the Alliance sent a letter to both the maintainer and the Ministry informing them that this amounted to a violation of the requirement of equal treatment. As there was no further reaction, on 21 June 2017, the Rainbow Families Foundation filed a complaint with the Equal Treatment Authority.

Already before the Authority the respondents claimed that since the complainant was demonstrably aware of the alleged violation already in December 2015, the complaint was submitted outside the one-year time limit prescribed by Article 17 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), and should therefore be rejected as belated. (Article 17 prescribes that the Authority 'may only investigate a complaint if no more than one year from becoming aware of the violation and no more than three years from when the violation took place have passed'). The Authority's stance was that the complainant became aware of the violation in July 2016, when the editor in chief made it clear that the complainant would not be included in the list, and therefore it was within the one-year time limit in June 2017. In its decision no. EBH/450/20/2017 (15 November 2017) the Authority concluded that the respondents had discriminated against

the complainant on the basis of sexual orientation and gender identity and obliged the respondents to include the complainant in the list of family organisations within 30 days from receiving the decision. The respondents asked for a judicial review. In its judgment no. 15.K.700.064/2018/21, the Metropolitan Regional Court accepted the respondents' argument and concluded that since the claimant had been aware of the alleged violation as early as December 2015, the complaint was submitted outside the one-year time-limit, and therefore quashed the Authority's decision and referred the case back to the Authority. However, the Authority challenged the judgment before the Curia.

Decision of the court: In its decision no. Kfv.III.37.881/2018/6 of 21 January 2020, the Curia (Hungary's supreme court) quashed the judgment and ordered the court to retry the case on the basis of the Curia's interpretation of Article 17 of the ETA. According to this interpretation if a violation is of continuing nature, the time-limit for submitting a complaint under the ETA does not start as long as the violation is still ongoing. If a violation is ongoing at the time of submitting the complaint, then the complaint cannot be time-barred on the basis of Article 17.

The Curia acknowledged that the strict grammatical interpretation of the ETA allows for the stance taken by the Metropolitan Regional Court. However, from the Preamble of the law (which envisages 'effective' protection against discrimination for everybody – irrespective of the type of discrimination they suffer) and the goal that the legislature sought to achieve through inserting Article 17 into the ETA (namely that the evidence be still available when the Authority's investigation starts) it is obvious that if a violation is still ongoing when a complaint is submitted, then it is irrelevant that the complainant might have known about it for over a year. If the violation is ongoing, the evidence is obviously available (so the legislative goal of securing the evidence can obviously be met) and the requirement of effective protection against a violation that is still in place when a person seeks protection under the law is only met if he/she would be given that protection.

Key points of analysis: The Curia articulated an important principle that has a general application across grounds and fields. The decision is also important because it goes beyond the strict grammatical interpretation in order to make sure that the protection offered by the ETA is – in line with the requirements of the relevant EU *acquis* – truly effective.

Internet link source:

<http://hatter.hu/sites/default/files/dokumentum/konyvlap/csaladhu-kuria-hatarido.pdf>.