

Communication concerning the decision of the Curia of Hungary
in criminal case n° Bfv.I.1722/2016

According to the summarised facts of the case, after leaving a catering establishment, the hugely drunk accused persons noticed a man with an African ethnic background, the victim to the present case, who was of Ivorian nationality and was given subsidiary protection in Hungary. The victim was walking towards the small railway station in the town of Bicske. The accused persons stopped him because of his racial and national origin and shouted at him the followings: “Black man, go back to Africa! Here is Hungary, not Africa!”. Subsequently, the first accused slapped him in the face, then hit his raised arm and the side of his head. They prevented him from continuing his walk towards the railway station and made him turn around and run on Kossuth street. The accused persons followed him, then seemingly abandoned the chase, but finally came back to attack him again, while he, equipped with a 1.5 meter-long fence-post to counter the accused persons’ eventual attacks, was seeking to reach the railway station once again. The first accused got behind him and stroke him from ambush. With the wooden fence-post, the self-defending victim broke the first accused person’s left little finger and bruised his left shoulder blade. Being in a dominant position, the first accused took the fence-post away from the victim, who fled towards the railway station. The second accused joined the first accused and, in their indignation over the injuries suffered by the latter, they went to the railway station to pursue the victim. They noticed him and a couple of other persons of African origin at a railway platform. Upon seeing the accused persons approaching, the victim and the other African individuals fled and left their luggages behind. The first accused run after the victim, while the second accused tore one of the luggages apart, causing the clothing items contained therein to fall onto the tracks. The first accused caught the victim, and hit him – by saying “You dared to hit me? You broke my finger! You’re gonna die!” – several times with the fence-post, which broke into pieces. The second accused joined the aggression and kicked the victim several times, while he was lying defenceless between the tracks. They caused him a bleeding head injury and even knocked him out for a short period of time. They put him on the platform, then onto the tracks, but finally put him back on the platform by saying that “We are not murderers!”. The victim suffered wounds that would heal within eight days. After completing their aggression, the accused persons sat down at the bottom of the station’s pedestrian bridge near the lying victim. The police officers on the scene found and arrested them.

The lower instance criminal courts qualified the accused persons’ acts as the criminal offence of violence against a member of a community based on the accused persons’ hate crime-related motives on grounds of their racial, national and ethnic discrimination and hatred. The criminal offence was committed against the victim by way of assaulting, while the other persons of African origin at the platform were also subject to the same offence, which, in their regard, was committed by way of displaying an apparently anti-social behaviour against them for being part of a national, ethnic and racial group, aiming to cause panic or to frighten them.

Proceeding as a judicial review court, the Curia reviewed and modified some elements of the qualification of the criminal offences attributed to the first and second accused and rendered a new decision in compliance with the applicable legal provisions. The Curia took into account as a mitigating circumstance the accused persons’ clean criminal record and the fact that the court proceedings had been significantly protracted for reasons out of their control, as more than three and a half years had elapsed between the commission of the impugned acts and the delivery of the final judgement. The Curia took into consideration in favour of the second accused that he had two minor children to look after and that he had been largely influenced by the first accused who had a more pro-active role in the duo. Consequently, the Curia imposed more severe criminal sanctions on the first accused. Despite the existence of the aforementioned mitigating circumstances, the Curia increased the length of imprisonment of both accused persons and excluded the possibility of the suspension of their implementation.

Budapest, the 30th of May 2017

Criminal Department of the Curia of Hungary