

Communication concerning the decision of the Curia of Hungary in
criminal case number Bfv.III.796/2018

By its judgment taken at a public hearing on 30 October 2018 the Curia's review bench determined the petition for review filed by the defence counsel and acquitted the camera operator for lack of criminal offence from the charge of misdemeanour disorderly conduct. On 8 September 2015 at Röszke border crossing the camera operator, while broadcasting about a mass migration at the Serbian-Hungarian border in the midst of the rush of several hundred migrants fleeing the police measures, kicked two persons in the leg and attempted to kick another person, after one of those persons pushed her aside.

The Curia has found that the first and the second instance courts violated the rules of substantive criminal law in having found the defendant guilty of the misdemeanour offence of disorderly conduct and having imposed a measure (probation) on her for the commission of that offence. For in the absence of the element of "outrageous antisociality" the defendant's conduct did not amount to misdemeanour disorderly conduct but to an illicit and morally improper conduct having constituted the regulatory offence of "causing disturbance". That regulatory offence, however, had, meanwhile become time-barred, therefore proceedings had to be discontinued.

Not sharing the defence's position, the Curia has been of the opinion that the conduct cannot be regarded to have constituted criminal self-help, which is an obstacle to punishability, because not the defendant's conduct but the chaotic rush of the several hundred migrants fleeing the police measure is to be regarded as having been antisocial. When the defendant interfered in an already disruptive situation she did not become the cause of the chaos that was already ongoing, and her improper reaction was not unique or outrageous in that situation.

According to the established jurisprudence, in the absence of the element of "outrageous antisociality", even violent conducts suitable for causing indignation or alarm shall not constitute the criminal misdemeanour of disorderly conduct. And this is what happened in the case at issue, too.

The indignation and negative opinions expressed subsequently, following the media coverage and the interpretations of the events did not form part of the charge, therefore they were not evaluated under the rules of criminal law. The sentiments that may be stirred by subsequent media reports are consequences that cannot be evaluated by the courts.

Budapest, the 30th October 2018

Criminal Department of the Curia of Hungary