

Communication concerning the decision of the Curia of Hungary in
criminal case number Bfv.III.500/2019

In its judgement delivered on 24 January 2017, the High Court of Budapest found the second accused guilty of the crime of misappropriation of funds [section 376, subsection (1) and subsection (5), point a) of the Criminal Code], committed as a co-perpetrator. Consequently, the high court sentenced him to two years' imprisonment, suspended for a probationary period of five years and to a fine representing three hundred and fifty days in the total sum of 70 000 000,- Hungarian forints. In addition, the high court obliged the second accused – jointly and severally with the other accused persons – to pay the victim, a local municipality in the present case, the sum of 131 700 000,- Hungarian forints as damages and interest and to pay the State the amount of 900 000,- Hungarian forints as court fees. The high court ordered that the remainder of the victim's civil claim be dealt with within the framework of civil court proceedings. Moreover, the high court obliged the second accused to pay 258 888,- Hungarian forints as criminal costs.

In its judgement rendered on 28 February 2018, the Regional Appellate Court of Budapest, acting as a court of second instance, partially modified the first instance judgement in respect of the second accused: it put the fine aside, reduced the amount of the damages awarded to 123 010 000,- Hungarian forints, changed the starting date of the accused persons' obligation to pay interest and rectified the victim's name. The court of second instance upheld the remainder of the first instance judgement in respect of the second accused.

According to the facts of the case, the second, third, fourth, fifth, sixth, seventh, late eighth, ninth, tenth, eleventh, twelfth, thirteenth and fifteenth accused were, in the year 2004, members of the municipal council of the District Municipality of Terézváros (District number VI of Budapest). At that time, the district mayor was the late first accused, while the second accused acted as the district's deputy mayor in charge of property matters.

On the basis of statutory mandates, the district municipality adopted a number of municipal decrees on asset management. In various procedures for the sale of some of the municipality's real estates, the second accused presented the tenderers' bids to the municipal council for discussion in a way to favour certain companies and by avoiding competitive tendering procedures, even though he was aware that his actions were in violation with the relevant rules of the municipality's Housing Decree and Assets Decree. The accused persons approved the second accused's propositions without taking the rules of the Assets Decree on competitive tendering procedures into due account, consequently, the municipal council decided to sell the real estates concerned to the favoured companies, which caused the District Municipality of Terézváros to suffer material harm amounting to 285 000 000,- Hungarian forints.

Based on section 649, subsection (1), point a), subpoint aa) and subsection (2), points a) and d) of the Code of Criminal Procedure, the defence attorney of the second accused submitted a petition for judicial review to the Curia of Hungary against the final judgement in order to request the quashing of the challenged court decision. In the context of section 649, subsection (2), point a) of the Code of Criminal Procedure, the petitioner argued that the second accused was a national of the Central African Republic and had been appointed as a diplomatic officer by the Minister for Foreign Affairs of the Central African Republic, acting on behalf of the said country's President. In the petitioner's viewpoint, the instrument of appointment and the second accused's diplomatic passport prove that the latter has diplomatic immunity, but the criminal authorities failed to request the lifting of his immunity and the courts, therefore, had no jurisdiction to hear his case. The petitioner submitted in the alternative that even if the authorities' failure to request the lifting of the second accused's immunity would not result in the establishment of the courts' lack of jurisdiction, such a failure should be regarded as a ground for exemption from criminal liability [section 15, point h) of the Criminal Code], which excludes, as a substantive legal ground, the possibility of prosecuting him. The petitioner also complained that the courts had failed to assess all the facts presented for their consideration and they had relied only on the statement of the Ministry for Foreign Affairs of Hungary.

The Curia was of the opinion that the courts had lawfully prosecuted the second accused, as the petitioner's reference to the courts' lack of jurisdiction and the ground for exemption from criminal liability had been ill-founded. The court of second instance correctly argued that the second accused had been given no diplomatic immunity from Hungary's criminal jurisdiction, hence, the authorities had not been required to request the lifting of his immunity. The court of first instance exercised due care and attention when it turned to the Ministry for Foreign Affairs to obtain the latter's statement on the matter. In addition, the court of second instance rightly pointed out that the ministerial statement was binding on the courts and any other authorities in respect of the assessment of the immunity of the person concerned [section 5, subsection (1) of Law Decree number 7 of 1973 on the procedure to be followed in case of diplomatic and other immunities].

It is a matter of fact that the second accused has a dual Hungarian and Central African nationality and has been working as a diplomatic officer at the Embassy of the Central African Republic in Geneva, Swiss Confederation. He referred to his immunity in the territory of Hungary based on his diplomatic status in Switzerland. By virtue of section 3 of the Criminal Code on the latter's personal scope, Hungarian criminal law shall apply to any act of Hungarian citizens committed either in Hungary or abroad, if such an act is criminalized under Hungarian law.

Section 2, subsection (2) of Act number LV of 1993 on Hungarian Citizenship unambiguously stipulates that – unless an Act provides otherwise – any Hungarian citizen who also holds citizenship in another country shall be regarded as a Hungarian citizen for the purposes of the application of Hungarian law. Furthermore, as the court of second instance correctly held, diplomatic immunity is not unlimited, since the content as well as the personal and temporal scope thereof are defined, among others, by the 1961 Vienna Convention on Diplomatic Relations, promulgated by Law Decree number 22 of 1965. According to Article 31, paragraph (1) of the Vienna Convention, a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State, while Article 31, paragraph (4) thereof stipulates that the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State. By virtue of Article 39, paragraph (1) of the Vienna Convention, every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Having regard to the above, it can be established that the diplomatic status of the second accused, a dual Hungarian and Central African national, at the Embassy of the Central African Republic (sending State) in Geneva, Swiss Confederation (receiving State) does not and could not entitle him to diplomatic immunity and privileges within the territory of Hungary, thus, he could not be exempted from Hungary's criminal jurisdiction in respect of his criminal offence committed in the territory of Hungary. It follows from the aforementioned that the petitioner's argumentation was ill-founded both in terms of the Criminal Code's personal and territorial scope.

With regard to the foregoing, the Curia upheld the final judgement in respect of the second accused.

Budapest, the 6th of November 2019

Criminal Department of the Curia of Hungary