

CASE LAW MOSAICS

A complainant of Roma origin objected to the possession protection procedure of the notary of the competent municipality due to an alleged discriminatory treatment related to her nationality. At the end of the procedure, the Minority Ombudsman drew the attention of both the complainant and the municipality to the possibility of using the conflict management and dispute settlement procedure.

A Roma citizen of a large municipality turned to the Minority Ombudsman with a complaint related to the right of pre-emption of real estate, objecting to the notification obligation of the local government. The complainant complained that the municipal announcement regarding the exercise of the right of pre-emption was only published on the Internet, but was not on the municipal notice board, and he also held that they wanted to evict him and his family from their current place of residence because of his Roma origin.

The Minority Ombudsman investigated the application of a complainant of Romanian nationality, who was insulted by her neighbors also because of her origin. Criminal proceedings were initiated in the case for nuisance.

A Roma complainant turned to the Minority Ombudsman for help in his housing case, also sharing his difficulties in starting a life and making a living. He held that he was at a disadvantage when applying for municipal rental housing because of his Roma origin.

A Roma citizen repeatedly lodged a complaint to the Minority Ombudsman in his enforcement case. He complained that the applicant for enforcement refrained from any kind of agreement, and also from authorizing the payment of the complainant's debt in installments. The Minority Ombudsman facilitated the complainant's legal enforcement options by providing detailed information.

A complainant of German nationality alleged that a private person's post on his Facebook page, accessible to the general public, violated his right to honor and reputation, as well as the dignity of the German community, in connection with his nationality.

A person of Roma nationality lodged a complaint to the Minority Ombudsman against a district nurse. In her application, she objected to the nurse's measures taken in the context of her pregnancy care.

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Pursuant to the relevant competence rules, the Minority Ombudsman can only investigate the procedure of an authority. Given the lack of competence, the Minority Ombudsman informed the petitioner about the possibilities of taking action against the statements of opinion expressed by the private individual that violate the right to honor and good reputation of the concerned individual, as well as affecting the dignity of the given nationality community.

First of all, the Minority Ombudsman emphasized that the complainant can directly notify the service provider after the harmful content appears on the Facebook social network, asking for the content to be removed.

The Minority Ombudsman's information also pointed out that under Article IX (4) of the Fundamental Law, the exercise of freedom of expression may not be aimed at violating the human dignity of others. As an implementation of the provisions of the Fundamental Law, the content of the rights to honor and reputation, the cases of their violation, the enforcement of these personality rights, and the sanctions that can be applied in the event of a violation are primarily provided for in the Civil Code.

Under section 2:42 of the Civil Code, everyone has the right to exercise, freely within the limits of the law and the rights of others, their right to respect for their personality and reputation, and no one should prevent them from doing so. Everyone is obliged to respect human dignity and the personality rights arising from it. Personality rights are protected by this Act of Parliament. Violations of personality rights are particularly violations of honour and reputation. [section 2:43 (d) of the Civil Code] According to section 2:45 (1) of the Civil Code, a violation of honour means, in particular, an expression of opinion that is apt to negatively influence the social judgment of another person and is unreasonably hurtful in its expression. Under section 2:45 (2) of the Civil Code, it is a breach of reputation in particular if someone claims or spreads an untrue fact concerning another person and insults this person, or falsely presents a true fact.

The Minority Ombudsman drew the petitioner's attention to the fact that filing a claim before a civil court is an effective means of the enforcement of personality rights under the Civil Code.

The information also mentioned that, in addition to the enforcement of rights under civil law, depending on the severity of the violation, it may also be possible to sanction it under the law on infractions and criminal law.

The provisions on insult in the Act on Infractions and the rules on insult and defamation in the Criminal Code serve the protection of personality. At the same time, it should be emphasized that infraction proceedings for insult can only be initiated on private initiative, while the perpetrator of the offense of insult or defamation under the Criminal Code can also be punished only on private initiative.

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The Minority Ombudsman also drew the complainant's attention to the fact that the Fundamental Law provides increased protection for the community's dignity. Pursuant to Article IX (5) of the Fundamental Law, the exercise of freedom of expression may not be aimed at violating the dignity of the Hungarian nation, nationality, ethnic, racial or religious communities. Persons belonging to such a community have the right, as defined by law, to enforce their claims in court against the expression of opinions that offend the community, as a violation of their human dignity.

The Civil Code also creates an opportunity to file a claim for the enforcement of personality rights related to belonging to the community. Under section 2:54 (5) of the Civil Code, any member of the community has the right, in the event of a violation of rights that is considered an essential feature of their personality, in connection with their belonging to the Hungarian nation or a nationality, ethnic, racial or religious community, and which seriously offends the community in public or unreasonably offends them in his manner of expression, from the date of the violation assert their personality rights within a thirty-day statute of limitations. Any member of the community may enforce all sanctions for the violation of personality rights, with the exception of the transfer of the pecuniary advantage achieved by the violation.

In some flagrantly serious cases that violate the dignity of communities, it is also possible to penalize the actions under Criminal Law as an *ultima ratio*.

Under section 332 of the Criminal Code, an incitement against the community is committed by a person, who incites to hatred or violation in public (a) against the Hungarian nation, (b) against a nationality, ethnic, racial or religious group or its member, or (c) certain groups of the population – especially with regard to disability, gender identity, sexual orientation – and is punishable by up to three years' imprisonment.

The protected legal object under criminal law of the offence of incitement against the community is a public atmosphere free from prejudices directed against groups of persons, ensuring equal respect and human dignity for all, and the public peace associated with it.

Regarding possible criminal prosecution, the Minority Ombudsman emphasized that only the investigating authority (police, prosecutor's office) has the right to decide whether to order an investigation related to a specific case or cases or to decide on rejecting a report of an offence. After the investigation, the prosecutor's office is in charge of pressing charges and the court shall decide in the question of liability under criminal law.