CUREDI008SK002

Question(s) at stake:

Whether the term "Gypsy" together with the word "parasites" is defamatory when used in public space to refer to members of the Roma minority, including by politicians and public figures.

Outcome of the ruling:

The Supreme Court dismissed the previous court decisions regarding the accusation that using the term "Gypsy" together with the word "parasites" in reference to the Roma minority amounted to the offence of defamation of nation, race, and belief.

Topic(s):

- Crime and Punishment under State Law
- Public Space and Institutional Sphere

Keywords:

- Freedom of expression
- Hate speech
- National minority
- Race, colour and ethnic origin
- Defamation
- Antigypsyism

Tag(s):

- Gypsy
- Roma
- Cigáň

- Rom

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Country:

Slovakia

Official citation:

Supreme Court of the Slovak Republic in Bratislava, Judgement of 19 March 2013, 4Tdo/49/2012 (Rozsudok Najvyššieho súdu Slovenskej republiky v Bratislave zo dňa 19 marca 2013 r., 4Tdo/49/2012)

Link to the decision:

https://www.nsud.sk/rozhodnutia/4tdo492012/

ECLI:

ECLI:SK:NSSR:2019:6110011469.1

Date:

19 March 2013

Jurisdiction / Court / Chamber:

Supreme Court of the Slovak Republic

Remedy / Procedural stage:

Appeal in cassation

Previous stages:

- Regional Court of Banská Bystrica (Krajský súd Banská Bystrica), Judgement of 18 January 2011, 5To/12/2011

- District Court of Banská Bystrica (Okresný súd Banská Bystrica), Judgement of 15 December 2010, 1T/126/2010 – the Court of First Instance

Subsequent stages:

None

Branches / Areas of law:

Criminal law

Facts:

During the regional election campaign in 2009, Marián Kotleba (a well-known right-wing politician and public figure in Slovakia identified in the rulings as Mgr. M.K.) authored leaflets which, *inter alia*, called to 'eliminate favouritism not only towards Gypsy parasites [Slovak: *cigánski paraziti*]". These were widely distributed in publicly accessible places in Banská Bystrica. As a result, Kotleba was accused of the offence of defamation of a nation. The Banská Bystrica District Court ruled to stop the criminal prosecution since there was not enough evidence that it was Kotleba who committed the offence.

Subsequently, the district prosecutor filed a complaint against the firstinstance judgment before the Banská Bystrica Regional Court. The regional court annulled the first-instance judgment. In turn, it ruled that the actions of Kotleba qualify as defamation of a nation (pursuant to para. 423.1(a) of the Criminal Code). However, it stopped the criminal persecution on the grounds that the act is not a criminal offence and there is no reason for further referral of the case (pursuant to 215.1(b) of the Criminal Code). More importantly, the Regional Court argued that the above-mentioned quote was not about the Roma as an ethnic group in general, but only about those who live on benefits offered by the society; therefore, the quote refers not only to "parasites" from the Roma community but also to those from the majority population, which is why the phrase "not only" was used.

This decision was appealed by Lucia Žitňanská, then Slovakia's Minister of Justice, under the initiative of the Government's Plenipotentiary for Roma Communities

(pursuant to para 371.1(i) of the Code of Criminal Procedure). The Minister of Justice stressed that the accused Mgr. M.K., as author and distributor of the text presented during his election campaign, defamed the Roma as an ethnic group because he used the word “Gypsy” together with the word “parasite” and clearly aimed to convince the voters that representatives of the Roma community are the main source of social parasites. Additionally, she claimed that Kotleba used the term Gypsy in the offensive sense (*cigáň*) to refer to citizens of Roma origin. She requested the Supreme Court to annul the judgment and to order the Banská Bystrica Regional Court to make a new judgment in the case. The court of first instance was ordered to send the review from the minister to the defendant for his clarification.

Kotleba responded in writing stating that the exact wording of the leaflets cannot be interpreted as defamation of the Roma as an ethnic group (as formulated in para 423.1(a) of the Criminal Code). According to Kotleba, the emphasis should be placed on the expression “not only” (Slovak: *nielen*), which implied that he was also referring to social parasites of other ethnic origins. Kotleba argued that Žitňanská failed to provide sufficient arguments or evidence which would prove his intention to defame any nation, race, or belief. He specified that his goal was to familiarize his potential electorate with his electoral programme and assure them that with their support he would eliminate any unfair favouritism of social parasites vis-à-vis decent people. Kotleba also claimed that his deeds did not constitute a criminal offence and demanded that all accusations against him be withdrawn.

Subsequently, the case was decided by the Supreme Court of Slovakia. Bound by the facts established by the lower courts, the Supreme Court found that Kotleba had neither the intention to defame the Roma as an ethnic group nor to dishonour any individual or group due to their belonging to the Roma. The Supreme Court also emphasized that Kotleba’s guilt cannot be proven just by the phrase he used in his leaflet. The Supreme Court found that the Banská Bystrica Regional Court correctly stopped the criminal prosecution of Kotleba because his deeds did not constitute a criminal offence and thus there was no reason for further

investigation.

Ruling:

With regard to the essence of the appeal in cassation, i.e. that the accused Mgr. M.K. defamed the Roma as a nation, race, and belief as author and distributor of the text on his pre-election leaflets, the Supreme Court did not find him guilty.

Main quotations on cultural or religious diversity:

- "[T]he Slovak language distinguishes between the meaning of the nouns 'Gypsy' (*cigáň*) and 'Gypsy' (*cigán*), and these, together with the adjective 'Gypsy' (*cigánsky*), are among the word forms commonly used in the current form of the codified state language."
- "The modern version of the codified state language accordingly allows one to indicate the members of this ethnic community by the two words: Roma (*Rom*) and Gypsy (*cygán*). From the point of view of their linguistic meaning they are identical terms, while the term Roma (*Rom*) has been used alongside the expression Gypsy (*cygán*) since the social changes in 1989 by both the majority population as well as by the members of the Roma ethnic members themselves."
- "In his leaflet, Mgr. MK used the adjective 'Gypsy' (*cigánsky*) to identify members of an ethnic minority in a codified form of the state language, a form recognized by the state and used in society; therefore, the use of this term cannot be interpreted as an objective reason for the crime of defamation of race, nation, and beliefs. Moreover, from the context in question, the statement (using the phrase 'not only' in connection with 'Gypsy' (*cigánsky*)) shows that the author expresses his determination to eliminate […] unfair advantages for all parasites/free-riders and does not focus exclusively on a specific ethnic group."
- "At the same time, the Court of Appeal (bound by the facts established by the lower courts) notes, in accordance with the grounds of the

appealed/contested decision, that in the case of the accused Mgr. M.K. the subjective side of this criminal offence – i.e. the intention to publicly defame the Roma-Gypsy ethnic group, or the intention to publicly dishonour an individual or a group due to their membership in this ethnic group – was not proved, and his deliberate fault cannot be based solely on the text of the statement used by him, as the former Minister of Justice mistakenly believes."

Main legal texts quoted in the decision:

Criminal Code 300/2005 from 20 May 2005:

- §423 section 1, letters a and b

Code of Criminal Procedure:

- §194 section 1, letter a
- §215 section 1, letters b and c
- §371 section 1, letter i

Cases cited in the decision:

None

Commentary

Defamation of an Ethnic Community by a Public Figure in Slovakia: When Terminology Matters for the Court

This case represents the main trends in the judicial approach to the Roma ethnic group in Slovakia. The core issue to be analysed by the court was supposed to be defamation of a nation (in this case the Roma) with the statement "With your trust, I can certainly eliminate the unfair favouritism not only towards Gypsy parasites over decent people!", which was used on leaflets for the political campaign of Marián Kotleba in October and November 2009, and the related duties and responsibility of the politician in question. Instead, the Supreme Court focused on linguistic aspects justifying the usage of the term Gypsy, which

according to many human right activists and Roma experts belongs to a pattern of antigypsyism.

The Roma minority is among the most frequent victims of eviction, harassment by authorities, and violent assault (Development and Cooperation 2021). Amnesty International (AI) acknowledges that "[a]ll too often European leaders have pandered to the prejudices fuelling anti-Roma violence by branding Roma as anti-social and unwelcome", while "[o]n many occasions law enforcement agencies are failing to […] ensure that hate motives are properly investigated and perpetrators brought to justice" (AI 2013). Such a marginalization of Roma across the EU continues due to the lack of political will to implement anti-discrimination legislation and national strategies as well as a general failure "to identify and tackle the main reason behind the social exclusion of Roma, namely prejudice and racism" (AI Report 2014/15: 37).

In Slovakia, the Roma are the second largest ethnic group, and back in 2011 they constituted nearly two percent of the Slovak population. However, a nationwide collection of data on Roma communities that resulted in the creation of the Atlas of Roma Communities in Slovakia (*Atlas rómskych komunít na Slovensku 2013*) shows the percentage of Roma to be much higher, namely 7.45% (402,840 people are perceived to be Roma). Many Slovak experts argue that reluctance to declare their nationality is due to the fear of potential persecution. Considering the marginalized status of Roma, greater sensitivity and deeper analysis are expected from the court when handling declarations of public figures that can potentially fuel anti-Roma sentiments.

Unlike a similar case heard several years later (see CUREDI008SK003), this court decision refrained from referring to any related ECHR cases, for example *Féret v. Belgium*, which addressed the conviction of a Belgian politician for incitement to hatred and discrimination during his political campaign. In the case of *Féret v. Belgium* the court proved that the applicant's right to freedom of expression had not been violated due to the nature of his statements, outlining the limits of freedom of expression. Nor did the Slovakian court refer to past ECHR decisions concerning the "duties and responsibilities" of political actors like in *Erbakan v.*

Turkey, in which the ECHR stated that because “the struggle against all forms of intolerance is an integral part of human rights protection, it is crucially important for politicians, in their public discourse, to avoid expressions that are likely to foster intolerance” (*Erbakan v. Turkey*, Judgment of the European Court of Human Rights (First Section) of 6 July 2006, para. 64, cited in McGonagle 2012: 18).

Instead, the court addressed the issue of terminology, limiting itself to the analysis of the usage of the word Gypsy (*cigáň* vs *cigán*). In addition, the accusation of defamation of the Roma community was dismissed based on a lack of proven intent on the side of the accused. The fact that the words “parasites” and “Gypsy” were used in one sentence was not considered defamation due to the presence of the phrase “not only”, indicating that the statement was not limited to or targeting one social group.

The Helsinki Committee for Human Rights (HCHR) in Slovakia sees this decision as a fatal failure of the court to protect fundamental human rights – the respect of the human dignity of each person. Justifying hate speech that degrades the Roma de facto legitimizes the view that the Roma are inferior, and that their dignity is of less value than that of the other citizens of the state (HCHR 2013).

According to the HCHR, the courts decision creates a precedent that not only can have serious consequences for the further development of inter-ethnic and intercultural relations in Slovakia, but may affect the sound development of democracy as such, as the potential defamation of representatives of any nation can be defended by the mere addition of the phrase “not only”, in this case meaning there are other “parasites” besides the Roma.

Therefore, this case represents the Slovak judicial and lawenforcement system’s underestimation of the seriousness of hate crimes. According to the Ministry of the Interior of the Slovak Republic, the number of incidents of hate speech against Roma and other minorities increased significantly in 2014–2015.

This case also shows the difference in approach to addressing similar accusations against Slovak political actors, which can partially be explained by the lack of knowledge and understanding of the principles of democracy. Major legal

developments and amendments that address the issues of hate speech and anti-discrimination were made in the 2010s (e.g. the 2013 amendments to the Antidiscrimination Act – Act No. 365/2004, the Committee for the Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance, established in 2011, etc.). In the meantime, other cases have come before Slovakian courts in which similar issues were handled differently; e.g. see case CUREDI008SK003, or the 2019 case of a member of the far-right People's Party Our Slovakia (ĽSNS) who was found guilty of hate speech for public comments made in 2016 which compared ethnic Roma to animals and accused them of bearing children to make money from begging and petty crime. In the latter case, the Supreme Court upheld a lower court's verdict (see "Slovak Parliament Expels MP" 2019).

It is also worth mentioning that the accused Mgr. M.K. is the Slovak politician Marián Kotleba, at that time leader of ĽSNS, which used strong anti-Roma rhetoric as a mobilization tool. In the 2010 and 2012 national elections, the party received most of its votes from municipalities with a high number of Roma settlements, where relations between the settlements and the majority population is characterized as problematic. The party called Roma "'asocial parasites' who abuse the welfare system and are the source of a high crime rate" and organized protests and rallies in the places where Roma cohabited with the majority population (Nociar 2012: 6).

In 2009, Kotleba ran for the position of Chairman of the Banská Bystrica region as an independent candidate and received 10.03% of the vote. Kotleba served as the Governor of Banská Bystrica Region from 2013 to 2017.

This court decision was used by Kotleba in his 2019 European Parliament election campaign. He referred to the Supreme Court decision as proof that his party ĽSNS does not represent fascists or extremists: "Interests of Slovakia v. Nonsense from Brussels! Confirmed by the Supreme Court: We are neither fascists or extremists!"

Literature related to the main issue(s) at stake:

Relevant to Case

- Helsinki Committee for Human Rights. 2023. “The Supreme Court of the SR De Facto Legitimized the Humiliation of the Roma”. *Facebook* (13 May 2013), available at <https://www.facebook.com/helcom.sk/posts/488073597930897/> accessed 29 September 2022
- "Monitorovacia správa občianskej spoločnosti o implementácii národnej stratégie integrácie Rómov na Slovensku So zameraním sa na štrukturálne a horizontálne predpoklady jej úspešnej implementácie”. 2018. *Centrum pre štúdium verejných politík Stredoeurópskej university*. (“Civil Society Monitoring Report on the Implementation of the National Roma Integration Strategy in Slovakia with a Focus on Structural and Horizontal Preconditions for Its Successful Implementation”. 2018. *The Centre for Public Policy Studies of the Central European University*, available at <http://cvek.sk/wp-content/uploads/2018/04/SK-reportcely-final.pdf> accessed 5 September 2022.)

General

- Mareš, Miroslav. 2018. “How Does Militant Democracy Function in Combating Right-Wing Extremism? A Case Study of Slovakian Militant Democracy and the Rise of Kotleba – People’s Party Our Slovakia”. In A. Ellian and B. Rijpkema (eds), *Militant Democracy – Political Science, Law and Philosophy*, 61–78. Cham: Springer.
- McGonagle, Tarlach. 2012. The Council of Europe against Online Hate Speech: Conundrums and Challenges. Available at <https://rm.coe.int/16800c170f> accessed 20 September 2022.

Interdisciplinary

- *Amnesty International Report 2014/15: The State of the World’s Human Rights*. 2015. Index Number: POL 10/0001/2015, available at <https://www.amnesty.org/en/pol10-0001-2015-en-2/> accessed 20

September 2022.

- *Atlas rómskych komunít na Slovensku 2013* (Atlas of the Roma Community in Slovakia 2013). 2013. UNDP: Bratislava. Available at <https://www.minv.sk/?atlas_2013> accessed 29 September 2022.
- Kluknavská, Alena. 2015. “A Right-Wing Extremist or People’s Protector? Media Coverage of Extreme Right Leader Marian Kotleba in 2013 Regional Elections in Slovakia”. *Intersections. East European Journal of Society and Politic*s 1 (1): 147–165.
- Caiani, Manuela, and Alena Kluknavská. 2017. “Extreme Right, the Internet and European Politics in CEE Countries: The Cases of Slovakia and the Czech Republic”. In: Mauro Barisione and Asimina Michailidou (eds), *Social Media and European Politics Rethinking Power and Legitimacy in the Digital Era*, 167-192. London: Palgrave Macmillan.
- Mysorekar, Sheila. 2021. “Sinti and Roma Demand Equality and Participation”. *Development and Cooperation*, available at <https://www.dandc.eu/en/article/racism-and-antiziganism-are-deeply-rooted-european-societies>accessed 19 September 2022
- Nociar, Tomáš. 2012. “Right-Wing Extremism in Slovakia”. *Friedrich-Ebert-Stiftung International Policy Analysis*, available at <https://library.fes.de/pdf-files/id-moe/09567.pdf> accessed 29 September 2022
- “Roma in Europe: Demanding Justice and Protection in the Face of Violence”. 2014. *Amnesty International*, available at *<*https://www.amnesty.eu/news/roma-in-europe-demanding-justice-and-protection-in-the-face-of-violence-0734/> accessed 19 September 2022.
- “Scaling up Roma Inclusion Strategies Truth, Reconciliation and Justice for Addressing Antigypsyism”. 2019. *Policy Department for Citizens’ Rights and Constitutional Affairs*, available at <https://www.europarl.europa.eu/RegData/etudes/STUD/2019/608859/IPOL_STU(2019)608859_EN.pdf> accessed 19 September 2022.
- “Slovak Parliament Expels MP for Hate Speech”. 2019. *France24* (3 September), available at <https://www.france24.com/en/20190903-slovak-

parliament-expels-mp-for-hate-speech> accessed 19 September 2022.

- Voda, Petr, Alena Kluknavská, and Peter Spáč. 2021. “From Trivialized Neo-Nazis to Parliament: Explaining the Electoral Success of the Extreme Right Party ĽSNS in Slovakia”. *Problems of Post-Communism* 69 (6): 498–513.

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