

Eger Court

Number 12.P.20.065/2013/128



Acting in the case of the applicant Társaság a Szabadságjogokért (Hungarian Civil Liberties Union) of 1136 Budapest, Tátra út 15/b., represented by attorney-at-law Dr. Péter Erdey (2330 Dunaharaszti, Apponyi út 5.), against the respondent Heves County Police Headquarters of 3300 Eger, Eszterházy tér 2., represented by in-house counsel Dr. Albin Péró (3300 Eger, Eszterházy tér 2.), Eger Court delivered the following

#### **J U D G M E N T:**

The Court establishes that the respondent committed harassment against the members of the Roma community living in Gyöngyöspata by means of the measures it failed to take in the course of its public security protection activity in regard to members of Szebb Jövőért Polgárőr Egyesület (For a Brighter Future Civil Guard Society), Véderő (Protective Force) and Betyársereg (Betyár Army) during the period from March 1, 2011 to May 1, 2011, and violated their right to equal treatment thereby.

The Court establishes that the respondent committed direct discrimination against the members of the Roma community living in Gyöngyöspata by means of its petty offense practice during the period from May 1, 2011 to November 30, 2011, and violated their right to equal treatment thereby.

The Court obliges the respondent to publish the operative part of the judgment on its website at its own cost, and to disclose the same to the Hungarian Telegraphic Agency within 15 days.

The Court **rejects** the claim of the applicant in all other respects.

This judgment may be appealed within 15 days of receipt by means of an appeal in three copies to be addressed to Debrecen Appeal Court, but submitted to Eger Court.

The Court informs the parties that a party submitting an appeal (cross-appeal) against the judgment must be represented by a legal representative in the proceedings before the appeal court. Any action or declaration of a party acting without a legal representative shall have no effect, except if the party submitted an application for permitting representation by a patronizing lawyer or if the court is required to reject the application for other reasons as well. The court will reject the appeal ex officio if the party does not have a legal representative in the legal remedy proceedings or fails to provide for replacement of a terminated legal representative despite being ordered to do so.

The court informs the litigant parties that the court of second instance may consider the appeal outside a hearing if

- requested jointly by the parties before the expiry of the appeal period or
- the appeal is targeted against only the payment of interest,

the bearing or the amount of the costs of proceedings or the payment of unpaid duties or the costs advanced by the state, or the time limit for performance, or the granting of payment by installments, or concerns the reasons of the judgment only and the appealing party did not request in its appeal that a hearing be held.

The appeal must be judged at a hearing if the appealing party requests that a hearing be held either in the appeal or in response to the notice of the court of second instance, or the opponent of the appealing party requests that a hearing be held in response to the notice of the court of second instance.

### **R e a s o n s :**

The court established the following facts based on the testimonies of the witnesses János Farkas, Tibor Kiss, Jenő Setét, Ádám Csillag, Péter Borsos, Ákos Gressai, Tamásné Baranyi, Györgyné Baranyi, Sándor Szőke, Balogh Tibor, Dr. Attila Ormosi, Juhász Oszkár, László Tábi and Mihály Tóth, the video and audio materials of the DVD disks submitted by the applicant as well as other documentary evidence available to it.

The small town of Gyöngyöspata at the foot of the Mátra Hills is within the jurisdiction of the Police Department of Gyöngyös.

There are 2,800 people living in the settlement, of which approx. 450 are of Roma origin.

In 2011, Gyöngyöspata was still a village, where two district officers were on duty until October 1, 2010.

A police station now functions in Gyöngyöspata, but there was only one district officer on duty in the village between October 1, 2010 and April 1, 2011.

In 2011, the Civil Guard of Gyöngyöspata had 24 members in the village and was a member organization of the Heves County Civil Guard Association and the National Civil Guard Association.

The Mayor of the village was László Tábi from October 3, 2010 to April 10, 2011, who resigned his position as mayor.

At the interim mayor election held on July 17, 2011, the village elected Oszkár Juhász, the Jobbik candidate, as mayor.

The civil organization known as Szebb Jövőért Polgárőr Egyesület, with its registered address in Békéscsaba, was entered by Békés County Court in the register of civil organizations under entry No. 2287 by ruling No. Pk.60.010/2010/4.

Article 1/b of chapter II of the statutes of the civil organization functioning as a non-profit organization declares that the organization does not engage in direct political activity, its organization is independent of and does not provide financial support to parties, and does not accept financial support from them.

In early 2011, Oszkár Juhász was already the president of the Jobbik organization in Gyöngyöspata.

According to report No. 10.030/1737/2011/ált. of February 28, 2011, signed by Tibor Balogh, police lieutenant colonel, head of the Police Department of Gyöngyös, and Ákos Gressai, police major, head of the subdivision of district officers, Oszkár Juhász, the president of the organization of Jobbik Magyarországért Mozgalom (Jobbik Movement for Hungary) in Gyöngyöspata, appeared in person at Gyöngyös Police Department, and personally announced that, owing to the Roma situation that had developed in Gyöngyöspata,

the Szebb Jövőért Polgárőr Egyesület (For a Brighter Future Civil Guard Society) will attend to public security duty with approximately 10-15 people for a period of no less than two weeks from March 1, 2011.

The same report also recorded the fact that the two police officers requested Oszkár Juhász to contact the heads of the Szebb Jövőért Polgárőr Egyesület in order that the head of the unit of that civil organization on duty in Gyöngyöspata visit Gyöngyös Police Department the next day for further consultation.

Róbert Kiss, acting as the head of the unit of Szebb Jövőért Polgárőr Egyesület on duty in Gyöngyöspata, appeared at Gyöngyös Police Department on March 1, 2011, and announced the facts of increased patrols to be held by the civil organization.

The police report drawn up on February 28, 2011, also sets out that Oszkár Juhász announced that the organization of Jobbik Magyarországért Mozgalom in Gyöngyöspata would hold a march combined with a remembrance ceremony in the village on March 6, 2011.

On March 1, 2011, the head of Heves County Police Department was Dr. Attila Ormosi, who also holds a law degree.

At the same time, the policing director of Heves County Police Department was Dr. Miklós Kovács, police colonel, who received the police report dated February 28, 2011, the statues of Szebb Jövőért Polgárőr Egyesület and the ruling of registration of Békés County Court from the head of Gyöngyös Police Department.

On March 2, 2011, an announcement was made that was signed by Oszkár Juhász as the organizer of the event.

According to the announcement, the purpose and the agenda of the event was to reduce the crime that had increased in Gyöngyöspata and to eliminate violations of the law.

The document titled "notice of event", addressed to Gyöngyös Police Department and dated March 2, 2011, was also signed by Oszkár Juhász as the president of the organization

of Jobbik in Gyöngyöspata. In this latter notice addressed to Gyöngyös Police Department, he announced, in his capacity as main organizer, that they would hold a demonstration at the request of the residents of Gyöngyöspata who were being terrorized by the part of the local Roma population who were living from criminal activities.

On March 3, 2011, the head of Gyöngyös Police Department informed Oszkár Juhász, the president of the organization of Jobbik Magyarországért Mozgalom in Gyöngyöspata under No. 10.030-1838/2011/ált., that he had examined the announcement made and established that it was subject to Act III of 1989 on the right of assembly, further, that the authority headed by him acknowledged the holding of the event.

Gyöngyös Police Department acknowledged the marching demonstration that the organizers wanted to hold from 17 to 21 hrs on March 6, 2011, in such a way that speeches were to be given on the stage to be erected in front of Patavár Panzió on the main square, and that the planned route of the march was Fő tér, Fő út, Bem út and Hegyalja út.

At the end of the acknowledged event, the main organizer wanted to hand over a petition to the president of the Roma Minority Self-government in Gyöngyöspata in front of the property at Gyöngyöspata, Bem út 13.

In 2011, only Roma people were living in Hegyalja utca and Sövény utca, in Gyöngyöspata while a mixed population was living in Bem utca, Bajcsy-Zsilinszky utca, Arany János utca and Klapka utca.

Hegyalja utca, which is affected by the march, is a dead end street, where car traffic was minimal in the period covered in this case.

László Tábi, acting as the Mayor of Gyöngyöspata, submitted an application on behalf of the Council of the Local Government of Gyöngyöspata to the national chief police commissioner, which was filed by the National Headquarters on March 23, 2011.

László Tábi addressed the application to the national chief police commissioner due to the tension between the local Roma and non-Roma population that seriously infringed public security, and requested permanent and adequate technical support from him.

The Mayor stated in his application to that a police station had operated in the village from 1994, and expressed the desire of the local community that a police station be operated in Gyöngyöspata again.

In his submission to the national chief police commissioner, László Tábi stated that public security had significantly deteriorated of late and that he felt that the population of the village had been left alone in the untenable situation, so it had turned to Szebb Jövőért Polgárőr Egyesület for effective assistance, which in turn caused outrage from the Roma population of the village and further increased the high level of tension in the village that had already prevailed.

On April 6, 2011, the Public Security Department of the Policing Directorate of the National Police Headquarters instructed the policing director of Heves County Police Department to submit a report in relation to the above-mentioned information provided by the mayor of the village, and this notice was filed by Heves County Police Department on April 11, 2011.

Starting on March 1, 2011, members of Szebb Jövőért Polgárőr Egyesület patrolled in Gyöngyöspata for a period of more than two weeks in such a way that 20-50 people were on patrol in the settlement every day.

In carrying out the patrols, the members of the Szebb Jövőért Polgárőr Egyesület patrolling the village wore the uniform introduced by the civil organization (boots, black pants, white shirt, black vest with the text "Szebb Jövőért!" (For a Brighter Future!), Árpád coat of arms and the text "civil guard" text on the back).

The uniform worn by the members of Szebb Jövőért Polgárőr Egyesület was reminiscent of the uniform of members of the dissolved Magyar Gárda (Hungarian Guard), so many of the local Roma community believed that "guardsmen" had arrived in the village.

Their assumption was reinforced by the fact a flag labeled "Magyar Gárda" was placed on the house of Oszkár Juhász, president of the organization of Jobbik in Gyöngyöspata after the members of Szebb Jövőért Polgárőr Egyesület arrived in Gyöngyöspata on March 1, 2011.

The patrolling by members of the Szebb Jövőért Polgárőr Egyesület aroused fear among the members of the local Roma community and, at the meeting held by Gyöngyös Police Department on March 2, 2011,

which was also attended by Róbert Kiss, the head of the unit of Szebb Jövőért Polgárőr Egyesület on duty in Gyöngyöspata, the heads of the Roma Minority Self-government of Gyöngyöspata specifically asked that the members of the civil organization leave the village because the members of the Roma were frightened. In spite of that request, the members of Szebb Jövőért Polgárőr Egyesület stayed in Gyöngyöspata and continued their increased patrol.

Szebb Jövőért Polgárőr Egyesület was established by former members of the dissolved Magyar Gárda and, in 2011, the head of the civil organization was Attila László, the former Békés county captain-general of Magyar Gárda.

The members of Szebb Jövőért Polgárőr Egyesület patrolled the village from March 1, 2011 to March 18, 2011. During this period, they were continuously and regularly marching in the public areas of the village and occasionally followed members of the local Roma community to the shops and minor members of the local Roma community to the school.

Members of Szebb Jövőért Polgárőr Egyesület patrolled the streets of the village inhabited by the Roma in the evening and late at night too, at which time which they sang and chanted.

Consequently, the marching demonstration organized by the unit of Jobbik in Gyöngyöspata was held on March 6, 2011, in a fierce, tense and heightened public mood.

The statutes of Szebb Jövőért Polgárőr Egyesület does not stipulate event security among its activities, yet the demonstration, which was attended by nearly 2,000 people, was secured by members of Szebb Jövőért Polgárőr Egyesület.

Gyöngyös Police Department prepared an action plan under No. 10.030/2011/ált. for the implementation of police security of the event falling within the scope of the Assembly Act.

The action plan laid down that police security was justified by the fact that the march involved streets populated by the Roma, one of which was a dead end street, and that a verbal or physical conflict occurring there could not be prevented or stopped without adequate police preparedness.

Gyöngyös Police Department lawfully made video and audio recordings of the marching demonstration, but it has since been destroyed in the

meantime.

The security officer for the marching demonstration was István Luzsi, police captain, head of the traffic department, who prepared a report under No. 10.030-1838/2011/ált. on the implementation of security measures. It shows that no police action at all took place at the event, even in conjunction with the verbal statements that were made when the main organizer Oszkár Juhász read out and handed over his petition on the road section in front of the property at Gyöngyöspata, Bem út 13.

After March 1, 2011, the members of the two radical far-right organizations Véderő and Betyársereg also appeared in Gyöngyöspata.

Ernő Kállai Kiss, the parliamentary commissioner for the rights of national ethnic minorities, opened an inspection based on the request of the president of the Roma Minority Self-Government of Gyöngyöspata and other specific complaints. His report, titled “Risks of the incidents that took place in Gyöngyöspata in March 20 and similar events” was dated April 19, 2011.

The staff of the parliamentary commissioner for the rights of national ethnic minorities inquired in Gyöngyöspata and at the police stations concerned between March 29, 2011 and March 31, 2011.

The Magyar Gárda Hagyományőrző és Kulturális Egyesület (Hungarian Guard Heritage and Cultural Society) was dissolved by the Metropolitan Appeal Court by a final judgment, and the Supreme Court confirmed the force of that judgment in its judgment taken in a review procedure on December 15, 2009.

The facts and the legal justification of these two court decisions were already known when the events in Gyöngyöspata that are the subject hereof occurred, and Gyöngyös Police Department also referred to them in the notice No. 10.030-1838/2011/ált. on acknowledging the event, which was sent to Oszkár Juhász, the main organizer of the event. It also informed the main organizer of the event that the exercise of the right of assembly should not violate the rights or freedom of others,

further, that Section 12(1) of Act III of 1989 provided that the organizer must dissolve the event in case the conduct of any participant at the event jeopardizes the legality of the event and order cannot be reinstated otherwise.

On March 22, 2011, the Békés County Chief Prosecutor's Office opened a judicial oversight investigation into the functioning of Szebb Jövőért Polgárőr Egyesület and requested the dissolution of the defendant society in the statement of claim dated August 22, 2011, and submitted to Békés County Court.

However, Gyula Court rejected the applicant's claim by its judgment No. 12.P.20.189/2011/50 of July 25, 2012.

However, Szeged Appeal Court, acting based on the appeal of the Békés County Chief Prosecutor's Office, acting as the applicant, repealed the judgment of the court of first instance by ruling No. Pf.III.20.818/2012/7, and instructed the court of first instance to conduct a new proceeding and take a new decision.

In the retrial, Gyula Court rejected the applicant's claim again by judgment No. 12.P.20.045/2013/47 of March 24, 2014, but Szeged Appeal Court, acting based on the appeal of the applicant Békés County Chief Prosecutor's Office in the repeated second instance procedure, dissolved Szebb Jövőért Polgárőr Egyesület by a final judgment.

The members of the Roma community of Gyöngyöspata were very often unable to differentiate between the members of Szebb Jövőért Polgárőr Egyesület, the Véderő and the Betyársereg despite their partly different uniforms and were clearly afraid of these people. They felt that they had appeared in the village for anti-Roma purposes.

The adult members of the Roma community could only adapt to the situation with difficulties, and their minor children were also distraught by the events, and many of them needed medical assistance.

During the period covered by the case, policemen from Gyöngyös Police Department, Heves County Police Department and other town police departments of Heves county, as well as policemen from the Borsod-Abaúj-Zemplén and Nógrád County Police Departments and the Intervention Police were also on duty in the village.

During the period covered by the case, the policemen from the staff of Borsod-Abaúj-Zemplén and Nógrád County Police Departments and the Intervention Police were also

under the command and direction of Heves County Police Department, and the commander in the staff of Heves County Police Department, in the position of head of department at least, was briefing the members of the police located in Gyöngyöspata every day.

When it was justified and an operational decision was required, the operational decisions were taken by Tibor Balogh, head of Gyöngyös Police Department, who continuously informed his superior, Dr. Attila Ormosi, head of Heves County Police Department.

During the period covered by the case, Dr. József Hatala, police lieutenant general, was the head of the National Police Headquarters, who was continuously informed about the events in Gyöngyöspata by the head of Heves County Police Department.

During the period from March 1, 2011 to May 1, 2011, a significant police force, though varying in numbers based on the given situation, was deployed in the village. Over this initial period, the largest police force in the whole country in terms of numbers was concentrated in Gyöngyöspata.

Following the interim mayor elections, the tension decreased in the village and the situation began to return to normal, so the head of Heves County Police Department steadily reduced the number of police personnel in the village. On the other hand, the head of Heves County Police Department resolved to decrease the number of police personnel in Gyöngyöspata to the level before the period covered by this case only following consultation with the head of the National Police Headquarters.

The largest number of police personnel was present in the village on March 6, 2011, that is, the day of the marching demonstration. Nearly 200 police officers secured the demonstration that day.

The holding of the marching demonstration further increased the tension in the village, and the fact that Véderő, a radical far-right organization, wanted to organize an open camp for training basic military skills in Gyöngyöspata from 22 to 24 April 2011, also increased the fear of the members of the Roma community.

A total of eight of the persons arriving at the camp were arrested and detained by the Intervention Police on account of the petty offense of breach of the peace, but Gyöngyös Town Court discontinued the petty offense proceedings initiated due to the

petty offense of breach of the peace by rulings No. 4.Sze.6028/2012/12 and 4.Sze.6895/2012/3.

The members of the other radical far-right organization Betyársereg also took an intimidating stance against members of the local Roma community. On March 10, 2011, a member of Betyársereg was arrested on account of the misdemeanor of harassment.

On July 14, 2011, Péter Borsos, police major, appointed head of the public security and traffic department of Gyöngyös Police Department informed the head of the criminal department of the criminal directorate of Heves County Police Department that the police had checked the identity of 27 members of Szebb Jövőért Polgárőr Egyesület, 7 members of Betyársereg and 4 members of Véderő in Gyöngyöspata between March 1 and 18, 2011.

During the initial period from March 1, 2011 and May 1, 2011, the tension was already so great in the village on April 26, 2011, that an incident took place between a larger group of the local Roma community and a smaller group of non-Roma people present in the village, in connection with which criminal proceedings were launched due to breach of the peace.

On January 13, 2012, a report No. 10.030-2012.ált. was made on the public security situation in Gyöngyöspata, which included the number of petty offenses and crimes committed in the village in 2010 and 2011.

In the village of Gyöngyöspata, the police detected and penalized 43 petty offenses in 2010 and 176 petty offenses in 2011, respectively, based on the report drawn up by Gyöngyös Police Department.

This report also contains a statement, namely, that the rising number of petty offenses was due to the increased police presence and the continued enhanced control.

Due to minor violations of road traffic regulations, only 14 petty offense proceedings were initiated in 2010, while the number of cases for similar reasons was already 90 in 2011.

Having received the follow-up report of the parliamentary commissioner for the rights of national and ethnic minorities into the circumstances in Gyöngyöspata in terms of public employment,

the practices of petty offense authorities and education, Dr. József Hatala, police lieutenant general, chief commissioner of police, sent his comments regarding the follow-up report to Dr. Máté Szabó in respect of the petty offense and sanction practice of Heves County Police Department concerning the acts committed in Gyöngyöspata over the period from March to October 2011 that fell within the competence of the police.

Annexed to the information No. 13.019-2011.ált. is a table, which contains a description of the petty offenses committed in the village during the period in question and the amount of the fines imposed.

The respondent submitted its detailed legal position, including the facts, in the preparatory writ No. 101 in respect of its petty offense practice followed from March 1, 2011 to May 1, 2011, respectively from May 1, 2011 to December 31, 2011, attaching 3 appendices to its preparatory writ.

In such preparatory writ, the respondent made separate declarations regarding the petty offenses reported and the on-the-spot fines specifying the police body on duty in Gyöngyöspata under the command and control of Heves County Police Department, which acted in each petty offense case, and disclosed the name of the perpetrator of each petty offense and the description of the facts of each such offense.

The respondent also attached to that preparatory writ anonymized documentary evidence on the on-the-spot fines imposed and the petty offenses reported.

The documents concerning the on-the-spot fines imposed by the members of the Intervention Police have already been discarded, so the respondent did not attach them in the personal rights case.

The policemen on duty in Gyöngyöspata under the command and control of the respondent imposed two on-the-spot fines in the area affected by the applicant's statement of claim during the period from March 1, 2011 and May 1, 2011. 13 petty offenses were reported on account of petty offenses falling

within the competence of the police, and 12 petty offenses were reported that did not fall within the competence of the police, that is, there were a total of 27 petty offenses during the initial period covered by the case in relation to which an on-the-spot fine was imposed or the petty offense reported.

On the other hand, the policemen on duty in Gyöngyöspata under the command and control of the respondent imposed 32 on-the-spot fines and reported 54 petty offenses in the administrative area of Gyöngyöspata during the second period covered by the case, that is, from May 1, 2011 to December 31, 2011, so the police took measures in connection with a total of 86 petty offense cases.

Of the 86 petty offense cases initiated between May 1, 2011 and December 31, 2011, 25 were launched against non-Roma persons, while 61 cases were opened against the members of the local Roma community.

Before the hearing was adjourned, the applicant modified and clarified its claim in its preparatory writ No. 110, and requested a judgment against the respondent regarding the following reliefs sought.

He requested the Court declare that the respondent violated the right to equal treatment of the members of the Roma Community in Gyöngyöspata during the period from March 1, 2011 to May 1, 2011, in the way that it harassed them through the measures it failed to take in the context of its public security activity, and to declare that the respondent committed harassment against the members of the Roma community in Gyöngyöspata during the period from March 1, 2011 to May 1, 2011, by means of its identity check and petty offense practice, and violated their right to equal treatment thereby.

Second, the applicant requested the Court declare that if, in the opinion of the Court, the two above reliefs sought could not be declared separately then the Court should declare that the respondent committed harassment during the period from March 1, 2011 to May 1, 2011, through the measures it failed to take in the context of its public security activities against the members of the extremist groups who appeared in Gyöngyöspata and its identity check and petty offense practice followed with respect to the members of the Roma community and violated their right to equal treatment thereby, as well as to declare that the respondent applied direct discrimination against the members of the Roma community during the period from May 1, 2011 to November 30, 2011, by means of its petty offense practice followed in Gyöngyöspata and harassed the Roma community of Gyöngyöspata through its abusive petty offense practice against

the Roma and violated their right to equal treatment thereby.

The applicant requested that if, in the opinion of the court, the latter relief sought could not be awarded, the court should declare that the petty offense practice of the respondent followed in Gyöngyöspata during the period from May 1, 2011 to November 30, 2011, represented direct discrimination against the members of the Roma community in Gyöngyöspata, and violated their right to equal treatment thereby.

The applicant also requested the court prohibit the respondent from further violations, and order the respondent to develop a strategy, within 6 months of the judgment becoming final, on the handling by the police of the anti-Roma movements of extremist organizations and disclose the same to the heads of the police departments and police stations under its command in the framework of a briefing, as well as to elaborate a control mechanism for the implementation of the strategy, and send both the strategy and the mechanism to the applicant within 15 days of approval by its heads. The court should also order the respondent to allow access to the developed strategy and its reports on the findings of the audit concerning its application as necessary to its staff on its intranet system.

The applicant also requested the court order the respondent to draw the attention of the heads of the police departments and police stations under its command in a briefing, to be held within 15 days of the judgment becoming final, to the requirement of equal treatment in relation to their petty offense practice, the fact that ethnic profiling violates fundamental rights, and to oblige the respondent to develop a control mechanism within 6 months of the judgment becoming final, which ensures that the requirement of equal treatment in terms of ethnicity is respected in the petty offense, fining and reporting practice of the police departments and police stations under its command, and to conduct an audit on such basis every year and, accordingly, to make available its report on the findings of the audit to staff every year on its intranet system and disclose it to the public.

The applicant also requested the court order the respondent to oblige its staff members who were on duty in Gyöngyöspata to attend, within 1 year of the judgment becoming final, a 2-day sensitizing and anti-discrimination training held by professionals provided by the equal treatment authority.

The applicant requested the court order the respondent to post on its website the provisions of the judgment declaring the violation and prohibition of further violations as well as imposing additional objective sanctions, and to oblige the respondent to disclose these provisions of the judgment to the Hungarian Telegraph Agency within 15 days.

The applicant also requested that the respondent be ordered to pay the costs of proceedings.

In its counterclaim, the respondent requested that all reliefs sought by the applicant be rejected and the applicant be ordered to pay the costs of proceedings.

The applicant's claim is partly well-founded.

## I.

The new Civil Code, that is, Act V of 2013 entered into force on March 15, 2014.

The subject of the personal rights case is the events that took place in Gyöngyöspata during the period from March 1, 2011 to December 31, 2011.

Pursuant to Section 8(1) of Act CLXXVII of 2013 ("CCImpl"), the provisions of the new Civil Code on the sanctions of the violation of personal rights apply only to violations that take place following the entry into force of the new Civil Code, so the tribunal had to apply the relevant provisions of the old Civil Code in force at the time of the violations, also taking into account the content of Section 8(2) of the CCImpl.

Section 75(1) of old Civil Code sets out that personal rights shall be honored and respected by all. Personal rights are protected by the law.

Section 76 of the Civil Code provides a non-exhaustive list of the especially protected personal rights, including,

from January 27, 2004, the violation of equal treatment.

Reducing discrimination and the extension of equal opportunities were regulated by 8 EU directives. Harmonization with Community law was ensured by the creation of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities (“ETA”).

However, the Constitutional Court already declared in decision 61/1992, that is, prior to the enactment of the ETA, that the state, as the executive power, must ensure equal treatment of all people present in its territory and should not discriminate between them in this context.

Directive 2000/43/EC implementing the principle of equal treatment amongst persons irrespective of racial or ethnic origin is one of the 8 EU directives affected by the harmonization.

Article XV(2) of the Fundamental Law of Hungary provides that Hungary shall ensure fundamental rights to every person without any discrimination on the grounds of race, color, gender, disability, language, religion, political or other views, national or social origin, financial, birth or other circumstances whatsoever.

And Article XV(4) of the Fundamental Law sets out that Hungary shall promote the principle of equal opportunities by means of introducing special measures.

In the context of the relationship that is the subject of the case, the applicant had the capacity to bring a case under paragraph c) of Section 20(1. of the ETA, so it could lawfully submit an action in the public interest.

However, the court also examined in this personal rights claim whether the respondent, that is, Heves County Police Department had the capacity to be brought to court, meaning, whether the applicant was bringing the right respondent to court. In this context, the court concluded on the basis of the testimonies of the policemen witnesses heard that the members of the police forces coming from other counties and the members of the Intervention Police were also under the command and control of Heves County Police Department at the time of the events that are the subject of this case, so in the personal rights case,

which was aimed at declaring the violation of the requirement of equal treatment, it is the legal opinion of the court that it was justified to have only Heves County Police Department as the respondent in the case.

The references of the parties with a political content do not have any relevance in a civil case initiated due to the violation of personal rights, so the tribunal assessed only the legal facts with actual relevance in terms of the judgment of the relationship and ignored the political references of the parties.

In the personal rights case, the applicant claimed that the respondent harassed and directly discriminated against members of the Roma community of Gyöngyöspata.

Given that harassment is an independently regulated form of direct discrimination and the legal definition of harassment complies with the definition laid down in Article 2(3) of Directive 2000/43/EC and Article 2(3) of Directive 2000/78/EC, the court took into account in the personal rights case the practice of the Constitutional Court, the rules of Community law governing the relationship that is the subject of the case, and assessed the case law of the European Court of Human Rights as well.

In the personal rights case launched based on the applicant's action in the public interest, the court applied the special rules in Sections 19(1) and (2) of the ETA concerning evidence taking, and informed the parties about the special rules concerning evidence taking applicable in the case by ruling No. 71.

The ETA defines special rectifying clauses in relation to employment, public education and the supply of goods and services, so the general rectifying clauses set out in Section 7(2) of the ETA apply only if the Act does not prescribe different, more stringent or more lenient rules.

With regard to the subject matter of the case, the special rectifying clauses could not prevail. On the other hand, Section 7(3) of the Act does not allow the application of the general rectifying clauses in the case of direct discrimination, either, therefore, the court also found that the applicant fulfilled its substantiation obligation set out in Section 19(1) of the ETA

as the respondent declared before the adjournment of the hearing at the hearing held on September 3, 2015, that the applicant fulfilled its substantiation obligation. Therefore, the respondent was obliged to prove under Section 19(2) of the ETA that the respondent complied with the requirement of equal treatment concerning the relationship that is the subject of the case.

Pursuant to paragraph d) of Section 4 of the ETA, the principle of equal treatment shall be observed by the armed forces and law enforcement bodies in the course of their measures. Given that the rules in Section 6 concerning the material scope of the Act does not define the relationship that is the subject of the case as one that is not covered by the scope of the Act,

the court concluded that the respondent legal entity was obliged to observe the requirement of equal treatment in relation to the relationship that is the subject of the case, which the respondent did not dispute at all.

With regard to the above, the court, in assessing the reliefs sought by the applicant in the personal rights case, examined whether the respondent was able to fulfill its rectification obligation through the testimonies of the witnesses and the documentary evidence submitted, meaning, that it could successfully demonstrate in relation to the evidence for rectification that it complied with the requirement of equal treatment.

Following extensive evidence taking, the applicant clarified and amended its reliefs sought in preparatory writ No. 110. That document of the applicant contained the objective sanctions, in respect of which the applicant requested the decision of the court based on paragraphs a), b), c) and d) of Section 84(1) of the Civil Code.

No legal dispute concerning any other legal field could be assessed in a personal rights case, and the personal rights case cannot be used as a general or special forum of legal remedy. Therefore, the court, acting in a personal rights case, cannot opine on the legality of or review other proceedings.

On the other hand, the court could assess the substance of the issue of whether the respondent violated the right to equal treatment of the Roma community in Gyöngyöspata and whether the respondent harassed or directly discriminated against the members of the Roma community in Gyöngyöspata.

The requirement of equal treatment is essentially a negative obligation, meaning, that the obligor must refrain from any conduct

that offends certain persons due to their specific qualities or the equal human dignity of certain groups of persons.

The applicant sought to prove in the personal rights case that the respondent was under the positive obligation to defend fundamental rights in terms of which it should have protected the intimidated Roma community, so it also attached an *amicus curiae* petition under No. 59/1, attached to its preparatory writ 59, on the basis of free evidence. The *amicus curiae* petition prepared by the Open Society Justice Initiative refers to the norms of international law that prohibit discriminatory ethnic profiling or racial discrimination in respect of the members of the law enforcement agencies.

The court took a wide range of evidence in the personal rights case. It heard 14 witnesses, obtained and assessed the documentary evidence generated in relation to the events that are the subject of the case that had a relevance on the determination of the case and viewed at the hearing the video and audio material of the DVDs that documented the events that are the subject of the case and included them in the material of the procedure.

The tribunal heard as witness *inter alia* Tibor Balogh, head of Gyöngyös Police Department, Péter Borsos, former head of the public security and traffic department of Gyöngyös Police Department, Ákos Gressai, the head of the district officers subdivision of Gyöngyös Police Department, Dr. Attila Ormosi, head of Heves County Police Department and János Farkas, the former president of the Roma Minority Self-government of Gyöngyöspata.

The applicant also stated in its clarified and modified claim that the respondent violated the rights of the members of the Roma community of Gyöngyöspata to equal treatment under two legal titles in respect of both periods, as it harassed and directly discriminated against them. Therefore, the court examined the substance, in respect of both periods being the subject of the case, of whether the activity or practice of the respondent specified by the applicant violated personal rights and accomplished harassment or possibly represented direct discrimination.

II.

**Reliefs sought in relation to the declaration of the violation of paragraph a) of Section 84(1) of the Civil Code concerning the period from March 1, 2011 and May 1, 2011**

**Harassment**

The applicant presented a primary and a secondary claim in its preparatory writ No. 110. These claims both aim to request the court declare that the respondent committed harassment against the members of the Roma community in Gyöngyöspata by means of the measures it failed to take in the course of its public security protection activity and petty offense practice and violated their right to equal treatment thereby.

Based on the evidence taken, the court found that the applicant's claim under that legal title is partly well-founded, and declared that the respondent committed harassment against the members of the Roma community in Gyöngyöspata during the period from March 1, 2011 and May 1, 2011, by means of the measures it failed to take against the members of Szebb Jövőért Polgárőr Egyesület, Véderő and Betyársereg. However, it rejected the unfounded claim of the applicant beyond that, and concluded that the respondent had succeeded in providing evidence that its identity check and petty offense practice during the initial period covered by the case did not represent harassment against the members of the Roma community in Gyöngyöspata for the reasons below.

The court found it justified to give a clear and accurate definition in the operative part of its judgment that the respondent committed harassment against the members of the Roma community in Gyöngyöspata specifically in the course of its public security activity against the members of Szebb Jövőért Polgárőr Egyesület, Véderő and Betyársereg. It is the position of the court that the term "extremist groups" is not concrete enough, so it was justified for the court to clearly define the scope of persons in respect of whom it considered the failed measures of the respondent as being suitable for committing harassment against the members of the Roma community in Gyöngyöspata and violating their right to equal treatment thereby.

In the personal rights case, the court did not examine the applicability of the general term of harassment as used in everyday life, nor whether the facts of harassment defined in the Criminal Code have relevance, rather the court specifically considered whether the respondent's actions and its failure to take measures violated personal rights and represented harassment against the members of the Roma community in Gyöngyöspata in that context.

The legal facts of harassment are defined in Section 222 of the Criminal Code, but those facts have no relevance for a civil rights or personal rights relationship.

Nevertheless, the Criminal Code also places harassment among the crimes against human dignity and certain fundamental rights.

Pursuant to Section 10(1) of the ETA, harassment is conduct of a sexual or other nature violating human dignity, related to the relevant person's characteristics defined in Section 8, with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around the particular person.

At the same time, harassment is a form of direct discrimination independently regulated in Act CXXV of 2003, however, the facts of direct discrimination and harassment, respectively, partly differ from each other because, in the case of direct discrimination as the legal title, the facts clearly include less favorable treatment compared to a person or group in a comparable situation while, in the case of harassment, the legal facts do not include this word. Therefore, the declaration of harassment requires the existence of a protected quality and, related to it, an act the purpose or effect of which is the creation of an intimidating, hostile, degrading, humiliating or offensive environment. So the court did not even have to examine the existence of the above-referred legal condition in relation to the applicant's claim based on harassment.

The first sentence of the preamble of the ETA states that Parliament recognizes every person's right to live as a person of equal dignity.

The requirement of equal treatment triggers an obligation with essentially negative content. Section 4 of the explanation to the preamble of the ETA also emphasizes that the requirement of equal treatment demands that the obligors refrain from any conduct that results in direct discrimination or harassment against certain individuals or groups of individuals, meaning, that the obligors should not violate the equal human dignity of others.

Pursuant to paragraph a) of Section 4 of the ETA, the principle of equal treatment shall be observed by the Hungarian State as well.

The text of Section 1(1) of Act XXXIV of 1994 on the police, in force during the period from March 1, 2011 to May 1, 2011, defined the protection of public security and public order as tasks of the police. And Section 2(1) of the same Act in force during the first period covered by the case clearly set out that the police should provide protection against acts directly threatening or violating life, physical integrity or the safety of property and shall at the same time respect and protect human dignity and human rights.

Chapter VIII of the Constitution (Act XX of 1949) in force from March 1, 2011 to May 1, 2011, set out the rules concerning the Hungarian Army and certain law enforcement bodies. Article 40/A (2) of the Constitution also stated that the principal task of the police is to ensure public security and protect public order.

On the other hand, Article 54(1) of the Constitution clearly provided that in the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied these rights.

However, Article 8(1) of the Constitution in force during the first period under litigation clearly defined as the primary obligation of the state to protect the inviolable and inalienable fundamental human rights recognized by the Republic of Hungary in the Constitution, including human dignity.

That provision of the Constitution forms the basis of the obligation of the state and the respondent, as its law enforcement body with separate legal personality, to protect the fundamental rights.

It is the opinion of the Court that the respondent had a positive obligation in relation to the legal relationship being the subject of the case during the period from March 1, 2011 and May 1, 2011, as it had the constitutional obligation to protect the members of the Roma community who were indisputably intimidated.

According to the legal position of the court, the respondent, acting as a law enforcement body with independent legal personality of the state, that is, the Republic of Hungary, was under the obligation to not only assess the applicability of certain facts of the Criminal Code and the Petty Offenses Act, but also the obligation to protect fundamental rights observing the relevant provisions of the supreme legal regulations, that is, the Constitution, as well as the international treaties signed by the Republic of Hungary.

Article 2 of Law-decree 8 of 1969 on the proclamation of the International Convention on the Elimination of All Forms of Racial Discrimination, made in New York, on December 21, 1965, reads as follows:

1. The State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to refrain from engaging in any act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes to refrain from sponsoring, defending or supporting racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances,

racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

In the court's view, it can also be concluded from the practice of the Constitutional Court that the respondent was under the obligation to protect the intimidated members of the Roma community in Gyöngyöspata, as Decision 53/2009. (V. 6.) AB ruled that the state should not only refrain from violating fundamental rights, but also promote the enforcement thereof through positive measures, so the Constitutional Court also made it clear that the state was under the obligation to protect fundamental rights as well as to protect institutions. -

In addition, the Supreme Court confirmed, by its judgment made in a review procedure on December 15, 2009, the final judgment of the Metropolitan Appeal Court that dissolved the Magyar Gárda Hagyományörző és Kulturális Egyesület, so the reasons for that judgment were already known to law enforcement law bodies as well.

Having regard to the above, the Court also examined whether the respondent violated the personal rights of or committed harassment against the members of the Roma community in Gyöngyöspata between March 1, 2011 and May 1, 2011, so in making its decision the court was also bearing in mind how the respondent fulfilled its obligations to protect fundamental rights.

As regards unlawful segregation, as defined in Section 10(2) of the ETA, which also violates the requirement of equal treatment, judicial practice has taken the view that the local government as the maintainer of the institution and the elementary school both violated personal rights by maintaining unlawful segregation even without any activity by not acting against the spontaneous segregation that has developed regardless of their intention (Appeal Court of Debrecen Pf.I.20.683/2005).

So unlawful segregation, as a conduct violating equal treatment, can be committed not only purposefully, but also through omission as well.

It is the court's view that harassment, being another conduct violating equal treatment, can also be committed not only purposefully, but through omission as well.

The tribunal took the view that the failure of the respondent, namely that it maintained the obviously intimidating, hostile, degrading, humiliating and offensive environment against the members of the Roma community in Gyöngyöspata, committed harassment against the members of the Roma community in Gyöngyöspata, as the respondent could commit the harassment, as a civil law personal right violation, through its omission, that is, in the absence of any active action as well. Section 10(1) of the ETA defines an alternative legal condition, thus the failure of the respondent by maintaining the obviously intimidating, hostile, degrading, humiliating and offensive environment against the members of the Roma community in Gyöngyöspata, represented harassment against them because, due to the alternative legal conditions, this was not subject to any racist intent on the respondent's part, and no such intent was claimed by the applicant or established by the court. Nevertheless, such failure of the respondent brought about and resulted in the maintaining of the hostile, degrading, humiliating and offensive environment against the members of the Roma community in Gyöngyöspata that obviously violated their human dignity.

In establishing that the respondent committed harassment against the members of the Roma community in Gyöngyöspata between March 1, 2011 and May 1, 2011, the court assessed the available evidence as follows.

The Court considers it undoubtedly proven that, after the members of Szebb Jövőért Polgárőr Egyesület appeared in the village after March 1, 2011, an environment violating the human dignity of the members of the Roma community developed in Gyöngyöspata, meaning, that the legal conditions set out in Section 10(1) of the ETA indisputably existed.

This fact is clearly confirmed by the official note prepared on April 26, 2011, by Tibor Balogh, head of the Police Department of Gyöngyös, which was annexed to the respondent's preparatory writ No. 60, which states that it was obvious and verifiable that the local Roma community was frightened and the piquancy of the situation is that they were also afraid and nervous when they saw a police officer.

This assessment of the situation by Tibor Balogh, head of Gyöngyös Police Department, was confirmed by the testimonies of the witnesses heard and other documentary evidence available to the court, so the court established beyond doubt that the situation continuously escalated after the members of Szebb Jövőért Polgárőr Egyesület appeared in the village on March 1, 2011, and started patrolling, further that a hostile, degrading, humiliating and offensive environment developed against the members of the Roma community in Gyöngyöspata that, according to the legal view of the court, violated the dignity of the members of the Roma community in Gyöngyöspata, as it can be linked to their characteristic defined in Section 8 of the ETA, namely that they were members of the Roma ethnic group.

By signing the International Convention on the Elimination of All Forms of Racial Discrimination, made in New York, as proclaimed by Law-decree 8 of 1969, Hungary, being a State Party, also agreed to prohibit and eliminate any local discrimination by any persons, groups or organizations with all appropriate means, including, if necessary, by legislation.

It follows from this obligation of Hungary it assumed under an international convention that Heves County Police Department, that is, the respondent with independent legal personality, was not only under the obligation “to try to properly follow all the events”, as phrased by Dr. Attila Ormosi, head of Heves County Police Department, during his hearing as a witness, but also under the obligation to protect the intimidated members of the Roma community in Gyöngyöspata during those two months on the basis of its obligation to protect fundamental rights. . . .

According to the legal position of the court, the respondent could have fulfilled such obligation to protect fundamental rights if it had fully explored the legal environment, that is, the legal environment provided by national law and Community law, under which it could have actually fulfilled its obligation of protecting fundamental rights.

For these reasons, the tribunal took the view that the law enforcement activity of the respondent, as a law enforcement body, was not limited in respect of these two months to just examining if any of the historical facts it revealed uncovered any legal facts, namely, that the committing of a crime or petty offense could be declared based on the national law, but the respondent,

as a law enforcement body, should have examined in a broader context how it could have protected the members of the undoubtedly intimidated members of the Roma community in Gyöngyöspata based on its obligation to protect fundamental rights.

Based on the evidence taken, the court concluded that it was justified to examine in respect of the three most important events that determined the period in question and violated the equal human dignity of the members of the Roma community in Gyöngyöspata whether the respondent actually fulfilled its obligation to protect fundamental rights or failed in any obligations in the context of its public security protection activity, which represented harassment against the members of the Roma community in Gyöngyöspata in a way that the failure of the respondent resulted in the maintaining of the abusive, intimidating, hostile, degrading, humiliating and offensive environment that violated the dignity of the members of this Roma community.

On the basis of the above, the court evaluated in particular the following events in the context of the first period covered by the case:

- The patrolling activities for over two weeks of the members of Szebb Jövőért Polgárőr Egyesület, which has been dissolved,
- The marching demonstration organized by Jobbik on March 6, 2011,
- The incident that took place on April 26, 2011, between a larger group of the local Roma community and non-Roma people present in the village.

The court is of the opinion that even though this two-month period should be examined as a whole, special attention should be paid to whether the respondent committed harassment against the members of the Roma community in Gyöngyöspata and whether the respondent was able to fulfill its obligation to protect fundamental rights in respect of the three events that most determined the period in question.

The applicant summarized its position regarding the facts and the law in preparatory writ No. 116, and requested the tribunal declare that the respondent committed harassment against the members of the Roma community in Gyöngyöspata.

On the basis of the evidence taken, the court established, on the one hand, that the members of the Roma community in Gyöngyöspata were unable to distinguish the members of Szebb Jövőért Polgárőr Egyesület, Véderő and Betyársereg despite their different uniforms and were afraid of them all because they felt that these persons were present in Gyöngyöspata with specifically anti-Roma intentions and, on the hand,

the court also found that the members of Szebb Jövőért Polgárőr Egyesület who first appeared in the village were reasonably considered to be “guardsmen” by the members of the Roma community, as the local and national newspapers, as well as the public service television and the commercial televisions had given detailed reports about the earlier anti-Roma actions of the Magyar Gárda. This is evidenced by the fact that Dr. Attila Ormosi, head of Heves County Police Department declared in his testimony that the patrolling activity of the Magyar Gárda was the point in time which created a new situation compared to the situation he referred to.

So the head of Heves County Police Department identified the patrolling activity commenced on March 1, 2011, as what triggered the process that, in the opinion of the court, lead to the development of an environment violating the equal human dignity of the members of the local Roma community as defined in Section 10(1) of the ETA and, on the other hand, the head of Heves County Police Department was unable to identify who were patrolling for two weeks in Gyöngyöspata even at the hearing held on October 28, 2014, that is, more than three years after the events covered in this case. This spontaneous unguarded expression of the witness also confirms the circumstance that, in order to fully comply with its obligation to protect fundamental rights, it was essential for the police commanders of the county to have an in-depth full understanding of the judgments of the courts of first and second instance, as well as the Curia, given in relation to the dissolution of the Magyar Gárda.

However, Dr. Attila Ormosi, head of Heves County Police Department with a law degree, declared in his testimony that he could not tell why the court had dissolved the Magyar Gárda even though he had read the judgment itself.

It is the opinion of the court that it can be concluded from the testimony of Dr. Attila Ormosi that the respondent did not have an in-depth knowledge of the essential legal content of the court judgments that were obviously accessible and recognizable at that time and fundamentally defined the scope for action of the law enforcement body, further, that this fact could in the court’s view contribute

to the respondent having been unable to fulfill its obligation to protect public order and was unable to protect the human dignity of the members of the Roma community in Gyöngyöspata during the two months in question because the respondent failed to take all the measures that it was entitled to take and could have ensured the equal human dignity of the local Roma community.

All the above is supported by the fact that Dr. Attila Ormosi, a witness, responded to a question of the judge in a way that even though Heves County Police Department had an in-house counsel in the period under consideration, he did not consult the counsel due to that fact that he also had a law degree and was able to independently evaluate and make decisions regarding legal matters.

The head of Heves County Police Department also stated as a witness that, given that the police is a centralized organization, he continuously reported to Dr. József Hatala, head of the National Police Headquarters. Therefore, the court took the view that despite the fact that the head of Heves County Police Department had a law degree, he should have availed himself of the legal knowledge and understanding (also due to Community law and international law correlations) that could have enabled the respondent to take the necessary and justified measures in awareness of the available and applicable legal regulations when the environment violating the equal human dignity of the members of the Roma community in Gyöngyöspata developed.

Consequently, the court did not share the view of Dr. Attila Ormosi expressed as a witness, namely, that the respondent did everything it could within the framework of the law.

The court evaluated the evidence below in relation to the patrolling of the members of Szebb Jövőért Polgárőr Egyesület.

In the personal rights case, the respondent consistently claimed that a legal loophole existed and it did not have the legal possibility to prevent the patrolling activities of the members of Szebb Jövőért Polgárőr Egyesület.

It is not disputed that the situations of violence against a member of the community were inserted in the previous Criminal Code (Act IV of 1978)

by Section 1 of Act XL of 2011, with effect on May 7, 2011.

Although the justification of the amendment does not refer to the events in Gyöngyöspata, which are the subject of this case, the text explanation of the amendment and the coincidence of the dates make it clear that in amending the Criminal Code as above on May 2, 2011, Parliament responded to the situation that evolved in Gyöngyöspata that, according to the legal view of the tribunal, violated the equal human dignity of the members of the Roma community.

In preparatory writ No. 5, the applicant marked the provisions of the earlier Criminal Code that could be used as the basis for opening criminal proceedings *ex officio* in the first period of the case.

In relation to the above, the applicant referred to the offense of violence against a member of the community, the misdemeanor of harassment and the misdemeanor of breach of the peace, as well as the petty offense of breach of the peace.

Given that a legal dispute involving another legal domain may not be judged in a personal rights case and that the courts acting in personal rights cases may not opine on or obviously supervise the legality of other proceedings, the court could not take a stand on the issue whether the marching activity of the members of Szebb Jövőért Polgárőr Egyesület confirmed the facts of any of the 3 crimes and 1 petty offense mentioned above. On the other hand, in examining whether the respondent committed harassment against the members of the local Roma community, it concluded that the fact that the respondent failed to initiate these proceedings *ex officio*, which is a failure in the context of the violation of personal rights, resulted in that the respondent maintaining a gradually evolving situation that violated the equal human dignity of the local Roma community.

The fact that Szeged Appeal Court dissolved Szebb Jövőért Polgárőr Egyesület only by its judgment given in the repeated proceedings on October 8, 2014, does not suggest that the respondent could not initiate criminal proceedings against the individual members of the civil organization and it could not take the view that the members of Szebb Jövőért Polgárőr Egyesület, which was lawfully functioning at that time, patrolling in the village did not commit a crime or petty offense and initiate criminal proceedings at least against them *ex officio*.

It is the opinion of the court that the respondent's obligation to protect fundamental rights clearly includes that it should have initiated such proceedings *ex officio*.

The respondent obviously had the opportunity to continuously and consistently examine over the two months whether the members of Szebb Jövőért Polgárőr Egyesület committed a crime or petty offense, as Tibor Balogh, head of Gyöngyös Police Department declared as a witness that the Society announced every morning by phone where and how many people would be mobilized that day.

So the respondent clearly had the opportunity to ensure that the police officers under its control and command notice any crime or petty offense committed by the members of the Society in due time in case such an act was committed.

Based on the evidence taken, the court concluded that the police officers under the control and command of the respondent did not initiate any petty offense or criminal proceedings *ex officio* against the members of Szebb Jövőért Polgárőr Egyesület specifically in relation to their patrolling in Gyöngyöspata during the period from March 1, 2011 to March 18, 2011.

In establishing that the respondent committed harassment against the members of the Roma community in Gyöngyöspata between March 1, 2011 and May 1, 2011, the court assessed the available evidence as follows.

The Court considers it undoubtedly proven that, after the members of Szebb Jövőért Polgárőr Egyesület appeared in the village after March 1, 2011, an environment violating the human dignity of the members of the Roma community developed in Gyöngyöspata, meaning, that the legal conditions set out in Section 10(1) of the ETA indisputably existed.

In the opinion of the court, it follows from the respondent's obligation to protect fundamental rights that in order to protect the equal human dignity of the members of the Roma community in Gyöngyöspata it should have at least initiated the petty offense or criminal proceedings that were available to it under national law and Community law.

Due to the above, it was irrelevant in the personal rights case why the human rights organizations, including the applicant, did not report more crimes or that the members of the Roma community in Gyöngyöspata possibly made groundless reports as well to the police.

It is an undisputed fact that Szebb Jövőért Polgárőr Egyesület did not enter into a written cooperation agreement with the police despite that Section 36 of Act LXXXIV of 2009 introduced the conclusion of a mandatory cooperation agreement and the obligation to put it down in writing as new obligations from September 1, 2009.

According to Section 2(5) of Act LII of 2006 on civil guards, Szebb Jövőért Polgárőr Egyesület was under a legal obligation to initiate the conclusion of a cooperation agreement with the police. Had Szebb Jövőért Polgárőr Egyesület, as a legal entity, exercised its right in good faith and as intended, the respondent and Gyöngyös Police Department could have assessed whether the conclusion of such a written cooperation agreement violated its obligation to protect fundamental rights or if there was a legitimate possibility to prevent patrolling itself.

In addition, Section 3(2) of Act LII of 2006 on civil guards also set forth during the first period covered by this case that the uniform worn by civil guards in the course of their activity should not be deceptive due to its similarity to the uniform of the members of the Hungarian army, the law enforcement bodies or any other authorities. It follows from this provision and the fact that the very detailed and governing factual and legal reasons of the judgments given in the civil cases concerning the dissolution of Magyar Gárda Hagyományőrző és Kulturális Egyesület were clearly known to the respondent as a law enforcement body that the fulfillment of the respondent's obligation to protect fundamental rights required that it should have at least initiated petty offense proceedings against the appropriate persons ex officio on grounds of the well-founded suspicion of the committing of petty offenses described in Sections 152/B(1) and (2) of the Petty Offenses Act.

It is the view of the court that the well-founded suspicion of these petty offenses is supported by the uniform of the patrols, as well as the fact that a flag labeled "Magyar Gárda"

was placed on the house of Oszkár Juhász, president of Szebb Jövőért Polgárőr Egyesület in the village.

It can be concluded based on the evidence taken that a petty offense procedure was initiated *ex officio* against only a few members of the two explicitly right-wing radical organizations.

In the reasons of the judgment given under No. 2.P.20.045/13/47 in the repeated procedure in the civil case concerning the dissolution of Szebb Jövőért Polgárőr Egyesület, Gyula Court held that wearing a uniform, marching in a formation, public marching and singing are lawful activities arising from the freedom of assembly and do not violate the rights of freedom of others even if they cause resentment in certain observers.

On the other hand, the court concluded based on the evidence taken in the personal rights case that the provision of Section 5(2) of the Civil Code, namely, that exercising any constitutional right directed toward an objective that is incompatible with the social function of that right shall not violate the personal right attached to the equal human dignity of other persons, including the members of the Roma community in Gyöngyöspata, should also be regarded as the constitutional barrier to the rights of the members of Szebb Jövőért Polgárőr Egyesület clearly had at the time of the patrolling.

Based on the evidence taken, the court concluded that the members of Szebb Jövőért Polgárőr Egyesület were exercising their constitutional and other rights in relation to their patrolling in Gyöngyöspata, which they were otherwise entitled to, in a way that violated the equal human dignity of the members of the Roma community in Gyöngyöspata, so the failure of the respondent to initiate the above-mentioned petty offense and criminal proceedings that could have at least created the possibility of not violating the equal human dignity of the members of the Roma community in Gyöngyöspata, can be considered a violation of personal rights and as harassment, as such failure of the respondent can be traced back to it actually failing to fulfill its obligation to protect fundamental rights.

The court evaluated the following evidence in relation to the marching demonstration held on March 6, 2011:

On March 6, 2011, the marching demonstration organized by Jobbik's unit in Gyöngyöspata was held in an obviously intensified, tense and heightened general mood, as the members of Szebb Jövőért Polgárőr Egyesület, which was dissolved during the personal rights case, were patrolling in the village for nearly a week.

The court believes that it is relevant in the context of the violation of personal rights that the members of the intimidated Roma community clearly felt, based on the experience obtained in relation to the patrols of the Szebb Jövőért Polgárőr Egyesület, that the mass demonstration was aimed not only at condemning the perpetrators of specific crimes, but the stigmatization of the entire Roma community.

The court believes it is also relevant in the context of the violation of personal rights that the police officers under the control and command of the respondent did have the opportunity over a period of 5 days to monitor and evaluate from the legal point of view the activity of the members of Szebb Jövőért Polgárőr Egyesület patrolling in the village and obviously balance, based on the intended purpose of the announcement, the fact that the exercise of the freedom of assembly should not result in a violation of the equal human dignity of the Roma community in Gyöngyöspata. Section 1 of Act III of 1989 on the right of assembly ("Assembly Act") in force at the time of the marching demonstration provided that the right of assembly is a fundamental right to which everyone is entitled and which the Republic of Hungary recognizes. Nevertheless, Act 2(3) of the same Act clearly set out that the exercise of the right of assembly shall not accomplish a crime or invitation to a crime, and shall not violate the rights or the freedom of others.

Due to the above, it is the view of the tribunal that it expressly followed from the respondent's obligation to protect fundamental rights that it should have recognized, assessed and considered that the approval of the marching demonstration organized by Jobbik's unit in Gyöngyöspata should not have caused a violation of the equal human dignity of the members of the Roma community in Gyöngyöspata.

Nevertheless, the head of Gyöngyös Police Department informed Oszkár Juhász, president of Jobbik's unit in Gyöngyöspata, as the organizer of the event falling within the scope of the Assembly Act by means of document No. 10.030-1838/2011.ált on March 3, 2011, that the authority took note of holding the event he announced.