

Communication concerning the decision of the Curia of Hungary
in criminal case n° Bfv.I.884/2017

The court of first instance found the accused guilty of the attempt to commit homicide and sentenced him to four years' imprisonment and to four years' ban on participating in public affairs. The court of second instance upheld the first instance judgement.

The defence attorney of the accused submitted a petition for judicial review to the Curia against the final judgement on the basis of section 416, subsection (1), point a) of the Code of Criminal Procedure.

The petitioner argued that the lower instance courts had wrongly interpreted the issue of legitimate defence, as the accused had committed the impugned acts in order to prevent an unlawful attack posing a direct threat to him and his sibling by an attacker carrying a deadly weapon.

According to the facts of the case as clearly established by the court of first instance, the accused persons and the victim and his friend exchanged blows during which the victim was stabbed after having fallen to the ground as a result of an unbalanced move, having dropped the deadly weapon from his hand and having gotten into a half-sitting and half-lying position.

In addition, the court of second instance correctly pointed out that while it was the victim who triggered the conflict, the accused person got willingly involved in the brawl when he accepted the victim's challenge after having gotten off the bus.

In the Curia's legal viewpoint, the applicable legal provisions excluded the possibility of lodging a petition for judicial review in the present case.

In the reasoning part of its decision, the Curia stated that, pursuant to section 423, subsection (1) of the Code of Criminal Procedure, the factual background established in the final court decision should prevail in the Curia's judicial review proceedings and petitioners are not entitled to challenge the already established facts of the case in such proceedings.

The Curia referred to its consistent case-law according to which the grounds for exemption from criminal responsibility – such as legitimate defence – should be assessed in judicial review proceedings only in the light of the already established facts of the case.

The facts of the case clearly show that the accused persons and the victim and his friend exchanged blows during which the victim was stabbed after having fallen to the ground as a result of an unbalanced move, having dropped the deadly weapon from his hand and having gotten into a half-sitting and half-lying position. Although it was the victim who triggered the conflict, the accused person got willingly involved in the brawl when he accepted the victim's challenge.

In its judicial review proceedings, the Curia could have been entitled to acquit the accused person on the basis of legitimate defence only if the circumstances underlying the existence of such ground for exemption from criminal responsibility had been completely included in the case's factual background as established by the lower instance courts.

With regard to the above, the Curia rejected the petition for judicial review.

Budapest, the 26th of October 2017

Criminal Department of the Curia of Hungary