

VAJNAI

ORDER OF THE COURT (Fourth Chamber)

6 October 2005 *

In Case C-328/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Fővárosi Bíróság (Hungary), made by decision of 24 June 2004, received at the Court on 28 July 2004, in the criminal proceedings against

Attila Vajnai

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, K. Schiemann (Rapporteur) and E. Juhász, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

after hearing the Advocate General,

* Language of the case: Hungarian.

makes the following

Order

- 1 This reference for a preliminary ruling concerns the interpretation of the principle of non-discrimination as a fundamental principle of Community law.

- 2 The reference was made in the course of criminal proceedings brought against Mr Vajnai for violation of Article 269/B of the Hungarian Criminal Code (Büntető Törvénykönyv) which sanctions the use in public of 'totalitarian symbols'.

Law

- 3 Article 269/B of the Hungarian Criminal Code, entitled 'Use of totalitarian symbols', provides:

'(1) Any person who:

(a) distributes

(b) uses in public

(c) publicly exhibits,

the swastika, the insignia of the SS, the arrow cross, the hammer and sickle, the five-point red star or any other symbol representing one of those signs commits — where the conduct does not amount to a more serious criminal offence — a minor offence, punishable by a fine.

- (2) The acts set out in paragraph 1 are not punishable if performed for the purpose of disseminating knowledge, education, science, art or information on historical or contemporary events.

- (3) The provisions of paragraphs 1 and 2 do not apply to current official State symbols.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 4 The order for reference states that criminal proceedings were brought against Mr Vajnai, Vice-President of the Hungarian Workers' Party, for displaying on his clothing in public a five-point red star, made of cardboard with a diameter of 5 cm, during a demonstration held in Budapest on 21 February 2003. A police officer who was on duty requested him to remove that symbol, which he agreed to do.

- 5 By judgment of 11 March 2004, the Pesti Központi Kerületi Bíróság (Central District Court, Pest) found Mr Vajnai guilty of having used a 'totalitarian symbol' in violation of Article 269/B(1)(b) of the Hungarian Criminal Code. The court decided to impose a one-year suspended sentence and ordered confiscation of the symbol.

6 Mr Vajnai appealed against that judgment to the court which has made the reference for a preliminary ruling.

7 In its order for reference the Fővárosi Bíróság (Metropolitan Court, Budapest) observes that in several Member States, such as the Italian Republic, the symbol of left-wing parties is the red star or the hammer and sickle. It follows that members of Italian left-wing organisations may wear symbols of the labour movement without contravening any prohibition, whereas the Hungarian Criminal Code prohibits the use of those symbols. Therefore, the question arises whether a provision in one Member State prohibiting the use of symbols of the international labour movement on pain of criminal prosecution, whereas the display of those symbols on the territory of another Member State does not give rise to any sanction, is discriminatory.

8 In those circumstances the Fővárosi Bíróság decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Article 269/B, first paragraph, of the Hungarian Criminal Code, which provides that a person who uses or displays in public the symbol consisting of a five-point red star commits — where the conduct does not amount to a more serious criminal offence — a minor offence, compatible with the fundamental Community law principle of non-discrimination? Do Article 6 of the Treaty on European Union, according to which the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, Directive 2000/43/EC, which also refers to fundamental freedoms, or Articles 10, 11 and 12 of the Charter of Fundamental Rights allow a person who wishes to express his political convictions by means of a symbol representing them to do so in any Member State?'

Jurisdiction of the Court

- 9 The Hungarian and Netherlands Governments, together with the Commission, who submitted written observations, express doubts as to whether the Court has jurisdiction to answer the question referred for a preliminary ruling.

- 10 In order to verify whether the Court has jurisdiction it is necessary to consider the subject-matter of the question.

- 11 By its question, the national court asks, essentially, whether the principle of non-discrimination, Article 6 EU, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) or Articles 10, 11 and 12 of the Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000 in Nice (OJ 2000 C 364, p. 1) preclude a national provision, such as Article 269/B of the Hungarian Criminal Code, which imposes sanctions on the use in public of the symbol in question in the main proceedings.

- 12 According to settled case-law, where national provisions fall within the field of application of Community law the Court, on a reference for a preliminary ruling, must give the national court all the guidance as to interpretation necessary to enable it to assess the compatibility of those provisions with the fundamental rights whose observance the Court ensures (Case C-299/95 *Kremzow* [1997] ECR I-2629, paragraph 15).

- 13 By contrast, the Court has no such jurisdiction with regard to national provisions outside the scope of Community law and when the subject-matter of the dispute is not connected in any way with any of the situations contemplated by the treaties (see *Kremzow*, paragraphs 15 and 16).

- 14 It is clear that Mr Vajnai's situation is not connected in any way with any of the situations contemplated by the provisions of the treaties and the Hungarian provisions applied in the main proceedings are outside the scope of Community law.
- 15 In those circumstances, it must be held, on the basis of Article 92(1) of the Rules of Procedure, that the Court clearly has no jurisdiction to answer the question referred by the Fővárosi Bíróság.

Costs

- 16 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby orders:

The Court of Justice of the European Communities clearly has no jurisdiction to answer the question referred by the Fővárosi Bíróság (Hungary) by decision of 24 June 2004.

[Signatures]