

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
Hungary	2019	Hungary / Constitutional Court/IV/1565/2018.	https://hunconcourt.hu/datasheet/?id=DB659534A12560D4C12583300058B33D	Migrant status	Constitutional Court of Hungary	Amnesty International Hungary filed a constitutional complaint against the Stop Soros act, claiming that the law is vague, is not proportional, is against the freedom of speech and the right of association. The Hungarian Government adopted the "Stop Soros" legislative package in 2018. The Criminal Code was amended by a provision on facilitating illegal migration (353/A §), which defines supporting illegal migration as any organisational activity to initiate asylum procedure for anyone who was not persecuted at home or in a country via which they have arrived in Hungary. Such an illegal offence can be punishable by up to 1 year of imprisonment if it is repeated or is done for financial gain.	The Court ruled that Section 353/A § on facilitating illegal migration is not unconstitutional, thus rejected Amnesty International Hungary's constitutional complaint. It, however, established that the provision shall not be extended to altruistic conduct aiming to perform the obligation of helping the vulnerable and the poor.	Regarding the vagueness of the provision, the Court pointed out that there were no adequate grounds to conclude that the specific definitions were uninterpretable. Considering the restriction of freedom of expression, the Court noted that the provision does not impose any restriction on the content of public debates, dissemination of (supportive) ideas on migration. It only prohibits activities that persuade others to commit an unlawful act. The right of association is not prohibited, only those that aim a specific purpose and as this right is not unlimited, it can be restricted. The Court moreover added that the provision shall not be extended to acts that aim to help the vulnerable and poor.	The main issue of the case is vagueness of the law and the uncertainty of the criminal act. Amnesty International Hungary claimed that it is hardly possible for anyone working with asylum-seekers to know whether or not he/she was persecuted or if his/her case is well-founded or not. The Court declared that the law can only sanction those intentional actions when the perpetrator is aware that he/she is engaged in an organisational activity for a person who is not subject to persecution or whose fear is not well-founded. The duty is on the investigating authorities to prove that the perpetrator was aware of that.	"A bűncselekmény elkövetéséhez ... a célzat vonatkozásában azt és csak azt kell az elkövető tudatának átgöngyöztetnie, vagyis arról kell tudnia, hogy olyan személyt üldöztetnek, aki nincs az ún. őt ok valamelyike miatt üldözésnek kitelve ... vagy a közvetlen üldözéstől való féltelme nem megalapozott." "...with regard to the purpose, the offence shall be deemed to have been committed when the perpetrator is conscious of - i.e. knows that - being engaged in the organising activity in the interest of a person who is not subject to persecution due to the so called five causes ... or whose fear of persecution is not well-founded." (AZ ALKOTMÁNYBÍRÓSÁG 3/2019. (III. 7.) AB HATÁROZATA. 2019. 7. szám, pp.318-319)

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