[SE] Supreme Court Rules on Freedom of Speech vs. Incitement to Hatred in Online Forums

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On 7 November 2007, *Högsta Domstolen* (the Swedish Supreme Court) delivered judgment in two cases in which persons were charged with incitement to hatred in relation to activities carried out online. We will elaborate on one of the cases and merely briefly touch upon the other.

The first case concerned a man who administered a Bulletin Board System on a Christian website. Alongside *Brottsbalken* (the Swedish Penal Code – BrB), *Lagen om ansvar för elektroniska anslagstavlor* (the Swedish Act on Responsibility for Electronic Bulletin Boards – BBS Act) was also relevant in this case. According to the BBS Act, the person providing the service of electronic bulletin boards is obliged to remove entries with content apparently violating certain provisions, among others, section 16:8 of the BrB on incitement to hatred.

A person had posted entries, which were demeaning to homosexual people, on the bulletin board in question. The entries were e.g.: “Sinners carry a responsibility of their own. Capital punishment for sodomites makes this responsibility clear” and “the sooner the gay faces his executioner, the fewer his accumulated sins become and the better his prospects of eternity”.

The Supreme Court stated that a conviction in this case would entail a limitation on the freedom of speech, but also states that a conviction is a possible outcome within the framework of section 16:8 of the BrB. The Court went on to explain that in order for a limitation on the freedom of speech to be considered necessary, a pressing social need must have been at hand. For such a limitation it is required that the grounds in the individual case are relevant and sufficient and that the limitation is proportional in relation to the legitimate purposes that motivated it.

The Supreme Court then stated that the contents of messages, e.g. forum entries, is only one of several factors with relevance in establishing whether an action in an individual case can be judged to constitute incitement to hatred and consequently regarded as criminal; the circumstances in each case are relevant. Furthermore, the entries are connected with certain sacred texts from the Old Testament and the Supreme Court did not consider these as constituting hate-speech. It asserted that the entries do not contain false claims regarding facts, but are only demeaning subjective opinions which reflect the author’s views on

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what is best for homosexuals and how legislation ought to be formulated in the matter.

The Supreme Court concluded that even though the posted entries constitute incitement to hatred, this, with regard to the circumstances in question, was not apparent and therefore the defendant could not be convicted.

The second case concerned incitement to hatred in relation to two articles published on the website of *Nationalsocialistisk Front* (the Swedish National Socialist Front – NSF) containing demeaning statements regarding homosexuals and Roma respectively. The defendant was, at the time of publication of these two articles, responsible for such publication under press law.

The Supreme Court concludes that the article containing the statements regarding homosexuals clearly expresses the opinion that homosexuality is to be condemned but that the article does not contain any threats and cannot be considered as hate-speech. The Supreme Court stated that even though the article was available on the website, it still only reached people actively visiting the website, and with regard to the special protection the website enjoys according to the constitution there are not sufficient reasons for a conviction.

Regarding the article containing the statements concerning the Roma, the Supreme Court again found that this article does not contain threats and that it is not to be considered hate-speech. The Supreme Court did state that the quote on which the prosecution was based is entirely uncalled for in an article debating the limitation of immigration, but that it is an uncommented quote and that the formulation clearly shows that it comes from an old text. The Supreme Court concluded that with regard to the circulation and the special protection the website enjoys according to the constitution there are not any sufficient reasons for a conviction.

Two Justices of the Supreme Court cast dissident votes and called for the conviction of the two defendants claiming that the statements in question by far exceeded the boundaries of objective debate and should be considered as being severely demeaning to the homosexual population.

Högsta domstolens dom 2007-11-07 i mål B 2673-06

Judgment of the Supreme Court of 7 November 2007, case B 2673-06

Högsta domstolens dom 2007-11-07 i mål B 2115-06

Judgment of the Supreme Court of 7 November 2007, case B 2115-06

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