



NEWS REPORT

Date: 18 June 2010
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Title: Penal Condemnation of a Mayor by the Court of Appeal of Grenoble for abusively using his right to prevent the acquisition of houses on the ground of origin
Country: France

Context

Issue at stake: Considering the strict interpretation of penal offences, how to qualify an abusive use of the right to prevent a sale in the definition of prohibited discrimination: i.e. does it correspond to a “discriminatory refusal of the benefit of a right”?

Ground of discrimination: racial/ethnic origin

Source: National Court decision, Court of Appeal of Grenoble, 16 June 2010

Field: Housing

Legislative provisions: Articles 225-1, 22562, 472-7 and 432-17 of the Penal Code

Content

Case: Some mayors have used their pre-emption rights (impediment of real estate transactions) in order to prevent persons of foreign origin from acquiring property in their towns. However the Court of cassation has decided that the exercise of this right did not qualify as denial of access to goods and services as provided by article 225-2 CP or the prevention of the benefit of a right provided by Article 432-7 CP.

In a decision of 17 June 2008 (no 07-81666), the Criminal Chamber of the Court of Cassation quashed similar condemnations on the ground that the mayor had no power to provide access to a right to purchase but had exercised a discretionary right of his own and as such could not be held to have interfered with the exercise of a right provided by distinct legal provisions. The Court decided that exercise of a right cannot qualify as the criminal offence of interfering with the exercise of a right.



In the present case, the mayor has systematically prevented real estate transactions of persons of foreign origin over a period 8 years and some of the potential buyers filed penal complaints of discrimination.

In four of the cases, evidence shows that the mayor had no real intention to purchase the flats and that the ground of the pre-emption was vague, with intimidating acts against the vendors followed by offers at a ridiculously low prices, so to prevent the sale to persons holding a surname of foreign origin. In one case, the same building was subjected to three transaction refusals when sold to persons of foreign origin, before being sold to a person of European origin.

Decision of the Court: The benefit of a right as provided by article 432-7 CP can only target someone who can refuse the benefit of a right or someone who has the power to grant access to a right.

A promise to sell amounts to a sale and the transaction is deemed to be perfect as soon as there is consent on the price and the object, before delivery and payment. In all four cases a promise to sell had been executed before a Notary in the perspective of the acquisition of real estate, and therefore beheld the right attached to the sale. Property is a fundamental right protected by the Constitution.

However, every real estate transaction must be declared to the mayor in order to allow the mayor to exercise his right of pre-emption (prevention of the sale) if the transaction concerns a building affected by urban development projects. However this intervention must be justified.

The mayor has prevented buyers from acceding to their right of property resulting from the sale by his abusive use of his right to prevent the sale.

Judgment available in pdf only