



NEWS REPORT

Date:	19 November 2014
Expert:	Romanița Iordache
Title:	High Court of Cassation and Justice strikes NCCD decision on genuine and determining occupational requirements
Country:	Romania
<u>Context</u>	
Issue at stake:	Genuine and determining occupational requirements regarding linguistic abilities of civil servants in locality with a large Hungarian minority
Ground of discrimination:	Ethnic origin
Source:	National court decision, High Court of Cassation and Justice, Decision 1438 in file 3683/2/2012 hearings from 20 March 2014
Field:	Employment
Legislative provisions:	Art.9 of the GO 137/2000

Content

Case development: The plaintiff complained in 2012 to the national equality body NCCD against a condition published in the job advertisement issued by the Mayor of Valea Crișului village and the National Agency for Public Servants requiring the candidates to have a good knowledge of Hungarian. The plaintiff considered that this condition amounts to discrimination in favour of ethnic Hungarians. In its decision No 56 of 22 February 2012, the NCCD assessed the particular conditions in the village (more than 20% ethnic Hungarians) and the specificity of the position (secretary of the Council, meaning the person who is in direct contact with the population on administrative and legal issues) and decided that the linguistic requirement was lawful.

The NCCD decision was challenged before the Court of Appeal București which decided in its decision No 4847 from 10 September 2012 to maintain the NCCD decision.

Decision of the Court: The High Court of Cassation and Justice had to answer the question if the requirement of knowledge of Hungarian for the position of secretary in the local administration in a village where there are more than 20% Hungarians amounts to a determining occupational requirement as provided by Article 9 of the GO 137/2000 or amounts to discrimination in relation to Romanian speaking population as argued by the plaintiff.

The High Court acknowledged that according to Art. 76 of Law 215/2001 on local public administration, Art. 108 of Law 188/1999 on the statute of public servants and

Art. 15 of the Governmental Decision 1206/2001 on Norms for enforcing the provisions regarding the right of citizens belonging to a minority to use their mother tongue in relation with local public administration, the requirement to know Hungarian can be justified for certain public positions in local administration. The High Court stated however that “knowledge of Hungarian, as an occupational requirement can be objectively justified only when the specificity of the task of work with the public, carried on in a public institution active in a territorial-administrative unit in which the Hungarian minority amounts to more than 20% of the population, a specificity which makes it mandatory to have skills in using Hungarian in direct conversations with the Hungarian-speaking citizens.” The High Court considered however that the position of council secretary does not entail direct work with the citizens in order to be able to include it on the list of public functions entailing work with the public. In doing so, the High Court noted that the secretary has a managerial position and even when there are specific legal attributions which provide for the direct work of the secretary with the general public, these attributions can be delegated, as the secretary coordinates but does not have to directly exercise this mandate. In order to support its argument that even if the secretary interacts with the Hungarian speaking population, the requirement of knowing Hungarian cannot be objectively justified as occupational requirement, the High Court also invoked Art. 13 of the Constitution providing that Romanian is the official language of the state.

The High Court of Cassation and Justice accepted the appeal and annulled the NCCD decision 56 from 22 February 2012, obliging the NCCD to pay RON 1,000 as moral damages and RON 5,000 as legal fees. In awarding moral damages, the High Court noted that the NCCD decision by not recognizing a case of discrimination as alleged by the plaintiff affected “the honour, reputation, professional dignity and the right to access to a public position of leadership in a village in which the Hungarian minority was more than 20%.”

Internet link source and additional information: No internet link available.
Decision available upon request.