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NEWS REPORT

Country:	Bulgaria
Title:	Supreme Court Ruling Jurisdiction Discrimination Lawsuits Against Public Bodies
Date:	21 August 2015
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<u>Context</u>	
Issue at stake:	Competent court; applicable procedure
Ground of discrimination:	All grounds
Source:	Judicial decision
Field:	All fields; discrimination by public authorities
Applicable law:	Protection Against Discrimination Act, Articles 71 (1) and 74 (2)

Content

Case development: On 19 May 2015, the Supreme Court of Cassation (SCC) and the Supreme Administrative Court (SAC)¹ jointly made an interpretative ruling concerning, inter alia, the issue of jurisdiction in court discrimination cases brought against public authorities. For years, the case law had been contradictory on this issue, with some of the civil courts deciding that the administrative courts were competent and vice versa. Under the Protection Against Discrimination Act (PADA),² the civil courts have general competence to hear all cases of alleged discrimination, regardless of who the respondent is, public or private (Article 71 (1)). The administrative courts only have jurisdiction to hear claims for damages against public respondents when the claimant first resorted to the equality body and obtained a favourable ruling from it (Article 74 (2)). In such cases, the applicable procedure is the State and Municipal Liability for Damages Act (SMLDA)³. However, under general administrative law (Administrative Procedure Code,⁴ Article 128 (1.5)), the administrative courts are the ones competent to hear all compensation claims against public bodies. As a result and because of institutional reasons (reduction of the case load), the civil courts in many cases refused to hear antidiscrimination compensation claims when there had been no equality body proceedings first, and referred those claims to the administrative courts. The administrative courts, based on PADA, referred such cases to the civil courts. To resolve this, and other, unrelated to PADA, issues of contradiction in the case law, in 2014, the two Supreme Courts initiated ex officio an interpretative case.

Decision of the Court: Interpretative ruling in case 2/20145 The Courts held that the administrative courts were competent to hear all discrimination compensation claims

¹ Върховен касационен съд; Върховен административен съд.

² Закон за защита от дискриминация.

³ Закон за отговорността на държавата и общините за вреди.

⁴ Административно-процесуален кодекс.

⁵ Тълкувателно постановление 2/2014. Supreme Court of Cassation and Supreme Administrative Court, Interpretative ruling of 19 May 2015 in interpretative case 2/2014.

against public bodies. In a dissenting opinion, ten justices (out of 103) held that the administrative courts were only competent to hear discrimination compensation claims against public bodies when the claimant first resorted to the equality body and obtained a finding of discrimination from it; in all other cases, the civil courts were competent.

Key points of analysis: By implication, the civil courts will be competent in discrimination cases against public authorities where no compensation is sought, as well as in all discrimination cases against private parties.

Internet link source:

http://www.vks.bg/Dela/2014_02_VKS_VAS_postanovlenie.pdf (in Bulgarian) Last accessed 20 August 2015