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NEWS REPORT

Country:	Czech Republic
Title:	The Constitutional Court decision – direct discrimination of Roma persons in the area of accommodation services
Date:	20 October 2015
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<u>Context</u>	
Issue at stake:	Direct discrimination in the services provided to Roma clients
Ground of discrimination:	Race/ethnic origin
Source:	The Constitutional Court
Field:	Services
Applicable law:	Law on Civil Procedure, the Constitutional Court judgement No. III. ÚS 1213/13 of 22 September 2015

Content

Case¹: The claimants defended they had been discriminated based on their Roma origin, because of the fact, that a hotel had allegedly rejected accommodating them due to their ethnic origin. Even though they had reserved a room over the phone in advance, as soon as they arrived to the hotel, a hotel manager informed them that there were no free rooms available and later was explained that all the remaining places have been already reserved for a commercial event by certain company.

The claimants filed an action for protection of personal rights and demanded that the operator of the hotel would apologize and pay damages for discrimination for 25 thousand CZK (EUR 922). During the proceedings some questionable facts emerged - the reservation of all the remaining rooms was made by associated company and it happened only few days before presumed accommodation, but finally no hotel rooms were utilized by the company and nobody informed the hotel about cancellation of alleged reservation.

The action was rejected by the Regional Court and the High Court in Prague.² The courts applied the provision³ prescribing that the burden of proof in discrimination cases is shifted to the defendant (operator of the hotel). According to the High Court, the claimants presented enough evidence that direct discrimination could have happened, so it was up to the defendant to disprove the presumption of discrimination. The High Court adjudicated that the operator of the hotel had proved an equal treatment towards guests of all ethnic, race and nationality, thus the defendant had born the burden of proof.

¹ The Constitutional Court judgement no. III. ÚS 1213/13 of 22 September 2015.

² Firstly the decision of the Regional Court was rescinded by the High Court because of a procedural error. Then the Regional Court rejected the action again, which was confirmed by the High Court.

³ According to the Section 133a of Law No. 99/1963 Coll, on Civil procedure.

Decision of the Court: The Constitutional Court did not agree with the judgments of both courts and rescinded the decision of the High Court in Prague, especially for the reason that the evidences were not evaluated sufficiently.

The Constitutional Court found out that the operator of the hotel might not have born the burden of proof, mainly because it was not certain, that alleged reservation of almost all the hotel rooms, which had been cancelled for unspecified reason, had not been only feigned.⁴

According to the Constitutional Court, the operator of a hotel should have suggested an evidence to disprove its discriminatory behaviour. The Constitutional Court criticized that despite of several doubts in the case, the High court had not accepted proofs suggested by claimants and had stated that there had been no discrimination. Moreover the Constitutional Court reproached the High Court for wrongly concluding that alleged equal treatment of the operator of a hotel was able to disprove presumption of discrimination.

For this reason the Constitutional Court decided that court rulings of both courts had led to the violation of the claimants' rights for judicial protection from Article 36(1) of the Czech Charter of fundamental rights and freedoms and Article 6(1) of the European Convention of Human Rights.

Within the subsequent proceedings the High Court is obliged to evaluate the evidence according to the legal opinion of the Constitutional Court.

Internet link source:

[http://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/III. US_1213_13_an.pdf](http://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezky/III._US_1213_13_an.pdf), last accessed on 15 October 2015.

⁴ The lower courts overlooked the fact that reservation was made by associated company, only few days before presumed accommodation and it was cancelled very shortly before the presumed accommodation for unknown reasons.