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NEWS REPORT

Country:	Poland
Title:	First case of discrimination by association on the ground of sexual orientation in Poland
Date:	11 January 2016
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<u>Context</u>	
Issue at stake:	Discrimination by association. Security guard fired for taking part in the equality parade in his private time
Ground of discrimination:	Sexual orientation
Source:	National court decision
Field:	Employment – in the form of civil contract
Applicable law:	Act of 3rd December, 2010 on the implementation of some regulations of European Union regarding equal treatment (ETA); Art. 13

Content

XY worked as a shop security guard employed by the Company Z. XY took part in the equality parade, fragments of which were shown on television. After the broadcast XY received a text message from his employer (from the security chief of the store where he worked), in which he was informed that he was fired. The dismissal was confirmed via a telephone conversation with another representative of the company, according to claimant based on the argument that a person who participates in such events and is associated with groups organizing them cannot be a bodyguard because it endangers the company's image. The claimant demanded PLN 5,000 (EUR 1,250) in damages (50% as a compensation, 50% as immaterial damages, compensation for suffered harm).

Decision of the Court:

The court of the first instance found discrimination by association and awarded the claimant PLN 2500 (ca. EUR 625) only in material damages and refused to grant immaterial damages. The claimant appealed the ruling arguing that limiting the compensation only to material damages is in contradiction with the duties of the EU Member States. Based in Article 4.3 of the EU Treaty¹, member states have the duty to

¹ Article 4.3: Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

interpret national law in line with the objective and substance of European law (that is Article 13 of the ETA read together with Article 17 of the Directive 2000/78/EC). The claimant argued that due to this mistaken interpretation the national court did not impose a sanction that could be understood as effective, dissuasive and proportionate.

The second instance court dismissed the appeals of both parties. The court stressed that ETA does not differentiate in Article 13 from material and immaterial damages and by doing this, the first instance court made a mistake. But at the same, the second instance court decided that the amount of the damages awarded was adequate. The ruling is final.

1st instance

Name of the court: The District Court Warszawa Śródmieście

Date of decision: 9 July 2014.

Name of the parties: XY and Polish Association for Antidiscrimination Law (PTPA) on behalf of XY v. Company Z

Reference number: sygn. VI C 402/13

2nd instance

Name of the court: The Regional Court in Warsaw, V Civil-Appellate Division

Date of decision: 18 November 2015

Name of the parties: XY and Polish Association for Antidiscrimination Law (PTPA) on behalf of XY v. Company Z

Reference number: sygn. V Ca 3611/14

Key points of analysis:

This is probably the first ruling in Poland that takes into account discrimination by association.

Internet link source:

The rulings are not available on the Internet and were not published.