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NEWS REPORT

Country:	Romania
Title:	High Court of Cassation and Justice issues decision on the interpretation and unitary application of Article 27 of the Anti-discrimination Law
Date:	18 October 2016
Expert:	Iordache, Romanița
<u>Context</u>	
Issue at stake:	Establishing level of jurisdiction/court competence for discrimination cases filed with the courts
Ground of discrimination:	All grounds
Source:	National court decision – Interpretation decision no. 10 from 23 May 2016 of the High Court of Cassation and Justice – appeal on points of law
Field:	All fields - employment, social protection, social advantages, access to goods and services, education, housing, other
Applicable law:	Article 27 of the Governmental Ordinance 137/2000, Article 514 Civil Procedure Code

Content

Case development: The High Court of Cassation and Justice issued an interpretation decision in an appeal on legal issues given the diverging decisions regarding the competence of the courts in cases filed under Article 27 of the Anti-discrimination Law, particularly on the cases on material damages. Article 27 of the Governmental Ordinance 137/200 allows the person who considers himself/herself to be discriminated to file a civil complaint seeking damages, re-establishing *status quo antes* or annulment of the situation triggered by the discrimination based on common law provisions. Such a request is exempted from paying court taxes and it is not conditioned by a prior complaint to the national equality body.

This provision of the Anti-discrimination Law has been interpreted in three different ways. Some courts decided that these are civil law (general torts) matters and the material competence belonged to the first instance courts (*judecătoria*) while other courts found that the competent courts were the tribunals (*tribunale*). A third category of courts identified in the decision of the High Court of Cassation and Justice found that by “common law provisions” it was not meant “civil courts” but the level and type of jurisdiction triggered by the specificity of the contract – labour or administrative courts for cases of discrimination in employment, administrative courts for cases of discrimination triggered by administrative acts. In such cases, the competent court was either the specialised section of the tribunals or of the courts of appeal.

Decision of the Court: The High Court of Cassation and Justice in its interpretation decision no. 10 from 2016, an appeal on issues of law regarding the material competence

for court actions on reparation of damages sought by victims of discrimination, decided that the competent court for cases seeking damages or re-establishing status quo antes or annulment of the situation triggered by the discrimination is the court of first instance or the tribunal as civil courts – depending on the object and the value of the litigation based on Articles 94, 95 and 99 of the Civil Procedure Code. Exceptionally, in cases of legal relations regulated by special legislation, special jurisdictions as provided by the special legislation will be competent.

Key points of analysis: The court distinguished between the different types of liability provided for in the Anti-Discrimination Law (civil, misdemeanours and criminal) and clarified the jurisdictional issues in relation to civil liability. The High Court stated that Article 27 provides for a right to access to justice and does not establish a clear jurisdiction norm. The article includes all conditions for filing a civil action in a case of discrimination (court fees, burden of proof, types of evidence, statutory limitations, remedies available). The Court indicates that as a general rule, courts of first instance (*judecătorie*) are competent as civil courts to deal with such complaints and that tribunals (*tribunal*) might be competent based on the Civil Procedure Code provisions when the amount in litigation or the object allow. However, when the discrimination takes place in an area regulated by special legislation, such as labour, social benefits, administrative or competition law, the jurisdictional provisions in these special norms should be applied.

Internet link source: Decision available at:

<http://lege5.ro/en/Gratuit/gezdgmrygeyq/decizia-nr-10-2016-privind-examinarea-recursului-in-interesul-legii-formulat-de-colegiul-de-conducere-al-curtii-de-apel-brasov-cu-privire-la-interpretarea-si-aplicarea-unitara-a-dispozitiilor-art-27-a>.