



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Bulgaria
Title:	Supreme Court confirms media company liability for website users' hate comments
Date:	10 January 2017
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<u>Context</u>	
Issue at stake:	Online hate speech
Ground of discrimination:	Racial or ethnic origin (Roma ethnicity)
Source:	national court decision
Field:	Access to goods and services (information)/ All fields
Applicable law:	Protection Against Discrimination Act (PADA)

Content

Case development: The Supreme Administrative Court (SAC) ruled that a national TV broadcaster company was liable for discrimination on account of having failed to moderate anti-Roma hate comments by anonymous users on its website. This ruling confirmed a ruling by the lower-instance court that in turn confirmed a ruling by the equality body. The lower court – the Sofia City Administrative Court (SCAC), held that by omitting to moderate anti-Roma comments under a news piece on its website, the respondent company had committed discrimination. SCAC ruled that the impugned comments constituted harassment under the Protection Against Discrimination Act (PADA). SCAC reasoned that the broadcaster company was responsible for their content because it acquired rights over them as soon as they were published on its site. Moreover, the company's own General Terms provided for a duty for the company to erase or edit user comments containing ethnic discrimination or insults to minorities. However, SCAC repealed the equality body's injunction that the company publish the body's ruling against it on its TV site. SCAC found that there was no basis in PADA for such an injunction. SCAC also repealed the financial sanction imposed by the equality body (BGN 2500, the equivalent of EUR 1250), reasoning that this sanction was not properly based on PADA: under the law, legal persons could only be sanctioned where they failed to comply with a specific duty deriving from PADA, and the equality body had not specified such a duty in its ruling. Instead, the equality body ruled that the sanction was based on the company's having committed discrimination. SCAC, however, held that under PADA, only natural persons could be fined for committing discrimination, and not legal persons. The latter is a controversial holding, but not a precedent. It follows trends set by SAC in 2015. SCAC ruling is not a binding precedent for other judges. The case was brought before the equality body by a Roma NGO using PADA's *actio popularis* provision.

Decision of the Court: SAC agreed with SCAC.¹ In addition, SAC found that the impugned comments contained incitement to violence against the Roma community, creating a hostile, degrading and offensive environment. The Court expressly held that it

¹ Decision No 13542 of 12.12.2016 in case No 10756/ 2015.

was irrelevant whether the company aimed at such a result by publishing the impugned comments. Its defence in that sense was groundless as intent was irrelevant insofar as a result was at hand. SAC invoked the European Court of Human Rights' Grand Chamber judgment in the case of *Delfi AS v. Estonia* to the effect that the media are liable for publications in their news forums that insult and incite to hatred. As an end result, however, no sanction was applied.

Key points of analysis: Overall, the rulings in this case are positive precedents adequately responding to an endemic problem of radical hate speech in news forums. Minority users of such sites are subjected to high levels of verbal aggression, and media companies do next to nothing to prevent or remedy that. Rulings such as the ones described above will likely promote better practices in the industry. It is a deficit of the courts' rulings that no sanction was applied. SCAC's ruling that legal persons could not be fined for acts of discrimination is problematic.

Internet link source:

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/e3288bd03c9de31cc225808400393d56?OpenDocument> (in BG).