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NEWS REPORT

Country:	Slovakia
Title:	Supreme Court: On responsibility for the discriminatory treatment in case of discrimination in access to services
Date:	23 January 2017
Expert:	Vanda Durbakova
<u>Context</u>	
Issue at stake:	Responsibility for discrimination in access to services
Ground of discrimination:	Race/ethnic origin
Source:	National court decision, Supreme Court of the Slovak republic from 8 December 2016 delivered on 28 December 2016, n. 3 Cdo 405/2015 - 773
Field:	Access to services
Applicable law:	Act no. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Antidiscrimination Act), §§ 9 and 11 para 1.

Content

Case: I.H. against 1. XY Mobile operator company and 2. XZ Mobile company's service provider from 8 December 2016, no. 3 Cdo 405/2015 – 773 (delivered on 28 December 2016).

Facts of the case: In 2005 Mr. I.H. claimed he was discriminated against in access to services on the ground of his Roma ethnic origin. When trying to buy a phone service for fixed tariff from a mobile operator company he was requested to provide confirmation that he was employed while non-Roma customers in a comparable situation were not requested to do so. The evidence in this case were gathered via the method of a situational testing experiment in cooperation with the NGO Centre for Civil and Human Rights.

Decision of the Court: Mr. I.H. filed a lawsuit with the District Court in Spišská Nová Ves against the Mobile operator company and also the company which provided the mobile company's services in the town Spišská Nová Ves at the relevant time under an agency contract (*"zmluva o obchodnom zastúpení"*). The claimant requested that the court rule that there had been a violation of the equal treatment principle in his case, order the defendant to send him an apology and pay compensation for non-pecuniary damage for discriminatory treatment in the amount of 3 319,39 Eur.

The District Court in Spišská Nová Ves ruled in the case by its judgment from 17 May 2012 no. 5 C 226/2005 – 544 and found there had been discrimination on the ground of the claimant's Roma ethnic origin and ordered the defendants to provide the claimant with an apology for the discrimination. The court dismissed the claimant's claim for non-pecuniary damage. The Regional Court in Košice decided on appeals of both parties - the defendants and claimant and by its judgment from 18 September 2013 n. 5 Co 197/2012

changed the first instance court decision by dismissing the claimant's claim as such. The regional court concluded that neither defendant is responsible for the alleged discriminatory treatment. According to the court, an employee of the service provider was responsible for the discriminatory treatment, but this service provider no longer has a contract with the mobile operator and its successor cannot be found responsible as the right to protection from discrimination is a personal right (similarly to the right to be free from interference to one's personal dignity) which cannot be transferred to the company's successor although it succeeds to all its rights and duties (universal succession). As for the mobile operator, the regional court did not find its responsibility as it did not have direct contact with the claimant.

The Supreme Court in a reported decision from 8 December 2016 dismissed the claimant's extraordinary measure – review ("dovolanie"). The Supreme Court had the same legal opinion as the regional court as for the responsibility for discriminatory treatment. It similarly concluded neither defendant could not be found responsible for discriminatory treatment of the claimant. The Supreme Court added to the regional court's reasoning the fact, that a violation of the principle of equal treatment has a personal character and the employee of the company which provides services under a contract with the mobile operator has an obligation to refuse to act in accordance with possible discriminatory instructions of the mobile operator, which is why the mobile operator cannot be found responsible for discrimination. The Supreme Court also concluded that it does not agree with the legal opinion set by the Regional Court in Presov and its final judgment from 25.08.2009, n. 11 Co 90/2008 in another practically similar case when this court concluded to the responsibility of a mobile operator for possible discriminatory treatment.

The claimant has a right to submit a complaint to the Slovak Constitutional Court which has a right to quash the Supreme Court's decision.

Key points of analysis: The Court established that responsibility for discriminatory treatment is solely personal, which is why it cannot be transferred to other legal entities although there is universal succession to the rights and duties. The decision has serious procedural flaws as for interpretation of the anti-discrimination legislation and as such is contrary to the Antidiscrimination Act and the Council Directive 2000/43/EC.

Internet link source: The full reported court decision is available in Slovak at: http://www.supcourt.gov.sk/data/att/59378_subor.pdf.