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NEWS REPORT

Country:	Slovakia
Title:	Regional court dismissed the appeal of Roma women claiming direct discrimination, harassment and victimisation in employment
Date:	20 February 2017
Expert:	Vanda Durbakova
<u>Context</u>	
Issue at stake:	Direct discrimination, harassment and victimisation in employment
Ground of discrimination:	Race/ethnic origin
Source:	National court decision, Regional court in Košice from 13 December 2016 delivered on 10 February 2017, n. 2Co/657/2015 - 379
Field:	Employment
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), § 2 para 1; §§ 2a para 1 and 4,8; § 6 para 1, 2 b); §§ 9 para 1-3, §§ 11 para 1-2, Act no. 311/2001 Call Labour Code as amended §§ 13 para 1-3, 6

Content

Case: M.V. against Municipal housing company of Košice from 13 December 2016 delivered on 10 February 2017, n. 2Co/657/2015 - 379

Facts of the case: Ms. M.V. (the claimant) was employed in the administration of the Municipal housing company. She claimed to be discriminated against in her workplace on the ground of her Roma ethnic origin in March 2009 when - unlike non-Roma employees in comparable working positions - she was transferred to an inconvenient office room placed in the basement, which caused her health problems. Later in 2010 her workplace was transferred to the segregated Roma ghetto where she was again placed in an inconvenient office room negatively impacting her health. She also claimed the employer was not giving her any bonus to her salary and was harassing her, and she pointed out that direct discrimination and harassment against her also resulted from victimisation after she repeatedly complained to the employer about how she was treated.

The claimant filed a lawsuit with the District court in Košice on 23 March 2012 requesting the court to order the respondent to refrain from discrimination, send a written apology, advertise the written apology in a local newspaper and pay compensation for non-pecuniary damage for discrimination in the amount of 10 000 Eur. The District court dismissed the lawsuit by its judgment n. 20C68/2012-350 from 08 September 2015. The claimant appealed to the Regional court arguing the illegality of the first instance court judgment.

Decision of the Court: The Regional court on 13 December 2016 upheld the first instance court judgment. It concluded that the respondent met its burden of proof and it was established by evidence that the respondent did not violate the equal treatment principle in relation to the claimant. The Regional court rejected the argument in the claimant's appeal regarding the wrong comparator used by the first instance court when assessing the alleged direct discrimination (non-Roma, but in a different working position in the company). It also concluded that it was not proved that the health problems of the claimant resulted from the fact that she was transferred to the other office rooms and that less favorable working conditions in these rooms were irrelevant for assessing the alleged discrimination.

As to the alleged harassment, the claimant in her appeal requested the Regional court to interrupt the proceeding and make a referral to the CJEU in Luxembourg for a preliminary ruling because the first instance court dismissed the lawsuit on this point particularly by reasoning that there is no comparator enabling to establish if the claimant was harassed or not. The claimant found the identification of a comparator when assessing discrimination in the form of harassment clearly impossible and legally groundless as the court should essentially consider the subjective perception of the concrete person who may feel harassed, the individual impacts on the given person and the relevant evidence in this regard. The Regional court rejected the request for a referral to the CJEU reasoning that it is not necessary to resolve the issue of the requirement to identify a comparator when assessing harassment, because the evidence provided in this case by the respondent sufficiently disproved the alleged harassment.

As to the alleged victimisation, according to the Regional court the respondent met its burden of proof and provided sufficient evidence to disprove discrimination in this form. In particular, the court accepted the respondent's explanation that the claimant was not given incentive pays, because of her long sick leave and thus limited working performance, not as a result of alleged victimization.

The claimant has a right to submit a complaint to the Slovak Constitutional Court which has a right to overturn the Regional court's decision.

Key points of analysis: The Regional court dismissed the appeal of a Roma woman claiming direct discrimination, harassment and victimisation in employment, reasoning that the respondent met its burden of proof in relation to all alleged forms of discrimination. The decision has procedural and substantive flaws particularly as for disregarding some substantial evidence and arguments presented by the claimant and the wrong identification of comparator in relation to the alleged direct discrimination. The court dismissed also the request for a referral to the CJEU regarding the need to identify a comparator when assessing discrimination in the form of harassment. As such it can be considered contrary to the Antidiscrimination Act and the Council Directive 2000/43/EC.

Internet link source: The decision has not yet been published. The original is available in a file of the national expert.