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FLASH REPORT

Country:	Slovakia
Title:	Slovak Constitutional Court: On responsibility for discriminatory treatment in case of discrimination in access to services
Date:	11 February 2019
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Update of news report:	Slovakia - Supreme Court: On responsibility for the discriminatory treatment in case of discrimination in access to services (PDF 141 kB)
<u>Context</u>	
Issue at stake:	Responsibility for Discrimination in access to services
Grounds of discrimination:	Racial or ethnic origin
Field of application:	Goods and services
Source:	National court decision
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: Decision of the Slovak Constitutional Court in the case of I.H. from 15 November 2018, no. IV ÚS 573/2018 - 13 (delivered on 28 January 2019).

Facts of the case: In 2017 Mr. I.H. filed a constitutional complaint against the decisions of the general courts in his case of racial discrimination – the refusal by a mobile operator company to provide him a phone service for a fixed tariff. In his constitutional complaint he claimed that the general courts¹ violated his right to a fair trial guaranteed by the Slovak Constitution. Among others he argued that his right to a fair trial was violated by the decisions of the lower courts which dismissed his claim for discriminatory treatment. According to the general courts, due to the particular circumstances of the case neither defendant was responsible for the alleged discriminatory treatment. In this regard the general courts concluded that, an employee of the service provider was responsible for the discriminatory treatment, but this service provider no longer had 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 courts did not find its responsibility as it did not have direct contact with the claimant.

¹ Judgment of the Regional Court in Kosice from 18 September 2013 n. 5 Co 197/2012 and Decision of the Supreme Court of the Slovak republic from 8 December 2016, no. 3 Cdo 405/2015 – 773.

Decision of the Court: On 15 November 2018, the Constitutional Court dismissed the claimant's constitutional complaint. The Constitutional Court did not find the legal opinion and reasoning of the lower courts on lack of responsibility of defendants for discriminatory treatment to be unconstitutional – in violation of the claimant's right to a fair trial. The Constitutional Court similarly to the general courts concluded, that a violation of the principle of equal treatment has a personal character and cannot be transferred by contract to the legal entity's successor. That is why according to the Constitutional Court in cases of discrimination the only subject which can be responsible for discriminatory treatment is the one who discriminates.

Key points of analysis: The Constitutional Court did not find unconstitutional the legal opinion of the Slovak general courts 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.

Internet link source: The full reported court decision is available in Slovak at:
<https://www.ustavnysud.sk/vyhľadavanie-rozhodnuti#!DecisionsSearchResultView>.