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NEWS REPORT

Date: 17 February
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Title: Supreme Court Denies that Secondary Legislation Per Se Amounts to Discrimination and that the Equality Body Can Hold Administrative Bodies Accountable for Discrimination
Country: Bulgaria
Context
Issue at stake: Equal access to employer-provided rented accommodation
Ground of discrimination: Age
Source: National court decision: Decision No 15637 of 19.12.2014 in administrative case No 1925/2014 of the Supreme Administrative Court
Field: Housing / Employment-related benefits

Content

Case: An army retiree younger than 65 years of age who had been renting a Ministry of Defence flat since 1987 complained to the equality body (EB) about secondary legislation adopted in 2010 by the Minister of Defence that introduced a minimum age of 65 as a condition for former army employees like himself to rent such accommodation. Apparently, regardless of the new legislation no measures were taken against the complainant. However, he requested that the EB order the ministry to repeal the impugned provisions. The EB ruled that the ministry was liable for indirect (*sic*) discrimination on grounds of age for having adopted the impugned legislation. The EB imposed a financial sanction on the ministry (BGN 1000 (EUR 500)), and an injunction for it to repeal the impugned provisions. That decision was confirmed on appeal by the first-instance court. The ministry appealed the decision of the first-instance court before the Supreme Administrative Court (SAC).

Decision of the Court: The SAC held that the EB only had powers to find a “concrete de facto instance of unequal treatment [...] and not a hypothetical, contingent, potential possibility of future less favourable treatment ensuing from a secondary legislative provision.” According to the SAC, discrimination was an objective fact that needed to be established in each particular case; only a concrete act could be an infringement of equality law. It was not enough for a discriminatory norm to be adopted, but there had to be at hand concrete discriminatory treatment of a complainant ensuing from the implementation of such a norm, and that was not the case here, the Court held.

Furthermore, only a natural person could in principle perpetrate an infringement of equality law; a legal person could only do so in cases expressly stated under the law.¹ Administrative authorities, single-

¹ In reality, the Protection Against Discrimination Act expressly states that the ban on discrimination is *erga omnes* (art. 6 (1)). Further, the law features a number of specific duties for employers and service providers (Titles I, III) who in reality are usually

person or collective, could not perpetrate such an infringement. The SAC held that where the EB found less favourable treatment ensuing from the implementation of a discriminatory legal provision, it only had two options: 1. to appeal against the administrative act containing such discriminatory provision, or to bring a claim before the civil courts against the body; or 2. to make a non-binding proposal to that body to repeal its own discriminatory act. The SAC held that the EB could not issue injunctions in cases of discriminatory administrative acts. The procedure for a natural person to defend her- / himself against discriminatory regulations was not the one before the EB, but instead the general procedure for the repeal of administrative acts under the Code of Administrative Procedure. (Furthermore, the Court found, the Minister himself was the administrative authority who issued the impugned acts, whereas the ministry as such is not an administrative authority; there were procedural irregularities in terms of respondent standing, as well as others.)

Internet link source and additional information:

<http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/e8608f76443ddaedc2257db2003af705?OpenDocument> (in BG)

legal persons. Furthermore, the law expressly provides that legal persons, as well as natural persons, are subject to administrative sanctions for infringements of the law (art. 80 (2)).