

Slovenia, Constitutional Court, Judgement of 13 November 2008

Deciding bodies and decisions

Constitutional Court (Ustavno sodišče RS), U-I-146/07, 13.11.2008

Area of law

Non-discrimination

Subject matter

Non-discrimination - disability - civil procedure - obligation of the court to ensure appropriate access to the file for persons with eyesight empairement

Summary Facts Of The Case

Petitioner had in a procedure before the civil court demanded a copy of the application and other documents in Braille and that the costs are covered by other party. The Court rejected his request on the ground that the Civil Procedure Act is no basis on which the court should provide a blind person the copies of the pleadings in the Braille alphabet. Petitioner then forwarded the initiative for assessing the constitutionality of this law to the Constitutional Court and claimed that blind people who litigate before courts are indirectly discriminated against.

Constitutional Court established that the legislature's failure to ensure blind persons the necessary and appropriate accommodations that would enable them to exercise their right to fair treatment in civil proceedings on an equal basis with others entails is an interference with their right to non-discriminatory treatment (the first paragraph of Article 14 of the Constitution). Then the court reviewed if such interference is constitutionally admissible. An interference with human rights is constitutionally admissible if it is based on a constitutionally admissible, i.e. objectively substantiated, aim (the third paragraph of Article 15 of the Constitution) and if it is in accordance with the general principle of proportionality as one of the principles of a state governed by the rule of law (Article 2 of the Constitution).

The Constitutional Court established that there exists a legal gap in the regulation of civil proceedings that cannot be filled and that its substance is deficient to such an extent that filling it in concrete cases would be arbitrary as there exist no predictable and legally reliable criteria that would indicate how to proceed in individual cases.

From the principle of non-discrimination (as a fundamental element of the principle of equality) determined by the first paragraph of Article 14 of the Constitution there follows not only the requirement of formal equal treatment, but of *de facto* equal treatment as well. Therefore, not only direct but also indirect discrimination is constitutionally inadmissible. Indirect discrimination exists if

individuals or social groups are formally ensured equal rights or an equal scope of rights, however, individuals who are in a *de facto* less favourable position are disadvantaged with regard to the exercise of their rights or the fulfilment of their obligations. In order to ensure the equal treatment of such disadvantaged social groups or individuals (who are at a particular disadvantage due to a personal circumstance as determined by the first paragraph of Article 14 of the Constitution), in certain instances the prohibition of discrimination can also entail the requirement to make necessary and appropriate accommodations in order to prevent these groups or individuals from being placed in a disadvantaged position. Positive measures adopted for this purpose do not entail an interference with the principle of equality but are intended for its implementation. Therefore, the omission or denial of necessary and appropriate accommodations in such instances entails an interference with the right to equal, i.e. non-discriminatory, treatment as determined by the first paragraph of Article 14 of the Constitution, which is constitutionally admissible only if it passes the strict test of proportionality. Despite the fact that blind and partially sighted persons are an objectively disadvantaged social group, the existing regulation of civil procedure does not ensure the necessary and appropriate accommodations that would enable them to exercise their right to fair treatment in proceedings (Article 22 of the Constitution) on an equal basis with others. Such omission of the legislature entails a constitutionally inadmissible interference with their right to non-discriminatory

Relation to the scope of the Charter

Notes on the remedies dimension

The National Assembly must remedy the established inconsistency within a period of one year from the publication of this Decision in the Official Gazette of the Republic of Slovenia.

Until the established inconsistency is remedied, courts in civil proceedings must provide blind and partially sighted persons, upon their request, access to court documents and written applications of parties and other participants in proceedings in a form accessible to them. The costs required for such are to be paid from the funds of the court.

Diagram



Case timeline representation

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Sources - EU and national law

Charter, Article 21 - Non-discrimination

Charter, Article 26 - Integration of persons with disabilities

Comments

Role of the Charter

The Court cited Charter of Fundamental Rights of the European Union which emphasises that persons with disabilities must be ensured not only formal (legal) equality, but also *de facto* (substantive) equality, which is intended to ensure equal opportunities and equality of results in order to eliminate *de facto* inequalities. The first paragraph of Article 21 of the Charter namely not only emphasises that discrimination based on disability is prohibited, but Article 26 explicitly recognises and guarantees persons with disabilities the right to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community.
