

Serbia

Decisions on anti-discrimination cases

This document outlines decisions on anti-discrimination cases in Serbia.

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Serbia Anti-Discrimination Case Summary

Krsmanovaca Case

1) Initial Details

- This case represents an important interpretation by the Supreme Court of Serbia of anti-discrimination provisions of the international conventions ratified by the Republic of Serbia, which were directly applied by the court in the absence of national law provisions. This decision has important social consequences since it publicly recognizes and condemns racial discrimination against the Roma population in Serbia. The Krsmanovaca Case sets important legal precedent being the first decision by a Serbian court against discrimination regarding access to public facilities. This decision provided direction for subsequent cases

and confirmed that a "situational testing"¹ standard (accepted for the first time by a Serbian court in this case) represents court-admitted evidence².

- **Jurisdiction:** The Supreme Court of Serbia (*Vrhovni sud Srbije*)³. This is the highest judicial authority deciding on regular and extraordinary legal remedies instituted against decisions of all courts in the Republic of Serbia and on other issues prescribed by the law (such as determining general legal positions in order to provide uniform application of law by courts).
- **Case Name:** Decision of the Supreme Court of Serbia, Rev. 229/2004/1 dated 21.4.2004, published in the Court Practice Bulletin (*Bilten sudske prakse*) of the Supreme Court of Serbia no. 2/2004 - page 64.
- **Date of Decision:** April 21, 2004.
- **Case Status:** The decision in the Krsmanovaca Case is final and binding.
- **Link to full case:** Please note that judgements are not made public in Serbia, although certain case summaries may be published in printed periodicals. No electronic data base or English translations of the court proceedings are available in Serbia. The central elements of a judgement can be consulted upon request, if the applicant is able to provide to the relevant court's clerk the specific case number, but the process is often very time-consuming.

2) Facts

- According to the facts as determined by the court, the plaintiffs⁴ were prevented on 8 July 2000 from entering into the swimming pool facilities of the defendant⁵ only because they were Roma. The court concluded that the defendant's behaviour caused emotional damage to the plaintiffs, provoking feelings of inferiority and hurt because they were being treated differently due to their ethnic origin.

¹ This standard consists of a survey pursuant to which a group of persons is put in the same situation in order to test and record their reactions and behaviors in a particular situation.

² In the "Club Acapulco" case, the IV Municipal Court of Belgrade sentenced a security agent of a night club "Acapulco" in Belgrade, Aleksandar Nikolic, to 2 years of imprisonment because he banned 3 Roma individuals from entering the club due to their ethnic origin. After security agents refused entry to 2 Roma individuals, the Belgrade-based NGO "Humanitarian Law Center" (the "**HLC**") made a survey on 25 July 2003 which confirmed that the security agents were directly discriminating against the Roma population based on their ethnic origin. HLC subsequently filed a criminal complaint against two security agents, which resulted in the aforementioned judgment.

³ <http://www.vrhovni.sud.srbija.yu/code/navigate.php?Id=101>

⁴ HLC's survey indicates that the Roma participants were Merihana Rustenov, Jordan Vasic and Zoran Vasic.

⁵ The company "Jugen-TTT" which operates the sport and recreational centre "Krsmanovaca" in the town of Sabac.

- The court case was initiated following several complaints of the Roma population raised with certain NGOs⁶ that they were being refused entry to the facilities of the sports and recreational centre "Krsmanovaca" in the town of Šabac. Following these complaints, the HLC conducted a survey at the entry of the Krsmanovaca swimming pool involving 6 participants (3 of them Roma).
- The swimming pool attendant, Bogdan Vasiljevic, asked 3 participants if they were Roma and, following their affirmative response, banned them from entering based solely on their race, the other 3 non-Roma participants were authorized access to the swimming pool. The attendant admitted that even if he had granted them entry, security would have intervened shortly after and forced them to leave the pool premises. Following this survey, the HLC filed a claim against the company "Jugen-TTT" that was operating the sport and recreational centre "Krsmanovaca" in Šabac.
- The Municipal Court (*Opštinski sud*) of Sabac rendered a decision in 2004 ordering the defendant to cease the infringement and publishing the judgement in the daily newspaper "Politika" at the defendant's cost. The defendant lodged a special appellate review (*revizija*) which was declined by the Supreme Court of Serbia confirming the first-instance judgments of the Sabac court. The first-instance decision was finally confirmed by the County Court (*Okružni sud*) of Sabac in 2006.

3) Law

In the Krsmanovaca Case, the Supreme Court applied general Serbian civil law provisions regarding the protection of civil rights, as well as international legal provisions regarding protection of civil rights ratified by the Republic of Serbia.

First, the Supreme Court concluded that the lower instance courts rightfully applied the law by accepting the plaintiffs' plea and affirming that personal and civil rights (such as personal integrity and dignity) are constitutionally guaranteed.

- Articles 157⁷ and 199⁸ of the Law on Obligations (*Zakon o obligacionim odnosima*)

Second, the Supreme court held that ratified international conventions, which are a constitutionally integral part of the Serbian legal system, prohibit all kinds of racial discrimination and grant equal protection of civil rights to all persons.

- Article 5⁹ of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by the Former Socialist Republic of Yugoslavia in 1967.

⁶ Two Roma civil rights associations and HLC (<http://www.hlc-rdc.org/stranice/14.en.html>).

⁷ Article 157 states that each person may request court protection to cease infringement of its civil rights (such as human integrity rights, personal or family rights or other civil rights).

⁸ Article 199 states that in the event of infringement of personal or civil rights, the court may request that the judgement declaring such infringement be published at the defendant's cost.

- Article 26¹⁰ of the International Covenant on Civil and Political Rights, ratified by the Former Socialist Republic of Yugoslavia in 1971.

4) Legal Arguments

The parties' submissions developing legal arguments are not publicly available.

5) Decision

The court concluded that every person has the right to protection of his or her rights regardless of the color of skin, race, national or ethnic origin. Discrimination on any count whatsoever is an infringement of human dignity and personal integrity rights which are protected by the court through admission of the plea to cease the infringement and the damages request.

a) The Majority Opinion

- The decision in the Krsmanovaca Case was reached by a Supreme Court panel composed of Justices Vladimir Tamas (the president), Ljubica Milutinovic, Vida Petrovic-Skero, Neda Antonic and Jovanka Petrovic. No other details are available on justices' voting (confidential under Serbian law).
- It is important to note that the "situational testing" standard (whereby a group of persons is put in the same situation in order to test and record their reactions and

⁹ Article 5 states "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (a) the right to equal treatment before the tribunals and all other organs administering justice; (b) the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; (c) political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service; (d) other civil rights, in particular: (i) the right to freedom of movement and residence within the border of the State; (ii) the right to leave any country, including one's own, and to return to one's country; (iii) the right to nationality; (iv) the right to marriage and choice of spouse; (v) the right to own property alone as well as in association with others; (vi) the right to inherit; (vii) the right to freedom of thought, conscience and religion; (viii) the right to freedom of opinion and expression; (ix) the right to freedom of peaceful assembly and association; (e) economic, social and cultural rights, in particular: (i) the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; (ii) the right to form and join trade unions; (iii) the right to housing; (iv) the right to public health, medical care, social security and social services; (v) the right to education and training; (vi) the right to equal participation in cultural activities; (f) the right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.", <http://www2.ohchr.org/english/law/cerd.htm>.

¹⁰ Article 26 states "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", <http://www2.ohchr.org/english/law/ccpr.htm>

behaviors in a particular situation) was accepted as a court-admitted proof of direct discrimination for the first time by a Serbian court in the Krsmanovaca Case. It confirms that "situational testing" can be applied in other contexts by other discriminated groups which is very important in an environment where anti-discrimination court practice is new, and limited.

And if relevant:

b) Important dissenting opinions

N/A

6) Key Words: Issues Tree

Group 1

- **Direct Discrimination**
- **Instruction to Discriminate**
- **Segregation**
- **Victimisation**

Group 2

- **International Standards**
- **Regional Standards**

Group 3

- **Race, Colour, Ethnicity**

Group 4

- **Goods Services and Facilities**
- **Public Services**

Group 5

- **Remedies and Enforcement**