# DATABASE 2012-2024 ON ANTI-MUSLIM HATRED

## Cases and rulings

| Country Code | Year | Reference details title | Reference details URL | Hate Bias motivation | Court / Body | Key facts of the case | Results (sanctions, outcome) and key consequences or implications of the case | Main reasoning / argumentation | Key issues (concepts, interpretations) clarified by the case | Key quotation in original language and translated into English with reference details |
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| Serbia | 2018 | Serbia / Equality body/Commissioner for Protecion of Equality/07-00-583/2018-02 | http://ravnopravnost.gov.rs/rs/731-18-c-z-p-t-a-protiv-zbog-diskriminacije-na-osnovu-licnog-svojstva-statusa-lica-kojem-je-odobren-azil-u-rs-prilikom-pruzanja-javnih-usluga/ | Migrant status | Commissioner for Protection of Equality (Poverenik za zaštitu ravnopravnosti) | An NGO (Asylum Protection Centre) filed a complaint against telecommunication company who refused to conclude a postpaid service contract with a person from Iraq who was granted a refugees status in Serbia. The company stated that this contract cannot be concluded because the Iraqi national in question could not have presented his national passport but only an identification document for refugees that was issued by Serbian authorities. | The Commissioner for Protection of Equality recommended a telecommunication company to receive and reconsider the request for postpaid service contract submitted by the Iraqi refugee and to assess his ability to conclude the contract on equal footing, in the regular and individualized procedure within 30 days following the receipt of this opinion. If the company fails to do so, the Commissioner may issue a warning that can be made public if the company fails to comply with it. | The Commissioner for Protection of Equality found that pursuant to Articles 8 and 17 of Law on the Prohibition of Discrimination the telecommunication company discriminated against the refugee from Iraq by not allowing him to conclude a postpaid service contract. | The key issue was whether the telecommunication company's differential treatment of the refugee from Iraq had any objective legal basis in both national laws and internal business regulations. After conducting a thorough legal analysis of national laws and internal business regulations, the Commissioner concluded that there is no legal basis that allows for a differential treatment of refugees wishing to conclude a postpaid service contract with a telecommunication company. The only basis for this differential treatment is a subjective eligibility criterion that is based on one's being a refugee and that a automatically makes this person an ineligible user. | "Kako odobrenje azila podrazumeva čitav spektar prava među kojima je i pravo lica da zasniva radni odnos i stiče imovinu i prihode – što čak predstavlja i poželjno ponašanje u cilju efikasnije integracije pojedinaca u njihovo novo okruženje, i imajući u vidu pravilo o preraspodeli tereta dokazivanja iz člana 45. stav 2. Zakona o zabrani diskriminacije, Poverenik konstatuje da X. nije pružio činjenice niti dostavio dokaze na osnovu kojih bi se mogło zaključiti da su postojali opravdani razlozi za nejednako postupanje prema H. A. M. u odnosu na druga lica, već je utvrđeno da je X. po automatizmu, odbio da zaključi postpaid pretplatnički ugovor sa H. A. M. isključivo zbog njegovog statusa lica kojem je odobren azil, imajući u vidu da je u mešju poslatom podnosiocu pritužbe, čija sadržina nije osporena u izjašnjenju, navedeno da kompanija X. ne zasniva nikakav vid preplatničkog odnosa sa „azilantima". Zbog toga, postavljanjem ovakvog ograničenja koje se apriori odnosi na sva lica kojima je odobreno pravo na utočište, a imajući u vidu posledicu koje ovo ograničenje proizvodi, Poverenik je mišljenja da je potrebno da kompanija X. sprovede proceduru procene svakog pojedinačnog klijenta, nakon što dostave identifikaciona dokumenta, uključujući ličnu kartu za lice kome je odobreno pravo na utočište, kako bi na osnovu objektivnih kriterijuma donela odluku o eventualnom zaključenju ugovora o pružanju telekomunikacionih usluga. Kako odobrenje azila podrazumeva čitav spektar prava među kojima je i pravo lica da zasniva radni odnos i stiče imovinu i prihode – što čak predstavlja i poželjno ponašanje u cilju efikasnije integracije pojedinaca u njihovo novo okruženje, i imajući u vidu pravilo o preraspodeli tereta dokazivanja iz člana 45. stav 2. Zakona o zabrani diskriminacije, Poverenik konstatuje da X. nije pružio činjenice niti dostavio dokaze na osnovu kojih bi se mogło zaključiti da su postojali opravdani razlozi za nejednako postupanje prema H. A. M. u odnosu na druga lica, već je utvrđeno da je X. po automatizmu, odbio da zaključi postpaid pretplatnički ugovor sa H. A. M. isključivo zbog njegovog statusa lica kojem je odobren azil, imajući u vidu da je u mešju poslatom podnosiocu pritužbe, čija sadržina nije osporena u izjašnjenju, navedeno da kompanija X. ne zasniva nikakav vid preplatničkog odnosa sa „azilantima". Zbog toga, postavljanjem ovakvog ograničenja koje se apriori odnosi na sva lica kojima je odobreno pravo na utočište, a imajući u vidu posledicu koje ovo ograničenje proizvodi, Poverenik je mišljenja da je potrebno da kompanija X. sprovede proceduru procene svakog pojedinačnog klijenta, nakon što dostave identifikaciona dokumenta, uključujući ličnu kartu za lice kome je odobreno pravo na utočište, kako bi na osnovu objektivnih kriterijuma donela odluku o eventualnom zaključenju ugovora o pružanju telekomunikacionih usluga." (para. 3.23.)<br>"Since the refugee status implies the whole spectrum of rights including one's right to work and to acquire income and property – which even represents a desirable conduct in terms of one's integration in the new society, and having in mind the evidentiary standard rule from Article 45 (2) of the Anti-Discrimination Act, the Commissioner considers that the company X. did not provide facts nor did it adduce evidence upon which it could be concluded that the reasons for a differential treatment towards H.A.M. were well-grounded, it was established that the company X. automatically refused to conclude a postpaid service contract with H.A.M. solely on the basis of his being granted asylum, given that the company informed him by email, the content of which was not disputed, that it does not conclude any kind of prepaid service arrangement with "asylees". For that reasons, the imposition of this impediment that a priori affects all persons who were granted asylum, and having in mind the consequences of this impediment, the Commissioner opines that the company X. needs to conduct the procedure for the assessment of all clients on individual basis upon they submit their identification documents, including the identification document for refugees, so that it can make a decision concerning the provision of telecommunication services that is based on objective criteria." |

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