

Equal Treatment Authority

File: 337-24/2005

In charge: Dr. Judit Demeter

At the initiative of the Parliamentary Commissioner for the Rights of Ethnic Minorities, the Equal Treatment Authority ("ETA") entered the following

Decision

against the town of in the proceeding initiated for the violation of the requirements of equal treatment. The ETA determined that the **Local Government of Kenderes** (represented by mayor AA) violated the requirements of equal treatment through **indirect negative discrimination** by not electing a Roma member to the Minority Affairs Committee formed in August 2003 to date and through **direct negative discrimination** by classifying BB (represented by dr. Agnes Fancsali, attorney, Roma Anti Discrimination Customer Relations Network of the Ministry of Justice), the only Roma local government representative as being unsuitable for membership or chairmanship of the Committee without giving any reasonable justification.

The ETA hereby orders that the unlawful situation be terminated by 30 September 2005 and that the final and enforceable decision determining the violation be made public.

This decision shall not be appealed within a public administrative proceeding.

This decision may be appealed within 30 days of its delivery by a claim addressed to the Metropolitan Court of Budapest but submitted to the ETA.

No procedural fees were incurred during the proceeding.

Justification

ETA started the proceeding against the Local Government of the town of ("LGK") at the initiative of the Parliamentary Commissioner for the Rights of Ethnic Minorities based on Section) of Act No. CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (the "ETPE Act"), to determine whether the requirements of equal treatment were violated by the LGK forming a Minority Affairs Committee that included nor BB, the only Roma local government representative, nor any other Roma as an outside member.

Based on the initiative of the Commissioner and the documents submitted by him, the ETA determined that BB had initiated the proceeding by the Commissioner in September 2004 due to the decisions of the LGK of 24 July and 13 August 2003 and their consequences resulting in negative discrimination. Considering that the ETPE Act had not entered into force on the above dates, the ETA examined whether its proceeding was hindered by this. The ETA determined that since the situation violating equal treatment exists perpetually, the proceeding can be conducted on the ETPE Act in force.

The ETA held a hearing on June 23, 2005. At the hearing, the claimant basically repeated in detail his complaint as submitted to the Commissioner, which is summarised below:

B.B. is the only Roma representative in the municipal corporation of the LGK in the third local government election cycle. Although his work is generally recognized at the local Family Assistance and Children's Welfare Service, inspite of his earlier promises that he can be a chairman if he has completed his secondary education, Mayor A.A. did not recommend him to be the chairperson of a committee, nevertheless, he passed the secondary school leaving exams. The Mayor suggested that he not be the chairperson of the committees he is in, but a Minority Affairs Committee be formed. The Mayor, however, did not initiate the formation of such a committee, B.B. and in the same time P.G. the Chairman of the Gipsy Minority Government ("G.M.G".) submitted a motion to the municipal corporation to form the committee. The motion was put on the agenda at the meeting of the municipal corporation on 24 July 2003. There was a long debate if the committee was really necessary. During this the Mayor made an offending and humiliating remark on the Roma minority: "Let's form a committee after we have seen the performance of the Roma community, you Gipsies need to achieve something." B.B. and the Chairman of GMG thought it was discrimination and left the meeting. They learned a few days later that the municipal corporation had put off the decision about forming the committee although both the Client and the notary had called the attention of the municipal corporation that the Local Government Act orders that such a committee be formed .B.B. also found it false that the records and the tape of the meeting did not contain the insulting remarks of the Mayor only his answer to that. The participants of the next meeting of the GMG decided to ask for legal remedy in the case then they turned to State Secretary László Teleki who was in charge of Roma matters, but later the case was investigated by the Administration Office of Jasz-Nagykun County as well as it was represented by the attorney of the Roma Anti Discrimination Customer Relations Network of the Ministry of Justice.

The Client only learned from the presentation of the meeting of the corporation of 13 August 2003 that the formation of the committee was on the agenda that he was nominated neither to be a member nor to be chairman. On 11 August he initiated to terminate his contract as a civil servant at the Family Assistance Service. Beyond the humiliation he had survived, he did not want the institution to suffer a harm because of him. On 13 August the committee was elected with 5 members and a single Roma outside member who kept his post only for a few days. GMG's suggestions and opinion were not asked for. At the corporation meeting the Chairman of GMG recommended B.B. chairman, but the Mayor refused it saying that B.B. had only secondary education while the elected chairperson was a university graduate. Only one representative nominated B.B. he, however, got only one vote in the open voting. B.B. turned to the Parliamentary Commissioner for the Rights of Ethnic Minorities because the preliminary investigations and the signature collecting campaign of the Roma population did not bring any results, the committee did not meet the requirements for a year, none of its members was Roma and its chairperson did not know the problems of the Roma population, he was unsuitable to treat them.

At the initiative of the Commissioner and the new signature collecting campaign of the Roma population objecting to the composition of the committee and suggesting its dissolution and he nomination of B.B. to be its chairperson in 2005 the situation only changed with the fact that the committee had meetings, but its composition remained the same. Although the Mayor asked the GMG to submit a motion to complete the committee with Roma members but he did not intend to change the chairperson.

The Client thought the whole procedure was humiliating and unfair as well as discriminating to her and asked ETA to start a procedure.

On 4 and 5 July 2005 the ETA held a hearing in an office of the LGK. To fully discover the facts of the

case. The respondent LGK was represented by Mayor A.A., his deputy was a witness along with several members of the corporation, the notary and the person who took the records at the meetings, the chairman of the GMG, the chairperson and several members of the Ethnic Minority Committee the Commissioner for the Rights of Ethnic Minorities, the employer of the Client, the representative of the National Gipsy Government, the Roma mayor of T. altogether 16 people excluding the Client.

Based on the available data the ETA entered the following conclusion

The number of the residents in Kenderes is 5.432, according to the Mayor the ratio of the Roma population is 12%, according to the chairman of the GMG the town has 800 Roma residents. The corporation of the representatives consists of 13 members, A.A. has been the mayor since 1990. The GMG has been working in the town since 1994, it is also the third cycle since B.B. was elected member who received the second highest number of votes (752). It can be concluded that she was significantly supported also by non-Roma voters. B.B. had been working at the Family Assistance Service, at the beginning she was a public-service worker, since November 2001 she had been a civil servant family assistant. During the procedure all the questioned people including the Mayor unanimously declared that she had done faultless jobs both as a family assistant and a representative, she is considered the most authentic representative of the Roma community. The judgement of her personality changed when she initiated setting up the Ethnic Minority Committee supported by the GMG.

On 24 July 2003 her initiative of setting up the committee was put on the agenda at the meeting of the corporation. In spite of the fact that before the session the notary informed several people that based on section 22(2) of the Local Government Act No LXV of 1990 that there was no place for deliberation and during the session B.B. called the attention on this fact, there was a long argument about it. Contradicting to the statement of the Mayor, based on the evidence of the witnesses and the taped and recorded minutes of the session it can be concluded that the notary restated the obligation of forming the committee only after B.B. and GMG chairman P.G. had left the session because of the hostile atmosphere and humiliating remarks that accompanied their failed initiatives.

The ETA thinks the statement of the Mayor about the foundation of a committee and the nomination of B.B. that she found deleterious did sound at the session: "you Gipsies have to perform first." The witnesses' confessions about this statement were contradictory, the tape and the minutes of the session do not contain the statement but they do contain the response of B.B.:" I don't understand why the Mayor says that we have to perform first when founding the committee is a legal requirement just like founding a financial committee. Don't the members of the financial committee have to perform first?" The minutes quote the words of GMG chairman P.G.: "The problem is that a minority has to perform 10 times as much as other people." It can be excluded that these statements sounded in connection with anything else although the Mayor hinted that he said it when the formation of a guard was discussed a month later.

The foundation of the Minority Affairs Committee was decided by the corporation on 13 August 2003. That time an outside Roma member, B.E. GMG member was also elected to the committee who resigned when he learnt it. prior to the election the Mayor called him but he said he needed some time to think it over, he did not give a prompt answer. GMG was not asked about the constitution or the duties of the committee. The corporation did not take their written suggestion about supporting the committee and the personality of B.B, into consideration. At the session representative O.M. headmaster recommended B.B. to be the chairman of the committee but he was given only one vote in the motion. A.A. the director of the house of cultural events was elected chairman at the recommendation of the Mayor.

During the procedure it became clear that although according to the Organisational and Operational Rules of the corporation makes a secret vote optional, it is rarely applied in personal questions, the chairmen and the members of the committees are usually elected with open motion, the Mayor said they usually previously agree on the nominees. It is also a consistent practice that the committee chairmen are expected to be experienced people in the relevant field. Nevertheless, the Mayor nominated such a person to be the chairman of the Minority Affairs Committee who had not had any experience as a representative neither had he had close contacts with the Roma community. The Roma witnesses confirmed that although A.A. was a talented young man, he was not a suitable advocate of the Roma community in the corporation. Except for the Mayor and the GP representative of the corporation all the other representatives thought that B.B. was suitable for that post. Some of the witnesses thought that B.B. was stubborn and she was difficult to compromise this is why they did not vote for her. She left the corporation meeting on 24 July, she had resigned from her post of a civil servant and she had turned to several authorities with her complaint. Even these witnesses recognized, however, that these characteristics came forth after her initiative of forming the committee failed.

The Minority Affairs Committee did not work from its foundation on 13 August 2003 to December 2004. When judging the facts the Authority did not accept the declarations of those witnesses who said that the chairman of the committee A.A. regularly dealt with the problems of the Roma population as the office of the GMG was in the house of cultural events. The fact that A.A. did his work conscientiously as a cultural activist is not an excuse for the faultiness of the committee work, the corporation should have called him to account.

After B.B. lodged her complaint to the Parliamentary Commissioner for the Rights of the Ethnic Minorities, the Commissioner used his monitoring power through the Administration Office of Jasz-Nagykun – county that initiated the creation of the legal operational conditions of the committee several times.

As a result of his investigations the Parliamentary Commissioner initiated that on 25 November 2004 the corporation agree with GMG about the members of the committee and arrange that the committee perform its duty. He exposed in details that according to Section 44/A of the Constitution and the Local Government Act No. 1 Section (6) local governments are not totally free to form an organization, at the decision it has to be considered that the new committee enforce the interests and rights of minorities. As the committee had not performed its duty, the constitutional rights of the Roma minority group were damaged. The commissioner spoke about the responsibility of the then committee and especially its chairman to neglect their duties. To restore the legal state he suggested to form a new committee and dissolve the present one which can be done in two ways: either the then committee could have been dissolved and a new one could have been elected or on the basis of Local Government Act No.103 Section 1 each member could have been exempted and the vacancies could have been filled in. He also noticed the corporation if GMG members could not participate in the election procedure, it would contradict the institution of minority governments.

In his answer of 13 January 2005 the Mayor informed the Parliamentary Commissioner, that although the corporation and the committee had agreed with the initiative, inspite of their written request the GMG had not recommended any committee members Being aware of the Commissioner's suggestion, the dissolution of the committee had been proposed along with the election of a new committee with 9 members chaired by B.B. The Club of Large Roma Families as well as F.L. the vice president of the National Gypsy Government, who had been heard as a witness, sent a letter with the same suggestions to the corporation. The Mayor informed the Commissioner that based on the 16 December 2004 decision of the corporation the constitution of the committee would remain the same, but it could be extended with Roma members. The Mayor confirmed in his letter and said at the hearing that the problem was not the discrimination of the Roma population, but the sulkiness of the GMG members and B.B. who said at the corporation meeting that she was not willing to be a committee member. At

the request of the Authority B.B. said that she had refused the membership because of the offences she had previously suffered and because of the whole Roma community who had been standing for her all the time, there had been a second signature collecting campaign for her position as a chairperson and 95 of the adult Roma population had signed it, had she accepted the membership, the Roma population had taken it as desertion.

Following this in February 2005 the Administration Office of Jász-Nagykun-Szolnok County turned to the corporation with a writ reminding them to create the operational conditions for the committee according to the Organisational and Operational Rules. As the writ was discussed in a closed session on 24 February 2005, the Commissioner recommended the corporation in a new initiative to discuss the composition of the committee in an open session, come to a consensual decision and asked the corporation to weigh new viewpoints.

At the corporation session of 28 April 2005 it became clear that both sides hardened, the corporation thought the chairman and the members performed their duties, the GMG insisted on a new committee with B.B. in the chair. The committee held its session as planned – that far three in 2005- without the participation of GMG members or B.B. On 4 May the Mayor informed the Commissioner about the events refusing the view that B.B. had not been elected chairperson because she was Roma.

Marshalling the facts mentioned above ETA determined the violation of the requirements of equal treatment based on the following acts:

1. According to Section 8 of ETPE Act an order is resulting in direct discrimination if a person or a group is treated worse than other people in a comparable situation because of those existing or imagined characteristics that are listed in Section 8 of ETPE Act.
2. According to Section 9 of ETPE Act an order is resulting in indirect discrimination if it seemingly does not directly violate the principle of equal treatment but the person or the group who possesses the characteristics listed in Section 8 of ETPE is put in a disadvantageous position compared with other people.
3. According to Section 19 of ETPE Act in a process of discrimination the discriminated party has to prove that he/she has suffered disadvantages because he/she possesses or is supposed to possess protected characteristics.
4. According to Section 19 Paragraph (2) of EPTE Act the other party is accountable for having observed the requirements of equal treatment, or he has to prove that he was not bound to observe it.
5. According to Section 7 Paragraph (2) the attitude, measures, default, direction or practice based on characteristics listed in Section 8 (hereinafter “ measures”) that are reasonably coming out of the given legal relationship do not violate the principle of equal treatment.

It was doubtlessly concluded during the procedure that the Client met the requirements of the directions of point 3, the Client and the discriminated group belonged to the Roma minority.

ETA is convinced that the respondent LGK was unable to prove that they had fully observed the legal requirements as listed in point 5 when electing the Minority Affairs Committee.

The representative of the respondent LGK and the witnessing members of the corporation recognized that the formation of the committee, its composition and operation along with the fact that it had not operated for years had violated the constitutional law of the . This statement is supported by the fact that on the second day of the hearings they submitted an agreement that will be discussed in this document further on.

Adding some completion in coordination with the statement of the Commissioner the Authority sees the following infringements of lawful rights in this case:

Based on Section e of Point 44/A of the Constitution **a local corporation of representatives forms its organisation and operational order independently** and Section 68 among others declares:

“In the ethnic minorities share the power of people and the establishment of the state.”

“The defends the national and ethnic minorities and guarantees their collective participation in public life.”

“The acts of the guarantee the national and ethnic minorities’ representation.”

The legal framework of the corporation of representatives’ right to form an organisation is guaranteed by certain sections of acts passed by two-third majority:

Section 1 of Local Government Act guarantees the right of autonomy to practise the democratic local public authority, it emphasizes that the right of autonomy does not mean that local governments are fully independent, they are legally limited. Section 2 of Local Government Act 22 demonstrates such a limitation:” The minority representatives of the corporation can initiate the formation of a minority committee.” According to Section 2 of Local Government Act 24 “It is reasonable to vote for a representative who works for a significant local service or social organization..”

The LGK should have considered Section 26 of Local Government Act LXXVII of 1993 concerning minority governments’ rights, adoption of motions, initiatives and treating objections.

The Authority stated that LGK did not meet the legal requirements when nominating, electing and operating the committee. It did not grant the local government rights, the rights of the minorities for representation in the decision making. LGK left the motions of the representatives of the significant Roma minority out of consideration abusing the principle of practicing authority democratically. Although LGK formally met the requirements of forming a committee at the influence of outside investigations, it, however, worked without the participation of the minority representatives. In the same time ETA considered the fact that LGK representatives had admitted their responsibility for the situation and they had submitted a proposal for agreement and the appointment of a councillor with the nomination of B.B who was to coordinate the local Roma issues, the committee could be completed with GMG members. LGK, however, excluded the opening of electing a new committee. ETA tried to mediate so that the parties come to an agreement, but the Roma complainants refused to agree because of the injustice they had suffered, they did not trust the then committee and refused to agree.

It was obvious for ETA that the suffered grievances were because of the Roma origin of the Client, nevertheless LGK refused to recognize this fact. They said that even if B.B. had suffered disadvantages at the election of the committee it was not because he was Roma but he had been unwilling to compromise.

ETA compared B.B. with the occupations of people in chairs. The chairwoman of the Educational Committee was a kindergarten teacher, the chairman of the Agricultural Committee was an agricultural economist. It was not natural for them to nominate a Roma who had been a representative in LGK for 9 years to be chairman of the Minority Affairs Committee to coordinate the issues of Roma population. Instead of him such a person was elected chairman who had only been a representative for two months, he was not accepted by the Roma community and he did not operate the committee after his election.

The statement that sounded at the corporation session in connection with B.B. and the Roma community on 24 July 2003 also made the cause of the discrimination clear. As long as B.B. and the Roma community did not want to form a committee, he was tolerated, his talent, hard work and his effect on the Roma community were appreciated. The situation between the Mayor, the corporation and B.B., GMG and the Roma community became tense when the complainants turned to the

Commissioner and unfortunately it remained so.

ETA concluded that during the nomination procedure to elect the committee B.B. and GMG had suffered direct discrimination, during and following the election they underwent indirect discrimination. The corporation itself designated the frameworks of practising public authority instead of proceeding legally causing unprecedented division among the population of the town. As it was the constitutional right of the corporation to form a committee, it was a seemingly neutral decision, but it resulted that the Roma minority got into a very unfavourable position compared with the minority as it was not represented in the corporation, which is direct discrimination. For all this special responsibility is given to the chief officers and the Mayor of the town who had held his position since the present system of local government was introduced and he is a respected and highly esteemed leader whose judgement is authoritative in the town. As the representatives of the respondent LGK partly recognised its responsibility and at the hearings they showed readiness to compromise, ETA assumed that the case could be settled and banned the infringement of rights. In the same time for the restitution of cooperation between the concerned parties and prevention of repeated occurrences with other minority committees, the decision was made public on ETA's website.

Right of appeal against this decision is excluded by Section 1 Act No.17 on Equal Treatment.
Based on Section 3 Act No.17 on Equal Treatment relief can be applied for.

Budapest, 15 July 2005

Dr. Judit Demeter

Received by
B.B. client
Dr. A.F. the client's representative
A.A. representative of LGK
Dr? Jeno Kaltenbach Parliamentary Commissioner of Ethnic Minorities
Administration Office
Archive

The Decision of the Metropolitan Court

The Metropolitan Court overturned decision No.20.K.33.285/2005/10 dated 15 May 2006 of the ETA dated 17 July 2005 in its binding judgement No. 337-24/2005. The Metropolitan Court justified its decision with the following:

1. The stated that the ETA acted lawfully when applied the directives of ETPE Act for a lawsuit as the decisions of LGK after July and August 2003 were unlawful.
2. The Court stated that Section 8 of ETPE Act was duly applied for the secondary party (Client in the procedure of the ETA) who was discriminated for his protected characteristic along with the Roma community. In spite of this fact the respondent ETA should not have condemned the LGK because the applicant successfully proved that in the given case they abode by the directions of the law or they were not obliged to do so. Evaluating the decisions objectively they were directly interrelated with ETPE Act. The argument of the applicant that the committee did not have a Roma member because the Roma minority had been unable to submit a proposal that could have been accepted by the corporation. The Court could not fully accept that the Client of ETA only suffered grievances because he was Roma. The argument of the applicant was supported by the fact that B.B. had been employed by the Mayor in another quality ever since, the Court also found baseless the decision of indirect negative discrimination brought by the respondent. The ETA and its Clients did not manage to prove that the insulting remarks of the Mayor's had really sounded. The only accepted the minutes of the corporation meeting as credible and they do not include such remarks.
3. Plaintiff LGK was able to prove at the Court that the formation of the Minority Affairs Committee had met the requirements of the ETPE Act. Even if delayed but it met the requirements of Section)e Act 44/A of the Constitution, Section2) of Local Government Act 22 about the formation of Minority Affairs Committee. The Corporation of Representatives did all its best to meet the requirements of Section 2) of Local Government Act 24 and elect some of its members who are also members of a minority government committee or the representatives of a significant organisation. The fact that one person from GMG was elected in the Committee, but he resigned later, was also documented. It was also concluded from the documents that since the decision of the ETA the Roma leader of the committee of large families had been participating in the work of the Committee. The emphasized that the plaintiff LGK had strived to involve Roma people in the work of the local government although they were not bound to do so, Local Government Act says "It is well reasoned to elect them". The qualified the titles of the Roma representatives in the local government unimportant and the charge of indirect negative discrimination in the decision of the ETA was found baseless.

The emphasized in its judgement that Section 4) of Local Government Act 8 declares the enforcement of the ethnic and minority rights is not only the duty of the plaintiff LGK but is also the responsibility of the Roma community.

The Decision of the Appeal Court

The Appeal Court overruled judgement No. 20.K.33.285/2005/10 of the Metropolitan Court that had overruled the respondent's decision No. 337-24/2005 of indirect negative discrimination and rejected the claim in this respect, otherwise it upheld the judgement of the Metropolitan Court.

The decision of the is justified below:

The considered the decision of the on the constitution of Minority Affairs Committee wrong. Referring to Sections 1 and 3) Act 68 of the Constitution the took the view that the delegation of the national and ethnic minorities means that also Roma representatives participate in the work of the committee. The lack of the compromise on the participation of the minority representatives does not mean that it could be justified by the law that no Roma representative was elected in the committee. The decision of the concludes that the fact that since the Minority Affairs Committee was founded in August 2003, it had not had a Roma member violated the delegation of the Roma community and it contradicted Section 2) Local Government Act 24. Regarding these facts it was proved that the plaintiff violated the requirements of equal treatment through direct negative discrimination.

Further on the stated that the fact that between two candidates the non-Roma was elected chairman of the committee was not a decision of declaring the second party unfit. The second party's behaviour at the investigated corporation meetings could properly raise the question of his suitability for the position of the chairman. His written declaration of resigning from his committee might have been the reason of neglecting him. Considering these facts the did not establish that he had been directly negatively discriminated. At the bill of review of ETA the overruled the judgement of the that had overruled the respondent's decision of indirect negative discrimination and rejected the claim of the plaintiff. Agreeing with the competent part of the decision of the respondent ETA it decided that LGK had violated the requirements of equal treatment through indirect negative discrimination. In the same time it agreed with the non- appealable decision of the stating that the second part of the respondent's decision of direct negative discrimination had been unlawful. As a result of the reviewed decision the part of the respondent decision of banning the violation remained binding: the plaintiff LGK is bound to elect a Roma member in the Minority Affairs Committee.