



EQUAL TREATMENT AUTHORITY

Case No.: EBH/416/ /2010
Responsible: dr. B. K.

In the proceeding conducted on the basis of the request submitted by **Menedék - the Hungarian Association for Migrants** (1077 Budapest, Jósika u. 2. I/4.) represented by **The Legal Defence Bureau for National and Ethnic Minorities of Másság Foundation** (1082 Budapest, Üllői út 68.) (the Appellant), the **Equal Treatment Authority of Hungary** (1024 Budapest, Margit krt. 85.) (“ETA”) has entered the following

DECISION

against **ROVIN Catering and Trade Service Ltd.** (1074 Budapest, Dohány u. 56., legal representative: Dr. A. A., attorney) (the “Respondent”) for the violation of the rules of equal treatment.

The Authority **establishes that ROVIN Catering and Trade Service Ltd., the company that operates the bar called “Akácfa Söröző” violated the requirements of equal treatment**, namely Sections 5. b), 8. c) and 30 (1) a) of Act No. 125 of 2003 on Equal Treatment and Promotion of Equal Opportunities (“Equal Treatment Act”) by its practice whereby between the end of 2007 until October 2009, for an undetermined period, it refused to serve certain persons entering the bar who were not regulars, based on their skin colour. The ETA **prohibits any future conduct that is in violation of the requirements of equal treatment as of the date of receipt of this decision.**

The ETA obligates the Respondent, **ROVIN Catering and Trade Service Ltd.**, to pay within 30 days of receipt of this Decision, **a fine of HUF 500,000, that is, Five Hundred Thousand Hungarian Forints** by wire transfer to account No. 10032000-00288413 of the ETA.

The ETA further orders the publication of its final and binding Decision on its www.egyenlobanasmod.hu homepage for a 90 day period.

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. Respondent may request that a three member judicial panel adjudicate the claim as well as suspension of the enforcement in the claim.

Procedural fees in the amount of HUF 12,580 were incurred during the process, which the Respondent shall pay to account No. 10032000-00288413 of the ETA within 30 days of delivery of this Decision.

JUSTIFICATION

In its written statement to the authority, the legal representative of Menedék - the Hungarian Association for Migrants (the "Applicant"), the Legal Defence Bureau for National and Ethnic Minorities (NEKI) described that due to reports of discrimination at the "Akácfa Söröző" in Budapest, at 10:55 p.m. on 10 June 2009 they conducted a test at the bar located at Budapest 7th District, 56 Dohány street.

One tester with coloured skin and two white skinned testers participated in the test, who entered the bar at the same time, but apparently separately. The coloured tester went straight to the bar, where the bartender only turned to him after serving the white company. The tester asked for an orange juice, but was told by the bartender that "we don't serve blacks". When asked for the reason, the bartender replied "I'm sorry, I don't know, but these are the boss' instructions" and also referred to the fact that earlier "some black people" got into a fight at the bar and since then they do not serve "blacks". The coloured tester entered a report due to the refusal of service.

In its application the Association stated that the employee was otherwise polite and apologetic stating that he is personally sorry but must follow the boss' instructions.

The white testers heard and saw the events and one of them even asked for the reason behind them. The bartender told him as well that "we are not allowed to serve blacks upon the boss' instructions".

According to the Applicant, ROVIN Ltd. is constantly discriminative against guests with coloured skin. The Association also stated that it is likely that an undefined larger group of coloured persons residing in Hungary who want to go out may be discriminated against and the danger of discrimination against the members of such group exists in the future as well.

In light of the above and Section 20 (2) of the Equal Treatment Act, the Applicant filed its complaint against ROVIN Ltd. within a public proceeding.

The Applicant enclosed in their complaint records of the test results of 10.55 pm June 10 2009 along with the article of a weekly of 1st October 2008 of "Hidden racism in a Hungarian Pub" and a copy of their statement of claim filed at the Metropolitan Court on November 6th 2008.

Based on the complaint and the contents of the filed documents the Authority started a procedure against Rovin Commercial Ltd (further on Respondent) and asked that B.B. manager give a declaration in the name of the Respondent.

Within the public administrative proceeding, the authority heard the testimonies of the three testers (one coloured and two white persons) who tested the policies of "Akácfa Söröző" at 22:55 on 10 June 2009 as protected witnesses.

In the framework of an administrative procedure the ETA heard the testimonies of one coloured and two white testers who tested the Respondent at 22:55 on 10th June 2009.

Tester 1 said that he had not had any problem entering the pub. Several people were standing at the counter, the attendant girl was embarrassed to look at him when he was about to order. When he did, the attendant said she was unable to serve him, she was sorry. She did not say what the reason of the refusal was. The tester asked for the book of complaints that he was readily given and he wrote in French that he had been denied the service without being given any reason. He said that the attendant had not told him that the reason for the refusal was his skin colour. He also said that the last time he had been to „Akácfa Pub” was ten years before, that time he did not have any problem.

Tester 2 said that when the case mentioned above was going on, he was not staying in the pub, he was near the entrance. He saw that all the customers including Tester 1 were let in the pub. When one of the white testers who wanted to remain anonym called him because Tester 1 had asked for the book of complaints, he entered the pub He said it was obvious that the

refusal of Tester 1 was not the attendant's initiative. The tester in the pub had heard the attendant saying that black people were not served.

Witness 3 said that on 10th June 2009 when the black Tester entered the pub first followed by the witness' friend, they were let in. First Witness 3 ordered a drink, then the black tester ordered a refreshment who was told that „coloured people are not served” and this statement was repeated when the other black tester ordered.

The executive director of the pub said at the hearing that he did not know that any customer had had a problem at the pub, neither did he know that coloured people had not been served in the pub. The notes of the book of complaints are checked by the manager who discusses them with the owner.

Dr.C.C., the legal representative of the pub said that as far as he knew not only fighting had gone on earlier at the pub but there had also been sexual harassment. He mentioned cases when coloured people attended the pub bear feet, not dressed suitably, loaded with drugs. He was aware that the manager had ordered the staff not to let in those who could cause problems. As the staff could only recognize the troublemakers on the description they had been given, sometimes they are unable to tell them from other customers. Dr,C.C, emphasized that those people could not go to the pub whose behaviour disturbed other customers whatever skin colour they had.

The Respondent enclosed counterclaim 26.P.25.969 which was presented in the case at court.

The Authority held a second hearing in the case on November 25 2009 where D.D. manager said he had not instructed the staff not to serve coloured people but certain people with definite identity. The identification is based on description. The shots taken in the pub were kept for two or three days, they showed the staff those people whose presence was not desirable in the pub irrespective of their skin colour. The instructions were not written. The service of those people was forbidden who had fought, quarrelled or harassed the female customers.

Each customer was let in but some of them were denied the service.

No safety guards worked in the pub and three bar attendants were employed. D.D. said that there were cases when the bar attendant mistook some people and refused to serve the wrong people. He said such cases had definitely happened like the ones that were discussed by the Authority. He learned the presented case from the book of complaints on 10th June 2009, however the complaint was written in French, he did not understand it, the complaint was signed but it was without an address or telephone number. D.D. could not say if he had asked the employees about the event. He said that “Akácfa Pub” was talked about in “Fokusz” an RTL Club TV programme, it was mentioned as a pub with also coloured and Roma customers. He also said he could not think of a better method to screen the difficult customers as he could not put their photos on the wall. He recognized that they had changed their policy for the past two years, these days hard cores are not served.

E.E., one of the owners of the Respondent spoke about the bad experience Of the downtown pubs. He said that “black people's behaviour is less civilized than Europeans”, Male customers often insult women, they are not properly dressed and “boast of the size of certain organs” which cases are often mentioned in police reports. They try to identify the difficult customers and screen the hard cores. At the moment the owner has also Roma employees to have them remove drunk Roma customers, he also said that black Africans behave differently from Afro-Americans, Africans often fight and insult women.

The legal representative of the Respondent doubted that the Applicant's testing was fully objective saying that the complaint in the customers' book was written in French, on the test paper the text was written in perfect Hungarian.

Dr.F.F., the representative of the Applicant said that the Applicant League of Refugee Assistance earlier had not tested the “Akácfa Pub” but they had received a lot of complaints this was why they decided to test the pub. He said that the testers who were witnesses in the case unanimously said the bar attendants were instructed not to serve black people.

G.G. bar attendant who was a witness at the hearing was working in the pub in the evening on 10th June 2009. She said she did not serve the tester because earlier there had been problems with a circle of black people where the tester was not present and she thought she could recognize the tester who ordered a drink in a foreign language. Her chief gave her a description of the hard cores and she thought she could recognize the tester as one of them. Then the refused company asked her what the reason for the refusal was but she did not give any explanation.

G.G. said she only refused to serve a customer if she had been given description of a trouble maker’s look and she also gave her colleagues such descriptions. In this case she was given a description of a 175-180 cm tall middle-aged, black person with a thin face and short hair. It happened that she had mistaken the person but none of those cases had been reported.

1. G.G. filed a thanking letter from the Local Government of Budapest 7th district to certify that E.E. owner had paid HUF 10,000 to the Foundation of Together for Mali along with Record 0168809 of the Customers’ Book.

After 8 days of the hearing the parties indicated that they were open to make an agreement and asked the Authority to suspend the procedure until 15th January 2010. After the deadline of the suspension the parties said they had been unable to agree. The legal representative of the Applicant said that according to the failed agreement the Respondent should have issued a publication to express regrets and intention to observe the principles of equal treatment three times in the weekly issue of “Pesti Est” (What’s on in Budapest This Week).

The legal representative of the Respondent explained that the costs of the publication would have been over HUF 500,000 which was over the financial capacity of the company this is why the parties had failed to make an agreement.

At the request of the Authority the National Consumer Protection Authority reported that between January 27 2004 and March 11 2010 they had not received any complaints of the operation of the Respondent.

Concluded from the facts below **the complaint has basis.**

The procedure of the Authority aimed to state if „Akácfa Pub” operated by ROVIN Ltd. had violated Section 8 c) of the Equal treatment Act by committing direct discrimination based on skin colour.

It is violated if an individual or group of protected characteristics suffers worse treatment than another person or group in the same situation without any reasonable explanation.

Based on Section 5 b) those who operate a public place that provides service or sells goods are bound to observe equal treatment as it is set forth in Section 5 b) of the Equal treatment Act. Section 30 (1) says that people of protected characteristics cannot be denied equal treatment in public places of culture, entertainment, restaurants or pubs. According to Section 20 of the Equal Treatment Act, NGO’s can start a procedure at the Authority if the violation is based on an essential characteristic of an individual and a non-definable group of people are affected. The Authority stated that based on its by-law 3.3. f) Refugee Assistance Association is authorized to enforce a public claim.

According to Section 19 of the Equal Treatment Act in procedures of the violation of equal treatment the Applicant shall proclaim credibly that he has suffered unequal treatment and he has a protected characteristic as it is set forth in Section 8 of Equal Treatment Act

The Respondent has to prove that the circumstances presented by the Applicant were not unlawful and he had observed the principle of equal treatment or in the given legal relation he was not bound to do so.

According to Para 7 Section (2) of the Equal Treatment Act certain defaults, measurements, attitudes, instructions or practices do not violate the principle of equal treatment:

- If a basic right of a person is limited for enforcing another basic right and the limitation is unavoidable supposing that the limitation is justified and unavoidable,
- If the limitation is based on fair consideration and reasonable.

As it is set forth in Para 7 Section 3 of Equal Treatment Act if the violation is based on ethnic belonging, skin colour the second exemption is not applicable.

Para 70/A Section (1) of Act XX of 1949 about the Hungarian Constitution says” The Republic of Hungary guarantees the citizens’ rights for each person without any discrimination of race, colour, language, gender, political conviction, national or social origin without any discrimination”. Any sort of discrimination is a criminal act.

Para 54 Section (1) of the Constitution says each individual has right to human dignity.

The right to human dignity means the provision of equality. Decision 64/1991 (XII.17.) of the Constitutional Court says “right to human dignity is a form of general personal right.” It is a subsidiary basic right; both ordinary courts and the Constitutional Court call our attention of the protection of autonomy.”

The Applicant described in his complaint that the coloured tester was not served in “Akácfa Pub” because of his skin colour, which is a protected characteristic.

When the bar attendant refused to serve the tester, she said it was the instruction of the chief. Because black people had previously fought in the pub. The Applicant said before the test they had received several complaints. For this reason the Association of Refugee Assistance thought the reason for the discrimination was the skin colour of people. A group of people whose number cannot be defined can be affected by this discrimination; it started the procedure in the framework of public assertion of claims.

The Respondent emphasized that he does not discriminate coloured people. Irrespective of the skin colour those people are not served who had not behaved earlier, who had fought, insulted people, insulted women. This is how the manager instructed the employees accompanied by the description of those people.

The same thing happened at the time of testing, the bar attendant thought the coloured tester was the black person who had insulted the other customers before.

In connection with the complaint the Authority concluded the following facts:

On 10th June 2009 The Association of Refuge Assistance sent a coloured and two white testers to „Akácfa Pub”. As the witnesses said the coloured tester was the first one to enter the pub, he was followed by a white company who were served immediately. Following this the coloured tester asked for refreshment but he was denied the service

As for the statement „we don’t serve coloured people” the declaration of the testers was different from that of the bar attendant. The Applicant had quoted this sentence in his complaint, it was confirmed by protected witness 3, however” protected witness 2 had only

heard about this sentence. G.G. the employee of the Respondent said as a witness she had not been instructed that black people were not served in the pub and she had not told that. It is possible though that she had reasoned for the denial of the service with „because there had been problems with the members of a black company.”

The witness told the Authority the damaging event in a similar way and indicated what the reason for the denial of the service was „because earlier a company of coloured people had made trouble and she had thought the witness was one of them.” The manager had described the troublemaker who she was not to be served as a man of 170-180 cm tall with a thin face, black, middle aged with short hair.

The employee who was heard by the Authority as a witness thought it was possible that she had taken the tester for another person and she had refused to serve a person who had not been a troublemaker and she did not remember that too many people had complained about this in the customers’ book. D.D. manager told the Authority it had happened before too that they had denied to serve the wrong customer, the bar attendant had mistaken. “This is why we are here now.” said D.D.

Based on the facts above the Authority concluded that in the “Akácfa Pub” a coloured tester was denied the service on June 10 2009 because of his skin colour which is a protected characteristic. It was also obvious that the equal treatment had been violated.

It also turned out of the adverse oral evidences that the denial of the service was reasoned with the abusive behaviour of a company of former colure customers. This statement does not say specifically who had behaved abusively. The bar attendant who was heard as a witness did not specify either the wrongdoer.

Labelling people as a “black company” without any differentiation is just generalisation similar to “black people are not served” and “we had problems with a black company” and not the given person was named as a troublemaker.

Based on the declarations of the witnesses it became obvious that during the test the bar attendant did not even hint at the description of the person.

Neither the testers nor the bar attendant told the Authority that at night of June 10 2009 the refusal of the tester was not explained with the fact that the bar attendant thought she had recognized the earlier troublemaker whose service had been forbidden to the employee. It means that „the black company „, was named as a collective noun.

The Authority accepted the statement of protected witness 1, who was the coloured tester in which he said that he had been at the pub six years before, when he was served well. This witness was aware of his rights and obligations to tell the truth as they are set forth in Section 53 of the Act on Administration and Commerce.

The Authority also took the orders of Para 2 Section 2 of No. 2000/43 Racial Equality Directive into consideration which says if a person is given worse treatment than others based on his race, it is direct discrimination.

The Respondent thought that saying his .discrimination had not been based on skin colour but the former behaviour of the customers served as a defence, he said he had acted for public order and security which meant that he had screened the former wrongdoers.

The Authority does not doubt the Respondent has to guarantee the safety of his customers by providing safe entertainment but the attention has to be called on 30/1992 (V. 26.) decision of the Constitutional Court which says the limitation of a basic right is only constitutional if it meets the requirements of proportionality, the importance of the targeted aim and the violation of basic law shall be proportional to each other., based on the necessity – proportion,

when the right to dignity is limited, the lightest means shall be chosen. The target and the means to achieve it shall be balanced.

It became clear for the Authority that the denial of service based on the manager's description of former wrongdoers did not merely mean their rejection but the discrimination of other customers whose refusal was unreasonable.

The legal representative of the Respondent said to the Authority that two years before „Akácfa Pub” had been an example of a pub that was popular also among coloured customers in a TV programme of RTL Club. The manager of the pub said that after this report there had been changes in their policy at present they do not serve each customer.

The Authority understood that the possibility of the violation of the law was repeated and it was supported by the words of the manager who admitted that there had been cases when based on the description the wrong customers were refused, which was illegal.

The Authority concluded that after the Respondent's business policy had changed each occasional customer, an indefinite number of coloured people's human dignity could have been hurt and they could have been discriminated which fact was supported by the test arranged by the Applicant.

Based on the facts motioned above the Authority came to the conclusion that ROVIN Commercial LTD that operates the pub had violated the requirements of equal treatment when, based on its customers skin colour, it employed direct discrimination for an indefinite time before they were advised of the Authority's procedure in October 2009.

As for the sanctions to be applied, the Authority decided that they are necessary to prevent the continuation of this attitude, the decision shall be made public and a fine shall be set. The Authority applied the sanctions that are set forth in Section 16 b)c) and d) of the Equal Treatment Act.

When determining the amount of the fine, the ETA considered the circumstances listed in Section 16 (2) of the Equal Treatment Act, especially the Respondent's capacity to perform and the range of persons who suffered from the discrimination and the consequences thereof. In light of the above, i.e. the Respondent's financial situation and the other circumstances in the ETA's discretion, the ETA found the amount of the penalty proportionate with the gravity of the Respondent's actions.

The ETA found the available testimonies and documentation sufficient for establishing the facts, so it did not find it necessary to hear the testimony of the witness presented by Respondent's counsel. The Respondent stated before the ETA that the witness is a regular guest at the bar, and his testimony would prove that guests are not excluded from the bar due to their skin colour. In this respect the ETA emphasises that the subject of the investigation was not exclusion from the bar, but refusal to provide service. Respondent's counsel also indicated that the witness is a regular guest. The ETA emphasises that during the process it became obvious that the “black company” and the description given by the Respondent could apply to a guest whom the staff of the bar do not know by name, i.e. who are not regular guests.

The provisions of the Equal Treatment Act, Act 140 of 2004 on the General Rules of Public Administrative Proceedings and Services, and Government Decree 362/2004 (XII. 26.) on the Equal Treatment Authority and its Proceedings are applicable to the proceeding and jurisdiction of the ETA.

This Decision was entered based on the jurisdiction granted in Section 15 (1) a) of the Equal Treatment Act.

Under Section 14 (2) of Government Decree 362/2004 (XII. 26.), the Respondent violating the rules of equal treatment shall bear the costs of the proceeding.

Section 17 (1) of the ETPE Act prohibits appeal against this Decision.
Judicial review of the Decision is allowed by Section 17 (3) of the Equal Treatment Act and Sections 98 (3) and 109 (2) of the Public Administration Act.

Budapest, 25 May 2010

Dr. Judit Demeter
President

This Decision is final and binding and enforceable as of 2 July 2010.