

Equal Treatment Authority

File: EBH/44/14/2007

In charge: Dr. Adrian Szász

At the complaint of the Client the Equal Treatment Authority ("ETA") entered the following

D e c i s i o n

against respondent **SORKER-T LLC.** ("Sorker") in the proceeding initiated **for the violation of the requirements of equal treatment** by placing a notice in their pub with the following sentence: **"Gipsies are not served here." and refusing to serve the Client because of his descendant on 14 November 2006.**

The ETA hereby orders that the unlawful situation be terminated from the date of receipt of this decision.

Further on the ETA hereby orders that the final and enforceable decision determining the violation be made public for 90 days on the website of the ETA.

The ETA **obligates Sorker to pay a fine of HUF 600,000 (six hundred thousand forint)** payable within 30 days of receipt of this Decision by wire transfer to account No10032000-00288413 of the ETA.

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.

In the procedure the ETA assessed a fee of HUF 3,857(three thousand eight hundred fifty seven forint) payable within 30 days of receipt of this Decision to the above account No. of ETA.

J u s t i f i c a t i o n

On 14 November 2006 the Client made an announcement at the Police Station of Jászapati that on the entrance door of Guri Pizzeria and Pub on road a notice was placed with the offensive wording of "Gipsies are not served here."

The Client said that he found the notice offensive but the owner of the pub said that he had put the notice there. He added that he did not want to offend the Gipsies but some of them had got drunk and behaved so scandalously in the past that the police had to be called.

After the announcement he removed the notice.

The Police Station sent the report to the Notary of the Mayor's Office of Jászapati Local Government, in the lack of jurisdiction it was referred to the Consumers' Protection of Jasz-Nagykun-Szolnok County. The Consumers' Protection advised the Client that they had referred the case to the ETA that was the competent Authority.

The notary of Jaszapati told the ETA the name and availability of the owner of Guru Pizzeria.

It was owned by SORKER, the ETA started a procedure against the owner. The executive director of

SORKER was summoned to the hearing that was held on 14 December 2006. The Client was also advised about the hearing.

The hearing was held at the old surgery of Jaszapati where several dozens of people gathered. After the parties were informed about their rights the Client asked the ETA to exclude the public from the hearing as he thought his personality could be damaged. The ETA accepted the request of the Client, excluded the public and listened to the respondent and the Client.

The Client completed the complaint he had lodged. At about 6 pm on 14 November 2006 he went to Guri Pizzeria, that is near to his home, with some of his relatives to buy cigarettes.

When they arrived at the place, they saw the notice, but they entered the shop. He ordered a packet of cigarettes, a glass of beer and a coke from the waiter who told him his boss that had ordered him not to serve Gipsies so he refused to serve the Client.

Then the Client phoned the police station from the yard. The policeman who arrived recorded what he had experienced. The following day the Client informed the notary about the events and turned to the media. He said all the Roma population of Jaszapati was concerned and he wanted to prevent other pubs to follow suit.

The owner doubted that the Client had really wanted to buy cigarettes that time and hinted that the waiter had known the Client from earlier incidents. The Client had behaved terribly several times before when he was drunk, and he had made offensive remarks on the waiter. In the given time the Client also wanted to drink beer. The respondent doubted that the Client represented the whole Gipsy population as he only got 36 votes at the local minority government election. In the same time he said he was on friendly terms with at least 4 Roma families who had been threatened by the Client. He said “ if a profit oriented company does not want to serve some customers and gives up the gain, it must have good reasons.

The executive director said he had had to call the police for several atrocities. Since he had arranged closed meetings, there had not been any scandalous incidents, the waiters had not survived any atrocities, the pub had been clean. He had given electric cards to the regular customers, the name of the unnotified club was “,” the members had signed the by-laws.

The executive director said that he had indicated at the police station that he wanted to put out the notice and he was said that it was not violation of law. After that he put out the notice. He said that the policeman who had gone to the place and discussed the matter with the policeman on duty at the station had not thought it was violation. After 10 hours, however, he took it off for the sake of peace, since then he had been arranging closed parties. As far as the Client remembered, the notice had been removed after 3 days. Each of the parties asked to summon three witnesses.

The executive director gave a written declaration to the ETA on behalf of SORKER saying that those people who wear clothes that are different from the dressing code of the majority, speak to the staff in an indecent way, hold dangerous objects in their hands and damage the furniture of the pub scandalizing and frightening the customers who want to have a good time in his pizzeria will not be served there.

The Client refused the allegations of the executive director about his behaviour and threats and said that he had been elected representative in the minority government agreeable with the Constitution.

The representative of the respondent attended the ETA again on 10 January 2007, attached his report of 2005 and he said that the chief officer of the police station at Jaszapati had told the respondent that his notice did not violate the law, he had acted in good faith. When the policemen saw the notice they

said it was lawful. still he had removed it within 10 hours.

The notary had said that based on his licence he was allowed to arrange private parties in his pub.

After the hearings the ETA asked the notary of Jaszapati to send us the licence of operation of Guru Pizzeria along with a declaration about the private parties the respondent had mentioned.

The notary sent the licence of operation, and explained that the premises were rented for a restaurant and a bar, Section 4) I .22 .Government Decree of 1997 about the operation of public catering does not contain any direction about private parties. He said that he had never talked to the respondent about private parties and he had not told him that he could permanently arrange them.

The ETA thought it was not necessary to listen to further witnesses. The collected evidence of the hearings and the attached documents were enough to draw the consequence that the complaint was well-based. on Act No.CXXV. of 2003 on Equal Treatment and Promotion of Equal Opportunities (the "ETPE Act") which says if a person or a group of people are treated less favourable than other people on the basis of their protected characteristics listed in Section 8) (gender, race, colour, nationality, mother tongue, disability, marital status, religious or political conviction, age, social origin) and the discrimination does not have any other reason it is direct discrimination.

According to Section 5. b) of ETPE Act those who offer public services or sell goods have to meet the requirements of equal treatment. Section 1 a and c) of ETPE Act 30 declares any limitation or ban on the use of public places of culture, entertainment or shops especially on the basis of characteristics listed in Section 8) or place a notice that indicates such a ban is strictly forbidden.

Sections 1 and 2) of ETPE Act 19 says that the discriminated party has to prove that he has suffered discrimination because of his/her protected characteristics. The respondent has to prove that he has observed or in the given circumstances he was not bound to observe the requirement of equal treatment.

The ETA took the Directives of Racial Equality (EK/43/2000) into consideration, Section 2) Directive 2b of which says if a person treats other people less favourable because of their race or ethnicity than other people in the same situation, he/she commits direct discrimination. Section 1) Article 3 says that the decree concerns both selling and services in the public and private sector.

The fact that the Client is Roma means that he possesses a protected characteristic, and according to the notice placed in Guri Pizzeria this was the reason he was not served. The notice, however, not only offended the Client, but it excluded all the Roma population from the services.

The respondent said in his defence that there had been several incidents in his pub caused by Roma customers but this fact does not justify the denial of the services from all the Roma customers. The respondent admitted having put the notice at the entrance of the pizzeria, a racist warning that excluded some people from the services because of their ethnic belonging.

Further on the respondent based his defense on his consultations with different officials who had not told him that his planned act was unlawful. He said he had removed the notice by himself in good faith. The letter the police station sent to the Consumers' Protection of Jasz-Nagykun-Szolnok County quoted the policeman as saying that the respondent's act had not been an attempt to commit a crime or an infraction. It cannot be proved if the policeman excluded all sorts of crime or what he told the executive director. The written information, however, conflicts with the fact that the respondent removed the notice by himself.

The ETA also analysed the fact that ever since this conflict the respondent had only arranged private

parties and his allegation that he had agreed about it with the notary of Jaszapati proved false. The declaration of the notary clearly denied it.

The earlier incident in a pub does not justify the denial of the service from a whole ethnicity. There are several legal solutions to make the customers comply with the behaviour code and avoid atrocities (e.g. the introduction of by –laws) without any discrimination. The respondent's response to the improper behaviour of certain customers is direct discrimination based on ETPE Act 8 and he classified the Client as unsuitable for being served because of her characteristic included in Section e) ETPE Act 8, since the violation of equal treatment entered into force , a proceeding had to be started.

The Client proved that he possessed a protected characteristic and suffered discrimination, the procedure doubtlessly proved him right. It became clear that the reason for the discrimination was his protected characteristic, the wording of the notice was also clearly racist as well as the denial of his service.

The ETA understands that SORKER is responsible for the provision of legally acceptable services in the pub without any discrimination. and directing the staff to do so.

Concluding all the facts mentioned above the ETA entered the following decision: the respondent had refused to serve Roma customers as a notice on the entrance door expressed and forbidden the staff to serve Roma customers. By these acts he violated the requirements of equal treatment.

As the violation of the requirements of equal treatment finished when the respondent removed the notice, his attitude will be lawful if he does not exclude the Roma population from the services of the bar and keeps the requirements of ETPE Act.

When imposing the sanctions the ETA was going to achieve prevention and restraint from the continuation of this practice and beyond the ban and the publication of the decision a fine was also meted out based on Sections b,c, d) ETPE Act.

When imposing the fine the financial position of the respondent was taken into consideration as it is set forth in Section 2) ETPE Act 16.

The ETA asked for the respondent's statement of retained earning of 2005, Jaszapati Notary's Office and Document Issuing Office documented how SORKER had met its local tax liability, the number of vehicles it had had. The Land Register Office had issued the enterprise's pages of titles in the Land Register. The Northern Plain Regional Tax Authority, however, refused to issue the enterprise's tax return.

The ETA took the documented data, the retained earnings, the payment of the local tax, the years' long operation of SORKER and its financial capacity into consideration when imposing the sanctions. When setting the fine the fact was considered that the respondent had removed the unlawful notice from the entrance, nevertheless he had excluded the whole Roma population from the services of his pub.

Regarding the utmost highest fine that can be imposed in this case and the financial position of the respondent the imposed fine was deemed proportional.

Regarding the actions and jurisdiction ETPE Act, the Commercial Act and the Government Decree about the detailed rules of the procedure of the ETA 362/2004 (XII. 26.) apply to the case.

I brought this decision based on the power granted to me.

Based on Section 2) Decree 14 the cost of the proceeding shall be born by the respondent.

Based on Section 1) ETPE Act 17 this Decision shall not be appealed.

Court review of this Decision is entitled by Section 3) of ETPE Act 17 as well as Section 3) Commerce Act 98 and Section 2) Commerce Act 109.

Budapest, 27 August 2007

Dr. Judit Demeter
chairwoman

Received by:

1. Client
2. SORKER Commercial Llc. 5130 Jaszapati, Lóczi u. 3.
3. Archive