



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

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| Country: | Romania |
| Title: | National equality body sanctions World Class for discriminatory denial of access to services for a homoparental family |
| Date: | 7 March 2015 |
| Expert: | Romanița Iordache |
| Context | |
| Issue at stake: | Denial of access to fitness facilities to homoparental or monoparental families |
| Ground of discrimination: | Sexual orientation, other (family status) |
| Source: | National equality body decision 680/ 12.11.2014 communicated on 21 January 2015, Jerome Goupil and ACCEPT v. World Class Romania |
| Field: | Access to goods and services |
| Applicable law: | Governmental Ordinance 137/2000, Art.2 (3) indirect discrimination, Art. 2(4) harassment and Art. 10 prohibition of discrimination in access to services |

Content

Case development: After using the fitness facilities of the respondent club for 11 years, the claimant and his partner started using the facilities three years ago together with their children. However, in March 2014 the staff and management of the club failed to react to homophobic harassment targeting the gay fathers and their children occurring in the locker rooms. Furthermore, the club introduced a new rule meant to limit the access of the claimant to the already paid services by prohibiting parents to access locker rooms with children of opposite gender, no matter the age and level of dependence of the children. The alternative solution offered by the wellness club to homoparental or monoparental families with children of the opposite sex was the use of a public toilet where the children could get changed.

The claimant supported by the NGO ACCEPT filed a petition before the National Council for Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*) in June 2014 asking the NCCD to find discrimination on grounds of sexual orientation, gender and family status given the failure to react to homophobic incidents in the locker rooms and the adoption of a rule de facto denying access to the premises to homoparental families with children of opposite sex. This is the first decision of the NCCD on discrimination in access to services on grounds of sexual orientation (homoparental families).

Decision of the national equality body: The NCCD decision 680/ 12.11.2014 communicated on 21 January 2015 found that there was no evidence provided regarding

the harassment of the claimant by other clients and the failure of the club to take measures against the aggressors or disclose the identity of the aggressors so that the claimant could file a complaint with the police. The claimant could offer only the written correspondence with the World Class administration, including the request for the names of the aggressors and an offer from the administration of the gym to go together to the police to report the incident.

As for the new rule introduced in the internal regulation of the club adopted shortly after the homophobic incident stating that “children must be accompanied by an adult of the same sex as long as they are in the locker rooms”, the NCCD took into consideration the opinion issued by the National Authority for the Protection of the Rights of the Children which emphasized the need to ensure the security, the comfort and the privacy of the child. It also noted that when the clubs or sports facilities do not have family locker rooms and the child does not have the age or the abilities to independently take care of him or herself, it should be the decision of the parent to bring the child in the locker room for the opposite-sex as the parent is in the best position to assess the impact of such a situation on the child.

The NCCD assessed the neutrality of the rule as well as if the rule was indeed objectively justified by a legitimate aim as alleged by the club. World Class justified the rule mentioning the best interest of the child and the right to privacy of the members of the club. The NCCD underlined that the right to intimacy of the members of the club cannot trump the right to dignity of the child. The NCCD concluded that while the purpose of the decision is legitimate and the justification is objective, the methods chosen to reach this purpose are not adequate and necessary. Thus, the apparently neutral rule generated a disadvantage for parents with children of the opposite sex.

The NCCD found that the measure was not adequate and sanctioned the defendants for discrimination on grounds of sexual orientation and against monoparental and homoparental families with children of the opposite sex according to Art. 2(3) and Art 10 of the GO 137/2000. The sanction was a warning carrying no financial penalties. The sanction of administrative warning was criticized, including in the separate opinion filed by two of the members of the NCCD, given the gravity of the deeds as well as the negative impact on the development of the two children exposed to the discriminatory treatment of their father and the trauma of the little girl sent to the public toilet in order to get changed. The NCCD decision was not challenged before the Court of Appeal and it is final.

Key points of analysis:

- NCCD had a restrictive appreciation of the burden of proof regarding harassment;
- First NCCD decision on denial of access to services on grounds of sexual orientation;
- The sanction with a warning carrying no financial penalties is debatable given the traumatic impact of the discrimination on young children.

Internet link source: Decision of the NCCD in Romanian available by request. A presentation of the case in Romanian is available at:

<http://www.acceptromania.ro/blog/2014/11/19/cncd-regula-impusa-de-world-class-ce-restrictioneaza-accesul-parintilor-in-vestiar-alaturi-de-copii-de-sex-opus-este-discriminatorie/>.