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NEWS REPORT

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| Country: | Hungary |
| Title: | Ombudsperson's report on practice of forbidding Roma passengers to board airplanes to Canada |
| Date: | 26 September 2016 |
| Expert: | Kádár, András |
| <u>Context</u> | |
| Issue at stake: | Violations of constitutional principles in the practice followed at Budapest airport, resulting in a series of refusals to allow Roma passengers to board airplanes to Canada |
| Ground of discrimination: | race/ethnic origin |
| Source: | miscellaneous |
| Field: | access to goods and services |
| Applicable law: | Fundamental Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights (Ombudsperson Act), Articles 3 and 18 |

Content

Case: Starting with the summer of 2015, the Deputy Commissioner for Fundamental Rights Responsible for the Protection of Minorities Living in Hungary (hereafter Deputy Ombudsperson) received a series of complaints from Roma families who were not allowed to board at the Budapest Airport airplanes destined to Canada. In most cases the families were approached by unidentified airport workers in front of the check-in counters, who checked their documents and after a brief discussion about their circumstances in Hungary and the aim of their travel to Canada told them that they could not board the plane. The complainants did not receive any official decision on the denial, nor were they provided with information on where and how they could seek remedies concerning their treatment and/or the damages they had suffered as a result of the denial. In addition to the complainants approaching the Ombudsperson directly, the NGO Legal Defence Bureau for National and Ethnic Minorities (NEKI) informed the Ombudsperson in October 2015 that they had received 15 such complaints concerning altogether 50-60 persons.

Statement of the Deputy Ombudsperson: After her investigation, the Deputy Ombudsperson concluded in her statement of 15 July 2016 that the injurious practice had been followed by domestic and foreign organisations that do not qualify as either "authorities" or "public service providers" under the Ombudsperson Act, and therefore she had not right to take direct measures in relation to them. However, the Deputy Ombudsperson decided to issue a statement on the case due to the systemic problems it reveals and the fact that after the charter flights to Canada were relaunched in the summer of 2016, complaints of similar nature emerged.

The Deputy Ombudsperson established the following. Based on a contract with the airline (Air Transat) the security company of Budapest Airport (Bud Security) undertook to screen and identify passengers whose entry into Canada is likely to be denied by the Canadian Border Service Agency (CBSA) due to the lack of appropriate documents, as in such cases the airline is obliged to transfer the passenger back to the place of departure and pay a fine. However, the screening carried out by Bud Security company extended beyond the checking of documents to the passengers' employment, income and real estate in Hungary, their family relations in Hungary and Canada as well as the financial resources saved for the journey. The employees of BUD Security tried to assess not only whether the passengers' documents are in order, but also whether the passengers had any intention to stay in Canada and not return to Hungary. On certain occasions the BUD Security employees requested assistance from CBSA staff members deployed to Budapest Airport (who could access those Canadian data bases in which some of the information provided by the passengers could be checked). BUD Security employees communicated their conclusions to the airline, and the final decision to deny boarding was made by the airline.

In her statement, the Deputy Ombudsperson established several violations:

- Whereas the pertaining Canadian law only sanctions the transfer of passengers who do not have the necessary documents (passport, visa, letter of invitation), the screening carried out by Bud Security company extended to the personal circumstances of the passengers without any legal basis in either Canadian or Hungarian law.
- The persons carrying out the screenings did not identify themselves (they were not wearing any identification badges), they did not adequately inform the passengers about the legal basis for their actions, the potential consequences of the screening or about the applicable remedies (concerning both the method of the screening and the denial of boarding).
- No written decision was delivered to the passengers about the refusal (either in English or in Hungarian). The passengers were only provided with an information leaflet containing the airline's postal address, telephone and fax numbers, e-mails and website in English.

The Deputy Ombudsperson concluded that due to these factors the practice followed at the airport violated the concerned passengers' dignity, right to a fair procedure and remedy and their freedom of movement, and recommended the remedying of the above listed problems.

Based on the evidence at her disposal, the Deputy Ombudsman could not establish beyond all doubt that the practice was disproportionately targeting Roma persons, but emphasised that if such a screening must be put into place, it must concern all passengers and must be carried out in a manner that does not raise the suspicion of discrimination and arbitrariness.

Key points of analysis: The Deputy Ombudsman's statement summarises the important procedural safeguards that cannot exclude, but are capable of reducing a discriminative practice resulting in potentially serious violations (severe infringement of dignity, significant economic loss). It will be important to monitor whether the recommendations are taken on board by the actors involved in the case.

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