



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

### NEWS REPORT

<b>Country:</b>	Hungary
<b>Title:</b>	Roma woman harassed in hospital while giving birth
<b>Date:</b>	18 April 2017
<b>Expert:</b>	Kádár, András
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Application of the rules of proof in a situation when the victim of discrimination is alone
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National equality body, decision no. EBH/349/2016, December 2016 (reported on 4 February 2017)
<b>Field:</b>	Social protection (health care)
<b>Applicable law:</b>	Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (ETA), Articles 10 and 19

### Content

**Case:** A Roma woman filed a complaint against a Miskolc (North-East Hungary) hospital on the following basis. While she was giving birth, one of the midwives told her that if she kept shouting, she would slap her and put a pillow over her face. The gynaecologist warned her that if she kept shouting, he would call for a psychiatrist and might have her child taken into child care, in which case she would not receive a family allowance, and "you, Gypsies, only give birth for the money, anyways". When receiving the complaint from the Equal Treatment Authority, the hospital's management ordered an internal investigation: they forwarded the complaint to the concerned doctor, who produced a detailed letter refuting the complaint (claiming that no offensive statements were made at the delivery), which letter was signed by all the witnesses who were present at the incident on behalf of the hospital (the gynaecologist, a resident, two midwives and a cleaner). The hospital management submitted this letter as their defence along with a brief statement. In the course of the Authority's investigation, the hospital's witnesses were heard in relation to not only the complained incident, but also with regard to the circumstances of the internal investigation. Their statements showed that the internal investigation was de facto led by the physician who was alleged to make the injurious statement.

**Decision of the Equality Body:** The Equal Treatment Authority concluded that there had been harassment based on affiliation with a national minority and colour. It examined two issues: whether the gynaecologist had actually made the impugned statement concerning the woman's Roma ethnicity, and if yes, whether this constituted harassment. Although the five hospital workers denied the complaint in full, the Authority accepted that impugned statement had been made. It based this conclusion on the following: (i) the complainant tried for two months to file a complaint with different authorities (e.g. the police and the prosecution), before upon the Roma minority self-government's advice it turned to the Authority, so she was persistently trying to seek remedy for the violation; (ii) she presented the complaint in a very consistent and

realistic manner; (iii) she was fully able to differentiate between the hospital workers regarding their role in the incident, distinguishing between those who were supportive towards her and those who violated her rights. When assessing the evidence, the Authority also took into account the deficiencies of the internal investigation, namely that it was not led by an independent person or body, but the physician complained about, and that the witnesses were not heard separately, but wrote a joint letter (in full awareness of the written complaint), which can have the effect of compromising the evidentiary value of their subsequent testimonies. Under these circumstances, the Authority decided to accept the complainant's version.

On this basis, harassment could be established, as the impugned statement was definitely capable of creating a humiliating environment for the complainant whose dignity was violated. The Authority ordered that its decision be published on the hospital's website for 60 days and imposed a fine of HUF 500,000 (approx. EUR 1,600) on the hospital. The hospital did not request a judicial review of the decision, so it is final and binding.

**Key points of analysis:** From the point of view of general legal assessment, the most interesting aspect of the case is the weighing of evidence in a situation when persons acting on behalf of the respondent outnumber the complainant and there are no impartial witnesses, nor is there any objective evidence. The Authority's approach is innovative, especially in taking into account the deficiencies of the internal investigation and their impact on the credibility of the witness statements.

**Internet link source:**

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