



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

NEWS REPORT

Country:	Poland
Title:	Conviction for denying entry into a shop to a mother with her child in a pram.
Date:	15 June 2017
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<u>Context</u>	
Issue at stake:	The conviction was issued in a prescriptive judgment sentencing the lowest possible fine of PLN 20 (approx. EUR 4). The court did not take into account the possibility of sex-related discrimination in access to services.
Ground of discrimination:	Maternity, Sex
Source:	Case law: ruling of 5 December 2016 of the District Court for the Warsaw residential district of Wola, case no. VW 49 237 /16 (not final)
Field:	Access to services
Applicable law:	Article 138 of the Code on Contraventions of 20 May 1971 (unified text JoL 2015, Item 1094).

Context

The district court issued a prescriptive judgment, charging the owner of a shop for refusal to provide a service without justified cause, as he had asked a mother with her child in a pram to leave the shop (Article 138 of the Code on Contraventions). For this contravention the court imposed a fine of PLN 20, which is the lowest possible fine provided by law. According to article 24 of the Code on Contraventions, a fine can amount from between PLN 20 and PLN 5 000. Furthermore, the court exempted the owner from paying court fees.

Key points of analysis: The facts as presented constitute a violation of anti-discrimination laws. Article 12 of the Law of 3 December 2010 on the Implementation of (some) EU Provisions on Equal Treatment, unified text JoL 2016 Item 1219 (hereafter the Anti-Discrimination Law) is not clear as regards the protection of maternity. This provision only refers to the consequences of violating the rule of equal treatment with regard to pregnancy and maternity leave (as well as other childcare-related leave). Nevertheless, given the improper (in this regard) implementation into Polish law of Council Directive 2004/113/EC of 13 December 2004, implementing the principle of equal treatment between men and women in access to and supply of goods and services, the court should have directly applied Article 4 of this regulation, which generally refers to maternity. Thus, the court should have awarded the mother damages, in accordance with Article 13 of the Anti-Discrimination Law. The other problem that comes to mind with regard to this ruling is the remarkably low amount of the fine. Such a low fine can by no means be regarded as fulfilling the standard requirements of a punishment; effectiveness, proportionality and dissuasiveness. This is further emphasised by the fact that the defendant was exempted from paying court fees. All of this shows that the court must have regarded the deed of the convicted person as carrying a particularly low level of social harm.

Source: The ruling has not been published. It has been submitted as the courtesy by the Polish Society of Anti-Discrimination Law, an NGO.