



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

NEWS REPORT

Country:	Romania
Title:	National equality body assessing testing case
Date:	21 September 2017
Expert:	Iordache, Romanița
<u>Context</u>	
Issue at stake:	Ex officio investigation started following testing recording becomes viral
Ground of discrimination:	Ethnic origin
Source:	Decision 486 from 6 September 2017 of the national equality body
Field:	Access to goods and services
Applicable law:	Government Ordinance 137/2000

Content

Case development: On 31 August 2017, an anonymous “vlogger” calling himself “the Militian” posted on social media (YouTube) a video recording according to which he seems to try to buy food from the grill stand of a supermarket in Odorheiu Secuiesc (in the Szekely region, the region of Transylvania which has a Hungarian-speaking majority). The shop assistant tries to make the transaction but eventually gives his money back which gives him the opportunity to claim that he was denied service because he talked in Romanian. The recording rapidly became viral, leading to nationalistic discourse and claims of discrimination of the Romanian population living in the Szekely region.

The National Council for Combating Discrimination (NCCD) started ex officio its own investigation looking into the refusal of access to services provided by the supermarket on grounds of belonging to a national minority and on grounds of language given that allegedly he was denied services because he was Romanian and talked in Romanian in a region with a Hungarian majority.

The NCCD reviewed the video recording available on the YouTube channel which has clearly been cut and pasted, seemingly to support the allegations of the vlogger that Romanians are not served in the shops in the Szekely region if they do not speak Hungarian. The NCCD also reviewed the alternative recordings provided by the supermarket indicating that the vlogger had three different interactions with the shop assistant, all of them before the opening time of the grill, as well as the written statement of the shop assistant explaining that the client could not be served because he came before the shop was open.

Decision of the national equality body: The NCCD notes that the recording of the incident is a situation testing and explains the specificity of this tool in proving discrimination. In its reasoning, the NCCD defines testing as “a role play, in which a person is in the position of perpetrating a discrimination without knowing that he/she is under observation, monitoring. Testing entails the presence of a person who has a

certain characteristic which can lead the person being monitored to have a certain discriminatory behaviour, compared to another person who does not have the same characteristic. The purpose of the surveillance is in observing the behaviour of the person under monitoring in relation to the person having a certain characteristic, in comparison with the person lacking the same characteristic.” The decision mentions that the admissibility of the evidences resulting from testing depends on “the methodological rigor of the procedure, the elements of ethics regarding the accuracy of the proof and the existence or not of a certain degree of incitement during the testing.”

The NCCD found that the recording of the testing does not observe the ethical rules regarding the accuracy of the evidence as the recording was not provided in its entirety, being cut and pasted, without providing the full information and without including the dialogue of the vlogger with the manager of the supermarket who explained to him that the grill opened after 10 a.m. The decision also finds that the vlogger incited through his own behaviour.

Key points of analysis: Even if the NCCD considered that the recording did not observe the rules of testing explained in the decision, the Steering Board still reviewed the case as potential discrimination. When analysing if the incident amounted to direct discrimination, the NCCD concluded that the case does not qualify as direct discrimination as there was no differential treatment, no clients, regardless of their ethnic origin, were being served before 10 a.m. In the decision, the NCCD condemns any conduct of inciting to hatred on grounds of ethnic origin through disseminating incomplete or false information, “exploiting existing biases in the Romanian society, with the purpose or effect of creating tension in the interethnic relations.”

Internet link source: Decision of the National Council for Combating Discrimination available in Romanian at:
[http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2017/09/4A_Kaufland etnie limba neconstatare 1 .pdf](http://api.components.ro/uploads/1d3a0bf8b95391b825aa56853282d5da/2017/09/4A_Kaufland%20etnie%20limba%20neconstatare%201.pdf).