



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

NEWS REPORT

Country:	Poland
Title:	Denying a woman the possibility to breast-feed in a restaurant constitutes discrimination (final court decision)
Date:	22 February 2018
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<u>Context</u>	
Issue at stake:	The Court of Appeals in Gdańsk has ordered the owner of a restaurant to pay 2.000,- PLZ (EUR 250) in damages, for discriminating a breastfeeding mother.
Ground of discrimination:	Sex
Source:	Case law. Ruling of the Court of Appeals in Gdańsk of 14 December 2017, case no.: I Aca 187/17VW 49 237/16.
Field:	Goods and Services
Applicable law:	The Law of 3 December 2010 on the Implementation of (some) EU Provisions on Equal Treatment, unified text: JoL 2016, item 1219 (hereafter Antidiscrimination Law).

Context

The case in this matter has been lodged on behalf of the claimant by the Polish Anti-Discrimination Law Society (PTPA), with a claim for apologies and 10.000 PLN (EUR 1250) in damages. The PTPA claimed that the act of one of the waiter of the restaurant in Sopot a to forwarding a request of other restaurant guests to be more discrete while breastfeeding constituted discrimination on the basis of sex and was a violation of the woman's personal rights. The young mother claimed that she felt discriminated against when the waiter asked her to move to the toilet, since this was a more appropriate place to breastfeed that the waiter's request to move to the toilet as a suitable place for breastfeeding. The restaurant on the other hand claimed that, she was directed to a chair near the toilet. The owner argued, it was solely a matter of comfort for the mother and the other restaurant guests. In the first instance the woman lost the case. Mid December 2016, the Regional Court in Gdańsk dismissed her claim, deciding that no discrimination took place.¹ An appeal was lodged on behalf of the mother by PTPA.² The proceeding was also adjoined by the Commissioner for Human Rights. The Court of Appeals changed the ruling of the court of first instance and ordered the restaurant-owner the amount of 2.000,- PLZ in damages plus interest. Additionally the restaurant owner was obliged to issue a public statement, apologizing to the woman for unlawfully preventing her to breast-feed her child at the restaurant table, which "constituted discrimination with regard to sex". The statement shall be published on a web portal, which published an article about the whole situation, generating very offensive comments addressed at the woman. The ruling is final.

¹ The ruling of the District Court in Gdańsk, of 12 December 2016, case No. IC 206/15 described in PL General Report 2017 section 9.8.

² The text of the appeal has been made available by PTPA; <http://www.gazetaprawna.pl/artykuly/1088769,gdansk-14-grudnia-wyrok-ws-o-swobode-karmienia-piersia-w-restauracji.html>.

Key points of analysis: A matter of controversy in this case was if the conduct of the waiter constituted discrimination and if this is the case, whether the restaurant owner should be held liable for it. According to the court of first instance this wasn't a case of discrimination, because the waiter didn't impose any particular action on the woman. Instead he merely forwarded to her a complaint of other restaurant guests, asking her to breast-feed more discreetly or find a less public spot in the restaurant. According to the court „*forwarding a request doesn't constitute unequal treatment*" and "*the requests of other guests were appropriate, hence - according to one of the waiters - the claimant was breast-feeding very ostentatiously. Breast-feeding in public places can't violate personal rights of other people, nor social or moral norms, in this regard*".

The woman's claimant and the representative of the Ombudsman disagreed with the view of the court. The appeal correctly emphasized that one of the forms of unequal treatment is the embarrassment and humiliation of mothers, who are breast-feeding in public places. "*Making woman feel that breast-feeding is something shameful, may cause them to be afraid to breast-feed at a time and place, which is most suitable for their children*". This on the other hand may lead to "*restricting woman from participation in social life in public spaces*", as well as "*restrict the practice of breast-feeding itself*", which is recommended both by the WHO and the Polish Ministry of Health. According to the authors of the appeal, the presented facts constitute an example of violating anti-discrimination law, thus constituting discrimination with regard to sex in maternity. As a result they claimed, that the mother should be awarded damages, according to Article 13 of the Anti-Discrimination law.

Internet source

Source: <http://www.dziennikbaltycki.pl/wiadomosci/gdansk/a/prawomocny-wyrok-ws-karmienia-piersia-w-sopockiej-restauracji-przeprosiny-i-2-tys-zl-dla-kobiety-zdjecia,12768777/>. Accessed 29 January 2018