



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

NEWS REPORT

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| Country: | Serbia |
| Title: | First discrimination case related to autism before the national equality body: <i>Č. A. v. Ground Service</i> |
| Date: | 9 May 2018 |
| Expert: | Ivana Krstic |
| <u>Context</u> | |
| Issue at stake: | Discrimination in the area of delivery of public services |
| Ground of discrimination: | Disability and other (health status) |
| Source: | Opinion of the Commissioner for the Protection of Equality (national equality body) |
| Field: | Services |
| Applicable law: | The Law on the Prohibition of Discrimination (LPD) |

Content

Case development: The reported case is the first case submitted to the Commissioner for the Protection of Equality dealing with discrimination against people with autism. The complainant's son is an 11-year-old boy with autism, who was refused access to an airplane on the basis of the airport doctor's assessment that he was unfit to travel. The company claimed that the boy "was very agitated, and started to behave more aggressively while waiting in the check-in line." The boy had been sent to be examined by the on-duty doctor by an airport official who had reacted to him crying for some minutes while awaiting check-in with his family. The official had allegedly announced as soon as she was informed that the boy had autism, that they would "take him off the flight". The Ground Service company later argued however that persons with autism have not been denied the right to use air transport services. However, in this case, the boy, after being "very irritating", was sent to be examined by the airport doctor, who assessed that it was not possible for him to travel and they were then obliged to act in accordance with the regulations and established procedures. This incident has been described as discriminatory and condemned by the media and the public. The complainant submitted a complaint to the Commissioner.

Decision of the CPE: The decision in this case was delivered on 29 January 2018, and published on 28 March 2018.¹ During the proceedings, the Commissioner for the Protection of Equality (CPE) analysed the relevant legal regulations and the process of employees receiving and dispatching passengers at the "N.T." Airport. Following the conducted procedure and established facts, and having in mind the rule on the reversal of the burden of proof under Article 45 of the Law on the Prohibition of Discrimination, the practice of the European Court of Human Rights, as well as numerous studies on the situation of persons with autism, the CPE gave an opinion that the airport Ground

¹ Č. A. v. AD A.N.T.B. ADVS A.S. doo ASGS, no. 07-00-343/2017-02, 29 January 2018.

Services had violated Article 12 of the Law on the Prohibition of Discrimination.² In this regard, the Ground Services had not proved that the manner of conducting the procedure of assessing the ability of the complainant's son to travel was not humiliating and degrading.

The Commissioner first analysed different air traffic regulations related to the reception and dispatch of passengers and which prescribe the possibility of denying passengers the right to travel in certain situations. Therefore, it was allowed to ban travel to passengers under certain conditions. In assessing the case, the Commissioner took into account that, in accordance with prescribed procedures, a doctor is authorized to give an opinion on the condition of the passenger and to assess their suitability for the flight. The CPE relied on the *Guberina* case,³ where the ECtHR found that stricter scrutiny applies if the restriction concerns a particularly vulnerable group, such as people with disabilities. The CPE underlined that the reason for such an approach lies in the fact that vulnerable groups have traditionally been exposed to prejudices with long lasting consequences, which ultimately resulted in their marginalization. Such prejudices can lead to the creation of a stereotype in terms of assessing the capacity and needs of those groups, among which are persons with disabilities.⁴ The CPE concluded that also in this case, nothing was done to prepare the boy for flying. The CPE based this conclusion on the fact that the doctor issued his opinion in 3.20 pm, around 1 hour and 45 minutes before the departure, and hadn't done anything to calm him down and prepare him to travel on that day.

Key points of analysis: It is very important that the CPE found discrimination in the first case brought before it of alleged discrimination of persons with autism, bearing in mind their widespread discrimination. Also, it is crucial that the CPE emphasized that discrimination can occur even if the relevant procedures and regulations are followed, due to acting that is based on stereotypes and prejudices. It is also interesting to note that the CPE underlined that discrimination of persons with autism is considered, in the jurisprudence of the ECtHR, to be discrimination on the ground of disability, while the Law on the Prohibition of Discrimination recognizes also health status as a ground of discrimination, under which this case was primarily classified. However, the CPE recommended to the Ground Service to take appropriate action to secure additional education of employees and to improve the support system to persons with health problems and disabilities. Finally, it is worth noting that the Ground Service immediately fulfilled the issued recommendations: they organized a meeting with one of the associations that provides support to people with autism in order to learn more about their problems, especially when using air traffic services, and also organized trainings on the support to travellers with autism for employees working in the reception and dispatching of passengers.

Internet link source: <http://ravnopravnost.gov.rs/rs/misljenje-na-prituzbu-c-a-protiv-ad-a-n-t-b-adv-a-s-d-o-o-asgs-zbog-diskriminacije-na-osnovu-zdravstvenog-stanja-prilikom-pruzanja-javnih-usluga/>.

² Article 12 of the LPD prohibits harassment and humiliating treatment, prescribing the following: "It is forbidden to expose an individual or a group of persons, on the basis of his/her or their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment."

³ *Guberina v. Croatia*, App. No. 23682/13, judgment from 22 March 2016.

⁴ The CPE here relied on *Glor v. Switzerland*, App. No.13444/04, 30 April 2009.