



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

FLASH REPORT

Country:	Hungary
Title:	Discriminatory practice at the maternity clinic of a public hospital in Miskolc (the "visitors' attire" case)
Date:	11 June 2019
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Context	
Issue at stake:	Discriminatory practice
Grounds of discrimination:	Sex, Racial or ethnic origin, Other ground
Field of application:	Pregnancy and maternity, Social security
Source:	National court decision (Judgment no. Pf.I.20.749/2018/8 of the Court of Appeal in Debrecen)
Applicable law:	Act CLIV of 1997 on Health Care 11 (5); Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, Articles 8 and 19

Content

Case: In 2017, the European Roma Rights Centre (ERRC), an international public interest law NGO which is registered in Hungary, filed an *actio popularis* claim against a public hospital in the city of Miskolc, because of a policy of the maternity clinic which affected socio-economically disadvantaged Roma women disproportionately.

Miskolc is located in the region of North-Hungary (*Észak-Magyarország*), which is one of the least economically developed regions of the EU,¹ with a large Roma population.² (In Hungary, the Roma make up the largest percentage of the socio-economically disadvantaged population.)³ ERRC was informed by local pro-Roma activists that the public maternity clinic in Miskolc hospital charges the companions of women, who arrive to give birth in the hospital, with a relatively high fee (c. 10-15 EUR) for a so-called 'visitor attire' (a disposable hygienic suit, to be worn in the delivery room) which is not affordable for families living in poverty. Thus, in many cases, Roma mothers (among them young girls under the age of 18 years) are forced to endure the hours of labour and childbirth without a supporting companion. This means also that they are hindered to exercise their right provided by the Act on Health Care, i.e. that women are entitled to be accompanied during childbirth by a person of their choice (an adult family member, a relative, a friend or a doula, etc.).⁴

¹ "2015 GDP per capita in 276 EU regions," *Eurostat Newsrelease*, no. 52 (2017), <https://ec.europa.eu/eurostat/documents/2995521/7962764/1-30032017-AP-EN.pdf/4e9c09e5-c743-41a5-afc8-eb4aa89913f6>.

² See the map published by the Library of the Hungarian Parliament on the dispersion of Roma population in Hungary: http://mtatkki.ogyk.hu/terkepek.php?map=2011_roma_cigany.

³ See the Hungarian National Social Inclusion Strategy for 2011-2020, p. 6, available at:

⁴ Hungary, Act CLIV of 1997 on Health Care (1997. évi CLIV. törvény az egészségügyről), 23 December 1997, Article 11 (5).

Decision of the court: The first instance court, the Regional Court of Miskolc, found direct discrimination based on pregnancy/maternity and on social/economic status (these are protected grounds in the Hungarian anti-discrimination legislation),⁵ and indirect discrimination based on (Roma) ethnicity.

According to the judgment, the hospital's practice amounts to direct discrimination based on maternity/pregnancy, because of the principle developed by the ECtHR in *Thlimmenos v Greece*,⁶ i.e. that the right not to be discriminated against may be violated when groups of persons whose situations are significantly different are not treated differently. In this case, the situation of the group of birthing women was compared with the group of other patients. According to the Miskolc Regional Court, the legislator had the firm intention to provide birthing women (unlike other patients) with the special right to be accompanied in the hospital, as "childbirth is not a pathological event, but a physiological process, and a psychical and social happening as well". Moreover, the practice of the hospital amounts to direct discrimination based social/economic status, as the fee of the mandatory "visitors' attire" may not be affordable for families living in poverty. And because Roma families are overrepresented among the poor families in the region, the practice is to be considered as indirect discrimination based on (Roma) ethnicity.

In its judgment of October 2018,⁷ the Regional Court of Miskolc ordered the hospital to cease the unlawful and discriminatory practice (of charging a fee for the mandatory hygienic attire) and to pay a public fine of 5 million HUF (c. 17 000 EUR).

This judgment of the first instance court was upheld on appeal by the Debrecen Court of Appeal in January 2019, although the fine was decreased to 2 million HUF (c. 6 800 EUR).⁸ The reasoning of the court of appeal's judgment emphasised that the practice of the hospital was unlawful because the enjoyment of a patients' rights cannot be made conditional on payment.

Key points of analysis: The importance of the judgment lies in its subject matter, access to maternal health care services and its strategic impact which applies to all hospitals in Hungary prohibiting them from implementing this kind of discriminatory policy. It is also important that the courts found both direct and indirect discrimination thus promoting equal treatment for vulnerable groups, including women living in poverty and Roma women. The courts rightly applied the principle of shifting the burden of proof and accepted statistical evidence as a tool to prove *prima facie* discrimination. Moreover, the courts acknowledged the vulnerable situation of birthing women and reinforced their right to respectful and equal treatment in the area of maternity health services regardless of their social or economic status and their ethnicity.

An important contextual element is that in the previous year, in 2016, ERRC provided legal representation for a Roma woman who had filed a complaint with the Equal Treatment Authority against the same maternity clinic. According to her account, she was targeted by offensive and racist remarks from some members of the medical staff, when she was alone in the delivery room. The Equal Treatment Authority established harassment based on ethnicity and skin colour.⁹ The press release of the ERRC connects this case with the issue at stake in the "visitors' attire" case, claiming that: "*When Romani women are forced*

⁵ Hungary, Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról), 28 December 2003, Article 8.

⁶ European Court of Human Rights, *Thlimmenos v Greece*, Application No. 34369/97, 6 April 2000, Article 44.

⁷ Regional Court of Miskolc, Judgment no. 10.P.22.249/2017/19., available at: http://www.errc.org/uploads/upload_en/file/5102_file1_hungary-miskolc-court-decision-october-2018.pdf.

⁸ Debrecen Court of Appeal, Judgment no. Pf.I.20.749/2018/8, available at: http://www.errc.org/uploads/upload_en/file/5106_file1_anonymised-version-of-the-judgment-in-hungarian-2018.pdf.

⁹ See Kádár, A. (18 April 2017), "Hungary: Roma woman harassed in hospital while giving birth" (News Report), available at: <https://www.equalitylaw.eu/downloads/4069-hungary-roma-woman-harassed-in-hospital-while-giving-birth-pdf-110-kb>.

to give birth alone, they are more likely to be exposed to the risk of abuse and harassment by racist medical practitioners."¹⁰

Regarding the context, it should also be mentioned that while prenatal and childbirth-related care is covered by statutory health insurance in Hungary, women and their families actually have to, or are expected to, pay a lot for these services in one way or another:

- Hungarian public hospitals are still infamous for the shortcomings of basic amenities:¹¹ patients are expected to bring their own eating utensils, toilet paper, diapers for new-borns etc. (or they can buy these goods from vending machines installed in hospital corridors).
- According to report from 2018, comparing the health care services in 35 European countries, Hungary is ranked to 2nd place (after Albania) regarding the prevalence of "under-the-table payments" to doctors.¹² The practice of „tipping” the medical staff¹³ (the Hungarian phrase for this kind of informal payment: „gratitude money”)¹⁴ is especially widespread in public maternity clinics.
- A report¹⁵ published by the Parliamentary Commissioner for Fundamental Rights in December 2018 called to discontinue the policy of some public paediatric clinics who charge parents who stay overnight with their hospitalised children. Given that the Act on Health Care provides that minors have the rights to be accompanied by their parents (or their legal representatives or a companion of their choice) when they stay in a hospital,¹⁶ these policies are unlawful. Health care institutions cannot make the enjoyment of patients' rights conditional to payment. From this aspect the case is analogous to the „visitors' attire” case.

Internet link source:

http://www.errc.org/uploads/upload_en/file/5106_file1_anonymised-version-of-the-judgment-in-hungarian-2018.pdf.

¹⁰ ERRC (12 November 2018), "ERRC ends discriminatory hospital charges affecting Romani mothers" Budapest, available at: <http://www.errc.org/press-releases/errc-ends-discriminatory-hospital-charges-affecting-romani-mothers>.

¹¹ Lovas, G., Balazs, E. (9 May 2016), 'No Toilet Paper at Hungary's Hospitals Spurs Private Investment', *Bloomberg.com*, available at: <https://www.bloomberg.com/news/articles/2016-05-09/no-toilet-paper-at-hungary-s-hospitals-spurs-private-investment>.

¹² Health Consumer Powerhouse (2019), *Euro Health Consumer Index 2018 Report*, available at: <https://healthpowerhouse.com/media/EHCI-2018/ehci2018-indicators/4.5%20Q16%202018%20Under-the-table%20money%20to%20doctors%20190104.xlsx>.

¹³ Rubashkin, N., Szebik, I., Baji, P., Szántó, Zs., Susánszky, É., Vedam, S. (2017), 'Assessing quality of maternity care in Hungary: expert validation and testing of the mother-centred prenatal care (MCPC) survey instrument', *Reproductive Health* Vol. 14, p. 152.

¹⁴ See Transparency International (TI), Hungarian Women's Lobby (2019), 'Cherchez la Femme! Gender and Corruption, with special regard to violence against women and gratitude payments in maternity care (a summary of the report', available at: https://transparency.hu/wp-content/uploads/2019/03/cherchez_la_femme_summary.pdf.

¹⁵ Hungary, Parliamentary Commissioner for Fundamental Rights (2 December 2019), *Az Alapvető Jogok biztosa a kórházi ellátásra szoruló gyermekeket kísérő szülők benntartózkodási lehetőségének biztosításáról és feltételeiről* (The Parliamentary Commissioner on providing the opportunity and the conditions for parents to stay with their hospitalized children), available at: <https://www.ajbh.hu/-/az-alapveto-jogok-biztosa-a-korhazi-ellatasra-szorulo-gyermekeket-kisero-szulok-benntartozkodasi-lehetosegenek-biztositasarol-es-felteteleiről?inheritRedirect=true>.

¹⁶ Hungary, Act CLIV of 1997 on Health Care (1997. évi CLIV. törvény az egészségügyről), 23 December 1997, Article 11 (4).