

Equal Treatment Authority

Case No.: 3/48/2007

In charge: dr. Annamaria Gombos

In the proceedings initiated by the **Applicant** for the violation of the requirements of equal treatment by the **Regional Notary of the Local Government of Babocsa-Komlosd-Rinyaujneg – Somogyarancs** (Babocsa, Rakoczi u.12.), **Andor Gabor Primary School and Kindergarten** (Babocsa, Rakoczi ut 3) **Microregion of Babocsa Basic Services Centre** (Babocsa beke u. 3.) as the **Respondent, the Equal Treatment Authority** (the "Authority") (1024 Budapest, Margit krt. 85.) entered the following

DECISION

The Authority determined that the **Regional Notary of the Local Government of Babocsa-Komlosd-Rinyaujneg-Somogyarancs** violated the requirements of equal treatment during the admission procedure to be employed as an office help because of her Roma origin in August 2006.

The Authority **hereby orders that the above conduct be terminated and the final and enforceable decision determining the violation be made public for 90 days on the following website:www.egyenlobanasmod.hu**

The **Authority refuses the complaints of the Applicant about w:st="on"Andor Gábor Primary School and Kindergarten as well as Basic Services Centre of Babocsa and its Micro Region.**

This decision may not be appealed within a public administrative proceeding.

The judicial review of this decision may be requested within 30 days of its delivery by a claim addressed to the Metropolitan Court of Budapest but submitted to the Authority in three copies in which it can be requested that a judicial counsel consisting of three judges judge the claim. The judicial review does not grant an extension to enforce this decision.

HUF 23,035 that is twenty -three thousand thirty-five Hungarian Forints procedural fee was incurred during the proceeding, which shall be paid by the Respondent to bank account No. 10032000-00288413-00000000 of the Authority within 30 days of the receipt of this decision.

Justification

The Respondent represented by counsel, B. solicitor submitted her application to the Authority claiming that the **Regional Notary of Babocsa-Komlosd-Peterhida-Rinyaujneg-Somogyarancs** ("Regional Notary"),w:st="on"Andor Gabor Primary School and kindergarten ("School and kindergarten") and the **Basic Services Centre of Babocsa and Its Microregion** ("Basic Services Centre") violated the requirement of equal treatment.

The Applicant claimed that she had not been employed because of her Roma origin, and the vacancies had not been advertised. First she inquired about the vacancies then she submitted a written application to the Respondent asking them to keep her application alive, she was willing to fill in any vacancy.

The Applicant said she was only able to get work as a public service worker where she was asked to go by the Mayor, she however, wanted to get a lasting job (cleaner, executive at the document issuing office, social worker). There had been several vacancies at the local government filled by other people. The Applicant completed her secondary education, she is a college graduate social worker. The Authority examined the employment policy of the Respondent between November 2005 and March 2007.

Regional Notary C. presented the following at the hearing held by the Authority: The Applicant wrote him a request of helping her to get a suitable job for his qualification and an application arrived in December 2006. He, however, can only employ the civil servants of his own office and he does this with the agreement of the

mayors he works with. In the letter the Applicant wrote in July 2006 he did not mention that she wanted to have a job at the Notary's office. In August 2006 she informed the Applicant there was no vacancy at the office and on 14th August she sent back the Applicant's attached documents.

During the examined time the vacancies in the office were not advertised, but the following posts became vacant: a certificate of civil status registry officer and a social administration officer were transferred, a Romani social administration officer got a contract for a definite time, a cleaner was given a contract for an indefinite time from September 2006.

The Respondent said that the Applicant was asked to work for the public-service four times which can be taken for positive distinction among the local unemployed people.

The Applicant said at the hearing that she did not know that a cleaner had been employed at the local government, she had written a letter to all the Respondent that she would fill the vacancy of an unqualified worker too. She expected the Respondents to let her know if there was a job. The regional notary said that the former cleaner retired in November 2006 as the local people knew about it, there were 6 applicants for the vacancy but the Applicant did not apply. He interviewed the applicants, and recommended one of them to the five mayors of the region who supported his candidate. The minutes of the meeting were not taken, a declaration of agreement was attached to the employment document. The employed person had been unemployed for a long time, she supported an adult disabled child. The Respondent attached the cleaner's contract, she was employed for an indefinite time from September 2006 and the agreement document of the mayors of the region was also attached.

It turned out at the hearing that the Applicant was not qualified to be an officer, she said, however, that the non-Roma applicants are not required to be qualified.

The regional notary attached the opinion of the Roma Minority Government of Babocsa which says that they did not experience any sort of discrimination from the notary, he was fair with each client, there is a Roma employee in his office.

The Applicant thought she suffered a disadvantage when the headmaster of the respondent kindergarten refused her application. The Applicant submitted her c.v. to the headmistress in July 2006 asking to take her application continuous. In November she confirmed her application. The headmistress said the Applicant did not respond to an advertised job but she informed the Applicant there was not any. In October 2006 the cleaner of the nursery was transferred to be a child-minder because she was qualified to do that. The Applicant thought she could have done that because she was a social worker.

This job was not advertised, because everybody knew about the vacancy but it was reasonable to choose a qualified person to fill it in.. The headmistress said that the application of the Applicant was paid attention to, if there would be a vacancy to fit for her qualification, she would be employed.

The legal representative of the Applicant asked the Authority to interpret the legal regulation as they thought her qualification was suitable to fill in the job of a child-minder.

The Applicant complained that she had been refused to be a child-minder while one of the employed one did not complete her secondary education. The head of the centre of basic services G. said at the hearing that the Applicant gave her c.v. to her asking her to keep paying attention to her application if there was a vacancy. During the questionable time there was not any, 3 child-minders had been employed earlier. G. is Roma, so is one of the child-minders.

According to its Foundation Letter the centre of basic services is a legal entity with an independent budgetary policy. Eleven villages have been jointly maintained since their local governments made an agreement on 31 January 2005. The centre of basic services' children's daytime care is in Babocsa, the daytime nursing home of elderly people is in Somogyarancs. The size of the staff and the employment of new employees is the centre's responsibility, the employer's rights are practised by the heads of the institutions.

At the hearing the Applicant completed her application and asked the Authority to extend the investigation to the employment of the head of the club of retired people and the home nurse of Somogyarancs.

According to the Respondent head of the centre of basic services on 2 January 2007 the post of the head of the club of retired people got vacant with the approval of the 11 mayors. Besides the Applicant several people were interested in the job with I. among them who was appointed to fill the vacancy for an indefinite time on 5 March 2007. Unlike the other applicants the appointed person was a qualified social assistant who was good at arranging outings and mastered IT and could manage the paperwork. The Applicant did not have these qualities, the Respondent thought he decided well because the employed person can fill two jobs at a time.

The attached documents showed that the appointed head of the retired people's club completed her secondary education at a school specialized in economics, she had a basic English exam, and a driving licence, she was a qualified social worker, office manager and IT officer and she was studying at a college to be a social worker.

The legal representative of the Applicant said that the Applicant had known about the vacancy at the club of retired people, she had applied as she was a social worker, she had the necessary qualification to fill the post. The Applicant had worked at the club as a substitute several times and the members of the club liked her and they were satisfied with her work.

In March 2007 the head of the centre of basic services wrote a letter to the Applicant that the vacancy in the retired people's club had been filled giving details of the qualifications of the person who had been appointed. He also informed the Applicant that on 29 March 2007 the post of a home nurse would get vacant in the neighbouring village of Somogyarancs, the body of representatives would bring the decision about the new employee, he suggested the Applicant to get in touch with the Mayor because of the job interview.

The head of the centre of basic services said that one of the home nurses retired at Somogyarancs in March 2007 where there was not a qualified person while there were 7 qualified people at Babocsa.. The mayor of Somogyarancs had informed him that their body of representatives wanted to interview the qualified people. He had told the mayor that the applicants were unemployed, there was a Roma among them, one with several children and they all needed the job.

In March 2007 there was a vacancy of a social worker at the regional notary's office at Somogyarancs, according to the minutes of the interview the local mayor and the members of the body of representatives, a member of the local Roma government interviewed the 7 applicants. The applicants were informed that in case of need the social worker would have to work at Rinyaujnep, too. After a long argument K. got 2, L got 4 votes.

L. was a 54 year old qualified social worker, she had not had any experience in social work, she had been a clerk or she had worked in the public service. The head of the institution said that she had worked in the public service as a social worker and when L. worked as a social worker the elderly people were satisfied with her and liked her.

The body of representatives chose L. because she was the oldest applicant, the elderly people could trust her, she could not have had a chance at the labour market because of her age. The head of the institution said that the ethnic origin of the applicants did not play a part in the choice.

The Applicant claimed that she had substituted in the quality of a social worker not the employed person.

On 13 March 2007 the head of the centre of basic services informed the Applicant that the body of representatives had chosen another person to fill in the vacancy.

Following the motion of the legal representative of the Applicant the Authority the Authority asked for the opinion of the Adult Education Department of the Ministry of Social Affairs and Labour and the International Institute of Adult Qualification which emphasized the following facts: the Applicant is a social worker, but she is not a qualified baby –minder, that qualification is advantageous. If she gets the qualification of a social assistant, she can be the head of the club of retired people because according to Section 3) of Decree 1/2000 of the Ministry of Social and Family Affairs.

According to the following facts the complaint is based.

According to Section 2) of EU principle 2000/43 of 29 June 2000 if a person gets less favourable treatment because of his/her race or ethnic origin than another person in a similar situation, it is direct discrimination.

According to Section 70/A 1) Act XX. of the Constitution of Hungary of 1949 " Each person on the territory of the Republic of Hungary shall enjoy the human or citizen's rights without any discrimination of race, colour, gender, language, religion, political or other conviction, national or social origin, financial, social or other position." According to its Section 2) " Each sort of discrimination according to Section 1) is strictly punished."

The principle of equal treatment is violated if a person or a group of people are treated less favourable than another person or group of people are treated in the same situation because of their characteristics that are listed in Act CXXV of Equal Treatment of 2003 (direct discrimination.).

According to Section d) of Equal Treatment Act 5 the employer shall observe the principle of equal treatment in the framework of employment law.

The principle of equal treatment is violated if the employer directly or indirectly discriminates the employee particularly in the following cases: in public vacancy advertisements, in the process of employment or in the terms of employment.

The Respondent shall prove that the Applicant complaints are baseless, he has complied with the principle of equal treatment or in the given situation he was not bound to do so.

The Applicant's protected characteristic is he Roma origin, the disadvantage she suffered was the fact that she had not been employed.

When a vacancy is to be filled, those candidates should be employed who are the most likely to meet the requirements of the job, the selection according to aptitude is legal.

The Authority examined if any of the Respondents had violated the principle of equal treatment, the Applicant's employment had been refused because she was Roma, if the evaluation of the applicants, the decision - making had been fair.

It was concluded that the Regional Notary's office violated the principle of equal treatment when there was a vacancy of an assistant officer in the office in November 2006 and the Applicant was not interviewed.

According to Section 36 (4) of Act LXV of 1990 about local governments " the regional notary appoints, dismisses and rewards the employees of his office with the approval of the mayor and he practises the rights of the employer."

The defence of the Respondent that she had thought the letter of the Applicant of July 2006 was not a proper job application could not be accepted. There was an agreement of September 2005 between the Applicant and the Mayor of Babocsa approved by the Authority. The Regional Notary must have known about this agreement. The Applicant asked the Notary to let her occupy a job she was qualified for and she had emphasized that she had maintained the obligations of the agreement. The Notary did not meet the obligations of the agreement when he did not interview the Applicant. The fact that the Respondent employed a Roma executive did not exclude the discrimination of another Roma person. during the procedure of the employment.

The Respondent was unable to prove that the facts claimed by the Respondent were not true or she observed the principles of equal treatment, or in the given circumstances he was not bound to observe them.. During the procedure the Authority concluded that the Applicant could not have filled in the post of an assistant officer or she could no even have been interviewed. The Applicant suffered discrimination against the non-Roma applicants. She was not given a chance to fill in the job of a social worker when she was interviewed by the mayor and the body of representatives. The Respondent could only attach the agreeing declaration of the mayor. The Respondent was unable to prove that the Applicant had not been neglected because of her Roma origin.

The Applicant stated that when other vacancies were filled in at the Regional Notary's office, the employer did not examine if the newly employed people had the necessary qualification to fill in the job. It was

concluded at the hearings that the Applicant did not have the necessary qualifications to fill in other jobs. 9/1995 Government decree regulates the qualifications that are necessary to fill in the jobs of civil servants, the Authority does not have jurisdiction to examine that.

The Authority accepted the reasoning of the headmistress of the kindergarten and the school that the people who had been employed as child-minders had the necessary qualifications. It was also accepted that the person who was appointed to be the executive manager of the club of retired people had IT literacy and a degree in management that the Applicant did not have.

The Authority also accepted the excuse of the head of basic services because she had informed the Applicant about the vacancy of a social worker for home nursing, she had interviewed her like the other applicants.

The Authority concluded that the regional notary's office had violated the principle of equal treatment when the Applicant was not interviewed to fill in the vacancy of an assistant officer because of her Roma origin and the Applicant's application had been refused to be employed at the primary school.

As regards the application of sanctions the Authority has banned the conduct violating the law and for preventive purposes it is necessary to make the decision public.

In addition to the Equal Treatment Act the following law applies to the proceeding and jurisdiction of the Authority: Section 154) of Act CXL of 2004 on General Rules of Administrative Procedures and Services.

The costs incurred during the proceeding shall be borne by the Regional Notary's Office of Babocsa. in accordance with Section 14(2)of the Decree.

Right of appeal against this decision is excluded by Section 17(1) of the Equal Treatment Act.

According to Section 17 (3) of the Equal Treatment Act and Section 109 (1) of the Administrative Procedures Act judicial review lies against this decision.

17 December 2007, Budapest

Dr.Judit Demeter
President