

Equal Treatment Authority

Case: EBH/641/11/2007.

In charge: dr. Adrián Szász

In the proceedings initiated by the **Applicant** for the violation of the requirements of equal treatment by the **OTP Bank Plc.** (1051 , 4.) as the **Respondent**, the Equal Treatment Authority entered the following

DECISION

The ETA determined that the **OTP Bank Plc.** violated the requirements of equal treatment by neglecting any other conditions, **with reference** exclusively to the **Applicant's age disqualified him from the opportunity of contracting credit agreement** in June 2007.

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

The Authority also **obligates the OTP Bank Plc.**, namely the Respondent to **pay a fine of HUF 2.000.000, namely two million Hungarian Forints**, which shall be transferred to bank account No. 10032000-00288413 of the Equal Treatment Authority within 30 days of the receipt of this decision.

The decision shall 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.

The Authority determined that HUF 1428, namely one thousand four hundred and twenty-eight Hungarian Forints procedural fee was incurred during the proceeding, which shall be paid by the Respondent to the above bank account of the Authority within 30 days of the receipt of this decision.

JUSTIFICATION

On 10th July, 2007 the Applicant submitted his application to the ETA claiming the violation of the requirement of equal treatment by the OTP Bank Plc. (hereinafter the Bank or the Respondent). In the application he presented that in June, 2007 on the basis of a special offer read on the homepage of the Bank he tried to claim credit card by filling the on-line application form offered there. Nevertheless his application was rejected by the Bank with reference to the fact that he is over 70. The Petitioner made a complaint by the Bank by e-mail, but he got the answer that the reason of the age-based rejection is an internal instruction.

The Petitioner attached the documentations of his email correspondence with the Bank in connection with the above subject. From the documents attached by the Applicant it was established that the on-line credit application of the Applicant with the effective birth date (02.03.1937) was simply rejected by the system. When he inquired about the cause of the rejection, the Bank informed him/her that the (upper) age-limit of credit claiming is 70 years which is contained by their internal administrative instruction. They cannot differ from it even if the reason of equity occurs.

Based on the above mentioned the Authority started proceedings against the OTP Bank Plc. because of the violation of the requirements of equal treatment, and held a hearing on 15

August 2007, the representative of the Bank was cited, The Applicant was informed about the date of the hearing. At the hearing the Bank was represented by its legal advisor, whilst the Petitioner did not appear.

The representative of the Respondent requested 15 days deadline to reconnoitre the statement of facts, within according to the promised it sent its written substantive declaration with reference to the complaint. Pursuant to the declaration the restriction on the age of the Bank's practice in connection with credit card licensing means the application of a professional rule reasoned by a risk management which is lawful in its view, because that has a reasonable explanation directly related to the credit card legal relationship.

Furthermore the Respondent declared that it entirely respects the principle of equal treatment pursuant to the *Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities* (furthermore Equal Treatment Act), and guarantees the rights from these for all of their clients, however it does not mean that all discriminations would be forbidden.

Pursuant to *Act CXII. of 1996 on Credit Institutions and Financial Enterprises* (furthermore Credit Institutions Act) the extant same deviations in the client's personal and economic circumstances are valuated in the same way for all the clients by the Bank. Article 77§ (1) of Credit Institutions Act obligates for all of the financial institutes the establishment and the perspicuity of commitments and outplacements, the elaboration and the application of an internal regulation which makes the control and the reduction of the risk measurement possible during the judgement of undertaking of commitments as well as following it.

According to the standpoint of the Respondent the fundamental requirement of prudent banking operation is credit rating and finding the adequate tools of risk management. According to the Respondent human age is a significant risk factor, whilst from the point of view of granting credit it is a fundamental requirement that credit has to be paid back from the debtor's own income, validation of halfbacks should only take place extraordinarily. Over some age the risk of the fact that the debtor cannot refund his credit increases.

With reference to the practice of the insurance institutes too that for correcting that risk which arises in upper age higher amount of insurance is prescribed the Respondent declared that according to its standpoint the assessment of higher age for itself is not bias, only the treatment of a realistic risk factor.

Following the above the Authority asked the Respondent to attach the business regulation and internal instruction which exclude credit card contracting with clients over 70, the Respondent declared that the Bank neither has such business regulation nor has internal instruction which would contain the exclusion clients from credit over this respect the administrator of the Bank misinformed the Applicant. Actually, the injurious procedure meant in the Bank's practice the application of a special, so-called professional rule which meanwhile, and in connection with on-line credit claiming was terminated as from 8 September 2007.

The Authority did not feel necessary the acquiring of additional declarations and proof for the clarification of statement of facts. Based on the available evidence, claimed by the Applicant and the Respondent as well the Authority determined that the claim in the application was founded.

According to Article 70/A (1) the Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination disregarding their race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever. According to Paragraph (2) the law shall provide for strict punishment of

discrimination on the basis of Paragraph (1).

The Authority was attentive to the 9/1990. (IV.25) *decision of the Constitutional Court* in which when interpreting Section 70/A. § (1) emphasized the fact that the law shall treat everyone as an equal honoured person, namely the basic right of human dignity cannot suffer damage, the guidelines of the competences and advantages shall be determined with the same respect and circumspection and with considering single standpoints to the same extent.

Furthermore the Authority took into consideration item 6. of B part of *the Recommendation No. 9 of 2006 (IX.7) of the Board of the Hungarian Financial Supervisory Authority on the principles of retail of credit provision of preliminary advice to clients and consumer protection* which states that: „No financial institution shall regard the age of the customer automatically as a criterion of eligibility. Institutions should consider various ways they could offer loans to elderly customers (e.g. requiring additional securities)”.

In this case it can be stated that in consequence of the Respondent's actions – with the refusal of signing the credit merely because of the Applicant's age - the basic right of the Applicant's human dignity was injured.

According to the Equal Treatment Act all dispositions of which a person or a group is treated, was treated or would be treated less favourably than another person or a group in a comparable situation because of his/her protected characteristics (sex, racial origin, colour, nationality, mother tongue, disability, family status, religious or ideological conviction, age, social origin etc.) are considered *direct discrimination*.

Section 7§ (2) of the Equal Treatment Act provides general exculpatory option from this disposition when it states that the principle of equal treatment is not violated by such conduct, measure, condition, omission, instruction or practice defined in Article 8, which is found by objective consideration to have a reasonable explanation directly related to the relevant relationship. Nevertheless according to the standpoint of the Authority the Respondent could not prove the latter in this case.

Section 30 § (1) of the Equal Treatment Act provides the enforcement of equal treatment's requirement in the scope of selling goods and using services. According to item a. of this paragraph it is considered a violation of the principle of equal treatment if at premises open to customers and particularly based on a characteristic defined in Article 8 the provision of services or sale of goods denied or neglected.

According to Section 19§ (1) and (2) of the Equal Treatment Act *the injured party must render it probable* that he/she has suffered a disadvantage and possessed any of the protected characteristics defined in the Equal Treatment Act at the time of the violation of law. *The Respondent shall prove* that the circumstances rendered probable by the injured party did not prevail or it did observe the principle of equal treatment, or that it was not obliged to observe the principle of equal treatment in respect of the relevant relationship.

In this case the Applicant undisputedly possessed a protected characteristic, namely his age, as well as his disadvantage – namely the rejection of the credit -, and the causal relation between age and disadvantage was not disputed by the Respondent. So thus the Authority had to examine whether the Respondent's reference is acceptable to the general exculpatory reason, namely according to objective examination whether the measure of the Respondent's credit risk is qualified as reasonable, with the concrete legal relation directly connected reason in terms of the clients who are over 70.

The Respondent thought that its standpoint was qualified as reasonable discrimination directly related to the concrete legal relationship of the old-aged client that the clients over 70 were excluded from the service because of their risk borne by their age.

The Authority does not dispute the Respondent's right to exactly elect that clients with whom it enters into a contract on the basis of different aspects keeping the interest of prudent operating and credit risk reduction in view. At the same time that sweeping practice cannot be accepted lawful which declines contracting with reference exclusively to the age with that client who does not mean any particular risk considering his/her financial background and other conditions. The human dignity of the old-aged is violated, so is the Applicant's with the generalization which automatically excludes them from that service which is opened for the persons who are in comparable situation under 70.

The decision of the Authority was supported by the Hungarian Financial Supervisory Authority, in accordance with it the bank has modified its practice.

As regards the application of sanctions the Authority has found that in this case for their preventive purposes concerning the whole bank sector, it is necessary to impose a fine as well as to publish this decision, thus the Authority applies the sanctions against the Respondent as set forth in Section 16 § c) and d) of the Equal Treatment Act.

When determining the amount of the fine the Authority took account of the circumstances set out in Section 16 (2) of the Equal Treatment Act with particular regard to the injurious Bank's performance resulted from its public annual report from 2006.

Whereas the Authority appreciated the step of the Bank changing its practice for the benefit of the Applicant The concrete rule was already modified during the administrative action so that the clients over 70 could get credit as well. However with regard to the indisputable detriment as well as the existence of the discriminative for a long time, the Authority could not disregard the application of sanctions

When making this decision the Authority proceeded within the jurisdiction provided in Section 15. § (1) a) of the Equal Treatment Act.

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 Sections 98 (3) and 109 (2) of *the Act CXL of 2004 on the General Rules of Administrative Procedures and Services* (Administrative Procedures Act) judicial review lies against this decision.

7 November 2007, Budapest

Dr. Judit Demeter
Chairwoman

Received by:

1. Petitioner
2. OTP Bank. 1051 Budapest, Nádor street 16.
3. Archives
4. Economic Office