

Equal Treatment Authority

Case No.: EBH/656/2006

In charge: dr. G. K.

In the proceedings initiated by **Dr. T. A.** as the **Applicant** for the violation of the requirements of equal treatment by the **Directorate of Pest County Museums** (2000 Szentendre, Fő tér 6, represented by dr. László Simon county museum director) as the **Respondent**, the Equal Treatment Authority (the “Authority”) entered the following

DECISION

The Authority determined that the Directorate of Pest County Museums violated the requirements of equal treatment in relation to the Applicant due to his trade union membership.

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. Furthermore, the Authority prohibits the Respondent from continuing the unlawful conduct complained of.

This decision may not be appealed within a public administration 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 1,920 that is one thousand nine hundred and twenty Hungarian Forints procedural fee was incurred during the proceeding, which shall be paid by the Respondent to the bank account of the Authority No. EBH 10032000-00288413 within 30 days of the receipt of this decision.

Justification

The Applicant submitted an application on 8 October 2006 to the Authority stating that in his view his employer, the Directorate of Pest County Museums (hereinafter the Respondent or the “Directorate”), violated the requirement of equal treatment due to his characteristic protected under Section 8 s) of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter the “Equal Treatment Act”).

The Applicant stated that from February 2004 he was the secretary of the East Pest County Museum Group of the Trade Union of Public Collections and General Education (the latter hereinafter the “Trade Union”) and also the head of the Pest County Museum Division of the Trade Union. Before January 2006 his employer never questioned the legitimacy of his position held in the Trade Union organization at the workplace or the existence of the East Pest County Museum Group of the Trade Union. Until then he was always invited to the management meetings as a trade union secretary, which is in accordance with Section 2/2 of the Rules of Organization and Operation of the Directorate.

The Applicant submitted that the negative discrimination against him started due to an event that took place at a management meeting on 29 August 2005. At the meeting the director of the Directorate announced that more than 40 pensioner museum attendants had to be dismissed with immediate effect. The directors of the museums belonging to the Directorate were required to hand the notices to the employees concerned without delay. The employer had not discussed this decision prior to the meeting with any of the museum directors or the officials of the trade unions. The Applicant stated that the Trade Union had two organizations at the workplace but neither was approached in this question. The employer presented unquestionable facts to them when he decided on the immediate dismissals.

The Applicant saw the minutes of the meeting of 29 August 2005 on 14 December 2005 because in the beginning of December 2005 members of the General Meeting of the Pest County Local Government (the maintainer of the Directorate) approached the Applicant in connection with the employer’s actions regarding the dismissal of the museum attendants. The Applicant submitted his letter of 7 December 2005 to the

Socialist Party caucus leader of the Pest County General Meeting and his letter of 15 December 2005 to the chairman of the General Meeting. In these letters he informed the addressees that prior to the dismissal of the museum attendants the employer did not have any negotiations with the East Pest County Museum Group of the Trade Union; the dismissals were presented at the management meeting as final decisions. Furthermore, the Applicant informed the chairman of the General Meeting that the content of the minutes of the management meeting of 29 August 2005, which he was only able to view on 14 December 2005, was inaccurate as it failed to record the objections against the employer's decisions raised by several directors of the museums concerned.

In the Applicant's view after the above events the employer's attitude towards the Applicant had changed. Between February and April 2006 the employer requested various data and documents concerning the trade union organization led by the Applicant and after March 2006 the Applicant was no longer invited to the management meetings. To support the above statements the Applicant submitted to the Authority the letter of dr. László Simon, county museum director, dated 14 February 2006 in which he requested the Applicant to provide the bylaws and programme of the local trade union organization led by the Applicant and also the approval of the chairman of the parent organization regarding the local group. The Applicant also submitted the letter of the director dated 23 March 2006 requesting the copies of the resolutions of the members' meeting of the local organization from 2002. The Applicant also submitted the letter of 13 July 2006 sent by dr. László Simon to the Applicant and J. R. museum director requesting the bylaws and the programme of the Trade Union and also stating that "*unless the certified copies of these documents are made available the East Pest County Organization of the Trade Union cannot be considered a legitimate trade union organization.*" The letter also states that unless the requested documents are provided the employer does not need to comply with Section 24 (1) of the Labour Code and also that the infrastructure, postal and phone service of the museum may only be used for professional museology work in the future.

The Applicant requested that his response to the above letter be submitted to the Authority, in which he informed dr. László Simon that the letter requesting the above documents was forwarded to, among others, the national chairman and county chairman of the Trade Union. The Applicant also informed the employer that the local trade union group led by him did not use the museum infrastructure and that the operation of the organization was financed from the membership fees.

Furthermore, the Applicant submitted the letter of the national chairman of the Trade Union to dr. László Simon dated 19 May 2006 stating that the East Pest County Organization of the Trade Union was established in 1998. The legitimacy of the organization was not questioned by the director of the Directorate at the time, who was sent the notice regarding the establishment of the organization, and by the amendment of the Collective Bargaining Agreement intensive cooperation started between the employer and the local trade union group. The national chairman asked dr. László Simon not to question the legitimate operation of the local organization in the future.

The Applicant also complained that in 2006, unlike in previous years, the employer failed to provide him the cost allocations necessary for his professional work and tried to create a situation in which the Applicant would be unable to do his work due to bad weather. He could have used the company car and the driver available for field trips (visiting 100 villages in county, taking photographs and collecting materials, etc.) up to the end of March 2006. However, due to the prolonged winter (the temperature was below zero and it was still snowing in March) the Applicant was unable to use these services.

The Applicant supplemented his application on 13 November 2006 by stating that after the hearing before the Authority on 24 October 2006 the director of the Respondent returned the invoices verifying the use of hot meal vouchers by the Applicant in October claiming that the invoices were not in compliance with the relevant rules. Thus the Applicant could not make use of this allowance in October. In the Applicant's view the above events are all due to the fact that he submitted his case to the Authority.

The Authority held a hearing in the case and heard the director of the Árpád Museum of Ráckeve, the direct supervisor of the Applicant, dr. N. L. the leader of the folk art work team, and the national chairman of the Trade Union.

At the hearing the Applicant submitted that in his view dr. László Simon tried to make his work impossible, requested detailed work reports and in the beginning of 2006 held several work inspections at the Árpád Museum of Ráckeve, where the Applicant worked. In the course of these inspections dr. Simon checked the work reports from 2005 and the professional achievements of the Applicant. The Applicant did not dispute the employer's right to such inspections, and that these may take place without notice, however, he found it unusual that even though he had worked for the museum in Ráckeve since 2001 his work had never been inspected before without prior notice. The Applicant stated that the reason why he did not participate in the trips that the Directorate organized and provided vans for was that there was no field work during these trips and his colleagues who participated in the trips worked on material that was available in various collections whereas for his work he would have needed to visit cemeteries. It is true that he could have visited 5-8 cemeteries this way but this would not have helped the Applicant to complete the work he had undertaken, i.e. to write the chapter entitled "The art of cemeteries" in the book called "The folk art of ". The Applicant also stated that the deadline of 31 October 2006 given by dr. Simon for finishing the work was not important because an application was submitted regarding the preparation of the book during spring 2006 to obtain funds for the printing and other tasks, which, if successful, would have postponed the publishing of the book until the spring of 2007. As the valuation of the application was postponed until autumn, the deadline of 31 October 2006 lost its significance. The Applicant was not provided any funds for the field work thus he himself financed the visits to the cemeteries and other data collection work.

At the hearing the direct supervisor of the Applicant stated that the only had organizational rights and not the right of employer, thus the right of employer was exercised over the Applicant by the county director of the Directorate. The witness was also present at the management meeting of 29 August 2006 where dr. László Simon had announced the dismissal of the pensioner museum attendants. The witness was also surprised at the announcement as he had not been asked previously either. The director took the notices to the meeting in his hand and then gave them to the museum directors concerned. The witness stated that the dismissals were not due to redundancy as the dismissed employees were replaced by younger ones. The witness confirmed the Applicant's statement in that it only turned out last December that the minutes taken of the management meeting had not included objections, even though there were at least 4 area directors who would have wanted to be consulted before the decision. The minutes of the meeting was reviewed by the Applicant and that is how the witness was informed of its content.

The witness stated that on 4 January this year dr. Simon and his deputy held an inspection at the without prior notice, which had never happened before. The witness also participates in writing the book entitled "The folk art of ", this task is included in the work agenda thus taking photographs in cemeteries and collecting data is part of the Applicant's job description. Not all contributors of the book have the same task. Some deal with collections available in museums and some must go on field trips and take photos. In some cases a couple of minutes could be sufficient for taking a photo whereas in other cases it may take a lot longer. The witness thought that dr. László Simon had put the Applicant into a disadvantageous position due to the Applicant's involvement in the trade union, since it was the Applicant who informed the maintainer of the institution of the dismissal of the museum attendants. In his opinion this action caused dr. Simon to request a detailed work report from the Applicant in August, which none of the other authors of the book had to provide. Furthermore, dr. Simon asked the witness several times on the phone about the whereabouts of the Applicant and what he had been working on and also checked the mailing records but found that there were no letters sent out in connection with the trade union because such post was always paid for by the trade union. The witness also stated that from the authors of the book it was the Applicant who would have gone on a field trip at the earliest time, i.e. at the end of winter, and that Applicant's request to use the company car at a later time was turned down. Both the Applicant and the witness stated that nobody had been asked about when they would want to go on a field trip or to collect material for the book, the schedule of trips was organized without prior consultation with the employees.

The witness also submitted that previously the Applicant had always been invited to the management meetings as a trade union secretary but not after May 2006 since when dr. Simon also started to question the legitimacy of both the trade union group and the position of the Applicant held within the organization.

Dr. N. L. witness stated that he was the editor of the book entitled "The folk art of " and had known the Applicant for years. As the head of the folk art work team he had been informed by the Applicant on several occasions that the employer failed to provide the conditions necessary for the field work. The witness

himself had also found it unusual that the Applicant had been required to do field work in the cemeteries in the middle of March 2006. The witness also stated that ever since the Applicant took action in connection with the dismissal of the pensioner museum attendants he had not been invited to the management meetings. The witness also knew that the county museum management had disputed the legitimacy of the East Pest County Group of the Trade Union as well as the position of the Applicant in the organization.

Dr. László Simon was also present on behalf of the Respondent when the witness statement of the national chairman of the Trade Union was taken. Dr. Simon had previously submitted his defence in connection with the application but was unable to attend the hearing for other official commitments.

The witness has been the chairman of the Trade Union since February 2003 and stated that during the operation of the organization it had never happened before that an employer requested the local group at the workplace to submit its bylaws or minutes of members' meetings. He stated that in practice the employer is informed by a letter when a local trade union group is formed at the workplace. The bylaws of the Trade Union are fully in compliance with the provisions of the Act on the Freedom of Association and after its establishment the Trade Union was registered by the relevant court. In connection with his letter of 19 May 2006 to dr. Simon the witness stated that he wrote it in response to dr. Simon's letter requesting that various documents confirming the legitimate operation of the East Pest County Organization of the Trade Union and the position of dr. T. A. secretary be provided. The witness said that he had not provided these documents to the employer but in his letter above he, as the national chairman, confirmed the legitimacy of the local organization. The witness also said that before 2005 there had been no problems between the employer and the trade union organization at the workplace, instead there had been a continuous dialogue between them. However, at the end of 2005 there had been a conflict between the director of the Directorate and the Applicant which resulted in that the employer questioned the legitimacy of both the local trade union organization and the position of dr. T. A. secretary. In the opinion of the witness this was unacceptable behaviour on the part of the employer. The witness thought that members of the trade union organization had to continue to face up to conflicts in order to represent the interests of employees.

In its written defence the Respondent submitted that the necessary conditions for the work of the Applicant were fully provided. For the months of March and August a car was provided with a cost limit of HUF 50 thousand for the field work of the folk art team, however, the Applicant did not wish to use this opportunity referring to bad weather conditions. Similarly, the Applicant did not join the group field trips because he was on sick leave and in June and July he rejected further offers of several weeks of car use referring to other work commitments.

In his letter of 6 November 2006, dr. László Simon submitted on behalf of the Respondent that he had never questioned the rights of the trade union organization. He had only requested that the Applicant provide the prior approval of the chairman of the Trade Union to the establishment and operation of the organization of the trade union within the institution. In his opinion the legitimacy of the local trade union organization can only be confirmed by the prior approval of the chairman of the Trade Union according to the bylaws of the Trade Union and this document had not been provided to date. He also said that in order to participate in management meetings the position of the trade union representative should be verified and the Applicant had failed to provide such verification so far. On behalf of the Respondent dr. Simon emphasized in his letters of 6 November and 20 November 2006 that he had provided appropriate conditions for the work of the Applicant. He noted that in 2006 there were 35 employees on field work and the weather conditions were suitable for such work in March. To his letter he attached the letter of the director of the dated 5 May 2006 stating that 17 settlements were visited on 13 March 2006 and 2 on 18 March and both visits included field work. In his opinion the claim of the Applicant and the director of the , who was heard as a witness, that the Applicant was discriminated against due to his trade union involvement was unfounded. He was of the opinion that only those trade union officials should be invited to management meetings whose legitimacy had been confirmed. Since the Applicant failed to provide such confirmation he was no longer invited to these meetings.

In this regard he stated that he was aware that the trade union group organized by the Applicant had been in operation since 1998, but he was of the opinion that this operation is not in accordance with the relevant rules.

In his letter referenced above the county museum director informed the Authority that he requested work reports from other members of the folk art team as well and not only the Applicant and confirmed this statement with the relevant document. He acknowledged that later he requested another report only from the Applicant and another employee, but the latter was not a trade union representative. In connection with the dismissal of the museum attendants he noted that according to the Public Employees Act trade unions may object to the decisions of employers within 5 days of being notified thereof, however, he did not receive such objection. He called the attention of the Authority to that the National Council for Public Employees and the other local trade union group distanced themselves from the actions of the Applicant. To prove this he submitted the related documents.

Regarding the invoices in connection with the hot meal vouchers mentioned in the application the Respondent presented its opinion in detail in its letter of 4 December 2006 to the Authority. In his opinion all department heads of the institution were informed about the appropriate way of issuing and accepting invoices and the few problems that occurred were usually clarified by the accounting employees of the institution on site. In his letter the director also informed the Authority that the correction of incorrect invoices is requested by the accounting department of the museum and that he did not understand why the Applicant considered such request as harassment. The Respondent submitted his letter of 10 November 2006 to the director of the , in the second part of which he stated that the invoices of the Applicant were not compliant with the relevant rules and thus were returned. He also complained that instead of using the term "I used it" the Applicant said "I ate it" on the invoices.

Based on the application, the documents submitted by the parties, the witness statements and the statements at the hearing, the Authority has concluded that the application is partly substantiated and the Respondent violated the requirement of equal treatment with respect to the Applicant due to his trade union membership.

During the proceedings the Applicant proved that at the time of the infringement he had the protected characteristic under Section 8 s) of the Equal Treatment Act. He also proved that he had suffered disadvantage as after February 2006 the employer had continuously disputed both orally and in writing the legitimacy of the trade union group led by the Applicant and thus the Applicant's position (secretary) therein, and he was no longer invited to the management meetings.

In the course of the procedure it was determined that the relationship between the Applicant and the director of the Respondent deteriorated since 2006 following the employer's decision on the dismissal of 44 pensioner museum attendants without prior consultation with the trade unions and the museum directors concerned. As requested, the Applicant as the secretary of the East Pest County Museum Group of the Trade Union informed the Socialist caucus leader of the Pest County General Meeting and then on 15 December 2005 the maintainer of the institution as well, the chairman of the Pest County General Meeting.

After the above events, the Respondent requested the Applicant in writing on several occasions (14 February 2006, 23 March 2006, 6 April 2006 and 13 July 2006) to verify the legitimacy of the local trade union organization led by the Applicant, to provide the employer with the bylaws and programmes of the local organization and the approval of the chairman of the Trade Union confirming that the second local trade union organization was also allowed to operate and the minutes of the members' meeting of the organization from 2002 to March 2006. The letter dated 13 July 2006 was also sent to the direct supervisor of the Applicant mentioning that the local trade union organization may not be allowed to exercise the rights under Section 24(1) of the Labour Code until the requested documents are provided. In addition, dr. Simon also asked the chairman of the Trade Union and D. L., the county chairman, to provide the above documents.

The Applicant forwarded the above letters of the employer to the national and county management of the Trade Union to obtain their opinion. The chairman of the Trade Union sent a detailed response on 19 May 2006 to the director of the Respondent stating that the East Pest County Museum Group was legitimate, was established in 1998, the director of the Directorate had been properly informed of this fact at the time and the legitimate operation of the group had never been questioned before. The county director of the Trade Union did not provide documents to the director of the Respondent either.

The doubts of the director of the Respondent regarding the East Pest County Museum Group of the Trade

Union and the position of dr. T. A. secretary were not eliminated during the procedure. Participating at the hearing of the witness statement of the chairman of the Trade Union dr. Simon again requested the chairman to provide the documents mentioned in his letters (bylaws, prior approval, minutes of members' meetings), in the absence of which he would continue to question the legitimacy of the local trade union group.

The director of the Respondent confirmed at his hearing that he did not invite the Applicant, as a trade union secretary, to the management meetings of 2006 since April. However, the secretary of the other local trade union organization is always invited to these meetings.

The director of the Respondent has held this position since 2002. The East Pest County Museum Group of the Trade Union was established in 1998 according to the witness statement of the national chairman of the Trade Union. According to the confirmation of the chairman of the Pest County Trade Union dated 2 November 2006 and submitted to the Authority, the Applicant is a member of the Trade Union, is the secretary of the East Pest County Museum Group of the Trade Union and the head of the Pest County Museum Department of the Trade Union. The director of the Respondent previously did not dispute the legitimacy of either the Applicant or the local trade union group led by him and in his letters to the Applicant he often addressed the Applicant as "Dear Mr. Secretary".

Section 2/2 of the Rules of Organization and Operation of the Directorate (2005) sets out that the head officials of the trade unions shall be invited to the management meetings to be held at least once a month.

The chairman of the Trade Union stated that during the operation of the Trade Union he had never experienced it before that the employer had required the submission of the minutes of members' meetings and bylaws in order to acknowledge the legitimacy of a local organization of the Trade Union.

The defence of the director of the Respondent regarding providing the necessary conditions for the work of the Applicant was accepted by the Authority. However, the Authority declines to accept the defence that the Applicant was no longer invited to the management meetings after April 2006 because he failed to verify the legitimacy of the local trade union organization led by him.

The Respondent could not provide adequate explanation to why he disputed only after February 2006 the legitimacy of the East Pest County Museum Group of the Trade Union and the position of the Applicant therein. The organization had been in operation with the Applicant as its secretary for years and the director of the Respondent had also held his position as the county director for 4 years. The Authority is of the opinion that this time should have been sufficient to acknowledge the legitimacy of the organization. If the director of the Respondent had doubts in this regard he could have checked with the court registering associations, parties and trade unions, whether the operation of the East Pest County Museum Group of the Trade Union was legitimate.

When making this decision the Authority also considered Section 19(1) of the Labour Code, which provides that employees shall be entitled to organize trade unions within the work organization and that it is the trade union's right to operate local groups inside any work organization and to involve its members in the operation of such local groups. According to Subsection (2) trade unions shall have the right to inform their members of their rights and obligations affecting their financial, social, cultural, as well as living and working conditions, furthermore to represent their members against the employers and before state agencies in matters concerning labour relations and employment matters.

Trade unions also have the right to inform not only their members but all employees of their rights and obligations affecting their financial, social, cultural, living and working conditions.

Due to lack of jurisdiction, the Authority did not examine in this regard whether the actions of the employer had been in compliance with the requirements of the Labour Code. This procedure only concerned the question whether the employer violated the obligation of equal treatment due to the trade union membership of the Applicant. Regarding this question it could be determined that dr. László Simon, representing the Respondent in this procedure and also exercising the employer's right over the Applicant, had written letters since February 2006 regarding this matter and the number, content and addressees of these letters contributed

to the total breakdown in the social dialogue between the parties concerned. The employer considered the critical comments of the trade union sent to him (dismissal of the museum attendants, absence of a collective bargaining agreement and information provided to the maintainer of the institution) as a personal offence.

The failure of the Applicant to provide the requested documents to the employer regarding the trade union organization was considered by the Respondent as “non-constructive behaviour”. However, in the view of the Authority it was not proved that regarding the organization of the field work of the Applicant and providing the company car for such purposes the Respondent violated the requirements of equal treatment as the Applicant had the opportunity to use the offers regarding the company car in June and July 2006. In connection with the format and content compliance of the invoices related to the hot meal vouchers the Authority found the Respondent’s defence contradictory in that raising objections regarding these invoices would have been the task of accounting employees, yet the correspondence in this regard took place between the director of the institution and the Applicant and the director of the institution returned these invoices accompanied by his own letter. Despite being requested by the Authority, the Respondent failed to state the type and content of the invoices sent by the Applicant within the 6-month period prior to the disputed invoices of October 2006. The Respondent also failed to state how the employees were informed of the use of hot meal vouchers and the correct format and content of the related invoices. The Applicant claimed that prior to his application to the Authority all of his invoices were accepted and he considered it quite unusual that his October invoices were returned by the employer. The Authority is of the opinion that it would have been a more reasonable resolution if the Applicant had been informed on time by quoting the relevant legal regulations or providing the opinion of the Tax Authority in this question and ensuring that the Applicant had enough time to correct and replace the disputed invoices in the given month.

In light of the above it could be determined as regards the Respondent that it had violated the requirement of equal treatment against the Applicant and discriminated against the Applicant due to his trade union membership and position and the critical comments he made in this capacity.

As detailed above the majority of the arguments of the Respondent have not been substantiated as no reasonable explanation was provided why the leader of the other local trade union group, who was in a similar situation to that of the Applicant, was always invited to the management meetings when the Applicant was not. Neither were acceptable explanations provided to why the Applicant’s work had to be checked in year 2006 more often than average and more often than previously.

As regards the sanctions applied, the Authority took into account that it did not find all claims of the application proved. However, it could be determined that the Respondent violated the requirement of equal treatment against the Applicant due to his characteristic under Section 8 s) of the Equal Treatment Act and therefore the Authority prohibited the Respondent from continuing the unlawful conduct and ordered that this decision be published on the Authority’s website for the time specified in the operative part hereof.

The following laws apply to the proceeding and jurisdiction of the Authority: Sections 8 s), 14 a), 16 b) and c) and 21 g) of the Equal Treatment Act; Act CXL of 2004 on the General Rules of Administrative Procedures and Services (“Administrative Procedures Act”) and Government Decree No 362/2004 (XII.26) on the Equal Treatment Authority and the Detailed Rules of its Proceedings (the “Decree”).

The costs incurred during the proceeding shall be borne by the Respondent 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 judicial review lies against this decision.

22 December 2006,

Dr. Judit Demeter
President

Effective as of 10 January 2008