



Case 149

Decision No. 149 of 17 October 2007

Country: Romania

Region: Europe

Year: 2007

Court: National Council for Combating Discrimination

Health Topics: Health care and health services, Hospitals, Sexual and reproductive health

Human Rights: Freedom from discrimination, Right to health

Facts

On August 28, 2009, Mrs. Y, a pregnant woman of Roma ethnic origin, went to Targu Neamt Hospital Obstetrics and Gynaecology Department, a public hospital, for a check-up. Dr. X performed the check-up and sent her home, telling her there was nothing wrong with her and making certain derogatory statements about gypsies. When Mrs. Y returned to the hospital a few days later, Dr. X refused to see her, but examined other non-Roma patients. On September 1, 2009, Mrs. Y obtained an ultrasound scan from a private hospital showing the existence of an intrauterine pregnancy. When she returned to the Targu Neamt Hospital that day, Dr. X again told Mrs. Y that she was fine. Mrs. Y returned to the private hospital where she was referred to the emergency room and received a perfusion. When Mrs. Y returned to Targu Neamt Hospital on September 2, Dr. X threatened to beat her if she didn't go home and told his medical assistants not to welcome gypsies anymore.

The defendant claimed that on September 2, 2009, while Mrs. Y was at the hospital, a group of 11 Roma people appeared at the hospital and started insulting him. The defendant also noted that Mrs. Y did not have a referral from a family physician or clinic, nor requested hospitalization or laboratory testing.

Government Ordinance No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, stated that any discriminatory behavior was considered harassment and would be sanctioned as an administrative offense.

Decision and Reasoning

The Board noted that "the act of harassment represents a behavior that can take many forms" and that the legislature intended for anti-discrimination legislation to cover a broad range of behavior constituting harassment and the discriminatory motives or causes behind such behavior. With regards to the burden of proof, the petitioner was required to "indicate sufficient elements that create the assumption of an existing act of discrimination. These elements can be considered evidence supporting the existence of a differential treatment (exclusion, restriction, preference, distinction) applied to the petitioner, directly or indirectly." The petitioner, however, did not have to prove the lack of justification for the differential treatment as the respondent had the burden of proof in showing that the facts creating the assumption of discrimination did not amount to an act of discrimination.

The Board confirmed that the petitioner had established the presumption of discrimination given how Dr. X approached Mrs. Y's situation and the method used for providing healthcare. The Board then quoted from relevant medical regulations and held that "within the exercise of this [medical] profession, the respect towards personal dignity, in close connection with the principle of non-discrimination, represents an essential characteristic that accompanies the fulfillment of medical acts. . . . Hence, what counts in the present case is in what way the behavior of the defendant interferes with the right to personal dignity, and if this interference is likely to amount to an act of discrimination"

The Board further cited case precedent indicating that, as the Roma were vulnerable minority, specific attention must be paid to their needs. The Board also noted that the necessity to specifically request hospitalization or medical testing should not be relevant to "a person found in a special medical situation (pregnancy), who is part of the Roman community and is in a situation of socio-economic or educational disadvantage as opposed to the majority of the population."

The Board held that defendant's statements created an intimidating or offensive environment, under

Decision Excerpts

6.17. The inclusion of harassment as a form of discrimination in the EU acquis, which is subsequently transposed into national legislation, is very important. Discrimination does not manifest itself per se, solely as a legal provision or practice, but also as behaviors that create an impact on the environment, and vary from physical violence and racist, sexist, xenophobic, etc. remarks or statements, all the way to general exclusion. This form of discrimination affects, in a psychological and emotional way, the dignity of persons pertaining to different minorities.

6.21. The Board holds that, according to Art. 373 of Law No. 95 of 14 April 2006 regarding the Reform in the Health Sector, modified and amended, the medical profession has the primary purpose of ensuring health status by preventing illness, promoting, maintaining and recovering the individual and the community's health. In order to reach this aim, all throughout the exercise of the profession, the doctor has to show availability, correctness, devotion, loyalty and respect towards the human being.

6.29. From this point of view, it is important when exercising the medical profession, the doctor should be exigent in the relationship with any potential patient, with regard to the way in which information is being communicated, and should have a flawless physical, mental and emotional behavior towards the patients, respecting their dignity and the principle of non-discrimination safeguarded by the Romanian Constitution and G.O. No. 137/200, republished . . .