

THE NATIONAL COUNCIL FOR COMBATING DISCRIMINATION
Autonomous State Authority

DECISION NO.350
of 17.10.2007

File No. 167/2007

Petition No. 3249 on 03.04.2007

Petitioner: [the name has been erased by the National Council for Combating Discrimination for confidentiality reasons]

Object of the petition: refusal to provide health care services by the employees of the Ambulance Service of the Neamț County Ambulance Station, on grounds of the petitioner's ethnic origin.

I. The parties

1. Petitioner: [the name has been erased by the National Council for Combating Discrimination for confidentiality reasons, for purposes of translation we will use "Mrs. X"], Neamț County

2. Defendant: The Ambulance Service of the Neamț County Ambulance Station, Neamț County, 151 Dimitrie Leonida Street, Piatra Neamț.

II. Subpoena of parties

Subpoena procedures were fulfilled on 27/09/2007, at the National Council for Combating Discrimination headquarters, in compliance with art. 20, paragraph 4, Government Ordinance no. 137/2000 on preventing and combating all forms of discrimination, republished.

The parties were not present at the hearing.

III. Object of the petition and statements of the parties

The petitioner referred to the National Council for Combating Discrimination with regard to the fact that on the date of 23/03/2007, because of health-related problems, she requested the ambulance service of the Neamț County Ambulance Station. An ambulance came to the whereabouts of the petitioner. The ambulance staff included a medical assistant (I. A.), a driver, and a person whose identity is unknown to the petitioner.

According to the petition, the medical assistant I. A. asked the persons on the scene if the petitioner died, did not perform any type of medical consult and did not approach the petitioner on grounds that she was a Roma woman.

The petitioner claims that she was lifted into the ambulance by her brother and not by a member of the ambulance staff.

The petitioner requested the Council to find an act of discrimination represented by the refusal of providing emergency health care services on the grounds of ethnic origin.

Taking the petition into consideration, an on-the-scene investigation was conducted.

Following the investigation, a series of aspects were found:

According to the statement of Mrs. I. A. (the medical assistant who was on the ambulance that came at the request of Mrs. X), the ambulance staff arrived on the scene in a few minutes, since the Ambulance Station was located near the petitioner's home. On the scene she found a loud group of people waiting for the patient to descend. One of the males in the group hit Mrs. I.A.'s head against the vehicle's door, causing her trauma to the orbital region. Mrs. I. A. could not attend to the patient because she herself needed medical care, the other members of the ambulance staff, Dr. P and the driver, were able to confirm these statements.

By means of a letter addressed by the Neamț County Ambulance Service, Mrs. L. D., chief physician of the Neamț County Ambulance Service, adds that, in spite of the medical assistant's (I. A.'s) injury caused by one of the Mrs. X's next of kin and thus suffering from abundant haemorrhage, the medical staff lifted the patient into the ambulance and went to Piatra Neamț County Emergency Hospital.

In order to confirm the fact that the ambulance staff reached Mrs. X's home on time, it was verified that the patient who was transported to the Piatra Neamț County Emergency Hospital was handed over 10 minutes after the 112 emergency call was registered.

The following day, realising the situation that has been created, Mrs. L. D. was telephoned by some persons from Mrs. X's entourage, which tried, in exchange for sums of money and other gifts, to change Mrs. I. A.'s decision to file criminal charges to the Public Prosecutor's Office of Piatra Neamț First Instance Court against the persons who assaulted her.

For the same purpose, two females went to the Neamț County Ambulance Service. They tried to convince the management of the Service to change Mrs. I. A.'s decision. Since they could not influence Mrs. I. A.'s decision, Mrs. X filed a complaint with the Commission of Professional Monitoring and Competence, a complaint which was not pursued afterwards.

IV. The facts and the law

Regarding the relevant law, according to **Article 2, paragraph 1, of the Governmental Ordinance (G.O.) No. 137/2000**, on preventing and sanctioning all forms of discrimination, republished, *"discrimination represents any distinction, exclusion, restriction or advantage, based on the race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, age, disability, chronic non-contagious illness, infection with HIV or the belonging to a disadvantaged category or any other criteria, which has as goal or effect the restriction or elimination of acknowledgement, of use or exercise, in equal conditions, of the human rights and fundamental freedoms recognized by the law, in the domain of politics, economy, society, culture or in any other domain of public life."*

Article 2, paragraph 2 of G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, reads as follows: *"The present ordinance deems as discriminatory those apparently neutral provisions, criteria or practices which disadvantage certain persons, based on the criteria stated in paragraph 1, as opposed to other persons, unless these provisions, criteria or practices are objectively justifiable by a legitimate aim, and the means of reaching that purpose are adequate and necessary."*

Article 2, paragraph 3 of G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, provides that *“Any behaviour, active or passive which, through the effects it generates, unduly favours or disadvantages, or subjects a person, a group of persons or a community to an unjust or degrading treatment, as opposed to other persons or communities, triggers contraventional liability in conformity with the present ordinance (...)”*

According to **Article 10 of G.O. No. 137/2000**, on preventing and sanctioning all forms of discrimination, republished, *“In conformity with the present ordinance, it is considered a contravention, if the fact does not fall under the criminal law provisions, the discrimination of a natural person, a group of persons, because of their belonging or the persons who administer the legal person belonging to a certain race, nationality, ethnic group, religion, social category or a disadvantaged category, respectively on the basis of personal beliefs, age, sex or sexual orientation of the persons concerned, by means of (...)*

b) refusing the access by a person or groups of persons to public health care services - choosing the family physician, medical assistance, health insurance or other health care services; (...)

h) refusal to provide, to a person or groups of persons, certain rights or facilities.”

The European Court of Human Rights, referring to the Article 14 on the prohibition of discrimination, stated that difference in treatment becomes discrimination, as viewed under Article 14 of the Convention, when state authorities induce distinctions between analogous and comparable situations, without these distinctions being based on a reasonable and objective justification. It has been a constant jurisprudence of the European court that if such a violation is alleged, it must be ascertained whether “the persons placed in analogous or comparable situations benefit from a preferential treatment and if this distinction has no reasonable or objective justification” (see also ECHR, 18 February 1991, Fredin v. Sweden, para. 60, 23 June 1993, Hoffman v. Austria, para. 31, 28 September 1995, Spadea and Scalabrino v. Italy, 22 October 1996, Stubbings and others v. UK, para. 75).

The European Court of Human Rights held that the High Contracting Parties benefit from a certain margin of appreciation in order to determine if and to what extent the differences in analogous or comparable situations are able to justify differences in legal treatment applied. (22 October 1996, Stubbings and others v. UK, para. 75).

Similarly, The Romanian Constitutional Court, through its Decision No. 1 of 8 February 1994, published in the Romanian Official Journal, Part 1, No. 69, 16 March 1994, held that *“a difference in treatment cannot simply be the exclusive appreciation of the legislature, but has to be rationally justifiable, with respect to the principle of equality of citizens before the law and public authorities”*. Moreover, in Decision No. 135 of 5 November 1996, published in the Romanian Official Journal, Part 1, No. 345, 17 December 1996, the Constitutional Court considered that *“the principle of equality before the law implies the establishment of an equal treatment for situations which, according to the aims pursued, are not different.”*(Decision No. 20/2000, Official Journal No. 72/2000, DH 2000, p. 44).

In order to analyse a petition from the point of view of the existence or non-existence of an act of discrimination, it is necessary to analyse the following aspects:

1. The existence of the different treatment

With regard to this aspect, the petitioner claims the existence of an act of discrimination for the reason that the staff of the ambulance arrived late after being solicited, and the medical assistant, Mrs. I. A. behaved inappropriately towards the patient because of her ethnic origin.

For this matter, Art.1, para.3 of G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, reads that “*The exercise of rights provided for in this article applies to persons who are found in comparable situations*”

Taking into consideration the documents attached to the file and the outcome of the Council’s investigations, the facts alleged in the petition have not been confirmed.

2. The extent to which the different treatment constituted an act of discrimination

According to the legislation on preventing and sanctioning discrimination, for an act to be considered as being discriminatory, it has to meet cumulatively the following conditions:

- *the fact consists in a distinction, exclusion, restriction or advantage;*

- *the distinction is based on one or more of the grounds of discrimination;*

According to the law, the grounds of discrimination are: *race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, age, disability, chronic non-contagious illness, infection with HIV or the belonging to a disadvantaged category or any other criteria.* In the instant case, the petitioner invoked the criterion of ethnic origin (Roma origin);

- *the distinction based on one of the discrimination criteria enumerated by the law has as a goal or effect the restriction or elimination of acknowledgement, of use or exercise, in equal conditions, of the human rights and fundamental freedoms recognized by the law, in the domain of politics, economy, society, culture or in any other domain of public life;*

- *the measure is not objectively justifiable by a legitimate aim, and the means of reaching that aim are not adequate and necessary.*

According to the documents attached to the file, the ambulance staff arrived on time subsequent to the petitioner’s request, took her and urgently transported her to Piatra Neamț County Emergency Hospital.

Following the investigation and the statements of other persons, it has been discovered that the person who was abused in this case was actually the medical assistant, Mrs. I. A.

It must be taken into consideration that the distinction, restriction, exclusion or advantage has to be based on one of the criteria provided by Art.2 para.1, but it also has to refer to persons found in comparable situations treated differently because of their belonging to one of the categories stated in this particular legal provision.

Therefore, not all situations in which persons are treated differently can amount to acts of discrimination, and such treatment can rely on other reasons than the person’s belonging to one of the categories enumerated in Art 2, para.1 of G.O. No. 137/2000.

After examining the petition and the relevant legal provisions, it results that the acts in the present case are not acts of discrimination, according to G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished.

Translation provided by Lawyers Collective and partners for the Global Health and Human Rights Database (www.globalhealthrights.org)

As to the aforesaid, in conformity with Article 20, paragraph 4 and 7 and Article 26 of G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, by 5 votes of the members present at the hearing,

**THE STEERING BOARD
HOLDS THAT**

1. the facts which were brought to attention do not constitute acts of discrimination according to G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished;
2. a reply will be provided to the petitioner, according to Article 8, paragraph 1 of Governmental Ordinance No. 27/2002 on solving petitions, approved and modified by Law No. 233/2002.

V. Appeal and time limits for appeal

The present decision can be appealed before the competent court within the legal time limit according to Article 20, paragraph 10 of G.O. No. 137/2000, on preventing and sanctioning all forms of discrimination, republished, as well as according to the provisions of Administrative Appeal Law No. 554/2004.

The members of the Steering Board present at the hearing:

DEZIDERIU GERGELY –	Member	[Signature]
ISTVAN HALLER –	Member	[Signature]
PANFILE ANAMARIA –	Member	[Signature]
TRUINEA ROXANA PAULA –	Member	[Signature]
VASILE ANA MONICA –	Member	[Signature]

Date of drafting: 19/10/2007