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Case ref. no.: 0700-78/2019/17
Date: 5 October 2020

In proceedings initiated upon the motion lodged by a third party against the offending party, a taxi driver, in the matter of the determination of discrimination under the Protection Against Discrimination Act (Official Gazette of the Republic of Slovenia, no. 33/16 and 21/18 - ZNOrg, hereinafter referred to as "ZVarD") and the first paragraph of Article 207 of the General Administrative Procedure Act (Official Gazette of the RS no. 24/06 - official consolidated text, 105/06 – ZUS-1, 126/07, 65/08, 8/10 and 82/13, hereinafter referred to as "ZUP"), pursuant to Article 21, with reference to Article 37 of the ZVarD, the Advocate of the Principle of Equality (hereinafter referred to as: "the Advocate") hereby issues the following

DECISION

1. The offending party is found to have violated the prohibition of discrimination based on one's racial or ethnic background, as stipulated under the ZVarD, whereas, in December 2019, as the driver of his taxi vehicle which he operates as a sole proprietor, he refused service to a group of persons who had booked a taxi with the taxi company's dispatch center.
2. No costs were incurred in the course of the proceeding.

REASONING

On 6 December 2019, the Advocate of the Principle of Equality (hereinafter referred to as: "the Advocate") received a Discrimination Complaint from a third party. It follows from the complaint that on 4 December 2019, the drivers who, at the time, were providing taxi services for the company they were in the employ of (hereinafter referred to as: the taxi company) refused transportation service to a group of persons - migrants, resulting in these persons being unable to reach their desired destination in the center of Ljubljana in a timely manner.

Pursuant to Article 34 of the Protection Against Discrimination Act (Official Gazette of the Republic of Slovenia, no. 33/16 and 21/18 – ZNOrg: hereinafter referred to as: "ZVarD") the Advocate may consider a case of discrimination *ex officio* if they learn about the existence of discrimination on the basis of a complaint by a third party or. The Advocate deemed this to be an issue which falls within the realm of his competence, and furthermore he also considered this case to be of significance for the protection from discrimination of foreign nationals, migrants or refugees. As such, the case warrants investigation and needs to be addressed as a matter of general importance to achieve clarity on the issue of potential discrimination based on the legally protected personal circumstance of racial or ethnic background.

The Advocate considers the factual situation to determine the potential existence of discrimination in the case concerned based on available information and certain key provisions of the ZVarD. Proceedings undertaken before the Advocate are regulated in Articles 33 through 37 of the ZVarD. Any procedural issues not regulated under the ZVarD are subject to the General Administrative Procedure Act (ZUP), pursuant to the second

paragraph of Article 3 of the ZUP. As the assessment of discrimination by the Advocate constitutes an administrative proceeding on the basis of the nature of the matter itself (under the second paragraph of Article 2 of the ZUP), the Advocate conducts the proceeding according to the provisions of the ZIP in all matters not specifically regulated under the ZVarD.

Article 4 of the ZVarD defines discrimination as any undue actual or legal unequal treatment, differentiation, exclusion, limitation or failure to act due to personal circumstances, the result or consequence of which is hindrance, reduction or nullification of equal recognition, enjoyment or exercise of human rights and fundamental freedoms, other rights, legal interests and benefits.

Discrimination based on any personal circumstance is prohibited. In order to confirm a finding of discrimination, a specific personal circumstance must be the decisive reason for comparably worse treatment. In accordance with Article 1 of the ZVarD, personal circumstances include gender, nationality, racial or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social status, financial situation, education, or any other personal circumstance. These circumstances are either inherent or acquired personal characteristics, features, conditions or statuses, which, as a rule, are either permanently and inalienably linked to a particular individual and their personality, in particular their identity; or cannot easily be changed by the individual.

ZVarD defines several forms of discrimination. Direct discrimination occurs if a person, or a group of people, are, were or could be treated less favorably in the same or similar circumstances due to certain personal circumstances compared to how another person or a group of people is, was or would be treated. Indirect discrimination occurs when a person or a group of people having certain personal circumstances is, was or could be at a disadvantage compared to other people due to a seemingly neutral regulation, criterion, or practice, unless such provision, criterion, or practice is objectively pursuing a legitimate objective and the means of attaining this objective are appropriate and necessary (Article 6).

Besides these two forms, the ZVarD also refers to other forms of discrimination (Article 7). Harassment is unwanted conduct related to any personal circumstance, which has the effect or purpose of creating an intimidating, hostile, degrading, humiliating or offensive environment for a person and which violates the dignity of that person (first paragraph of Article 8). Instructions on discrimination are any instructions the result of which is, was or could be discrimination in the sense of this Act, which also includes an instruction not to prevent or eliminate discrimination. (Article 9) Inciting discrimination is any incitement of other persons to carry out actions the result of which is, was or could be discrimination as per the provisions of this Act (first paragraph of Article 10). Victimization is exposing a person subject to discrimination, or a person helping the aforementioned person, to unfavorable consequences due to actions which they take to prevent or eliminate discrimination (Article 11).

Article 12 of the ZVarD recognizes what is referred to as severe forms of discrimination, which include multiple discrimination occurring when a person is discriminated against simultaneously due to several personal circumstances; mass discrimination occurring when several people are discriminated against simultaneously by disputable conduct, particularly if motivated by hatred or contempt for people with certain personal circumstances; persistent or repeated discrimination; discrimination which has or could have consequences for the person subject to discrimination that are difficult to remedy regarding damage caused to the person's legal position, rights or obligations, particularly if directed at children or other weak persons.

In the context of the assessment of discrimination, the Advocate examined and investigated the facts and circumstances of the matter, including the identification of drivers who had refused transportation to a group of foreign nationals – migrants. For that purpose, on 29

January 2020, the Advocate sent an Inquiry no. 0700-78/2019/4 to the headquarters of the taxi company, based in the Ljubljana area. Based on Article 37 of the ZVarD (the Advocate may request evidence which, as per the principle of proportionality, are necessary to consider an individual case to determine the existence of discrimination), the Advocate requested the company to provide the personal and contact details of the drivers who had refused transportation. He also asked the taxi company to provide other relevant details about the matter in question, related to their business operations and to the nature of the business relationship between the taxi drivers and the taxi company.

The Advocate received a response from the taxi company on 17 February 2020, and supplemental information to the response on 26 February 2020, both in the form of e-mail messages. In the responses, the company sent the Advocate the requested personal information and contact details about the two taxi drivers who refused transportation. In this context, they provided the personal information and contact details of the offending party and information about the second taxi driver. The company also explained how they operate (i.e. the relationship between the dispatch center and the taxi vehicle). It was found that a business relationship exists between the driver of the taxi car and the taxi company. Drivers who wish to provide taxi services must operate as sole proprietors under the auspices of the company. They must use their own vehicles to perform the service. Their contract states that the dispatch center notifies drivers about potential customers of taxi services based on their current location, whereas the drivers make the final decision to either accept or refuse to provide transportation for the customer on the spot. It was also established that the taxi company does not have a policy/rules which regulate the possibility of refusal of transportation. They claim that the most common reason for refusing taxi service is the customer being visibly intoxicated and filthy. Another common reason is the transportation of animals or small children, because not all taxi vehicles have metal transportation cages built into the car (which are used for transportation of animals), or child car seats installed.

In order to clarify the matter for the purposes of the assessment of discrimination, the presumably offending taxi driver was then invited to an interview at the Advocate's headquarters, Železna cesta 16, Ljubljana (the interview was conducted on 28 February 2020). It was established during the interview that the taxi driver responded to a call from the dispatch center and drove to the Žale cemetery, where he noticed a group of 8 to 10 people immediately upon arrival. He allegedly immediately knew they were migrants, since they were of a dark complexion ("we're white, and they're brown or darker-skinned," he said). He immediately reported his observation to the dispatch center and told them these were migrants, and refused to provide them with transportation.

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Based on the explanation provided by the taxi company, and based on the interview with the offending party - the taxi driver, who performs taxi services as a sole proprietor as a subcontractor of the taxi company, and based on conducting other interviews, inquiries, verifications and gathering facts, the Advocate determined that on 4 December 2019, a funeral service was held for two Third Country citizens who had died in a traffic accident on the Primorska highway some days prior. After the funeral service, where family members of the deceased, who were foreigners from the Middle East countries, at approximately 14:30 hours (2:30pm), a person who occasionally volunteers at the Asylum Home called a taxi company based in Ljubljana to arrange transportation for a group of approximately ten persons who were meant to ride into the town center of Ljubljana, while some of them were going to continue on towards the Marco Polo airport in Venice (the volunteer who made the call to the taxi company was interviewed on 17 December 2020). In doing so, he made no mention to the dispatch center who would be using the taxi service or where the persons were traveling. He only said he needed two taxis to transport a group of people. The taxi company dispatch operator confirmed the booking and assured him that two taxi vehicles would be sent to the location.

The offending party and the driver of the taxi car marked with the name of the company responded to the taxi company's dispatch call at approximately 14:35 (2:35pm) and drove towards the Žale Cemetery parking lot. As he approached the gravel parking lot, he noticed in front of him another taxi car already driving in the same direction. He drove up approximately 50 meters from him. As this car pulled off the main road into the gravel parking lot, the offending party stopped his car next to the main road and decided to wait to see if the taxi in front of him was going to pick up the potential customers who had booked the transportation. As he stopped by the main road, he immediately noticed the taxi car stop in front of a group of ten persons. A person from the group approached the taxi driver and conversed with the driver through the open car window (he could not make out what they were talking about because he was too far away). Their conversation went on approximately two minutes, after which the taxi driver slowly drove away from the location without picking anyone up. Thinking this was strange, the offending party also decided to approach the group and ask them if they needed transportation. As soon as he drove up to them, he realized these were foreign nationals - migrants. Apparently, they all had a darker skin tone compared to citizens of the Republic of Slovenia. In the interview, the offending party said that "we - Slovenian citizens are white, while they are brown or darker-skinned." The volunteer approached the offending party. The offending party asked him if the taxi transportation was for him. The volunteer told him that the transportation was for the persons standing behind him. The offending party immediately notified the dispatch center over the radio and told the dispatcher that these are migrants and that he wasn't going to give them a ride. The dispatch center acknowledged his notice and told him that they would send someone else to pick them up.

The offending party also said in the interview that the reason he declined to offer transportation was that he had had bad experiences with foreigners in the past, particularly migrants. He would often not get paid for the taxi service he had performed. He also said that the migrants have no money and that he had gotten in trouble with the police because of it in the past. In the past, the police had already pulled him over during traffic checks because he had three customers riding with him, which the police check revealed to be migrants. The police had held him over three hours, causing him to incur a substantial loss due to the extended idle time, and he was never compensated for it by anyone. Police officers had told him to avoid transporting migrants, because transporting them could cause him to run into problems. As a result of this, the offending party decided to refuse the taxi service and drove away from the location.

Since, according to the volunteer, he was unable to secure transportation from the taxi company, he decided to call another taxi company based in Ljubljana. This taxi company then provided the group with transportation.

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In the case concerned, pursuant to the first paragraph of Article 1 of the ZVarD, protection against discrimination is also afforded to individuals - in this case individual migrants. In the case concerned, the Advocate recognized racial and ethnic background as the personal circumstances based on which individuals are afforded protection from discrimination. Racial or ethnic background are explicitly mentioned in the ZVarD as personal circumstances afforded statutory protections under Slovenian and European law.

Based on all the information gathered, the Advocate finds that by refusing to provide the foreign nationals - migrants transportation services, the offending party violated the prohibition of direct discrimination, contrary to the first paragraph of Article 6 of the ZVarD, with reference to Indent 8 of the first paragraph of Article 2 of the ZVarD. This provision prohibits discrimination in access to goods and services, which includes taxi services. Direct discrimination occurs if a person, or a group of people, are, were or could be treated less favorably in the same or similar circumstances due to certain personal circumstances compared to how another person or a group of people is, was or would be treated. In the case concerned, the foreign nationals - migrants were refused transportation based on their

ethnic origin or skin tone. The offending party referred to them as having a darker skin tone, or being dark-skinned.

Under the first paragraph of Article 2 of the ZVarD “The Act shall bind all state authorities, local communities, holders of public authorizations, legal entities and natural persons to ensure protection against discrimination”. It therefore also applies to individuals operating their businesses as entrepreneurs, including sole proprietors and employees of transportation companies working in the taxi transportation industry, like the offending party. Pursuant to the first paragraph of Article 2 of the ZVarD, these persons must “ensure protection against discrimination or equal treatment of all persons in all fields of decision-making, legal transactions and other operations or conduct to afford protection from discrimination and ensure equal treatment of all persons.” When it comes to the personal circumstance of racial or ethnic background, two personal circumstances explicitly protected under the *acquis communautaire*, unequal treatment in the access to goods and services available to the public is always prohibited. No exceptions may be allowed, as stipulated in the sixth paragraph of Article 13 of the ZVarD. Racial discrimination in the access to and supply of goods and services which are available to the public is also explicitly prohibited under the European Directive 2000/43/EC, in Article 3(1)(h).¹

The Advocate thus found that by refusing to transportation to persons protected under the ZVarD, the offending party violated the rights of the affected persons to equal treatment. The offending party did not know the specific persons who needed transportation, yet pre-emptively refused transportation to them because of their skin tone, which caused him to arrive at a generalized pre-conceived conclusion that they were migrants, and that he was going to have bad experiences with them. The Advocate appreciates the fact that past negative experience can deter drivers from performing services, however service cannot be refused purely based on an individual’s skin color and the pre-conceptions of their negative characteristics.

The Advocate therefore finds that the offending party is found to have violated the prohibition of discrimination on the grounds of one’s racial or ethnic background, as stipulated under the first paragraph of Article 2 of the ZVarD, whereas, as the driver of his taxi vehicle, which he operates as a sole proprietor as a subcontractor of a taxi company based in Ljubljana, refused service to a group of persons - migrants who had booked a taxi with the taxi company’s dispatcher on 4 December 2019.

In accordance with the first paragraph of Article 35 of the ZVarD, the procedure conducted by the Advocate is free of charge for the parties involved, and no special expenses were incurred over the course of the proceedings, therefore the Advocate decided as per Point 2 of the operative part of this Decision.

Legal notice:

No appeal may be lodged against this decision, although an administrative dispute may be raised. An administrative dispute may be raised by way of legal action, lodged within 30 days of delivery of the decision, before the Administrative Court of the Republic of Slovenia, Fajfarjeva 33, 1000 Ljubljana. The dispute may be lodged with either directly in writing, or sent by certified mail. It must be lodged in at least three copies, including any appendices thereto. The action must be accompanied by this decision, either the original or a photocopy.

Proceeding conducted by:

Danilo Hovnik
Advocate of the Principle of Equality II

Miha Lobnik
ADVOCATE OF THE PRINCIPLE OF EQUALITY

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.