

THE EQUALITY TRIBUNAL
P.O. Box 8049 Dep.
NO-0031 Oslo
Tel. 95 19 68 00/01
e-mail: post@diskrimineringsnemnda.no
website: www.diskrimineringsnemnda.no

Case no. 1/2008

Parties to the case:

Thon Hotel Opera

B

Administrative decision of 5 March 2008

Composition of the Equality Tribunal:

Aslak Syse, Chair
Thom Arne Hellerslia
Selma Ilyas
Hege Skjeie

Subject-matter of the case

The question of discrimination is in breach of section 3 of the Gender Equality Act and section 4 of the Anti-discrimination Act on the grounds of gender and ethnicity. Refusal when requesting a hotel room.

The facts of the case

B and her girlfriend have an Asian background. They are domiciled in Asker and Oslo, respectively.

Late on the afternoon of Friday 19 January 2007, they visited Thon Hotel Opera wishing to book a hotel room. They had no luggage with them.

When the receptionist on duty discovered that B's home address was in Asker, they were asked why they were not going to spend the night at home. B and her girlfriend were then refused a room at the hotel.

The hotel has produced written guidelines permitting staff to turn away people whose home address is in Oslo and its environs.

B and her girlfriend asked for further explanation as to why they had been refused a room. The receptionist informed them of the guidelines, and explained that the background for the guidelines was that guests resident in Oslo and its environs could be prostitutes or drug addicts who gained access to the hotel in order to cause trouble.

Consideration by the Equality and Anti-discrimination Ombud and subsequent proceedings

In a letter dated 10 April 2007, B contacted the Equality and Anti-discrimination Ombud. She felt she had been discriminated against on the grounds of her ethnicity when her and her friend's request for a hotel room was turned down.

The Ombud issued an opinion in this case on 12 November 2007. The Ombud concluded that the hotel had acted in breach of section 3 of the Gender Equality Act and section 4 of the Anti-discrimination Act when they refused B and her girlfriend a room at the hotel.

In a letter dated 10 December 2007, the hotel appealed the Ombud's opinion.

The Ombud considered the opinion on the basis of the complaint, but upheld its opinion in this case.

The Ombud submitted the case for consideration by the Equality Tribunal in a letter dated 14 December 2007.

The case was dealt with at the Tribunal's meeting on 5 March 2008 in Oslo. In its consideration of the case, the following members of the Tribunal took part: Aslak Syse (chair), Thom Arne Hellerslia, Selma Ilyas and Hege Skjeie.

Thon Hotel Opera was represented by the director, a colleague who was present at the next terminal at the reception desk and the person who was on duty on that particular afternoon. B was interviewed on the telephone. The Equality and Anti-discrimination Ombud was represented by Serap Helin Hartwig and Rannveig Sørskaar. The Tribunal's secretariat was represented by Christel Kirkøyen.

The parties' arguments

Thon Hotel Opera apologises for the experiences of B and her girlfriend had when they attempted to reserve the room, but refutes the notion that B has been discriminated against on the grounds of gender and ethnicity.

The hotel stresses that written guidelines are necessary in order to tackle situations in which guests pose challenges. The idea behind such guidelines is to have the opportunity to turn away guests which the hotel considers represent a security risk. This is done out of regard for the security of the hotel's guests and its employees, as well as the hotel's reputation.

The area around the hotel has an exceedingly bad reputation, which means there are many people who do not wish to stay at the hotel.

Hotel fraud is commonplace, and prostitution is a recurring theme for hotels in downtown Oslo. Furthermore, the hotel must be on guard as regards criminals who deal in drugs. It is particularly during the weekends that the hotel has requests from guests who pop in and ask for a room without having made a reservation in advance. These people wish to use the hotel room as a party room, which results in drunkenness and vandalism. The majority of such guests have a home address in Oslo and its environs. In order to help the staff at the reception desk, the hotel has therefore drawn up the aforementioned guidelines.

The hotel also asks its receptionists to be particularly aware when guests arrive without making an advance booking and carry no luggage.

It was made clear that it was not the hotel's intention that B should be perceived of as belonging to any of the above-mentioned categories of guests. The receptionist based her findings on no other assessment than the hotel's guidelines regarding guests with home addresses in Oslo and its environs who arrive without an advance booking and with no luggage.

All guests who spend the night in the hotel are required to register with their name and address, and anyone who asks for a room at the hotel is therefore asked for their home address. When the check-in process began and a private address was requested, the receptionist asked why B and her girlfriend were not going to spend the night at home. This conversation was overheard by a colleague working at the next terminal. During the Tribunal's meeting, this colleague stated that this is usually done in order to assess whether guests whose home address is in Oslo and its environs nevertheless should be given a room at the hotel. The colleague was of the opinion that B answered that there was a party at home. The receptionist then stated that B and her girlfriend would not be given a room. The person who was on duty on that particular day says that the receptionist afterwards explained that B and her girlfriend were turned away on the grounds that their home address was in Oslo and

its environs, that the only luggage they had was a plastic bag and that the reason why they were going to stay in town was that there was a party at home.

In the hotel's opinion, B's own description of events confirms that it was her home address that gave rise to their rejection.

The receptionist explained the guidelines in an unfortunate way to B and her girlfriend. The receptionist explained to the person on duty that she had not meant for her statement to be construed as a personal attack, but she had used this as an example of earlier unfortunate experiences.

B feels she was discriminated against on the grounds of her gender and ethnicity.

She and her girlfriend had planned a weekend trip to London. The flight was cancelled, however. Together with her girlfriend, she decided to be a tourist in her own city. After spending a pleasant day of shopping followed by dinner, they visited Thon Hotel Opera with the intention of booking a hotel room. They had no luggage with them, but they were carrying handbags and lots of shopping bags.

When asked by the receptionist, B stated that her home address was in Asker. She and her girlfriend were then refused a room at the hotel. She feels they probably would not have been asked for their home address if they "had been white".

The receptionist then asked: "*Why don't you spend the night at home then?*" B and her girlfriend felt that it was none of the hotel's business if they wished to spend the night at the hotel. They felt that the hotel's guidelines were unreasonable, and asked the receptionist for justification as to why the hotel had adopted such guidelines. The receptionist justified the guidelines, saying that the reason why the hotel did not accept guests resident in Oslo and its environs was because they could be "*prostitutes or drug addicts*" who accessed the hotel in order to cause trouble. They were also told that other hotels in the city centre had the same policy. In a letter to the Tribunal, B's girlfriend confirms this.

B feels she was turned away because it was felt she was a prostitute, and this assumption was made solely on the grounds of her gender and her foreign background. She says that neither she nor her girlfriend were lightly dressed or wearing excessive amounts of make-up. She otherwise stated that she and her girlfriend encountered no problems when they ordered a room at Hotell Plaza that same afternoon.

The Tribunal's deliberations

This case concerns a hotel's decision to refuse access to a woman whose ethnic background was not Norwegian. Pursuant to section 7 of the Anti-discrimination Ombud Act, the Tribunal has the competence to make binding administrative decisions as to whether a breach of the Gender Equality Act and the Anti-discrimination Act has occurred or not.

The acts essentially apply wherever discrimination on the grounds of gender and/or ethnicity etc. may occur, including activities in the private sector. B complains that the hotel receptionist turned down her request for a room. As an employer, the hotel is, pursuant to the legislation, liable for those actions carried out by its employees during working hours.

The Tribunal understands the hotel's need for rules allowing them to turn away guests whom they consider to be undesirable for security reasons and other justifiable grounds. However, such rules must be practised in compliance with the rules laid down in the Gender Equality Act and the Anti-discrimination Act.

The Tribunal has assessed the case in relation to the bans on direct discrimination in section 3 first and second paragraphs of the Gender Equality Act and section 4 first and second paragraphs of the Anti-discrimination Act.

It follows from section 16 first paragraph of the Gender Equality Act and section 10 of the Anti-discrimination Act that the burden of proof passes to the hotel if there are circumstances that give reason to believe that the hotel attached negative importance to B and her girlfriend's gender and ethnicity when it was decided not to offer them a hotel room.

B and her girlfriend are women with another ethnicity than Norwegian. They had no luggage with them, only shopping bags, when they arrived at the hotel. They have explained that they were decently dressed, were wearing no make-up, and that they were not intoxicated.

These guidelines give the staff access to nevertheless offer rooms to guests with home addresses in Oslo and its environs. An assessment is thus made in each individual case.

The receptionist chose to turn away B and her girlfriend, and stated that the background for the guidelines were that guests resident in Oslo and its environs could be prostitutes or drug addicts who gained access to the hotel in order to cause trouble. This was done in spite of the fact that there was nothing to indicate that they could be linked to these risk groups against which the hotel in its guidelines wished to protect itself.

Against this background, the Tribunal finds there are circumstances that give grounds to believe that the hotel attached negative importance to B and her girlfriend's gender and ethnicity when they were refused a room at the hotel, where the combination of gender and ethnic background was the basis for turning them away.

The Tribunal does not find that the hotel has substantiated only other reasons lie behind why B and her girlfriend were refused a room at the hotel. Apart from a general reference to the fact that the guidelines give access to refuse people whose home address is in Oslo and its environs, the hotel has not explained why the receptionist considered it necessary to avail herself of the opportunity to turn away B and her girlfriend. The receptionist was aware that it was possible to exercise discretion.

The Tribunal has therefore reached a conclusion which is identical to that of the Ombud: Thon Hotel Opera acted in breach of section 3 of the Gender Equality Act and section 4 of the Anti-discrimination Act when it refused B and her girlfriend a room at the hotel.

The Tribunal's administrative decision is unanimous.

The Tribunal would like to point out that this case reveals a need for hotels in the city centre to review their routines for enforcing the opportunity they have to turn away guests whom they consider to be undesirable for security reasons or other justifiable grounds.

This decision is a final administrative decision that cannot be reviewed by means of an administrative complaint. Pursuant to section 12 of the Act on the Equality and Anti-discrimination Ombud and the Equality Tribunal (the Anti-discrimination Ombud Act) regarding review of Tribunal decisions, the decision may be brought before a court of law for a full review of the case. Legal proceedings for the review of a Tribunal decision must be brought within three months of receipt of notification of the decision. Legal proceedings regarding the validity of a Tribunal decision shall be brought against the State represented by the Tribunal.

CASE 1/2008

The Equality Tribunal has made the following administrative decision:

Thon Hotel Opera acted in breach of section 3 of the Equality Act and section 4 of the Anti-discrimination Act when it refused B and her girlfriend a room at the hotel.

Oslo, 5 March 2008

Aslak Syse,
Chair

Thom Arne Hellerslia

Selma Ilyas

Hege Skjeie