



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Serbia
<b>Title:</b>	<i>NGO E v The Army of the Republic of Serbia and the Minister of Defence</i> No. 07-00-1/2015-02 of 3 April 2015
<b>Date:</b>	27 July 2015
<b>Expert:</b>	Ivana Krstic
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Whether gender identity was the reason for termination of military service
<b>Ground of discrimination:</b>	Transgender
<b>Source:</b>	National equality body
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 12 of the Law on the Prohibition of Discrimination (LPD), Official Gazette of the Republic of Serbia No. 22/2009; Article 13(3) of the Law on the Serbian Armed Forces, Official Gazette of the Republic of Serbia, No. 116/2007, 88/2009, and 101/2010; Article 14 of the European Convention on Human Rights

### **Content**

**Case:** The claimant, M.V., was a major in the Serbian Armed Forces with 22 years of military service. The military police arrested M.V. in 2001, when M.V. was biologically male, because she was wearing women's clothing. For seven months M.V. was deprived of her rank and service, until the Supreme Court ordered that she be returned to work.

In September 2014, M.V. informed doctors at the military hospital that she wanted to undergo sex-reassignment surgery. M.V. started to use hormonal treatments in preparation for reassignment. Doctors at the Department of Psychiatry of the Military Academy subjected her to psychiatric examinations, and on the basis of these made a diagnosis of 'F64' (trans-sexualism); however they found M.V. mentally capable to continue professional military service. Despite this evaluation, the Chief of Headquarters of Serbian Armed Forces suggested on 3 October 2014 that M.V. should terminate military services and retire. The Department of Human Resources of the Armed Forces subsequently sent a letter to the Ministry of Defence asking for the termination of professional military service of M.V. It was argued that M.V. had 22 years and 5 months of military service (20 years are required for pension), that M.V. was in a low rank position, and that there is no prospect for promotion as M.V. did not have an appropriate specialisation. Finally, it was underlined that M.V. had an 'established psychiatric diagnosis which can cause adverse consequences for the reputation of the Serbian Army'. Acting on this suggestion, the Minister of Defence on 22 October 2014 issued an order to terminate the professional military service of M.V., and the Chief of Staff issued on 13 November 2014 a decision to dismiss M.V. from the professional army. M.V. agreed to terminate military service and to receive her pension.

Although M.V. agreed to receive her pension, she considered that the words used in the

decision to dismiss her were offensive (that she had an 'established psychiatric diagnosis which can cause adverse consequences for the reputation of the Serbian Army'). In January 2015, the NGO Egal, an organisation that protects the rights of transgender persons in Serbia, brought a complaint on behalf of M.V., arguing that she was exposed to a severe form of discrimination.

The Minister of Defence claimed that the relevant procedure was respected, and that this was supported by M.V.'s agreement with the termination of professional military service. In addition, the Minister claimed that there is no case for discrimination based on gender identity,<sup>1</sup> as M.V.'s expression of gender identity was tolerated from 2001 until 2014. M.V.'s service was terminated in accordance with Article 192 of the Law on the Serbian Armed Forces<sup>2</sup> under the same conditions that apply to all members of the Serbian Armed Forces, which include, among others, an impact on the reputation of the Armed Forces. The officer at the military's Department of Human Resources responsible for sending the letter claimed that M.V.'s dismissal was lawful, that M.V. was not discriminated against, and that the letter contained a 'technical administrative error'.

**Decision of the Commissioner for the Protection of Equality:** The Commissioner for the Protection of Equality (CPE) stated that examining whether or not the procedure for termination of professional military service of M.V. was legal was out of the scope of its mandate. However, its task was to examine and assess whether the reasoning used in the letter (a psychiatric diagnosis that can cause adverse consequences for the reputation of the Serbian Army) can be considered discrimination based on gender identity.

The CPE did not accept that this reasoning could be considered a 'technical administrative error', and found this expression (an 'established psychiatric diagnosis') to be unacceptable as it is based on negative stereotypes and prejudices about the gender identity of M.V., and expresses a negative value-judgment. The CPT also found that the wording is especially significant, as the sentence is written in documents of the Serbian Armed Forces and the Serbian Ministry of Defence, whose constitutional and legal duty is to strictly respect the prohibition of discrimination and the principle of equality of all citizens.

The CPE therefore found that the reasoning used in the letter violated Article 12 of the Law on the Protection of Discrimination, which prohibits harassment and degrading treatment, as the acts insulted and offended the dignity of M.V. The CPE recommended the Chief of Staff and the Ministry of Defence to issue a written apology to M.V., and to take all appropriate measures to diminish transphobia, increase tolerance, and prevent discrimination against transgender persons who are employed in the Armed Forces and in the Ministry of Defence.

**Key points of analysis:** The CPE relied on domestic law: Article 21 of the Serbian Constitution,<sup>3</sup> which prohibits discrimination; Article 12 of the Law on Prohibition of Discrimination;<sup>4</sup> and Article 13(3) of the Law on the Serbian Armed Forces. The latter Law stipulates that it is forbidden to favour or deprive a member of the Serbian Armed Forces of his/her rights and duties on the grounds of his/her race, religion, gender, nationality, background, or another personal feature.<sup>5</sup>

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<sup>1</sup> Prohibited in Article 2(1) of the Law on the Protection of Discrimination, Official Gazette of the Republic of Serbia, No. 22/2009.

<sup>2</sup> The Law on the Serbian Armed Forces, Official Gazette of the Republic of Serbia, No. 116/2007, 88/2009 and 101/2010.

<sup>3</sup> The Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006.

<sup>4</sup> The Law on the Prohibition of Discrimination.

<sup>5</sup> It also relied on the Code of Honour of the member of the Serbian Armed Forces, which as one of the most important rules stipulates that a member of Armed Forces must respect each person and diversity. See The Code of Honour of the member of the Serbian Armed Forces, November 2010, available at [http://www.vs.rs/content/attachments/Kodeks\\_casti\\_pripadnika\\_Vojske\\_Srbije.pdf](http://www.vs.rs/content/attachments/Kodeks_casti_pripadnika_Vojske_Srbije.pdf). Accessed 24 July 2015.

The CPE also relied on international norms to substantiate his opinion, including: the prohibition of discrimination stipulated in Article 14 of the European Convention on Human Rights, Principle No. 3 of the Yogyakarta Principles on the right to recognition before the law, and the Recommendation of the Committee of Ministers of the Council of Europe CM/Rec (2010) on measures to combat discrimination on grounds of sexual orientation or gender.

It is very important that the CPE found that in this case the harm suffered by the claimant was caused by existing stereotypes and prejudices towards transgender persons. The CPE also found that this behaviour contributes to the maintenance of widespread transphobia, stigma, and intolerance of transgender persons; and pointed out their poor social status, and the ignorance and serious and specific problems they face in Serbian society.

**Internet link source:**

Opinion of the CPE in *NGO E. v. The Army of the Republic of Serbia and the Minister of Defence* in Serbian, at: <http://www.ravnopravnost.gov.rs/rs/друга-лична-својства/притужба-уг-е-против-врс-и-министра-одбране-због-дискриминације-по-основу-родног-идентитета-у-области-рада>, accessed 22 July 2015.