



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

### NEWS REPORT

<b>Country:</b>	Croatia
<b>Title:</b>	New case law on discriminatory public statements
<b>Date:</b>	17 February 2016
<b>Expert:</b>	Lovorka Kušan
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Supreme court found public statement ruling out the recruitment of gay footballers discriminatory
<b>Ground of discrimination:</b>	Sexual orientation
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Anti-discrimination Act

### Content

#### **Case law development:**

In 2010, four human rights organisations filed a joint action<sup>1</sup> against Z.M., executive manager of the most popular football club in Croatia and vice president of the Croatian Football Association, because of his public statement that gay people could not play in his national football team. Zagreb County Court, as a first instance court, ruled that such a statement does not constitute discrimination because it does not place any person in a less favourable position but is a hypothetical statement and not a decision or conduct that did place or could have placed any person of homosexual orientation in a less favourable position since Z.M., as an official of a football club and not a national selector, is not in a position to decide who will play in the national team. Further, the Court said that Z.M. had the right to publicly express his opinion even if he was wrong and that granting the claim would constitute a violation of Z.M.'s right guaranteed by Article 10 of the European Convention on Human Rights (freedom of expression).

The Supreme Court, as an appellate court, upheld that judgment and said that Z.M.'s statement could not prevent any homosexual from playing in the national team since the national football selector chose the best players according to their sport abilities and not on someone else's wrongful perception of their psycho-physical abilities. According to the Supreme Court, the statements could not lead to an intimidating, hostile, degrading or offensive environment.

In June 2015, following the plaintiffs appeal on points of law (*revizija*), the Supreme Court, this time as a third instance court, brought a new decision, finding the statement discriminatory. The Court further prohibited Z.M. from making any similar public statement in the future and ordered him to apologize publicly as well as to publish the

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<sup>1</sup> An association may bring a joint legal action (*udružna tužba*) if it demonstrates plausibly that the defendant's conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the association defends, and the association may file this action without a specific victim to support or represent.

decision in the daily newspaper *Jutarnji list*. The parties received the decision only in January 2016.

The Supreme Court based its latest decision on the "Feryn case", finding the facts in the two cases to be the similar.<sup>2</sup> The Court found that Z.M. had such a reputation and public authority that his statement could encourage others to treat gay persons with prejudice. The Court concluded that his statement was an act that could place a person (a gay man) in a less favourable position than other persons (a heterosexual man) in a comparable situation and was therefore direct discrimination. The Court further stated that statements can be acts of discrimination in spite of the constitutional freedom of expression.

**Decision of the Court:** Supreme Court of the Republic of Croatia, Rec-300/13, judgment of 17 June 2015.

**Internet link source:** the decision has not been published yet.

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<sup>2</sup> The Supreme Court refers to it as „Feryn case“, case of the European Court of Human Rights, without any other reference.