



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

### NEWS REPORT

<b>Country:</b>	Serbia
<b>Title:</b>	Strategic litigation for direct discrimination against Roma in employment
<b>Date:</b>	17 February 2016
<b>Expert:</b>	Krstic, Ivana
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discriminatory working conditions against Roma for the position of raspberry harvester
<b>Ground of discrimination:</b>	Ethnic origin
<b>Source:</b>	National court decision- <i>The Commissioner for the Protection of Equality v. I. Cvetic</i> , Higher Court in Belgrade, I P no. 519/14, 22 October 2015
<b>Field:</b>	Employment
<b>Applicable law:</b>	The Law on the Prohibition of Discrimination (LPD)

### Content

**Case development:** A lawsuit was filed against an employer for discrimination against Roma. Namely, the advertisement for the position of raspberry harvester was posted on a website, and a Roma woman sent an Email stating that she and her husband were interested for this job since they already had some experience in harvesting raspberries. She also requested information on working conditions and wage for this job. She received a reply on the same day, and together with the requested information, she received two documents, named "Contract" and "Remarks". The document titled "Remarks" contained information on what clothes to bring to agricultural holding, as well as the necessary documents, such as ID and the health card. However, it also included the following remark: "People of Roma nationality cannot be employed because of quarrels with the employees of other nationality and possible consequences that can occur during the joint stay with the employer."

The employer claimed that he and his parents already employed several Roma, that he does not have prejudices towards them, that he has Roma friends and that he is not denying employment rights for them. However, he also claimed that this remark relates to accommodation and that the majority of employees have prejudices towards Roma which caused some problems and conflicts among employees in previous years. These conflicts related to the majority of them not wanting to sleep in the same room with Roma, while the employer couldn't ensure spare rooms for them. He also stated that in 2014 among 25 employees, a Roma was hired as raspberry harvester. That Roma employee testified that the employer employed him without any problems and that some other Roma employees were engaged as well, but since those other Roma had lighter skin, the employer probably didn't know that they are of Roma origin.

The Commissioner for the Protection of Equality demanded, aside from the lawsuit, that the court set a temporary measure so as to remove the document "Remarks" from the public eye. The court ordered an interim measure (P. no. 519/14, 1 September 2014)

and requested the employer to withdraw the discriminatory document.

**Decision of the Court:** The court relied on several provisions of the Law on the Prohibition of Discrimination: Article 2, par. 1 (1) which defines discrimination; Article 6 which prohibits direct discrimination; Article 16, par. 1 which prohibits discrimination in employment; as well as Article 24 which prohibits discrimination of national minorities. It also took into account Article 14 of the European Convention on Human Rights which prohibits discrimination. The Court also relied on two Constitutional provisions: Article 21 that prohibits discrimination, and Article 76 par. 2, which prohibits discrimination of national minorities. The Court particularly underlined that discrimination offend dignity, honour, reputation and personal integrity.

The court found direct discrimination based on national affiliation and ordered the following:

- the removal of the discriminatory provisions from the "Remarks" document by the employer;
- the prohibition that this discriminatory situation would happen again;
- send a written apology to the Roma woman who applied for the job within 15 days from the date of receiving the judgement; and
- the publication of the judgment daily newspaper with national circulation on the employer's expense.

**Key points of analysis:** This case is very important as case law that finds discrimination against Roma is quite scarce, although it is widespread in practice. It is also positive that the judge found discrimination for the offensive remark in the "Remarks" document sent by the employer despite the fact that the employer had in practice employed some Roma and that he didn't ask future employees about their ethnic origin.

This case is also important from the position of defining *locus standi*. Thus, the defendant argued that the lawsuit should be dismissed as the requirement of *locus standi* is not fulfilled. He claimed that employment discrimination can be raised only against the employer, his father, who is the owner of a registered agricultural holding. However, the Court found that the *locus standi* requirement is fulfilled as Article 2, par. 1 (2) of the Law on the Prohibition of Discrimination prescribes that the terms "person" and "everyone" shall be used to designate any person that resides on the territory of the Republic of Serbia or a territory under its jurisdiction, as well as any legal entity registered or operating on the territory of the Republic of Serbia.

**Internet link source:**  
Not available in Serbia.