



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

### **NEWS REPORT**

<b>Country:</b>	Serbia
<b>Title:</b>	S.R. v the Republic Fund for the Health Insurance, No 00-166/2016-02, Opinion of 26 May 2016
<b>Date:</b>	22 September 2016
<b>Expert:</b>	Ivana Krstic
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discrimination in relation to the prescription of free medication
<b>Ground of discrimination:</b>	Sex
<b>Source:</b>	National equality body (Commissioner for the Protection of Equality)
<b>Field:</b>	Goods and services
<b>Applicable law:</b>	The Law on the Prohibition of Discrimination (LPD)

### **Content**

**Case development:** In this case, the complaint was submitted against the Republic Fund for Health Insurance. In the complaint, among other things, it was stated that the claimant, D.R., had severe osteoporosis. The doctor prescribed him the drug "Forteo" in order to treat his state of health. The drug was on the list of medicines that can be obtained from the Republic Fund for Health Insurance at the expense of mandatory health insurance but only to persons who are post-menopause. In other words, the drug was accessible to women and not to men, though they suffer from the same disease. In its observations, the Republic Fund for Health Insurance stated that there are no differences in prescribing and dispensing the drug "Forteo" in terms of age or gender, but only in medical parameters. The Commissioner for the Protection of Equality delivered an Opinion on 26 May 2016.

**Decision of the CPE:** The Commissioner for the Protection of Equality (CPE) relied its decision on Article 21 of the Constitution, Article 14 of the European Convention on Human Rights, and Article 2, paragraph 1 of the Law on the Prohibition of Discrimination. In addition, the Opinion relied on Article 20 of the Gender Equality Act (which prohibits gender discrimination in the area of social protection), as well as on the Article 5, paragraph 2 of the Law on Health Insurance (which stipulates that in the implementation of the compulsory health insurance the principles of health care applies, as well as the enjoyment of the rights of patients). It also mentioned Article 20 of the Law on the Health Protection. This article stipulates the principle of fairness of health care, which is achieved, among other things, by the prohibition of discrimination in the provision of health care on the basis of race, sex, age, national origin, social background, religion, political or other opinion, property status, culture, language, type of disease, mental or physical disability.

In assessing this case, the CPE first found that there was no direct discrimination, as the condition to obtain the above mentioned drug at the expense of mandatory health insurance was not based on 'sex'. However, as the drug can be obtained free of charge only to those persons who are post-menopause, it was important to examine if this was a case of indirect discrimination.

The CPE noted that the Republic Fund for Health Insurance in its regulations did not explicitly stated that only women can obtain the medicine "Forteo" at the expense of mandatory health insurance. However, the requirement for prescribing and dispensing of the drug linked to being post-menopausal clearly indicates that men, even if they met all other requirements could obtain this medicine due to biological and physiological characteristics. Although post-menopause certainly represents a medical condition, it also indicates the gender of the person going through this process, and completely prevents males from obtaining the drug at the expense of the compulsory health insurance. The CPE concluded that by the denial of the right of D.R. to obtain the prescribed drug "Forteo" at the expense of the compulsory health insurance, the National Health Insurance Fund made an indirect sex discrimination, which is prohibited by Article 7 of the Law on the Prohibition of Discrimination.

**Key points of analysis:** In this case, the CPE found no justified reason to prescribe free medication for osteoporosis only to the health insured who are in post-menopause, thus discriminating against men. This case is important as it involves indirect discrimination, which is still very rare in Serbian jurisprudence. It is also relevant that the CPE applied the proportionality test in this case, and found discrimination against men in a very important area of life.

**Internet link source:** <http://ravnopravnost.gov.rs/prituzba-s-r-protiv-rfzo-zbog-diskriminacije-po-osnovu-pola-u-oblasti-pruzanja-zdravstvenih-usluga/>, accessed 19 September.