



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

NEWS REPORT

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| Country: | Serbia |
| Title: | <i>A. against the Centre for Social Work, no. 07-00-00581/2016-02, 12 April 2017</i> |
| Date: | 14 July 2017 |
| Expert: | Ivana Krstic |
| <u>Context</u> | |
| Issue at stake: | Different treatment in provision of services |
| Ground of discrimination: | Multiple (sex and ethnicity) |
| Source: | Opinion of the Commissioner for the Protection of Equality (national equality body) |
| Field: | Other (Domestic violence) |
| Applicable law: | The Law on the Prohibition of Discrimination (LPD) |

Content

Case/law/policy development: The lawyer A. submitted a complaint in the name of R.K., a Roma woman who on 1 October 2015 reported domestic violence by her ex-partner Z.K. to the competent centre for social work. The social workers warned Z.K. on the consequences of violent behaviour. The risk for recurrence of violence was estimated as low and an agreement on Z. K's visits with the couple's daughter was reached. as agreed until the court judgment. However, Z.K. was advised to attend psychotherapeutic treatment to learn to better recognise and control potential violent behaviour. Afterwards, Z.K. was convicted for domestic violence on 9 November 2015¹ on the basis of his own guilty plea. He was convicted to a conditional sentence for 2 years, and sent to psychosocial treatment.

In June 2016, R.K. claimed that the communication between her and her ex-partner was again very bad. After 10 days, R.K. claimed that her daughter had been exposed to domestic violence, but Z.K. denied the charges. The social worker hadn't detected any existing fear in the daughter, and the mother's claims were rejected as non-credible due to the fact that she was herself angry repeatedly with her daughter, showing intolerance against her in the presence of the social worker. Also, the social worker claimed that medical evidence didn't show any sign of physical violence or neglect of the child. However, in a medical report from 27 June 2016 it was noted that the girl had a blue hematoma size 1 x1 cm, and that the mother claimed that the girl was exposed to violence during her stay at her father's flat for several days.

On 14 September 2016 R.K. claimed that three days before she was again exposed to domestic violence. She wanted to report domestic violence in written form to the social workers, but she managed to do that only after intervention of a lawyer A, who provides

¹ First Basic Court in Belgrade, 1. SPK no. 464/15, 9 November 2015.

free legal aid for an NGO. The social worker claimed that R.K. was refused to report domestic violence as the communication with her was very difficult, and she was extremely upset and angry. In addition, the social worker warned her that she can be criminally convicted for false report indicating that she is lying about domestic violence, and that her daughter can be taken away from her. The social worker then referred her to a psychologist and to A., who submitted a complaint to the Ministry of Labour, Employment, Veterans and Social Affairs against several officials employed at the competent centre for social work for a failure to take measures to protect R.K. and her daughter from violence. The Ministry conducted a supervision and in a letter from 10 January 2017 concluded that officials from the competent centre for social work have not sufficiently dealt with this case in accordance with the standards of professional work. Afterwards, A. also submitted a complaint for discrimination to the Commissioner for the Protection of Equality claiming that Roma women very often do not receive efficient and timely legal protection due to prejudices that exist against Roma population, their way of living and customs, which resulted in discrimination against R.K. in this case.

Decision of the CPE: The CPE first determined that the officials in the centre for social work refused to accept a report on domestic violence from R.K. The CPE then analysed if this behaviour was based on R.K.'s personal characteristics. The CPE noted that the legal framework for combating domestic violence is very solid, but its implementation is still weak, especially bearing in mind numerous women who were killed by their partners and ex-partners in Serbia in past several years. However, the situation is even more complicated when Roma women are exposed to domestic violence, as they are not reporting violence, or if they do so, they are faced with weak institutional support as violence is considered to be a part of Roma tradition and way of living. Therefore, the CPE concluded that it is likely that discrimination occurred in this case, especially as the officials acknowledged that they didn't take any statement from R.K. on 14 September 2016, while the centre for social work was obliged to conduct the procedure *ex officio*, to assess the case and determine measures. This obligation existed particularly as social workers knew that her ex-partner was already convicted for domestic violence. Even more, they also showed caution and suspicion towards her statements. The CPE also concluded that the centre for social work needs to provide support for victims of domestic violence who are traumatized and are coming from marginalized groups. It is particularly relevant that the CPE acknowledged that there are still gender stereotypes, prejudices and discriminatory attitudes deeply rooted and widespread among professionals working to prevent and prosecute violence against women. The CPE finally pointed out that domestic violence against women is a form of discrimination and a serious violation of women's human rights that threatens society as a whole. Therefore, it is the duty of the state and the society as a whole to approach this problem and put an end to the devastating statistics regarding the number of women killed by their partners and ex-partners.

The CPE relied in its decision on several important sources, such as Article 21 of the Constitution prohibiting discrimination, among others, on ethnicity and sex. It particularly emphasized the importance of CoE Convention on Preventing and Combating Violence against Women and Domestic Violence² and Article 20 that stipulates the obligation of all parties to take all necessary legislative and other measures and provide victims with access to health and social care services, adequate equipment of those services and training of employees to assist victims. It also invoked the European Convention on Human Rights and standards established by the European Court of Human Rights in case *Eremia v. Republic of Moldova*.³ The CPE also referred to several articles of the LPD⁴ that were violated in this case: Article 2, par. 1 (1) prohibiting discrimination, among others,

² Serbia, The Law on the Ratification of the Convention on Preventing and Combating Violence against Women and Domestic Violence *Official Gazette of the Republic of Serbia*, no. 12/13, 5 February 2013.

³ ECtHR, *Eremia v. Republic of Moldova*, App. no. 3564/11, judgment from 28 May 2013.

⁴ Serbia, Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, no. 22/2009, 26 March 2009.

on nationality; Article 15 that prohibits discrimination by public officials and prescribes it to be a more severe form of discrimination; and Article 24 that prohibits discrimination against national minorities. In addition, the CPE relies on Article 4 of the Law on Gender Equality⁵ prohibiting discrimination based on sex, and Article 29 that prohibits domestic violence and requires protection of all family members. Finally, the CPE relied also on the Family Law⁶ defining domestic violence, the Law on Social protection⁷ prohibiting discrimination and the manner of provision of social services, as well as on the Strategy for Social Inclusion of Roma for 2016 – 2025,⁸ Strategy for Prevention and Protection from Discrimination,⁹ the Rules on the Organisation, Norms and Standards of work of the Centre for Social work,¹⁰ the General Protocol on the Treatment and Cooperation of Institutions, Bodies and Organisations in a situation of Violence Against Women in Family and in Partnerships,¹¹ and the Special protocol on the treatment by centres for social work - guardianship bodies in cases of domestic violence and women in partnership relations.¹² All these legal acts prescribe duty to protect persons from domestic violence.

The CPE issued its opinion on 22 April 2017, and published it on 2 June 2017.

Internet link source: <http://ravnopravnost.gov.rs/prituzba-a-protiv-centra-za-socijalni-rad-zbog-diskriminacije-po-osnovu-pola-i-etnicke-pripadnosti-u-oblasti-pruzanja-usluga/>.

⁵ Serbia, Law on Gender Equality, *Official Gazette of the Republic of Serbia*, no. 104/2009, 16 December 2009.

⁶ Serbia, Family Law, 18/05, 72/11 и 6/15, 24 February 2005.

⁷ Serbia, Law on Social Protection, *Official Gazette of the Republic of Serbia*, no. 24/2011, 4 April 2011.

⁸ Serbia, Strategy for social inclusion of Roma for 2016-2025, *Official Gazette of the Republic of Serbia*, no. 26/16, 10 March 2016.

⁹ Serbia, Strategy for Prevention and Protection from Discrimination, *Official Gazette of the Republic of Serbia*, no. 60/2013, 10 July 2013.

¹⁰ Serbia, Rules on the Organisation, Norms and Standards of work of the Centre for Social work, *Official Gazette of the Republic of Serbia*, no. 58/08, 37/10, 39/11, 1/12, 6 June 2008.

¹¹ Serbia, General Protocol on the Treatment and Cooperation of Institutions, Bodies and Organizations in a situation of Violence Against Women in Family and in Partnerships, adopted by the Government on 24 November 2011.

¹² Serbia, Special protocol on the treatment of centres for social work - guardianship bodies in cases of domestic violence and women in partnership relations, adopted by the Ministry of Labour, Employment, Veterans and Social Affairs in March 2013.