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NEWS REPORT

Country:	Serbia
Title:	<i>C.K.P.R. v. the Serbian Railways Company</i> , no. 07-00-575/2016-02, 27 March 2017
Date:	17 July 2017
Expert:	Ivana Krstic
<u>Context</u>	
Issue at stake:	Different treatment in provision of services
Ground of discrimination:	Other (Nationality - migrant/asylum seeker)
Source:	Opinion of the Commissioner for the Protection of Equality (national equality body)
Field:	Provision of services
Applicable law:	The Law on the Prohibition of Discrimination (LPD)

Content

Case/law/policy development: C.K.P.R, an NGO dealing with asylum seekers and migrants submitted a complaint against the Serbian Railways Company. It stated that on 17 November 2016, migrants were refused to buy railway tickets. A worker at Belgrade's main Railway station refused to sell tickets to Sid (near the Croatian border) to migrants. The worker confirmed that she received telephone instructions by the head of the company not to sell tickets to migrants. On 18 November 2016, an asylum seeker was refused to buy a ticket for the same destination, but the worker told her that on that day she could buy a ticket for Subotica (near the Hungarian border). Thus, on 19 November, the NGO conducted situational testing (voluntary examination of discrimination) which confirmed that an asylum seeker was refused to buy a ticket for the train for Sid scheduled for 9.30 pm, while it was sold ten minutes later to the tester.

In its statement, the Serbian Railways company explained that since the beginning of the migration crisis, it actively participated in the transportation of migrants, where needed. Since beginning of October 2016, due to the increased number of migrants who continued their journey to Croatia, the international train going to Sid at 9.30 pm had two additional wagons. However, according to daily reports from the Sid station, the Ministry of Internal Affairs had suspended two additional wagons in mid of November 2016, as the capacities of the reception centre in Sid were full.

Decision of the CPE: In its opinion, the CPE found that it is not clear who informed workers at the railway station that the capacities of the reception centre in Sid are full, and whether it was notified by state authorities responsible for the implementation of the migration policy, or the source were daily newspaper reports. Although the CPE accepted that the capacity of the reception centre can affect the reduction in a number of passengers to Sid and justify the decision to reduce the number of wagons in the train for that specific destination, it cannot justify the decision to refuse transport service to travellers based only on the fact that they are migrants/asylum seekers. It also pointed out that this denial can result in refusing international protection to asylum seekers, who

have 72 hours to report to the asylum centre, or to the reception centre if all capacities in asylum centres are full; otherwise after 72 hours their stay in Serbia becomes illegal.

The CPE relied in its decision on Article 57 of the Constitution guaranteeing the right to asylum and Article 21 prohibiting discrimination, among others, on the nationality. It also invoked Article 14 of the European Convention on Human Rights prohibiting discrimination. It further found violation of Article 12, par. 1 of the International Covenant on Civil and Political Rights that prescribes that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement", and par. 3 that stipulates the restriction of this right only if legal and necessary in order to protect "national security, public order (ordre public), public health or morals or the rights and freedoms of others." The CPE also referred to several articles of the LPD that were violated in this case: Article 2, par. 1 (1) prohibiting discrimination, among others, on nationality; Article 6 prohibiting direct discrimination; and Article 17, par. 1 prohibiting discrimination in a provision of services. Therefore, the CPE found that refusal to sell tickets to asylum seekers/migrants amounted to direct discrimination.

This opinion is very important as it shows the problems in implementation of very solid legal framework for asylum seekers, which are mainly results of the fact that Serbian authorities believe that all asylum seekers perceive Serbia as a transit state, and still do not offer some durable solutions for asylum seekers and migrants.

The CPE issued its opinion on 27 March 2017, and published it on 2 June 2017.

Internet link source: <http://ravnopravnost.gov.rs/prituzba-c-k-p-r-protiv-zeleznice-srbije-a-d-zbog-diskriminacije-po-osnovu-licnog-svojstva-migrant-u-oblasti-pruzanja-usluga/>.