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NEWS REPORT

Country:	Serbia
Title:	Z. D. v. The Hospital O.B.S., no. 07-00-263/2017-02, 17.10.2017 ¹
Date:	28 February 2018
Expert:	Ivana Krstic
<u>Context</u>	
Issue at stake:	Unsuccessful application for employment, despite relevant and applicable positive action measures for Roma
Ground of discrimination:	Ethnic origin (Roma)
Source:	The Commissioner for the Protection of Equality (national equality body)
Field:	Employment
Applicable law:	The Law on the Prohibition of Discrimination (LPD)

Content

Case development: The claimant is a medical technician of Roma origin from Sabac (a city in western Serbia where Roma are the largest minority), who for seven years couldn't find a job in his profession. Only in 2016 and 2017 he had applied six times for a post of medical technician in the hospital O.B.S. Although he was sufficiently qualified for each of the jobs he applied for and he had fulfilled the conditions for the jobs, he was never selected. In addition, the Republic of Serbia recognizes positive measures for Roma as the Constitution in Article 21, par. 4 allows special measures which can be introduced in order to achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens. As job seekers usually do not mention their ethnic origin in their application for the job, in some cases, the claimant had submitted a recommendation for his employment from the National Council for the Roma Nationality in Serbia,² which means that his origin was well known to the hospital O.B.S. However, in all these cases, in the record of the Commission who proposed a candidate to be employed to the Director of the hospital, it was never stated that the Commission paid attention to the claimant's candidacy or that his qualifications were seriously taken into account together with those of the other candidates. Also, in all decisions on employment, the selected candidate of non-Roma origin was marked as "the candidate who would best fit into the working environment."

In order to assess whether this is a case of discrimination or not, the Commissioner for the Protection of Equality first recalled the relevant legal framework. It noted that the Law on the Prohibition of Discrimination prohibits discrimination in employment (Article

¹ This decision was published on the website on 20 December 2017.

² The National Council was acting under Article 10, par. 14 of the Law on National Councils of National minorities, which prescribes that the Council shall "take positions, launch initiatives and undertake measures in respect of all issues directly related to the status, identity and rights of a national minority." The Law on National Councils of National minorities, *The Official Gazette of the Republic of Serbia*, no. 72/2009, 20/2014, 55/2014.

16) and discrimination of national minorities (Article 24),³ while the prohibition of discrimination of national minorities is further elaborated in the Law on the Protection of Rights and Freedoms of National minorities.⁴ This Law prescribes in Article 21 that in respect of employment in public services, attention shall be paid to the national composition of the population. In addition, the Law on Employment and Unemployment Insurance in Article 31 stipulates that the unemployed belonging to a group of hard-to-employ persons⁵ can have priority, that is, special rights in the implementation of programs and measures of active employment policy.⁶ According to Article 37, the basic instrument of active employment policy is the National Employment Action Plan, adopted by the Government. Pursuant to Article 39 of the a forementioned law, the Action Plan contains the categories of job seekers who have priority in active employment policy measures. In the National Action Plan for Employment adopted for 2017, Roma are recognized as such, bearing in mind the many challenges that they are facing in the labour market.

In this case, the Commissioner found that the claimant established as probable that discrimination had occurred, while the hospital, based on the rule of the reversed burden of proof, didn't prove that there was no discrimination. In any case, the hospital didn't take into account that one of the applicants for each of the jobs was of Roma origin and didn't assess his qualifications and reasons for not giving him priority over other candidates. Moreover, in each case the hospital found that the selected candidate is the one "who would best fit into the working environment," without giving any explanation for that presumption, which raises concern that they reasoned that the claimant will not fit so well in the environment where predominantly are employed persons of general population. The Commissioner particularly underlined the difficult situation of Roma in Serbia, identified in the Strategy for the Social Inclusion of Roma (2016-2025)⁷ and the Strategy for Prevention and Protection from Discrimination (2014-2018).⁸ It is very important that the Commissioner highlighted that the employment of Roma in areas that are not considered to be "typically Roma" and in which the Roma would be given the opportunity to make direct contact with the general population through performing tasks and jobs related to care and support in situations where people feel most vulnerable (such as work in health care), would contribute to elimination of prejudices about their work potentials, and will lead to the elimination of social distance towards them. The Commissioner also underlined that ignorance of employers can contribute to the feeling of hopelessness of working-age Roma, as many of them have never even tried to find employment because of the belief that "no one will hire Roma". Therefore, the Commissioner issued an opinion that this is a case of indirect discrimination, and recommended to the hospital eliminate discrimination towards the claimant, as well as to pay attention to members of minorities who are hard-to-employ persons.

Internet link source:

<http://ravnopravnost.gov.rs/prituzba-z-d-protiv-o-bolnice-s-zbog-diskriminacije-na-osnovu-nacionalne-pripadnosti-u-postupku-zaposljavanja/>.

³ The Law on the Prohibition of Discrimination, *The Official Gazette of the Republic of Serbia*, no. 22/2009.

⁴ The Law on the Protection of `rights and Freedoms of National minorities, *The Official Gazette of the SRY*, no. 11/2002, *he Official Gazette of the SCG*, no. 1/2003, *The Official Gazette of the Republic of Serbia*, no. 72/2009, 97/2013.

⁵ This category is defined in Article 31, par. 4 as "a person that, owing to his/her medical condition, insufficient or inadequate education, social or demographic characteristics, regional or occupational mismatch between labour market demand and supply, or other objective circumstances, has difficulty finding employment."

⁶ The Law on Employment and Unemployment Insurance, *The Official Gazette of the Republic of Serbia*, no. 36/2009, 88/2010, 38/2015, 113/2017.

⁷ The Strategy for the Social Inclusion of Roma, *The Official Gazette of the Republic of Serbia*, no. 22/2016.

⁸ The Strategy for Prevention and Protection from Discrimination, *The Official Gazette of the Republic of Serbia*, no. 60/2013.