



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

FLASH REPORT

Country:	Serbia
Title:	Supreme Court decision on discrimination on the grounds of sex and sexual orientation
Date:	05 October 2020
Expert:	Ivana Krstic
Context	
Issue at stake:	Protection from domestic violence as a threat to traditional values
Grounds of discrimination:	Sex, Sexual orientation
Field of application:	Other field
Source:	National court decision
Applicable law:	Law on the Prohibition of Discrimination (LPD)

Content

The Commissioner for the Protection of Equality, initiated strategic litigation proceedings concerning discrimination on the grounds of sex and sexual orientation against the dean of a law faculty. In June 2017, the dean, who was also a professor at his university, published an article with the title 'Domestic Violence and Violence against the Family'. The author stated that the Law on the Prevention of Domestic Violence,¹ which was finally adopted in 2016, does not intend to only protect the poor but also;

'women regardless of whether they are weak or strong, loved or unloved, nervous, unusual or well-off, whether they have a lover or not, whether they earn their own money or are financially dependent, whether they own property or have moved into their husband's apartment.'

The author believed that the Law will further initiate the break up of families, as various measures can be imposed, including the expulsion of men from their home prohibiting contact with their wife and children. The author further advocated for a traditional and patriarchal organisation of a family, where the man is the head of the family in charge of all important decisions regarding the family, placing women in an unequal position. Furthermore, the author described the LGBTI community as 'primitive', 'violent' and as 'prostitutes'. The Commissioner emphasised that protection from domestic violence should apply to all, and should not depend on the personal circumstances of women. The Commissioner highlighted the fact that the attitude that only 'weak' women deserve protection is based on stereotypes of the role of women.

The Higher Court in Novi Sad delivered its decision in May 2018, finding that the author of the text committed an act of discrimination on the basis of gender and sexual orientation.² The court of first instance found that the author, as a public figure, should not advocate

¹ The Law on the Prevention of Domestic Violence, "Official Gazette of the Republic of Serbia", no. 94/2016.

² Higher court in Novi Sad, II. 1344/2017, judgment from 8 May 2018.

discrimination or ideas that encourage discrimination, which can have detrimental effects on democratic processes and human rights guarantees in a society. Surprisingly, the Appellate Court in Novi Sad found that the author has the right to freedom of expression and that his profession (university law professor and a dean) is irrelevant in this case. In its decision, the Court invoked Article 10 of the European Convention on Human Rights and relied on principles deriving from the jurisprudence of the European Court of Human Rights, but did not refer to any particular case. The court particularly emphasized that Article 10 also protects information that can offend, shock, or disturb others, finding no discrimination in this case.³ Therefore, the finding of discrimination was quashed in this case.

Unfortunately, on 3 August 2020, the Commissioner for the Protection of Equality was informed that the Supreme Court of Cassation upheld the Appellate Court's decision.⁴ The highest court found that the author did not offend people based on sex or sexual orientation and neither had the intention to offend. On the contrary, he merely expressed his value judgment about the Law on the Prevention of Domestic Violence, and criticized the manifestation of sexual orientation at the Gay Pride. Also, the court found that the Commissioner's position set forth in the complaint (that the decision of the Appellate Court which legitimises the discriminatory speech is unacceptable for combating discrimination and should not be a part of the Serbian legal order) can be viewed as a special pressure on the court. The court did not take into account the possible effects of the statements of the defendant expressed in a position as a public figure.⁵

This decision was the reason why some other academics, also known for unacceptable speech, advocated to dismiss the Commissioner arguing that she *'violates the legal order and discriminates and persecutes persons whose views she doesn't like.'*

Internet link source: <https://www.standard.rs/2020/08/05/m-djurkovic-presuda-vks-je-razlog-za-smenu-brankice-jankovic/>.

³ The Commissioner for the Protection of Equality v. AA, GŽ.3576/2018, Appellate court in Novi Sad Date of decision: 17 October 2018.

⁴ Supreme Court of Cassation, Rev 195/2019, judgment from 29 January 2020.

⁵ See Supreme Court of Cassation, Rev 1855/2017, judgment from 30 June 2017.