Complaint filed by S.V. and A.M.M. against Basic Court in Kragujevac for discrimination on grounds of family status in area of work and employment

The opinion was issued following the application filed by S.V. and A.M.M. from K. against the Basic Court in Kragujevac since they were denied promotion under same conditions as other employees due to maternity leave and childcare parental leave. The applicants stated in their complaints that during 2012 and 2013 they received maximum job performance mark but that in 2015 they failed to be promoted as they were not given a job performance mark in 2014 since they were on maternity and childcare parental leave respectively. The Basic Court in Kragujevac stated in its justification that applicants were not eligible for promotion as they had not received the highest job performance mark for the second year in the row since they were not assessed in 2014. In the course of complaints procedure regulations governing the promotion of civil servants were analyzed and a targeted and systematic interpretation of regulations was undertaken, in particular in the context of antidiscrimination legislation, guaranteed gender equality and Constitutional protection of mothers and children. An unequivocal conclusion of this review was that maternity leave and childcare parental leave cannot constitute an obstacle to promotion of civil servants not can they have any kind of negative impact on employees’ position and labor related legal status. In the course of complaints procedure it has been ascertained that the Basic Court in Kragujevac had, through inadequate implementation of regulations, put S.V. and A.M.M. position in an unequal position on the grounds of their gender and family status, i.e. the Basic Court had prevented the applicants from being promoted under same conditions as other employees, thus violating the provisions of the Law on the Prohibition of Discrimination. Given the aforementioned the Commissioner for the Protection of Equality has issued a recommendation to the Basic Court in Kragujevac instructing them to implement the regulations governing the promotion of civil servants correctly and in such a way as to prevent putting them in a disadvantaged position due to a protected characteristics, that is the Court is advised to consider the possibilities for their promotion by taking into account the job performance marks they have already been awarded i.e. to disregard the year in which they have not received job performance mark due to maternity and childcare parental leaves.