



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

### FLASH REPORT

<b>Country:</b>	Serbia
<b>Title:</b>	Regular Annual Report of National Equality Body for 2018
<b>Date:</b>	08 May 2019
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<b>Update of flash report nr:</b>	<a href="#">038-RS-ND-GE-2018</a>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Annual report of the Commissioner for Protection of Equality for 2018
<b>Grounds of discrimination:</b>	All grounds
<b>Field of application:</b>	All fields
<b>Source:</b>	National equality body
<b>Applicable law:</b>	Law on the Prohibition of Discrimination (LPD)

### **Content**

The Commissioner for Protection of Equality (CPE) in its report for 2018 underlines that Serbian society continues to face numerous challenges in the field of promotion of equality and that some additional measures are necessary in order to improve the legal antidiscrimination framework, as well as the position of certain vulnerable groups.<sup>1</sup>

In 2018, the Commissioner received 947 complaints (compared to 532 in 2017) and issued opinions in 115 cases, finding discrimination in 81 cases (compared to 32 in 2017). In a majority of cases where discrimination was found, the recommendations issued were also fulfilled (78,2%). However, it is worrying that certain media and public officials do not act on recommendations when they concern discrimination based on sexual orientation, whereas they fulfill recommendations when they concern persons with disabilities.

Most of the complaints submitted in 2018 concerned discrimination based on disability (26,4%), age (16.5%), and sex (10.7%), followed by complaints of discrimination based on birth (10,6%), health status (6.1%), ethnic origin (6.0%), marital and family status (4.9%) and sexual orientation (4,2%). In previous years, the majority of complaints referred to discrimination in recruitment and in the workplace. However, this year, the majority of complaints refer to discrimination in relation to access to public services and facilities (27,6%), followed by discrimination in recruitment and in the workplace (20,8%), discrimination in proceedings before the public authorities (17,7%) and discrimination in the area of social protection (13,1%).

In addition, the CPE provided 37 opinions on draft laws and general acts and initiated one lawsuit for a strategic case, three criminal charges and one misdemeanour charge, 17 warnings, 24 announcements and 300 general recommendations.<sup>2</sup> However, this year, a major difference compared to previous years is that 88 cases were concluded by mediation.

<sup>1</sup> Commissioner for the Protection of Equality, *Regular annual report of the Commissioner for Protection of Equality for 2018*, Belgrade, 15 March 2019.

<sup>2</sup> The Commissioner uses "warnings" when she wants to draw attention to dangerous phenomena, such as misogynic and sexist statements, cases of murder as a consequence of domestic violence, etc. The

The Report also contains findings in relation to discrimination of the most vulnerable groups in Serbia. Thus, the CPE finds that persons with disability are among the most discriminated groups in Serbia, facing many problems such as: access to public buildings, areas and services, information and communication. They have only a limited number of medical and social services available to them. A particular problem is to provide an accessible and efficient system for registering emergency services, such as ambulance, police and fire service, support services, SOS phones, etc. They also face discrimination in employment and many employers fail to fulfil their duty to provide reasonable accommodation. They also face discrimination in relation to access to education and vocational training. Therefore, the CPE recommends to intensify work on removing barriers for persons with disability to have access to public buildings, transportation and services, as well as access to information and services to first aid, and to continue the process of deinstitutionalisation, with development of local services and continuous cooperation of social, health, educational and the employment services. Also, age discrimination is present to a great extent, especially in relation to children with disabilities in education. The CPE especially recommends to take all necessary measures to ensure engagement of teaching assistants for children that need additional support in education, and to remove from textbooks all inadequate, discriminatory and stigmatising terms and contents. Citizens from 50 to 65 years experience discrimination in the area of recruitment and employment, facing prejudices concerning their inefficiency and non-productivity. In addition, senior citizens who are older than 65 are in unfavorable situations, as they face a limited number of health and social care services, but they rarely address the competent authorities, including the CPE.

Discrimination based on gender is still very present, especially in the business sector where women are mainly discriminated based on their family status. Women mostly file complaints due to changes in their employment status after returning from maternity leave or other types of leave related to child care. Also, in 2018, a significant number of fathers addressed the CPE claiming that they were discriminated in divorce proceedings, where the court acted in accordance with opinions issued by centers for social work, and entrusted the mother with child custody. The CPE found that these decisions are mainly based on deeply rooted prejudices on gender roles. Thus, the CPE recommends to improve the system of social protection and to strengthen capacities of centers for social work to provide all forms of support. Also, the CPE recommends to situate gender equality issues at the centre of any planned actions, including legislation, policies and programmes, in all areas and all levels, and to support women's entrepreneurship.

Other vulnerable groups identified in the report are persons with HIV/AIDS and persons with autism. Roma are still facing discrimination and limitations, especially in relation to access to personal identification documents, adequate housing, health, social services and employment, as well as in education. The CPE recommends to secure admission to primary and secondary education, as well as to higher education for Roma and members of other vulnerable groups. The CPE also recommends to take all necessary measures to ensure that the composition of state bodies, local authorities and other public authorities corresponds to the ethnic composition of the population, and to take measures to manage the national, ethnic, religious, linguistic and other diversity.

Regarding sexual orientation and gender identity, a majority of complaints concerns offensive speech, hate speech, and sensationalism in the area of public information and media. In 2018, a legal framework concerning the change of sex in personal documents was adopted, but same-sex partnership is still not regulated. Moreover, although the first

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Commissioner uses "announcements" in order to inform the public about some changes in the law and practice, about the position of certain groups on particularly relevant dates (e.g. International Women's Day). In the complaint procedure, the Commissioner issues an "opinion", finding if discrimination occurred or not, and issuing recommendations to the discriminator on how to correct the situation. Therefore, some opinions contain specific recommendations issued in concrete cases of discrimination. However, the Commissioner can also issue a general "recommendation", mostly issued to public authorities. These are of a general nature, e.g. issued to all centers for social work, to all courts, etc.

judgment for hate crime pursuant to Article 54a of the Criminal Code was obtained in 2018, the CPE recommends that the police, prosecutors and judges continue to work in order to ensure the full implementation of this article and to impose sanctions for criminal acts committed by hatred.

Overall, the CPE concludes that Serbia has established a satisfactory legal framework for combating discrimination and achieving equality, but underlines that the LPD still needs to be fully aligned with the *EU acquis*. It is important to change the definition of direct discrimination as it limits application to less favourable treatment and does not cover detriment. The definition of indirect discrimination doesn't contain the conditional wording ('would') and can thus be interpreted as being limited to the actual occurrence of disadvantage, making it impossible to challenge neutral provisions before they incur disadvantages for actual victims. It also fails to use the wording 'an apparently neutral provision, criterion or practice' which plausibly explains this phenomenon. In addition, one of the most far-reaching provisions of the Employment Equality Directive is Article 5, which creates an obligation to provide reasonable accommodation for people with disabilities. However, the duty to provide reasonable accommodation is not recognised in the LPD.

The existing framework needs to be supported with an additional strategic framework and the CPE recommends to prepare without delay a new Strategy for Prevention and Protection against Discrimination. However, the CPE concludes that it is also necessary to continuously work on the education of judges, public prosecutors, police officers and other public servants, as well as journalists.

It can be concluded that the overall situation is very similar to previous years and that most of the recommendations proposed by CPE to public authorities are still valid, while it is important to emphasize that one recommendation was finally fulfilled in 2018 - the adoption of the Law on Free Legal Aid.<sup>3</sup>

**Internet link source:** <http://ravnopravnost.gov.rs/izvestaji/>.

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<sup>3</sup> Serbia, Free Legal Aid (Zakon o besplatnoj pravnoj pomoći), *Official Gazette of the Republic of Serbia*, no. 87/2018, 21 November 2018.