



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

FLASH REPORT

Country:	Serbia
Title:	The Commissioner for the Protection of Equality
Date:	27 July 2020
Expert:	Ivana Krstic
<u>Context</u>	
Issue at stake:	The mandate of CPE expired
Grounds of discrimination:	All grounds
Field of application:	All fields
Source:	National equality body
Applicable law:	Law on the Prohibition of Discrimination (LPD)

Content

The Commissioner for the Protection of Equality (Commissioner) was established in 2010 by the Law on the Prohibition of Discrimination (LPD)¹ as an independent, autonomous and specialised state body, with a wide mandate in the promotion and protection from discrimination in Serbia.

The LPD prescribes that the Commissioner is elected by the Parliament, acting on a proposal that was submitted by the committee authorised to deal with constitutional matters (Article 28(1)). The Commissioner is elected for a period of five years and can be re-elected once (Article 29). However, the LPD does not prescribe the election procedure in more detail, and does not contain a provision, as Article 4(7) of the Law on the Protector of Citizens (Ombudsperson),² that the procedure for the appointment needs to start at least 6 months before the end of office of the outgoing Commissioner. Furthermore, it is not stipulated in the LPD that the Commissioner should have deputies to help him/her in performing the duties (as it is the case with Article 6 of the Law on the Protector of Citizens) which means that when the term of the Commissioner expires, there is no one to run the office, before a new Commissioner is appointed. Bearing in mind this legal lacuna, the procedure was supposed to be initiated on time as the first term of the Commissioner Brankica Jankovic, expired on May 27, 2020 and it was already known that parliamentary elections in Serbia were scheduled for April 26, 2020.

The Government of Serbia has declared a state of emergency due to the COVID-19 crisis, which became effective on March 15, 2020 and lasted until May 6, 2020. On April 30, 2020, the National Assembly only confirmed the Decision on Declaring a State of Emergency and all decrees with legal force during the state of emergency, and on May 6 adopted the proposal on the abolition of the state of emergency. In the meantime, parliamentary elections were postponed and held on June 21, 2020. The new composition of the National Assembly should be constituted on August 4, at the latest. However, the new Commissioner will not be elected until the regular session, which means not before October this year.

¹ The Law on the Prohibition of Discrimination, The Official Gazzete of the Republic of Serbia, No. 22/2009.

² The Law on the Protector of Citizens, The Official Gazzete of the Republic of Serbia, No. 79/2005, 54/2007.

The office of the Commissioner currently only performs operational tasks until a new Commissioner is (re)elected. The complaints department receives and files complaints from citizens and civil society organisations, but the handling of complaints will not be completed until the elected Commissioner takes office. As a consequence, victims of discrimination will not be able to be provided with protection from discrimination in a complaint procedure for several months, especially in a situation when many claim to be victims of discrimination due to the coronavirus crisis (especially migrants and elderly due to restrictions of movement during the state of emergency).

On June 16, 2020, a group of 51 NGOs expressed their concern as the institution of the Commissioner has been completely blocked due to the failure to elect a new person to that position in a timely manner. They called on 'all relevant actors' to urgently initiate the process of electing a new Commissioner immediately after the constitution of the new composition of the Serbian Parliament. NGOs particularly underlined that this situation will mostly affect citizens who belong to multiple vulnerable and marginalised groups, especially those who do not have enough money and resources to turn to the courts in Serbia for protection against discrimination.

Internet link source:

<https://www.autonomija.info/nvo-u-srbiji-zabrinute-zbog-blokade-poverenika-za-zastitu-ravnopravnosti.html>.