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# Country report

## Non-discrimination

Serbia

2020

including summary



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and Consumers

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# **Country report**

## **Non-discrimination**

Transposition and implementation at national level of  
Council Directives 2000/43 and 2000/78

### **Serbia**

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Reporting period 1 January 2019 – 31 December 2019

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## EXECUTIVE SUMMARY

### 1. Introduction

The Republic of Serbia is a constitutional multi-party parliamentary democracy. The multi-party National Assembly of the Republic of Serbia was established in 1991. The 11th legislature commenced its work on 3 June 2016 and is notable for the fact that the leading party has a majority in the Parliament, which shapes and influences current parliamentary work in Serbia.

According to the latest census in 2011, the Republic of Serbia has 7 565 761 inhabitants. Serbs comprise 83.32 % of the population, Hungarians 3.53 %, Roma 2.05 %, Bosniaks 2.02 %, Croatians 0.81 %, Slovaks 0.73 %, Montenegrins 0.54 %, Vlachs 0.49 %, Romanians 0.41 %, Yugoslavs 0.32 %, Macedonians 0.32 %, Muslims 0.31 %, <sup>1</sup> Bulgarians 0.26 %, Bunjevci 0.23 %, Rusyns 0.20 %, Gorani 0.11 %, Albanians 0.08 %, Ukrainians 0.07 %, Germans 0.06 %, Slovenes 0.06 % and others 0.24 %. More than six million inhabitants of Serbia are Orthodox (84.6 %), followed by Roman Catholics (5 %) and Muslims (3 %). Other religions are also present in Serbia. Almost 90 % (88.1 %) of the population of the Republic of Serbia considers the Serbian language their mother tongue; the second language is Hungarian (3.4 %), followed by Bosniak (1.9 %) and the Roma language (1.4 %).<sup>2</sup>

### 2. Main legislation

The Constitution of Serbia,<sup>3</sup> adopted in 2006, contains a broad catalogue of human rights and proclaims equality and prohibits discrimination (Article 21(3)).

Serbia introduced a set of anti-discrimination laws that are almost aligned with the two EU directives from 2000.<sup>4</sup>

In April 2006, the first anti-discrimination law was adopted: the Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD),<sup>5</sup> which is supplemented by the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD).<sup>6</sup> Some additional laws have been adopted to further support the LPDPD, such as the Law on the Use of Guide Dogs<sup>7</sup> and the Law on the Use of Sign Language.<sup>8</sup>

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<sup>1</sup> People can state 'Muslim' as their ethnic identity in Serbia, while the same term can be used in the context of religious identity.

<sup>2</sup> Statistical Office of the Republic of Serbia (2018), *Statistical Yearbook of the Republic of Serbia*, Belgrade, p. 32. The *Statistical Yearbook* is the result of numerous statistical surveys and calculations, continuously conducted every year.

<sup>3</sup> Constitution of Serbia (*Ustav Republike Srbije*), *Official Gazette of the Republic of Serbia*, No. 98/2006, 10 November 2006.

<sup>4</sup> Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal L 180*, 19 July 2000; Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, *Official Journal L 303*, 2 December 2000.

<sup>5</sup> Law on the Prevention of Discrimination against Persons with Disabilities (*Zakon o sprečavanju diskriminacije osoba sa invaliditetom*), *Official Gazette of the Republic of Serbia*, Nos. 33/2006, 13/2016, 17 April 2006.

<sup>6</sup> Law on the Professional Rehabilitation and Employment of Persons with Disabilities (*Zakon o profesionalnoj rehabilitaciji i zapošljavanju osoba sa invaliditetom*), *Official Gazette of the Republic of Serbia*, Nos. 36/2009, 32/2013, 17 April 2006.

<sup>7</sup> Law on the Use of Guide Dogs (*Zakon o kretanju uz pomoć psa vodiča*), *Official Gazette of the Republic of Serbia*, No. 29/2015, 31 March 2015.

<sup>8</sup> Law on the Use of Sign Language (*Zakon o upotrebi znakovnog jezika*), *Official Gazette of the Republic of Serbia*, No. 38/2015, 7 May 2015.

Serbia adopted its first comprehensive anti-discrimination law in March 2009. The Law on the Prohibition of Discrimination (LPD)<sup>9</sup> was an important milestone in securing basic human rights in Serbia through the establishment of systematic anti-discrimination law. It prohibits a wide range of discriminatory actions. In addition, all the grounds for discrimination that are addressed in EU equality law are covered in the LPD and are significantly expanded.<sup>10</sup> However, the European Commission notes that further amendments to Serbian anti-discrimination legislation are necessary to bring it fully into line with the *acquis*,<sup>11</sup> especially in relation to the following: the scope of exceptions from the principle of equal treatment; the definition of indirect discrimination; and the inclusion of provisions on reasonable accommodation for employees with disabilities.<sup>12</sup> This process was initiated in 2016, but by the end of 2019 it had not been completed.

Many other laws also contain anti-discrimination provisions, such as the Law on Young People,<sup>13</sup> the Law on Sports,<sup>14</sup> the Law on Churches and Religious Organisations,<sup>15</sup> etc.

The Law on the Protection of the Rights and Freedoms of National Minorities<sup>16</sup> regulates the way in which the rights of people who belong to national minorities are implemented. Amendments to this Law from 2018 explicitly introduce a provision to regulate the protection of national minorities from discrimination in the enjoyment of their individual rights.<sup>17</sup>

The adoption of the Law on Free Legal Aid,<sup>18</sup> which was implemented on 1 October 2019, was of the utmost importance. Its adoption was anticipated in the Action Plan for Chapter 23 for the third quarter of 2015. The purpose of this Law is to ensure and provide access to justice for everyone. The Law recognises the primary providers of legal aid: attorneys and legal aid offices in municipalities. It also limits the role of civil society organisations (CSOs) to providing free legal aid only on the basis of the Law on Asylum and Temporary Protection and the Law on the Prohibition of Discrimination (apart from providing general legal information and helping beneficiaries to draft submissions), while legal clinics can provide only general legal information.

In addition, criminal law protection against discrimination is regulated by the Criminal Code<sup>19</sup> which provides for several criminal offences in connection with the prohibition of discrimination: Article 128 (violation of equality), Article 129 (violation of the right to use

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<sup>9</sup> Law on the Prohibition of Discrimination (*Zakon o zabrani diskriminacije*), *Official Gazette of the Republic of Serbia*, Nos. 22/2009, 13/2016, 26 March 2009.

<sup>10</sup> The LPD contains an open clause and explicitly mentions the following grounds: race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, and membership of political, trade union and other organisations.

<sup>11</sup> European Commission, *Serbia 2018 Report*, Strasbourg, 17 April 2018, p. 26, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

<sup>12</sup> This was specifically mentioned in European Commission, *Serbia 2015 Report*, Brussels, 10 November 2015, p. 56.

<sup>13</sup> Law on Youth (*Zakon o mladima*), *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011.

<sup>14</sup> Law on Sports (*Zakon o mladima*), *Official Gazette of the Republic of Serbia*, No. 10/2016, 16 February 2016.

<sup>15</sup> Law on Churches and Religious Organisations (*Zakon o crkvama i verskim zajednicama*), *Official Gazette of the Republic of Serbia*, No. 36/2006, 27 April 2006.

<sup>16</sup> Law on the Protection of the Rights and Freedoms of National Minorities (*Zakon o zaštiti prava i sloboda nacionalnih manjina*), *Official Gazette of the Republic of FRY*, No. 11/2002, *Official Gazette of SM*, No. 1/2003, *Official Gazette of the Republic of Serbia*, 172/2009, 97/2013, 47/2018, 27 February 2003.

<sup>17</sup> Amendments to the Law on the Protection of the Rights and Freedoms of National Minorities (*Zakon o izmenama i dopunama zakona o zaštiti prava i sloboda nacionalnih manjina*), *Official Gazette of the Republic of Serbia*, No. 47/2018, 28 June 2018.

<sup>18</sup> Law on Free Legal Aid (*Zakon o besplatnoj pravnoj pomoći*), *Official Gazette of the Republic of Serbia*, No. 87/2018, 21 November 2018.

<sup>19</sup> Criminal Code (*Krivični zakonik*), *Official Gazette of the Republic of Serbia*, Nos. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019, October 6, 2005.



a language or alphabet) and Article 387 (prohibition of racial and other discrimination). The Law on Misdemeanours<sup>20</sup> regulates the procedure and the conditions and implementation of misdemeanour charges.

### **3. Main principles and definitions**

The LPD recognises seven forms of discrimination: direct and indirect discrimination; violation of the principle of equal rights and obligations; the prohibition of calling to account (victimisation is known as 'the prohibition of calling to account' in Serbian law); association for the purpose of discriminating; hate speech, harassment and humiliating treatment; and severe forms of discrimination.

The definition of direct discrimination is almost in line with the definition that is given in the EU directives, but it is limited to less favourable treatment and does not cover detriment. The definition of indirect discrimination does not contain the conditional wording ('would') and can therefore be interpreted as being limited to the actual occurrence of disadvantage, which makes 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 is a plausible explanation of this form of discrimination. It is not clear why the violation of the principle of equal rights is recognised as a special form of discrimination, as it is either direct or indirect discrimination and is used as a test of discrimination. The prohibition of 'calling to account' is, in other words, 'victimisation', but this provision must be aligned with EU law in order to include express protection from dismissal.

Hate speech is defined ambiguously as the prohibition of the expression of 'ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public newsletter and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.' In addition, hate speech is not recognised as a specific form of discrimination in the Racial Equality and Employment Equality Directives. The LPD forbids association for the purpose of exercising discrimination by inciting among others hatred, divisions or enmity on the basis of national, racial, religious or other motivations. Instruction to discriminate is mentioned in the LPD, but it is not defined. Harassment, taken together with humiliating treatment, is recognised as a special form of discrimination. However, this provision is confusing, as humiliating treatment is a possible element of harassment, while the term 'harassment' is not defined.

The LPD allows for some exceptions and exemptions from the equality clause. Thus, 'measures introduced for the purpose of achieving the full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination' (Article 14). Indirect discrimination can be justified if there is a lawful objective and the means of achieving that objective are appropriate and necessary. Different treatment, exclusion or giving priority on account of the specific character of a job is allowed if an individual's personal characteristic constitutes a genuine and decisive precondition for performing the job and the objective to be achieved is justified. In addition, the conduct of religious officials in accordance with a religious doctrine or the beliefs or objectives of churches and religious organisations that are entered in the register of religious organisations is, in accordance with the law regulating the freedom of religion and the status of churches and religious organisations, not considered to be discrimination. This article is problematic as it provides a blanket exemption for religious officials who can discriminate if that is what their religious doctrines require or allow.

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<sup>20</sup> Law on Misdemeanours (*Zakon o prekršajima*), *Official Gazette of the Republic of Serbia*, Nos. 65/2013, 13/2016, 98/2016, 25 July 2013.

One of the most far-reaching provisions of the Employment Equality Directive is Article 5, which provides an obligation to make reasonable accommodation for people with disabilities. This provision is included only in the LPREPD and not in the LPD, which means that its application is limited only to the area of employment and applies only to disability. The LPDPD also provides several justifications for discrimination, although many of them are recognised as positive measures, defined in Article 8. However, the most problematic justification is provided in Article 19(2), of the LPREPD, which allows the organisation of special classes for children who do not have sufficient intellectual capacity to attend mainstream courses.

In Serbia, multiple discrimination is recognised as a severe form of discrimination, which means that more severe penalties should be imposed in cases of multiple or intersectional discrimination.<sup>21</sup>

#### **4. Material scope**

The LPD applies in all areas of public and private life. Article 2(1) defines discrimination as 'any unwarranted discrimination or unequal treatment' that is based on personal characteristics. However, the LPD recognises some special cases of discrimination, such as discrimination in the course of proceedings conducted before public administration bodies; discrimination in the provision of public services and in the use of premises and spaces; and discrimination in employment and in education. Thus, the material scope of the LPD goes beyond the areas that are covered by the two EU directives.

The prohibition of discrimination in employment applies to both the public and private sectors.

The LPD does not cover occupational pensions, social advantages or self-employment, and it is unclear whether it covers social protection and housing. Although certain other laws regulate some of these issues, such as self-employment or housing, those provisions should be included in the LPD.

The LPD mentions only access to services and does not expressly mention access to goods.

#### **5. Enforcing the law**

Civil proceedings in discrimination cases are regulated by three anti-discrimination laws (LPD, LPDPD and the Law on Gender Equality). The general rule is that provisions from general litigation apply unless there is explicit regulation that states otherwise (*lex specialis*). However, it was necessary to create a special procedure for discrimination cases that is designed to ensure the provision of effective and efficient civil protection from discrimination in accordance with international and European standards in this area.

The LPDPD provides specific procedural provisions in order to enhance court procedure in cases of discrimination against people with disabilities. In addition, the LPD sets out the procedure for initiating civil court cases in cases of discrimination, which can be initiated by anyone who claims to have suffered discriminatory treatment, including discrimination on the ground of disability. It also contains more guarantees than the procedure stipulated in the LPDPD. While both laws include a provision in relation to the court's jurisdiction for victims of discrimination, the LPD recognises temporary measures and the court must decide on requests for them within three days. It provides that the proceedings must be conducted with urgency (Article 41(3)). It is particularly important that Article 45 of the LPD shifts the burden of proof from the complainant to the respondent.

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<sup>21</sup> Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, Nos. 22/2009, 13/2016, 26 March 2009, Article 13.

Article 41 of the LPD provides that anyone who claims to be a victim of discriminatory treatment has the right to initiate a lawsuit. The complainant may request: 1) the imposition of a ban on an action that poses a threat of discrimination, on proceeding with a discriminatory action or on repeating a discriminatory action; 2) that the court should establish that the defendant has treated the complainant or another party in a discriminatory manner; 3) that steps be taken to provide redress for the consequences of the discriminatory treatment; 4) compensation for pecuniary and non-pecuniary damage; and 5) that the judgment be published. Furthermore, Article 46 provides that a lawsuit may be initiated by the Commissioner for the Protection of Equality or by an organisation that is engaged in the protection of human rights or the rights of a certain group of people.

Affirmative action measures are expressly allowed in the Serbian Constitution (Article 21(4)) and the LPD (Article 14) and are applied mainly in relation to women in politics, Roma in education and people with disabilities in employment.

## **6. Equality bodies**

The institution of the Commissioner for Protection of Equality was established by the LPD as an independent, autonomous and specialised public body with a wide mandate for the promotion of equality and anti-discrimination in all spheres of society. It has two main responsibilities: the prevention of and protection from discrimination. The Commissioner's office has a range of measures at its disposal, the most relevant of which, for victims of discrimination, are to receive and consider complaints regarding discrimination, to initiate strategic litigation and to file offence and criminal charges.<sup>22</sup>

The procedure of applying to the Commissioner is regulated in Articles 35 to 40. The general rule is that the provisions of the law that regulate general administrative proceedings apply accordingly to procedure that involve the Commissioner. A complaint must be forwarded within 15 days of its submission to the alleged violator, who has 15 days to respond to it. The Commissioner can propose mediation if both parties agree to it. This obligation complies with the Racial Equality Directive, which, in Article 7(1), obliges states to ensure the availability of judicial and/or administrative procedures including, where appropriate, conciliation procedures. However, if the dispute is not subject to mediation, the Commissioner must give an opinion as to whether there has been a violation of the prohibition of discrimination within 90 days of receiving a complaint, and inform both the individual who submitted the complaint and the individual against whom the complaint was submitted. If the Commissioner finds that there has been a violation, they issue a recommendation to the individual against whom the complaint was submitted, suggesting a way of redressing the violation in question. The individual to whom the recommendation is addressed is obliged to act on it and to redress the violation in question within 30 days of receipt of the recommendation. The individual must inform the Commissioner of any measures that are taken. If the individual fails to redress the violation in question within 30 days, the Commissioner may inform the public through electronic and print media, but it cannot punish the violator. Nevertheless, the Commissioner can initiate a notice for misdemeanour proceedings or a criminal charge, or a lawsuit if it finds that there is a strategic case for litigation.

In 2019, the Commissioner's office undertook many awareness-raising activities on discrimination and mechanisms for protection against discrimination, and it continued to encourage regional cooperation. The annual report demonstrates that the Commissioner

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<sup>22</sup> The Commissioner can provide information to the person lodging a complaint and can recommend mediation. They also submit an annual report and special reports to the National Assembly; warn the public about the most frequent, typical and severe cases of discrimination; monitor the implementation of laws and other regulations; initiate the passing or amending of regulations; provide opinions concerning the provisions of draft laws and other regulations; establish and maintain cooperation with different bodies and organisations; and recommend measures to public administration bodies and other institutions aimed at ensuring equality.

was very active in 2019.<sup>23</sup> During this year, the Commissioner received 711 complaints; issued opinions in 70 cases; provided 686 general recommendations and 31 opinions on draft laws and general acts; and initiated one strategic litigation lawsuit and six criminal charges as well as three misdemeanour charges, 23 warnings and 34 announcements.<sup>24</sup>

## 7. Key issues

### 1. Compliance with the two EU anti-discrimination directives

In Serbia, national legislation is mainly in accordance with the two EU anti-discrimination directives from 2000. However, there are some inconsistencies and ambiguities that require further judicial interpretation or changes to the existing legislation:

#### Forms of discrimination

- the definition of direct discrimination is in line with the definition in the EU directives; however, it is limited to less favourable treatment.
- the definition of indirect discrimination does not contain the conditional wording ('would') and can thus be interpreted as being limited to the actual occurrence of disadvantage, which makes it impossible to challenge neutral provisions before they incur disadvantages for actual victims.
- the instruction to discriminate is not defined in the LPD and should be included in the law.
- discrimination by association is recognised in the LPD, but its application is limited only to 'members of families' and people who are close to those being discriminated against.
- the LPDPD does not provide protection from victimisation, and the definition of victimisation in the LPD must be further aligned with EU law as it does not expressly protect people from dismissal.

#### Limitations concerning the scope

- the LPD mentions only access to services and does not expressly mention access to goods.
- the LPD does not cover occupational pensions, social advantages and self-employment, and it is unclear whether it covers social protection and housing. Although certain other laws regulate some of those issues, such as self-employment and housing, those provisions should be included in the LPD.
- the LPD does not include provisions on reasonable accommodation for people with disabilities.
- national law does not provide for an exception for employers with an ethos based on religion or belief, but there is a blanket exemption for religious officials who can discriminate if this is what their religious doctrines require or allow.
- the LPD does not explicitly provide an exception for direct discrimination on the ground of age. Further judicial interpretation is required, especially with regard to the application of the proportionality test.<sup>25</sup>

#### Procedural issues

- the LPDPD does not contain a provision on the reversal of the burden of proof.

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<sup>23</sup> After the cut-off date for this report, on 13 March 2020, the annual report was submitted to the National Assembly.

<sup>24</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for Protection of Equality for 2019*, Belgrade, p. 7.

<sup>25</sup> This was discussed as one of the issues that should be changed in the LPD, but the draft law on amendments to the Law on the Prohibition of Discrimination does not contain a provision providing an exception for direct discrimination on the ground of age.

- sanctions are still not effective, proportionate and dissuasive.
- The LPD does not contain any specific rule in relation to statistics, and it is still unclear how the courts will treat statistical evidence that arises from the practice of the Commissioner for the Protection of Equality.

## 2. Implementation of the existing normative framework

Although the normative anti-discrimination framework in Serbia mainly respects the relevant EU standards, some problems with the implementation of the existing norms are visible in practice:

- it is important to finalise the process of adoption of amendments to the LPD in order to fully align it with the EU *acquis*, especially bearing in mind that this process now takes four years.
- it is important to prepare and adopt strategic documents, including the Anti-Discrimination Strategy, as soon as possible, as the last such strategy expired in 2018.
- some problems deserve urgent attention, such as the social inclusion of people with disabilities and in particular their ability to access services, buildings and documents.
- the need for improvement in the inclusion of the Roma and in particular their access to adequate housing, health and social services, and equality in education.
- the need for improvement in the position of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, with particular emphasis on the recognition of same-sex registered partnerships and the elimination of stigmatisation and discrimination in order to comply with the Court of Justice of the European Union (CJEU) jurisprudence in *Maruko*, *Romer* and *Hay*.
- according to the Commissioner's practice, it is important to focus on the prevention of discrimination in the provision of services.
- the ageing population, in particular in rural areas, must have better access to health and social services.
- the Republic of Serbia has not yet established a unified and centralised system for collecting data relevant to the functioning of the system of legal protection against discrimination, which represents a huge problem in assessing and monitoring discrimination.
- although training on anti-discrimination law has been provided to different public officials, it is important to continue with that training, which must be comprehensive and on-going.

## INTRODUCTION

### The national legal system

The Republic of Serbia is a constitutional multi-party parliamentary democracy. It has a history of being a federal unit within a federal state – the Socialist Federal Republic of Yugoslavia (SFRY). After the dissolution of the SFRY during the 1990s, it was again structured as a federal state with two federal units and was known as the Federal Republic of Yugoslavia (FRY). From 2003 to 2006, Serbia was part of the State Union of Serbia and Montenegro, into which the Federal Republic of Yugoslavia had been transformed. On 5 June 2006, the National Assembly of Serbia declared Serbia the successor to the State Union, following a decision by the Parliament of Montenegro to declare that country's independence. Thus Serbia finally became a single state. The legal competence for anti-discrimination law is therefore directly applicable in all parts of the state, as Serbia is now a unitary state.

### List of main legislation transposing and implementing the directives

Several general and specialised anti-discrimination laws have been adopted in the Republic of Serbia.

The Law on the Prohibition of Discrimination (LPD) is the general anti-discrimination law. It was adopted on 26 March 2009,<sup>26</sup> thereby establishing an integral system of protection from discrimination in the country's legal system. It came into force on 3 April 2009 (except for the provisions relating to the Commissioner for the Protection of Equality (Poverenik za zaštitu ravnopravnosti), which came into force on 1 January 2010). The Law on the Prohibition of Discrimination expressly prohibits discrimination on the basis of all five grounds mentioned in two EU directives and recognises the following grounds of discrimination: race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability and marital and family status, previous convictions, age, appearance, and membership of political, trade union or other organisations. However, it is important to underline that, although the LPD includes protection against discrimination on the basis of sexual orientation, it is still possible to make distinctions between heterosexual and same-sex couples in relation to marriage, social benefits, etc. This difference is not explicitly included as a specific exception in the LPD, but derives from the Constitution and other laws.

The Law applies to all areas of life, which means that its material scope goes beyond the two EU directives.

The Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD) prohibits discrimination based on disability.<sup>27</sup> The Law was adopted on 17 April 2006 and came into force on 1 January 2007.<sup>28</sup> It addresses various forms of discrimination against people with disabilities that were previously included piecemeal in a number of different laws (such as social security, employment and labour laws, family law, public healthcare laws, public education laws, pension and disability laws, etc.). The Law was amended on 12 February 2016 to include a duty on public authorities, other legal entities and individuals to allow the use of personal facsimile signature stamps by people with disabilities for the

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<sup>26</sup> Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, No. 22/2009, 26 March 2009, available at: [www.ravnopravnost.gov.rs/en/laws/laws-and-regulations-of-the-republic-of-serbia](http://www.ravnopravnost.gov.rs/en/laws/laws-and-regulations-of-the-republic-of-serbia).

<sup>27</sup> The position of people with disabilities is further supported by two pieces of legislation adopted in 2015: the Law on the Use of Guide Dogs, *Official Gazette of the Republic of Serbia*, No. 29/2015, 31 March 2015, and the Law on the Use of Sign Language, *Official Gazette of the Republic of Serbia*, No. 38/2015, 7 May 2015.

<sup>28</sup> Law on the Prevention of Discrimination against Persons with Disabilities, *Official Gazette of the Republic of Serbia*, No. 33/2006, 17 April 2006. Amendments to the Law on the Prevention of Discrimination against Persons with Disabilities (*Izmene i dopune Zakona o sprečavanju diskriminacije osoba sa invaliditetom*), *Official Gazette of the Republic of Serbia*, No. 13/2016, 19 February 2016.

signing of legal documents. This Law was followed by the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD),<sup>29</sup> which was adopted with the aims of making it possible for greater numbers of people with disabilities to be included in the open labour market and improving their employability and quality of employment. The Law was amended on 8 April and came into force on 16 April 2013.<sup>30</sup>

The Law on the Protection of the Rights and Freedoms of National Minorities<sup>31</sup> was adopted on 27 February 2003 and came into force on 7 March 2003. The Law provides national minorities with protection from all forms of discrimination in exercising their civil rights and freedoms, and places a duty on public officials to refrain from acts and regulations that discriminate against them. Further, it creates instruments that guarantee and protect the special rights of minorities to minority self-governance in the fields of education, use of language, media and culture. It is important to underline that the Law does not contain an exhaustive list of protected national minorities, but limits its application to citizens who have a long and strong relationship with the territory of the Republic of Serbia.<sup>32</sup>

The law has been amended several times: in 2003, 2009, 2013 and 2018.<sup>33</sup> The latest amendment includes provisions to prevent discrimination against national minorities in the exercise of their individual rights and prescribes in Article 4 that it should not be considered discrimination to implement positive measures in public sector employment.<sup>34</sup>

The Labour Law<sup>35</sup> was adopted on 15 March and came into force on 23 March 2005. It makes specific provisions to prevent discrimination at work and in relation to employment. While the LPD contains general anti-discrimination provisions, the Labour Law contains more specific provisions that relate to discrimination at work. It entitles employees to initiate lawsuits and claim damages based on the anti-discrimination provisions contained within it. It contains an open anti-discrimination clause, but it explicitly mentions the following grounds of discrimination: gender, birth, language, race, skin colour, age, pregnancy, health condition, disability, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial capacity, and membership of labour unions and political or other organisations. In particular, the Labour Law prohibits discrimination with respect to employment conditions and the choice of candidates for an employment position; working conditions and rights; professional development and training; career development; and termination of employment by the employer. The Law has been amended several times: in 2005, 2009, 2013, 2014, 2017 and 2018.

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<sup>29</sup> Law on the Professional Rehabilitation and Employment of Persons with Disabilities, *Official Gazette of the Republic of Serbia*, No. 36/2009, 17 April 2006.

<sup>30</sup> Amendments to the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (*Izmene i dopune Zakona o profesionalnoj rehabilitaciji i zapošljavanju osoba sa invaliditetom*), *Official Gazette of the Republic of Serbia*, No. 32/2013, 8 April 2013.

<sup>31</sup> Law on the Protection of the Rights and Freedoms of National Minorities, *Official Gazette of FRY*, No. 11, 27 February 2002; *Official Gazette of Serbia and Montenegro*, No. 1/2003 – Constitutional Charter, *Official Gazette of the Republic of Serbia*, No. 72/2009 – other law; *Official Gazette of the Republic of Serbia*, No. 97/2013 – decision of the Constitutional Court, 27 February 2003.

<sup>32</sup> Law on the Protection of the Rights and Freedoms of National Minorities, *Official Gazette of the Republic of FRY*, No. 11/2002, *Official Gazette of SM*, No. 1/2003, *Official Gazette of the Republic of Serbia*, Nos. 172/2009, 97/2013, 47/2018, 27 February 2003, Article 2.

<sup>33</sup> On 3 March 2016, the Action Plan for Exercising the Rights of National Minorities was adopted, as envisaged in chapter 23 of the Action Plan for Negotiation. It completes Serbia's strategic commitment aimed at the improvement of the institutional and legislative framework in the field of human and minority rights. The document contains 11 chapters: personal status; prohibition of discrimination; culture and media; freedom of religion; the use of language and script; education; democratic participation; representation of national minorities in the public sector and public enterprises; national councils; the economic position of national communities; and international cooperation.

<sup>34</sup> Amendments to the Law on the Protection of the Rights and Freedoms of National Minorities, *Official Gazette of the Republic of Serbia*, No. 47/2018, 28 June 2018.

<sup>35</sup> Labour Law (*Zakon o radu*), *Official Gazette of the Republic of Serbia*, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017, 95/2018, 15 March 2005.

Many other laws also contain anti-discrimination provisions, such as the Law on Youth,<sup>36</sup> the Law on Churches and Religious Organisations,<sup>37</sup> etc.

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<sup>36</sup> Law on Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011.

<sup>37</sup> Law on Churches and Religious Organisations, *Official Gazette of the Republic of Serbia*, No. 36/2006, 27 April 2006.



## **1 GENERAL LEGAL FRAMEWORK**

### **Constitutional provisions on protection against discrimination and the promotion of equality**

The Constitution of Serbia<sup>38</sup> of 2006 includes the following articles that deal with non-discrimination.

Article 21 proclaims the equality of everyone before the law and the right to equal legal protection without any discrimination. Article 21(3) contains an anti-discrimination clause: 'Any direct or indirect discrimination on any grounds, particularly race, sex, national origin, social origin, birth, religion, political or other belief, property status, culture, language, age, mental or physical disability, shall be prohibited.'

The Constitution does not provide a definition of discrimination, but it prohibits both direct and indirect discrimination. It also makes provision for the prohibition of discrimination on any ground, not just those grounds explicitly mentioned in Article 21, which means that the list is not exhaustive. The provision applies to all grounds that are covered by the EU directives, as sexual orientation is included under 'any grounds'.<sup>39</sup> In Article 21(4), the Serbian Constitution recognises affirmative action, stating that 'special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination'.

Article 15 guarantees gender equality and states that 'The State shall guarantee the equality of women and men and develop equal opportunities policy'. Article 62 of the Constitution guarantees the equality of spouses.

Article 76(1) provides that 'Persons belonging to national minorities shall be guaranteed equality before the law and equal legal protection', and Article 76(2) states that 'Any discrimination on the grounds of affiliation to a national minority shall be prohibited'. Article 76(3) states that 'specific regulations and provisional measures which the Republic of Serbia may introduce in economic, social, cultural and political life for the purpose of achieving full equality among members of a national minority and citizens who belong to the majority, shall not be considered discrimination if they are aimed at eliminating extremely unfavourable living conditions which particularly affect them'.

Articles 15 and 76 also apply to all areas that are covered by the directives, as the material scope of the above-mentioned provisions is broader than those in the directives (including economic, social, cultural and political life).

These provisions are directly applicable, while Article 15, Article 21(4) and Article 76(3) require the adoption of further laws and regulations to enable their implementation.

The constitutional equality clause prescribed in Article 21(3) and Article 76(2) can be enforced against private individuals as well as against the state.

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<sup>38</sup> Constitution of Serbia (*Ustav Republike Srbije*), *Official Gazette of the Republic of Serbia* No. 98/2006, 10 November 2006.

<sup>39</sup> The absence of explicit mention of 'sexual orientation' in the Constitution has not been challenged in court.

## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the main legislation transposing the two EU anti-discrimination directives:

The Constitution contains a brief list of prohibited grounds of discrimination, specifically mentioning (in Article 21(3)) race, sex, national origin, social origin, birth, religion, political or other opinions, property status, culture, language, age, and mental or physical disability.

Article 2(1) of the comprehensive LPD contains a longer list of prohibited grounds than the Constitution, specifically mentioning race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, and membership of political, trade union and other organisations.

The Law on the Prevention of Discrimination against Persons with Disabilities prohibits discrimination based on disability.<sup>40</sup>

The Labour Law<sup>41</sup> prohibits discrimination based on sex, birth, language, race, colour, age, pregnancy, health condition or disability, national origin, religion, marital status, family obligations,<sup>42</sup> sexual orientation, political or other opinions, social origin, property and membership of political organisations and trade unions.

#### 2.1.1 Definition of the grounds of unlawful discrimination within the directives

As in the EU directives, national law does not provide definitions of the different grounds of discrimination. However, the interpretation of the terms is equivalent to that in EU law, although jurisprudence in the area of anti-discrimination is not yet very well developed. In addition, as international law is directly applicable in Serbia, a judge can, in the event of inconsistencies in the interpretation of different terms, directly apply definitions that are provided in EU directives and CJEU jurisprudence. Nevertheless, judges are reluctant to apply international and European norms directly, so it is important to define some grounds that could be interpreted differently.<sup>43</sup>

##### a) Racial or ethnic origin

'Race' and 'ethnic origin' are not defined in the LPD. However, Article 26 of the Law on Asylum and Temporary Protection<sup>44</sup> suggests that race refers to skin colour, descent and membership of a specific ethnic group. In addition, 'nationality' according to this Law means 'membership of a group that is specific in terms of its culture, ethnic or linguistic identity, common geographical or political origins, or its relationship with the population of another state, and may also include citizenship', although citizenship is a separate ground

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<sup>40</sup> The position of people with disabilities is further supported by two pieces of legislation adopted in 2015: the Law on the Use of Guide Dogs, *Official Gazette of the Republic of Serbia*, No. 29/2015, 31 March 2015, and the Law on the Use of Sign Language, *Official Gazette of the Republic of Serbia*, No. 38/2015, 7 May 2015.

<sup>41</sup> Labour Law, *Official Gazette of the Republic of Serbia*, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017, 95/2018, 15 March 2005.

<sup>42</sup> 'Family obligations' probably means family status, as this is the only law containing this ground of discrimination.

<sup>43</sup> See, e.g. European Court of Human Rights (ECtHR), *Dimitras and Others v. Greece*, Nos. [42837/06](#), [3269/07](#), [35793/07](#) and [6099/08](#), 3 June 2013.

<sup>44</sup> Law on Asylum and Temporary Protection (*Zakon o azilu i privremenoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 24/2018, 3 April 2018.

of discrimination.<sup>45</sup> The first part of the definition refers to ethnic origin, meaning a 'membership of a group that is specific in terms of its culture, ethnic or linguistic identity.'

Case law in which race is invoked as a ground of discrimination is almost non-existent. According to the general annual reports by the Commissioner for the Protection of Equality in 2010,<sup>46</sup> 2012<sup>47</sup> and 2017<sup>48</sup> no one claimed to be a victim of race discrimination. In 2011 and 2018, there was only one complaint;<sup>49</sup> in 2013, there were five complaints;<sup>50</sup> and in 2015,<sup>51</sup> 2016<sup>52</sup> and 2019<sup>53</sup> there were only two complaints. In one handbook prepared by the Commissioner's Office, 'race' is explained, for example, as involving discrimination against African Americans. National affiliation and ethnic origin are considered to be one ground of discrimination, and in the same handbook those grounds are explained as referring to discrimination against the Roma.<sup>54</sup> Thus, it can be said that the logic of the *Timishev* case is followed: 'race' is considered to represent the idea of a biological classification of human beings into subspecies, while 'ethnic origin' refers to the idea of societal groups marked by common characteristics, such as nationality, religion, language, cultural and traditional origins.<sup>55</sup>

#### b) Religion and belief

The LPD does not define 'religion and belief'. However, the Law on Asylum and Temporary Protection in Article 26 defines 'religion' as 'theistic and atheistic beliefs, participation in or abstention from formal worship in private or in public, either alone or in community with others, other religious acts or expressions of faith, or forms of personal or communal conduct founded on or arising from religious beliefs'.<sup>56</sup>

#### c) Disability

Some problems arise due to the fact that Serbia does not have a single, comprehensive definition of the term 'disability', which is instead defined in several laws, by-laws and policy documents. Some older laws contain a medical definition of disability,<sup>57</sup> while Article

<sup>45</sup> See, e.g. Appellate court in Nis, Gć. 6816/2018, judgment of 18 April 2018.

<sup>46</sup> Commissioner for the Protection of Equality (2011), *Regular annual report of the Commissioner for the Protection of Equality for 2010*, Belgrade, p. 52.

<sup>47</sup> Commissioner for the Protection of Equality (2013), *Regular annual report of the Commissioner for the Protection of Equality for 2012*, Belgrade, p. 66.

<sup>48</sup> Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, pp. 217-218.

<sup>49</sup> Commissioner for the Protection of Equality (2012), *Regular annual report of the Commissioner for the Protection of Equality for 2011*, Belgrade, p. 51; Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 246;

<sup>50</sup> Commissioner for the Protection of Equality (2014), *Regular annual report of the Commissioner for the Protection of Equality for 2013*, Belgrade, p. 101.

<sup>51</sup> Commissioner for the Protection of Equality (2016), *Regular annual report of the Commissioner for the Protection of Equality for 2015*, Belgrade, p. 253.

<sup>52</sup> Commissioner for the Protection of Equality (2017), *Regular annual report of the Commissioner for the Protection of Equality for 2016*, Belgrade, p. 217.

<sup>53</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 298.

<sup>54</sup> Petrusic, N. and Beker, K., *Šta je diskriminacija i kako se od nje zaštititi? (What is discrimination and how to protect from discrimination?)*, Partnership for Tolerance and Protection from Discrimination in Serbia, available at:

[www.ravnopravnost.gov.rs/jdownloads/files/jednostavna\\_verzija\\_praktikuma\\_za\\_zastitu\\_od\\_diskriminacije.pdf](http://www.ravnopravnost.gov.rs/jdownloads/files/jednostavna_verzija_praktikuma_za_zastitu_od_diskriminacije.pdf).

<sup>55</sup> See ECtHR, *Timishev v. Russia*, Nos. 55762/00 and 55974/00, 13 December 2005, para. 55, available at: <http://minorityrights.org/wp-content/uploads/old-site-downloads/download-218-Timishev-v.-Russia-full-case.pdf>.

<sup>56</sup> Law on Asylum and Temporary Protection, *Official Gazette of the Republic of Serbia*, No. 24/2018, 26 March 2018, came into force on 3 June 2018.

<sup>57</sup> According to Article 21 of the Law on Pension and Disability Insurance, a disability exists when an insured person experiences total loss of their working capacity due to changes in their health resulting from an injury at work, occupational disease, injury outside of work or illness which cannot be eliminated by any treatment or medical rehabilitation. See Law on Pension and Disability Insurance (*Zakon o penzijskom i*

3(1) of the LPDPD defines people with disabilities as people with a congenital or acquired physical, sensory, intellectual or emotional (psycho-social) impairment who are, due to social or other barriers, unable or have limited opportunities to engage in social activities at the same level as others, regardless of whether they are capable of carrying out such activities with the use of technical aids or support services. This definition is not taken *ad verbum* from Article 1(2), of the UN Convention on the Rights of Persons with Disabilities, but the meaning and national interpretation of the definition is the same. In addition, the Serbian definition of 'disability' in the LPDPD is broader than the CJEU's definition.<sup>58</sup> However, 'disability' as defined in Article 3(1) of the LPDPD is compatible with the CJEU's definition, in which disability is perceived as including a condition caused by an illness medically diagnosed as curable or incurable, if that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one. The definition in the LPDPD takes into account opportunities to engage in social activities in general, rather than in the more limited sphere of professional life to which the CJEU case law refers.

A further definition of 'people with disabilities' is included in another law that, together with the LPDPD, prohibits discrimination against people with disabilities. Article 3(1) of the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD) defines people with disabilities as people who live with the permanent consequences of a physical, sensory, mental or psychiatric impairment or disease that cannot be eliminated by any treatment or medical rehabilitation and are faced with social and other limitations and barriers affecting their working capacity and possibility of finding or retaining employment, and who have no possibility or reduced possibilities of being involved in the labour market or applying for employment on equal terms with other people.

The provision in the LPREPD defines the concept of 'long-term impairments' as impairments that cannot be eliminated by any treatment or medical rehabilitation, which creates long-term consequences (Article 3(1)). Having different definitions of disability in these two laws (LPDPD and LPREPD) leads to legal uncertainty, as each definition applies in the area of law that is governed by that legal instrument. Not only is the wording different; the meaning of the definition is not compatible with the CJEU's case law, as it refers to permanent impairment.

#### d) Age

The LPD does not define 'age', but it gives special protection to children (Article 22) and the elderly (Article 23(2)). The National Strategy for Young People considers that young people are persons under the age of 30,<sup>59</sup> while the Law on Youth more precisely defines the young as persons between 15 and 30 years.<sup>60</sup> The National Strategy on Ageing (2006-2015) defines the elderly as persons who are over 65 years old.<sup>61</sup>

#### e) Sexual orientation

Sexual orientation is also not defined in the LPD. However, the draft law on amendments to the Family Law, which was submitted to the National Assembly at the end of 2018, recognises same-sex couples (gay and lesbian) and seeks to equalise their status in non-

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*invalidskom osiguranju*), *Official Gazette of the Republic of Serbia*, Nos. 34/2003, 64/2004 – CC decision, 84/2004 – CC decision, 85/2005, 101/2005, 63/2006, 5/2009, 107/2009, 93/2012, 108/2013, 75/2014, 142/2014, 73/2018, 2 April 2003.

<sup>58</sup> See judgment of 11 April 2013, *HK Danmark*, joined cases C-335/11 and C-337/11.

<sup>59</sup> 'National Strategy for the Young (2015-2025)' ('Nacionalna Strategija za mlade za period 2015-2025'), *Official Gazette of the Republic of Serbia*, No. 22/2015.

<sup>60</sup> Law on Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011, Article 3(1)(1).

<sup>61</sup> National Strategy on Ageing (2006-2015), (Nacionalna Strategija o starenju za period od 2006. do 2015), *Official Gazette of the Republic of Serbia*, No. 76/2006.

marital relationships. The draft law further prescribes that registered partnerships will be governed by a separate law. As of 2019, this draft law had not yet been adopted.

### 2.1.2 Multiple discrimination

In Serbia, multiple discrimination is prohibited by law. According to Article 13 of the LPD, multiple discrimination is recognised as a severe form of discrimination. Article 13 states:

‘The following shall be considered to constitute severe forms of discrimination:

...

5. discrimination against individuals on the basis of two or more personal characteristics (multiple or intersecting discrimination);

...’

This means that a more severe penalty should be imposed in cases of multiple or intersecting discrimination: in other words, discrimination against individuals on the basis of two or more personal characteristics such as race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, and membership of political, trade union and other organisations, or any other ground.

In Serbia, the Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*) is aware of the negative consequences and detrimental effects of multiple discrimination and acknowledges that the number of complaints claiming multiple discrimination increased in 2017<sup>62</sup> and 2018.<sup>63</sup>

In 2019, 116 complaints (20.1 % of the total number of complaints) that contained two or more grounds for discrimination were submitted to the Commissioner (in comparison with 102 in 2016, 138 in 2017 and 188 in 2018).<sup>64</sup> However, this does not mean that multiple discrimination was present in all those cases, as it is usual for applicants to name several grounds of discrimination when they are not sure what personal characteristic was the ground for discrimination in their case.

The Commissioner’s practice shows that multiple discrimination was most frequent in relation to age, disability, birth, sex, marital and family status and health.<sup>65</sup> Multiple discrimination usually occurs in various proceedings before public authorities, and in the area of employment on the basis of sex and the marital and family status of women. In addition, some reports illustrate that there is widespread discrimination against women with disability, ageing women, women living in rural areas and Roma women.<sup>66</sup> Also, migrant women are very often exposed to multiple discrimination in Serbia.<sup>67</sup>

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<sup>62</sup> Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, p. 162.

<sup>63</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 182.

<sup>64</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 297. The number of complaints in 2018 was much higher than in 2019 as a consequence of the amendments to the Law on Financial Assistance to Families with Children, which contained some discriminatory provisions, as a result of which many complaints were submitted to the Commissioner for the Protection of Equality.

<sup>65</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 246.

<sup>66</sup> Praxis (2019), *Submission concerning Serbia to the Committee on Economic, Social and Cultural Rights (Izveštaj o Srbiji Komitetu za ekonomska, socijalna i kulturna prava)*, available at: [https://www.praxis.org.rs/images/praxis\\_downloads/Praxis\\_submission\\_to\\_CESCR\\_for\\_the\\_65\\_PSWG.pdf](https://www.praxis.org.rs/images/praxis_downloads/Praxis_submission_to_CESCR_for_the_65_PSWG.pdf)

<sup>67</sup> Kisić, M. and Petrović, A. (2019), *The Space for Women and Girls: Voices of women refugees and migrants in Serbia (Prostor za žene i devojke: glasovi žena izbeglica i migrantkinja u Srbiji)*, Belgrade, available at: <https://adra.org.rs/2019/06/20/devojke-i-zene-iz-izbeglicke-i-migrantske-populacije-dele-svoja-iskustva-u-adrinoj-novoj-publikaciji/>

There is still no solid jurisprudence before the civil courts in order to assess whether the detrimental effect of multiple discrimination is recognised and whether it provides a basis for awarding higher compensation.

### 2.1.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In Serbia, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law.

Article 2(1) of the LPD prohibits discrimination based on presumed personal characteristics. It states that 'the terms "discrimination" and "discriminatory treatment" shall be used to designate any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or people close to them, be it overt or covert, on the grounds of race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, or membership of political, trade union and other organisations and other real or *presumed personal characteristics*' (emphasis added).

In many opinions, the Commissioner has underlined that discrimination can be perpetrated on the basis of real or presumed personal characteristics. In 2018, the Commissioner found for the first time that discrimination had been based on presumed characteristics. Namely, the Commissioner found that a bank had rejected a loan application from the Serbian Association of Journalists, basing its decision on the presumption that the association had unstable revenues as a non-profit organisation.<sup>68</sup> In 2019, the Commissioner found that a two-year-old boy who was not talking had been exposed to discrimination in a kindergarten based on his presumed health, as he was labelled by a director of the institution as a 'child with special needs'.<sup>69</sup> In addition, the Commissioner found that the president of a women's organisation had been exposed to humiliating comments, as she advocated for LGBTI rights and identified as a lesbian. The Commissioner initiated criminal charges against unidentified persons in this case.<sup>70</sup> In addition, research involving 206 LGBTI+ people and 10 companies showed that 38 % of respondents had experienced discrimination in the workforce in the past five years due to their real or presumed personal characteristics.<sup>71</sup> The results of the research also indicated that only one fifth of LGBTI people freely express their sexual orientation or gender identity at work, while two thirds do not manifest their orientation or identity at all.<sup>72</sup>

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<sup>68</sup> Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *U.n.s. v. R. b. a.d. B.*, complaint No. 07-00-506/2016-02, opinion of 24 August 2018. See also Commissioner for the Protection of Equality, *K. S. v. Fondation M.T.G.B.*, complaint No. 07-00-532/2017-02, opinion of 9 March 2018. Here, the Commissioner found that the Foundation for Young Talents had discriminated against a high-school pupil based on the presumption that pupils who attend private schools enjoy good material conditions and do not deserve a scholarship.

<sup>69</sup> Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *D.M. v. S.M. and K.P.*, complaint No. 07-00-1207/2018-02, opinion of 8 March 2019.

<sup>70</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, pp. 259- 260.

<sup>71</sup> IDEAS (2019), *Dignity at Work – Research on the Position of LGBTI+ people in the field of work and employment (Dostojanstvo na radu - istraživanje o položaju LGBTI+ osoba u oblasti rada i zapošljavanja)*, Belgrade, p. 27.

<sup>72</sup> IDEAS (2019), *Dignity at Work – Research on the Position of LGBTI+ people in the field of work and employment (Dostojanstvo na radu - istraživanje o položaju LGBTI+ osoba u oblasti rada i zapošljavanja)*, Belgrade,, p. 5.

## b) Discrimination by association

In Serbia, discrimination based on association with persons with particular characteristics is prohibited in national law. Article 2(1) of the LPD states that 'the terms "discrimination" and "discriminatory treatment" shall be used to designate any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as *members of their families*,<sup>73</sup> or *persons close to them*, be it overt or covert, on the grounds of race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, or membership of political, trade union and other organisations and other real or presumed personal characteristics' (emphasis added). The definition of 'discrimination' states that unequal treatment occurs 'in relation to individuals or groups, as well as members of their families, or persons close to them'. However, its application is limited to 'family members' and people close to those who are discriminated against.<sup>74</sup>

Article 3(2) of the LPDPD contains the same provision in relation to discrimination that is based on disability, in line with the judgment in the *Coleman* case.<sup>75</sup> However, it further includes the possibility for a lawsuit to be initiated by the individual with a disability who is a victim of discrimination, their legal representative and an individual accompanying them at the time they experience the discrimination (in other words, someone who is discriminated against on the ground of their association with a person with disabilities).

In one case, an applicant claimed that she had been fired due to her disability and the disability of her child.<sup>76</sup> The court did not find that there had been discrimination in that case, but it accepted that discrimination by association is possible. In 2019, the Commissioner initiated criminal charges against sports fans for incitement of national, racial, religious and other hatred during a sporting event, at which they insulted the wives and sisters of players from the opposing club.<sup>77</sup>

## 2.2 Direct discrimination (Article 2(2)(a))

### a) Prohibition and definition of direct discrimination

In Serbia, direct discrimination is prohibited by Article 2(1) of the LPD. Article 6 of the LPD provides the following definition: 'Direct discrimination shall occur if an individual or a group of persons, on the grounds of his/her or their personal characteristics, in the same or a similar situation, are placed or have been placed or might be placed in a less favourable position through any act, action or omission'. This definition is almost in line with the definition in the EU directives. However, it is limited to less favourable treatment and does not cover detriment.

Article 6(2) of the LPDPD contains a similar definition of direct discrimination, which says that discrimination exists 'if an individual or a group of persons, in the same or a similar situation, are placed or have been placed, or might be placed by act or action in a more unfavourable position because of his/her or their disability.'

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<sup>73</sup> There is no definition of 'families' in the LPD, but the Family Law contains a definition and it does not include same-sex families. However, the draft law on changes to the Family Law has been submitted to Parliament and will hopefully, if adopted, extend its meaning.

<sup>74</sup> There is no definition of 'persons close to them', and judicial interpretation is required in order to define who is covered by the term 'discrimination by association'.

<sup>75</sup> Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06.

<sup>76</sup> Supreme Court of Cassation, Rev 2 26/17, judgment of 18 January 2017.

<sup>77</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 260.

b) Justification of direct discrimination

According to the wording of Article 6, there is no justification for direct discrimination.

### **2.3 Indirect discrimination (Article 2(2)(b))**

a) Prohibition and definition of indirect discrimination

In Serbia, indirect discrimination is prohibited in national law. Article 7 of the LPD defines indirect discrimination, stating that 'Indirect discrimination shall occur if an individual or a group of individuals, on account of their personal characteristics, is placed in a less favourable position through an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination, unless it is justified by a lawful objective and the means of achieving that objective are appropriate and necessary.' However, the definition does not contain conditional wording ('would be placed in a less favourable position') and can thus be interpreted as being limited to the actual occurrence of disadvantage, making it impossible to challenge apparently neutral provisions before they incur disadvantages for actual victims. Therefore, the European Commission against Racism and Intolerance (ECRI) recommended that Serbia should ensure that it is possible to take legal action in cases of indirect discrimination even before actual disadvantages occur, and should amend the definition of indirect discrimination in that respect.<sup>78</sup>

The LPD also uses the wording 'an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination' instead of the wording 'an apparently neutral provision, criterion or practice', when the essence of this form of discrimination is neutrality which, in practice, leads to an unequal position for a certain group.

There are only a few cases in which the Commissioner found that there was indirect discrimination. One such case involved a local authority in Serbia. The authority had taken several decisions concerning eligibility for various social benefits (such as free bus rides and financial assistance for unemployed mothers) that stipulated as one of the criteria that the person should have a place of residence within the territory of the city. The Commissioner found that those decisions involved indirect discrimination towards internally displaced persons who live in that municipality but do not have a residence.<sup>79</sup> Another complaint involved a person with hepatitis C. The Commission of the Republic Health Fund decided that she was not able to receive a certain therapy as she had not previously been treated for liver cirrhosis. She claimed that hepatitis C patients with contraindications to interferon pegylated therapy were therefore placed in an unequal position in comparison with patients with hepatitis C who did not have such contraindications, as they did not fulfil the condition of having 'previously unsuccessfully treated compensated liver cirrhosis', which was a precondition for prescription of certain drugs from the list of free drugs. The Commissioner found that there was indirect discrimination of patients in the claimant's situation as the neutral condition of 'previously unsuccessfully treated compensated liver cirrhosis' placed this group of hepatitis patients in an unequal position.<sup>80</sup>

b) Justification test for indirect discrimination

Indirect discrimination can be justified if an apparently neutral act, action or omission has a lawful objective and the means of achieving that objective are appropriate and necessary. The means will be proportionate if they are closely linked to the achievement of the

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<sup>78</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, adopted on 22 March 2017, p. 16, available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4>.

<sup>79</sup> Commissioner for the Protection of Equality, *Organisation P. v. Assembly of the City of Kraljevo*, complaint No. 07-00-85/2018-02, opinion of 27 July 2018.

<sup>80</sup> Commissioner for the Protection of Equality, *M. in the name of N.M.M. v. RFZO*, complaint No. 07-00-64/2019-02, opinion of 18 June 2019.



legitimate aim, which cannot be achieved with less intrusion into someone's rights. It is the same justification test as that which is contained in the relevant EU directives.

### 2.3.1 Statistical evidence

#### a) Legal framework

In Serbia, there is legislation regulating the collection of personal data.

On 9 November 2018, the National Assembly of Serbia adopted the long-awaited new Law on Personal Data Protection, which was implemented in August 2019.<sup>81</sup> The main reason behind the adoption of this new piece of legislation was to ensure the same level of protection of personal data as in EU Member States. It represents a literal translation of the General Data Protection Regulation and therefore exhibits a high level of formal compliance with the EU law, but its practical application is highly questionable. The Law contains anti-discrimination provisions in Article 2(2), prescribing that 'personal data protection is provided to any person, regardless of his/her nationality and residence, race, age, sex, language, religion, political and other belief, ethnicity, social status and status, wealth, birth, education, social status or other personal characteristics.'<sup>82</sup>

The Law defines personal data in Article 4(1) as 'any data pertaining to a natural person whose identity is identified or identifiable, directly or indirectly, in particular on the basis of an identity mark, such as the name and an identification number, location data, identifiers in electronic communication networks or one or more features of his/her physical, physiological, genetic, mental, economic, cultural and social identity.' In Article 17(1), the law defines sensitive data as 'data relating to race or ethnic background, political opinion, religious or philosophical belief, union membership, processing of genetic data, biometric data for the purpose of unique identification of persons, health status, or data concerning sexual life and sexual orientation'. According to Article 18, those data can be processed only if it is necessary and in the following situations: 1) the competent authority is authorised by law to process special types of personal data; 2) processing of special types of personal data is performed in order to protect the vital interests of the person to whom the data relate or another natural person; 3) processing refers to special types of personal data that the person to whom they refer has obviously made available to the public.

In Serbia, statistical evidence may be admitted under national law in order to establish indirect discrimination, but this question requires further judicial interpretation. Such evidence is used in the opinions of the Commissioner for the Protection of Equality and is not challenged by courts.<sup>83</sup>

The LPD does not contain any specific rule in relation to statistics. The case law is still developing, and it is not clear how the courts will treat statistical evidence. However, it must be said that its use is permitted by national law in order to establish indirect discrimination. Sometimes it is very important to have statistical data, and they are widely used where possible in cases that are submitted to the Commissioner.

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<sup>81</sup> Law on Personal Data Protection (*Zakon o zaštiti podataka o ličnosti*), *Official Gazette of the Republic of Serbia*, No. 87/2018, 21 November 2018. The Law's application commenced nine months after its adoption. The Law was criticised by the Commissioner of Information of Public Importance and Personal Data Protection, CSO and the European Commission with regard to its non-compliance with the domestic legal framework. See PC Press, 'Today begins the application of the new Law on Personal Data Protection' ('Danas stupa na snagu novi Zakon o zaštiti podataka o ličnosti'), 21 August 2019, available at: <https://pcpress.rs/danas-stupa-na-snagu-novi-zakon-o-zastiti-podataka-o-licnosti/>

<sup>82</sup> Although not explicitly mentioned, this provision also includes sexual orientation ('any other personal characteristic').

<sup>83</sup> See, e.g. First Basic Court in Belgrade, 73 P. No. 18254/2012, judgment of 17 September 2013; Appellate Court in Belgrade, Gž. – 2746/14, judgment of 10 September 2014; Supreme Court of Serbia, Rev. 262/2015, judgment of 26 March 2015.

## b) Practice

In Serbia, statistical evidence is used in practice in order to establish indirect discrimination. Although there is no boundary that prevents the use of statistical evidence in order to establish other forms of discrimination, relevant case law is still lacking. Such evidence is used by the Commissioner for the Protection of Equality, mostly in cases involving pregnancy. However, such evidence is not so widely used in practice by the courts, as case law is still developing and most cases fall within the category of direct discrimination. The Civil Procedure Code does not mention statistical evidence as evidence before the court.<sup>84</sup> It just states in Article 7 that parties are obliged to present all the facts on which they base their claim and to provide evidence which determines those facts. Thus, further judicial interpretation is required in this matter.

## 2.4 Harassment (Article 2(3))

### a) Prohibition and definition of harassment

In Serbia, harassment is prohibited in national law.

Harassment is not clearly defined in the LPD. Article 12 prohibits harassment and humiliating treatment together, which is confusing. It states that 'It is forbidden to expose an individual or a group of persons, on the basis of their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment.' In other words, this article defines humiliating treatment as a possible element of harassment, which is confusing. This law applies to everyone (any individual under the jurisdiction of Serbia, as well as any legal entity registered or operating on Serbian territory) and in all areas of public life.

Article 21(2) of the Labour Law prohibits harassment and provides a definition of it. Thus, harassment means any unwanted conduct aiming at or amounting to the violation of the dignity of an individual seeking employment, as well as of an employee, and which causes fear or creates a hostile, degrading or offensive environment. The Labour Law applies to all rights, duties and responsibilities arising from employment and/or on the basis of work, and includes all employees who work on the territory of the Republic of Serbia with a national or foreign legal entity and/or an individual.

Harassment is not defined in the LPDPD.

In Serbia, harassment explicitly constitutes a form of discrimination. In the LPD, harassment explicitly constitutes a form of discrimination, while the Labour Law does not explicitly recognise it as such. In addition, the LPDPD does not recognise harassment as a special form of discrimination. It considers harassment to be a more severe form of discrimination only if it is committed by public authorities when people with disabilities are seeking to have their rights recognised (Article 11(3)).

### b) Scope of liability for harassment

Where harassment is perpetrated by an employee, the employer and/or the employee is liable. The scope of liability for harassment is not defined in the LPD. It derives from the Labour Law and is enshrined in Article 12, which states that employees have the right to protection of their personal integrity and dignity.

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<sup>84</sup> Civil Procedure Code (*Zakon o parničnom postupku*), *Official Gazette of the Republic of Serbia*, No. 72/2011, 49/2013 – decision CC, 74/2013 – decision CC and 55/2014, 87/2018, 3 September 2011.

Employers are liable for harassment. They are also liable for harassment that is perpetrated by an employee, if they did not prevent it by undertaking appropriate measures, as an employer is obliged to create the conditions for a healthy working environment. This obligation also stems from the Law on the Prevention of Bullying at Work<sup>85</sup> (although there is a clear distinction between discrimination and bullying), which states that employers are responsible for their own acts of bullying and are vicariously liable if other employees or management engage in bullying (Article 4). In addition, employees are obliged to refrain from bullying, otherwise they are responsible for the violation of their duties at work (Article 11).

In the sphere of employment, Article 16 of the LPD prescribes that the employer is liable if they violate 'the principle of equal opportunity for gaining employment or equal conditions for enjoying all the rights pertaining to the sphere of labour, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from unemployment'. Those who enjoy protection include 'a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever'.

In 2018, the Commissioner initiated strategic litigation on the grounds of words used in the text *Domestic violence and violence against the family*. The author expressed his opinion that the Law on the Prevention of Domestic Violence does not protect vulnerable women, but all women 'no matter if they are strong or weak, loved or unloved, nervous or fussy, and whether they have a lover or not.' The author further advocates the traditional and patriarchal organisation of the family, in which the man is the head of the household and should make all the important decisions regarding the family. In addition, members of the LGBT community and their activities are defined as primitive and violent, and the author advocates their restriction of freedom of movement and assembly. The Higher Court in Novi Sad delivered the decision that the author had committed an act of discrimination in the form of harassment against women on the grounds of sex and an act of discrimination against LGBT people based on sexual orientation.<sup>86</sup> The Court emphasised in particular that the author is a public figure and 'has the obligation not to promote discrimination in its public appearances, not to outline the ideas that incite discrimination, which may have detrimental effects on democratic processes and the guarantee of human rights and freedoms in a society.' However, this decision was revised by the Appellate Court in Novi Sad, which found that the author had the right to freedom of expression and that his profession (university law professor) was irrelevant in this case.<sup>87</sup> In other words, the higher court found that the author was not discriminating against LGBT persons by expressing his opinion on this group, which falls within his right to freedom of expression. In addition, in March 2019, the Commissioner strongly condemned sexist, misogynistic and extremely offensive comments in social networks against a woman who dared to report years of sexual harassment and abuse by her employer, who was the mayor in her home town. The Commissioner underlined in particular that such messages discourage women from reporting harassment, abuse and violence.<sup>88</sup>

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<sup>85</sup> Law on the Prevention of Bullying at Work (*Zakon o sprečavanju zlostavljanja na radu*), *Official Gazette of the Republic of Serbia*, No. 36/2010, 26 May 2010.

<sup>86</sup> Higher Court in Novi Sad, II. 1344/2017, judgment of 8 May 2018.

<sup>87</sup> In this case, the court found that the author expressed his view and not the facts. The court mentioned the proportionality test stipulated in Article 10(2) of the European Convention on Human Rights and found that the test was met, as the author had expressed his personal view on some important topics without offending anyone. Appellate Court in Novi Sad, Gž. 3576/18, judgment of 17 October 2018.

<sup>88</sup> See the Commissioner for the Protection of Equality's website: <http://ravnopravnost.gov.rs/upozorenje-za-javnost-cir1/>.

As harassment is recognised as a special form of discrimination in Article 12 of the LPD, liability also exists outside the context of employment.

The special by-law prescribes duties on the part of the employer and the employee concerning a healthy working environment and the prohibition of ill-treatment, mobbing and harassment.<sup>89</sup> The employer should provide a working environment in which work is performed in an atmosphere of respect, cooperation, openness, security and equality, and is responsible for investigating formal complaints of harassment, and for providing adequate remedies in such cases. The employee should treat other colleagues and the employer with dignity, respect and esteem and refrain from any form of ill treatment or harassment. However, according to Serbian law, only the employer can be sued for harassment and mobbing.

## **2.5 Instructions to discriminate (Article 2(4))**

### **a) Prohibition of instructions to discriminate**

In Serbia, instructions to discriminate are not prohibited in national law. Instructions are not defined. Therefore, ECRI criticises the fact that under the LPD, an instruction to discriminate and an announced intention to discriminate do not appear to be considered forms of discrimination as recommended in General Policy Recommendation 7.<sup>90</sup>

Article 13(1) of the LPD provides only that 'causing and encouraging inequality, hatred and enmity on the grounds of national, racial or religious affiliation, language, political opinions, gender, gender identity, sexual orientation or disability' is considered to be a severe form of discrimination.<sup>91</sup> Age is a protected ground of discrimination, but it is not recognised as a severe form of discrimination. However, it can be considered as a severe form of discrimination if other conditions are met - e.g. in a case of multiple, intersectional, repeated or extended discrimination.

In Serbia, instructions do not explicitly constitute a form of discrimination.

### **b) Scope of liability for instructions to discriminate**

In Serbia, the instructor and the discriminator are liable. Although the instruction to discriminate is not explicitly prohibited in national law, the scope of application of the LPD is very broad and it should be interpreted as recognising the liability of the instructor. However, there is as yet no case law that would clarify this matter.

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)**

### **a) Implementation of the duty to provide reasonable accommodation for people with disabilities in the area of employment**

In Serbia, the duty on employers to provide reasonable accommodation for people with disabilities is included in the law and is defined. However, it does not fully comply with the duty as set out in Article 5 of Directive 2000/78.

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<sup>89</sup> Rulebook on the rules of conduct of employers and employees regarding the prevention and protection against harassment at work (*Pravilnik o pravilima ponašanja poslodavaca i zaposlenih u vezi sa prevencijom i zaštitom od zlostavljanja na radu*), 62/2010.

<sup>90</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, adopted on 22 March 2017, p. 14.

<sup>91</sup> Article 34 of the Criminal Code stipulates that anyone who, with intent, incites another to commit a criminal offence shall be punished as prescribed by law for such offences. Article 387 prohibits racial and other discrimination; Article 128 outlaws the violation of equality; and the most important, Article 317, prohibits incitement of national, racial and religious hatred and intolerance.

The Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD)<sup>92</sup> states in Article 11(4) that one of the actions in connection with the promotion of the employment of people with disabilities is to ensure technical, professional and financial support for the adaptation of work tasks, the workplace or both work tasks and the workplace, including technical and technological aids for the purpose of enhancing opportunities for people with disabilities to find and retain employment. However, this provision does not give an individual the right to claim reasonable accommodation under the LPREPD, so it cannot be regarded as meeting the requirements of Article 5 of the Employment Equality Directive.

Furthermore, the LPREPD prescribes that people with disabilities can be employed under general and special conditions (Article 22). While 'general conditions' means the job placement without adapted work activities, workplace, or work activities and workplace, 'special conditions' means job placement with the adaptation of work activities, workplace, or work activities and workplace.<sup>93</sup> The LPREPD further clarifies that the adaptation of work activities can involve adjustments to the work process and work tasks (Article 23(3)). Adaptation of the workplace can refer to the technical and technological equipment that is used in a workplace, tools, space or equipment in accordance with the capabilities and needs of the individual with disabilities. It may also include professional assistance to support the individual with disabilities in their induction to the job or workplace through counselling, training, assistance services and support in the workplace, work monitoring, development of personal work methods and evaluation of efficiency, which are measures that can further support reasonable accommodation.

Article 22(4) of the LPDPD further prescribes that discrimination occurs where there is a refusal to undertake technical adaptations in the workplace that would enable a person with disabilities to carry out their work effectively, if the costs of adaptation are not borne by the employer or are not excessive in relation to the gain achieved by the employer who is employing a person with disabilities. This provision gives workers the right to reasonable accommodation, although it is not clear if this right extends to job applicants as well. In this provision, the reasonable accommodation duty is individualised and is part of non-discrimination law. However, it is limited in its application: reasonable accommodation can take forms other than workplace adaptation, but Article 22(4) refers only to technical adaptations in the workplace. It provides a broader justification test than is provided for in EU law, and further judicial interpretation is required in this field. The obligation for which the LPDPD provides is not sufficient, as noted by the UN Committee on the Rights of Persons with Disabilities. That is why the Committee recommended that Serbia review its legislation to adequately guarantee the provision of reasonable accommodation in the workplace.<sup>94</sup>

The duty to provide reasonable accommodation is not included in the LPD. Therefore, the Committee on the Rights of Persons with Disabilities is concerned that neither the concept of reasonable accommodation nor recognition that the denial of such accommodation is a form of discrimination are explicitly included in a general anti-discrimination law.<sup>95</sup>

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<sup>92</sup> Law on the Professional Rehabilitation and Employment of Persons with Disabilities, *Official Gazette of the Republic of Serbia*, No. 36/2009, 17 April 2006.

<sup>93</sup> This means that, depending on the disability and the job, the employment of certain persons can require special conditions to be met – for example, concerning the adaptation of the working process or working duties. In that case, it means that the person can require 'special conditions' of work if he or she is the best candidate for the job.

<sup>94</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Serbia*, CRPD/C/SRB/CO/1, 23 May 2016, para. 53.

<sup>95</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Serbia*, CRPD/C/SRB/CO/1, 23 May 2016, para. 9.

## b) Practice and case law

The lack of a duty to provide reasonable accommodation in the LPD has led to a high unemployment rate among people with disabilities and has reduced their possibilities for inclusion in the labour market. Although it is positive that the LPDPD, in Article 22, provides this duty, relevant case law is still lacking on this issue, as the reasonable accommodation duty is not recognised in the LPD. Consequently, in its 2016 progress report for Serbia, the European Commission acknowledged that while Serbian non-discrimination legislation is generally in line with European standards, amendments to bring it fully into line with the *acquis* remain to be adopted, in particular in respect of the obligation to ensure reasonable accommodation for employees with disabilities.<sup>96</sup> In addition, the Committee on the Rights of Persons with Disabilities expressed its concern that neither the concept of reasonable accommodation nor recognition that the denial of such accommodation is a form of discrimination are explicitly included in anti-discrimination laws.<sup>97</sup>

## c) Definition of disability and non-discrimination protection

The LPDPD prohibits discrimination based on disability. It defines people with disabilities as people with a congenital or acquired physical, sensory, intellectual or emotional (psycho-social) impairment who are, due to social or other barriers, unable or have limited opportunities to engage in social activities at the same level as others, regardless of whether they are capable of carrying out such activities with the use of technical aids or support services (Article 3(1)).

The LPREPD also provides a definition of people with disabilities as people who live with the permanent consequences of a physical, sensory, mental or psychiatric impairment or disease that cannot be eliminated by any treatment or medical rehabilitation; who are faced with social and other limitations and barriers affecting their working capacity and the possibility of finding or retaining employment; and who have no possibility or a reduced possibility of being involved in the labour market or applying for employment on equal terms with other persons (Article 3(1)). This definition is based on a social model of disability; Article 3(1) of the LPREPD defines the concept of 'long-term impairments' as impairments that cannot be eliminated by any treatment or medical rehabilitation, which creates permanent consequences. This provision is not taken *ad verbum* from Article 1(2), of the UN Convention on the Rights of Persons with Disabilities, as in the LPDPD, but the meaning is the same. This definition of disability, which is used in the LPDPD in respect of the prohibition of discrimination, is also used in relation to the duty to provide reasonable accommodation, to the extent that such a duty exists.

## d) Failure to meet the duty of reasonable accommodation for people with disabilities

In Serbia, failure to meet the duty of reasonable accommodation in both the field of the provision of services and the use of facilities, as well as in employment, counts as discrimination (to the extent that the duty exists). The LPDPD stipulates in Article 22(4) that discrimination occurs in the case of a refusal to carry out a technical adaptation of the workplace that would enable efficient work by people with disabilities. An individual can request such an adaptation. However, the employer can be exempted from this obligation if the costs of the adaptation are disproportionate to the profit of the employer who is employing a person with a disability. In other words, the disproportionality of the burden is assessed only in financial terms, and it is a broader justification than that for which EU law provides. In addition, there is an individual relationship between the profit gained from

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<sup>96</sup> European Commission, *Serbia 2016 Report*, Brussels, 9 November 2016, p. 62; available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_serbia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf). See also European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 27.

<sup>97</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Serbia*, CRPD/C/SRB/CO/1, 23 May 2016, p. 2.

employing the person with a disability and the cost of the accommodation for that person. This provision is not clear, and one could argue that it seems to imply that the employer still has to gain some profit from employing the person with a disability. Therefore, further judicial interpretation is required in order to clarify this matter. Furthermore, Article 2(1) of the LPD and Article 3(2) of the LPDPD clearly state that discrimination occurs as an act or omission and this can be interpreted to apply to a failure to provide reasonable accommodation. However, it is important to mention that, under a strict interpretation of Article 22(4), reasonable accommodation assumes only technical adaptations and cannot take other forms such as reassigning tasks, moving people to another function, etc., which contradicts Article 5 of Directive 2000/78/EC.<sup>98</sup>

One study in particular underlines the fact that inclusive education is guaranteed by law, but in practice many schools fail to provide reasonable accommodation for children with disabilities in the form of accessible transport, learning materials and teaching assistants, which are needed to enable them to participate on an equal basis with others.<sup>99</sup>

It is important to mention that a failure to provide reasonable accommodation can be either direct or indirect discrimination, as both definitions define failure to act as an act of discrimination. Therefore, potential sanctions are the same as in a case of direct or indirect discrimination. Furthermore, the burden of proof shifts when claiming discrimination due to failure to provide reasonable accommodation.

- e) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

In Serbia, there is a duty to provide reasonable accommodation for people with disabilities in the field of the provision of services and the use of facilities and services. Thus, the LPDPD describes as discrimination a 'refusal to carry out a technical adaptation of the facility necessary to provide a service to users with disabilities' (Article 13(5)(3)). However, the Law does not introduce a disproportionate burden test. The LPD does not define accessibility, but it stipulates in Article 17(2) that 'Everyone shall have the right to equal access to premises in public use (such as buildings where the head offices of public administration bodies are located, premises used in the spheres of education, healthcare, social welfare, culture, sports and tourism, and premises used for the purpose of environmental protection and protection against natural disasters), as well as public spaces (such as parks, squares, streets, pedestrian crossings and public transport roads), in accordance with the law'. This means that it covers accessibility in all areas of public life (public institutions, education, healthcare, social welfare, culture, sports, tourism and premises used for the purpose of environmental protection and protection against natural disasters). Public authorities, as well as private institutions and individuals who open facilities to the public, have a duty to ensure accessibility.

The duty to provide reasonable accommodation does not explicitly cover education. In its concluding observations, the Committee on the Rights of Persons with Disabilities recommended that Serbia take immediate steps to ensure that all people with disabilities have access to inclusive and quality primary, secondary and tertiary education and that reasonable accommodation, in accordance with established individual education plans, is provided in mainstream education.<sup>100</sup>

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<sup>98</sup> Therefore, some claim that denial of reasonable accommodation is not prohibited as a form of discrimination. See Equal Rights Trust (2019), *Equality in Practice – Implementing Serbia's Equality Laws*, London, p. 26.

<sup>99</sup> Equal Rights Trust (2019), *Equality in Practice – Implementing Serbia's Equality Laws*, London, p. 21.

<sup>100</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Serbia*, CRPD/C/SRB/CO/1, 23 May 2016, p. 8.

f) Duties to provide reasonable accommodation in respect of other grounds

In Serbia, there is no duty to provide reasonable accommodation in respect of other grounds in the public sector and/or the private sector



### 3 PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

In Serbia, there is a residence requirement for protection under the relevant national laws transposing the directives. Thus, the LPD prescribes that the law applies to 'an individual residing on the territory of the Republic of Serbia or a territory under its jurisdiction, regardless of whether that individual is a national of the Republic of Serbia, some other state or a stateless person'. It can be derived from the wording that this requirement means legal residence and not only presence on the state territory, as there is a difference between the terms 'reside' (*boraviti*) and 'is present' (*nalazi se na*). The LPD requires that a person is resident in the Republic of Serbia, regardless of their citizenship. In the case of a cross-border worker (for example, someone who resides in Croatia and works in Serbia), it can be argued that this person is not covered by the LPD. However, Article 21 of the Constitution also applies, which means that the LPD must be interpreted in accordance with the constitutional provisions and must therefore provide protection in this case. This dilemma is not resolved, even through Article 3(2), which states that a foreigner, in accordance with international treaties, has all the rights guaranteed by the Constitution and by law, with the exception of those rights that, in accordance with the Constitution and the law, are only enjoyed by the citizens of the Republic of Serbia. However, in practice, the Commissioner for the Protection of Equality acts if complaints are submitted as a result of discrimination against asylum seekers and migrants, and does not question if they are residing legally or illegally in Serbian territory (undocumented migrants are also covered).<sup>101</sup>

##### 3.1.2 Natural and legal persons (Recital 16 Directive 2000/43)

###### a) Protection against discrimination

In Serbia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

Article 3(1) of the LPD states that *everyone* shall have the right to adequate protection from all forms of discrimination by the authorised courts and other public administration bodies of the Republic of Serbia. In addition, Article 2(1) states that discrimination can occur against *persons* and groups as well as members of their families or persons close to them. Article 2(2) explains that the terms 'person' and 'everyone' refer to individuals as well as to 'any legal entity registered or operating on the territory of the Republic of Serbia'.

###### b) Liability for discrimination

In Serbia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination. Thus, Article 4(2) provides that *everyone* shall be obliged to respect the principle of equality and the prohibition of discrimination.

Article 2(3) of the LPD defines the terms 'person' and 'everyone', which shall be used to designate individuals residing on the territory of the Republic of Serbia or a territory under its jurisdiction, regardless of whether those individuals are nationals of Serbia, another state or stateless persons, as well as any legal entity registered or operating on Serbian territory.

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<sup>101</sup> See, e.g. Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *C. K. P. R. v. Railways of Serbia*, complaint No. 07-00-575/2016-02, 27 March 2017.

### 3.1.3 Private and public sector including public bodies (Article 3(1))

#### a) Protection against discrimination

In Serbia, the personal scope of national anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination. Article 3(1) prescribes that everyone has the right to receive efficient protection from all forms of discrimination. Article 2(1) of the LPD explains that 'everyone' is protected against discrimination; this term refers to individuals as well as to 'any legal entity registered or operating on the territory of the Republic of Serbia', whether private or public.<sup>102</sup>

#### b) Liability for discrimination

In Serbia, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination. Article 4(2) stipulates that *everyone* shall be obliged to respect the principle of equality and the prohibition of discrimination. Article 2(4) defines what is meant by the term 'public administration body': a state body, autonomous province body, local government body, public company, institution, public agency or other organisation entrusted with public authority, as well as a legal entity established or financed in its entirety, or predominantly, by the Republic, an autonomous province or local authority.

## 3.2 Material scope

### 3.2.1 Employment, self-employment and occupation

In Serbia, national legislation applies to all sectors of private<sup>103</sup> and public employment,<sup>104</sup> self-employment and occupation, including contract work, military service and holding statutory office, with regard the five grounds of discrimination.<sup>105</sup>

Article 2 of the Labour Law specifies that it applies to 'all employees who work in the territory of the Republic of Serbia with a national or foreign legal entity and/or a natural person, as well as to employees assigned to work abroad by an employer, unless otherwise specified by the law'. It also applies to employees of government agencies, agencies in the autonomous provinces and local authorities and public services, and to employed foreign nationals and stateless persons, unless otherwise specified by the law. Article 18 prohibits discrimination based on, among other grounds, sex, race, skin colour, age, pregnancy, disability, ethnic origin, religion and sexual orientation.

Article 16(2) of the LPD prohibits discrimination in the sphere of labour, and provides that the right to protection from discrimination is enjoyed by 'a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a

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<sup>102</sup> Article 2(4) defines a public body as 'a state organ, autonomous province organ, local government organ, public company, institution, public agency and other organisations entrusted with public authority, as well as a legal entity established or financed in its entirety, or predominantly, by the Republic, an autonomous province or a local government.'

<sup>103</sup> See e.g. Commissioner for the Protection of Equality, *I.K. from U. v. PTP D. DOO from K.*, complaint No. 07-00-00555/2016-02, opinion of 17 November 2017.

<sup>104</sup> See e.g. Commissioner for the Protection of Equality, *Z. D. from B. v. O. hospital Š.*, complaint No. 07-00-263/2017-02, opinion of 17 October 2017.

<sup>105</sup> It covers sex, birth, language, race, skin colour, age, pregnancy, health condition and/or disability, ethnic origin, religion, marital status, family obligations, sexual orientation, political or other belief, social background, financial status, membership of political organisations or trade unions and any other personal characteristic.

contract of employment, a volunteer or any other person who works on any grounds whatsoever'. The LPD covers all five grounds of discrimination that are prohibited in the Racial Equality Directive and the Employment Equality Directive.

The LPREPD provides for the prohibition of discrimination against people with disabilities and applies to an employer who is a 'domestic or foreign legal entity or individual who employs one or several persons, i.e. the Republic of Serbia for employees of state bodies, autonomous province for employees of provincial bodies and local authority for employees of local authorities' (Article 3(3)).

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))**

In Serbia, national legislation prohibits discrimination in relation to conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, on the five grounds, in both the private and public sectors, as described in the directives.

Article 1(1) of the Labour Law governs 'Rights, duties and responsibilities arising from employment, and/or in the area of work', which are regulated by this Law and by other specific laws to conform with the ratified international conventions. Article 20 prohibits discrimination with regard to access to employment, selection and recruitment (paragraph 1), and job promotion (paragraph 4). Thus, it does not cover self-employment and occupation. The Labour Law covers all five grounds that are covered by the relevant EU directives.

The Law on Employment and Unemployment Insurance governs employment-related activities and institutions competent for employment affairs, the rights and obligations of unemployed people and employers, active employment policy, unemployment insurance and other matters relevant to employment, raising employment levels and preventing long-term unemployment in the Republic of Serbia (Article 1). Unlike the Labour Law, the Law on Employment and Unemployment Insurance does cover self-employment. Article 43(4), on active employment measures, includes support for self-employment, while Article 51 defines that support. Article 52 prescribes further education and training in order to promote self-employment. Article 5(1), prohibits discrimination as it is defined in the LPD and guarantees freedom of choice of employment and occupation. However, this provision is limited as it does not apply to the entire scope of the Law, but only in respect of support for self-employment. Employment activities comprise the dissemination of information on employment opportunities and conditions; job matching within the country and internationally; vocational guidance and career counselling; and the implementation of active employment policy measures (Article 6).

Article 16(1) of the LPD prohibits discrimination in the sphere of labour. It prohibits any violation of the principle of equal opportunities in obtaining employment or equal conditions for enjoying all the rights pertaining to the sphere of labour, such as the right to employment, free choice of occupation, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from unemployment. This Law does not cover self-employment.

Article 13(2) of the Law on the Employment of Foreigners applies to asylum seekers,<sup>106</sup> stipulating that people who apply for asylum shall be issued with personal work permits nine months after submitting their asylum application. These personal work permits shall be valid for six months, with the possibility of extension for the duration of the holders' status. This solution is, to a certain extent, in line with the standards set out in the Directive on Reception Conditions.<sup>107</sup> The Law on Asylum and Temporary Protection<sup>108</sup> stipulates that the asylum seekers have access to employment (Article 48(8); Article 57), as well as refugees (Article 59(6); Article 65). Where asylum seekers and refugees have the right to work, they are protected under Article 16 of the LPD, which prohibits discrimination in the sphere of labour.

Article 21(1) of the LPDPD establishes the prohibition of discrimination on the ground of disability in relation to employment and seeking employment. This law does not cover self-employment and occupation.

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

In Serbia, national legislation prohibits discrimination in relation to working conditions including pay and dismissals, on all five grounds and in both private and public employment.<sup>109</sup>

Article 20(2) of the Labour Law prescribes the prohibition of discrimination regarding employment conditions, working conditions and all the rights deriving from employment relations and cancellation of an employment contract (in paragraph 5).

Article 16(1) of the LPD covers, among other things, equal conditions for the enjoyment of all the rights pertaining to the sphere of labour; equal pay for work of equal value; fair and satisfactory working conditions; and protection from unemployment.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

In Serbia, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities or by adult lifelong learning courses.

Article 16(1) of the LPD covers the right to vocational training and professional rehabilitation within and outside the employment relationship. This right is broadly enjoyed by 'a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever' (Article 16(2)).

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<sup>106</sup> Law on Employment of Foreigners, (*Zakon o zapošljavanju stranaca*), *Official Gazette of the Republic of Serbia*, No. 128/2014, 113/2017, 12/2016, 50/2018, 4 December 2014.

<sup>107</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013, laying down standards for the reception of applicants for international protection.

<sup>108</sup> Law on Asylum and Temporary Protection (*Zakon o azilu i privremenoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 24/2018, 26 March 2018, came into force on 3 June 2018.

<sup>109</sup> This covers sex, birth, language, race, skin colour, age, pregnancy, health condition and/or disability, ethnic origin, religion, marital status, family obligations, sexual orientation, political or other belief, social background, financial status, membership of political organisations or trade unions and any other personal characteristic.

This right is also guaranteed for people who perform some kind of practical work experience, although there is no employment relationship. Article 19(1) prescribes that everyone has the right to professional training in education in equal circumstances, in accordance with the law. It includes higher education and adult lifelong learning courses.

The Labour Law prohibits discrimination in Article 20(3) in relation to education, vocational training and specialisation. In addition, the whole of Section IV regulates the area of education, vocational training and specialisation.

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

In Serbia, national legislation expressly prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations as formulated in the directives for the ground of disability.

Article 12(1) of the LPDPD prohibits discrimination in associations on the ground of disability. The Law further clarifies that this discrimination includes the refusal to grant membership; the establishment of special conditions of membership; denial of the right to vote and to be elected to the management bodies of the association; and the establishment of special conditions for the selection of people with disabilities to the management bodies of the association. However, the establishment or operation of associations of people with disabilities and other forms of self-organisation are not considered to be discrimination.

The LPD prohibits discrimination based on 'membership in political, trade union and other organisations' (Article 2(1)). It further prescribes in Article 25 that it is prohibited to discriminate against an individual or a group of persons on the grounds of his or her or their political beliefs, or membership or non-membership of a political party or a trade union.

The Labour Law prohibits discrimination based on 'membership in political organisations or trade unions' (Article 18(1)). Furthermore, Article 183(1) does not consider dismissal to be justified if it is based on 'membership in political organisations or trade unions'. Finally, an employer may not terminate an employment contract or otherwise disadvantage an employee because of his or her status or activity as a representative, union member or participant in union activities (Article 18).

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Serbia, national legislation prohibits discrimination in relation to social protection, including social security and healthcare as formulated in the Racial Equality Directive.

The Constitution of Serbia guarantees to everyone the right to protection of their mental and physical health (Article 68) and the right to social protection for citizens and families who require welfare for the purpose of overcoming social subsistence difficulties and creating the conditions to provide for themselves and their families (Article 69). However, this provision does not include same-sex families.

Article 25 of the Law on Social Protection<sup>110</sup> prohibits discrimination in the area of social protection which is based on 'race, sex, age, national origin, social background, sexual orientation, religion, political, trade union or other opinion, property status, culture, language, disability, the nature of social exclusion or other personal characteristics'.

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<sup>110</sup> Law on Social Protection (*Zakon o socijalnoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 24/2011, 4 April 2011.

The Law on Healthcare<sup>111</sup> guarantees the right to healthcare for citizens of the Republic of Serbia, as well as to any other person who has permanent or temporary residence in Serbian territory (Article 3(1)). Persons who are passing through Serbian territory are entitled only to emergency medical care (Article 3(2)). According to Article 20, every citizen has the right to healthcare, exercised with respect to the highest possible standards of human rights, and respecting their moral, cultural, religious and philosophical beliefs. The principles in the areas of healthcare include, among others: 1) the principle of accessibility (physically, geographically and economically available), especially at the primary level (Article 23); 2) the principle of fairness, which means the prohibition of discrimination in the provision of healthcare based on race, sex, gender, sexual orientation and gender identity, age, national origin, social background, religion, political or other opinion, property status, culture, language, type of illness, mental or physical disability (Article 21);<sup>112</sup> and 3) the principle of comprehensive cover, which involves the inclusion of all citizens of the Republic of Serbia in the healthcare system (Article 22).

The LPD applies to all areas of life, but does not explicitly mention social protection in Section III, which covers special cases of discrimination.<sup>113</sup> The Law also does not explicitly mention social housing. However, a National Strategy for Social Housing has been adopted, and the city of Belgrade has adopted an action plan for the relocation of informal settlements in order to respect international and national standards in respect of eviction and resettlement.<sup>114</sup> The Law on Housing and Building Maintenance further improves protection in respect of relocation.<sup>115</sup> This Law regulates issues of housing usage, eviction and housing support, which is defined as any form of support in relation to housing for a citizen who cannot meet their housing needs under market conditions for themselves and their family household, due to any social, economic or other reasons (Article 89(1)). However, according to Article 89(1), beneficiaries of housing support must be Serbian citizens. Beneficiaries of housing assistance are, in particular, homeless or temporarily homeless people; victims of domestic violence without accommodation; people without accommodation who are in receipt of social assistance; and people with disabilities who have nowhere to live. The Law sets out in Article 80 what is considered to be adequate accommodation, which is a property 'that meets conditions according to the criteria of space, basic services, structural safety and security, and protection from external climate impacts, as well as meeting basic hygiene standards'.

Article 27 of the LPD forbids discrimination against an individual or a group of people on the grounds of their health, and discrimination against their family members. The Law further explains in Article 27(2) that it will be considered that discrimination occurs 'especially if an individual or a group of persons is unwarrantedly denied healthcare services, has special conditions imposed for the provision of healthcare services, is denied diagnosis and has information withheld pertaining to their current health condition or measures already undertaken or intended for treatment or rehabilitation and, in the case of harassment, receives insults and disparagement in the course of staying at a healthcare institution'.

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<sup>111</sup> Law on Healthcare (*Zakon o zdravstvenoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 25/2019, 11 April 2019.

<sup>112</sup> After the cut-off date of this report, the new Law on Healthcare was adopted. Article 21 of the Law explicitly includes sexual orientation. Law on Healthcare, *Official Gazette of the Republic of Serbia*, No. 25/2019, 11 April 2019.

<sup>113</sup> The LPD contains section III recognising special cases of discrimination (Articles 15 to 27 recognise discrimination in proceedings conducted before public administration bodies, in the sphere of labour, in provision of public services, education, etc). However, it does not contain a provision on a special case of discrimination in the area of social protection. It means that this area is protected in the Law, but it is not recognised as the most relevant area, and it deserves to be further elaborated on in the Law.

<sup>114</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 31.

<sup>115</sup> Law on Housing and Building Maintenance (*Zakon o stanovanju i održavanju zgrada*), *Official Gazette of the Republic of Serbia*, No. 104/2016, 23 December 2016.

The LPDPD recognises a more severe type of discrimination in the case of discrimination against people with disabilities in the provision of health services (Article 17). The Law defines that discrimination occurs where the following actions take place due to an individual's disability:

- refusal to provide health services for people with disabilities;
- establishing special conditions for the provision of health services to people with disabilities if the conditions are not justified by medical reasons;
- rejection of a diagnosis and denial of adequate information on the current state of health measures taken, or intended treatment and rehabilitation of people with disabilities; and
- any harassment, insulting or belittling of people with disabilities during their stay in a health institution.

a) Article 3(3) exception (Directive 2000/78)

Serbian law does not rely on the exception in Article 3(3) of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation.

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

In Serbia, national legislation does not prohibit discrimination in relation to social advantages as formulated in the Racial Equality Directive. The concept of social advantages is not recognised as such, but some benefits do exist in Serbia which are granted solely on the basis of employment status. Article 119 of the Labour Law recognises as other income a refund of funeral expenses in the event of the death of a member of the immediate family (not including same-sex couples), and to members of the immediate family in the event of the death of the employee. An employer shall be bound to pay the funeral expenses, in conformity with the general act. A general collective agreement and special collective agreements further specify what social advantages are granted to employees and under what conditions.

### **3.2.8 Education (Article 3(1)(g) Directive 2000/43)**

In Serbia, national legislation prohibits discrimination in relation to education as formulated in the Racial Equality Directive.

Article 19(1) of the LPD guarantees to everyone the right to different levels of education (pre-school, primary, secondary and higher education and professional training) under equal conditions. The protected grounds are enshrined in Article 2(1): race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation,<sup>116</sup> financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations and other real or presumed personal characteristics.

This means that foreign nationals, asylum seekers, refugees and migrants also have the right to education and that they also enjoy protection from discrimination under the LPD.

The LPD further specifies that it is forbidden to obstruct or prevent admission to an educational institution for an individual or a group of persons on the grounds of their personal characteristics or to exclude them from these institutions; to obstruct or prevent

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<sup>116</sup> This provision does not mean that children will not be protected if they are exposed to different treatment on the basis of their parents' same-sex relationship – e.g. if they are exposed to hate speech, humiliating treatment, etc. The legal framework only allows differences in property and social status due to the fact that Serbia does not have a law on registered partnership and does not recognise same-sex marriage.

their attendance of classes and participation in other educational activities; and to categorise pupils on the basis of personal characteristics, maltreat them and unwarrantedly differentiate among them in other ways and treat them in an unequal manner (Article 19(2)). It is also forbidden to discriminate against educational institutions that operate in accordance with the law and other regulations, and against people who use or have used the services of these institutions in accordance with the law (Article 19(3)).

The Law on the Fundamentals of the Education System and Upbringing is a systemic law in the area of education which prescribes an inclusive education. It states that the education system must secure for all children, students and adults equal rights to and accessibility of education based on social justice and the principle of equal opportunities without discrimination (Article 7(1)). This provision is further articulated in a Regulation on the detailed criteria for the recognition of forms of discrimination perpetrated by an employee, child, student or third party in an educational institution.<sup>117</sup> In 2018, the Ministry finally adopted a rulebook on the conduct of the educational institution in a case of discrimination or discriminatory behavior.<sup>118</sup>

Article 3(1) guarantees everyone the right to education. Citizens of the Republic of Serbia are equal with regard to exercising their rights to education. The Law guarantees the right to education for foreign citizens, stateless persons and persons seeking Serbian citizenship under the same conditions and in the manner prescribed for citizens of the Republic of Serbia (Article 3(5)). It also contains Article 110, which prohibits discrimination, direct or indirect, on any ground and specifically includes migrant status. Article 100(2) expressly allows special measures that have been introduced to achieve full equality for, protection of and advancement of people or groups of people who are in an unequal position. Pupils are protected from discrimination, violence, abuse and neglect (Article 79(4)). According to Article 99(3), educational institutions are required to adopt anti-discrimination programmes and to establish anti-discrimination teams.

The LPDPD, in Article 18, prohibits discrimination on the grounds of disability at all levels of upbringing and education. Discrimination exists in particular in the following forms: 1) denial of admission of a child of preschool age, pupil or student with a disability to an educational institution that corresponds to his or her previously acquired knowledge or educational possibilities; 2) exclusion from an educational institution that is already attended by a preschool child, pupil or student with a disability for reasons related to his or her disability; and 3) setting non-disability as a special condition for admission to an educational institution, including submission of a health certificate and prior examination of psychophysical abilities, unless that condition is determined in accordance with the regulations governing the field of education.

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<sup>117</sup> Regulation on detailed criteria for the recognition of forms of discrimination by an employee, child, student or third party in an educational institution (*Pravilnik o o blizim kriterijumima za prepoznavanje oblika diskriminacije od strane zaposlenog, deteta, učenika ili trećeg lica u ustanovi obrazovanja i vaspitanja*), Official Gazette of the Republic of Serbia, No. 22/2016, 4 March 2016.

<sup>118</sup> Rulebook on the conduct of the institution in a case of discrimination or discriminatory behavior (*Pravilnik o postupanju ustanove u slučaju diskriminacije ili diskriminatoriskog ponašanja*), Official Gazette of the Republic of Serbia, No. 65/2018, 1 September 2019.



Other specific laws regulate different levels of education (pre-school,<sup>119</sup> primary,<sup>120</sup> secondary<sup>121</sup> and higher education)<sup>122</sup> and all contain provisions on the prohibition of discrimination which cover different grounds. However, Article 7(1) of the Law on the Fundamentals of the Education System and Upbringing applies as a systemic law, in addition to Article 2(1) of the LPD, which means that all grounds covered in the two EU directives are covered by these laws.

a) Pupils with disabilities

In Serbia, the general approach to education for pupils with disabilities gives rise to problems.

The Law on the Fundamentals of Education System and Upbringing recognises inclusive education and provides that people with disabilities have the right to education respecting their educational needs in the mainstream education system, with additional individual or group support in a special group or school, in compliance with this and special laws (Article 3(3)). In certain cases, pupils with disabilities will be enrolled in special schools, but the majority of them are integrated within the mainstream school system. There are 41 schools in Serbia for children with developmental impairments (23 primary schools with pre-school departments, 17 schools for primary and secondary education with pre-school departments and one secondary school).<sup>123</sup>

Those pupils with disabilities who are integrated into the mainstream school system need special support and an individual teaching plan. Children with disabilities may be enrolled in special schools based on the opinion of an intersectoral commission and with the consent of their parents (Article 20). Many schools are still inaccessible and there is a lack of transportation, accessible books and teaching equipment, which can make it difficult for children to attend lessons or prevent them from doing so.<sup>124</sup> The Committee on the Rights of People with Disabilities underlines the need to secure access to inclusive and quality education and to ensure that reasonable accommodation, in accordance with established individual education plans, is provided in mainstream education. It also recommends that teachers and other education professionals receive training on inclusive education and that all secondary and tertiary education facilities be made accessible.<sup>125</sup> The Committee on the

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<sup>119</sup> The principles of pre-school education include, *inter alia*, equal rights and access to all forms of pre-school education without discrimination on the basis of gender, social, cultural, ethnic, religious or other affiliation, place of residence or domicile, material or health conditions or disability, as well as on other grounds, in accordance with the law (Article 4(2)(1)). Although it is not explicitly covered, this provision also applies in a case involving sexual orientation. Law on Pre-School Education (*Zakon o predškolskom vaspitanju i obrazovanju*), *Official Gazette of the Republic of Serbia*, Nos. 18/2010, 101/2017, 113/2017, 95/2018, 10/2019, 11 April 2010.

<sup>120</sup> Law on Primary Education (*Zakon o osnovnom obrazovanju i vaspitanju*), *Official Gazette of the Republic of Serbia*, Nos. 55/2013, 101/2017, 27/2018, 19/2019, 25 June 2013. Article 9 states that the main task of the school is to provide education of good quality and education for every child and student, under the same conditions, no matter where the school is located or where the education takes place. People carrying out educational work and other people employed in schools must promote equality among all students and actively oppose all forms of discrimination and violence.

<sup>121</sup> Law on Secondary Education (*Zakon o srednjem obrazovanju i vaspitanju*), *Official Gazette of the Republic of Serbia*, Nos. 55/2013, 101/2017, 27/2018, 25 June 2013. Article 2(1)(6) provides as one of the goals of secondary education respect for equality in relation to racial, ethnic, cultural, linguistic, religious, gender, sex and age characteristics, tolerance and respect for diversity. Sexual orientation has not been explicitly mentioned, but it is covered by systemic educational law – the Law on the Fundamentals of Education and Upbringing.

<sup>122</sup> Law on Higher Education (*Zakon o visokom obrazovanju*) *Official Gazette of the Republic of Serbia*, Nos. 88/2017, 27/2018, 73/2018, 67/2019, 7 October 2017. This Law recognises the principle of respect for human rights and freedoms, including prohibition of all forms of discrimination and equality of higher education institutions, regardless of their founder or form of ownership (Article 4(7) and Article 4(10)).

<sup>123</sup> Coalition of NGOs, *Alternative report on the implementation of the Convention on the Rights of Persons with Disabilities in the Republic of Serbia*, Belgrade, July 2015, p. 20.

<sup>124</sup> Coalition of NGOs, *Alternative report on the implementation of the Convention on the Rights of Persons with Disabilities in the Republic of Serbia*, Belgrade, July 2015, p. 20.

<sup>125</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Serbia*, CRPD/C/SRB/CO/1, 23 May 2016, para. 50.

Rights of the Child further emphasises that Serbia must strengthen its efforts to promote inclusive education for all children and ensure that adequate human, financial and technical support is available to implement the provisions outlined in the Law. It should also guarantee all children with disabilities the right to inclusive education in mainstream schools independent of parental consent; train and assign specialised teachers and professionals in integrated classes to give individual support and due attention to children with learning difficulties; and address the shortage of speech therapists and qualified professionals for children with mental and psychosocial disabilities.<sup>126</sup>

It must be concluded that the application of educational laws and inclusive practices is very underdeveloped, and that there is still a tendency to exclude pupils, especially those in social welfare institutions, from the education system.<sup>127</sup> The Commissioner for the Protection of Equality also acknowledges that people with disabilities are discriminated against in the area of education. In 2019, a number of complaints to the Commissioner related to the lack of transportation for, or services of assistants to escort, children with disabilities. The Commissioner issued 119 general recommendations to local self-government units to take measures and activities to ensure the provision of personal escort services for children with disabilities.<sup>128</sup>

The Law on Textbooks<sup>129</sup> prescribes that textbooks cannot include discriminatory content and should foster diversity and tolerance. The Law also recognises the publishing of textbooks in all accessible formats: audio, audiovisual, large print and Braille (Article 12(5) and the use of special books for children with developmental disabilities. Article 6(1) prescribes that the content and format of textbooks for children with developmental disabilities can be adjusted to their capabilities and needs. In other words, it may be shorter in content and therefore lead to differences in achievement.

In addition, Article 18 of the LPDPD prohibits discrimination based on disability at all levels of education. It is prohibited:

- 1) to deny pupils and students with disabilities admission to educational institutions which correspond to their previously acquired knowledge and educational capabilities;
- 2) to exclude people with disabilities from educational institutions for reasons related to their disability;
- 3) to set non-disability as a special condition for admission to an educational institution, including the submission of a certificate of health and prior checking of psychological and physical abilities, unless that requirement is in accordance with the regulations governing the particular field of education.

However, Article 19 provides two exceptions to the prohibition of discrimination: ascertaining the specific preferences of pre-school children, pupils or students for admission to an educational institution for a particular subject or group of subjects, their artistic affinities or special talents (paragraph 1); and the organisation of specific forms of teaching or education for pupils and pre-school children who, due to insufficient intellectual capacity, cannot follow regular courses, and their referral to these forms of teaching or education, if this is done on the basis of actions by a competent authority, which determines the need for such education (paragraph 2).

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<sup>126</sup> Committee on the Rights of the Child, *Concluding Observations on the combined second and third periodic reports for Serbia*, 7 March 2017, para. 55 b) and c).

<sup>127</sup> Belgrade Center for Human Rights (2019) *Human Rights in Serbia in 2018 – law, practice and international human rights standards (Ljudska prava u Srbiji u 2018 - pravo, praksa i međunarodni standardi ljudskih prava)*, Belgrade, p. 291.

<sup>128</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 10.

<sup>129</sup> Law on Textbooks (*Zakon o udžbenicima*), *Official Gazette of the Republic of Serbia*, No. 27/2018, 14 April 2018.

Article 19(2) unduly makes a distinction between children with intellectual disabilities and other children. In 2011, the Commissioner for the Protection of Equality submitted an initiative to amend this Article, but as of 2019 the initiative had not yet received support.<sup>130</sup>

#### b) Trends and patterns regarding Roma pupils

In Serbia, specific patterns exist in education regarding Roma pupils, such as segregation. Segregation of Roma children is still present in certain schools; there are schools attended by a large percentage of Roma children, which also leads to segregation, and there are frequent problems related to the attitudes of the teaching staff and the community towards Roma pupils. Roma children are still victims of prejudice and various forms of discrimination, including segregation, as one of the most serious violations of the right of children to education (e.g. schools with a majority of Roma pupils, so-called 'Roma' schools, and the over-representation of Roma children in schools for the education of children with disabilities).<sup>131</sup>

In its *Serbia 2019 Report*, the European Commission underlined that only 9 % of marginalised Roma children attended kindergartens (in comparison with 28 % of non-Roma children). Drop-out rates remain high, especially for Roma girls, and only 67 % of Roma youth complete secondary education (in comparison with 96 % of non-Roma youth). The percentage of those completing tertiary education remains extremely low.<sup>132</sup>

In addition, the UN Committee on the Elimination of Racial Discrimination observes that, while different measures (scholarships and other supporting measures) have been introduced to support Roma children, there is still a significantly lower percentage of Roma children enrolled in all levels of education in comparison with the general population. The Committee is also concerned about the practice of segregation in education in schools where most children are Roma, or where they are placed in Roma-only classes.<sup>133</sup> Therefore, the Committee recommended that Serbia should put an end to de facto state school segregation of Roma children and ensure access to quality education for them, including through anti-racism and human rights training for school staff, awareness-raising efforts targeting parents and increased employment of Roma teachers.<sup>134</sup>

Some organisations identified main problems in the realisation of the right to education of Roma pupils, such as a lack of strategy and cooperation at all levels; employment of parents as a condition for enrolment in pre-school institutions; lack of personal documents, databases and systemic measures for parents who do not enrol their children in school; low coverage of early childhood education programmes; and discrimination, non-motivation and neglect. Educational workers do not have the will or skills to work with children from vulnerable groups.

In addition, a lack of community will to accept poor and Roma families and children as legitimate participants in school and community life is very much present.<sup>135</sup> In its

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<sup>130</sup> Commissioner for the Protection of Equality, opinion No. 1080/2011, 3 November 2011. See also Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 10.

<sup>131</sup> European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs (2017), *Towards a comprehensive EU protection system for minorities*, available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL\\_STU\(2017\)596802](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2017)596802).

<sup>132</sup> European Commission, *Serbia 2019 Report*, Strasbourg, 29 May 2019, p. 29.

<sup>133</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, CERD/C/SRB/CO/2-5, 3 January 2018, para. 20.

<sup>134</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, CERD/C/SRB/CO/2-5, 3 January 2018, para. 21.

<sup>135</sup> UNICEF and Social Inclusion and Poverty Reduction Unit, *Policy Impact Analysis: Providing additional support to students of vulnerable groups in a pre-university education (Analiza uticaja politika: Pružanje dodatne podrške učenicima iz osetljivih grupa u preduniverzitetskom obrazovanju)*, available at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2014/05/Prilog-3-Pruzanje-dodatne-podrske-ucenicima-iz-osetljivih-grupa-u-preduniverzitetskom-obrazovanju.pdf>.

concluding observations on Serbia, the Committee on the Elimination of Racial Discrimination expressed its concern about the fact that the percentage of Roma children enrolled in all levels of education is lower than in the general population. Furthermore, the Committee is very concerned by reports that one third of people who are registered homeless are Roma, and that 60 000 Roma, Ashkali and Egyptians live in substandard conditions in hundreds of informal settlements, often lacking access to basic services, including drinking water and sanitation.<sup>136</sup>

A positive trend is that in 2018, there were 175 pedagogical assistants in local self-government units contributing to the inclusion of Roma students in education and supporting them to achieve better results, and in 2019 that number increased to 250.<sup>137</sup>

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)**

In Serbia, national legislation does not prohibit discrimination in relation to access to and the supply of goods and services as formulated in the Racial Equality Directive. Discrimination is prohibited in the provision of services on all grounds,<sup>138</sup> but there is no provision expressly prohibiting discrimination in access to and the supply of goods on any ground. However, as the LPD has a broad application, judicial interpretation of this article is needed for the protection in access to and supply of goods. It can be claimed that this situation is covered by Article 4(1) of the LPD.

Article 17(1) of the LPD prohibits discrimination in the provision of public services but not goods, and it does not include housing. It states that discrimination is considered to have taken place 'if a legal or physical entity, within the framework of its/his/her activities or profession, refuses to provide a service on the grounds of a personal characteristic of an individual or a group of persons, or if the said entity, in order to provide the service in question, requires the fulfilment of some condition that is not required of other individuals or groups of persons, or if the said entity unwarrantedly gives priority to another individual or a group of persons when it comes to providing a service'. The term 'public services' refers to services available to the public (whether provided by private or public authorities, entities, companies, etc.).

Furthermore, Article 17(2) of the LPD guarantees to everyone 'the right to equal access to premises in public use (such as premises where the head offices of public administration bodies are located, premises used in the spheres of education, healthcare, social welfare, culture, sports and tourism, premises used for the purpose of environmental protection and protection against natural disasters), as well as public spaces (such as parks, squares, streets, pedestrian crossings and other public transport roads), in accordance with the law'.

The LPDPD contains several provisions which relate to the provision of services to people with disabilities. Article 13(1) prohibits discrimination based on disability in relation to the availability of services and access to public premises. Article 13(2) defines 'service' as any service which a legal entity or an individual, with or without pay, provides in the course of its activities or permanent occupation. In addition, Article 13(3) explains what is meant by premises and public areas; the meaning is the same as in Article 17(2) of the LPD. Article

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<sup>136</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, CERD/C/SRB/CO/2-5, 3 January 2018, para. 22.

<sup>137</sup> Atanackovic, I., *Education of Roma in Serbia: The Hard Way from Discrimination to Integration* (*Obrazovanje Roma u Srbiji: Težak put od diskriminacije do integracije*), Danas, 8 December 2019, available at: <https://www.danas.rs/drustvo/obrazovanje-roma-u-srbiji-tezak-put-od-diskriminacije-do-integracije/>.

<sup>138</sup> This includes race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations and any other ground.

13(4) sets out what are considered to be public areas, such as parks, green spaces, squares, pedestrian crossings and other public roads.

Discrimination includes, in particular:

- the refusal to provide services to people with disabilities, unless the provision of the services would endanger the life or health of people with disabilities or other people;
- the provision of services to people with disabilities under different and more onerous conditions than those under which the service is provided to other users, unless the provision of services under usual conditions endangers the life or health of people with disabilities or other people; and
- the refusal to make technical adaptations to facilities that are necessary to provide services to people with disabilities (Article 13(5)).

Article 14 prescribes that an increase in costs for services that is proportional to the costs of the provision of services to meet the specific needs of people with disabilities, as well as activities that are intended to eliminate and combat new forms of discrimination in this area, cannot be deemed to be discrimination. In other words, it is permissible to charge more for services that are adapted to the needs of people with disabilities. The Law classifies as a particularly serious type of discrimination harassment, insults and humiliation of people with disabilities when these acts are performed by a person providing services directly or by their superior (Article 15). The owner of a property in public use, as well as the public company responsible for the maintenance of public spaces, is obliged to provide access to buildings for public use and public areas for all people with disabilities, regardless of the type and degree of their disability (Article 16(1)).

The owner of a property in public use is obliged to adapt the facility in order to meet the conditions for its accessibility for people with disabilities (Article 16(3)).

#### a) Distinction between goods and services available publicly or privately

In Serbia, national law distinguishes between services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. those restricted to members of a private association). However, the term 'public services' as used in Article 17(1) refers to services available to the public (whether they are provided by private or public authorities, entities, companies, etc.).

The LPDPD also prohibits discrimination based on disability in relation to the availability of services and access to public premises. Article 13(2) of the LPDPD defines 'service' as any service which a legal entity or individual, with or without pay, provides in the course of its activities or permanent occupation.

In 2018, 261 complaints (27.6 % of all complaints submitted to the Commissioner for the Protection of Equality) came from people who considered themselves to be victims of discrimination in relation to the provision of services and accessibility to public buildings,<sup>139</sup> whereas in 2019, that number decreased to 53 (7.5 % of all complaints).<sup>140</sup>

### **3.2.10 Housing (Article 3(1)(h) Directive 2000/43)**

In Serbia, national legislation does not explicitly prohibit discrimination in relation to housing as formulated in the Racial Equality Directive. The LPD does not include housing in Section III where it covers special cases of discrimination. However, Article 4(1) of the

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<sup>139</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 247.

<sup>140</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 298.

LPD says that all people are equal and shall enjoy equal status and equal legal protection regardless of personal characteristics. This provision does not limit the application of the LPD to the special cases of discrimination that are covered by part III of the Law, which means that housing is also protected; it is interpreted as such by the Commissioner for the Protection of Equality. However, further judicial interpretation by the court would be necessary. The Advisory Committee on the Framework Convention for the Protection of National Minorities noted that while housing is protected, further clarifications still appear to be necessary as regards the scope of protection provided by the LPD in the fields of housing and social protection.<sup>141</sup> Therefore, the Advisory Committee recommended that the authorities take all necessary steps to ensure that the wording of the LPD does not prevent persons from national minorities from bringing claims of discrimination in the fields of housing and social protection, and amend the Law if necessary to achieve this.<sup>142</sup>

There is a special law that deals with housing: the Law on Housing and Building Maintenance.<sup>143</sup> This Law regulates issues of housing usage, eviction and housing support. The Law establishes that the municipality has the jurisdiction to carry out a forced eviction if an individual moves into an apartment or the common areas of residential or commercial buildings without legal ground. In such cases, the residential community manager, the owner of a separate part of the building or another person with a legal interest has the right to put in an eviction request to the local municipality with a 90-day deadline for eviction. The eviction of people from a building that has been built illegally is carried out when it is considered to be necessary and justified in the public interest, primarily to protect the lives and health of people and for the protection of property, or where land is earmarked for the construction of buildings of public interest.<sup>144</sup>

#### a) Trends and patterns regarding housing segregation for Roma

In Serbia, there are patterns of housing segregation and discrimination against the Roma, who face discrimination and exclusion in all spheres of life. Unemployment is particularly high among the Roma (36 %), and those who are employed are usually in low-paid positions.<sup>145</sup> Poverty is widespread, and living conditions are particularly appalling in the informal settlements where Roma who are displaced from Kosovo or forcibly returned from abroad mainly live. They tend to move towards bigger cities where they have more opportunities, and they usually live in informal settlements on peripheral sites.

The Committee on the Elimination of Racial Discrimination expressed its concern that one third of people registered homeless in Serbia are Roma and that 60 000 Roma, Ashkali and Egyptians live in substandard conditions in hundreds of informal settlements, often lacking access to basic services.<sup>146</sup> The Committee also expressed its concern that forced evictions from settlements continue to take place without consultation, due process of law or the possibility of alternative accommodation. In some cases, other essential services such as ambulances or public transport are not available. Many such people are isolated from employment, schools and medical centres.

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<sup>141</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 28 November 2013, ACFC/OP/III(2013)006, Strasbourg, 23 June 2014, p. 7.

<sup>142</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, *Fourth Periodical Report by Serbia*, September 2018, ACFC/SR/IV(2018)001, Belgrade, p. 115.

<sup>143</sup> Law on Housing and Building Maintenance, *Official Gazette of the Republic of Serbia*, No. 104/2016, 23 December 2016.

<sup>144</sup> These interests exist under Article 78, when: 1) the land is unfavourable for construction; 2) it is undertaken during the preparation for the implementation of an investment project and if it has previously been proven that there is no alternative for relocation; 3) the settlement is located near natural resources, or near a protected cultural heritage area; 4) the settlement is located in protected zones around military facilities or infrastructure with a special purpose.

<sup>145</sup> European Commission, *Serbia 2019 Report*, Strasbourg, 29 May 2019, p. 30, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>

<sup>146</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic report of Serbia*, CERD/C/SRB/CO/2-5, 3 January 2018, p. 22.

According to data provided by municipalities, there are 583 informal/illegal Roma settlements in Serbia.<sup>147</sup> Thus, many Roma live in households that have no access to electricity, drinking water or connection to the sewage system.<sup>148</sup>

There has been a case, in one city in central Serbia, in which a Roma settlement was enclosed through the construction of a concrete wall. Due to the importance of this case and its detrimental effect on the Roma, the Commissioner for the Protection of Equality filed a lawsuit under Article 6 of the LPD, which prohibits direct discrimination, with the competent court. This case has not been yet resolved.

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<sup>147</sup> Human Rights Council, Universal Periodic Review, third cycle, *Report of the Republic of Serbia*, 31 October 2017, para. 87.

<sup>148</sup> European Commission, *Serbia 2019 Report*, Strasbourg, 29 May 2019, p. 30, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Serbia, national legislation provides for an exception for genuine and determining occupational requirements.

Article 16(3) of the LPD states that 'different treatment, exclusion or giving priority on account of the specific character of a job, for which an individual's personal characteristic constitutes a genuine and decisive precondition for performing the said job, if the objective to be achieved is justified, shall not be considered to constitute discrimination'. This definition does not explicitly state that such a requirement should adhere to the proportionality principle. However, Article 8 of the LPD is applicable in this case, as it says that a violation of the principle of equality shall occur 'if an individual or a group of persons, on account of his/her or their personal characteristics, is unwarrantedly denied rights and freedoms or has obligations imposed that, in the same or a similar situation, are not denied to or imposed upon another person or group of persons, if the objective or the consequence of the measures undertaken is unjustified, and if the measures undertaken are not proportional with the objective achieved'.

In addition, the Labour Law contains the same provision. It prescribes in Article 22(1) that different treatment, exclusion or giving priority on account of the specific character of a job shall not be considered as discrimination where the nature of a job is such, or where a job is performed in such conditions that it constitutes a genuine and decisive precondition for performing the said job and where the purpose intended to be achieved is justified.

Finally, Article 23 of the LPDPD stipulates that the following are not considered to constitute discrimination based on disability: the selection of candidates without disabilities who achieved the best results on an assessment of psychological and physical abilities that are directly related to the job requirements, and the adoption of incentive measures to fast-track the employment of people with disabilities, in accordance with the law governing the employment of people with disabilities.

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

In Serbia, national law does not provide for an exception for employers with an ethos based on religion or belief as defined in Article 4(2) of Directive 2000/78/EC. However, the LPD provides for a somewhat different exception by stipulating in Article 18(2) that 'The conduct of priests, that is to say, religious officials, which is in keeping with a religious doctrine, beliefs or the objectives of churches and religious communities entered in the register of religious communities, in accordance with the law regulating the freedom of religion and the status of churches and religious communities, shall not be considered to constitute discrimination'. The register is maintained by the ministry responsible for religious affairs in accordance with the Law on Churches and Religious Organisations.<sup>149</sup> This provision is unclear, as it is not entirely certain what type of conduct it would pertain to; and it seems to be very problematic as it provides a blanket exemption for religious officials.

- Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Serbia, there are specific provisions in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination. However, there is still no relevant case law on this issue.

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<sup>149</sup> Law on Churches and Religious Organisations, *Official Gazette of the Republic of Serbia*, No. 36/2006, 27 April 2006.



The Law on Churches and Religious Organisations recognises traditional churches<sup>150</sup> and religious communities,<sup>151</sup> confessional communities<sup>152</sup> and other religious organisations<sup>153</sup> (Article 4).

All other religious organisations (communities), including those already registered, need to seek re-registration through the newly established procedures, which mean that they are required to fulfil additional criteria. The process is discriminatory and could cause groups which currently enjoy legal status to lose that status.

The Law on Churches and Religious Organisations guarantees general religious freedom to religious organisations that are registered. Article 2 prohibits discrimination, but only against natural persons as opposed to legal persons (i.e. it does not address discrimination between churches or communities). The law does not make it clear that everyone is entitled to enjoy freedom of religion irrespective of whether or not they are a member of a church or religious community that has been registered in accordance with the Law on Churches and Religious Organisations.

Article 6 guarantees the independence of churches and religious organisations from the State and proclaims their equality before the law, as well as the fact that they are free and autonomous in determining their religious identities. Article 8(2) further establishes that the performance of priestly duties and religious services is subject to autonomous regulations by churches and religious communities. However, confessional communities and other religious organisations are exempt from these rights and freedoms. Furthermore, neither they nor unregistered religious organisations are entitled to the rights and benefits enshrined in Articles 26 to 30, such as property rights and tax exemptions. They may also have difficulty in printing and distributing literature and materials; opening bank accounts; securing sites and spaces for prayer and worship; and property sales. Moreover, only the children of members of the 'traditional churches and religious communities' can receive religious education in accordance with their own faith.

- Religious institutions affecting employment in state funded entities

In Serbia, religious institutions are permitted to select people (on the basis of their religion) to be hired for or dismissed from a job if the post is in a state entity or in an entity financed by the state. Religious institutions can discriminate if that is required or allowed by their religious doctrines. Article 6 of the Law on Churches establishes that churches and religious communities are independent of the State and equal before the law. They are free and autonomous in defining their identity. Churches and religious communities have the right to independently regulate and conduct their structure and organisation and to independently conduct their internal and public affairs. Churches can obtain accreditation and establish schools at all levels of education which have the right to be financed from state funds (Article 36(2)). In order to promote religious freedoms and education, the state may offer financial support to religious educational institutions which are not included in

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<sup>150</sup> Article 10(1) defines 'traditional churches' as those which have a centuries-long historical continuity and whose legal subjectivity was acquired on the basis of special laws. They are: the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church, the Christian Reformed Church and the Evangelical Christian Church.

<sup>151</sup> 'Traditional religious communities' are those which have a centuries-long historical continuity and whose legal subjectivity was acquired on the basis of special laws. They are: the Islamic religious community and the Jewish religious community (Article 10(2)).

<sup>152</sup> In Article 16, 'confessional communities' are defined as all churches and religious organisations whose legal status was regulated with an application in accordance with two laws adopted in the former Yugoslavia. These two laws are the Law on the Legal Status of Religious Organisations (*Zakon o pravnom položaju verskih zajednica*), *Official Gazette of the FPRY*, No. 22/1953 and the Law on the Legal Status of Religious Organisations (*Zakon o pravnom položaju verskih zajednica*), *Official Gazette of the SRS*, No. 44/1977.

<sup>153</sup> There is no further, more precise definition of the category of 'other religious organisations'.

the education system. Religious education institutions have organisational and curricular autonomy (Article 37(1)).

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Serbia, national anti-discrimination legislation does not provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4) of Directive 2000/78/EC).

Article 16(2) of the LPD, which prohibits discrimination in the sphere of labour, also establishes protection for members of the army. It also specifies that some categories can be exposed to protective measures, such as women, pregnant women, women who have recently given birth, parents, minors and people with disabilities.

However, exemption from discrimination law is stipulated in Article 23 of the LPDPD, which prescribes that the selection of candidates without disabilities who achieved the best results on an assessment of psychological and physical abilities which are directly related to the job requirements applies mostly to the armed forces and the police sector.

#### **4.4 Nationality discrimination (Article 3(2))**

##### **a) Discrimination on the ground of nationality**

In Serbia, national law does not include exceptions relating to differences in treatment based on nationality. Article 2(2) of the LPD explains that the terms 'person' and 'everyone' are used in the Law to refer to an individual who resides on the territory of the Republic of Serbia or a territory under its jurisdiction, regardless of whether that individual is a national of Serbia or another state, or a stateless person, as well as to any legal entity registered or operating on Serbian territory. Furthermore, Article 3 proclaims that everyone shall have the right to obtain effective protection from all forms of discrimination from the authorised courts and other public administration bodies of the Republic of Serbia. A foreign national in Serbia, in accordance with international treaties, shall have all the rights guaranteed by the Constitution and by law, with the exception of those rights which, in accordance with the Constitution and the law, are enjoyed only by citizens of the Republic of Serbia.<sup>154</sup>

In Serbia, citizenship is explicitly mentioned as a protected ground in Article 2(1) of the LPD. There have not been many cases that relate to discrimination based on citizenship. In 2018, only four complaints (in comparison with 10 in 2016, seven in 2017 and 12 in 2018) were submitted to the Commissioner for the Protection of Equality claiming discrimination based on citizenship.<sup>155</sup> In one case, the Commissioner found that there had been discrimination based on Croatian nationality, as a result of which a misdemeanour charge was initiated. In this case, a client was exposed to insulting and humiliating comments in a bank office by another client, while officers failed to react and protect her.<sup>156</sup>

##### **b) Relationship between nationality and 'race or ethnic origin'**

National minorities sometimes differ from ethnic minorities in that they represent part of the nation with its own nation state. Thus, the former Yugoslavia officially made a

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<sup>154</sup> For example, Article 38(2) of the Constitution stipulates that Serbian citizens may not be expelled or deprived of their citizenship or the right to change it. In addition, Article 52(1) states that every citizen who has reached their majority and working ability shall have the right to vote and be elected. Furthermore, Article 53 stipulates that citizens shall have the right to take part in the management of public affairs and to assume public service and functions under equal conditions.

<sup>155</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 298.

<sup>156</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 225.

distinction between nationalities and ethnic groups. This division has become blurred. However, Article 2 of the Law on the Protection of Rights and Freedoms of National Minorities defines national minorities as a group of citizens of Serbia who are sufficiently representative, although in a minority situation within the territory of Serbia, who belong to an indigenous group of the population with a lasting and firm connection with Serbia and who possess some distinctive features, such as language, national or ethnic affiliation, origin or religion, by means of which they differ from the majority of the population. The definition goes on to state that members of a national minority should demonstrate concern about the preservation of their common identity, including culture, tradition, language or religion.

Today, discrimination based on nationality is considered to be discrimination based on citizenship, while discrimination based on ethnic origin relates to ethnic minorities whose culture, origin and lifestyle differs from the majority. Usually they are citizens, but if they are not citizens, an overlap between 'nationality' and 'ethnic origin' can occur. However, this is a rather theoretical debate, as all those grounds – citizenship, national affiliation and ethnic origin – are covered by Article 2(1) of the LPD. In other words, citizenship is an explicitly protected ground under the LPD, and the Commissioner for the Protection of Equality has an explicit mandate to deal with discrimination based on citizenship as well as on national affiliation.

In Serbia, the ethnic minority which is considered to be most discriminated against is the Roma.<sup>157</sup> The UN Human Rights Committee expressed its concern in 2017 that despite Serbia's efforts, the Roma continue to suffer from widespread discrimination and exclusion, unemployment, forced eviction and de facto housing and educational segregation.<sup>158</sup> The Committee was particularly concerned about the continued difficulties faced by internally displaced Roma<sup>159</sup> in relation to: (a) registering births and their place of residence and acquiring identification documents, including as a result of a narrow interpretation of the law on permanent and temporary residence; (b) being integrated into Serbian society; and (c) the poor conditions reported in collective centres, where internally displaced people are accommodated by the Commissariat for Refugees and Migration. The situation remains the same in 2019, despite the fact that Serbia adopted certain measures to prevent discrimination against the Roma.<sup>160</sup>

Finally, race and colour are also recognised in the LPD as particular grounds for discrimination. It would be theoretically possible to establish indirect race discrimination if nationals of an African decent were treated less favourably. However, those grounds of discrimination are rarely invoked in practice, and such cases are usually treated as involving discrimination based on asylum and migration status. In 2019, two complaints submitted to the Commissioner claimed to involve discrimination based on race.<sup>161</sup>

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<sup>157</sup> See, for example, European Movement in Serbia, European Policy Centre (2017), *Attitudes of citizens on their satisfaction with public services in primary health care (Ставови грађана о задовољству јавним услугама у примарној здравственој заштити – Приказ налаза истраживања)*, Belgrade. This research shows that the Roma have more difficulty in accessing essential health services than other citizens. They are more exposed to hate speech than other citizens: Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, p. 88. In addition, Roma children are perceived as experiencing the most discrimination. See National Organisation of Persons with Disabilities of Serbia, *Position of children with disabilities and their rights in the Republic of Serbia (Положај деце са сметњама у развоју и инвалидитетом и остваривање њихових права у Републици Србији)*, Belgrade, p. 21.

<sup>158</sup> CCPR, *Concluding observations on the third periodic report of Serbia*, CCPR/C/SRB/CO/3, 10 April 2017, p. 14.

<sup>159</sup> These Roma have Serbian citizenship and their status is recognised as that of internally displaced persons.

<sup>160</sup> Belgrade Centre for Human Rights (2020), *Human Rights in Serbia in 2019 – law, practice and international standards of human rights, (Људска права у Србији 2019 - право, praksa i међународни standardi људских права)*, Belgrade, p. 277-288.

<sup>161</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 298.

#### **4.5 Health and safety (Article 7(2) Directive 2000/78)**

In Serbia, there are exceptions in relation to disability and health and safety (Article 7(2) of Directive 2000/78/EC). The LPD provides in Article 16(3) that undertaking protective measures towards certain categories of employees (such as women, pregnant women, women who have recently given birth, parents, minors and people with disabilities) cannot be considered as discrimination.

Article 12(1) of the Labour Law states that an employee shall have the right to safety and protection of life and health at work. According to Article 16(2), employers are obliged to provide their employees with working conditions which ensure safety and the protection of life and health at work in conformity with the law and other regulations. The Law further prescribes that employees are entitled to safety and the protection of life and health at work in conformity with the law (Article 80). Article 12(4) entitles employees with disabilities to special protection. Article 22(2) establishes that provisions relating to special protection of people with disabilities shall not be considered as discrimination. Finally, Article 101 prescribes that employers are obliged to enable employees with disabilities to perform their work according to their remaining working capacity. Employers shall, in accordance with the pension and disability insurance regulations, provide appropriate alternative tasks for an employee who is assessed to be at risk of becoming disabled by performing certain tasks.

#### **4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.6.1 Direct discrimination**

In Serbia, the LPD does not provide an exception for direct discrimination on the ground of age.

##### **a) Justification of direct discrimination on the ground of age**

In Serbia, national law provides for justification for direct discrimination on the ground of age. Article 23(1) of the LPD prohibits discrimination against individuals on the ground of age and does not mention any exceptions. However, a possible justification for direct discrimination on the ground of age is provided in Article 14, which prescribes positive measures and states that 'measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination'.

In addition, it can be considered that a genuine occupational requirement, as established in Article 16(3), can justify direct discrimination based on age. The same provision is contained in Article 21(1) of the Labour Law.

Finally, the compulsory retirement age is part of social policy and is therefore considered not to contravene the LPD.

There is still no significant case law on this ground of discrimination, except for cases that have been brought before the Commissioner for the Protection of Equality.

In 2019, 72 complaints (9.9 %) were submitted to the Commissioner for the Protection of Equality claiming age discrimination, in comparison with 116 complaints (16.5 %) in 2018 and 75 complaints (11.8 %) in 2017.<sup>162</sup> Therefore, this ground of discrimination still ranks very highly – this year, it was among the top four grounds. The greatest number of

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<sup>162</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 297.

complaints (43 %) concerned discrimination against persons older than 65; 39 % concerned people between the ages of 50 and 65; and 18 % concerned discrimination against children.<sup>163</sup> The majority of complaints concerned discrimination in recruitment and work, due to the dominant attitude that older workers are inefficient and non-productive.

In 2019, the Commissioner issued a general recommendation to 169 centres for social work, due to an increase in the number of instances of litigation on the basis of the deprivation of legal capacity of elderly beneficiaries of social centres as a result of prejudices and stereotypes about their ability to protect their own rights and interests.<sup>164</sup> According to the available information obtained by the Commissioner for the Protection of Equality, lawsuits were brought mainly due to the fact that social work centres did not adequately assess the strengths and needs of older beneficiaries before initiating the procedure for deprivation of legal capacity and appointing a temporary guardian. In the majority of cases, older beneficiaries were completely excluded from the procedure in relation to the exercise and protection of their rights. In addition, the accessibility of certain centres for social work was challenged.<sup>165</sup> In some cases, the Commissioner found that centres were not guided by the best interests of the beneficiary, nor by the principles of least restrictive intervention and the provision of an environment of respect for the dignity of the individual.

b) Permitted differences of treatment based on age

In Serbia, national law permits differences in treatment based on age for any activities within the material scope of Directive 2000/78/EC. Thus, Article 16(3) of the LPD prescribes that different treatment is permissible on account of the specific nature of a job for which an individual's specific age constitutes a genuine and decisive condition for performing the job, if the objective to be achieved is justified. In addition, it is permissible to provide protective measures for certain categories of people, such as children. Furthermore, Article 23(2) stipulates that the elderly constitute a specific protected group.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

In Serbia, there are no occupational pension schemes.

#### **4.6.2 Special conditions for young people and older workers**

In Serbia, there are no special conditions set by law for older workers in order to promote their vocational integration. However, although there is no general-scope law which sets special conditions for these groups, it does not mean that special conditions are not established at a local level, mostly in order to promote the employment of young people.<sup>166</sup> The LPD only provides in Article 23(2) that 'Older people shall have the right to dignified living conditions, without discrimination, and especially the right to equal access and protection from neglect and harassment in the course of receiving healthcare services and other public services'.

However, Article 12(4) of the Labour Law entitles employees under 18 to special protection. With regard to younger workers, Article 84 lists jobs that are prohibited for employees under 18. Therefore, employees who are younger than 16 cannot work in posts that require

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<sup>163</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 181.

<sup>164</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 182.

<sup>165</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 100.

<sup>166</sup> The basis for affirmative measures is set out in the Law on Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011.

particularly hard physical work, exposure to harmful radiation or materials which pose a risk to health. Employees between the ages of 18 and 21 can perform such hazardous tasks only if a medical professional determines that such work is not harmful to their health (Article 85). Employees under the age of 18 cannot work for more than eight hours per day (a maximum of 35 hours per week) and cannot do overtime or night work, except in some specific cases (Article 88).

Certain categories of workers can, exceptionally, in circumstances and under conditions set out in the Law on Pension and Disability Insurance,<sup>167</sup> be entitled to a pension (Article 7). Under Article 42, those categories are police officers; some categories of employee at the Ministry of Foreign Affairs; members of the Security Information Agency; members of the Military Security Agency and Military Intelligence Agency; employees of the Administration for the Execution of Plenipotentiary Sanctions; authorised officials of the Tax Police, military personnel; and other police officers.

#### **4.6.3 Minimum and maximum age requirements**

In Serbia, there are no exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training.

#### **4.6.4 Retirement**

##### **a) State pension age**

In Serbia, there is a state pension age – 65 – at which individuals must begin to collect their state pension (Article 19 of the LPDI). However, an employee can decide to submit a request to collect an early (reduced) pension.

If an individual wishes to work beyond the state pension age, the pension cannot be deferred, except for certain jobs (doctors or university professors), when it can be deferred for an additional three years (until the individual reaches 68).

An individual can collect a pension and still work. However, in that case, the pension is not a taxable income.

##### **b) Occupational pension schemes**

In Serbia, it is not possible to receive payment from any employer-funded pension arrangements, since occupational pension schemes are not recognised as such in Serbia.

Previously, the only system in existence was the mandatory public pension system.<sup>168</sup> However, the 2019 changes to the Law on Pension and Disability Insurance introduced voluntary pension funds and pension plans.<sup>169</sup>

##### **c) State-imposed mandatory retirement ages**

In Serbia, there is a state-imposed mandatory retirement age which is generally applicable. According to Article 19 of the Law on Pension and Disability Insurance, the retirement age

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<sup>167</sup> Law on Pension and Disability Insurance (*Zakon o penzijskom i invalidskom osiguranju*), *Official Gazette of the Republic of Serbia*, Nos. 34/2003, 64/2004 – decision CC, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – decision CC, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 2 April 2003.

<sup>168</sup> Voluntary pension savings are also possible, although the introduction of mandatory private funds has been dismissed. See the Law on Voluntary Pension Funds and Pension Plans (*Zakon o dobrovoljnim penzijskim fondovima i penzijskim planovima*), *Official Gazette of the Republic of Serbia*, Nos. 85/2005 and 31/2011, 13 October 2005.

<sup>169</sup> Amendments to the Law on Pension and Disability Insurance (*Izmene i dopune Zakona o penzijskom i invalidskom osiguranju*), *Official Gazette of the Republic of Serbia*, No. 86/2019, 14 December 2019.

is 65 years, with a minimum of 15 years of pension contributions, or after 45 years of contributions.

When an employee in the public sector reaches 65, it is not possible for them to continue to work and defer their pension. However, the retiree can continue to work in the form of a fixed-term service contract. In addition, in the public sector, the mandatory retirement age for both sexes is 65. It is possible to extend this period to cover an additional three years in higher education for university professors and doctors.

d) Retirement ages imposed by employers

In Serbia, national law does not permit employers to set a retirement age (or an age at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

In practice, in both the private and public sectors, some women are forced to retire when they reach the age of 62, despite the fact that it is their right to choose if they want to retire or to work until 65. The main reasons for this common practice include a high unemployment rate and the restructuring of some private firms, mostly those that were privatised.

e) Employment rights applicable to all workers irrespective of age

The Labour Law applies equally to the public and private sectors. It protects employees against dismissal and applies to all workers irrespective of age, until they reach the mandatory retirement age. However, during the deferral period, workers are still protected by Article 16(2) of the LPD, which protects from discrimination a person who is employed and also 'a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever.'

Article 20 of the Labour Law prohibits any discrimination in relation to dismissal. Article 187 protects employees during pregnancy, maternity leave, absence from work for childcare and leave for special childcare, when an employer cannot terminate the contract of employment.

f) Compliance of national law with CJEU case law

In Serbia, national legislation is in line with the CJEU case law on age in respect of mandatory retirement. There is no possibility of working beyond pensionable age, although a retired person can perform certain jobs on the basis of service contracts. Although there are differences in pensionable age between male and female workers, they both retire at 65, so an earlier pension is a possibility and not a requirement. The automatic termination of employment contracts for employees who meet the conditions as regards age and the minimum number of years of service during which pension contributions were paid has been a feature of employment law in many Member States and is widely used in employment relationships.

It is a mechanism which is based on a balance that must be struck between political, economic, social, demographic and/or budgetary considerations and the choice to be made between prolonging people's working lives or, conversely, providing for early retirement. This is why the retirement age for women will be higher each year until 2031 in Serbia when it will reach 64 years and nine months, with the objective of equalising the required

conditions for both sexes. However, there is an exception that allows university professors to work for three more years (until the age of 68) if they receive permission from their respective departments, the faculty council and the university. The same exception applies to doctors.

#### **4.6.5 Redundancy**

##### **a) Age and seniority taken into account for redundancy selection**

In Serbia, national law permits age or seniority to be taken into account in selecting workers for redundancy. Section XI of the Labour Law regulates redundancy. Article 155 stipulates that a redundancy plan has to include the following information: the reasons that the work of the employees is no longer needed; the total number of employees with the employer; the number of redundant employees and the jobs they perform; their professional qualifications, age and number of years of insurance contributions; the criteria for establishing redundancy; measures for finding alternative employment for redundant employees such as transfer to other work assignments, employment with another employer, retraining or additional training, part-time work (but not less than half a full-time position) or other measures; the means for resolving the socio-economic status of redundant employees; and the time limit within which the employment contract will be terminated.

##### **b) Age taken into account for redundancy compensation**

In Serbia, national law provides compensation for redundancy. This is not affected by the age of the worker. Financial compensation is calculated from the first day of insurance until the termination of insurance, and the total amount depends on the number of insurance years. In other words, severance pay for redundancy dismissal is different for a worker with one year of tenure, five years of tenure, 10 years of tenure or more. However, it can indirectly have a different impact on younger age groups, which mostly have fewer years of tenure and thus receive a lower amount of redundancy compensation.

#### **4.7 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

In Serbia, national anti-discrimination law does not include exceptions, which seek to rely on Article 2(5) of the Employment Equality Directive.

The Constitution of Serbia prescribes that some human rights may be restricted by the law if the Constitution permits such a restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right (Article 20(1)). This section of the Constitution relies on the European Convention on Human Rights. However, the Constitution only permits a restriction in relation to special measures that are introduced in order to achieve full equality for individuals or groups of individuals who are in a substantially unequal position in comparison with other citizens. Other restrictions of the principle of equality are not allowed by the Constitution.

#### **4.8 Any other exceptions**

In Serbia, no other exceptions to the prohibition of discrimination (on any ground) are provided in national law.



## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Serbia, positive action in respect of racial and ethnic origin, religion and belief, disability, age and sexual orientation is permitted in national law.

Article 21(4) of the Constitution recognises that special measures that are introduced in order to achieve the full equality of individuals or groups of individuals who are in a substantially unequal position in comparison with other citizens shall not be deemed to be discrimination. This provision applies to all groups that are identified as being in a substantially unequal position in society, including LGBTQ+ people.

Article 14 of the LPD also prescribes that measures which are introduced for the purpose of achieving the full equality, protection and progress of an individual or a group of people in an unequal position shall not be considered to constitute discrimination.

The LPDPD provides that there is no discrimination if a provision of a law, a regulation, a decision or a special measure was adopted with the aim of improving the situation of people with disabilities, their family members and associations of persons with disabilities, when this special support is necessary in order to ensure that they can enjoy and exercise their rights under the same conditions as the general population (Article 8(1)). Furthermore, a 'decision or the retention of existing laws or measures aimed at eliminating or repairing the adverse situation of people with disabilities who are given special support' is not considered to be discrimination either (Article 8(2)). In addition, Article 23(2) stipulates that incentive measures should be introduced to speed up the employment of people with disabilities, in accordance with the law regulating the employment of persons with disabilities.

### **b) Quotas in employment for people with disabilities**

In Serbia, national law provides a quota for the employment of people with disabilities.

The National Action Plan for Employment for 2019 recognises persons with disabilities as a less employable category of persons,<sup>170</sup> while the Law on Professional Rehabilitation and Employment of Persons with Disabilities introduces a quota system. Article 24 establishes a duty on employers with at least 20 employees to employ a certain number of people with disabilities. An employer with 20 to 49 employees is obliged to employ one person with disabilities (Article 24(2)). An employer with 50 or more employees is obliged to employ at least two people with disabilities and one more for every additional 50 employees (Article 24(3)). This obligation is not imposed on a newly established employer for a period of 24 months from the day of the establishment of the business.

According to Article 26, an employer can be relieved of this obligation if they pay, on a monthly basis, a sum of at least 50 % of the average salary per employee for every person with a disability whom they do not employ. This amount is paid to the budget of the Republic of Serbia for the Fund for the Professional Rehabilitation and Employment of Persons with Disabilities.<sup>171</sup> In addition, an employer receives a wage subsidy for a duration of 12 months for an employee with disabilities and without work experience who is hired for an indefinite period of time.

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<sup>170</sup> National Action Plan for Employment for 2019 (*Nacionalni akcioni plan zapošljavanja za 2019*), *Official Gazette of the Republic of Serbia*, No. 105/2018, 29 December 2019.

<sup>171</sup> This obligation is defined in the Regulation on the monitoring of the execution of duties on the employment of persons with disabilities and the method of proving the execution of these obligations (*Pravilnik o načinu praćenja izvršavanja obaveze zapošljavanja osoba sa invaliditetom i načinu dokazivanja izvršavanja te obaveze*), *Official Gazette of the Republic of Serbia*, No. 101/2016, 24 December 2016.

It is important to underline that this subsidy applies only to people who have been officially recognised as having a disability by the National Employment Service, which assesses disability in the context of employment.<sup>172</sup> This subsidy is equivalent to 75 % of the salary costs associated with contributions for mandatory social insurance, but not more than the minimum wage determined in accordance with the regulations.

The Tax Administration controls the fulfilment of the obligation to employ persons with disabilities on a monthly basis. If an employer violates the above-mentioned provisions, the Tax Administration determines the amount to be paid to the budget for the Fund for Professional Rehabilitation and Employment of Persons with Disabilities. In addition, the employer is obliged to pay a fine of between RSD 200 000 (EUR 1 700) and RSD 1 000 000 (EUR 8 500).

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<sup>172</sup> This system applies only to persons with disabilities and in the form of a quota system.

## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

- a) Available procedures for enforcing the principle of equal treatment

In Serbia, the following procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation).

*Civil procedure* – Civil proceedings in discrimination cases are regulated by three anti-discrimination laws (the LPD, the LPDPD and the Gender Equality Act (GEA)). The general rule is that provisions from general litigation apply (which are enshrined in the Civil Procedure Code) unless it is explicitly regulated differently (*lex specialis*). However, it was necessary to create a special procedure for discrimination cases as general litigation is not adapted to the specific content and particularities of the proceedings in discrimination cases, nor does it secure the provision of legal protection that is of satisfactory quality. A special civil action is designed to ensure the provision of effective and efficient civil protection from discrimination which is in accordance with international and European standards in this area.

The first special anti-discrimination procedure in Serbia was established by the LPDPD in order to enhance the court procedure in cases of discrimination against people with disabilities. These provisions modify the provisions which regulate the general civil procedure. First, apart from the local court of general jurisdiction, the court situated in the area where the complainant is domiciled or has temporary residence shall also have jurisdiction over the proceedings (Article 41). The complainant can request:

- court prohibition of further discriminatory behaviour;
- remedy actions to remove the consequences of discriminatory behaviour;
- the court's confirmation that an action or behaviour is discriminatory; and
- compensation for pecuniary and non-pecuniary damages incurred due to discriminatory behaviour.<sup>173</sup>

The LPDPD in Article 44 provides that revision, a special appellate review for legal questions and serious breaches of procedure, is always available in cases of discrimination (with no time limit). This law allows for temporary measures at the request of the complainant when initiating a lawsuit, in the course of the proceedings and after the termination of the proceedings, until the court decision is enforced. The court is allowed to pass a temporary measure in order to prevent discriminatory treatment, with a view to eliminating the risk of violence or major irreparable damage.<sup>174</sup> The court is obliged to decide on a request to pass a temporary measure within 48 hours of receiving the request. However, the LPDPD does not recognise a reversal of the burden of proof.

The LPD also sets out the procedure for initiating lawsuits in cases of discrimination which can be initiated by anyone who claims to have suffered discriminatory treatment. It includes the same provisions in relation to the court's jurisdiction for victims of discrimination and revision as the LPDPD. The LPD also recognises temporary measures, although the court must decide on the request not within 48 hours, but within three days. It further provides several positive solutions to protect victims of discrimination. First, it provides that the proceedings will be conducted swiftly (Article 41(3)). Secondly, Article

<sup>173</sup> In this complaint, the rules in the Law on Contracts and Torts apply, including the statute of limitations (Article 376). See Law on Contracts and Torts (*Zakon o obligacionim odnosima*), *Official Gazette of SFRY*, Nos. 29/1978, 39/1985, 45/1989 – CC, 57/1989, *Official Gazette of SRY*, Nos. 31/1993, 22/1999, 23/1999, 35/1999, 44/1999, *Official Gazette of SCG*, No. 1/2003 – Constitutional Charter, 1 July 1978.

<sup>174</sup> A request to pass a temporary measure must prove the necessity of doing so in order to eliminate the risk of violence, use of force or irreparable damage (Article 45(2)).

45 of the LPD recognises a reverse burden of proof, which is very important bearing in mind that the LPDPD does not recognise it.

The provisions of the Gender Equality Act go further than those mentioned in the other two anti-discrimination laws in order to ensure efficiency, such as time limits for certain legal acts, provisions on the collection of data on cases and release from prior payment of litigation costs until the case is decided. Those additional measures that are envisaged for gender have not been applied to the other protected grounds.

*Civil litigation with advocacy element* – Under Article 46 of the LPD, the Commissioner for the Protection of Equality can initiate lawsuits. The Commissioner decides in which cases they will file a claim, taking into account whether it is a case of strategic litigation: in other words, a case of frequent and widespread discrimination in respect of which there are good prospects for success (so far, litigation has been initiated 18 times; while in 2015 and 2016 no new strategic litigation was brought, in 2017 and 2018 four litigation lawsuits were initiated, and in 2019 there was only one).<sup>175</sup> The litigation proceedings are initiated and conducted in the general public interest in order to contribute to the consistent implementation of legislation and improvement of legal practice; to further encourage victims of discrimination to initiate anti-discrimination litigation; to uphold the rule of law; and to contribute to improving access to justice. In 2018, the Commissioner filed four lawsuits.<sup>176</sup> In one case, in Krusevac, a concrete wall was built next to the Roma settlement and parallel to the street, so that the Roma settlement was actually enclosed. Another lawsuit concerned an ill worker who was dismissed on the ground that she could only work day shifts due to illness. A third and a fourth lawsuit were initiated against authors who used humiliating words against victims of domestic violence and members of the LGBTI population in their texts.

*Labour dispute* – As the Labour Law prohibits discrimination in Articles 18 to 20, an individual can decide to initiate a labour dispute if discrimination occurs in the area of employment. An employee has the choice to initiate a labour dispute or an anti-discrimination proceeding, which can be initiated even if the labour dispute is not complete.

The Civil Code governs the rules on proceedings in labour law disputes in order to provide adequate protection. Jurisdiction in such cases, in addition to the court of general territorial jurisdiction for the respondent, lies with the court on whose territory the work is being performed or was performed, if the complainant in a labour-related dispute is an employee (Article 60). This procedure is regulated by several articles (Articles 436 to 441). Article 438 prescribes that in labour-related litigation, in particular prior to determining time limits and scheduling hearings, the court shall always take due account of the necessity of resolving labour disputes swiftly. In the course of the proceedings, Article 439 provides that the court may also *ex officio* order temporary measures to be applied in enforcement proceedings for the prevention of violent acts or the alleviation of irreparable damage. The court shall issue a ruling on the temporary measures at the request of a party within a time limit of eight days from the date of the request being submitted. No specific appeal shall be permitted against a ruling of a court on injunctions. In addition, in a judgment ordering the performance of a specific obligation, the court will determine a time limit of eight days for its execution (Article 439). An appeal may be submitted within a time limit of eight days (Article 440). Finally, a review shall be allowed in litigation pertaining to labour disputes on employment, the course of employment and termination of employment (Article 441). The amendments from 2014 provide a rule: if, during proceedings concerning

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<sup>175</sup> Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, p. 169; Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 198; Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 258.

<sup>176</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 199.

illegal termination, the court determines that there were grounds for termination but the employer has not complied with the procedure, the court shall reject the employee's request to return to work and they will be awarded the equivalent of six monthly salary payments in damages.

*Mediation* – The Law on the Peaceful Resolution of Labour Disputes<sup>177</sup> prescribes the jurisdiction of the National Agency for the Peaceful Resolution of Labour Disputes in procedures in both individual and collective disputes. This includes conciliation, mediation and, in fewer cases, arbitration. The law distinguishes between individual and collective labour disputes. Collective labour disputes are, for example, disputes about collective agreements, unions and strikes. Individual labour disputes are disputes about minimum wages, termination of employment and the payment of a minimum wage, as well as discrimination and bullying (Article 3).

Mediation is also prescribed by the Law on Mediation.<sup>178</sup> This law made some improvements and advancements to the existing system, which dates from 2005, and brought changes in respect of the refinement and development of existing solutions that have proven to be inefficient in practice. The basic principles of mediation are that it should be conducted on a voluntary basis, in a procedure with strictly personal participation by the parties where the equal treatment of the parties; the privacy of the procedure; confidentiality, neutrality, and urgency; and the prohibition of the use of evidence in other proceedings are guaranteed. Agreement in the mediation procedure is achieved with the assistance of mediators who are appointed by and registered with the Ministry of Justice and Public Administration. The legal effectiveness of the agreement reached in the mediation procedure is equal to that of a court decision and the agreement is enforceable through enforcement proceedings. Initiating mediation causes an interruption in the duration of the statute of limitation for a period of 60 days in a court proceeding.

The Commissioner for the Protection of Equality is also entitled, but not obliged, to suggest or recommend mediation after an assessment of whether a case is suitable for mediation. The Commissioner is required to recommend mediation to the parties before taking the first action in the proceedings under the complaint. If both parties accept mediation, the complaint procedure is suspended until the end of the mediation process. If the parties reach an agreement, the procedure is completed, whereas if no agreement has been reached through the mediation process, the complaint procedure before the Commissioner is continued.

The mediation procedure is conducted by a mediator who is appointed by an authorised official of the Commissioner from a list of authorised mediators. Only qualified persons, who are not employed by the Commissioner, can be included in the list of mediators, provided that they meet the criteria and the closely defined requirements that have been established by the Commissioner.

In 2015, mediation was offered and accepted for the first time in two cases. While in 2016 there were no cases of mediation, in 2017 it was offered in one case.<sup>179</sup> However, in 2018 mediation was offered in 88 cases as a proper way to complete the case.<sup>180</sup> In 2019, the trend returned to the same level as in 2017, with mediation being proposed in only one case.<sup>181</sup>

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<sup>177</sup> Law on the Peaceful Resolution of Labour Disputes (*Zakon o mirnom rešavanju radnih sporova*), *Official Gazette of the Republic of Serbia*, Nos. 125/2004, 104/2009, 50/2018, 22 November 2004.

<sup>178</sup> Law on Mediation (*Zakon o posredovanju u rešavanju sporova*), *Official Gazette of the Republic of Serbia*, No. 55/2014, 23 May 2014.

<sup>179</sup> Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, p. 7.

<sup>180</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 268.

<sup>181</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 92.

*Misdemeanour procedure* – This procedure is regulated by a special law.<sup>182</sup> It can be initiated by certain bodies (administrative bodies, authorised inspectors, public prosecutors, etc.). Inspectors can initiate a misdemeanour procedure in order to secure the legality and safe operation and practices of public authorities (they can also review documents, take statements, see the premises, order enforcement measures, notify other authorities, etc). In addition, this procedure can be initiated by the individual who was discriminated against. The Commissioner for the Protection of Equality can initiate a misdemeanour notice, but cannot punish a discriminator with a fine directly. The LPD makes provision for several misdemeanours, which are regulated in 11 articles (Articles 50 to 60). In 2018, the Commissioner issued three misdemeanour charges for discrimination.<sup>183</sup> In two cases, a misdemeanour charge was issued for discrimination based on sex and family status in employment, while in one case a misdemeanour charge was issued for discrimination against Roma.

The LPDPD also makes provisions for several misdemeanours (Articles 46 to 52a) concerning people with disabilities.

*Criminal procedure* – The criminal law is set out in the Criminal Code, which contains several provisions relating to discrimination:

- Article 128 covers the violation of equality. In 2016, an amendment to the criminal Code expanded the prohibited grounds of discrimination to cover disability, sexual orientation and gender identity;<sup>184</sup>
- Article 129 covers the violation of the right to use a language or alphabet;
- Article 317 establishes as a criminal offence the instigation or exacerbation of ethnic, racial and religious hatred or intolerance;
- Article 344a prohibits the instigation of ethnic, racial and religious or other hatred or intolerance by means of actions or slogans at sporting events or public gatherings;
- Article 387 prohibits propagation of the idea of racial superiority or racial intolerance or discrimination.

In 2019, one criminal charge was submitted by the Commissioner for hate speech and advocating hatred against persons with disabilities.<sup>185</sup>

Under Article 54a of the Criminal Code, racial, religious, national and ethnic hatred, as well as hatred based on sex, sexual orientation and gender identity, can be considered to constitute aggravating circumstances. However, this is rarely applied in practice. ECRI welcomed the introduction of this provision, as it was intended to improve protections against hate crime. However, ECRI found that the application of the legislation against hate speech and violent hate crime was inefficient and that 'there is no decisive action against the activities of racist, homophobic and transphobic hooligan groups'.<sup>186</sup> In order to address the problem of the under-reporting of hate speech, and given that it is increasingly disseminated on the internet, it is necessary to provide police officers and prosecutors with specialist knowledge and technical tools in order to conduct investigations in an efficient manner.<sup>187</sup> Therefore, since 2016, many anti-discrimination training sessions for police officers were held by the Commissioner with the support of the Organization for Security

<sup>182</sup> Law on Misdemeanours, *Official Gazette of the Republic of Serbia*, Nos. 65/2013, 13/2016, 25 July 2013.

<sup>183</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 92.

<sup>184</sup> Amendments to the Criminal Code (*Zakon o izmenama i dopunama Krivичnog zakonika*), *Official Gazette of the Republic of Serbia*, No. 94/2016, 24 November 2016, Article 9. Other prohibited grounds are: national or ethnic origin, race or religion, political or other opinion, sex, language, education, social status, social origin, property and other personal characteristics.

<sup>185</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 125.

<sup>186</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 10.

<sup>187</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 23.

and Co-operation in Europe (OSCE) mission in Serbia, together with training sessions for judges, public prosecutors and police officers, with a view to improving their knowledge and skills as required for the efficient prosecution of hate crimes.<sup>188</sup> In addition, in all the appellate, higher and basic public prosecutors' offices, in compliance with the Instruction of the Republic Public Prosecutor A. No. 802/15 of December 2015, special records are kept on the hate crimes committed within the meaning of Article 54a of the Criminal Code.<sup>189</sup> In September 2018, the General Mandatory Instruction of the Republic Public Prosecutor O. No. 4/2018 was issued; it envisaged that prosecutors should be designated as contact points for hate crimes within the meaning of Article 54a of the Criminal Code in all the appellate, higher and basic public prosecutors' offices.<sup>190</sup> Finally, in 2018, the *Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia* were drawn up and published as a document intended for public prosecutors.<sup>191</sup>

While there is still no centralised official data on hate crimes, CSOs reported a slight increase of violence and attacks on LGBTIQ+ persons, including within their families.<sup>192</sup>

*Complaint procedure* – This procedure before the Commissioner for the Protection of Equality is a specific procedure, which has the characteristics of a special administrative procedure. Article 40(4) of the LPD expressly stipulates that the procedure before the Commissioner shall be conducted pursuant to the provisions of the Law on General Administrative Procedure.<sup>193</sup> The procedure for submitting a complaint is regulated in Articles 35 to 40. A complaint must be forwarded within 15 days of its submission to the alleged perpetrator of the violation, who has 15 days to respond to it. The Commissioner must give an opinion on whether there has been a violation of the prohibition of discrimination within 90 days of receiving a complaint, and must inform the individual who submitted the complaint and the individual against whom the complaint was submitted.

If the Commissioner finds that there has been a violation, they will issue a recommendation to the individual against whom the complaint was submitted, suggesting a means of redressing the violation in question. The individual to whom the recommendation is addressed is obliged to act on it and to redress the violation in question within 30 days of receipt of the recommendation. The individual must inform the Commissioner of the measures taken. If the individual fails to redress the violation in question within 30 days, the Commissioner may inform the public in the press and online. If the discriminator fails to comply with the recommendation, the individual(s) exposed to the discriminatory act can decide to initiate a lawsuit, or the Commissioner for the Protection of Equality can initiate a lawsuit in a case of strategic litigation. The Commissioner can also initiate a misdemeanour notice or a criminal charge.

In 2019, 711 complaints were submitted to the Commissioner for the Protection of Equality.<sup>194</sup>

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<sup>188</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 12 December 2018, para. 3.

<sup>189</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 12 December 2018, para. 4.

<sup>190</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 12 December 2018, para. 6.

<sup>191</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined second to fifth periodic reports of Serbia*, 12 December 2018, para. 8.

<sup>192</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 28.

<sup>193</sup> Law on General Administrative Procedure (*Zakon o opštem upravnom postupku*), *Official Gazette of the Republic of Serbia*, No. 18/2016, 9 March 2016. The Law will apply from 1 June 2017.

<sup>194</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 7.

b) Barriers and other deterrents faced by litigants seeking redress

There is a certain overlap between the three anti-discrimination laws, as disability and gender discrimination can be challenged under the general and specific law on discrimination. However, it seems that discrimination based on disability has thus far mostly been challenged under the specific law, while cases based on gender discrimination are mostly challenged under the LPD, although the GEA is better equipped to protect victims of discrimination. The jurisdiction for cases of discrimination was transferred in January 2014 from the basic to the higher courts<sup>195</sup> and some relevant jurisprudence is still developing. In addition, there is an overlap between the LPD and the Labour Law, and it is not always clear to judges that in a case of discrimination, even if the procedure was initiated under the Labour Law, the more favourable provisions enshrined in the LPD should be applied (e.g. the procedure is urgent).

Judges have problems with applying the provision on shifting the burden of proof, although some progress has been visible in the past two years. In addition, it is problematic for them to identify the right comparator group, to apply the proportionality test or even to identify the real ground for discrimination. In some cases, judges mix up discrimination and bullying, although it must be admitted that this has been happening less since 2017. Finally, judges do understand that not every case of unequal treatment can be considered to be discrimination, and courts underline in their judgments that such different treatment must be based on personal characteristics.<sup>196</sup> However, cases are still not decided with urgency, and courts usually award small amounts in non-pecuniary damages, demonstrating that they still do not understand the detrimental effect of discriminatory treatment. The same applies to courts for misdemeanours; the range of fines is very small (around EUR 80 to EUR 800) in comparison with fines for other acts covered by laws outside the discrimination legislation.

Although the procedure before the Commissioner is free of charge, for civil procedures alleged victims of discrimination need professional legal aid. The Law on Free Legal Aid was finally adopted in 2018, and it entered into force in October 2019. It is expected that the Law will secure the possibility for lawyers and NGOs who specialise in dealing with discrimination cases to access public funds for the provision of legal aid.

Another problem is the length of proceedings. Serbia is facing a huge problem with trials that last for an unreasonably long time. The Law on the Protection of Trials Within a Reasonable Timeframe aims to provide legal remedies for unreasonably long trials and to speed up the procedure, but in 2019 it did not achieve its purpose.<sup>197</sup> There is also a problem with the enforcement of court decisions. The courts are subject to organisational changes, and many buildings and courtrooms are not fully accessible for people with disabilities. The only positive trend in 2018 was the more frequent use of mediation in discrimination cases before the Commissioner for the Protection of Equality. This positive practice shows the need to create rules that will encourage the development of specific forms of mediation, including mediation in discrimination cases, which should be relocated from the courts.

Finally, although the Commissioner has a wide range of mechanisms at their disposal, these are not very efficient, as most recommendations are not fully considered and

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<sup>195</sup> Law on the Organisation of the Courts (*Zakon o uređenju sudova*), *Official Gazette of the Republic of Serbia*, Nos. 116/2008, 104/2009, 101/2010, 31/2011 – other laws, 78/2011, 101/2011, 101/2013, 106/2015, 40/2015, 13/2016, 108/2016, 113/2017 – CC decision, 87/2018, 88/2018 – CC decision, 22 December 2008.

<sup>196</sup> See, e.g. Appellate Court in Kragujevac, Gž1 - 1789/18, judgment of 17 January 2019; Higher Court in Subotica, P 3217/2018, judgment of 17 January 2019; Court of Cassation, Rev 2. 1283/2019, judgment of 19 July 2019; Court of Cassation, Rev 2. 1635/2017, judgment of 17 December 2019.

<sup>197</sup> Belgrade Centre for Human Rights (2020), *Human Rights in Serbia in 2019 – law, practice and international standards of human rights (Ljudska prava u Srbiji 2018 – pravo, praksa i međunarodni standardi ljudskih prava)*, Belgrade, p. 76.



respected. Reasons for this arise from the fact that the Commissioner is not authorised to punish a perpetrator of discrimination by imposing fines and is not able to initiate proceedings *ex officio* when they have knowledge of discriminatory conduct. This was criticised by ECRI, which pointed out that the Commissioner still lacks the power to take up cases of discrimination *ex officio*.<sup>198</sup> It also remains unclear whether a court is bound by the Commissioner's opinion on the existence or otherwise of discrimination in a discrimination case that is brought before it. Current practice illustrates that judges do not feel bound by the Commissioner's opinion, even when it comes to discussing on what grounds they base their decision and whether it derives from the opinion of the Commissioner.

c) Number of discrimination cases brought to justice

In Serbia, statistics on the number of cases related to discrimination that are brought to justice are not available. However, statistics are available on the complaints submitted to the Commissioner for the Protection of Equality. As mentioned above, in 2019, 711 complaints were submitted to this specialised body in comparison with 626 complaints in 2016, 532 in 2017 and even 947 in 2018.<sup>199</sup>

In total, 18 lawsuits have been initiated by the Commissioner since 2010. They concern the following grounds: eight lawsuits for discrimination against Roma; three for sex discrimination; one for discrimination based on sexual orientation; one for discrimination based on disability; and five for multiple discrimination.<sup>200</sup> The number of cases processed each year has not risen as was the case in previous years, and the numbers are still insignificant in the context of the widespread nature of discrimination in practice in all spheres of society. The reasons for this lie not so much in insufficient awareness and knowledge of discrimination, but in the reluctance of victims to seek help.

d) Registration of discrimination cases by national courts

In Serbia, discrimination cases are not registered as such by national courts. They are usually registered as labour disputes or bullying. These data are available to the public only if a decision is posted on the website of a particular court (they are put into a database for which a paid subscription is needed), or if someone requests the data under the Law on Free Access to Information of Public Importance.<sup>201</sup> However, even in that case, some decisions will not be included as they have been wrongly classified.

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Serbia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination. Article 35(3) of the LPD provides that a lawsuit may be initiated by an organisation that is engaged in the protection of human rights or the rights of a certain group of people, on behalf of and with the agreement of the individual whose rights have been violated.

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<sup>198</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 16.

<sup>199</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 244.

<sup>200</sup> Commissioner for the Protection of Equality, *Guidelines for strategic litigation (Smernice za strateške parnice)*, Belgrade, September 2018, p. 34.

<sup>201</sup> Law on Free Access to Information of Public Importance (*Zakon o pristupu informacijama od javnog značaja*), *Official Gazette of the Republic of Serbia*, Nos. 120/2004, 54/2007, 104/2009 and 36/2010, 5 November 2004.

NGOs are more active in submitting complaints on behalf of victims of discrimination to the Commissioner for the Protection of Equality, but some of them also initiate lawsuits, mostly in relation to discrimination against members of the LGBTI and Roma communities. When they decide to initiate lawsuits, they do so in important cases that concern all members of a particular group, such as a hate speech case in which many detrimental stereotypes and prejudices are expressed in public.

Trade unions can represent a member in a labour dispute, through a lawyer who has passed the bar exam (Article 85(3) of the Civil Procedure Code).

The LPDPD does not provide for the possibility that organisations can initiate a lawsuit.

The LPD requires that, if discriminatory treatment affects a particular individual, organisations may initiate a lawsuit only with the written consent of that individual. Otherwise, consent is not needed.

Standing does not depend on the number of years for which the organisation has been operating. It is important only to consult the statutes of an organisation and to demonstrate that it deals with human rights or the protection of certain vulnerable groups. Organisations can submit different claims stipulated in the LPD, except claims for pecuniary and non-pecuniary damages, because they initiate proceedings in order to protect an individual or a group of people who are exposed to discriminatory acts, and in order to prove discrimination. In other words, they cannot seek damages for individuals who are affected by discriminatory acts.

#### b) Engaging in proceedings in support of victims of discrimination

In Serbia, associations, organisations and trade unions are entitled to act in support of victims of discrimination. The right to intervention is not explicitly mentioned in the LPD, but it stems from Article 35(3) and (4), which grant standing to initiate lawsuits to organisations and to the Commissioner for the Protection of Equality. These rights also derive from the Civil Procedure Code (Articles 215 to 217), which is *lex generalis* to the LPD, and which affords the right to intervene in someone else's anti-discrimination lawsuit to those who have legal authority to initiate a lawsuit. Thus, Article 215(1) states that 'If an individual has a legal interest in assisting one of the parties in litigation, such an individual may join that party'. The individual who intervenes may become involved in the litigation at any time during the proceedings, until the judgment on the claim comes into effect, as well as during the proceedings for extraordinary legal remedy (Article 215(2)).

#### c) Actio popularis

In Serbia, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*). This right is not recognised in the LPD, but derives from the Law on Contract and Torts,<sup>202</sup> which in Article 156 establishes a duty to eliminate danger of injury or loss.

This provision means that anyone can demand that appropriate measures be taken to prevent damage to them or to an unspecified number of people. This is particularly applicable in discrimination cases.<sup>203</sup> However, this possibility has not been tested in practice in discrimination cases.

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<sup>202</sup> Law on Contract and Torts, *Official Gazette of the SFRJ*, Nos. 29/78, 39/85, 45/89 – decision CCJ and 57/89, *Official Gazette of the SRJ*, No. 31/93 and *Official Gazette of the Republic of Serbia SCG*, No. 1/2003 – Constitutional Charter, 1 July 1978.

<sup>203</sup> Article 156 prescribes that anyone may demand another to eliminate a source of danger threatening considerable damage to them or to an unspecified number of persons, as well as to refrain from an activity causing disturbance or risk of loss, should the ensuing disturbance or loss be impossible to prevent by adequate measures (para. 1). On the request of an interested person, the court shall order adequate

Although the Commissioner for the Protection of Equality is not allowed to initiate *actio popularis* under the LPD, she can initiate strategic litigation in a case that demonstrates frequent and widespread discrimination in respect of which there are good prospects for success. It was previously unclear whether the Commissioner needed consent in the case of two or more victims of discrimination, as would be necessary in the case of one person. In September 2014, the Supreme Court of Cassation put an end to this debate and held that the Commissioner did not need written consent in a case that affected a group of people: children of Roma origin.<sup>204</sup> Therefore, even if the victims were a group of identified people, it would still qualify as *actio popularis*.

#### d) Class action

In Serbia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event, but not in discrimination cases.

The 2011 Civil Procedure Code introduced so-called organisational claims for the protection of collective rights and interests,<sup>205</sup> but in 2013 the Constitutional Court proclaimed the articles which regulate that procedure to be unconstitutional. As a consequence of this decision, on 23 June 2014, the third basic court in Belgrade rejected the first collective claim submitted by an association of bank clients on the issue of foreign currency loans in Swiss francs, which covered 10 000 clients.<sup>206</sup> Therefore, this judgment prevented others from using the possibility of bringing a class action in discrimination cases. However, this example does not mean that there is no access to class action.

The Law on Consumer Protection regulates protection of the collective interests of consumers, but this protection has been moved from civil to administrative procedure.

### 6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Serbia, national law requires a shift of the burden of proof from the complainant to the respondent.

The LPD prescribes a shift of the burden of proof in civil proceedings, unlike the LPDPD, which does not provide a rule on reversing the burden of proof from complainant to defendant in cases of discrimination based on disability.

Article 45(1) of the LPD states that 'if the court establishes that a direct act of discrimination has been committed, or if that fact is undisputed by the parties to the lawsuit, the defendant may not be relieved of responsibility by supplying evidence that they are not guilty'. If the complainant 'proves the likelihood of the defendant's having committed an act of discrimination, the burden of providing evidence that no violation of the principle of equality or the principle of equal rights and obligations has occurred shall fall on the defendant' (Article 45(2)). In other words, the shift of burden of proof from the complainant to the respondent happens in the following way. If the complainant proves the likelihood of the defendant's having committed an act of discrimination, the burden of

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measures to be taken to prevent the emergence of damage or disturbance, or to eliminate the source of risk – at the expense of the individual who is the source of the risk, should they fail to act accordingly (para. 2).

<sup>204</sup> See Commissioner for the Protection of Equality (2015), *Regular annual report of the Commissioner for Protection of Equality for 2014*, Belgrade, p. 128.

<sup>205</sup> They were introduced for the protection of collective rights and interests and for the protection of consumers (Articles 495 to 505). Civil Procedure Code (*Zakon o parničnom postupku*), *Official Gazette of the Republic of Serbia*, Nos. 72/2011, 49/2013 – CC decision, 74/2013 – CC decision, 55/2014, 28 September 2011.

<sup>206</sup> See Efektiva, 'Kolektivna tužba odbačena kao nedozvoljena!?' ('Collective claim rejected as inadmissible?'), 8 July 2014, available at: <http://efektiva.rs/aktuelnosti-krediti/kolektivna-tuzba-odbacena-kao-nedozvoljena>.

providing evidence that no violation of the principle of equality has occurred will fall on the defendant. This means that the complainant must prove to a reasonable degree of likelihood that the defendant committed an act of discrimination. If they succeed in this, the defendant has a duty to prove that the act was not a violation of the principle of equality.

The case law still does not provide clear rules on the application of this principle, although there are more cases in which judges insist on shifting the burden of proof.<sup>207</sup> However, it must be interpreted to mean that the rule on the burden of proof also applies to harassment.<sup>208</sup> Since 2014, the Labour Law has provided, in Article 23(2), for the reversal of the burden of proof in discrimination cases, including harassment.

However, the rules on the burden of proof, despite being enshrined in the procedural part of the LPD, are not procedural in their nature, but rather substantive. As a consequence, the court decides whether particular conduct constitutes discrimination. It is declared only in the explanation of the verdict, without mentioning that the reverse burden of proof was applied, and at which moment the claimant proved the likelihood that the defendant committed an act of discrimination and the burden shifted to the defendant to prove that the act was not discriminatory. The Commissioner refers in its regular report for 2018 to one study conducted in 2017, which illustrates that only six judgments refer to the evidence procedure and explain in detail the reverse burden of proof.<sup>209</sup>

This situation is further exacerbated by the fact that the Civil Procedure Code (which applies as *lex generalis*) imposes a duty to present all the facts necessary to justify its submission at the preparatory session or at the first hearing; to submit evidence; to take a stand on the allegations and evidence provided by the opposing party; and to propose a timeframe for the implementation of the procedure (Article 308). This means that both sides provide their evidence at the beginning of the procedure and do not know whether the complainant has proved the likelihood of discrimination until the end of the procedure.

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Serbia, there are measures for protection against victimisation. Victimisation is enshrined in the LPD as a special form of discrimination.<sup>210</sup> Article 9 states that 'Discrimination shall exist if an individual or a group of persons is unwarrantedly treated worse than others are treated or would be treated, solely or predominantly on account of requesting or intending to request protection from discrimination, or due to having offered or intending to offer evidence of discriminatory treatment'. This law protects victims of discrimination, as well as people other than the complainant, such as witnesses or someone who helps the victim of discrimination to bring a complaint. However, there is still a lack of relevant case law on this matter, as well as judicial interpretation as to whether the reversal of the burden of proof applies to victimisation under the LPD. It is necessary to align the definition of victimisation in the LPD with that given in the two EU directives from 2000 in order to provide protection against dismissal and any other consequence that may arise as a reaction to the complaint.

However, the LPD does not impose a positive obligation on employers to introduce protection measures against victimisation, nor does it provide express protection from dismissal in the event of a complaint regarding discrimination.<sup>211</sup>

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<sup>207</sup> See, for example, Appellate Court in Belgrade, Gž. 1 438/2018, judgment of 11 January 2019.

<sup>208</sup> See Petrusić, N., Krstić, I. and Marinković, T. (2014), *Commentary on the Law on the Prohibition of Discrimination*, Commissioner for the Protection of Equality, Judicial Academy, Belgrade, p. 188.

<sup>209</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for Protection of Equality for 2018*, Belgrade, p. 52.

<sup>210</sup> Victimisation is known as 'calling to account' in Serbian law.

<sup>211</sup> Equal Rights Trust (2019), *Equality in Practice – Implementing Serbia's Equality Laws*, London, p. 53.

The Commissioner, in its annual report for 2019, underlines that in some complaints procedures it is noticeable that the complainants or witnesses are afraid of losing their jobs or of further victimisation, which is the reason why individuals refuse to continue the procedure.<sup>212</sup>

Victimisation is not covered by the LPDPD.

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

### **a) Applicable sanctions in cases of discrimination – in law and in practice**

In Serbia, there is a range of applicable sanctions in discrimination cases. Article 43(4) of the LPD expressly allows compensation for material and non-material damage in discrimination cases.<sup>213</sup> In addition, Article 43(4) of the LPDPD expressly provides for compensation of damages which occur due to a discriminatory act.<sup>214</sup> The principles set out in the Law on Contract and Torts apply for determining the type of damage.

According to Article 43 of the LPD, the complainant may also demand the following:

- the imposition of a ban on an action that poses the threat of discrimination, a ban on proceeding with a discriminatory action or a ban on repeating a discriminatory action;
- that the court establish that the defendant has treated the complainant or another party in a discriminatory manner;
- that steps be taken to redress the consequences of the discriminatory treatment; and;
- that the decision passed be published.

As discrimination cases are urgent, it is sometimes necessary to pass a temporary measure in order to prevent discriminatory treatment and victimisation, with a view to eliminating the risk of violence or major irreparable damage. Both anti-discrimination laws prescribe that the complainant may demand temporary measures when initiating a lawsuit, in the course of the proceedings and after the termination of the proceedings, until the court decision is enforced. The request for the adoption of a temporary measure must prove the necessity of doing so in order to eliminate the risk of violence or irreparable damage. The court is obliged to issue its decision on a request for the adoption of a temporary measure immediately or within a very short period of time. The LPDPD stipulates 48 hours for a decision at the very latest, while the LPD prescribes three days. However, temporary measures are extremely rare in civil proceedings.<sup>215</sup>

The LPD (Articles 50 to 60) and the LPDPD (Articles 46 to 52) prescribe the fines that can be imposed in misdemeanour proceedings. Monetary fines for misdemeanours range from between RSD 10 000 and RSD 50 000 (approximately EUR 80 to EUR 400) for individuals (Articles 50 to 60 of the LPD) to the sum of between RSD 10 000 and RSD 100 000 (approximately EUR 80 to EUR 800) for legal entities (Articles 52 to 60 of the LPD). The same goes for the LPDPD, which in Articles 46 to 52 prescribes the same range of monetary

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<sup>212</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 38.

<sup>213</sup> If the complainant is the Commissioner for the Protection of Equality, an organisation engaged in the protection of human rights or the rights of a certain group of people, or a person who deliberately exposed themselves to discriminatory treatment intending to directly verify the application of the regulations pertaining to the prohibition of discrimination in a particular case, compensation cannot be claimed.

<sup>214</sup> According to Article 43 of the LPDPD, the complainant can request: (1) court prohibition of further discriminatory behaviour, (2) remedy actions to remove the consequences of discriminatory behaviour, (3) the court's confirmation that an action or behaviour is discriminatory, and (4) compensation for pecuniary and non-pecuniary damages incurred due to discriminatory behaviour.

<sup>215</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for Protection of Equality for 2018*, Belgrade, p. 52.

finer. In addition, other laws that contain anti-discrimination clauses also cover misdemeanours, such as the Labour Law and the Law on the Fundamentals of Education.

Finally, some acts are considered to be criminal acts, for which it is possible to impose monetary fines or imprisonment. For criminal acts, prescribed by the Criminal Code, the following sanctions can be imposed:

- violation of Article 128 (violation of equality): up to three years' imprisonment and, for the more severe form, three months' to five years' imprisonment;
- violation of Article 129 (violation of the right to use a language or alphabet): monetary fine or up to one year of imprisonment;
- violation of Article 317 (instigation or exacerbation of ethnic, racial and religious hatred or intolerance): from six months' to 10 years' imprisonment;
- violation of Article 344a (instigation of ethnic, racial and religious or other hatred or intolerance by means of actions or slogans at sporting events or public gatherings): from three months' to 12 years' imprisonment;
- violation of Article 387 (racial and other discrimination): from three months' to five years' imprisonment for the more severe form.

b) Compensation - maximum and average amounts

In Serbia, there is no ceiling on the maximum amount of compensation that can be awarded, and in civil procedures the amount is subject to the judge's discretion. However, the average amount in the current jurisprudence cannot be deemed appropriate in comparison with the amount of compensation in some other areas. This applies in particular to compensation for non-pecuniary damages. For example, there have been several cases involving discrimination against people with disabilities and their carers on public transport, who experienced insults and harassment from bus drivers and passengers as they used special cards for free travel, to which they were entitled by law. In these cases, the court found that discrimination had taken place and ordered pecuniary damages, but with regard to non-pecuniary damages the court believed that it should not award the amount requested, or it awarded a token amount in comparison to other cases (e.g. insult).<sup>216</sup>

c) Assessment of the sanctions

In recent years, there has been an increase in the number of discrimination cases, but in practice there are several problems that affect the effectiveness of sanctions.

In anti-discrimination cases, it is important to establish an urgent procedure and to allow a quick remedy for people who have been exposed to discrimination. Although Article 41(2) of the LPD provides that the proceedings shall be conducted swiftly, in practice discrimination cases are not treated as urgent. It usually takes more than three years to receive a final decision, which influences the effectiveness of sanctions.

Another problem in discrimination cases lies in the application of the principle of shifting the burden of proof, which is prescribed in the LPD but not in the LPDPD. It is very important to use the mechanism of shifting the burden of proof, as otherwise it will be hard to prove discrimination and to apply an adequate sanction.

As has been mentioned, sanctions imposed in discrimination cases are very mild, especially in relation to compensation for non-pecuniary damages. Another problem is the fact that the monetary fines which can be imposed are symbolic in comparison to the fines imposed in areas other than discrimination. In practice, judges impose the lowest fines for misdemeanours, even in very serious cases of discrimination. An illustrative example is a

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<sup>216</sup> See, for example, Supreme Court of Cassation, Rev. 3602/10, 16 December 2010; Supreme Court of Cassation, Rev. 66/12, February 2012.

case of segregation of Roma children in a primary school. In this case, Roma children for several years attended separate classes in an old building that was located in the same courtyard as the new building where the other pupils learned.<sup>217</sup> The judge imposed a fine of RSD 30 000 (EUR 250) on the school and RSD 5 000 (EUR 45) on the principal. In determining the amount and type of punishment, the court found as an aggravating circumstance that the offence was of a serious nature, while as a mitigating circumstance it found that the principal was a father of three children who earned a middle-range income, and that the offence did not cause serious consequences, although the children were completely separated from their peers for several years.

This shows that, despite the fact that knowledge among judges about the need for prohibition of discrimination has increased, they are still not fully aware of the detrimental effect of discriminatory acts. On the other hand, both anti-discrimination laws provide different measures, from the prohibition of the discriminatory act to compensation and the publication of the court decision, which has proved to be a very effective measure in Serbia. The same is indicated in the practice of the Commissioner for the Protection of Equality, whose opinions are mostly respected in order to prevent their publication.

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<sup>217</sup> See Court for Misdemeanours in Novi Pazar, Pr. br. 684/12-69, 13 September 2013; see also Court for Misdemeanours in Novi Pazar, Pr. br. 7 – 4162/ 13-67, 14 May 2014.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

In Serbia, a 'specialised body' – the Commissioner for the Protection of Equality – has been designated under Article 1(2) of the LPD for the promotion of equal treatment irrespective of any ground, including racial or ethnic origin, in accordance with Article 13 of the Racial Equality Directive. The first Commissioner was elected in May 2010, and the second in May 2015.

- b) Political, economic and social context of the designated body

The Commissioner for the Protection of Equality is working at a very challenging time, bearing in mind that independent bodies do not have real support from the Government. From their establishment, independent bodies in Serbia face difficulties in getting adequate premises for their work, adequate financial means and staff as well as technical and other support.<sup>218</sup>

It is illustrative to mention that the Office of the Commissioner opened in June 2011, in premises that were not adequate in terms of accessibility and technical and spatial capacity. That situation remained unchanged, although the number and range of activities of the Office increased over time. For that reason, the Commissioner repeatedly stated in their reports that there was a need to improve the spatial capacity for the Commissioner's work.<sup>219</sup> On 30 October 2015, the Commissioner finally received a decision on moving to other premises<sup>220</sup> that would meet the spatial and technical requirements in an area of 1 008 m<sup>2</sup>. Since October 2016, the Commissioner has been using the new premises, which has made it possible to employ 60 staff members as stipulated by internal acts.<sup>221</sup> In 2017, 36 staff members were employed, which is 60 % of the estimated total number.<sup>222</sup> ECRI has concluded that the Commissioner has been provided with additional staff and appropriate premises, and that she has a 'high degree of independence'.<sup>223</sup> In 2018, the number of employed staff members increased to 39, or 65 % of the estimated total number,<sup>224</sup> which is still not enough, bearing in mind the number of activities that the Commissioner performs. In 2019, the situation did not improve – quite the opposite. While an internal act stipulated the necessity of having 60 staff members (five less than the recommendation in 2018), only 39 were employed.<sup>225</sup>

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<sup>218</sup> Marko Davinic (2018), *Independent controlling bodies in the Republic of Serbia (nezavisna kontrolna tela u Republici Srbiji)*, Belgrade, p. 296. See also Civil Right Defenders (2019) *Effectiveness of Human Rights Institutions in the Western Balkans: Montenegro, North Macedonia, Serbia, Comparative Report, What is behind and beyond average?*

<sup>219</sup> Commissioner for the Protection of Equality (2017), *Regular annual report of the Commissioner for the Protection of Equality for 2016*, Belgrade, p. 15.

<sup>220</sup> Commissioner for the Protection of Equality (2016), *Regular annual report of the Commissioner for the Protection of Equality for 2015*, Belgrade, p. 28.

<sup>221</sup> Rulebook on internal arrangement and systematisation of working matches in the expert service of the Commissioner (*Pravilnik o unutrašnjem uređenju i sistematizaciji radnih mesta u Stručnoj službi Poverenika*), Personnel Plan for 2018, *Official Gazette of the Republic of Serbia*, No. 113/2017, 25 December 2017.

<sup>222</sup> Commissioner for the Protection of Equality (2018), *Regular annual report of the Commissioner for the Protection of Equality for 2017*, Belgrade, p. 20.

<sup>223</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, pp. 9, 16.

<sup>224</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 24.

<sup>225</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 26.



c) Institutional architecture

In Serbia, the Commissioner does not form part of a body with multiple mandates. The Commissioner for the Protection of Equality was established by the LPD as an independent, autonomous and specialised state body with a wide mandate in the area of the promotion of equality and anti-discrimination in all spheres of society.

There is no other national institution, apart from the Commissioner, dealing with discrimination issues, although the Ombudsman (the Protector of Citizens) can decide on cases that contain elements of discrimination. The Ombudsman is an independent and autonomous public body that is responsible for the protection and promotion of human rights and freedoms. The institution focuses in particular on the protection of national minorities, children's rights, the rights of people with a disability, the rights of persons deprived of liberty and gender issues.

d) Status of designated body – general independence

i) Status of the body

The Commissioner for the Protection of Equality was established by the LPD as an independent, autonomous and specialised state body. 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 may not perform any other public or political function or any political activity, in accordance with the law (Article 28(5)).

The Commissioner shall have the right to a salary equal to that of a judge of the High Court of Cassation, as well as the right to reimbursement of the expenses incurred in connection with performing their function. The Commissioner shall be entitled to the immunity enjoyed by representatives of the people in the National Assembly (Article 31). The Commissioner has an expert service to help them in performing the work that they are authorised to do. They are also entitled to appoint three assistants. In addition, the Commissioner decides independently, in accordance with the law, on the employment of staff members for the expert service, on the basis of the need for the professional and efficient discharge of the work that the Commissioner is authorised to do. The funds required for the work of the Commissioner, their assistants and the expert service is provided from the budget of the Republic of Serbia, acting on a proposal submitted by the Commissioner. The Commissioner's head office is in Belgrade, with a regional office in Novi Pazar, which means that there is no equal geographic distribution of regional offices.

ii) Independence of the body

The immunity enjoyed by the Commissioner for the Protection of Equality enables the independence of her work.

The Commissioner is elected for a period of five years and can be re-elected once (Article 29). According to Article 30, the Commissioner's function shall cease: upon the expiry of their mandate; if they submit a resignation notice in writing to the National Assembly; if they fulfil the conditions for retirement, in accordance with the law; if they are relieved of their duty; and in the case of their death.

The Commissioner shall be relieved of their duty:

- if they perform their work unprofessionally and negligently;
- if it is established, by an enforceable court decision, that the Commissioner has committed a criminal offence punishable by a prison sentence, when the nature of the offence makes them unworthy and unfit to perform the function of Commissioner;

- if they lose their citizenship and;
- if they perform another public function or professional activity; if they perform another duty or a job that could influence their independence; or if they act contrary to the law regulating conflict of interest when it comes to performing public functions.

The National Assembly can pass a decision to relieve the Commissioner of their duties by a majority vote of the overall number of representatives of the people.

The Commissioner is accountable to the National Assembly. In accordance with Article 48 of the LPD, the Commissioner submits to the National Assembly an annual report on the situation in the field of protection of equality. The Regular Annual Report of the Commissioner for 2017 was presented in detail at the 16th session of the Committee on Human and Minority Rights and Gender Equality of the National Assembly of the Republic of Serbia, which was held on 22 May 2018, but the report was not considered in the session of the National Assembly. The National Assembly considers that the report should serve as a good basis for actions within legislative and supervisory powers of the Assembly. However, after four years, in 2019, the annual report was discussed in plenary session in the National Assembly.

e) Grounds covered by the designated body

According to Article 2(1) of the LPD, grounds explicitly covered by the mandate of the Commissioner are 'race, skin colour, ancestry, citizenship, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance and membership of political, trade union and other organisations'. Although Article 1(2) contains an open clause provision, it will not be considered to protect same-sex family status until the adoption of the Law on Registered Partnerships. The Commissioner acts upon complaints equally, no matter which ground of discrimination is at stake. However, as the Commissioner has a wide range of competences, it gives preference to some grounds of discrimination (Roma, people with disabilities, LGBTQ+) in warning the public about the most frequent and particularly prevalent forms of discrimination and provide training and issuing publications concerning those grounds.

f) Competences of the designated body - and their independent exercise

i) Independent assistance to victims

The Commissioner has the competence to provide independent assistance to victims of discrimination.

From the point of view of victims of discrimination, the Commissioner's most relevant tasks are to receive and consider claims regarding discrimination. The Commissioner can provide assistance in the form of fulfilling applications; by providing an opinion and recommendations in concrete cases; and by providing information to the complainant on their rights and the possibility of initiating a lawsuit or other types of protection measures (Article 33(2) of the LPD. The Commissioner can also file lawsuits for protection from discrimination on behalf of, but with the approval of, the individual who has experienced discrimination, and initiate a misdemeanour notice against an act of discrimination. Thus far, it can be concluded that this task has been performed successfully and in an independent manner.

ii) Independent surveys and reports

According to Article 33(5) of the LPD, the Commissioner is responsible for preparing and submitting annual and special reports to the Parliament on the situation in the field of

protection of equality. The content of annual reports is prescribed by Article 48 of the LPD, which also sets out the reasons for preparing special reports (Article 49 of the LPD). The Commissioner submits annual reports on the work that it has done to the National Assembly in March each year. These reports contain an evaluation of the situation in Serbia concerning the protection of equality and activities carried out by the Commissioner. In addition, the Commissioner can prepare and submit special reports on its own initiative, or on the request of the National Assembly. These reports contain analyses of the position of certain groups that face discrimination and recommendations for the improvement of that position by undertaking measures to combat discrimination more effectively. The annual report for 2019 was submitted on time (on 13 March 2020).<sup>226</sup> The report is very comprehensive and contains several sections: a normative anti-discrimination framework; a description of the current situation in the area of equality and non-discrimination; and key problems and challenges in achieving equality and combating discrimination in Serbia. The report also contains information on activities performed by the Commissioner in 2019 and their cooperation with other bodies and institutions. The Commissioner underlines that, in order to successfully combat discrimination and achieve equality, it is necessary to ensure that all mechanisms to protect against discrimination are effective. In addition, it is imperative to create a social discourse in which discrimination is condemned and citizens are aware of their rights and the mechanisms for their protection. The report also contains information on the number of complaints that were submitted in 2019 (the highest number concerns disability discrimination, followed by discrimination based on sex, health conditions and age). Discrimination appears most frequently in the area of labour, procedures before the public authorities, in education and in the provision of public services.

Thus far, the Commissioner has prepared special reports concerning the position of persons with disabilities, children and women,<sup>227</sup> while in 2019 the Commissioner prepared a report on discrimination in employment.<sup>228</sup> In 2019, the Commissioner also requested a survey on Attitudes of Citizens towards Discrimination in Serbia,<sup>229</sup> which revealed some interesting results. Almost half of citizens (48 %) believe that the presence of discrimination is at the same level as it was in 2016, while 69 % believe that it is very much present or mostly present in Serbian society. This perception is least prevalent among those aged 15 to 19 years, and most prevalent among those aged 20 to 29 years. The majority of those with high-school education (74 %) share this opinion. The great majority of citizens (74 %) believe that discrimination is very much present in the workforce, while perceived levels of discrimination are lower in other areas such as social protection (30 %), health care (29 %), education (20 %), judiciary (17 %), and the media (11 %). Around 69 % of citizens are aware that discrimination is prohibited by law (67 % in 2016); this perception is most prevalent among respondents aged 30 to 39, those with a high-school diploma and those from western and central Serbia. Around 41 % of respondents believe that sanctions are effective in cases of discrimination; this opinion is mostly shared by those aged 20 to 29 years (55 %), those with a high-school diploma (42 %) and those living in the capital, Belgrade (47 %). Only 7 % of respondents believe that sanctions are totally effective. A majority of the respondents believe that the media (59 %), political parties (54 %) and citizens (53 %) generate discrimination, while 84 % believe that the media is so powerful that it can also influence a reduction of discrimination

<sup>226</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, available at: <http://ravnopravnost.gov.rs/izvestaji/>.

<sup>227</sup> Commissioner for the Protection of Equality (2013), *Special report on discrimination of people with disabilities (Poseban izveštaj o diskriminaciji osoba sa invaliditetom u Srbiji)*, Belgrade; Commissioner for the Protection of Equality (2013), *Special report on discrimination of children (Poseban izveštaj o diskriminaciji dece)*, Belgrade; Commissioner for the Protection of Equality (2015), *Special report on discrimination of women (Poseban izveštaj o diskriminaciji osoba žena)*, Belgrade.

<sup>228</sup> Commissioner for the Protection of Equality (2019), *Special report on discrimination in employment (Poseban izveštaj Poverenika za zaštitu ravnopravnosti o diskriminaciji u oblasti rada i zapošljavanja)*, Belgrade, available (in Serbian) at <http://ravnopravnost.gov.rs/izvestaji/>.

<sup>229</sup> Commissioner for the Protection of Equality (2019), *Attitudes of Citizens towards Discrimination in Serbia (Odnos građana i građanki prema diskriminaciji u Srbiji)*.

in society, together with the family (78 %), school (76 %), and the Commissioner for the Protection of Equality (65 %). Citizens are of the opinion that the media in general do not pay enough attention to issues relating to discrimination. At the same time, 28 % of respondents believe that discrimination is an extremely significant problem in a society and must be prioritised. However, the number of citizens who are ready to report a case of discrimination has significantly decreased, as 41 % of the respondents answered that they would not report such a case (59 % said that this was because of a distrust in public institutions). Only 22 % said that they would report a case to the Commissioner. The greatest distrust was identified among the elderly, who are defined as those aged 70+. Respondents believe that the groups that face the most discrimination in Serbia are: Roma (51 %), women (42 %), LGBTIQ+ (33 %), persons with mental disability (33 %) and the poor (31 %). When respondents are offered a list of 17 groups, the order is slightly different: the poor (27 %), Roma (25 %), persons with mental disability (24 %), elderly (21 %), LGBTIQ+ (21 %), persons with HIV/AIDS (20 %) and women (16 %). The idea of social distance towards the same groups in society is still very much present, with an increase in social distance towards migrants. The greatest social distance exists towards the following groups: migrants, LGBTIQ+ and Albanians, persons with HIV/AIDS, Roma, and persons with mental disability.<sup>230</sup>

This competence of the Commissioner has been effectively exercised in an independent manner in practice.

### iii) Recommendations

According to Article 33(9) of the LPD, the Commissioner for the Protection of Equality can recommend measures to state bodies and institutions and other persons aimed at ensuring equality. Recommendations can be directed towards ensuring that public authorities take measures to prevent and eliminate institutional discrimination and improve the functioning of the institutions, and that they undertake positive measures in order to provide full equality and protection for, and ensure the advancement of, people or groups who are in an unequal position in comparison with other citizens. In 2019, the Commissioner issued 686 recommendations concerning different groups facing discrimination and different areas, in comparison with 300 in 2018.<sup>231</sup> In a complaint procedure, according to Article 39, the Commissioner gives an opinion on whether there is a violation of the LPD in a concrete case. If a violation is found, the Commissioner issues a recommendation and suggests a way of redressing the matter. The person to whom the recommendation is addressed is obligated to act on it and to redress the violation in question within 30 days of the day of receiving it, and to inform the Commissioner. The Commissioner underlined in its annual report that all recommendations were fulfilled in 90 % of cases (in comparison with 98.3 % in 2018).<sup>232</sup> They are all published on its website or presented in the media.

### iv) Other competences

According to Article 33 of the LPD, the Commissioner should warn the public about the most frequent, typical and severe cases of discrimination; monitor the enforcement of laws and other regulations; initiate the adoption of, or amendments to, such regulations; provide an opinion on the provisions of the law and other regulations for the purpose of implementing and developing protection against discrimination; and establish and maintain cooperation with bodies in charge of equality and human rights protection on the territories of the autonomous provinces and local authorities. The Commissioner is very engaged in

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<sup>230</sup> Social distance, in this context, means the measure of nearness and intimacy that a person feels towards a member of a certain group.

<sup>231</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 296.

<sup>232</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 5.

public awareness activities and prepares different publications and provides training for different public officials (judiciary, labour inspectors, police officers, etc.).

f) Legal standing of the designated body

In Serbia, the Commissioner has a legal standing:

- to bring discrimination complaints (on behalf of identified victims) to court;<sup>233</sup>
- to bring discrimination complaints (on behalf of non-identified victims) to court;<sup>234</sup>
- to intervene in legal cases concerning discrimination,<sup>235</sup> for example, as an *amicus curiae*.

However, the Commissioner is not entitled to to bring discrimination complaints *ex officio* to court, or to initiate *ex officio* a complaint procedure or cases in which they have knowledge of discriminatory behaviour, unless the victim submits a claim.

The Commissioner has legal standing to initiate a discrimination lawsuit, under Article 46 of the LPD. The Commissioner decides in which cases they will initiate a lawsuit, taking into account whether it is a case of strategic litigation – in other words, a case of frequent and widespread discrimination in respect of which there are good prospects for success. So far, litigation has been initiated 18 times.<sup>236</sup> The litigation is initiated and conducted in the general public interest in order to contribute to the consistent implementation of legislation and the improvement of legal practice; to further encourage victims of discrimination to initiate anti-discrimination litigation; to uphold the rule of law; and to contribute to the improvement of access to justice.

In order to initiate a lawsuit, the Commissioner needs the consent of the person who has experienced discrimination. In September 2014, the Supreme Court of Cassation held that the Commissioner does not need written consent if the case affects a group of people, in that case children of Roma origin, who are unidentified.<sup>237</sup> This decision is very important as the court noted that the complaint was not directed at the Commissioner's finding of discrimination against a particular individual, in which case the Commissioner would be required to obtain written consent to the filing of the lawsuit, but to establish the existence of discrimination against a group of people. In this situation, the lawsuit would qualify as *actio popularis*. However, in another case from 2015, the Appellate Court of Belgrade rejected a complaint as the organisation did not have the written consent of three Roma children who were allegedly discriminated against.<sup>238</sup> The court explained that in this case all three children (siblings in one Roma family) were known, and that consent is not needed only in a case involving two or more unidentified persons.

The Commissioner can demand from the court the following:

- a) the imposition of a ban on an action that poses a threat of discrimination, a ban on proceeding with a discriminatory action, or a ban on repeating a discriminatory action;
- b) that the court should establish that the defendant has treated the complainant or another party in a discriminatory manner;
- c) that steps be taken to redress the consequences of the discriminatory treatment;

<sup>233</sup> Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, Nos. 22/2009, 13/2016, 26 March 2009, Article 33(3); Articles 46(1) and 46(2).

<sup>234</sup> Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, Nos. 22/2009, 13/2016, 26 March 2009, Article 33(3); Article 46(1).

<sup>235</sup> Civil Procedure Code, *Official Gazette of the Republic of Serbia*, No. 72/2011, 49/2013 – decision CC, 74/2013 – decision CC and 55/2014, 87/2018, 3 September 2011, Article 215(1).

<sup>236</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 261.

<sup>237</sup> Supreme Court of Cassation, Rev. 853/2014, decision of 3 September 2014.

<sup>238</sup> Appellate Court in Belgrade, No.7 P. 782/15, decision of 29 May 2015.

- d) that the decision passed be published. The Commissioner cannot claim compensation for pecuniary and non-pecuniary damages, which can be demanded by victims of discrimination when they initiate a lawsuit on their own.

The Commissioner for the Protection of Equality can initiate a misdemeanour notice, as well as a criminal charge, but they are not entitled to punish a discriminator with a fine directly.

- g) Quasi-judicial competences

In Serbia, the Commissioner is a quasi-judicial institution as it receives complaints and issues decisions on them.

The procedure before the Commissioner for the Protection of Equality is a specific procedure that has the characteristics of a special administrative procedure. Article 40(4) of the LPD expressly stipulates that the procedure before the Commissioner shall be conducted pursuant to provisions of the Law on General Administrative Procedure.<sup>239</sup> The procedure for submitting a complaint is regulated in Articles 35 to 40. A complaint must be delivered within 15 days of its submission to the alleged perpetrator of the violation, who has 15 days to respond to it. The Commissioner must give an opinion on whether there has been a violation of the prohibition of discrimination within 90 days of receiving a complaint, and must inform the individual who submitted the complaint and the individual against whom the complaint was submitted. If the Commissioner finds that there has been a violation, they will issue a recommendation to the individual against whom the complaint was submitted, suggesting a means of redressing the violation in question. Although this decision is called a recommendation in the Law, it is binding. Thus, the individual to whom the recommendation is addressed is obliged to act on it and to redress the violation in question within 30 days of receiving it. The individual must inform the Commissioner of the measures taken. If the perpetrator fails to redress the violation in question within 30 days, the Commissioner may inform the public in the press and online (Article 40(2) of the LPD). This is the only sanction that can be imposed; the Commissioner is not allowed to impose other sanctions. The existing sanction has been shown to be effective, especially in cases that involve a private individual or entity whose business may be endangered if he or she appears in newspapers as a discriminator. In 2019, the Commissioner's recommendations were respected in 35 cases (87.5 %) and not respected in five cases (12.5 %), while in 12 cases the deadline for acting on recommendations had not yet expired.<sup>240</sup> In order to secure even better implementation of the Commissioner's opinions and recommendations, it would be desirable to allow the Commissioner to directly impose fines. It is not possible to appeal against the Commissioner's opinion, but it is possible to bring a lawsuit to the court independently. There are no follow-up activities that track and secure implementation of the Commissioner's decisions.

- h) Registration by the body of complaints and decisions

In Serbia, the Commissioner registers the number of complaints and decisions by ground and field. These data are available to the public online, in regular annual and special reports and in particular publications issued by the Commissioner. In 2019, the Commissioner received 711 complaints. In respect of 116 complaints (20.1 %), a personal characteristic was not mentioned. In 462 complaints, a personal characteristic was invoked as follows: 118 complaints (16.2 %) – disability; 96 complaints (13.2 %) – sex; 86 complaints (11.8 %) – health status; 72 complaints (9.9 %) – age; 72 complaints (9.9 %) – membership of political and trade unions; 58 complaints (7.9 %) – marital and family status; 50 complaints (6.8 %) – ethnic origin; 33 complaints (4.5 %) – property status;

<sup>239</sup> Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 9 March 2016.

<sup>240</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 7.

18 complaints (2.5 %) – sexual orientation; 14 complaints (1.9 %) – religious or political beliefs; 12 complaints (1.6 %) – gender identity; seven complaints (1.0 %) – birth; six complaints (0.8 %) – conviction; six complaints (0.8 %) – appearance; six complaints (0.8 %) – language; four complaints (0.5 %) – citizenship; three complaints (0.4 %) – genetic features; two complaints (0.3 %) – ancestry; two complaints (0.3 %) – race; and 65 complaints (8.9 %) on other grounds.<sup>241</sup>

With regard to the areas where discrimination occurs, the number of complaints in 2019 was as follows: employment (229 complaints, or 32.2 %); public authorities (155 complaints, or 21.8 %); education and vocation (102 complaints, or 14.3 %); access to public services and facilities (53 complaints, or 7.5 %); social protection (41 complaints, or 5.8 %); healthcare (27 complaints, or 3.8 %); public sphere (24 complaints or 3.4 %); public information and media (18 complaints, or 2.5 %); private relations (17 complaints, or 2.4 %); housing (11 complaints, or 1.5 %); culture, art and sport (11 complaints, or 1.5 %); the operations of trade unions and other organisations (6 complaints, or 0.8 %); pensions (two complaints, or 0.3); and other areas (15 complaints, or 2.1 %).<sup>242</sup> There were no complaints claiming discrimination in the area of justice, property rights and collective minority rights, as in 2018. The report contains some other data, such as the numbers of male and female applicants and details of who submitted complaints (individuals, organisations, legal entities, state institutions, groups or individuals).

#### i) Stakeholder engagement

In Serbia, the Commissioner for the Protection of Equality engages with stakeholders as part of implementing their mandate.

The Commissioner cooperates with the National Assembly, the Government and various ministries, local government units and the judiciary. They also cooperate with CSOs and international partners in the country and abroad; international governmental and non-governmental organisations; and European and regional equality bodies through bilateral meetings and active participation in the work of the European Network of Equality Bodies (EQUINET).

During 2016, the Commissioner initiated activities to establish an effective regional cooperation model for human rights institutions, signing the Declaration on Cooperation with nine bodies for the protection of equality in south-east Europe. That initiative continued in 2019 in the form of regional conferences and panels.<sup>243</sup>

#### j) Roma and Travellers

The Commissioner recognises that the Roma are among the groups that experience the most discrimination in Serbia, which is highlighted in all regular annual reports.<sup>244</sup> Therefore, she deals with cases of discrimination against the Roma and issues public announcements on their situation. In addition, the Ombudsman deals with some cases of discrimination against the Roma within its jurisdiction, especially cases of forced eviction.

Every year on 8 April, which is International Romani Day, the Commissioner issues a press release to draw attention to the fact that the situation of the Roma minority is still poor and that the Roma are the group that faces the most discrimination in Serbia. The

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<sup>241</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, pp. 297-298.

<sup>242</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 298.

<sup>243</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 281.

<sup>244</sup> In order to combat discrimination against Roma, the Strategy for Social Inclusion of Roma in the Republic of Serbia (for 2016 to 2025) was adopted.

Commissioner noted in its report for 2019 that the Roma men and women are still frequently exposed to discrimination.<sup>245</sup> The report contains relevant information on the position of the Roma in Serbia; the Commissioner underlines that they still face widespread discrimination in education and that they live in inadequate conditions in informal settlements.<sup>246</sup> In 2019, the Commissioner visited a Roma settlement in Makis after receiving information that the Secretariat for Social Welfare intended to expose residents to forced eviction. On that occasion, the Commissioner emphasised that the process of eviction must be carried out in cooperation with, and with the active participation of, residents, and in accordance with relevant international standards on the displacement of citizens from informal settlements.

For the past seven years, a large number of complaints have concerned alleged discrimination against the Roma. In 2019, 50 complaints (6.8 %) were submitted to the Commissioner claiming discrimination based on ethnicity. The majority of those cases dealt with unequal treatment of the Roma or other national minorities (Bosniak, Croatian, Albanian or Romanian, etc.).<sup>247</sup> In 2019, 32 complaints were submitted claiming discrimination against the Roma, which made up 64 % of all complaints based on ethnicity.<sup>248</sup> In one case, during an intervention in one elementary school, a police officer slapped a minor and insulted him on the basis of his national origin.<sup>249</sup> In addition, the most frequent ground on which the Commissioner initiates strategic cases concerns discrimination against the Roma. On 30 June 2019, the Commissioner warned the public about an attack on a Roma young man, after he posted a picture of himself with a bruise on social media. The Commissioner expressed the expectation that the authorities would take all measures to identify and adequately punish the perpetrators in order to prevent violence, hatred and intolerance towards the Roma, but unfortunately the authorities failed to do so.

Some research studies conducted in 2019 have claimed that the Roma are still one of the most vulnerable groups in Serbia.<sup>250</sup> The European Commission identified some progress in relation to the position of the Roma, as well as the continuation of some negative trends.<sup>251</sup> Thus, it was found that while most Roma have civil documents, the procedure for registering the birth of children whose parents lack documents needs to be monitored. There has been an increase in the number of Roma students who benefit from scholarships, but still only 9 % of Roma children attend kindergartens, and the drop-out rate remains high. Only 67 % of Roma youth complete compulsory education, and only 1 % complete higher education. Segregation in schools still exists and must be addressed. The

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<sup>245</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 38.

<sup>246</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 102.

<sup>247</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 246. See also Forum za etničke odnose (2018), *Alternative report on the protection of rights of national minorities in the Republic of Serbia for 2017 (Alternativni izveštaj o zaštiti prava nacionalnih manjina u Republici Srbiji)*, Belgrade, available at: <https://www.minoritynews.rs/wp-content/uploads/2018/05/Forum-3-2018-SRP-290502018.pdf>.

<sup>248</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 219.

<sup>249</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 151.

<sup>250</sup> Demostat, Horizontal Facility for Western Balkans and Turkey Project (2019), *Final research report - Strengthening the protection of national minorities, with the focus on the use of minority languages (Finalni istraživački izveštaj - Jačanje zaštite nacionalnih manjina sa fokusom na upotrebu manjinskih jezika)*; Roma Education Fund (2019), *The right to education and the prohibition of discrimination - Legal and Strategic framework and challenges in reintegration procedure of Roma returnees in education system of primary and secondary schools (Pravo na obrazovanje i zabrana diskriminacije - Pravni i strateški okvir i izazovi u postupku integracije Roma povratnika u obrazovni sistem osnovnih i srednjih škola)*; Centre for Youth Integration (2019), *Legal and social status and vulnerability of families and children that live in informal settlements in Belgrade (Pravno socijalni položaj i ranjivost porodica i dece koja žive u neformalnim naseljima u Beogradu)*.

<sup>251</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, pp. 29-30.



unemployment rate is 36 % for Roma men and 45 % for Roma women. The Roma are still underrepresented in the public administration. Many Roma households have no access to electricity or drinking water and no connection to the sewage system. Although child marriage is not common in the general population, almost 60 % of girls from Roma settlements are married at an early age. Domestic violence is also often unreported.

In 2019, the Commissioner conducted four more training sessions for police officers on anti-discrimination law, with a focus on hate crimes and discrimination against the Roma.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

With regard to the dissemination of information about legal protection against discrimination, the Commissioner for the Protection of Equality publishes brochures and handbooks for various professionals and the wider public in order to inform them about discrimination and to explain the available remedies if discrimination takes place. The Commissioner actively works to increase the visibility of the institution, appears in the media and organises a moot court for law students. In 2019, a seventh law competition was initiated in partnership with the Open Society Foundation. The competition was open to law students from undergraduate and masters programmes.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

The Commissioner for the Protection of Equality cooperates with international organisations and international and national NGOs. They are very important partners in advising on complex discrimination cases; being involved in joint activities; providing important information about discrimination cases; and engaging in situation testing. In 2019, many meetings were organised with different organisations and the Commissioner participated in several seminars, round tables and conferences organised by NGOs. In 2019, NGOs submitted only 110 complaints (15.5%) – less than in 2018 when they submitted 293 complaints (30.9%), and almost the same as in 2017, when they submitted 105 complaints (19.7 %).<sup>252</sup>

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practice, codes of practice and workforce monitoring (Article 11, Directive 2000/43 and Article 13, Directive 2000/78)

In order to promote dialogue between social partners, the Commissioner for the Protection of Equality organises conferences, round tables, presentations and lectures on different issues. The Commissioner also takes part in different training courses. The Commissioner's Office advises people about their rights and refers them to other institutions if it finds that there is no discrimination case. The Commissioner has prepared guidelines and methodologies for the adoption of the Equality Code, which contains anti-discrimination policy for employers in Serbia.<sup>253</sup> In 2017 and 2018, the Commissioner provided training for labour inspectors, and in 2019 it organised training sessions for advisers in the National Employment Service.<sup>254</sup>

The Office for Human and Minority Rights (Kancelarija za ljudska i manjinska prava) also undertakes a lot of activities in relation to discrimination. The Action Plan for the Implementation of the Strategy for the Prevention of and Protection from Discrimination was adopted on 3 October 2014 and implemented in 2015. The strategy and the action plan resulted from consultations with the relevant NGOs and social partners, and continued

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<sup>252</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 301.

<sup>253</sup> Commissioner for the Protection of Equality, *Equality Code: Guidelines for Developing Anti-discrimination Policy of Employers in Serbia – Instructions and Methodologies (Kodeks ravnopravnosti - Smernice za izradu kodeksa antidiskriminacione politike poslodavaca u Srbiji – uputstvo i metodologije)*, Belgrade.

<sup>254</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 6.

through 2017 and 2018. However, the new strategy and the new action plan were not prepared and adopted until the end of 2019.

d) Addressing the situation of the Roma and Travellers

The Commissioner for the Protection of Equality deals with cases of discrimination against the Roma and issues public announcements on their situation. In addition, the Ombudsman deals with some cases of discrimination against the Roma within its jurisdiction, especially in relation to cases of forced eviction.

Furthermore, the Roma community also has a National Council for the Roma National Minority, which was established under the Law on National Councils of National Minorities.<sup>255</sup> It is an elected body which has the exclusive right to manage issues of education, the official use of language and public information for the Roma. In addition, a Council of National Minorities of the Republic of Serbia was established with the aim of preserving, improving and protecting the national, ethnic, religious, linguistic and cultural characteristics of national minorities, including the Roma.<sup>256</sup> Among other things, the Council monitors the implementation of cooperation between national councils and the competent authorities of the Republic of Serbia, as well as the autonomous provinces and municipalities.

The Office for Human and Minority Rights of the Government of Serbia has a section for national minorities, which includes the Group for the Advancement of Roma and Assistance for Migrants. This body has a duty to undertake activities related to coordination and cooperation with relevant ministries in order to initiate, prepare and realise operational measures for the implementation of the Strategy for the Inclusion of Roma in the Republic of Serbia for the period 2016-2025 and the Action Plan, and to cooperate with local government with the aim of implementing local action plans. The aim of this strategic document is to create conditions for the social inclusion of Roma, to reduce poverty among them and to eliminate discrimination against them. Other reasons for its adoption are to introduce mechanisms for the implementation and improvement of strategic objectives; to enhance the capacity and accountability of both the state administration and local self-governments to effectively oversee the implementation and protection of Roma rights; to secure budget funds; and to effectively involve representatives of the Roma community in the process of developing and implementing strategic measures and exercising their rights to employment, housing, education and social and health protection. It outlines five main areas: education, housing, health, employment and social protection. A working group for the preparation of an action plan for the implementation of the strategy for social inclusion of the Roma for 2019-2020 was established. The text of the action plan has not yet been adopted, but the plan has been prepared and is awaiting the necessary approval from the Ministry of Finance.

The Government adopted a Decision on the Establishment of the Council for the Improvement of the Situation of Roma and the Implementation of the Roma Decade.<sup>257</sup> The Council receives administrative and technical support from the Office for Human and Minority Rights. Its role is to prepare proposals for the development of a comprehensive and coherent policy to improve the situation of the Roma population and the implementation of the Decade of Roma Inclusion; to give opinions on the planned

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<sup>255</sup> Law on National Councils of National Minorities (*Zakon o nacionalnim savetima nacionalnih manjina*), *Official Gazette of the Republic of Serbia*, Nos. 72/2009, 20/2014 – decision CC, 55/2014, 47/2018, 3 September 2009.

<sup>256</sup> Decision on the Establishment of the Council for National Minorities (*Odluka o obrazovanju Saveta za nacionalne manjine*), *Official Gazette of the Republic of Serbia*, No. 50/2009, 10 July 2009; amended on 10 November 2016, *Official Gazette of the Republic of Serbia*, No. 91/2016.

<sup>257</sup> Decision on the Establishment of the Council for the Improvement of the Situation of Roma and the Implementation of the Roma Decade (*Odluka o obrazovanju Saveta za unapređenje položaja Roma i sprovođenje Dekade uključivanja Roma*), *Official Gazette of the Republic of Serbia*, No. 46/2013, 24 May 2013.

budgetary resources; and to provide opinions and expert explanations for the realisation of important social indicators, etc.

The institutional structure for dealing with Roma integration remains ineffective and complicated, and there is no clear distribution of tasks. Coordination between the national and local authorities and budgeting at local level still need to be reinforced.<sup>258</sup>

## **8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Compliance of national legislation (Articles 14(a) and 16(a))**

In Serbia, there are mechanisms to ensure that laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished. First, working groups that are established to prepare the text of a certain law for its adoption should take care to ensure that the text does not contravene systemic laws, including the LPD. It may be questioned whether working group members always have enough expertise in anti-discrimination law.

Draft laws are open for public debate before they are submitted to the National Assembly. In addition, members of Parliament can further ensure, through amendments, that the text of the law does not contain any discriminatory clauses. This process does not apply to regulations and provisions. However, the Commissioner for the Protection of Equality has a very broad mandate, which includes the initiative to pass or amend laws and regulations and to provide opinions on the provisions of draft laws and other regulations pertaining to the prohibition of discrimination (Article 33(7) of the LPD). Current practice shows that the Commissioner is using this opportunity very frequently, but in some cases, unfortunately, its opinion has not been taken into account. In 2018, the Commissioner provided 37 opinions on different laws, submitted four proposals for the assessment of constitutionality and initiated nine initiatives for a change to the law.<sup>259</sup> In 2019, this trend continued: the Commissioner provided 31 opinion on draft laws and other acts, initiated 16 initiatives for a change to the law and submitted one proposal for assessment of constitutionality.<sup>260</sup> The annual report contains information on some of these initiatives and whether or not they were accepted. In a majority of cases, proposals were only partially accepted.

It is always possible to challenge the constitutionality of a certain law, regulation or provision from the perspective of the anti-discrimination clause (Article 21 of the Constitution). It is important to underline that in 2019, the Constitutional Court issued a decision stating that Article 28a of the Law on Pension and Disability Insurance is unconstitutional, prescribing that a widower or widow who is above the age of 65 when their marriage ends cannot claim a family pension if he or she does not have a child with the deceased or if the marriage did not last for at least two years.<sup>261</sup> The proposal for assessment of constitutionality was submitted by the Commissioner in 2017.

### **b) Compliance of other rules/clauses (Articles 14(b) and 16(b))**

In Serbia, any other provisions contrary to the principle of equal treatment that are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations or rules governing the independent professions and workers' or employers' organisations can be declared null and void after negotiations with trade unions. However, if there is a claim that a certain rule or

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<sup>258</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 29.

<sup>259</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 244.

<sup>260</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 301.

<sup>261</sup> Constitutional Court, Iuz - 130/2017, opinion of 19 June 2019.

clause contravenes the Constitution and the LPD, proposals for an assessment of its constitutionality and legality can be submitted to the Constitutional Court of Serbia.

## 9 COORDINATION AT NATIONAL LEVEL

The Office for Human and Minority Rights, which was established in August 2012, provides expert services to the Government and relevant ministries related to the protection and promotion of human and minority rights;<sup>262</sup> monitors the compliance of national legislation with international treaties and other international acts on human and minority rights; takes initiatives to amend national legislation; deals with general issues relating to the status of people belonging to national minorities; monitors the status of people belonging to national minorities living in the territory of the Republic of Serbia; and monitors the exercise of minority rights.

The Government adopted the Strategy for the Prevention of and Protection from Discrimination on 27 June 2013 and the associated Action Plan on 2 October 2014. The Strategy was presented as a system of public policy measures and instruments which Serbia needs to implement with the aim of reducing all forms and types of discrimination. The Strategy was adopted for the period from 2013 to 2018 with the aim of preventing discrimination and improving the situation of nine vulnerable groups (women; children; people with disabilities; senior citizens; LGBTI people; national minorities; refugees, internally displaced persons and other vulnerable migrants; people whose health condition may be grounds for discrimination; and members of religious communities) who are most often exposed to discrimination.<sup>263</sup>

The Commissioner for the Protection of Equality, the Office for Human and Minority Rights and the Council for National Minorities were involved in the implementation of the Strategy. The Action Plan for the implementation of the Strategy was adopted for the period from 2014 to 2018. The framework for the implementation of strategic objectives was set out in the Action Plan, with the aim of enabling the realisation of the objectives and measures established by the Strategy and systematic monitoring of their implementation. The Action Plan envisaged specific measures and actions necessary for the realisation of strategic objectives, deadlines, responsible entities and resources for implementation. It also defined the indicators of the fulfilment of activities, based on the monitoring of the extent of their implementation that will be conducted, as well as indicators for evaluating the objectives and the resources necessary for the achievement of established measures. In order to assist the Sector for Anti-Discrimination Policy and Improvement of Gender Equality – which was established in 2017 within the Ministry of Labour, Employment, Veteran and Social Affairs – to draft the new strategy, the Office of the United Nations High Commissioner for Human Rights prepared a baseline study from September to December 2018. However, the work on a new strategy is still in progress and the new document was not finalised and adopted until the end of December 2019.<sup>264</sup> The Ministry of Labour, Employment, Veterans and Social Affairs has so far adopted only a baseline study for the new strategy.<sup>265</sup>

It is important to underline that the Commissioner for the Protection of Equality cooperates closely with the National Assembly, representatives of the judiciary, local self-government units, CSOs and international organisations.

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<sup>262</sup> The Office for Human and Minority Rights can lend expertise to all ministries dealing with human rights issues, but assistance in that regard is given mainly to the Ministry of Labour, Employment, Veteran and Social Affairs; the Ministry of Justice; the Ministry of the Interior; the Ministry of Health; and the Ministry of Education, Science and Technological Development.

<sup>263</sup> A follow-up assessment of the implementation of the strategy was performed between June and October 2017, and six reports were prepared, the last covering the period from February to September 2018. In August 2019, an analysis of the effects of the strategy was adopted by the Ministry of Labour, Employment, Veteran and Social Affairs. These reports can be found at: <https://liudskaprava.gov.rs/sh/node/19990>.

<sup>264</sup> No new strategy was adopted in 2019; as the previous document has expired, there are no strategic aims identified and no action plan activities for their realisation stipulated in order to further improve the position of the most vulnerable groups in Serbia.

<sup>265</sup> Ministry of Labour, Employment, Veteran and Social Affairs, *Baseline study for the new a for the new Strategy on Prevention of and Protection from Discrimination 2020-2025 (Analiza efekata, odnosno polazne osnove za izradu nove Strategije prevencije i zaštite od diskriminacije 2020-2025)*, 20 August 2019.

## 10 CURRENT BEST PRACTICE

The work of the Commissioner for the Protection of Equality since its creation 10 years ago must be evaluated as successful, despite the technical and spatial constraints, which were finally resolved in 2017. In May 2015, Brankica Jankovic was elected as the second Commissioner for the Protection of Equality, and she continued to perform all the duties of her predecessor. In 2019, the Commissioner received fewer complaints than in 2018 (711) and issued fewer opinions (in 70 cases), but it issued 686 general recommendations, provided 31 opinion on draft laws and general acts, initiated six criminal charges in addition to three misdemeanour charges, and issued 23 warnings and 34 announcements.<sup>266</sup> The Commissioner continued to support regional cooperation and actively participate in EQUINET. The body also organised and participated in 670 training sessions, conferences, lectures and round tables; issued numerous handbooks and guides; and contributed to awareness-raising on discrimination and the legal framework for protection against discrimination. The institution also become more visible in 2019, which means that the public is now more aware of the existence and activities of the Commissioner.

Given the need for judges to have more specialist knowledge and enhanced capacity and sensitivity in dealing with complex issues, training for anti-discrimination trainers was continued at the Judicial Academy in 2019 for eight judges from the higher courts and from the jurisdiction of four appellate courts, with the support of the OSCE mission in Serbia. The training programme consisted of two seminars on different issues relating to discrimination, including the jurisprudence of the European Court of Human Rights and the CJEU. The main aim of this study group was to give Serbian judges a greater insight into the CJEU'S work in the area of non-discrimination, as they currently have a very modest level of knowledge of its functioning and jurisprudence. In October 2019, a two-day refresher course was organised, in which judges were informed about the latest jurisprudence of international courts and had a chance to discuss the current practice of Serbian courts. In addition, the Judicial Academy organised a five-day course of intensive initial training on non-discrimination for future judges and prosecutors, which was held in June in Zlatibor. The HELP anti-discrimination course was also available to them. In cooperation with the OSCE mission to Serbia, the Judicial Academy also organised two sessions with two days of intensive training for judges and prosecutors on non-discrimination in the area of asylum and migration.

The situation of LGBTI rights in Serbia has improved since 2017. The 2018 Gay Pride march was organised without any problems; hundreds of participants were joined by the city's mayor, the Serbian Prime Minister and a number of ambassadors and other state officials. On 15 September 2019, Gay Pride in Belgrade gathered over a hundred LGBTIQ+ activists and civil society organisations from across the Western Balkans (Montenegro, Albania, North Macedonia, Bosnia and Herzegovina), accompanied by activists from Greece, Norway, Belarus and the United States, who shared their experience of the struggle in their communities. A considerable number of police and social welfare staff have been trained in LGBTIQ+ issues. In addition, public prosecutors have received training on hate crimes.

A positive trend is that in 2018 there were 175 pedagogical assistants in local self-government units contributing to the inclusion of Roma students in education and support them to achieve better results, whereas by 2019 the number had increased to 250.<sup>267</sup>

In 2019, two important strategies were adopted. The Strategy for the Development of Artificial Intelligence was adopted for the period 2020 to 2025 with the goal of developing

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<sup>266</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 7.

<sup>267</sup> Atanackovic, I., *Education of Roma in Serbia: The Hard Way from Discrimination to Integration (Obrazovanje Roma u Srbiji: Težak put od diskriminacije do integracije)*, Danas, 8 December 2019, available at: <https://www.danas.rs/drustvo/obrazovanje-roma-u-srbiji-tezak-put-od-diskriminacije-do-integracije/>.

artificial intelligence in Serbia while respecting human rights. One of the stipulated measures seeks to provide protection from discrimination in the application of artificial intelligence, as a risk was identified that the automation of decision-making may mean that decisions are made on the basis of discriminatory criteria.<sup>268</sup> The Strategy for Consumer Protection for 2019-2024 underlines that artificial intelligence and decision-making based on algorithms can have serious implications for consumers, who may experience discrimination based on their financial status and may be prevented from accessing more favourable offers.<sup>269</sup>

The Commissioner for the Protection of Equality continued its successful cooperation with the Office of the Council of Europe in Belgrade in coordinating the joint project 'Living Library in Serbia – Don't Judge a Book by its Cover'. The aim of this project is to reduce the effect of negative stereotypes and prejudice as key causes of discrimination. In 2018, five new partners, including two primary schools, joined the project,<sup>270</sup> while in 2019 four elementary schools, five high schools and one faculty became new partners. In December 2019, a panel event entitled 'Equality among Young People' was held; it was dedicated to the exchange of experiences of discrimination among the young in Serbia.<sup>271</sup>

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<sup>268</sup> Strategy for the Development of Artificial Intelligence in Serbia for 2020 to 2025 (*Strategija za razvoj veštačke inteligencije u Republici Srbiji za period 2020-2025*), *Official Gazette of the Republic of Serbia*, No. 73/2019, 15 October 2019.

<sup>269</sup> Strategy for Consumer Protection for 2019 to 2024 (*Strategija zaštite potrošača za period 2019 - 2024*), *Official Gazette of the Republic of Serbia*, No. 93/2019, 3 January 2020.

<sup>270</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 217.

<sup>271</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 279.



## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives at the national level**

In Serbia, national legislation is mainly in accordance with the two EU anti-discrimination directives from 2000. However, there are some inconsistencies and ambiguities that require further judicial interpretation or changes to the existing legislation.

#### **a) The definition of discrimination**

The definition of indirect discrimination does not include the conditional wording 'would' and can thus be interpreted as being limited to the actual occurrence of disadvantage, making it impossible to challenge apparently neutral provisions before they incur disadvantages for actual victims (contrary to Article 2(2)(b) of Directive 2000/43 and Article 2(2)(b) of Directive 2000/78).

Furthermore, 'instruction to discriminate' is not recognised as discrimination in the LPD and the liability for instruction is not clearly regulated (contrary to Article 2(4) of Directive 2000/43 and Article 2(4) of Directive 2000/78).

#### **b) Proving discrimination**

The LPDPD does not contain a provision for reversal of the burden of proof, although the LPD, as a systemic law, does include this concept in Article 45(2) (contrary to Article 10(1) of Directive 2000/78).

#### **c) Material scope**

The LPD does not cover occupational pensions, social advantages and self-employment, and it is unclear whether it covers social protection and housing (contrary to Article 3 of Directive 2000/43 and Article 3 of Directive 2000/78). Although certain other laws regulate some issues such as self-employment, social protection and housing, these areas should be expressly included in the LPD, as in practice it can be interpreted that anti-discrimination legislation does not apply in such cases.

The LPD mentions only access to services and does not expressly mention access to goods (contrary to Article 3(1)(h) of Directive 2000/43).

The duty of reasonable accommodation exists in relation to the provision of services and the use of facilities, as well as employment. However, according to Article 22(4) of the LPDPD, which prescribes a duty of reasonable accommodation in the workforce, it can be invoked only in the case of a refusal to carry out a technical adaptation of the workplace that enables efficient work by people with disabilities, and it cannot take other forms, such as reassigning tasks, moving people to another function, etc., which contradicts Article 5 of Directive 2000/78/EC. In addition, the employer can be exempted from this obligation if the costs of the adaptation are disproportionate to the profit of the employer who is employing a person with a disability. In other words, the disproportionality of the burden is assessed only in financial terms. Furthermore, there is an individual relationship between the profit gained from employing the person with a disability and the cost of the accommodation for that person. This provision is not clear, and it can be argued that it seems to imply that the employer still has to gain some profit from employing the person with a disability. The same applies to Article 13(5)(3) of the LPDPD, which prescribes a duty of reasonable accommodation in the provision of services. Therefore, further judicial interpretation is required in order to clarify this matter.

d) Exceptions from discrimination

National law does not provide for an exception for employers with an ethos based on religion or belief, but there is a blanket exemption for religious officials who can discriminate, if this is what their religious doctrines require or allow (contrary to Article 4(2) of Directive 2000/78)

e) Remedies, enforcement and sanctions

Victimisation is recognised in the LPD, but it has to be further aligned with EU law as it does not expressly protect people from dismissal. In addition, the LPDPD does not provide protection from victimisation (contrary to Article 9 of Directive 2000/43 and Article 11 of Directive 2000/78).

### 11.2 Other issues of concern

Although the previous strategy document expired in December 2018, the new Strategy on the Prevention of and Protection from Discrimination has not yet been adopted, and nor has the Action Plan accompanying the Strategy for Social Inclusion of Roma for 2019 to 2020. In addition, the amendments to the Law on the Prohibition of Discrimination have not been yet adopted, despite many efforts to finalise amendments and to fully align the text with the EU *acquis*. Among other issues mentioned in the previous section, it is important to underline that the definition of 'direct discrimination' seems to be limited to less favourable treatment and does not cover detriment. Discrimination by association is recognised in the LPD, but its application is limited to 'members of families' and people who are close to those who are discriminated against.

Furthermore, the LPD does not expressly state that situation testing can be used as evidence in court. Many questions derive from unclear regulation, such as who the tester is; whether they have a particular relationship with the individual who reported the discrimination; whether they have been discriminated against previously; whether they have any basic knowledge about the testing process; and whether they operate alone. In addition, there is the question of whether their primary objective is evidence gathering for another party or to initiate a lawsuit, which includes notification of and reporting to the Commissioner, and the role of the Commissioner in that regard.

Serbia was the last country in the region to adopt a Law on Free Legal Aid. The Law limits the role of NGOs in providing free legal aid, although it accepts their legal standing in anti-discrimination lawsuits. It is hard to assess the effectiveness of legal solutions stipulated in the Law as it entered into force only in October 2019, but there is some doubt that the Law will limit the provision of different forms of legal aid by NGOs in discrimination cases.

Despite some positive trends (the organisation of Gay Pride; the delivery of training on LGBTIQ+ issues and hate crimes for the police and social welfare staff), the position of LGBTIQ+ people still remains a controversial issue in Serbia, and the Law on Registered Partnerships has not yet been adopted. Furthermore, LGBTIQ+ people still face prejudice, and a considerable proportion of discrimination is committed by civil servants and public officials who do not always promote understanding and tolerance towards LGBTIQ+ people. Furthermore, intersex persons are legally invisible in Serbia, and they are exposed to stigmatisation and self-stigmatisation.<sup>272</sup>

The Roma are still the most vulnerable group. As ECRI has noted, only 6 % of Roma children are enrolled in pre-school, only 46 % complete the compulsory eight years of primary education and just 13 % complete secondary education. Only half as many Roma

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<sup>272</sup> Gayten – LGBT (2019) *Intersex - Towards establishing an intersectional platform (Interseks - ka stvaranju intersekcionalne platforme)*, Belgrade.

girls as Roma boys attend and complete secondary school. The figures for Roma living in settlements – in particular, for displaced Roma from Kosovo – are even worse. In addition, 72 % of all Roma settlements are still informal, while not a single Roma person is employed in public services.<sup>273</sup> Statistical data on vulnerable groups is still not disaggregated, in particular for Roma children and children with disabilities.<sup>274</sup> However, in 2019, it was noted that there had been an increase in the number of Roma students benefiting from scholarships.

Although the LPD prohibits discrimination based on sexual orientation (Article 2(1)), Article 21 limits the application to privacy, stating that sexual orientation is a private matter and that discriminatory treatment on account of the declaration of someone's sexual orientation is prohibited. However, Article 2(1) prohibits any unlawful discrimination that is based on sexual orientation, among other things, and one could argue that this prohibits the provision of benefits only to employees with opposite-sex partners. Bearing in mind the current case law, it is probable that the Commissioner for the Protection of Equality and judges would interpret the scope of Article 21 and Article 2(1) in different ways in relation to sexual orientation. While the Commissioner would claim that such treatment is discriminatory, judges would say that the application of Article 21 is limited, and would not find that discrimination had occurred.

In general, it appears that judges, despite the provision of many training sessions, still do not correctly apply non-discrimination provisions such as the use of a comparator, justification test, reverse burden of proof, etc. The LPD does not contain any specific rule in relation to statistics. The case law is still developing, and it is not clear how the courts will treat statistical evidence.

Another main issue of concern is the inadequate conduct of judges in misdemeanour cases, whose inactivity in a procedure leads to the application of the statute of limitations, as well as the conduct of public prosecutors who, in a majority of cases, do not act on criminal charges. Moreover, despite the availability of a range of applicable sanctions in discrimination cases, the practice demonstrates that they are mild and there are often delays in the proceedings, which leads to the conclusion that sanctions cannot be considered to be effective, proportionate and dissuasive. It is also important to note that the level of compliance with the Commissioner's recommendations as a percentage dropped in 2019 in comparison with previous years.

In addition, Serbia does not provide compensatory collective redress as stipulated in the Commission's 2013 recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under union law.

The case analysis shows that the majority of criminal charges apply to members of the Roma and LGBTQ+ populations. A great amount of suspicion about the existence of such crime is expressed in statements given in the media and in comments on news stories posted on internet sites. It is particularly worrying that the Prosecutor's Office informed the Commissioner about the actions that were undertaken in only in a small number of cases of discrimination. In a greater number of cases, criminal charges were dismissed, despite serious doubts and concerns that an offence had actually been committed. Therefore, it can be concluded that the prosecuting authorities are not yet sufficiently sensitised to issues of discrimination, and that they still do not recognise the social danger in making statements that can provoke hatred and intolerance. In addition, it is concerning that there is a lack of understanding of judges in misdemeanour cases with regard to the specific nature of cases in which discrimination appears. In the majority of cases, suspension of the procedure occurred due to its obsolescence. That practice must be

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<sup>273</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 10.

<sup>274</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 29.

urgently changed so that the misdemeanour procedure can be considered an effective mechanism for protection against discrimination. There is also a policy of applying lesser sanctions for discriminatory acts in very serious cases of discrimination, such as the segregation of Roma children in schools. This practice illustrates that judges are still not aware of the very detrimental effects of discrimination. It is also important to provide training on the shifting of the burden of proof, as this concept is not applied in practice and is limited to some legal solutions contained in the Civil Procedure Code.

Although several major training sessions were organised in 2019, this is still not enough. The current situation requires the implementation of different measures: the introduction of an obligatory anti-discrimination course at university level; workshops on breaking stereotypes during initial training at the Judicial Academy; and regular mandatory seminars as part of continuing professional development for judges from different jurisdictions. Of particular importance is the organisation of training in relevant international and European standards in this area of law, including workshops on prejudice and stereotypes. Furthermore, in the majority of cases, anti-discrimination proceedings are initiated for any wrongdoing that citizens have experienced, which also reflects the lack of understanding of the concept of discrimination.

Finally, it is necessary to enhance the statistical parameters and the database for monitoring court proceedings concerning discrimination cases.

## 12 LATEST DEVELOPMENTS IN 2019

### 12.1 Legislative amendments

The adoption in 2018 of the Law on Free Legal Aid,<sup>275</sup> which was initiated by the Action Plan for Chapter 23 for the third quarter of 2015, was of utmost importance. The Law was implemented in October 2019, and its purpose is to ensure and provide access to justice for everyone. The Law recognises as direct beneficiaries – among others – persons with disabilities, persons exposed to forced eviction and persons who are subject to a procedure for the deprivation of legal capacity. Article 10(1) prescribes that free legal aid is based on the equal availability of this right without discrimination among providers and beneficiaries, as well as respecting the principle of accessibility of facilities where free legal aid is provided.

The Law on Tourism, which was adopted in 2019, enshrines in law principles of human rights, respect and dignity for persons with disabilities, equality and the prohibition of discrimination in tourism.<sup>276</sup>

The new Law on Health Protection enshrines in law principles of health protection, including the protection of human rights, the principle of comprehensiveness and the accessibility principle, as well as the principle of fairness, which includes the principle of equality and the prohibition of discrimination.<sup>277</sup>

### 12.2 Case law

**Ground:** Disability

**Name of the court:** Appellate Court in Kragujevac

**Date of decision:** 12 July 2019

**Name of the parties:** *A. M. v. Banca Intesa a. d. Beograd*

**Reference number:** GŽ - 4172/19

**Link:** N/A

**Brief summary:** The higher court in Krusevac, in its judgment No. 1080/18 of 15 May 2019, found that there was discrimination on the basis on disability in respect of the inaccessibility of a bank office to persons with disabilities using wheelchairs. The claimant had been a longstanding client of the bank, but the bank decided to change its location, and the new office was not accessible as there was one step at the entrance to the facility. Due to this obstacle, the client was forced to call the bank beforehand to announce his arrival. On each occasion, he would be helped by bank officials to enter the premises. However, the Appellate Court overruled the lower court's decision on the basis of incomplete fact-finding. The Appellate Court erroneously concluded that it was not a case of discrimination as the lower court had not assessed whether there were technical conditions to enable the installation of a ramp. In addition, the Appellate Court was of the opinion that, if there were technical conditions to enable the installation of a ramp, it would then be necessary to discuss in whose jurisdiction – that of the bank or the city government – the duty of installation would fall.

**Ground:** Not specified

**Name of the court:** Court of Cassation

**Date of decision:** 23 January 2019

**Name of the parties:** *AA (not available) v. BB (not available)*

**Reference number:** Rev 37/2019

**Link:** <https://vk.sud.rs/sr-lat/rev-372019-11436-diskriminacija-1642-imunitet-319113-tu%C5%BEba>

<sup>275</sup> Law on Free Legal Aid, *Official Gazette of the Republic of Serbia*, No. 87/2018, 21 November 2018.

<sup>276</sup> Law on Tourism (*Zakon o turizmu*), *Official Gazette of the Republic of Serbia*, No. 17/2019, 22 March 2019.

<sup>277</sup> Law on Health Protection (*Zakon o zdravstvenoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 17/2019, 22 March 2019.

**Brief summary:** This case concerns an adjudication by a court, and a claim that an individual was exposed to discrimination due to the court's misapplication of law. The claimant alleged that he was discriminated against as the judge acted unlawfully in his case. He claimed that the judge should withdraw from the case, but his claim was rejected.

The Court of Cassation found that this specific case did not involve discrimination, as there was no different treatment based on any personal characteristic. The Court of Cassation underlined the position of the courts and the independence of judges in their application of the law. The Court explained that the possible misapplication of substantive and procedural law is corrected in a legally prescribed procedure, by submitting regular and extraordinary legal remedies in the course of which monitoring of the regularity of court decisions is prescribed. The Court underlined in particular that a judge enjoys immunity guaranteed by the Constitution and that the Law on the Prohibition of Discrimination, as *lex specialis*, cannot exclude the application of the highest act in Serbia.

**Ground:** Residence

**Name of the court:** Appellate Court in Nis

**Date of decision:** 6 February 2019

**Name of the parties:** AA (*not available*) v. Ministry of Defence

**Reference number:** R 5/2019

**Link:** N/A

**Brief summary:** On 25 March 2014, the Grand Chamber of the European Court of Human Rights delivered its judgment in [Vuckovic and others v. Serbia](#).<sup>278</sup> The case was initiated by 30 reservists in the Yugoslav army against the Government's refusal to pay *per diems* for their work during the NATO intervention in Serbia in 1999. Since they were subsequently demobilised, the Government had refused to pay the *per diems* to which they were entitled. After public protests, the Government reached an agreement in 2008 with some of the reservists residing in seven underdeveloped municipalities. Only those reservists were guaranteed payment of the *per diems*. The 30 applicants were unable to benefit from the agreement, since they resided in other parts of the country. The applicants filed a civil claim against Serbia and pointed to discrimination resulting from the 2008 agreement. However, the applicants did not rely on any anti-discrimination provisions and the court of first instance dismissed their claim, based on the fact that the three-year prescription period since their demobilisation had expired. They therefore filed a new lawsuit after the Grand Chamber delivered its decision. In this case, the Appellate Court reasoned that, the higher court found in a civil procedure that there was a concrete case of discrimination, the higher court is also competent to determine the amount of pecuniary and non-pecuniary compensation for discrimination. This decision is very important, as otherwise victims of discrimination would be in a situation to initiate a new compensation procedure.

**Grounds:** Age and education qualifications

**Name of the court:** Court of Cassation

**Date of decision:** 31 October 2019

**Name of the parties:** AA (*not available*) v. BB (*not available*)

**Reference number:** Rev 67/2018

**Link:** <https://www.vk.sud.rs/sr-lat/rev2-672018-361>

**Brief summary:** In this case, a graduate engineer had passed the certification exam and had three licences issued by the Serbian Chamber of Engineers that confirmed his competences for the job of an independent engineer. He claimed that he had been discriminated against based on age and education qualifications ('other personal characteristics') since 4 April 2011, when he was transferred to lower-paid jobs that objectively required a lower degree. He was subsequently declared redundant due to organisational changes, and his contract was terminated on 24 May 2013. He had been employed by the same employer since 1987. The higher court in Novi Sad rejected his

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<sup>278</sup> ECtHR, *Vuckovic and Others v. Serbia*, app. No. 17153/11 et al., judgment of 25 March 2014.

claim, and the appellate court in Novi Sad upheld the findings of the lower court, as did the Court of Cassation. In finding that there was no discrimination in this case, the Court relied on the fact that the claimant's organisational unit employed employees with all levels of qualification (from primary to higher education), not only highly qualified employees. The Court also relied on the fact that workers of different ages were transferred to different jobs within the firm all the time. In addition, the Court found that the claimant lost his job because the employer decided to terminate the unit in which he was engaged, and not as a result of his personal characteristics. However, the Serbian courts did not assess the employer's treatment of older workers and did not rely on statistics to prove that it was not a case of discrimination. The Court relied primarily on the fact that employees with a lower level education were engaged in the same organisational unit, and it did not discuss how many workers in total and how many older workers in the firm had been declared redundant and lost their jobs.

**Ground:** Age

**Name of the court:** Court of Cassation

**Date of decision:** 26 September 2019

**Name of the parties:** AA (*not available*) v. BB (*not available*)

**Reference number:** Rev 2. 2089/2019

**Address of the webpage:** <https://www.vk.sud.rs/sr-lat/rev2-20892019-diskriminacija>

**Brief summary:** A lawsuit was filed against an employer who organised a meeting with seven female workers who fulfilled the conditions for retirement at the age of 63. He explained that if they refused to retire, they would be exposed to some unpopular measures in the form of pay cuts or relocation to a lower-paid job. They refused to file a retirement claim, and they were subsequently assigned to lower-paid jobs. The same happened to co-workers who also fulfilled the conditions for retirement. The Court of Cassation found that there was age discrimination in this case, as all workers in fact continued to perform the same job, but with reduced earnings. However, the Court of Cassation, including the lower courts, did not find that this was a case of multiple discrimination (on the basis of age and gender).

**Ground:** N/A

**Name of the court:** Court of Cassation

**Date of decision:** 19 July 2019

**Name of the parties:** AA (*not available*) v. BB (*not available*)

**Reference number:** Rev 2. 1283/2019

**Address of the webpage:** <https://www.vk.sud.rs/sr-lat/rev2-12832019-362>

**Brief summary:** In this case, a director of a bank was dismissed. He claimed that he was discriminated against from October 2008 until August 2009, when he was fired. In October 2008, the Governor of the National Bank of Serbia issued a decision to establish a forced administration and appointed the compulsory trustees. They fired the claimant, as he was obstructing their work. The Court of Cassation underlined the importance of the shift in the burden of proof in a case in which the claimant must prove the likelihood that he or she was discriminated against. However, in this case, there were no indications that the claimant was discriminated against on the basis of his personal characteristics, and the Court found that there was no discrimination.

### 12.3 Cases brought by Roma and Travellers

There are no available data on the number of cases brought by Roma and Travellers. In December 2017, the European Roma Rights Centre (EERC) initiated a lawsuit against the cutting off of the electricity supply to a Romani neighbourhood in the southern Serbian city of Niš, where several hundred people live. The supply was cut off in the middle of a lawsuit that accused Elektroprivreda Srbije (the electricity public power authority) of race discrimination. The electricity supply was restored after the court issued an emergency order to turn it back on. The electricity had been cut off as there were two collective electricity meters located off-site and bills were estimated collectively. The bills were huge,

as a result of which the lawsuit was initiated, especially as in all other cases each household had its own meter.<sup>279</sup>

The following year, another interesting case was brought by the ERRC.<sup>280</sup> Based on the statistics available, Romani children are separated from their families much more often than children of other ethnicities, and placed in foster care (family and residential accommodation). The numbers range from 17.3 % to 65 %, depending on the institution. Due to this fact, a lawsuit was initiated against the discriminatory treatment of Romani children, bearing in mind that they amount to 2.05 % of the total population in Serbia.<sup>281</sup> The lawsuit underlined in particular that the state acknowledged that there is a disproportionate number of Romani children among those children who are accommodated in residential care facilities and foster families.<sup>282</sup>

In 2019, the number of complaints before the Commissioner claiming discrimination on the basis of ethnicity decreased, with 50 complaints (6.8 %) being made. However, the majority of complaints on that ground (32 complaints, or 64 %) were submitted in respect of discrimination against Roma. Of those 32 complaints, 12 were submitted by CSOs, mostly in respect of discrimination in the area of employment, access to public authorities and delivery of services.<sup>283</sup> Other complaints were brought by individuals.

In 2019, the Commissioner for the Protection of Equality initiated one criminal charge for incitement of racial hatred towards Roma.<sup>284</sup>

CSOs also advocate for Roma rights. For example, a coalition of NGOs made a joint submission to the UN Committee on Economic, Social and Cultural Rights regarding some current problems experienced by the Roma in Serbia.<sup>285</sup> Among other issues, they claim that the Law on Financial Support for Families with Children discriminates against the most marginalised Roma children. The Law introduces additional conditions for parental allowance – i.e. that all children in a family must be vaccinated fully and on time, and that they must regularly attend elementary school and obligatory preschool education. Although, on the face of it, those conditions are neutral, their effects disproportionately affect vulnerable Roma children.<sup>286</sup>

In 2019, situational testing of discrimination against the Roma was conducted. First, it was proved that one taxi association does not carry Roma passengers. However, another test involving discrimination against Roma in the area of employment did not prove that such discrimination existed.<sup>287</sup>

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<sup>279</sup> European Roma Rights Centre, 'Serbian Court Issues Emergency Order to Turn the Lights Back on in Roma Neighborhood', 7 January 2019, available at: <http://www.errc.org/press-releases/serbian-court-issues-emergency-order-to-turn-the-lights-back-on-in-roma-neighbourhood>

<sup>280</sup> Higher Court in Belgrade, *ERRC v. the Ministry of Labour, Employment, Veteran and Social Policy, City of Belgrade and City of Nis*, lawsuit No. 8386/18.

<sup>281</sup> European Roma Rights Centre, *Family Life Denied: Overrepresentation of Romani children in State Care in Serbia*, December 2017, available at: [http://www.errc.org/uploads/upload\\_en/file/overrepresentation-of-romani-children-in-state-care-in-serbia.pdf](http://www.errc.org/uploads/upload_en/file/overrepresentation-of-romani-children-in-state-care-in-serbia.pdf)

<sup>282</sup> UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Second and third periodic reports of States parties due in 2013 : Serbia*, 21 June 2016, para. 82.

<sup>283</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 222.

<sup>284</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 223.

<sup>285</sup> Coalition of NGOs, *Joint Submission to the United Nations Human Rights Committee on Economic, Social and Cultural Rights on List of Issues for the Third Periodic Report of the Republic of Serbia*, 26 August 2019.

<sup>286</sup> Law on Financial Support to the Family with Children (*Zakon o finansijskoj podršci porodici sa decom*), *Official Gazette of the Republic of Serbia*, Nos. 113/2017, 50/2018, 25 December 2017, Article 25(1)(6).

<sup>287</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 223.



## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Serbia  
**Date:** 31 December 2019

### **Title of the law: The Law on the Prohibition of Discrimination**

Abbreviation: LPD

Date of adoption: 26 March 2009

Latest relevant amendments: N/A

Entry into force: 7 April 2009

Web link: <http://ravnopravnost.gov.rs/propisi/propisi-republike-srbije/>

Grounds covered: explicitly race, skin colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership of political, trade union and other organisations

It is an open clause

Civil law

Material scope: all areas of public life

Principal content: prohibition of direct and indirect discrimination, violation of the principle of equal rights and obligations, calling to account<sup>288</sup> associating for the purpose of exercising discrimination, hate speech and disturbing and humiliating treatment

### **Title of the law: The Gender Equality Act**

Abbreviation: GEA

Date of adoption: 11 December 2009

Latest relevant amendments: N/A

Entry into force: 25 December 2009

Web link: <http://ravnopravnost.gov.rs/propisi/propisi-republike-srbije/>

Grounds covered: gender

Civil law

Material scope: all areas of public and private life

Principal content: direct and indirect discrimination, harassment, sexual harassment

### **Title of the law: The Law on the Prevention of Discrimination against Persons with Disabilities**

Abbreviation: LPDPD

Date of adoption: 17 April 2006

Latest relevant amendments: 19 February 2016

Entry into force: 1 January 2007

Web link: <http://ravnopravnost.gov.rs/propisi/propisi-republike-srbije/>

Grounds covered: disability

Civil law

Material scope: all areas of public life

Principal content: direct and indirect discrimination, violation of the principle of equal rights and obligations, humiliating treatment

<sup>288</sup> Victimisation is known as 'calling to account' in Serbian law.

**Title of the law: Law on the Professional Rehabilitation and Employment of Persons with Disabilities**

Abbreviation: LPREPD

Date of adoption: 13 May 2009

Latest relevant amendments: 16 April 2013

Entry into force: 15 May 2009 (Article 24 and 29 on 24 May 2010)

Web link: <http://ravnopravnost.gov.rs/propisi/propisi-republike-srbije/>

Grounds covered: disability

Civil law

Material scope: employment

Principal content: affirmation of equal opportunities

**Title of the law: Law on the Protection of Rights and Freedoms of National Minorities**

Abbreviation: LPRFNM

Date of adoption: 27 February 2002

Latest relevant amendments: 28 June 2018

Entry into force: 7 March 2002

Web link: <http://ravnopravnost.gov.rs/propisi/propisi-republike-srbije/>

Grounds covered: national, ethnic, racial origin and language

Civil law

Material scope: education, use of language, information, culture, participation in public affairs

Principal content: prohibition of discrimination, affirmative actions

**Title of the law: Labour Law**

Abbreviation: LL

Date of adoption: 15 March 2005

Latest relevant amendments: 16 December 2018

Entry into force: 23 March 2005

Web link: [https://www.paragraf.rs/propisi/zakon\\_o\\_radu.html](https://www.paragraf.rs/propisi/zakon_o_radu.html)

Grounds covered: gender, birth, language, race, skin colour, age, pregnancy, health condition, invalidity, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial capacity, membership of political, labour union or other organisations

It is an open clause

Civil/administrative law

Material scope: employment

Principal content: direct and indirect discrimination

**Title of the law: Law on the Fundamentals of Education and Upbringing**

Abbreviation: LFE

Date of adoption: 27 September 2017

Latest relevant amendments: 15 February 2019

Entry into force: 7 October 2017

Web link:

[https://www.paragraf.rs/propisi/zakon\\_o\\_osnovama\\_sistema\\_obrazovanja\\_i\\_vaspitanja.html](https://www.paragraf.rs/propisi/zakon_o_osnovama_sistema_obrazovanja_i_vaspitanja.html)

Grounds covered: racial, national, ethnic, linguistic, religious background or gender, physical and psychological characteristics, developmental impairments and disabilities, health condition, age, social and cultural origin, financial status or political views

Civil/administrative law

Material scope: education

Principal content: direct and indirect discrimination

**Title of the law: Criminal Code**

Abbreviation: CC

Date of adoption: 6 October 2005

Latest relevant amendments: 21 May 2019

Entry into force: 14 November 2005

Web link: <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html>

Grounds covered: race, colour, religion, nationality, ethnicity or any other personal characteristic

Criminal law

Material scope: all indicated areas employment, access to goods or services (including housing), social protection, social advantages, education if the act is enough serious to be considered as criminal act

Principal content: direct and indirect discrimination

## ANNEX 2: INTERNATIONAL INSTRUMENTS

**Country:** Serbia  
**Date:** 31 December 2019

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogation s/ reservation s relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	3.4.2003	3.3.2004	No	Yes	Yes
Protocol 12, ECHR	3.4.2003	3./3.2004 entered into force 1.4.2005	No	Yes	Yes
Revised European Social Charter	22.3.2005	14.9.2009 entered into force 1.11.2009	Declaration: Among 98 paragraphs, it did not accept 10: (2.4; 10.5; 19.11; 19.12; 27.1; 27.2; 27.3; 31.1.; 31.2; 31.3)	Ratified collective complaints protocol?  No	Yes
International Covenant on Civil and Political Rights	N/A	12.3.2001 (succession)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	N/A	11.5.2001 (accession) entered into force 1.9.2001	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	N/A	12.3.2001 (succession)	No	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	N/A	12.3.2001 (succession)	No	Yes	Yes

<b>Instrument</b>	<b>Date of signature</b>	<b>Date of ratification</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
ILO Convention No. 111 on Discrimination	N/A	24.11.2000	No	N/A	Yes
Convention on the Rights of the Child	N/A	12.3.2001 (succession)	No	N/A	Yes
Convention on the Rights of Persons with Disabilities	17.12.2007	31.7.2009	No	Yes	Yes

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