



# DISCRIMINATION IN SERBIA – PRACTICE AND CHALLENGES



**YUCOM**  
Lawyers' Committee  
for Human Rights



The Republic of Bulgaria  
Ministry of Foreign Affairs



# DISCRIMINATION IN SERBIA – PRACTICE AND CHALLENGES

## **Discrimination in Serbia – practice and challenges**



### **Publisher**

Lawyers' Committee for Human Rights – YUCOM  
Kneza Miloša 4, 11103 Belgrade  
[www.yucom.org.rs](http://www.yucom.org.rs)

### **For publisher:**

Katarina Golubović

### **Authors:**

Natalija Šolić  
Milena Vasić  
Kristina Todorović

### **Proofreading:**

Ljiljana Korica

### **Translation:**

Ljiljana Madžarević

### **Design, layout and printing:**

Dosije studio

### **Circulation:**

200 copies

**ISBN 978-86-83209-53-8**



THE REPUBLIC OF BULGARIA  
MINISTRY OF FOREIGN AFFAIRS

Publication “Discrimination in Serbia – practice and challenges” was prepared within the project “Human rights beyond chapters” implemented by the Lawyers’ Committee for Human Rights – YUCOM with the support of the Embassy of Bulgaria in Republic of Serbia. The views expressed in this publication do not necessarily reflect the views of the Embassy of Bulgaria in Republic of Serbia.

# **DISCRIMINATION IN SERBIA – PRACTICE AND CHALLENGES**

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# INTRODUCTION

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As of adoption of the Constitution of the Republic of Serbia in 2006 and adoption of the new Law on the Prohibition of Discrimination of 2009, there seems to have been numerous texts and publications about the principle of equality and prohibition of discrimination. The institution of the Commissioner for the Protection of Equality has been established and it decides on the complaints of the citizens every day, leads strategic litigations and submits annual reports to the National Assembly of the Republic of Serbia and the public. The principle of prohibition of discrimination has a significant place in the ratified international treaties and national regulations. Action plan for the Chapter 23 defines harmonization of the law of the Republic of Serbia with the law of the European Union as one of the key instruments in the process of negotiations of Serbia for the accession to the EU, emphasizing the principle of anti-discrimination as one of the basic rights. However, despite numerous legislative and institutional activities undertaken as a part of fulfilment of the obligations of Serbia for the purpose of accession to the European Union, while performing its regular activity of provision of free legal aid, the Lawyers' Committee for Human Rights – YUCOM has had a chance to hear the experiences and problems faced by the citizens exposed to discrimination. Both governmental and non-governmental entities have issued many manuals defining the term and protection against discrimination, and we are witnesses that those who need this protection the most are often not sufficiently informed. This is the answer to the question as to why we need another publication on discrimination.

This publication was prepared as a part of the project *Human rights above negotiating chapters* supported by the Ministry of Foreign Affairs of the Republic of Bulgaria. During one year of the project, provision of free legal aid to vulnerable and minority social groups was monitored, enabling conversations with victims of discrimination, as well as with the journalists reporting about this topic, representatives of public institutions and the public, in order to closely present the topics of Chapter 23 to the citizens of Serbia. The obligations undertaken by Serbia with opening of this chapter are not just a formality, and their focus is on the protection of human rights of all the citizens. Thus, the fight against discrimination is the issue which does not apply only to minority groups, but the entire society. Treatment of minorities in one country, on the grounds of nationality, ethnicity, sexuality or any other grounds, is a reflection of the status of human rights in that country as a whole.

The goal of this publication is to remind once again of the existing legal framework – both the international and national, which follows the principle of prohibition of discrimination, but also to point to its insufficiencies and the obligations not fully implemented, in order to protect all the citizens against discrimination.

# LEGAL FRAMEWORK FOR THE PROHIBITION OF DISCRIMINATION

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In the legal system of the Republic of Serbia, the prohibition of discrimination is regulated by the Constitution of the Republic of Serbia<sup>1</sup>, Law on the Prohibition of Discrimination<sup>2</sup> and many other special laws, which were in force even before adoption of the Law on the Prohibition of Discrimination as an umbrella legislation.

However, even before adoption of the mentioned laws, the obligation of prohibition of discrimination was arising from numerous international documents taken over or previously ratified by the Republic of Serbia as the legal successor of former countries SFRY, FRY and State Union of Serbia and Montenegro.

## – UN conventions and documents –

- a) **Charter of the United Nations** (1945) in Article 55 obligates all the members to “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.
- b) **Universal Declaration of Human Rights** (1948) in Article 1 and 2 guarantees freedom and equality in dignity and rights, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.
- c) **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** of 1965 is the principal document of the UN in fight against racism and discrimination. In accordance with the provision of Article 5 of this Convention, the States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, and particularly in respect of enjoying the rights referred to in that provision. Among other things, this Convention stipulates that: “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form”.
- d) **International Covenant on Civil and Political Rights (ICCPR)** of 1966 in Article 20 proclaims that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”, and Article 26 that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground

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1 Official Gazette of the Republic of Serbia no. 83/2006

2 Official Gazette of the Republic of Serbia no. 22/2009

such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status“.

- e) **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984**, particularly condemns torture or cruel and inhuman treatment of a person caused by a personal characteristic of that individual.

In addition, it is important to mention **International Covenant on Economic, Social and Cultural Rights** (ICESCR, came into force in 1971), **Convention on the Elimination of All Forms of Discrimination Against Women** (CEDAW, came into force in 1981), **Convention on the Rights of the Child** (CRC, came into force in 1990), as well as the **Convention on the Rights of Persons with Disabilities** (CRPD, 2009).

With ratification of the above listed international documents, as the member state of the United Nations, the Republic of Serbia undertook not only the rights but also the obligations to comply with them and implement them.

In accordance with above described international treaties, the contractual bodies – Committees have been established, and it is within their competence to supervise fulfilment of all the obligations of member states and some of them may consider individual complaints, The Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro has accepted the competences of the United Nations Human Rights Committee, United Nations Committee on the Elimination of Racial Discrimination and **United Nations Committee Against Torture**, which enables citizens of the Republic of Serbia to directly address these committees due to breach of the prohibition of discrimination.

## – Instruments of the Council of Europe (CE)–

### **European Convention on Human Rights and Fundamental Freedoms of 1950.**

Article 14 of the **European Convention on Human Rights and Fundamental Freedoms** (2004) and the **Protocol no. 12 to the Convention** (2005) stipulate prohibition of discrimination.

**Article 14 of the Convention** – Prohibition of Discrimination – is as follows:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

However, initially, this prohibition in the Convention only had an auxiliary character because the prohibition of discrimination referred exclusively to exercising of the rights guaranteed by the Convention. With adoption of the Protocol no. 12 to the Convention in 2005, the general prohibition of discrimination was established.

**Article 1 of Protocol 12 to the Convention** - General prohibition of discrimination:

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1”:

Along with guaranteeing fundamental rights and freedoms, European Court of Human Rights was also established in accordance with the European Convention on Human Rights and Fundamental Freedoms. With ratification of the Convention by member states, the direct jurisdiction of this court is established for the cases of violation of rights defined by the Convention, thus, the citizens of all members states of the Council of Europe may address the court with the application in case an act or an action of the state authority violated one of their rights defined by the Convention. In order to submit the application to the court, certain formal conditions must be met.

The European Commission against Racism and Intolerance (ECRI), was established as a separate body of the Council of Europe in 1994.

The role of this Commission is prohibition of discrimination directed at prevention of racism, xenophobia, anti-Semitism and intolerance. After the analysis of the situation in the member states through periodical reports delivered by member states of this Commission, the ECRI issues recommendations to the member states about required changes of the legislation and other measures in the fight against racism, but these recommendations are not binding. However, in great number of member states, these recommendations are considered and implemented.

Other significant documents of the Council of Europe in this field are Revised European Social Charter (2009), European Charter for Regional or Minority Languages (2005), as well as Framework Convention for the Protection of National Minorities (1998).

# NATIONAL LEGAL FRAMEWORK

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Anti-discrimination system in the Republic of Serbia is established by the Constitution of the Republic of Serbia, Law on the Prohibition of Discrimination as the systemic law, and other special laws.

Prohibition of discrimination is a human right guaranteed by the Constitution.

**The Constitution of the Republic of Serbia of 2006** does not provide the definition of the term of discrimination, but it contains the general prohibition of discrimination and proclaims the right to equality.

**Article 21 of the Constitution of the RS** prohibits discrimination and stipules: “All are equal before the Constitution and law.

Everyone shall have the right to equal legal protection, without discrimination.

All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited”.

The same article of the Constitution stipulates what shall not constitute discrimination, as well as special measures which may be introduced by the Republic of Serbia to achieve full equality of individuals or a group of individuals in a substantially unequal position compared to other citizens.

This is not the only provision of the Constitution that refers to prohibition of discrimination, because there are other provisions that directly or indirectly refer to the matter of prohibition of discrimination.

**Article 44 of the Constitution of the Republic of Serbia – Churches and religious communities** – stipulates that the Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

Such limitations are also defined by **Article 43 of the Constitution of the Republic of Serbia - Freedom of thought, conscience and religion**, as well as **Article 55 of the Constitution of the Republic of Serbia – Freedom of association**.

Prohibition of discrimination is also defined by **Article 48 of the Constitution of the Republic of Serbia - Promotion of respect for diversity**, as well as in **Article 49 of the Constitution of the Republic of Serbia - Prohibition of inciting racial, ethnic and religious hatred**, stipulating that any inciting of racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable.

**Paragraph 3 of the Article 50 of the Constitution of the Republic of Serbia - Freedom of the media** – stipulates that a competent court may prevent the dissemination of information and ideas through means of public informing only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence”.

Article 76 of the Constitution of the Republic of Serbia – Prohibition of discrimination against national minorities

This Article stipulates prohibition of discrimination against national minorities as follows:

“Persons belonging to national minorities shall be guaranteed equality before the law and equal legal protection”, as well as “any discrimination on the grounds of affiliation to a national minority shall be prohibited”, except for positive discrimination which includes 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, if they are aimed at eliminating extremely unfavorable living conditions which particularly affect them.

**Paragraph 1 of Article 77 of the Constitution of the Republic of Serbia – Equality in administering public affairs** stipulates:

“Members of national minorities shall have the right to participate in administering public affairs and assume public positions, under the same conditions as other citizens”.

# SPECIAL LAWS

Other laws contain partial provisions on the prohibition of discrimination and their provisions are either not harmonized or insufficiently connected. They contain the norms that define certain measures undertaken in order to prevent discrimination, but they also refer to certain subject matters (e.g. healthcare, education, media, labor and employment etc.) or to individual social groups (persons with disabilities, patients, employees etc.).

Thus, in the field of healthcare, there is the **Law on Healthcare**<sup>3</sup>, which defines prohibition of discrimination in its Article 20.

In addition, the **Law on Higher Education**<sup>4</sup> has the provisions on prohibition of discrimination.

In the field of media, there are also several provisions on prohibition of discrimination.

Article 75 of the **Law on Public Information and the Media**<sup>5</sup> stipulates Prohibition of Hate Speech:

“Ideas, opinions or information published in the media shall not incite discrimination, hate or violence against an individual or a group of individuals on grounds of their race, religion, nationality, sex, or their sexual orientation or other personal inclination, notwithstanding whether a criminal offence has been committed by such publication”.

Article 76 of this law stipulates when and under which conditions there shall be no violation of the prohibition of hate speech.

Prohibition of discrimination is also defined by Article 7, item 5 of the **Law on Public Media Services**<sup>6</sup>, as well as the Article 6 of the **Law on Free Access to the Information of Public Importance**<sup>7</sup>, which proclaims the principle of equality.

In the field of labor and employment, the provisions on the prohibition of discrimination are contained in the **Law on Labor**<sup>8</sup> - with a special chapter on **discrimination (Articles 18-23)**, in the **Law on Professional Rehabilitation and Employment of Persons with Disabilities**<sup>9</sup>, as well as in the **Law on Employment and Insurance in Case of Unemployment**<sup>10</sup> in Article 1, paragraph 1, item 1.

3 Official Gazette of the Republic of Serbia no. 107/2005

4 Official Gazette of the Republic of Serbia no. 88/2017, 27/2018 and other law and 73/2018

5 Official Gazette of the Republic of Serbia no. 83/2014, 58/2015 and 12/2016

6 Official Gazette of the Republic of Serbia no. 83/2014, 103/2015 and 108/2016

7 Official Gazette of the Republic of Serbia no. 120/2004, 54/2007, 104/2009 and 36/2010

8 Official Gazette of the Republic of Serbia no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014 and 13/2017 – decision of the CC, and 113/2017

9 Official Gazette of the Republic of Serbia no. 36/2009, 32/2013

10 Official Gazette of the Republic of Serbia no. 36/2009, 88/2010, 38/2015, 113/2017 –other law.

Other significant laws contain the provisions on the prohibition of discrimination in respect of certain social categories, as follows:

**Law on the Prohibition of Discrimination against Persons with Disabilities**<sup>11</sup>, which fully regulates the issue of prohibition of discrimination against persons with disabilities.

Article 3 of the **Law on the Protection of Rights and Freedoms of National Minorities**<sup>12</sup> stipulates as follows:

“Any form of discrimination on the grounds of nationality, ethnicity, race, language, religion or any other grounds against national minorities and persons belonging to national minorities shall be prohibited.

The bodies of the Republic, autonomous province, units of local self-government shall not adopt legal acts, nor undertake the measures contrary to paragraph 1 of this Article”.

Article 4 of the same law envisions the Measures for securing equality.

Prohibition of discrimination of the national minorities is categorized as one of the basic principles of this Law, together with specials measuring securing equality that apply to the government authorities of the Republic of Serbia. This particularly refers to participation of national minorities in the political life, i.e. the affirmative measures with the goal to secure equal presence on the positions in the public sector, as well as the measures for the improvement of the economic position in undeveloped areas traditionally inhabited by the members of national minorities. This Law has expanded the scope of protection of the national minorities to the national minorities as collectives, while until recently, it was almost fully reserved for the individual members of the national minorities, thus emphasizing the significance of the collective rights of the national minorities.

The position of the national minorities is also regulated by the **Law on the National Councils of National Minorities**<sup>13</sup>, and the **Law on the Official Use of Language and Script**<sup>14</sup>. This set of laws was amended in June 2018 in order to be complied with the measures defined in the Action Plan for Chapter 23, as well as the Action plan for exercising rights of national minorities. The need for harmonization of the legislative framework in the field of protection of rights of national minorities is the obligation of Serbia defined in the Action Plan for the Negotiating Chapter 23, as the significant precondition for the accession of the Republic of Serbia to the European Union. Previous Law on the Protection of Rights of National Minorities was adopted in 2002, before adoption of the Constitution of the Republic of Serbia in 2006, and the Constitutional Court proclaimed numerous provisions of the Law on the National Councils of National Minorities as unconstitutional.

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11 Official Gazette of the Republic of Serbia no. 33/2006 and 13/2006

12 Official Gazette of the FRY no. 11/2002, Official Gazette of Serbia and Montenegro no. 1/2003- Constitutional Charter and Official Gazette of the RS no. 72/2009 – other law, 97/2013- decision of the CC and 47/2018

13 Law on the National Councils of National Minorities (*“Official Gazette of the RS”; no. 72/2009, 20/2014 – decision of the CC, 55/2014 and 47/2018*)

14 Law on Official Use of Language and Script (*“Official Gazette of the RS”; no. 45/91, 53/93, 67/93, 48/94, 101/2005 – other law, 30/2010, 47/2018 and 48/2018 - correction*)



Since these laws regulate a large scope of matters, and there are numerous novelties introduced by the new law, we will focus on the most significant provisions which refer to the protection of national minorities against discrimination, as stipulated by the Law on the Protection of Rights and Freedoms of National Minorities, as the instrument for the protection of individual and collective rights of the national minorities defined by the Constitution of Serbia.

Article 2, paragraph 2 of the **Law on Churches and Religious Communities**<sup>15</sup> stipulates Prohibition of religious discrimination, thus, only partially defining prohibition of discrimination based on the grounds of the religion:

“No one shall be harassed, discriminated or privileged for his/her religious convictions, belonging or not belonging to a religious community, participating or not participating in religious services and religious ceremonies and exercising or not exercising guaranteed religious freedoms and rights. “.

**Law on Gender Equality**<sup>16</sup> regulates prohibition of discrimination based on sex and gender.

This law prescribes the establishment of equal opportunities to accomplish rights and obligations, undertaking of special measures to prevent and eliminate gender-based discrimination and the procedure of legal protection of persons exposed to discrimination.

In accordance with Article 2 of this law, gender equality means equal participation of women and men in all fields of public and private sector, in accordance with generally accepted rules of international law, recognized international treaties, the Constitution of the Republic of Serbia and laws, which are to be respected by all.

This law clearly defines the terms “gender” and “sex” and prohibits direct and indirect discrimination on the grounds of sex as the personal capacity.

Prohibition of discrimination is also regulated by the **Law on the Prohibition of Manifestation of Neo-Nazi and Fascist Organizations and Associations and Prohibition of Use of Neo-Nazi and Fascist Symbols and Emblems**<sup>17</sup> and **Law on Sports**<sup>18</sup>.

There are also other laws which partially cover prohibition of discrimination and contain certain security measures such as:

**Law on Peaceful Resolution of Labor Disputes**<sup>19</sup>, **Law on the Protector of Citizens**<sup>20</sup>, **Law on the Constitutional Court**<sup>21</sup>, as well as the **Law on the Official Use of Language and Script**<sup>22</sup>.

15 Official Gazette of the Republic of Serbia no. 36/2006

16 Official Gazette of the Republic of Serbia no. 104/2009

17 Official Gazette of the Republic of Serbia no. 41/2009

18 Official Gazette of the Republic of Serbia no. 10/2016

19 Official Gazette of the Republic of Serbia no. 125/2004, 104/2009 and 50/2018

20 Official Gazette of the Republic of Serbia no. 79/2005 and 54/2007

21 Official Gazette of the Republic of Serbia no. 109/2007, 99/2011, 18/2013- Decision of the Constitutional Court, 40/2015 and 103/2015

22 Official Gazette of the Republic of Serbia no. 45/1991, 53/1993, 67/1993, 48/1994, 101/2005-other law, 30/2010, 47/2018 and 48/2018 –correction.

Partial protection of certain groups of individuals is also defined by various laws, thus, the **Law on Healthcare** stipulates prohibition of discrimination of patients.

**Family Law**<sup>23</sup>, **Law on Foundations of Educational System**<sup>24</sup> in Article 46, **Law on Underage Perpetrators of Criminal Offences and Criminal Legal Protection of Underage Individuals**<sup>25</sup> in Article 88 partially regulate discrimination against children and underage individuals.

Article 7 of the **Law on Execution of Criminal Sanctions**<sup>26</sup> regulates the matter of prohibition of discrimination against individuals serving criminal sanctions.

The **Criminal Code**<sup>27</sup> defines several criminal offences which refer to **discrimination**.

The offences directly related with prohibition of discrimination are as follows: **Violation of Equality in Article 128 of the Criminal Code of the Republic of Serbia**, criminal offence **Racial and Other Discrimination in Article 387 of the Criminal Code of the Republic of Serbia**, as well as **Instigating National, Racial and Religious Hatred and Intolerance in Article 317**:

“Whoever instigates and incites national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia, shall be punished by imprisonment of from six months to five years”.

Other criminal offences defined by the Criminal Code of the Republic of Serbia significant for the prohibition of discrimination are as follows:

Violation of the Right to Use a Language or Alphabet (Article 129 of the Criminal Code of the Republic of Serbia), Violation of the Right to Expression of National or Ethnic Affiliation (Article 130 of the Criminal Code of the Republic of Serbia), Violation of the Freedom of Religion and Performing Religious Service (Article 131 of the Criminal Code of the Republic of Serbia), Injury to Reputation due to Racial, Religious, Ethnic or Other Affiliation (Article 174 of the Criminal Code of the Republic of Serbia) etc.

In Article 54a, the Criminal Code defines **Special Circumstances for Sentencing** for the criminal offences committed out of hatred:

“If a criminal offence is committed due to hatred on the grounds of race and religion, nation or ethnicity, sex, sexual orientation or gender identity of another individual, the court shall consider that circumstance as aggravating circumstance, unless it is defined as the characteristic of a criminal offence”.

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23 Official Gazette of the Republic of Serbia no. 18/2005, no. 72/2011 – other law and 6/2015

24 Official Gazette of the Republic of Serbia no. 88/2017 and 27/2018 – other laws

25 Official Gazette of the Republic of Serbia no. 85/2005

26 Official Gazette of the Republic of Serbia no. 55/2014

27 Official Gazette of the Republic of Serbia no. 85/2005, 88/2005, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

# THE LAW ON THE PROHIBITION OF DISCRIMINATION

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Adoption of the Law on the Prohibition of Discrimination was a significant step in the field. Efficient and comprehensive protection was not possible since the norms of the existing laws, which directly or indirectly stipulated prohibition of discrimination, were not harmonized or connected. It was necessary to adopt an umbrella anti-discrimination law, which would include and connect all these norms and provide systemic approach for the efficient fight against discrimination.

The Republic of Serbia adopted the new Law on the Prohibition of Discrimination on March 26, 2009 (application of the law was initiated on April 8, 2009).

For the first time, this law provides systemic method for general prohibition of discrimination, establishing the forms and special cases of discrimination, as well as the proceedings and mechanisms for the protection, which would provide comprehensive and efficient fight against discrimination.

In its basic provisions, the Law on the Prohibition of Discrimination gives the definition of discrimination, explains the terms, as well as the circle of protected individuals.

In this Law, the discrimination is defined as follows:

“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 persons close to them, be it overt or covert, on the grounds of race, skin color, ancestors, 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 in political, trade union and other organizations and other real or presumed personal characteristics”.

The Law on the Prohibition of Discrimination provides clearly defined forms of discrimination (in the section “General Prohibition and Forms of Discrimination”):

**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 favorable position through any act, action or omission.

**Indirect discrimination** shall occur if an individual or a group of individuals, on account of his/her or their personal characteristics, is placed in a less favorable 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.

Discrimination is also **the violation of the principle of equal rights and obligations** which 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 commensurate with the objective achieved through them.

**The prohibition of calling to account** - 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.

**Association for the purpose of exercising discrimination** – It is forbidden to associate for the purpose of exercising discrimination; that is, this Law prohibits activities of organizations or groups that are aimed at violating freedoms and rights guaranteed by the Constitution, rules of international law and the law, or at inciting nationally, racially, religiously or otherwise motivated hatred, divisions or enmity.

**Hate speech** – It is forbidden to express 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 bodies and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.

Discrimination is also **Harassment and humiliating treatment** – It is forbidden to expose an individual or a group of persons, on the basis of his/her or their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment.

This law separately defines **severe forms of discrimination**:

1. Causing and inciting inequality, hatred and enmity on the grounds of national, racial or religious affiliation, language, political opinions, gender, gender identity, sexual orientation or disability;
2. Advocating or exercising discrimination on the part of state bodies or in the course of proceedings conducted before state bodies;
3. Advocating discrimination through public bodies;
4. Slavery, trafficking in human beings, apartheid, genocide, ethnic cleansing, as well as advocating any of the above;
5. Discrimination against individuals on the basis of two or more personal characteristics (multiple or intersecting discrimination);
6. Discrimination that is committed a number of times (repeated discrimination) or is committed over an extended period of time (extended discrimination) against one and the same individual or a group of persons;
7. Discrimination that results in severe consequences for the individual discriminated against, other persons or property, especially if it involves an act punishable by law, predominantly or solely motivated by hatred or enmity towards the aggrieved party on the grounds of a personal characteristic of his/hers.

The Law on the Prohibition of Discrimination also has a chapter where it defines **special cases of discrimination**, such as:

- Discrimination in the course of proceedings conducted before public administration bodies
- Discrimination in the sphere of labor
- Discrimination in the provision of public services and in the use of premises and spaces
- The prohibition of religious discrimination
- Discrimination in the sphere of education and professional training
- Discrimination on the grounds of gender
- Discrimination on the grounds of sexual orientation
- Discrimination of children
- Discrimination on the grounds of age
- Discrimination against national minorities
- Discrimination on the grounds of political party or trade union membership
- Discrimination of disabled persons
- Discrimination on the grounds of health

# PROTECTION AGAINST DISCRIMINATION

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The Law on the Prohibition of Discrimination defines institutional mechanisms for the protection against discrimination: Institution of the Commissioner for the Protection of Equality and judicial protection (the right to file a lawsuit), including misdemeanor law-related protection against discrimination.

## **Protection in the proceedings before the Commissioner for the Protection of Equality**

The Commissioner for the Protection of Equality is an independent institution established by the Law on the Prohibition of Discrimination. Normative framework for the work of this institution consists of the Constitution of the Republic of Serbia, relevant international documents, as well as general and specific anti-discrimination laws of the Republic of Serbia.

Main tasks of this state body are to prevent all modes, forms and cases of discrimination, protect equality of individuals and legal entities in all areas of social relations, monitor application of regulations related to prohibition of discrimination, as well as to improve achievement and protection of equality.

Proceedings before the Commissioner are initiated by a complaint and this body is authorized to receive and review complaints from discriminated persons, provide opinions and recommendations in specific cases of discrimination and pass legally prescribed measures (warning).

The Commissioner is obliged to provide information to the person who filed a complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection, including the process of reconciliation conducted by the Commissioner.

Under specific conditions, the Commissioner is authorized to file a lawsuit for the protection against discrimination, and to file misdemeanor charges to the court along with the aggrieved party, on the account of violations of rights guaranteed by anti-discrimination regulations.

The Commissioner is also authorized to inform the public about significant cases of discrimination, to monitor implementation of the law and other regulations, initiate the passing or amending of regulations for the purpose of implementation and development of protection against discrimination, and to provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination.

The Commissioner is also authorized to establish and maintain cooperation with bodies authorized to ensure equality and the protection of human rights on the territory of an autonomous province or a local government, and to recommend measures to public administration bodies and other entities aimed at ensuring equality.

Through its annual report (as well as its special reports, when needed) submitted to the National Assembly, the Commissioner provides information about noticed cases of discrimination, including the evaluation of work of public

administration bodies, providers of services and other entities, any failures perceived, measures taken and recommendations for their elimination.

Organization of work and activities of the Commissioner are fully regulated by the Rules of Procedure passed by the Commissioner.

## Judicial protection

### Litigation procedure

Anyone who believes that has suffered discriminatory treatment shall have the right to judicial protection in line with the law. Court proceeding is initiated by filing of a lawsuit. Provisions of the Law on Civil Procedure<sup>28</sup> shall apply accordingly to such a lawsuit, with certain exceptions as defined by the Law on the Prohibition of Discrimination. This type of proceedings shall be conducted urgently, and judicial review as extraordinary legal remedy shall always be allowed in the proceedings related to the protection against discrimination.

The following may be demanded through a lawsuit:

- imposing a ban on the activity that poses the threat of discrimination, a ban on further discriminatory activities, or a ban on repeating of a discriminatory activity
- establishing that the defendant acted in discriminatory manner against the plaintiff or another party
- taking steps to redress the consequences of discriminatory treatment
- compensation of material and non-material damages
- publication of the decision rendered in the lawsuit

### Criminal procedure

Criminal Code of the Republic of Serbia prescribes criminal offences that provide protection in cases of discrimination and violation of the principle of equality. Criminal procedure, as one of the possible forms of protection, is conducted in case of the criminal offences defined as Violation of Equality, referred to in Article 128 of the Criminal Code of the Republic of Serbia, and Instigating National, Racial and Religious Hatred and Intolerance, referred to in Article 387 of the Criminal Code of the Republic of Serbia (as the criminal offences directly prohibiting discrimination), as well as other criminal offences defined by the Criminal Code of the Republic of Serbia that are also important for the prohibition of discrimination (Articles 129, 130, 131 of the Criminal Code of the Republic of Serbia).

Article 54a of the Criminal Code of the Republic of Serbia stipulates a qualifying circumstance that needs to be considered when deciding on the punishment for criminal offences committed based on the based due to a personal characteristic of a victim. This aggravating circumstance has been present in the Criminal Code since 2012 and it is focused on suppression of criminal offences motivated by prejudices related to certain personal characteristics.

28 Official Gazette of the RS, no. 72/2011, 49/2013 – Decision of the Constitutional Court, 74/2013 Decision of the Constitutional Court, 55/2014 and 87/2018

However, not before the year 2018 was the first judgement<sup>29</sup> adopted that did take into account mandatory aggravating circumstance in the proceedings for criminal offence of domestic violence motivated by hatred.

This was also the first time that a court in Serbia invoked Article 54a of the Criminal Code of the Republic of Serbia even though that aggravating circumstance has been mandatory for 6 years.

### **Misdemeanor procedure**

The Law on Misdemeanors<sup>30</sup> regulates the term of misdemeanor, conditions for misdemeanor liability, conditions for defining and enforcement of misdemeanor sanctions, the system of sanctions and misdemeanor proceedings. The provisions of the Criminal Procedure Code apply accordingly to the misdemeanor proceedings, unless otherwise prescribed by this or other law.

Anti-discrimination regulations sanction certain acts of discrimination, as well as the failure to conduct specific measures prescribed by law for the purpose of achievement of full equality, protection of a person or a group of persons in the position of inequality.

Misdemeanor proceedings are initiated by misdemeanor notice of violation of the rights prescribed by anti-discrimination regulations, not only for offences defined by the Law on the Prohibition of Discrimination, but also for those defined by other specific anti-discrimination laws:

The Law on the Protection of Rights and Freedoms of National Minorities, the Law on Prevention of Discrimination of Persons with Disabilities, the Law on Gender Equality, the Labor Law, the Law on Sports, the Law on Official Usage of Languages and Scripts, Law on the Prohibition of Manifestation of Neo-Nazi and Fascist Organizations and Associations and Prohibition of Use of Neo-Nazi and Fascist Symbols and Emblems, etc.

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29 Judgement K.no 1435/2017 of October 17, 2018, case led by lawyer Kristina Todorović, YUCOM

30 Official Gazette of the RS, no.65/2013, 13/2016 and 98/2016 – Decision of the Constitutional Court



# APPLICATION OF THE LAW ON THE PROHIBITION OF DISCRIMINATION AND PROBLEMS IN PRACTICE

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Adoption of a systemic law was a significant step in achieving protection against discrimination. The next significant step was implementation of this law and creation of the court practice.

The Law on the Prohibition of Discrimination itself has contributed to development of a more notable and richer court practice in the field of protection against discrimination as compared to the period before its adoption.

However, in the first years of application of this law, an uneven court practice has been developed, meaning that the acting courts had different opinions when interpreting and applying provisions of the Law on the Prohibition of Discrimination. It was necessary to initiate the analysis and harmonization of opinions expressed in application of anti-discrimination regulations in order to achieve legal security and equal legal protection before the courts in the Republic of Serbia, which was also pointed out by the basic and higher court judges who attended trainings organized in 2013 and 2014 on the subject of protection against discrimination, where YUCOM lawyers also participated.

During 2013, that is, four years after the Law on the Prohibition of Discrimination had come into force, YUCOM conducted the research on application of mechanisms prescribed by this law<sup>31</sup>, which showed that not only the citizens, but also the lawyers and even courts lacked knowledge in this matter. Insufficient use of all legal possibilities to eliminate consequences of discriminatory treatments and prevent further discriminatory treatment, contributed to an uneven and inefficient practice in the fight against different treatment of people on the basis of their personal characteristics<sup>32</sup>. In addition, the research showed an uneven application of various provisions of this law, starting from the provisions on urgency of the proceedings, the rules concerning the burden of evidence, the issues of active or passive legitimation, compensation of damages and similar.

In 2015, the Judicial Academy in cooperation with the OSCE Mission in Serbia started the analysis of the court practice in the field of protection against discrimination in the decisions of appellate courts in the territory of the Republic of Serbia<sup>33</sup>.

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31 "Antidiscrimination Mechanisms in Practice", lawyers Kristina Todorovic, Ivana Stjelja, Nikola Grujić, 2013

32 Available at: [http://www.yucom.org.rs/upload/vestgaleri-ja\\_103\\_9/1363187226\\_GS0\\_Antidiskriminacioni%20mehanizmi\\_web.pdf](http://www.yucom.org.rs/upload/vestgaleri-ja_103_9/1363187226_GS0_Antidiskriminacioni%20mehanizmi_web.pdf)

33 "Analysis of Appellate Courts Practice – Legal Protection against Discrimination in the Republic of Serbia", lawyer Katarina Golubović, lawyer Natalija Šolić, June 2015

Subjects of the research were the decisions of appellate courts (including the decisions of former district courts) made in the period from April 8, 2009 to April 8, 2015. The goal of this research was to analyze application of substantive legal provisions of the Law on the Prohibition of Discrimination during that time and it included large number of appellate courts' judgements that created problems and certain patterns that led to uneven proceedings by the courts. These are some of them:

### **(No) Application of international documents by the courts**

Even though there is an obligation to apply international standards in the proceedings before national bodies, at the beginning, the courts referred to international documents in their judgements usually only if the legal representatives pointed them out. Later, referencing of international documents was noted, but this was reduced to simple listing of certain articles, most frequently from the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the International Covenant on Civil and Political Rights. However, in their judgements, the courts did not explain the articles of the documents they referred to, and they did not state whether and in what way those articles were violated. There are such examples where the court would completely fail to apply international law. In the case of Pfajfer vs. Air Serbia, in its decision on existence of discrimination, the Higher Court in Belgrade<sup>34</sup> determined that there was discrimination, but only for the period after 2003 "since there were no legal regulations prohibiting discrimination before the adoption of the Law on the Prohibition of Discrimination". It is evident that the court did not have necessary knowledge and did not know that the 1974 Constitution of Yugoslavia also contained the first anti-discrimination norms, and that the former Yugoslavia had ratified International Covenant on Social and Cultural Rights in 1971 (both covenants came into force in 1976). Because of all of this, among other things, the first instance verdict was revoked by the Appellate Court, specifically stating in its decision this failure of the first instance court to consider the existing international and national regulations related to protection against discrimination.

**Personal characteristic**, as the ground for discrimination and the main precondition for determining discrimination (with other conditions, of course), was interpreted differently by the courts. This was happening because the Law on the Prohibition of Discrimination does not prescribe limitations regarding personal characteristics, and besides the ones clearly listed, they are defined as "and other real or presumed personal characteristics". Such definition leaves space for different interpretations, and certain number of courts took a restrictive stance (only those characteristics clearly listed in the legal definition are considered as personal characteristics), while certain number of courts had wider interpretation (personal characteristics also included marital status, disturbed relations between two employees, residence, tolerance, respect of authority, etc.).

The courts also interpreted differently **legal interest** for filing of a lawsuit for protection against discrimination, guided by the fact that the Law on Civil Procedure (the provisions of which apply in a subsidiary manner in the process of protection against discrimination) prescribed that the plaintiff had to have a legal interest in order to file the lawsuit, thus, they rejected certain lawsuits as inadmissible.

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34 Verdict of the Higher Court in Belgrade 5 P1. 430/10 of January 5, 2012

However, such interpretation is wrong since the filing of the lawsuit for protection against discrimination is determined by the Law on the Prohibition of Discrimination which does not require proof of legal interest for its filing. Discriminated person does not have to prove his/her legal interest, or state the reason for requesting protection against discrimination.

**Difference between harassment at work and discrimination in the sphere of labor** was also a base for various interpretations. However, the courts have taken a position that discrimination in the sphere of labor could not be equalized with acts of harassment at work and that harassment at work could be considered as discrimination only when such behavior is based on a personal characteristic of an employee. Therefore, discrimination in the sphere of labor exists only if unequal treatment was motivated by a personal characteristic of an employee.

#### **Recognizing and differentiating direct and indirect discrimination**

The courts are very inconsistent in application of legal definition of discrimination. Due to insufficient education and lack of experience in the field of application of anti-discrimination regulations, there are some situations where discrimination is not identified in line with the law. Additional problems are prejudices and beliefs that apparently still exist in certain number of judges, which leads to some acts of discrimination not being recognized because they are justified according to their system of values.

Also, closely linked with non-recognition of direct discrimination is the **Intent** – although intent to commit discrimination is not determined in anti-discrimination proceedings, certain number of courts still determines such intent after all. Unlike those courts who very clearly explained this in their decisions, there are also decisions in which the court gave clear instructions to determine the intent. Example for this is the case Pfajfer vs. Air Serbia where the Appellate Court returned the case to the Higher Court with the order to determine intent of the words spoken, stating “that the insults spoken on the basis of nationality are not discriminatory *per se*, even though they were extremely insulting and were repeated and had clear (combined with other wrongdoings of the employer) discriminatory, degrading and insulting connotation. However, the Appellate Court determined that their discriminatory base depended on “circumstances of how and at what occasion the words were spoken”, and that it “depended on the system of moral values of the defendant, as well as on the fact whether there was enough evidence to substantiate the claims that these were insults rather than just something intended as a joke”<sup>35</sup>. This is the example that shows the court was not sufficiently educated to recognize discrimination and that the purpose of judicial protection is precisely to show that such values are not right and are not allowed in the society.

**Burden of evidence** – In its Article 45, paragraph 2, the Law on the Prohibition of Discrimination introduces different rule regarding the burden of evidence in anti-discrimination litigations: “If the plaintiff 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”.

This led to different interpretations of the articles prescribing the burden of evidence not only in the Law on the Prohibition of Discrimination, but also in the Law on Civil Procedure which is applied in subsidiary manner, thus, the courts combined in their decisions the provisions on burden of evidence without knowing which regulation should be given precedence. Namely, in most of the proceedings, judges gave the precedence to the provisions of the Law on Civil Procedure by which they derogated the provisions of the Law on the Prohibition of Discrimination and vice versa. The point is that there is no exclusive application of Article 45 of the Law on the Prohibition of Discrimination because the provisions on the burden of evidence prescribed by this law do not completely exclude the provisions of the Law on Civil Procedure. The rule of the burden of evidence given in the Law on the Prohibition of Discrimination does not exclude prosecutor's obligation to present all the facts and propose all evidence confirming such facts regarding the existence of an act of discrimination. Prosecutor in the proceedings for protection against discrimination does not have to prove discrimination but only to show discriminatory treatment as probable. However, the rules related to the burden of evidence still remain as a problem in proceedings before the courts in anti-discrimination lawsuits, where the courts during the proceedings do not state at all whether the prosecutor showed the discrimination as probable, but rather conduct the whole proceedings according to the rules of a regular lawsuit. This is forcing prosecutors to prove discriminatory treatment throughout the proceedings and to present numerous pieces of material evidence, without knowing till the end of the proceedings, that is, till the announcement of verdict, whether they have proven discriminatory treatment or shown it as probable.

### **Compensation of damages**

Since there are no clear rules on relations between anti-discrimination regulations and other laws, judges sometimes combine provisions of anti-discrimination regulations and other relevant laws, giving advantage to one or the other, which certainly leads to legal insecurity, different decisions on the same factual and legal grounds, and to unfair results. In some cases of discrimination, judges apply time limits from general regulations, such as the unenforceability time limit due to statute of limitations from the Law on Contracts and Torts, to damage compensation claims for discriminatory treatment. Although the Law on the Prohibition of Discrimination does not stipulate statute of limitations for discriminatory acts, this means that anyone can sue for discrimination without time limits, but cannot receive compensation of damage after certain time period has passed.

**Passive legitimation** was a problem because the courts combined applications of regulations against discrimination and harassment at work and the right to sue employer. They did not make a distinction between disturbance as a form of discrimination and harassment at work. This led to courts taking a stance in their decisions that in case of "simultaneous existence of harassment at work and discrimination, only the employer can be sued". Such practice was wrong due to untenable assumption of simultaneous existence of harassment at work and discrimination, but this was changed after adoption of the Law on Prevention of Harassment at Work (2010). In cases of discrimination in the sphere of labor, passive legitimation applied to employer.

In addition, the issue of **active legitimization** caused different interpretations by the courts concerning the question of who had the right to file a lawsuit for protection against discrimination. In practice, there are some court decisions where the courts rejected lawsuits filed by organizations working in the field of human rights protection, as well as by unions, with the explanation that they were not authorized to do so by law (although the regulations stipulate this possibility).

For example, in its decision<sup>36</sup>, the court rejected the lawsuit filed by the union organization “Evrovozac” against Public Transportation Company GSP Beograd, in the proceedings for determination of discriminatory treatment. The Court’s explanation stated: “... since it can be concluded that the lawsuit in case of discriminatory treatment may be filed by a person, group of persons individually or through an organization as other person, in this case the court finds that the union organization “Evrovozac” cannot be party to the proceeding. This is because in this case, “Evrovozac” cannot demand protection in its own name, but in the name of its members, meaning that the members cannot be discriminated against for their union membership and their right to unionizing cannot be violated, as stated in the plaintiff’s brief, while written statements from certain persons, members of “Evrovozac” that they are threatened by termination of employment if they did not revoke their union membership, as per the court’s findings, do not present acceptance by persons being discriminated against.” Higher instance court corrected this in its decision, but this mistake of the first instance court has significantly affected duration of this procedure and caused loss of time while waiting for the appellate procedure and final epilogue in the courtroom. This case was initiated in 2011 and validly completed only in 2018.

After the conducted research, all of the stated problems and conflicting opinions were resolved at the VI session of the Civil Department of the Appellate Court in Belgrade, held on September 10, 2015, at which clear legal positions were taken.

### **Duration of proceedings**

In accordance with the Law on the Prohibition of Discrimination, proceedings related to protection against discrimination are considered particularly urgent. However, duration of anti-discrimination lawsuit varies from court to court. There are some positive examples where the proceedings have been completed in a reasonable time period, but there are also those where duration completely beats the purpose of protection against discrimination. Thus, the case of Pfajfer vs. Air Serbia<sup>37</sup> was the first proceeding initiated before the court immediately after the Law on the Prohibition of Discrimination had come into force in 2009, and this case is still pending. In addition, the case “Evrovozac” vs. GSP lasted full 7 years, which shows that, sometimes, when it comes to their duration, decisions and their approach to the court, these anti-discrimination lawsuits become the same as regular proceedings, which is, by all means, unacceptable, having in mind the significance and the role of these proceedings in the fight against discrimination. The question is what kind of message judiciary is sending in such cases to potential victims of discrimination who are yet to seek protection against discrimination before the courts of the Republic of Serbia.

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36 Decision of the First Basic Court in Belgrade 16 P.no. 718/2012 of January 23, 2012

37 Proceedings before the Higher Court in Belgrade P1.no.24/2013, started in 2009, still pending

# PROHIBITION OF DISCRIMINATION AND

## CHAPTER 23

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In July 2016, Serbia opened Chapter 23 in the process of negotiations for the accession to the . Prior to that, at the session held on April 27, 2016, the Government adopted the Action Plan for negotiations on Chapter 23, confirmed by the European Commission. Chapter 23 refers to judiciary and fundamental rights and is an extensive and comprehensive strategic document with the goal to harmonize regulations of Serbia with those of the European Union in this field.

The Action Plan is structured in such a way that it starts with recommendation from the Screening Report, followed by the required result of that recommendation and the indicators for evaluation of fulfillment of the recommendation. Based on the recommendation, the list was created with concrete activities that Serbia needs to implement in order to fulfill the recommendation, as well as responsible authorities for each activity, deadline for their implementation, financial resources and impact indicators for those activities.

Recommendations given to Serbia in the field of discrimination are quite broad and imply numerous systemic activities that Serbia needs to implement; they include all vulnerable social categories, with special focus on the position of national and religious minorities, women, children, persons with disabilities and LGBT population. The following are the most important recommendations:

- Ensure state neutrality towards the internal affairs of religious communities and further ensure that the right of persons belonging to a national minority to equal access to religious institutions, organizations and associations is consistently guaranteed in both legislation and its implementation in line with recommendations of the independent bodies.
- Complement the anti-discrimination strategy with a credible action plan, including actions to foster gender equality and a mechanism to monitor its implementation. Strengthen the institutional capacity of the bodies active in this area, improve their cooperation and ensure more effective follow up from the law enforcement bodies to possible violations, enhance awareness and support measures, especially on employment and public representation of women. Particular focus should be put on ending discrimination of the LGBTI community and respecting their rights and freedoms; Adopt the law aiming at protecting persons with mental disabilities in institutions of social welfare.
- Improve the protection and enforcement of rights of the child and of persons with disabilities, including by strengthening the relevant institutions, ensuring better cooperation between the judiciary and the social sector and by fully implementing legislation on juvenile justice in line with EU standards.

- Adopt a specific action plan, through an inclusive process, which would focus on the effective implementation of existing rights of national minorities, taking into account the recommendations issued in the third Opinion on Serbia in the context of the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities.
- Serbia should start with the preparations for adoption a new multi-annual strategy and an action plan to improve living conditions of the Roma planned for the end of 2014, including actions to ensure their registration, comprehensive measures on non-discrimination, ensure compliance with international standards on forced evictions and access to guaranteed socio-economic rights and dedicate additional financial assistance to implement the current and future Roma strategy in particular regarding education and health measures.

Although at first glance they may seem quite general, each recommendation from the Screening Report is thoroughly elaborated through concrete activities that Serbia is required to implement, such as: strengthening administrative capacities by training for the employees at the Ministry of Justice in the sector for normative affairs and register of churches and religious communities; amendments and supplements to the Law on the Prohibition of Discrimination to fully align with the EU Acquis; improvement of the existing General Protocol for the protection of children from abuse and neglect in order to align with the best practice of the EU; implementation of training for judges on international documents and standards in the field of protection against discrimination of national minorities and on the practice of the European Court for Human Rights; establishing mechanisms for an integrated social services delivery model by searching more actively for solutions for the beneficiaries of social services who are fit for work, in order to promote active inclusion of the Roma, and numerous other activities.

Even though Serbia has taken on numerous activities in order to fulfill obligations from the Action Plan for Chapter 23, many activities have been delayed which directly affects the position of vulnerable social groups in Serbia. In its non-paper report November 2018, the European Union stated the following:

- The annual reports of independent institutions – the Ombudsman, the Commissioner for the Protection of Equality and the Commissioner for Information of Public Importance and Personal Data Protection, have not been discussed at the plenary session of the National Assembly for the fourth consecutive year. There is a serious delay in adopting of the Law on Amendments to the Law on the Ombudsman.
- The strategy on prevention of discrimination expired in January 2018 and the new one has yet to be adopted, while adoption of the new Law on the Prohibition of Discrimination, that is, its alignment with the EU Acquis is further delayed.
- There is also a delay in the adoption of a new Law on Gender Equality, as well as the adoption of the National Strategy and Action Plan for Combating Violence against Women in Family and Partner Relationships.

- Draft Strategy (2018-2022) for Prevention and Protection of Children from Violence has yet to be adopted. Statistical data on vulnerable groups are still not disaggregated, particularly on the Roma children and children with disabilities.
- In regards to the situation of persons with disabilities, adoption of the law aiming at protecting persons with mental disabilities in institutions of social welfare is delayed.
- In regards to LGBTI persons, six textbooks for high school were withdrawn from use due to discriminatory content. In September 2018, and for the fourth consecutive year, the Pride Parade in Belgrade took place without incidents. However, investigation, prosecution and penalties for hate speech, threats and attacks against members of the LGBTI community are often inadequate. Centralized official data on hate crimes are still lacking.
- Regarding the rights of persons belonging to minorities, the implementation of the “Action Plan for the Realization of the Rights of National Minorities” has continued. The Office for Human and Minority Rights regularly reports on its implementation with the most recent report of June 2018. Amendments to the Law on Protection of Rights and Freedoms of National Minorities and the Law on National Councils of National Minorities were adopted in June 2018. Elections of the National Minority Councils took place on November 24, 2018; the Commission will review the election process closely in cooperation with the state authorities and the stakeholders. Local councils for interethnic relations have not yet been established in all the municipalities where such obligation is stipulated by the law. Their role and mandate should be clarified.
- In regards to the Roma integration, the Coordinating Body for monitoring the implementation of the Strategy for Social Inclusion of the Roma (2016-2025), chaired by a Deputy Prime Minister, met only once in the first half of 2018.

This “overview” of the situation certainly does not close the circle in regards to anti-discrimination. Position of vulnerable and minority social groups is especially affected by recommendations related to the field of judiciary, since only independent and self-reliant institutions of the judicial system may consistently monitor achievement of the principle of equality. In November 2018, Serbia adopted a Law on Free Legal Aid, the implementation of which was planned for the end of 2019, and which should provide free legal aid to most vulnerable categories of population. The text of this law, though lacking clarity and with numerous inconsistencies, stipulates a possibility for associations and non-governmental organizations to also provide legal aid, besides lawyers. The European Union has still not given its opinion on this law, but it stated in the aforementioned non-paper report that the Commission would review it in terms of its compliance with the Acquis.



# CONCLUSION

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Since the prohibition of discrimination has been a really dynamic field in the sphere of raising awareness of not only the citizens, but also the law-implementing institutions and has been in the focus of both domestic and international organizations, if we compare this issue with the period of 10 or 20 years ago, just the fact that discrimination has become a relevant issue in the public discourse can be considered a success. However, many activities which need to be implemented in order to fully achieve the principle of equality in the legal system, have not been implemented. This primarily refers to amendments to the Law on the Prohibition of Discrimination, adoption of the Law on Gender Equality, adoption of new Strategy for Prevention and Protection against Discrimination, full implementation of the principle of national minorities' protection, integration of the Roma in the society, regulation of position of internally displaced persons, adoption of the Law on Protection of Persons with Mental Disabilities in Institutions of Social Welfare, as well as collection of statistical data related to victims of hate crimes and gender based violence, and many others.

Examples of good practice – such as inclusion of civil society organizations with extensive experience and expertise in the field of discrimination in the work of state and combined bodies, such as Council for Monitoring the Implementation of the Recommendations of the United Nations Mechanisms, which includes representatives of public institutions, and civil society organizations as observers – sends a clear message that there is a will for regulation of this issue.

However, as in any society still feeling the consequences of a civil war, burning issue of hate speech from public and political figures towards minority groups must be adequately sanctioned. In order to solve the problem of achieving full equality of all citizens before institutions of the system, it is not enough, although it is necessary, to adopt adequate regulations. The key ingredient, without which the regulations would remain just letters on a paper, is consistent and even application of the law for all the citizens, and establishment of independent and self-reliant institutions of the judicial system that would monitor this application. That is why the issue of discrimination is broader than a set of laws or obligations that Serbia has taken up with opening of Chapter 23. This is the matter of every right in the legal system of a country and its equal access to all the citizens.

CIP – Каталогизacija у публикацији – Народна библиотека Србије,  
Београд

343.85:343.412(497.11)

343.85:343.412(497.11)(094.5)

342.726(497.11)

DISKRIMINACIJA u Srbiji – praksa i izazovi / [priredile Natalija  
Šolić, Milena Vasić, Kristina Todorović ; prevod Ljiljana Madžarević]. –  
Beograd : Komitet pravnika za ljudska prava – YUCOM, 2019 [Beograd :  
Dosije studio]. – 32, 32 str. ; 23 cm

Nasl. str. prištampanog prevoda: Discrimination in Serbia – practice and  
challenges. – Oba rada štampana u međusobno obrnutim smerovima.  
– „Publikacija ... nastala je u okviru projekta ‚Ljudska prava i van  
pregovaračkih poglavlja‘ koji realizuje Komitet pravnika za ljudska  
prava – YUCOM uz podršku Ambasade Republike Bugarske u Republici  
Srbiji...“ --> kolofon. – Tiraž 200. – Napomene i bibliografske reference  
uz tekst.

ISBN 978-86-83209-53-8

- a) Дискриминација – Спречавање – Србија
- b) Дискриминација – Спречавање – Србија – Законски прописи
- c) Људска права – Заштита – Србија

COBISS.SR-ID 273795852