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# Country report

## Non-discrimination

Serbia

2021

including summary



Justice  
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 2020 – 31 December 2020

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**CONTENTS**

|                                                                                                                                                                                                                                                             |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>EXECUTIVE SUMMARY .....</b>                                                                                                                                                                                                                              | <b>5</b>  |
| <b>INTRODUCTION .....</b>                                                                                                                                                                                                                                   | <b>12</b> |
| <b>1 GENERAL LEGAL FRAMEWORK .....</b>                                                                                                                                                                                                                      | <b>15</b> |
| <b>2 THE DEFINITION OF DISCRIMINATION .....</b>                                                                                                                                                                                                             | <b>16</b> |
| 2.1 Grounds of unlawful discrimination explicitly covered .....                                                                                                                                                                                             | 16        |
| 2.1.1 Definition of the grounds of unlawful discrimination within the directives .....                                                                                                                                                                      | 16        |
| 2.1.2 Multiple discrimination .....                                                                                                                                                                                                                         | 19        |
| 2.1.3 Assumed and associated discrimination .....                                                                                                                                                                                                           | 20        |
| 2.2 Direct discrimination (Article 2(2)(a)) .....                                                                                                                                                                                                           | 22        |
| 2.3 Indirect discrimination (Article 2(2)(b)) .....                                                                                                                                                                                                         | 22        |
| 2.3.1 Statistical evidence .....                                                                                                                                                                                                                            | 23        |
| 2.4 Harassment (Article 2(3)) .....                                                                                                                                                                                                                         | 24        |
| 2.5 Instructions to discriminate (Article 2(4)) .....                                                                                                                                                                                                       | 27        |
| 2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78) .....                                                                                                                                                             | 27        |
| <b>3 PERSONAL AND MATERIAL SCOPE .....</b>                                                                                                                                                                                                                  | <b>32</b> |
| 3.1 Personal scope .....                                                                                                                                                                                                                                    | 32        |
| 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) .....                                                                                                                       | 32        |
| 3.1.2 Natural and legal persons (Recital 16 Directive 2000/43) .....                                                                                                                                                                                        | 32        |
| 3.1.3 Private and public sector including public bodies (Article 3(1)) .....                                                                                                                                                                                | 33        |
| 3.2 Material scope .....                                                                                                                                                                                                                                    | 33        |
| 3.2.1 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)) ..... | 33        |
| 3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c)) .....                                                                                                                                                               | 35        |
| 3.2.3 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)) .....                                                           | 35        |
| 3.2.4 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)) .....                     | 35        |
| 3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43) .....                                                                                                                                                 | 36        |
| 3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43) .....                                                                                                                                                                                           | 38        |
| 3.2.7 Education (Article 3(1)(g) Directive 2000/43) .....                                                                                                                                                                                                   | 38        |
| 3.2.8 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43) .....                                                                                                                                | 42        |
| 3.2.9 Housing (Article 3(1)(h) Directive 2000/43) .....                                                                                                                                                                                                     | 44        |
| <b>4 EXCEPTIONS .....</b>                                                                                                                                                                                                                                   | <b>47</b> |
| 4.1 Genuine and determining occupational requirements (Article 4) .....                                                                                                                                                                                     | 47        |
| 4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78) .....                                                                                                                                                              | 47        |
| 4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 Directive 2000/78) .....                                                                                                                                               | 48        |
| 4.4 Nationality discrimination (Article 3(2)) .....                                                                                                                                                                                                         | 49        |
| 4.5 Health and safety (Article 7(2) Directive 2000/78) .....                                                                                                                                                                                                | 50        |
| 4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78) .....                                                                                                                                                           | 51        |
| 4.6.1 Direct discrimination .....                                                                                                                                                                                                                           | 51        |
| 4.6.2 Special conditions for younger or older workers .....                                                                                                                                                                                                 | 52        |

|                                                                              |                                                                                                                                                                 |            |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 4.6.3                                                                        | Minimum and maximum age requirements .....                                                                                                                      | 52         |
| 4.6.4                                                                        | Retirement .....                                                                                                                                                | 53         |
| 4.6.5                                                                        | Redundancy .....                                                                                                                                                | 54         |
| 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) ..... | 55         |
| 4.8                                                                          | Any other exceptions .....                                                                                                                                      | 55         |
| <b>5</b>                                                                     | <b>POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78) .....</b>                                                                         | <b>56</b>  |
| <b>6</b>                                                                     | <b>REMEDIES AND ENFORCEMENT .....</b>                                                                                                                           | <b>58</b>  |
| 6.1                                                                          | Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78) .....                                                      | 58         |
| 6.2                                                                          | Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78) .....                                                          | 65         |
| 6.3                                                                          | Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..                                                                                  | 67         |
| 6.4                                                                          | Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78) .....                                                                                 | 68         |
| 6.5                                                                          | Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78) .....                                                                       | 69         |
| <b>7</b>                                                                     | <b>BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43) .....</b>                                                                         | <b>72</b>  |
| <b>8</b>                                                                     | <b>IMPLEMENTATION ISSUES .....</b>                                                                                                                              | <b>82</b>  |
| 8.1                                                                          | Dissemination of information, dialogue with NGOs and between social partners .....                                                                              | 82         |
| 8.2                                                                          | Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78) .....                          | 84         |
| <b>9</b>                                                                     | <b>COORDINATION AT NATIONAL LEVEL .....</b>                                                                                                                     | <b>86</b>  |
| <b>10</b>                                                                    | <b>CURRENT BEST PRACTICES .....</b>                                                                                                                             | <b>87</b>  |
| <b>11</b>                                                                    | <b>SENSITIVE OR CONTROVERSIAL ISSUES .....</b>                                                                                                                  | <b>89</b>  |
| 11.1                                                                         | Potential breaches of the directives at the national level .....                                                                                                | 89         |
| 11.2                                                                         | Other issues of concern .....                                                                                                                                   | 90         |
| <b>12</b>                                                                    | <b>LATEST DEVELOPMENTS IN 2020 .....</b>                                                                                                                        | <b>94</b>  |
| 12.1                                                                         | Legislative amendments .....                                                                                                                                    | 94         |
| 12.2                                                                         | Case law .....                                                                                                                                                  | 96         |
| <b>ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION .....</b> |                                                                                                                                                                 | <b>100</b> |
| <b>ANNEX 2: INTERNATIONAL INSTRUMENTS .....</b>                              |                                                                                                                                                                 | <b>103</b> |

## 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 12th legislature commenced its work on 3 August 2020 and is notable for the fact that the ruling party – the Serbian Progressive Party – has a supermajority of seats in the Parliament (due to a boycott by several opposition parties), which shapes and influences current parliamentary work in Serbia.

According to the latest census in 2011,<sup>1</sup> 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>2</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>3</sup>

### 2. Main legislation

The Constitution of Serbia,<sup>4</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>5</sup>

In April 2006, the first anti-discrimination law was adopted: the Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD),<sup>6</sup> which is supplemented by the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD).<sup>7</sup> Some additional laws have been adopted to further support the LPDPD, such as the Law on the Use of Guide Dogs<sup>8</sup> and the Law on the Use of Sign Language.<sup>9</sup>

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<sup>1</sup> In 2020, the new Law on the Census was adopted, and the census will be conducted in 2021. Law on the Census (*Zakon o popisu stanovništva, domaćinstva i stanova 2021. godine*), *Official Gazette of the Republic of Serbia*, No. 9/2020, 12 February 2020.

<sup>2</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>3</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>4</sup> Constitution of Serbia (*Ustav Republike Srbije*), *Official Gazette of the Republic of Serbia*, No. 98/2006, 10 November 2006.

<sup>5</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>6</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>7</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>8</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>9</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>10</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>11</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>12</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>13</sup> This process was initiated in 2016, but by the end of 2020 it had not been completed. The European Commission has subsequently criticised the fact that the adoption of amendments to the LPD to further align it with the EU *acquis* has been seriously delayed.<sup>14</sup>

Many other laws also contain anti-discrimination provisions, such as the Law on Young People,<sup>15</sup> the Law on Sports,<sup>16</sup> the Law on Churches and Religious Organisations,<sup>17</sup> etc.

The Law on the Protection of the Rights and Freedoms of National Minorities<sup>18</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>19</sup>

The adoption of the Law on Free Legal Aid,<sup>20</sup> which was implemented on 1 October 2019, was of the utmost importance. 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. The first report on the implementation of the Law was adopted on 31 March 2020.<sup>21</sup>

<sup>10</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>11</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>12</sup> European Commission, *Serbia 2018 Report*, Strasbourg, 17 April 2018, p. 26.

<sup>13</sup> This was specifically mentioned in European Commission, *Serbia 2015 Report*, Brussels, 10 November 2015, p. 56.

<sup>14</sup> European Commission, *Serbia 2020 Report*, Strasbourg, 6 October 2020, p. 36, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf).

<sup>15</sup> Law on Youth (*Zakon o mladima*), *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011.

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

<sup>17</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>18</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>19</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>20</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>21</sup> Ministry of Justice, 'Report of the Ministry of Justice on the implementation of the Law on Free Legal Aid' (*Izveštaj Ministarstva pravde o sprovođenju Zakona o besplatnoj pravnoj pomoći*), 31 March 2020, available at: <https://www.mpravde.gov.rs/files/Izvestaj%20o%20sprovođenju%20ZBPP%201.okt%20do%2031.%20marta.pdf>. See also Filipović, M. (2020), 'The Law on Free Legal Aid - first six months of its implementation' (*Zakon o besplatnoj pravnoj pomoći - prvih šest meseci primene*), YUCOM, Belgrade.



In addition, criminal law protection against discrimination is regulated by the Criminal Code<sup>22</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 a language or alphabet) and Article 387 (prohibition of racial and other discrimination). The Law on Misdemeanours<sup>23</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

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<sup>22</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.

<sup>23</sup> Law on Misdemeanours (*Zakon o prekršajima*), *Official Gazette of the Republic of Serbia*, Nos. 65/2013, 13/2016, 98/2016, 25 July 2013.

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.

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>24</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

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<sup>24</sup> Law on the Prohibition of Discrimination, *Official Gazette of the Republic of Serbia*, Nos. 22/2009, 13/2016, 26 March 2009, Article 13.

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.

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.

Positive 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 the Protection of Equality (Poverenik za zaštitu ravnopravnosti) 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, covering all grounds included in the LPD. 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>25</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

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<sup>25</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.

misdemeanour proceedings or a criminal charge, or a lawsuit if it finds that there is a strategic case for litigation.

The mandate of Commissioner Brankica Jankovic expired on 27 May 2020. Her mandate was renewed on 26 November, for a five-year period. In the interim period, citizens of Serbia did not have available a legal remedy to ensure protection from discrimination; what is more, they lost such a remedy at a time when they were trying to question many discriminatory measures in relation to the COVID-19 crisis. During 2020, the Commissioner received 674 complaints; issued opinions in 20 cases; provided 476 general recommendations and 12 opinions on draft laws and general acts; and initiated two criminal charges and 12 warnings.<sup>26</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, which have been seriously delayed:

#### 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.

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<sup>26</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 29.

- 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>27</sup>

#### Procedural issues

- the LPDPD does not contain a provision on the reversal of the burden of proof.
- 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 five 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.
- the social inclusion of people with disabilities and in particular their ability to access services, buildings and documents must be attained.
- there is a need for improvement of inclusion of the Roma and in particular their access to adequate housing, health and social services, and equality in education. The COVID-19 pandemic has had a major impact on Roma, in particular on their access to work and sources of income, which leads to greater risk of poverty; access to adequate housing; and access to welfare and information.<sup>28</sup> These issues also need to be addressed.
- there is a need for further improvement in the position of lesbian, gay, bisexual, transgender and intersex (LGBTI) people by introducing a law that recognises same-sex registered partnerships and eliminates stigmatisation and discrimination in order to comply with the Court of Justice of the European Union (CJEU) jurisprudence in *Maruko*, *Romer* and *Hay*.
- 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, and must include workshops on breaking down stereotypes and prejudices towards members of certain groups.

<sup>27</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.

<sup>28</sup> OHCHR (2020), *Impact of the COVID-19 on Vulnerable Groups and Groups at Risk – causes, outcomes and recommendations*, pp. 6–7, available at: [https://serbia.un.org/sites/default/files/2021-02/LNOB%20analiza\\_ENG\\_web.pdf](https://serbia.un.org/sites/default/files/2021-02/LNOB%20analiza_ENG_web.pdf).

## 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>29</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, 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. For example, a survivor will not be able to apply for the family pension after the death of a same-sex partner.

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>30</sup> The Law was adopted on 17 April 2006 and came into force on 1 January 2007.<sup>31</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

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<sup>29</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>30</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>31</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.

to allow the use of personal facsimile signature stamps by people with disabilities for the signing of legal documents. This Law was followed by the Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD),<sup>32</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>33</sup>

The Law on the Protection of the Rights and Freedoms of National Minorities<sup>34</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>35</sup>

The law has been amended several times: in 2003, 2009, 2013 and 2018.<sup>36</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>37</sup>

The Labour Law<sup>38</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>32</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>33</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>34</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>35</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>36</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>37</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>38</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>39</sup> the Law on Churches and Religious Organisations,<sup>40</sup> etc.

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<sup>39</sup> Law on Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011.

<sup>40</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>41</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>42</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>41</sup> Constitution of Serbia (*Ustav Republike Srbije*), *Official Gazette of the Republic of Serbia* No. 98/2006, 10 November 2006.

<sup>42</sup> The absence of explicit mention of 'sexual orientation' in the Constitution has not been challenged in court. However, the Constitutional Court accepts that Article 21 also covers sexual orientation (under 'any ground'). See Constitutional Court, VIIU-249/2009, decision of 12 June 2012.

## 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>43</sup>

The Labour Law<sup>44</sup> prohibits discrimination based on sex, birth, language, race, colour, age, pregnancy, health condition or disability, national origin, religion, marital status, family obligations,<sup>45</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>46</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>47</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>43</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>44</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>45</sup> 'Family obligations' probably means family status, as this is the only law containing this ground of discrimination. However, individuals would not be covered against discrimination arising on the basis that they are part of a same-sex family, as they are not considered as 'family'.

<sup>46</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>47</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>48</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>49</sup> 2012<sup>50</sup> and 2017<sup>51</sup> no one claimed to be a victim of race discrimination. In 2011, 2018 and 2020, there was only one complaint;<sup>52</sup> in 2013, there were five complaints;<sup>53</sup> and in 2015,<sup>54</sup> 2016<sup>55</sup> and 2019<sup>56</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>57</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>58</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>59</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>60</sup> while Article

<sup>48</sup> See, e.g. Appellate Court in Nis, Gć. 6816/2018, judgment of 18 April 2018.

<sup>49</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>50</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>51</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>52</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 182; Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 246;

<sup>53</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>54</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>55</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>56</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>57</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>58</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>59</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>60</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>61</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 'permanent impairments' as impairments that cannot be eliminated by any treatment or medical rehabilitation, which creates permanent 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, which requires that the disability is sufficiently long-term and not permanent.<sup>62</sup>

#### 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>63</sup> while the Law on Youth more precisely defines the young as persons between 15 and 30 years.<sup>64</sup> The National Strategy on Ageing (2006-2015) defines the elderly as persons who are over 65 years old.<sup>65</sup>

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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>61</sup> See judgment of 11 April 2013, *HK Danmark*, joined cases C-335/11 and C-337/11.

<sup>62</sup> See, e.g. judgment of 11 April 2013, *HK Danmark*. There is no definition of long-term and permanent impairment in the Law, but while the first reflects impairment that can last for quite some time, permanent impairment is lifelong. However, the definition of long-term impairment in the LPREPD suggests that the impairment is permanent. Therefore, it is not advisable to have different terms used in two connected laws.

<sup>63</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>64</sup> Law on Youth, *Official Gazette of the Republic of Serbia*, No. 50/2011, 8 July 2011, Article 3(1)(1).

<sup>65</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.

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-marital relationships. However, it does not define what it means to be gay or lesbian. The draft law further prescribes that registered partnerships will be governed by a separate law. The adoption of this obligation was stipulated in the Action Plan for the Implementation of the Anti-Discrimination Strategy for 2014 to 2018. As of 2020, 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 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>66</sup> and 2018.<sup>67</sup>

In 2020, 177 complaints (31.5 % of the total number of complaints) that contained two or more grounds for discrimination were submitted to the Commissioner (a much higher number in comparison with 102 in 2016, 138 in 2017, 188 in 2018 and 116 in 2019).<sup>68</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 sex, marital and family status, age, disability, health and nationality.<sup>69</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

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<sup>66</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>67</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>68</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 182.

<sup>69</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 170.

with disability, ageing women, women living in rural areas and Roma women.<sup>70</sup> Also, migrant women are very often exposed to multiple discrimination in Serbia.<sup>71</sup>

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>72</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>73</sup>

#### 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

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<sup>70</sup> See more in Beker, K. (2019), 'Multiple discrimination of women in Serbia and the EU: comparative analysis' (Višestruka diskriminacija žena u Srbiji i odabranim državama EU: uporedna analiza), University of Novi Sad, PhD defended on 7 July 2020.

<sup>71</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-izbeglice-i-migrantske-populacije-dele-svoja-iskustva-u-adrinoj-novoj-publikaciji/>.

<sup>72</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>73</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.

treatment) in relation to individuals or groups, as well as *members of their families*,<sup>74</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>75</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>76</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>77</sup> The court did not find that there had been discrimination in that case, but it accepted that discrimination by association is possible. In 2020, the Commissioner issued an opinion regarding the complaint of A. A. against B. B, the principal of an elementary school.<sup>78</sup> The complainant argued that the principal had transferred him from the principal school to a separate department in another place without bearing in mind that he has a son with autism from whom he would be separated by this transfer. The complainant lives with his wife, who works as a teacher outside their place of residence, and their son has developmental difficulties. Therefore, his claim was that he was placed in a less favourable position than other employees due to the health condition of a member of his family. The principal stated that due to an insufficient number of students enrolled in the first grade, there was a reduction in classes held in the main school; and that the only and primary criterion in the assignment of A. A. to another place was the need for good organisation and functioning of the school and the best interests of students living in rural areas, who also deserve quality education. The Commissioner found that B. B, the principal of the elementary school, did not submit evidence indicating that the transfer of A. A. to another place of work was proportionate and necessary, i.e., that the goal (relocation of the unassigned primary school teacher and well-organised teaching) could not be achieved in another way. The Commissioner underlined that this was a case of discrimination by association of the disability of A.A.'s child and that, due to all the details above, the director of the elementary school had violated the LPD. It was recommended that the director conclude an annex to the employment contract by which the employee will be returned to the principal school. The Commissioner directly relied on the judgment of the European Court of Human Rights in the *Guberina* case,<sup>79</sup> but did not mention the *Coleman* case.

In addition, in one case the Appellate Court in Belgrade found discrimination by association<sup>80</sup> – namely, that the complainants had been exposed to harassment and humiliating behaviour in a police station. The husband, who was Roma, and his non-Roma

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<sup>74</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>75</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>76</sup> Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06.

<sup>77</sup> Supreme Court of Cassation, Rev 2 26/17, judgment of 18 January 2017.

<sup>78</sup> Commissioner for the Protection of Equality, *A.A. v. the principal B.B.*, complaint No. 07-00-614/2019-02, 18 February 2020.

<sup>79</sup> ECtHR, *Guberina v. Croatia*, No. 23682/13, 22 March 2016.

<sup>80</sup> Appellate Court in Belgrade, Gž. 5882/20, judgment of 17 December 2020.

wife reported that their car had been stolen. They went to the police station to give a statement, where they were informed that their car had been found. In the police station, they were interrogated and exposed to ill-treatment in order to get them to confess that they had hidden the car and falsely reported it missing in order to demand payment from their insurance. The wife was humiliated and offended, and insulted for being married to a Gypsy. The Court found that she had been exposed to discriminatory treatment based on the ethnic origin of her spouse.

## **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.'

### **c) 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>81</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

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<sup>81</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>.



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>82</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>83</sup>

d) 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 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>84</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 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'. The

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<sup>82</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>83</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.

<sup>84</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/>.

processing of those data is prohibited. According to Article 17(2), those data can be processed only if it is necessary in some exceptional situations, such as: 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.

The Law prohibits profiling that leads to discrimination against individuals, based on a specific type of personal data (Article 39(1)), such as data defined in Article 18: data containing racial or ethnic origin, political opinion, religious or philosophical beliefs or trade union membership, as well as processing of genetic data, biometric data for the purpose of unique identification of an individual, health data or data on the sexual life or sexual orientation of an individual. These data can be processed only in some specific cases defined by the Law.<sup>85</sup>

In Serbia, statistical evidence may be admitted under national law in order to establish indirect discrimination in accordance with the rules stipulated in Articles 7 and 8 of the Civil Procedure Code, 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>86</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.

#### e) 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>87</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.

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<sup>85</sup> The processing of data is allowed only if necessary, with the application of appropriate measures to protect the rights of individuals, in one of the following cases: 1) the competent authority is authorised by law to process special types of personal data; 2) the processing of special types of personal data is performed in order to protect the vital interests of the person; 3) processing refers to special types of personal data that the person has obviously made available to the public (Article 18).

<sup>86</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.

<sup>87</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.

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)).

f) 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.

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>88</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

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<sup>88</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.

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>89</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>90</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. The Supreme Court of Cassation upheld the Appellate Court’s decision in 2020.<sup>91</sup> The highest court found that the author did not offend people based on sex or sexual orientation, nor did he have the intention to offend.<sup>92</sup> On the contrary, he merely expressed his value judgment about the Law on the Prevention of Domestic Violence, and criticised the manifestation of sexual orientation at Gay Pride. In addition, the Court found that the Commissioner’s position set forth in the complaint (that the decision of the Appellate Court, which legitimises the discriminatory speech, is unacceptable with regard to combating discrimination and should not be a part of the Serbian legal order) can be viewed as a special pressure on the Court. The Court did not take into account the possible effects of the statements of the defendant expressed in his position as a public figure, which was underlined in particular in another decision, from 2017.<sup>93</sup>

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>94</sup> The employer should provide a working environment in which work is

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<sup>89</sup> Higher Court in Novi Sad, II. 1344/2017, judgment of 8 May 2018.

<sup>90</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>91</sup> Supreme Court of Cassation, Rev 195/2019, judgment of 29 January 2020.

<sup>92</sup> This is the most problematic part of the reasoning, as it seems that if the author had had the intention, the situation would have been differently qualified. However, it is not clear how the judge would know what the author’s intention was.

<sup>93</sup> See Supreme Court of Cassation, Rev 1855/2017, judgment of 30 June 2017. There was no move to bring this case before the European Court of Human Rights as it was strategic litigation initiated by the Commissioner for the Protection of Equality. Nevertheless, the fact that the victim was the LGBT community was not a reason for the different judgment of the Supreme Court, as in general Serbian courts place more emphasis on freedom of expression in balancing competing interests.

<sup>94</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.

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>95</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>96</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.

### **g) 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.

The Law on the Professional Rehabilitation and Employment of Persons with Disabilities (LPREPD)<sup>97</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

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<sup>95</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, adopted on 22 March 2017, p. 14.

<sup>96</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.

<sup>97</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.

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>98</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. The availability of financial assistance from the state will be taken into account in assessing whether there is a disproportionate burden. 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>99</sup>

It can be assumed that Article 101 of the Labour Law also prescribes a kind of reasonable accommodation provision, as it stipulates that employers are obliged to enable employees with disabilities to perform their work according to their remaining working capacity, as well as those who are ill and presumably not disabled at present.

Amendments to the Law on Secondary Education, adopted on 1 February 2020, contain provision which requires that practical classes conducted at the employer's location require, for students with disabilities, adaptation of the workplace in relation to their capabilities and type of disability (Article 1(5)).<sup>100</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>101</sup>

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<sup>98</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>99</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>100</sup> The Law on Amendments on the Law on Secondary Education (*Zakon o izmenama i dopunama Zakona o srednjem obrazovanju i vaspitanju*), *Official Gazette of the Republic of Serbia*, No. 6/2020, 1 February 2020.

<sup>101</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.

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>102</sup>

h) Case law

Relevant case law on this matter is still lacking; that includes the practice of the Commissioner in a complainant procedure.

i) 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)). This definition of disability used for determining protection from discrimination is the same used for the purpose of reasonable accommodation (to the extent that it exists under this Law).

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.

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

In Serbia, failure to meet the duty of reasonable accommodation in employment for people with disabilities is not recognised as a form of discrimination.

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

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<sup>102</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.

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 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>103</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>104</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.

k) 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>105</sup>

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<sup>103</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>104</sup> Equal Rights Trust (2019), *Equality in Practice – Implementing Serbia's Equality Laws*, London, p. 21.

<sup>105</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.



l) 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. However, Article 101 of the Labour Law can be considered as a basis for the provision of reasonable accommodation in respect of health. In addition, regarding days off work for religious holidays, the Labour Law stipulates that the employee is entitled to salary compensation during holidays (Article 114(1)). The Law on State Holiday<sup>106</sup> stipulates that Christmas on 7 January and Easter are state holidays (Article 2). In addition, the Law prescribes in Article 4 that employees have the right not to work on the following religious holidays: 1) Orthodox – on the first day of baptism; 2) Catholics and members of other Christian religious communities – on the first day of Christmas and on Easter holidays; 3) members of the Islamic community – on the first day of Eid al-Fitr and the first day of Eid al-Adha; and 4) members of the Jewish community – on the first day of Yom Kippur.

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<sup>106</sup> Law on State and Other Holidays (*Zakon o državnim i drugim praznicima u Republici Srbiji*), *Official Gazette of the Republic of Serbia*, Nos. 43/2007, 101/2007, 92/2001, 24 May 2007.

### 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>107</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'.

###### m) 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>107</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>108</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 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

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<sup>108</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.'

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>109</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>110</sup> The Law on Asylum and Temporary Protection<sup>111</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.

In 2020, the Government paid particular attention to the promotion of self-employment. In October 2020, the Programme of Promotion of Entrepreneurship and Self-employment was amended in order to encourage development in this area by facilitating the opening of new companies and creating conditions for sustainable growth and employment. It implies guarantees for loans approved by commercial banks that have been selected through a public call to participate in the Programme; approval of favourable bank loans by partner banks; payment of grants; and the provision of free professional help and support in the development of a business plan, plus further business support through a mentoring programme implemented by the Serbian Chamber of Commerce. In addition, in order to support self-employment, at the end of 2019 the National Assembly adopted the Law on Amendments to the Law on Personal Income Tax.<sup>112</sup> This law changed the system of flat-rate taxation on self-employed income in order to support people who are self-employed to pay less tax. The law determines the tax on 'other income', which is defined, among other things, as remuneration received by an entrepreneur on the basis of carrying out activities for the same principal, provided that the entrepreneur fulfils at least five of nine criteria in the test of independence introduced by Article 85(17) of the Law. If, however, the entrepreneur does not meet five of the criteria stipulated in the law, he/she will not be considered as independent, and the income this entrepreneur receives will be taxed as income (the general taxation regime applies). Furthermore, the contributions for pension and disability insurance are also calculated on this other income, as well as the health

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<sup>109</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>110</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>111</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>112</sup> Law on Amendments to the Law on Personal Income Tax (*Zakon o izmenama i dopunama Zakona o porezu na dohodak građana*), *Official Gazette of the Republic of Serbia*, No. 86/19, 14 December 2019.

insurance contributions if the entrepreneur is not insured on another basis. The test of independence for entrepreneurs has been applied from 1 March 2020.

### **3.2.2 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>113</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.

### **3.2.3 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)).

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.

### **3.2.4 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.

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<sup>113</sup> This covers sex, birth, language, race, skin colour, age, pregnancy, health condition, 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.

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).

### **3.2.5 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>114</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'.

The Law on Healthcare<sup>115</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>116</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).

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<sup>114</sup> Law on Social Protection (*Zakon o socijalnoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 24/2011, 4 April 2011.

<sup>115</sup> Law on Healthcare (*Zakon o zdravstvenoj zaštiti*), *Official Gazette of the Republic of Serbia*, No. 25/2019, 11 April 2019.

<sup>116</sup> Article 21 of the Law for the first time explicitly includes sexual orientation. Law on Healthcare, *Official Gazette of the Republic of Serbia*, No. 25/2019, 11 April 2019.

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>117</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>118</sup> The Law on Housing and Building Maintenance further improves protection in respect of relocation.<sup>119</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'.

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.

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<sup>117</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>118</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 31.

<sup>119</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.

### **3.2.6 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.

### **3.2.7 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>120</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 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 inclusive education.<sup>121</sup> At Article 110(1), it prohibits discrimination based on race, colour, ancestry, citizenship, migrant or displaced person status, nationality or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, social and cultural origin, birth, genetic characteristics, health status, disability, marital and family status, convictions, age, appearance, membership in political, trade union and other organisations and other personal characteristics. The Law 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

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<sup>120</sup> This provision protects children against discrimination by association with gay parents.

<sup>121</sup> Law on the Fundamentals of the Education System and Upbringing (*Zakon o osnovama sistema obrazovanja i vaspitanja*), *Official Gazette of the Republic of Serbia*, Nos. 88/2017, 27/2018, 10/2019, 6/2020, 7 October 2017.



educational institution.<sup>122</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>123</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.

Other specific laws regulate different levels of education (pre-school,<sup>124</sup> primary,<sup>125</sup> secondary<sup>126</sup> and higher education)<sup>127</sup> and all contain provisions on the prohibition of discrimination which cover different grounds. However, Article 7(1) of the Law on the

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<sup>122</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>123</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.

<sup>124</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 as it is an open clause. Moreover, the Law on the Fundamentals of the Education System and Upbringing, which is a systemic law on education, explicitly prohibits discrimination based on 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>125</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>126</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, 6/2020, 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, which in Article 110(1) explicitly prohibits discrimination based on sexual orientation.

<sup>127</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, 6/2020, 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)).

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.

The Law on the Fundamentals of the Education System 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 preschool departments, 17 schools for primary and secondary education with preschool departments and one secondary school).<sup>128</sup> Pupils with disabilities who are integrated within the mainstream school system need special support and have 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 also a lack of transportation, accessible books and teaching equipment, which makes learning difficult or prevents children from attending lessons.<sup>129</sup> The Commissioner's practice also pointed to the need to continuously provide support services to children. During 2020, because of the pandemic caused by COVID-19, a number of citizens addressed the Commissioner with complaints of discrimination against children in the field of education, pointing out the problems experienced by children with disabilities in following online classes because they are not allowed to use the service of a personal assistant.<sup>130</sup>

In 2017, a comprehensive study on the position of children with disabilities in Serbia was conducted by the National Organisation of Persons with Disabilities of Serbia, covering the period 2006 to 2017.<sup>131</sup> It highlighted that Serbia has a good legal framework and strategic direction for the development of inclusive education, but children with disabilities are still educated in both educational systems: regular and special. The data also showed that half of children with disabilities attend schools in segregated environments, especially due to the fact that parents of children with disabilities perceive children's experience in special schools more positively than in regular schools. It was underlined that 'schools for children with disabilities do not manage to transfer necessary knowledge and skills for independent life, and employees only think that they are well prepared for providing support to children in 27 per cent of schools for children with disabilities, parents point out that the education system in such schools is better adapted to children with disabilities than regular education.'<sup>132</sup> No follow-up to this study has been conducted.

The Commissioner for the Protection of Equality acknowledges that people with disabilities are discriminated against in the area of education. For example, in one case, the mother of a child with a disability submitted a complaint against the local municipality, which did not provide a personal assistant for her child. The Commissioner found the municipality responsible for failing to secure additional support for children with disabilities.<sup>133</sup> In

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<sup>128</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>129</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>130</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 133.

<sup>131</sup> NOOIS (2017), *Situation analysis: Position of children with disabilities in the Republic of Serbia*, Belgrade, available at: <https://www.unicef.org/serbia/media/156/file/Situation%20Analysis:%20Position%20of%20children%20with%20disabilities%20in%20the%20Republic%20of%20Serbia.pdf>.

<sup>132</sup> NOOIS (2017), *Situation analysis: Position of children with disabilities in the Republic of Serbia*, Belgrade, p. 36.

<sup>133</sup> Commissioner for the Protection of Equality, *R.A. from Z. v. City Administration Zaječar*, complaint No. 07-00-156/2017-02, opinion of 5 September 2017.

addition, on 30 December 2019, the Commissioner issued a general recommendation to all municipalities to take all necessary actions and measures to ensure the establishment and provision of personal escort services for children who need this service.<sup>134</sup> This recommendation was issued bearing in mind the importance of this type of practical support in order to include children with disability in regular schooling and community activities, in order to establish their highest possible level of independence.

#### 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>135</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>136</sup> In its *Serbia 2020 Report*, the European Commission underlines that Roma segregation in education needs to be addressed, and confirms that there is still a very low level of children in preschool education, while the percentage of those who complete high education remains extremely low (1 % compared with 16 % of the general population).<sup>137</sup> In addition, the school drop-out rate remains high, in particular for Roma girls. On the other hand, a positive trend is that there is an increase in the number of Roma students benefiting from scholarships, with a total of 2 220 Roma students enrolled at secondary level in 2018-19, compared with 1 969 students in 2017-18.<sup>138</sup>

However, 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>139</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>140</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

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<sup>134</sup> Commissioner for the Protection of Equality, General recommendation to municipalities, 30 December 2019, available at: <http://ravnopravnost.gov.rs/rs/preporuka-opstinama-i-gradovima/>.

<sup>135</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>136</sup> European Commission, *Serbia 2019 Report*, Strasbourg, 29 May 2019, p. 29.

<sup>137</sup> European Commission, *Serbia 2020 Report*, Strasbourg, 6 October 2020, p. 40.

<sup>138</sup> European Commission, *Serbia 2020 Report*, Strasbourg, 6 October 2020, p. 40.

<sup>139</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>140</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.

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>141</sup> In its 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>142</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>143</sup> They are employed on a fixed-term contract (12 months, with the possibility of renewal).

The Rulebook on Pedagogical and Andragogical Assistants determines more detailed conditions for work, level and type of education and training programme for pedagogical assistants and andragogical assistants.<sup>144</sup> On the recommendation of the National Council of the Roma National Minority, amendments governing the criteria and standards for financing assistants were prepared and adopted.<sup>145</sup>

### **3.2.8 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>146</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.

<sup>141</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>.

<sup>142</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>143</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>144</sup> Rulebook on Pedagogical and Andragogical Assistants (Pravilnik o pedagoškom i andragoškom asistentu), *Official Gazette of the Republic of Serbia*, No. 87/2019, 20 December 2019. The pedagogical assistant provides assistance and additional support to a group of children and students in preschool, primary and secondary education, in accordance with their needs, and assistance to employees in order to improve their work. The andragogical assistant provides support to adults for inclusion in the education system and assistance to employees in implementing education programmes.

<sup>145</sup> Amendments to the Rulebook on Pedagogical and Andragogical Assistants (*Izmene i dopune Pravilnika o pedagoškom i andragoškom asistentu*), *Official Gazette of the Republic of Serbia*, No. 115/2020, 11 September 2020.

<sup>146</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.

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 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 2019, 53 complaints (7.5 % 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>147</sup> whereas in 2020, that number increased to 95 (14.1 % of all complaints).<sup>148</sup>

### 3.2.9 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 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>149</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>150</sup>

There is a special law that deals with housing: the Law on Housing and Building Maintenance.<sup>151</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

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<sup>147</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>148</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 183.

<sup>149</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>150</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>151</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 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>152</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>153</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>154</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.

According to data provided by municipalities, there are 583 informal/illegal Roma settlements in Serbia.<sup>155</sup> Thus, many Roma live in households that have no access to electricity, drinking water or connection to the sewage system.<sup>156</sup>

There has been a case, in a city in central Serbia, in which a Roma settlement was enclosed by 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. The first instance court ruled that this was not a case of discrimination, and that the disputed wall had a dual role: providing both safety from traffic, as numerous traffic accidents had happened, and protection from noise. The court took into account in particular that the residents of the Roma settlement had agreed to the construction of the wall. Bearing these circumstances in mind, the court concluded that the erection of the wall served a legitimate purpose, as well as being proportionate as it was in accordance with the technical documentation.<sup>157</sup> The Commissioner submitted a complaint to the Appellate Court in Kragujevac, emphasising that it was a case of ghettoisation and segregation of Roma. The Commissioner underlined that the first instance court did not deal with the question of whether the fencing of a Roma settlement is an act of segregation, or whether the characteristics of the wall were such as to violate the dignity of the inhabitants and create an offensive environment, contrary to Article 12 of the LPD. The court completely ignored the testimonies of witnesses who stated precisely what restrictions they faced after the wall had been erected in front of their households. In addition, the court did not answer the key question of why a concrete wall was placed only

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<sup>152</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>153</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>154</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.

<sup>155</sup> Human Rights Council, Universal Periodic Review, third cycle, *Report of the Republic of Serbia*, 31 October 2017, para. 87.

<sup>156</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>157</sup> High Court in Krusevac, P br. 707/17, judgment of 16 January 2019.



in front of the Roma settlement. Finally, the Commissioner emphasised that the defendants did not explain in any way why the erection of the wall was necessary, and even if it was, the question of the proportionality of such a restriction was not clarified. The Commissioner has concluded that the first instance judgment is illegal and provides a basis for creating a dangerous practice of segregation of Roma settlements in Serbia. Although the complaint was submitted on 11 March 2019, and discrimination cases are urgent, the Appellate Court has still not delivered a judgment



## **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 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 is not to be considered to constitute discrimination based on disability.

### **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>158</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>158</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>159</sup> and religious communities,<sup>160</sup> confessional communities<sup>161</sup> and other religious organisations<sup>162</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.

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 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

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<sup>159</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>160</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>161</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>162</sup> There is no further, more precise definition of the category of 'other religious organisations'.

job requirements applies mostly to the armed forces and the police sector. This provides a basis for the practice that even if candidates with a disability achieve the best result in an assessment, they will not necessarily be selected for/appointed to the army or police.

#### **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>163</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 and 2019, only four complaints were submitted to the Commissioner for the Protection of Equality claiming discrimination based on citizenship, in comparison to 12 in 2020 (1.5 % of all complaints).<sup>164</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 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.

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<sup>163</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>164</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 182.

In Serbia, the ethnic minority which is considered to be most discriminated against is the Roma.<sup>165</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>166</sup> The Committee was particularly concerned about the continued difficulties faced by internally displaced Roma<sup>167</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 2020, despite the fact that Serbia adopted certain measures to prevent discrimination against the Roma.<sup>168</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 2020, only one complaint submitted to the Commissioner claimed to involve discrimination based on race.<sup>169</sup>

#### **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

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<sup>165</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>166</sup> CCPR, *Concluding observations on the third periodic report of Serbia*, CCPR/C/SRB/CO/3, 10 April 2017, p. 14.

<sup>167</sup> These Roma have Serbian citizenship and their status is recognised as that of internally displaced persons.

<sup>168</sup> Belgrade Centre for Human Rights (2020), *Human Rights in Serbia in 2020 – law, practice and international standards of human rights, (Људска права у Србији 2020 - право, пракса и међународни стандарди људских права)*, Belgrade, p. 349-361.

<sup>169</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 182.

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) Exceptions to the prohibition of direct discrimination on grounds of age

In Serbia, national law does not provide for specific exception(s) for direct discrimination on the ground of age.

b) 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 2020, even 115 complaints (14.8 %) were submitted to the Commissioner for the Protection of Equality claiming age discrimination, in comparison with 72 (9.9 %) in 2019, 116 complaints (16.5 %) in 2018 and 75 complaints (11.8 %) in 2017.<sup>170</sup> Therefore, this ground of discrimination ranks very highly – this year, it was among the top two grounds. Compared with 2019, the number of complaints submitted on this ground has increased significantly, which is expected given the COVID-19 pandemic and the consequences it has had on the population in different age categories. In this regard, in 2020, the greatest number of complaints concerned discrimination against persons older than 65 (43 %), followed by complaints due to discrimination based on the age of persons between 50 and 65 (39 %), and finally complaints filed against discrimination against children (18 %).<sup>171</sup> The majority of complaints concerned discrimination in proceedings before public authorities, while smaller number of complaints were filed in the area of healthcare and pension and disability insurance. The measure prohibiting the freedom of movement of persons over the age of 65, which was introduced during the state of emergency, affected the number of complaints filed on this basis in the area relating to the actions of public authorities.

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<sup>170</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 182.

<sup>171</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 129.

c) 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. 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 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).

Furthermore, Article 23(2) stipulates that the elderly constitute a specific protected group.

d) Fixing of ages for admission to occupational pension schemes

In Serbia, there are no occupational pension schemes.

#### **4.6.2 Special conditions for younger or 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>172</sup> In 2020, a bylaw on the implementation of practical teaching and professional practice was adopted.<sup>173</sup> Practical teaching and professional practice for secondary school pupils are recognised as forms of teaching implemented in the vocational school only or combined in the vocational school and at the workplace. This bylaw also defines the structure and importance of the agreement between the school and the employer in the case of implementation of practical teaching and professional practice at the workplace. The role of the employer, the adaptation of practical teaching and the characteristics of the workplace are also defined.

The Labour Law does not impose an obligation for the employer to define vocational training by a general act, as a collective agreement, rulebook or special rulebook, but it is recommended to adopt a special act - rulebook, which determines the needs for education and training of employees in the short term (for one year) or the long term (for several years). However, many employers regulate vocational training in a form of a rulebook, which usually do not contain special conditions or boundaries for younger or older workers.

#### **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.

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<sup>172</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.

<sup>173</sup> Bylaw on the implementation of practical teaching and professional practice (*Pravilnik o posebnom programu obrazovanja i vaspitanja*), *Official Gazette of the Republic of Serbia*, No. 110/2020, 3 September 2020.

#### 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>174</sup> However, the 2019 changes to the Law on Pension and Disability Insurance introduced voluntary pension funds and pension plans.<sup>175</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 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 63, 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.

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<sup>174</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>175</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.

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other 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 covered by this report) 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. Therefore, the LPD does not mention explicitly the principle of proportionality and necessity as a condition to apply positive measures. However, this provision should be taken together with Article 8 of the LPD, which stipulates that a violation of the principle of equal rights and obligations occurs if a person or group of persons, due to their personal characteristics, are unjustifiably denied rights and freedoms or imposed obligations, if the goal or consequence of the measures taken is unjustified, as well as if there is no proportion between the measures taken and the goal achieved by these measures. The Commissioner in its practice relies on the principle of proportionality and legitimate aim in order to decide if a positive measure is in accordance with the LPD.<sup>176</sup>

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 2020 recognises persons with disabilities as a less employable category of persons,<sup>177</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.

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<sup>176</sup> See, e.g. Commissioner for the Protection of Equality, *A. Č. from B. v. Ministry of Trade, Tourism and Telecommunication*, complaint No. 07-00-376/2017-02, opinion of 5 November 2017.

<sup>177</sup> National Action Plan for Employment for 2020 (*Nacionalni akcioni plan zapošljavanja za 2020*), *Official Gazette of the Republic of Serbia*, No. 94/2019, 3 January 2020.

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>178</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.

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>179</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 EUR 1 700 (RSD 200 000) and EUR 8 500 (RSD 1 000 000).

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<sup>178</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.

<sup>179</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>180</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>181</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

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<sup>180</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>181</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 2017 and 2018 four litigation lawsuits were initiated, and in 2019 there was only one, in 2020 no new strategic litigation was brought).<sup>182</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>183</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. However, this case is still ongoing.

*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 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

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<sup>182</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, Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, pp. 258, 29.

<sup>183</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for the Protection of Equality for 2018*, Belgrade, p. 199.

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>184</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>185</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>186</sup> However, in 2018 mediation was offered in 88 cases as a proper way to complete the case.<sup>187</sup> In 2019, the trend returned to the same level as in 2017, with mediation being proposed in only one case.<sup>188</sup> In 2020, no mediation was offered.

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<sup>184</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>185</sup> Law on Mediation (*Zakon o posredovanju u rešavanju sporova*), *Official Gazette of the Republic of Serbia*, No. 55/2014, 23 May 2014.

<sup>186</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>187</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>188</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>189</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 2019, the Commissioner issued three misdemeanour charges for discrimination,<sup>190</sup> while in 2020 no misdemeanour charge was initiated.

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>191</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 2020, two criminal charges were submitted by the Commissioner.<sup>192</sup>

The Commissioner filed a criminal complaint against a person who published content on his Twitter profile. He called members of the Roma national minority pests, and added that they 'only reproduce and abuse children, women and animals.' In addition, two videos were published, which would provoke hatred and intolerance. The second criminal complaint was filed against the representatives of one association and unidentified persons on the basis of a video that appeared on social networks showing members of the association breaking into a Roma settlement, dressed in black T-shirts and trousers with emblems on their shoulders. They were arbitrarily 'investigating' or searching for a minor, whom they interrogated and filmed on a phone with comments that the entire Roma settlement would suffer due to the minor's behaviour.

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

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<sup>189</sup> Law on Misdemeanours, *Official Gazette of the Republic of Serbia*, Nos. 65/2013, 13/2016, 25 July 2013.

<sup>190</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>191</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>192</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 40.

the activities of racist, homophobic and transphobic hooligan groups'.<sup>193</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>194</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 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>195</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>196</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>197</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>198</sup> In 2019, Serbia recorded 86 cases of hate crime, with 14 persons prosecuted and 10 sentenced.<sup>199</sup> While there are still no data for 2020, it is important to note that the organisation Let It Be has stated that 430 LGBTI+ people and members of their family and friends reported violence and discrimination against them in 2020.<sup>200</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>201</sup> The European Commission also reports that the implementation of the hate crime legislation remains inadequate, and that due to distrust in institutions and fear of stigmatisation and victimisation, cases of violence and discrimination towards LGBTI+ persons are often unreported.<sup>202</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>203</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.

<sup>193</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 10.

<sup>194</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 23.

<sup>195</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>196</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>197</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>198</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>199</sup> OSCE, ODIHR, 'Hate Crime Reporting', available at: <https://hatecrime.osce.org/serbia>.

<sup>200</sup> Autonomija (Autonomy portal), 'Since the beginning of the year, 430 reports of LGBT people and their family members due to violence or discrimination', 7 December 2020, available at: <https://www.autonomija.info/od-pocetka-godine-430-prijava-lgbt-osoba-i-clanova-njihovih-porodica-zbog-nasilja-ili-diskriminacije.html>.

<sup>201</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 28.

<sup>202</sup> European Commission, *Serbia 2020 Report*, Strasbourg, 6 October 2020, p. 38.

<sup>203</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.



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 2020, 674 complaints were submitted to the Commissioner for the Protection of Equality, compared with 711 complaints in 2019.<sup>204</sup>

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>205</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, and to understand the detrimental effect of discrimination. 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>206</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 was expected that the Law would secure the possibility for lawyers and NGOs who specialise in dealing with discrimination cases to access public funds for the provision of legal aid. A report on the first six months of implementation of the Law showed that 1 902 persons received free legal aid and were referred either to municipal administration or to lawyers; 7 460 beneficiaries received legal advice; and 635 received assistance with filling in applications

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<sup>204</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 29.

<sup>205</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>206</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.

and forms.<sup>207</sup> Nevertheless, the eligibility criteria are linked to social welfare or child allowance, which covers a limited percentage of persons at risk of poverty in Serbia.<sup>208</sup>

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 even in 2020 it did not achieve its purpose.<sup>209</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. In addition, the COVID-19 pandemic prompted significant and rapid changes to the operation of courts, especially from 15 March to 6 May 2020, during the state of emergency. On 17 March, the Minister of Justice issued a recommendation on the functioning of courts and prosecutorial offices.<sup>210</sup> It was recommended that judges and prosecutors from all jurisdictions work from home, except in emergency cases. Work from home was recommended in particular for those older than 60 years, those with chronic health diseases and those with children younger than 12. On 17 March, the High Judicial Council issued an instruction on its work and announced that it would cease to work with parties, who could henceforth communicate only by post or by email.<sup>211</sup> This instruction was followed by similar instructions from courts in all jurisdictions,<sup>212</sup> and from the Republic Public Prosecutor's Office, with the aim of preserving the health of employees. On 19 March 2020, the Bar Association stated that lawyers would represent clients only in emergency cases.<sup>213</sup> As a result, the courts ceased to work with parties in person, and during the state of emergency, courts processed only emergency cases in person, which did not include discrimination cases.

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 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>214</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. Furthermore, it must be underlined that in 2020, the institution of the Commissioner was not operational for six months. The mandate of the second Commissioner expired on 27 May 2020, and her mandate was renewed on 26 November, for a five-year period. As a consequence, citizens of Serbia had no legal remedy available to ensure protection from discrimination, and furthermore they lost such a remedy at a time when they were trying to question many discriminatory measures in relation to the COVID-19 crisis.

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<sup>207</sup> Ministry of Justice, 'Report of the Ministry of Justice on the implementation of the Law on Free Legal Aid' (Izveštaj Ministarstva pravde o sprovođenju Zakona o besplatnoj pravnoj pomoći), 31 March 2020.

<sup>208</sup> European Commission, *Serbia 2020 Report*, Strasbourg, 6 October 2020, p. 38.

<sup>209</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.

<sup>210</sup> Minister of Justice, recommendation No. 112-01-557/2020-05, 17 March 2020.

<sup>211</sup> High Judicial Council, Instruction on the work of the High Judicial Council with parties during the state of emergency (Uputstvo o radu Viskog saveta sudstva sa strankama za vreme vanrednog stanja), 17 March 2020.

<sup>212</sup> For example, Appellate Court in Belgrade, Instruction Su no. I - 1, 33/20, 16 March 2020.

<sup>213</sup> Bar Chamber, Decision No. 284/2020, 19 March 2020.

<sup>214</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 16.

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 2020, 674 complaints were submitted to this specialised body in comparison with 711 in 2019, and even 947 in 2018.<sup>215</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>216</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 national court decisions on discrimination

In Serbia, court decisions on discrimination 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>217</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.

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, as they have greater specialisation regarding these two grounds of discrimination. This is particularly the case with Roma, as the European Roma Rights Centre decided to initiate several proceedings. When NGOs 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.

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<sup>215</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 29.

<sup>216</sup> Commissioner for the Protection of Equality, *Guidelines for strategic litigation (Smernice za strateške parnice)*, Belgrade, September 2018, p. 34.

<sup>217</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.

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>218</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>219</sup> However, this possibility has not been tested in practice in discrimination cases, or in any other field.

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

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<sup>218</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>219</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 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).

people: children of Roma origin.<sup>220</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>221</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>222</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 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>223</sup> However, it must be interpreted to mean that the rule on the burden of proof also applies to

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<sup>220</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>221</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>222</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>.

<sup>223</sup> See, for example, Appellate Court in Belgrade, Gž. 1 438/2018, judgment of 11 January 2019.

harassment.<sup>224</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.

Nevertheless, 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>225</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>226</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>227</sup>

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>228</sup>

Victimisation is not covered by the LPDPD.

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<sup>224</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>225</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for Protection of Equality for 2018*, Belgrade, p. 52.

<sup>226</sup> Victimisation is known as 'calling to account' in Serbian law.

<sup>227</sup> Equal Rights Trust (2019), *Equality in Practice – Implementing Serbia's Equality Laws*, London, p. 53.

<sup>228</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 38.

## **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>229</sup> In addition, Article 43(4) of the LPDPD expressly provides for compensation of damages which occur due to a discriminatory act.<sup>230</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>231</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 EUR 80 to EUR 400 (approximately RSD 10 000 and RSD 50 000) for individuals (Articles 50 to 60 of the LPD) to the sum of between EUR 80 to EUR 800 (approximately RSD 10 000 and RSD 100 000) 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 fines. 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:

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<sup>229</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>230</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>231</sup> Commissioner for the Protection of Equality (2019), *Regular annual report of the Commissioner for Protection of Equality for 2018*, Belgrade, p. 52.

- 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>232</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 and dissuasiveness 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 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>233</sup> The judge imposed a fine of EUR 250 (RSD 30 000) on the school and EUR 45 (RSD 5 000) on the principal. In determining the amount and type of punishment, the court found as an aggravating

<sup>232</sup> See, for example, Supreme Court of Cassation, Rev. 3602/10, 16 December 2010; Supreme Court of Cassation, Rev. 66/12, February 2012.

<sup>233</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.



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.

## **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; she was reelected in November 2020. In addition, the Protector of Citizens (Ombudsperson) is an independent body that protects the rights of citizens and controls the work of government agencies.

It ensures that human and minority freedoms and rights are protected and promoted. Only six authorities are exempted from its control: National Assembly, President of the Republic, Government of Serbia, Constitutional Court, the courts and the public prosecutor's offices. The Protector of Citizens pays special attention to the protection of the rights of certain groups, such as national minorities and persons deprived of their liberty, as well as gender equality, children's rights and the rights of persons with disability. For these special areas, four Deputy Protectors of Citizens are elected in the National Assembly, upon proposal by the Protector of Citizens. However, although some aspects of the Protector's work can include discrimination issues, this independent body was not introduced with the aim of providing protection from discrimination, which is the mandate of the Commissioner.

- 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>234</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>235</sup> On 30 October 2015, the Commissioner finally received a decision on moving to other premises<sup>236</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>237</sup> In 2017, 36 staff members were employed, which is 60 % of the estimated total number.<sup>238</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>239</sup> In 2018, the

<sup>234</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>235</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>236</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>237</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>238</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>239</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, pp. 9, 16.

number of employed staff members increased to 39, or 65 % of the estimated total number,<sup>240</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>241</sup> The situation remains the same in 2020, with 62 % of the estimated capacity filled.<sup>242</sup>

Finally, it must be underlined that the process for re-electing the Commissioner (from May to November 2020) was evidently delayed and non-transparent, which again illustrates the attitude of the state towards independent bodies in Serbia. The process was delayed as it was not initiated on time and subsequently the state of emergency and elections postponed it even further. During this time (six months), citizens of Serbia had no legal remedy available to secure protection from discrimination; what is more, they lost access to such a remedy at a time when they were trying to question many discriminatory measures in relation to the COVID-19 crisis.

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 Protector (Ombudsperson) can decide on cases that contain elements of discrimination. The Ombudsperson 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

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<sup>240</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>241</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 26.

<sup>242</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 26.

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 for 2018 was discussed in plenary session in the National Assembly. The same practice continued in 2020 in relation to the report for 2019.<sup>243</sup> Hopefully, this practice will continue in 2021 for the 2020 report, but it must be underlined that it has to be done much earlier than at the end of the year.

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'.<sup>244</sup> Although

<sup>243</sup> Conclusion concerning the consideration of the annual report of the Commissioner for 2019 (*Zaključak povodom razmatranja Redovnog godišnjeg izveštaja Poverenika za zaštitu ravnopravnosti za 2019. godinu*), 26 December 2020.

<sup>244</sup> Intersex persons are also included under the gender identity ground. The Commissioner in 2019 announced the need to advance the position of intersex persons in Serbia, especially in relation to medical treatment

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 2020 was submitted on time (on 15 March 2021).<sup>245</sup>

Thus far, the Commissioner has prepared special reports concerning the position of persons with disabilities, children and women,<sup>246</sup> while in 2019 the Commissioner prepared a report on discrimination in employment.<sup>247</sup> In 2020, the Commissioner also requested a survey

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and a lack of adequate psychological support. Commissioner for the Protection of Equality, announcement of 12 July 2019, available at: <http://ravnopravnost.gov.rs/rs/poverenica-o-unapredenju-polozaja-interseks-osoba/>.

<sup>245</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, available at: <http://ravnopravnost.gov.rs/izvestaji/>.

<sup>246</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 zena)*, Belgrade.

<sup>247</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/>.

on discrimination in the labour market,<sup>248</sup> which revealed some interesting results. This survey deals with the perception of discrimination and showed that the greatest number of employers and employees (92 %) believe that discrimination in the field of labour and employment is present in Serbia. Among employed workers, women (86 %); younger (91 %) and older workers (87 %); workers without work experience, those with higher education and those with work experience in the private sector have a more pronounced perception of discrimination in Serbia. Although the majority of respondents believe that discrimination is widespread, about two thirds of them do not have personal experience of discrimination. The perception is that the personal characteristics most represented as grounds for discrimination are: political membership, marital and family status,<sup>249</sup> sex and age. These grounds are followed by appearance, health and convictions. Ethnic origin and sexual orientation are not perceived as common grounds for discrimination by employers (0 % for both), and employees (only 3 % and 6 % respectively). In the opinion of the respondents, discrimination occurs in all phases of employment, i.e. when announcing vacancies, as well as during employment and when terminating employment contracts. All respondents agree that the groups most discriminated against in the labour market are people with disabilities and older workers, followed by members of political and other organisations, Roma men and women, people living with HIV/AIDS, migrants, the poor and LGBTI+ people.

### 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. Under Article 39, the Commissioner also gives opinions and recommendations in individual cases initiated by a complaint.

In 2020, the Commissioner issued some very important general recommendations, especially during the state of emergency (15 March – 6 May 2020). The Commissioner recommended that the public media institution RTS should enable the broadcasting of information in accessible formats (especially for hearing-impaired viewers, through the use of subtitles and/or sign language).<sup>250</sup> This recommendation referred to information relating to the state of emergency in Serbia, as well as to public information campaigns and instructions from competent institutions regarding the COVID-19 pandemic. Of particular importance was the recommendation given to the Prime Minister in relation to victims of domestic violence, which covered several issues: 1) the need to simplify the procedure for issuing movement permits during the state of emergency; 2) problems caused by the prohibition on movement for the elderly; 3) operation of SOS lines for the elderly and other lines established for various types of support and assistance; and 4) capacities of shelters and timely protection from violence.<sup>251</sup> The Prime Minister was also informed that, due to the border closing, the Commissioner had received numerous calls from citizens of Serbia living in the Republika Srpska, a part of the neighbouring state Bosnia and Herzegovina, pointing out the problems they faced.<sup>252</sup> Namely, retired persons who are dual citizens and who have spent their working life in Serbia were in a particularly difficult position. It was pointed out that they faced several problems, such as the impossibility of being able to

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<sup>248</sup> Commissioner for the Protection of Equality (2020), *Discrimination in the labour market (Diskriminacija na tržištu rada)*, January 2020.

<sup>249</sup> This ground of discrimination means that the respondents believe that those who experience the most discrimination are women, in relation to their marital and family relations.

<sup>250</sup> Commissioner for the Protection of Equality, No. 021-01-266-2/2020-02, 18 March 2020.

<sup>251</sup> Commissioner for the Protection of Equality, No. 560/2020, 14 April 2020.

<sup>252</sup> Commissioner for the Protection of Equality, No. 011-00-5/3/2020-02, 1 April 2020.

collect their pensions, use health insurance and vote in the elections, due to the measures taken in the Republic of Serbia to combat the spread of the COVID-19 virus.

Furthermore, the Commissioner informed the Prime Minister that she had been informed by the NGO dealing with the rights of people with disabilities that such people have been faced with numerous problems since the state of emergency was declared.<sup>253</sup> The NGO pointed out, as an urgent problem, the functioning of the personal assistance service, especially the problem of assistants visiting the homes of persons with disabilities under conditions of restricted movement. Therefore, it was necessary to give consent to unhindered movement for these persons, with the proposal that all licensed providers of this service submit the names of personal assistants and their users in order to prevent possible abuses. An equally urgent problem was the provision of support to persons with disabilities by 'persons who are not in the system, i.e. by relatives, friends or persons personally hired by individuals', and this issue urgently required to be solved. By not allowing persons with disabilities to exercise freedom of movement during the curfew, they were left without support at home. Another recommendation concerned persons with autism. Namely, the Commissioner informed the Minister of Labour, Employment, Veterans and Social Issues that movement permits should be issued during curfew to people with autism to enable them to be accompanied by their parents and guardians due to the necessity of maintaining a routine in daily activities to avoid tantrums, meltdown, aggression and self-harm.<sup>254</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 89 % of cases, almost the same as in 2019 (90 % of cases), in comparison with 98.3 % in 2018.<sup>255</sup> They are all published on the Commissioner's 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 public awareness activities and prepares different publications and provides training for different public officials (judiciary, labour inspectors, police officers, etc.). However, in 2020, those activities were less represented due to the COVID-19 pandemic.

#### g) 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>256</sup>

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<sup>253</sup> Commissioner for the Protection of Equality, No. 011-00-5/2/2020-02, 26 March 2020.

<sup>254</sup> Commissioner for the Protection of Equality, No. 382/20, 10 April 2020.

<sup>255</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 27.

<sup>256</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).

- to bring discrimination complaints (on behalf of non-identified victims) to court;<sup>257</sup>
- to intervene in legal cases concerning discrimination,<sup>258</sup> for example, as an *amicus curiae*.

However, the Commissioner is not entitled 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>259</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>260</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>261</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;
- 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.

<sup>257</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>258</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>259</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>260</sup> Supreme Court of Cassation, Rev. 853/2014, decision of 3 September 2014.

<sup>261</sup> Appellate Court in Belgrade, No.7 P. 782/15, decision of 29 May 2015.



#### h) 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>262</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 2020, the Commissioner's recommendations were respected in 16 cases (89 %) and not respected in two cases (11 %), while in six cases the deadline for acting on recommendations had not yet expired.<sup>263</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.

#### i) 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 2020, the Commissioner received 674 complaints. In respect of 112 complaints (16.6 %), a personal characteristic was not mentioned. In 4 562 complaints, a personal characteristic was invoked as follows: 121 complaints (15.6 %) – health status; 115 complaints (14.8 %) – age; 114 complaints (14.7 %) – ethnic origin; 105 complaints (13.5 %) – sex; 89 complaints (11.5 %) – disability; 56 complaints (7.2 %) – marital and family status; 44 complaints (5.7 %) – property status; 30 complaints (3.9 %) – membership of political and trade unions; 12 complaints (1.5 %) – citizenship; 11 complaints (1.4 %) – religious or political beliefs; seven complaints (0.9 %) – appearance and sexual orientation; four complaints (0.5 %) – conviction, gender identity and language; three complaints (0.4 %) – ancestry; two complaints (0.3 %) – birth; one complaints (0.1 %) – race and genetic features; and 47 complaints (6.0 %) on other grounds.<sup>264</sup>

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<sup>262</sup> Law on General Administrative Procedure, *Official Gazette of the Republic of Serbia*, No. 18/2016, 9 March 2016.

<sup>263</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 29.

<sup>264</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, pp. 182.

With regard to the areas where discrimination occurs, the number of complaints in 2020 was as follows: public authorities (192 complaints, or 28.5 %); employment (184 complaints or 27.3 %); access to public services and facilities (95 complaints, or 14.1 %); education and vocation (37 complaints, or 5.5 %); social protection (35 complaints, or 5.2 %); public sphere (27 complaints, or 4.0 %); public information and media (21 complaints, or 3.1 %); healthcare (17 complaints, or 2.5 %); private relations (16 complaints, or 2.4 %); culture, art and sport (eight complaints, or 1.2 %); housing (eight complaints, or 1.2 %); pensions (seven complaints, or 0.1 %); judiciary, property rights and operations of trade unions and other organisations (six complaints, or 0.9 %); and other areas (13 complaints, or 1.9 %).<sup>265</sup> 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).

#### 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>266</sup> Therefore, she deals with cases of discrimination against the Roma and issues public announcements on their situation. In addition, the Ombudsperson 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 Commissioner noted in her report for 2019 that the Roma men and women are still frequently exposed to discrimination.<sup>267</sup> The same trend continues in 2020. The report contains relevant information on the position of the Roma in Serbia; the Commissioner underlines that they still face widespread discrimination in access to labour, adequate housing, education, access to services, information and communication, access to health and social protection, personal documents and justice.<sup>268</sup>

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, while this number increased to 114 in 2020. The majority of those cases dealt with unequal treatment of the Roma or other national minorities (Bosniak, Croatian, Albanian or Romanian, etc.).<sup>269</sup> In 2020, 94 complaints were submitted claiming discrimination against the Roma, which made up 82.5 % of all complaints based on ethnicity.<sup>270</sup> The majority of complaints that the Commissioner received concerned the inability of residents of the Roma settlement in Nis to use a taxi service. In addition, a large number of complaints were filed due to two instances of graffiti stating 'Gypsies in camps' and 'Gypsies stink', located near one primary school in Kraljevo. Following the Commissioner's intervention, the city administration issued an urgent order to the communal inspectors to carry out an inspection. The

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<sup>265</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 183.

<sup>266</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.

<sup>267</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>268</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>269</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>270</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 139.

inspectors gave an order to the managers of the residential buildings to remove the disputed graffiti, which was done immediately.

In 2020, the European Commission identified some progress in relation to the position of the Roma, as well as the continuation of some negative trends.<sup>271</sup> While it was found that most Roma have civil documents, the European Commission stressed that all births need to be registered immediately after children are born, regardless of their parents' status. 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, especially for Roma girls. Transition from education to the labour market is particularly challenging for young Roma people, and the low level of education remains a key barrier to employment. Many Roma households have no access to electricity or drinking water and no connection to the sewage system. The issue of legalisation of Roma settlements needs to be tackled as a matter of priority. Roma returnees are particularly vulnerable in terms of their social and economic inclusion. 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.

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<sup>271</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, pp. 39-40.

## 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 2020, a eighth law competition was initiated in partnership with the Open Society Foundation. The competition was open to law students from undergraduate and masters programmes. However, due to the COVID-19 situation, the competition was finalised with a written phase only.

- 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>272</sup> However, in 2020, the trend deteriorated and NGOs submitted only 56 complaints (8.3%).<sup>273</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>274</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>275</sup> The 2020 training was specific to the COVID-19 crisis, and some training sessions were organised at the beginning of the year. In February 2020, a two-day seminar was held for representatives of the National Councils of National Minorities.

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<sup>272</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>273</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 181.

<sup>274</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>275</sup> Commissioner for the Protection of Equality (2020), *Regular annual report of the Commissioner for the Protection of Equality for 2019*, Belgrade, p. 6.

In addition, the Commissioner participated in another training session on national minorities, and organised training for public officials, pupils and judges.<sup>276</sup>

The Office for Human and Minority Rights (Kancelarija za ljudska i manjinska prava) also undertakes a lot of activities in relation to discrimination. With the formation of the new Government, its competences were passed over to the Ministry for Human and Minority Rights and Social Dialogue (Ministarstvo za ljudska i manjinska prava i društveni dijalog). 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 through 2017 and 2018. However, the new strategy and the new action plan were not prepared and adopted until the end of 2020.

#### 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 Ombudsperson 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>277</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>278</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 Ministry for Human and Minority Rights and Social Dialogue has a section for anti-discrimination politics and improvement of gender equality. One subsection of this section is dedicated to the improvement of the position of Roma women and men. This subsection has a duty to undertake activities related to coordination and cooperation with the 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

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<sup>276</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 55.

<sup>277</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>278</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.

was established. The text of the action plan has been seriously delayed, although the text was subjected to public debate in October 2019. The coordination body for monitoring the implementation of the strategy met only three times during the reporting period, instead of six as previously agreed.<sup>279</sup> In addition, the expert group involving CSOs, which was established with the aim of supporting the coordination body, has never met.<sup>280</sup>

In July 2019, in Poznań, the Government signed the Western Balkans Partners Roma Integration declaration, which contains quantifiable commitments in key priority areas: an increase in the employment rate for Roma in the public sector; whenever possible, the legalisation of all informal Roma settlements or provision of permanent, decent, affordable and desegregated housing for Roma; an increase in the enrolment and completion rate for Roma in primary and secondary education; securing the registration of all Roma in the civil registries; and strengthening protection from discrimination.<sup>281</sup>

The Government also 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>282</sup> The Council receives administrative and technical support from the Ministry. 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 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>283</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

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<sup>279</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 39.

<sup>280</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 39.

<sup>281</sup> Declaration of Western Balkans Partners of Roma Integration within the EU Enlargement process, available at: <https://www.romaeducationfund.org/wp-content/uploads/2019/07/Western-Balkans-Declaration-on-Roma-Integration-and-EU-enlargement.pdf>.

<sup>282</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.

<sup>283</sup> European Commission, *Serbia 2019 Report*, Brussels, 29 May 2019, p. 29.

and initiated nine initiatives for a change to the law.<sup>284</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>285</sup> In 2020, the Commissioner provided 12 opinions on different laws and initiated 12 changes for a change to the law.<sup>286</sup> This number is smaller due to the legislative inactivity caused by the COVID-19 crisis. 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). However, in the majority of cases, the Constitutional Court in Serbia is not efficient enough, or it adopts decisions that are sometimes contrary to the principle of non-discrimination. This was particularly visible in the Court's approach to acts brought in during the state of emergency from 15 March to 6 May 2020. It received some 66 initiatives with regard to assessing the constitutionality of the emergency measures and 10 complaints about possible violations of human rights, many of which invoked the principle of equality. The majority of complaints invoked discrimination towards the elderly and migrants in relation to restrictions on their freedom of movement, which were much greater in comparison with restrictions placed on other citizens. On 21 May, the Constitutional Court decided to dismiss a request to review the constitutionality of the procedure by which the state of emergency was introduced, on procedural grounds.<sup>287</sup> The Court elaborated on the facts relating to the epidemic, and held that, while it is difficult to differentiate between a state of emergency and an emergency situation, there is no doubt that COVID-19 is a public danger. Unfortunately, the Constitutional Court did not assess the state-of-emergency decision in the light of the Serbian Constitution and other legislation.<sup>288</sup>

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 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.

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<sup>284</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>285</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>286</sup> Commissioner for the Protection of Equality (2021), *Regular annual report of the Commissioner for the Protection of Equality for 2020*, Belgrade, p. 29.

<sup>287</sup> Constitutional Court, IUo - 42/2020, 21 May 2020.

<sup>288</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 19.

## 9 COORDINATION AT NATIONAL LEVEL

The Ministry for Human and Minority Rights and Social Dialogue was established on 26 October 2020 by the Law on Ministries<sup>289</sup> as a specialised Government ministry to provide protection and promotion of human and minority rights and non-discrimination, to draft legal acts and to monitor the compliance of national legislation with international treaties and other international acts on human and minority rights. It also 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>290</sup>

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, Veterans 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 2020. The Ministry of Labour, Employment, Veterans and Social Affairs has so far adopted only a baseline study for the new strategy.<sup>291</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>289</sup> Law on Ministries (*Zakon o ministarstvima*), *Official Gazette of the Republic of Serbia*, No. 128/2020, 26 October 2020.

<sup>290</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, Veterans and Social Affairs. These reports can be found at: <https://ljudskaprava.gov.rs/sh/node/19990>.

<sup>291</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 PRACTICES

The work of the Commissioner for the Protection of Equality since its creation has been successful, despite 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. The Commissioner has continued to support regional cooperation and actively participate in EQUINET. The body also regularly organises and participates in training sessions, conferences, lectures and round tables; issues numerous handbooks and guides; and contributes to awareness-raising on discrimination and the legal framework for protection against discrimination. However, in 2020, a backward process was identified, given that the Commissioner was not able to actively participate in various events, and bearing in mind that its mandate expired on 27 May 2020 and was renewed only on 26 November. This influenced not only the adoption of opinions on complaints, but all the other activities that the Commissioner would regularly conduct.

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 2020 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 an online refresher seminar on different issues relating to discrimination, where 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 for the first time included in their annual programme for the initial training the compulsory HELP anti-discrimination course. The same course was delivered for 60 students of the Faculty of Law at the University of Belgrade in the winter semester of 2020, within the Legal Anti-Discrimination Law Clinic programme.

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>292</sup>

In 2019, the Strategy for the Development of Artificial Intelligence was adopted for the period 2020 to 2025 with the goal of developing 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>293</sup> The Action Plan for 2020-2022 was adopted in June 2020, and one of the goals stipulated in this operational document is the ethical and safe application

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<sup>292</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>293</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.

of artificial intelligence.<sup>294</sup> It further stipulates the establishment of the Institute for the Artificial Intelligence in 2021. Protection from discrimination is also addressed in measure 5.2, which contains the two following goals: 1) development of guidelines in accordance with the code of ethics with the aim of eliminating discrimination in the development of software solutions based on artificial intelligence; and 2) publishing data on the basis of which the application of artificial intelligence creates public policies in order to ensure transparency and prevent discrimination in the work of public administration.

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<sup>294</sup> Action Plan for 2020 to 2020 for the implementation of the Strategy of Artificial Intelligence in Serbia for 2020 to 2025 (Akcionni plan za period 2020-2022. godine za primenu Strategije razvoja vetačke inteligencije u Republici Srbiji za period 2020-2025. godine), *Official Gazette of the Republic of Serbia*, No. 81/2020, 16 June 2020.

## **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.

The mandate of the Commissioner Brankica Jankovic expired on 27 May 2020. Due to the fact that the selection process was delayed, and due to the state of emergency and dissolution of the National Assembly before the June parliamentary elections, she was re-elected only on 26 November 2020. Since the Commissioner does not have deputies who are entitled under the law to take action, the institution was ineffective for six months and unable to act on complaints. Therefore, citizens of Serbia had no legal remedy available to secure protection from discrimination, and they lost access to such a remedy at a time when they were trying to question many discriminatory measures in relation to the COVID-19 crisis. In addition, the re-election process was criticised as being non-transparent.<sup>295</sup>

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. In 2020, NGOs warned the public that the Belgrade Bar Association, the largest chamber in Serbia, had taken a number of measures to limit the possibilities for lawyers to cooperate with the civil sector: their members were called on to choose whether they would cooperate with NGOs or independently provide free legal aid, or otherwise they will be removed from the Register of Lawyers. In a case where they

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<sup>295</sup> BBC News, 'Srbija, ravnopravnost i Brankica Janković: Dobili smo staru-novu Poverenicu posle pola godine' (Serbia, equality and Brankica Jankovic: We have old-new Commissioner after half a year), 27 November 2020, available at: <https://www.bbc.com/serbian/lat/srbija-55104694>.

decide to provide legal aid independently, the costs are not covered from the budget. The NGOs believe that this and other measures deny citizens effective access to justice.<sup>296</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 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>297</sup> This situation remains the same, as confirmed by the European Commission in its *Serbia 2020 Report*. The European Commission also underlines that statistical data on vulnerable groups is not disaggregated, in particular for Roma children and children with disabilities.<sup>298</sup>

Despite some positive trends, the European Commission has found that LGBTI+ people are often exposed to hate speech, threats and violence. Hate speech in particular increased during the state of emergency, together with hate speech against women, the elderly, and people infected with COVID-19.<sup>299</sup> Transgender persons are particularly vulnerable to violence, abuse and discrimination, while intersex persons remain socially and legally invisible. A new rulebook on conditions for reproductive cell providers and embryos introduces a ban on sperm donation for people who have had homosexual relations in the last five years.<sup>300</sup>

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.

The anti-discrimination case law in Serbia is still developing, but some important decisions were delivered in 2020. 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

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<sup>296</sup> 'Belgrade Bar Association brings access to justice in danger', available at: <https://akb.org.rs/wp-content/uploads/2019/12/SERBIAN-NGOs-vs-BELGRADE-BAR.pdf?script=lat>.

<sup>297</sup> ECRI, *Report on Serbia (fifth monitoring cycle)*, Council of Europe, adopted on 22 March 2017, p. 10.

<sup>298</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 37.

<sup>299</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 36.

<sup>300</sup> European Commission, *Serbia 2020 Report*, Brussels, 6 October 2020, p. 38.

appears. In the majority of cases, suspension of the procedure occurred due to its obsolescence. That practice must be 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. Finally, it is necessary to enhance the statistical parameters and the database for monitoring court proceedings concerning discrimination cases.

Major training sessions on anti-discrimination for judges, prosecutors and other public officials were postponed in 2020 due to the coronavirus crisis. However, the regular refresher seminar for eight specialised judges of the higher court has been conducted; the HELP anti-discrimination course became a mandatory part of initial training at the Judicial Academy (50 participants) and for 60 students of the Faculty of Law, University of Belgrade. Nevertheless, 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.

It should be underlined that everything that is mentioned above concerns the challenges present during the past several years. However, some new challenges were imposed as a result of the COVID-19 crisis, and were present especially during the state of emergency. On 15 March 2020, the lockdown in Serbia was announced by the President on the television and stipulated in the Decree.<sup>301</sup> The Decree was in force until 6 May 2020. The curfew hours were from 6 pm until 5 am on working days, and from 6 pm on Friday until 5 am on Monday. The longest curfew period was from 17 April (Friday) from 6 pm until 21 April (Tuesday) at 5 am.<sup>302</sup> However, movement restrictions were imposed on some groups in particular, especially the elderly. On 22 March, seniors were allowed to go outside for the first time, and only for buying groceries (from 4 am to 7 am). This exception applied once a week. Starting from 21 April, seniors were allowed to go out on Tuesday, Thursday and Sunday for 60 minutes, during the curfew hours, within a 600-metre radius from their place of residence. Very strict limitations on movement were also applied to migrants and asylum seekers accommodated in asylum and reception centres.<sup>303</sup> They were not allowed to leave the centres during the day without the management's permission, even after the

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<sup>301</sup> Decree on measures during the state of emergency (*Uredba o merama za vreme vanrednog stanja*), *Official Gazette of the Republic of Serbia*, Nos. 31/2020, 36/2020, 38/2020, 39/2020, 43/2020, 47/2020, 49/2020, 53/2020, 57/2020, 58/2020, 60/2020, 126/2020 16 March 2020.

<sup>302</sup> The restriction did not apply to: 1) health workers with a licence; 2) servants of the Ministry of the Interior, the Ministry of Defence, the Serbian Army and the security services, performing the task; 3) persons to whom the Ministry of the Interior issued a movement permit; 4) crew members of motor vehicles, cargo ships, train crew of railway vehicles, crew and cabin crew of aircraft, which perform international transport in road, rail, water and air traffic; and 5) persons who urgently need medical assistance and who are accompanied by a maximum of two persons. From 21 April, persons with pets were allowed to go outside during the curfew hours from 11 pm to 1 am, and on Saturdays and Sundays from 8 am to 10 am, for 20 minutes, up to a maximum of 200 metres distance from their place of residence. Also, during curfew hours, persons with developmental disabilities and autism were allowed to go outside, accompanied with one adult (parent or guardian), up to a maximum of 200 m distance from the place of residence.

<sup>303</sup> Decision on temporary restriction of movement of asylum seekers and irregular migrants accommodated in asylum centres and reception centres in the Republic of Serbia (*Odluka o privremenom ograničavanju kretanja trazilaca azila i iregularnih migranata smestjenih u centrima za azil i prihvatnim centrima u Republici Srbiji*), *Official Gazette of the Republic of Serbia*, No. 32/2020, 16 March 2020.

state of emergency was lifted. Those granted such permission were allowed to leave the centres for only a few hours.<sup>304</sup> The situation of elderly people accommodated in residential centres deserves particular attention. On 10 April 2020, the Government regulated the organisation of work in residential care for the elderly; the measures, which related to the health, treatment and isolation of both the beneficiaries of care and employees, ceased to be valid on 7 May.<sup>305</sup> In addition, an order prohibiting visits and restrictions on movement was issued on 14 March and remained in force until the end of 2020.<sup>306</sup> The principle of proportionality is recognised in the Constitution. Article 202(1) prescribes that upon proclamation of a state of emergency, human rights derogations are permitted 'only to the extent deemed necessary.' Furthermore, Article 20(1) stipulates principles for human rights restrictions: restrictions are permitted only to the extent necessary in a democratic society, and without encroaching upon the core content of the relevant right. However, these few examples illustrate the problem in applying the proportionality test; the assessment of proportionality in practice needs to be tackled by courts, and especially by the Constitutional Court. However, the Constitutional Court has played a disappointing role during the pandemic. It dismissed the claims made in the initiative that migrants and asylum seekers had been illegally, arbitrarily and collectively deprived of liberty on the basis of discriminatory criteria and without recourse to judicial protection. The Constitutional Court found that the temporary restriction of movement was permitted by the Serbian Constitution, allowing derogations from constitutionally guaranteed human and minority rights during a state of emergency to the extent necessary to protect the population from the transmission of COVID-19.<sup>307</sup> In the same decision, the Constitutional Court did not find any violations concerning the elderly and restrictions on their movement.

At the moment, no issues of concern can be identified regarding the use of artificial intelligence in relation to the implementation of the national legislation transposing the directives, or regarding the regulation of artificial intelligence. In its Strategy for the Development of Artificial Intelligence, Serbia announced the first Institute that will deal with its application in various fields. So far, AI has been used mainly in agriculture for various yield estimates and in industry to automate physically demanding and repetitive processes. According to the Index of Readiness for Artificial Intelligence, published by the British organisation Oxford Insights in cooperation with the Canadian International Development Research Centre, in 2020 Serbia was ranked in 46th place out of 172 countries. Therefore, the use of AI will be more significant in future.

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<sup>304</sup> Belgrade Centre for Human Rights (2020) *Right to Asylum in the Republic of Serbia for 2020*, p. 88.

<sup>305</sup> Decree on organising the work of social protection institutions for accommodation of beneficiaries and social protection organisations for providing home accommodation services during a state of emergency (*Uredba o organizovanju rada ustanova socijalne zaštite za smestaj korisnika i organizacija socijalne zaštite za pružanje usluge domskog smeštaja za vreme vanrednog stanja*), *Official Gazette of the Republic of Serbia*, No.54/2020, 10 April 2020.

<sup>306</sup> Order on prohibition of visits and restrictions on movement in the facilities of institutions for accommodation of the elderly (*Naredba o zabrani poseta i ograničenju kretanja u objektima ustanova za smestaj starih lica*), *Official Gazette of the Republic of Serbia*, Nos. 28/2020, 66/2020, 87/2020 (14 March 2020).

<sup>307</sup> Constitutional Court, IUo-45, decision of 17 September 2020.

## 12 LATEST DEVELOPMENTS IN 2020

### 12.1 Legislative amendments

The National Assembly ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled,<sup>308</sup> with the aim of removing barriers to the complete development of persons with visual impairments or other print disabilities, which limit their freedom of expression and ideas of all kinds on an equal basis with others, including through all forms of communication of their choice, their enjoyment of the right to education and the opportunity to conduct research.

Amendments to the Law on the Fundamentals of the System of Education and Upbringing, adopted on 1 February 2020,<sup>309</sup> establish and regulate the Unified Information System for Preschool, Primary and Secondary Education, Adult Education, Higher Education and Pupil and Student Standards. The educational institution organises Serbian classes as a foreign language for children of foreign nationals, stateless persons and persons seeking Serbian citizenship free of charge under the condition of reciprocity or at the expense of parents or other legal representatives in the organisation. The provisions on the education programme have been amended to add that curricula in primary and secondary education also contain guidelines for adjusting the curriculum, as well as for providing individual or group additional support for students with disabilities, when it is in their best interest, and based on the opinion of the Interdepartmental Commission and with the consent of parents or other legal representatives of students. Until now, the budget of the local self-government unit has provided funds for the transportation of children with disabilities in primary schools and their companions. The new amendments enable the budget of the local self-government unit to provide funds for the transportation of secondary school pupils who reside on the territory of the local self-government unit at a distance of more than four kilometres from the school premises.

Amendments to the Law on Secondary Education, adopted on 1 February 2020, contains provision which requires that practical classes conducted at the employer require for students with disabilities adaptation of the workplace in relation to their capabilities and type of disability (Article 1(5)).<sup>310</sup> Also, it must be secured that a student with disabilities must be passing the final graduation exam in conditions which ensure overcoming physical and communication barriers (Article 4(1)).

Amendments to the Law on Culture, adopted on 1 February 2020, prescribe encouraging the cultural and artistic creativity of persons with disability and the accessibility of all cultural content to them (Article 2(28)).<sup>311</sup>

On 5 March 2020, the Government of Serbia adopted the Strategy for the Improvement of the Position of Persons with Disabilities (2020-2024).<sup>312</sup> The aim of this policy document is to advance the position of persons with disabilities over the next five years, in order to improve their overall social and economic position and promote their equal participation in the society by removing obstacles in the areas of accessibility, participation, equity,

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<sup>308</sup> Law on Confirmation of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (*Zakon o potvrđivanju Marakeškog ugovora za omogućavanje pristupa objavljenim delima od strane lica koja su slepa, slabovida ili na drugi način onemogućena da koriste štampane materijale*), *Official Gazette of the Republic of Serbia*, No. 1/2020, 6 February 2020.

<sup>309</sup> Law on the Fundamentals of the System of Education and Upbringing (*Zakon o osnovama sistema obrazovanja i vaspitanja*), *Official Gazette of the Republic of Serbia*, No. 6/2020, 1 February 2020.

<sup>310</sup> Law on the amendments to the Law on Secondary Education (*Zakon o izmenama i dopunama Zakona o srednjem obrazovanju i vaspitanju*), *Official Gazette of the Republic of Serbia*, No. 6/2020, 1 February 2020.

<sup>311</sup> Law on amendments to the Law on Culture (*Zakon o izmenama i dopunama Zakona o kulturi*), *Official Gazette of the Republic of Serbia*, No. 6/2020, 1 February 2020.

<sup>312</sup> Strategy for the Improvement of the Position of Persons with Disabilities from 2020 to 2024 (*Strategija za unapređenje položaja osoba sa invaliditetom u Republici Srbiji za period od 2020. do 2024. godine*), *Official Gazette of the Republic of Serbia*, No. 44/2020, 4 April 2020.



employment, education and training, social protection, health and other areas of life. The strategy provides a comprehensive overview of the position of persons with disabilities and defines general and specific goals that need to be achieved. The main objective is to provide the conditions to allow persons with disabilities to enjoy all civil, political, economic, social and cultural rights, respecting their dignity and individual autonomy, their independence, freedom of choice and full and effective participation in all areas of social life. In order to fulfil this general goal, three specific goals are stipulated. The first goal is to increase the social inclusion of persons with disabilities. Key indicators of this specific goal are: 1) to have a 10 % annual increase in the number of accessible public facilities, 2) to have a 20 % annual increase in programmes that support the social inclusion of persons with disabilities, as well as 3) to have a 10 % annual increase of public awareness of the position of persons with disabilities. The second specific goal is to ensure the enjoyment of the right to legal capacity and family life on an equal basis with others, and effective protection from discrimination, violence and abuse. Key indicators of the second specific goal are: 1) to abolish the complete deprivation of legal capacity and of the extension of parental rights on the basis of disability, 2) to introduce mechanisms and services to enable the enjoyment of legal capacity for persons with disabilities; and 3) to improve the protection of persons with disabilities, especially women with disabilities, from violence and abuse in family and institutional settings. The final specific goal is to introduce, in a systemic manner, the disability perspective in the adoption, implementation and monitoring of all public policies. Key indicators for the third specific goal are: 1) to incorporate a disability perspective into all strategies, programmes, plans and regulations; 2) to improve the inclusion of persons with disabilities in the labour market; 3) to improve inclusive education and lifelong learning for people with disabilities; and 4) to improve health care that meets the needs of persons with disabilities, with full respect for their rights as patients.

On 10 June 2020, the Strategy for the Prevention and Protection of Children from Violence for 2020 to 2023 entered into force,<sup>313</sup> and was accompanied by the Action Plan for 2020 to 2021. The strategy defines different types of violence and recognises a large number of environments in which violence occurs. It also indicates that corporal punishment of children in order to correct or control their behaviour is child abuse and that it requires zero tolerance. This document also stresses the importance of special protection for children from vulnerable groups who are often exposed to multiple forms of violence, such as children in street situations, refugee children, migrant children, LGBTI+ children and Roma children. The Commissioner welcomed the adoption of this important document, but criticised the fact that it had not been developed on the basis of a formal evaluation of the impact of the implementation of the National Strategy for the Prevention and Protection of Children from Violence, which expired in 2015.<sup>314</sup>

The Digital Skills Development Strategy was adopted on 16 March 2020.<sup>315</sup> Its general goal is to improve the digital knowledge and skills of all citizens, including members of vulnerable groups, in order to monitor the development of information and communication technologies in all areas and meet the needs of the economy and the labour market. Consequently, the specific goals are the improvement of digital competencies in the education system; the improvement of basic and advanced digital skills for all citizens; and the development of digital skills in relation to the needs of the labour market, as well as lifelong learning for ICT professionals. It was acknowledged that training programmes need to be non-discriminatory, especially regarding young people, poor citizens or unemployed adults. Programmes should include the development of models for increased access to

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<sup>313</sup> Strategy for the prevention and protection of children from violence for 2020 to 2023 (Strategija za prevenciju i zaštitu dece od nasilja za period od 2020. do 2023. godine), *Official Gazette of the Republic of Serbia*, No. 80/2020, 10 June 2020.

<sup>314</sup> Commissioner for the Protection of Equality, Opinion on the draft Strategy, No. 021-01-3/2020-02, 31 January 2020.

<sup>315</sup> Digital Skills Development Strategy from 2020 to 2024 (Strategija razvoja digitalnih veština za period od 2020. do 2024. godine), *Official Gazette of the Republic of Serbia*, No. 21/2020, 16 March 2020.

digital skills training for citizens belonging to vulnerable groups, such as the elderly, the less educated and the poor. It is necessary to envisage measures to provide funds for the development of digital skills through free or subsidised training for members of these groups, for which economic entities should be engaged within the corporate social responsibility programme.

The Strategy for the Culture Development,<sup>316</sup> adopted on 13 February 2020, stipulates that it is necessary to pursue a policy of equal opportunities that encourages cultural institutions to promote a policy of social cohesion, with the aim of including all social groups in cultural life. It is emphasised that concern for socially vulnerable groups is not an isolated segment of reality, which is usually associated only with certain areas of social life (education, health or employment), but is an issue important for the development of culture and quality interpersonal relationships. For people with disabilities, it is important not only to remove physical barriers in the facilities of cultural institutions, but also to adapt cultural content. Therefore, measure 3.3 concerns encouraging and developing cultural needs and habits and equal participation in cultural life. The strategy recognises as one of the basic principles of cultural policy the need to define measures that enable equal participation by all citizens in cultural life, regardless of geographical, material and social barriers. In addition, one of the goals is the promotion and affirmation of programmes in the field of contemporary art (literature and publishing, theatre, art, music, visual arts, film, children and youth, national minorities).

## 12.2 Case law

**Relevant discrimination ground:** Disability and health status

**Name of the court:** Appellate Court in Belgrade

**Date of decision:** 1 September 2020

**Name of the parties:**

**Reference number:** Gž1 - 2129/20

**Link:** N/A

**Brief summary:** The higher court in Belgrade, in its judgment P1. 109/17 of 24 February 2020, found discrimination in the termination of work based on the disability and health status of a complainant. The complainant had been employed with the same employer since 2002. In 2015, the National Employment Services determined her status as a person with disability as she suffered from chronic lymphocytic leukemia, and was therefore not eligible for shifts, extended or night work. In 2017, the employers decided to terminate the employment agreement, according to a new organisation plan due to which her position was surplus. The first instance court found discrimination, as the employer had dismissed her not due to organisational matters, but due to the fact that it did not suit him to have a worker only in the first shift. She was the only employee who was declared redundant. In addition, the employer, in terminating the employment, wrote that the employee was not able to perform her job any more, which was not true. The Appellate Court overturned that decision. The Appellate Court did not find discrimination, as there was no discriminatory treatment of the complainant in relation to other employees. The Court found that she was a person with disability who was employed under the same general conditions as others. However, the Court did not take into account the fact that the employer explicitly wrote that her contract was terminated due to her disability and health status. Furthermore, the Court erred in concluding that discrimination means unequal treatment among the category of the same group, or in this case compared with other persons with disabilities. Although the CJEU found that discrimination under Directive 2000/78 can occur if one group of people with disabilities is treated differently than another group of persons with disability, this was not the case here.<sup>317</sup> Therefore, the Court needed

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<sup>316</sup> Strategy for Culture Development (Strategija razvoja kulture za period od 2020. do 2029. godine), adopted by the Government on 13 February 2020.

<sup>317</sup> Judgment of 26 January 2021, *VL v. Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19.

to assess the difference in treatment between persons with disability and persons without disability.

**Relevant discrimination ground:** Ethnicity

**Name of the court:** Appellate Court in Belgrade

**Date of decision:** 17 December 2020

**Name of the parties:** *A.A. and B.B. (not available) v. The Ministry of Internal Affairs*

**Reference number:** Gž. 5882/20

**Link:** N/A

**Brief summary:** On 21 April 2017, the complainants were exposed to harassment and humiliating behaviour in a police station. The husband, who is Roma, and his non-Roma wife reported that their car had been stolen. They went to the police station to give a statement, where they were informed that their car had been found. In the police station, they were interrogated and exposed to ill-treatment in order to get them to confess that they had hidden the car and falsely reported it missing in order to demand payment from their insurance. The police officers slapped the man, kicked him in the abdomen, hit him with a leather belt, insulted him on ethnic grounds, put a plastic bag on his head that made him unable to breathe, took a gun, loaded it and put the barrel to his head. His wife was humiliated and offended, and insulted for being married to a Gypsy, and the police officers threatened to take their two daughters from the couple as they would be detained. After 13 hours, they were released without any report. The Court found that they had been exposed to discriminatory treatment based on ethnic origin and that the police officers, without any justifiable reason, had conducted numerous acts against the complainants which took the form of physical and psychological coercion. The complainant was also insulted on the ground of ethnicity, due to which the Court ordered compensation to be paid. The judgment was delivered against the Ministry of the Interior, and it is final. The compensation for non-pecuniary damages for physical and psychological suffering and fear was EUR 4 700 (RSD 550 000) for the complainant and EUR 1 700 (RSD 200 000) for his wife. It is worth mentioning that the prosecutor's offices decided to reject the criminal complaint, and this decision has been challenged in the Constitutional Court.

**Relevant discrimination ground:** Ethnicity

**Name of the court:** Higher court in Belgrade

**Date of decision:** 10 February 2020

**Name of the parties:** *AA (not available) v. Elektroprivreda Srbije*

**Reference number:** 1 P. 1-2018

**Link:** N/A

**Brief summary:** In December 2017, the European Roma Rights Centre (EERC) initiated a lawsuit in the name of several Roma persons against the public power company Elektroprivreda Srbije for cutting off 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 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. The court reasoned that it is first important to find a comparator, which in this case were other consumers of electricity. As the Roma population from this settlement were treated differently, the court found that the defendant had not shown any objective and reasoned reason for this different treatment. The court rejected the defence that this was a case of 'positive discrimination', which means positive measures that ensure equal opportunities for all, including members of vulnerable groups. However, the court declined to award compensation in this case. The judgment is not final.

**Relevant discrimination ground:** Residence

**Name of the court:** Supreme Court of Cassation

**Date of decision:** 10 June 2020

**Name of the parties:** AA (*not available*) v. Ministry of Defence

**Reference number:** Rev 1422/2020

**Link:** <https://www.vk.sud.rs/sr-lat/rev-14222020-3661-vojni-rezervisti>

**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>318</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 Supreme Court of Cassation reasoned 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 the situation of having to initiate a new compensation procedure. In this case, the amount was adequately weighed and represents fair compensation. This is one of many judgments which were decided on the same matter in 2020.

**Relevant discrimination ground:** Residence and ethnicity

**Name of the court:** Appellate Court in Belgrade

**Date of decision:** 14 May 2020

**Name of the parties:** AA (*not available*) v. BB (*not available*)

**Reference number:** Gž. 9580/18

**Link:** N/A

**Brief summary:** This case concerns the forced eviction of Roma on 26 April 2012 from the informal settlement at Belvil in New Belgrade. Many organisations reported on almost 1 000 Roma who were affected by this measure. Those who had residence in Belgrade, stayed in Belgrade and were offered some alternative solution, while the complainants were returned to Niš, and temporarily settled in an informal settlement called Stocni trg. At that time, it did not have electricity and water, but those utilities were introduced three months later. However, the Ombudsperson and the Commissioner for the Protection of Equality, who visited the settlement, found that it did not provide adequate housing as a permanent solution. The Higher Court in Belgrade, in judgment P. 7674/17 of 12 July 2018, did not find discrimination in this case. The first instance court reasoned that complainants were not exposed to unequal treatment as discrimination was not based on ethnicity, given that several migrants, returnees and seasonal workers were also exposed to forced eviction. In addition, it was found that the eviction was carried out with a legitimate aim, as the settlement represented a risk to the health of the inhabitants and the environment. It was further found that the state does not have an obligation to secure adequate housing for everyone, as otherwise citizens would be planning to live in informal settlements with the aim of achieving permanent housing afterwards. The Higher Court overturned this decision. The Appellate Court found discrimination, as the Action plan for displacement of informal settlement Belvil anticipated two solutions: one for those with residence in Belgrade, and another for those who did not have a residence in the capital. In addition, this case concerns a minority group which is recognised in many policy documents as a particularly vulnerable group. The city of Belgrade secured an alternative solution for the first group, while for the second group it paid transport expenses and one-off assistance to the amount of RSD 10 000 (EUR 80). The settlement that was secured by the City of Nis was inadequate and was not properly suited to long-term living. Therefore, in this case

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<sup>318</sup> ECtHR, *Vuckovic and Others v. Serbia*, app. No. 17153/11 et al., 25 March 2014.

discrimination had occurred. The Court awarded compensation to the amount of EUR 2 600 (RSD 300 000) for each claimant. This judgment is not final.

**Relevant discrimination ground:** N/A

**Name of the court:** Court of Cassation

**Date of decision:** 18 June 2020

**Name of the parties:** AA (*not available*) v. BB (*not available*)

**Reference number:** Rev 384/2017

**Address of the webpage:** <https://www.vk.sud.rs/sr-lat/rev-3842017-362-366>

**Brief summary:** The claimant had been employed by the defendant since 29 September 2005. By an order of the the Dean issued to employees from 25 May 2006, the claimant was not allowed to enter the faculty building without the prior consent of the Dean, or one of the vice deans. The claimant was also forbidden to enter the building by the decision of the dean since 27 February 2009. Therefore, until 2011, the employer kept records of entering the building – when and with whom the claimant entered the building, and when he left the building. The employment was terminated on the basis of an agreement between the parties. After the termination of the employment, the claimant came to the faculty building several times with the aim of organising protests in front of the building and to place leaflets and pamphlets containing offensive content addressed to certain people. The police also intervened several times, at the invitation of the defendant. The prosecutor also conducted several proceedings against employees at the faculty. The Court overturned the judgments of the Higher Court in Belgrade (P. 21097/10 of 9 September 2015) and the Appellate Court in Belgrade (Gž. 649/16 of 7 July 2016), as they found discrimination in this case without referring to any specific personal characteristic. The Supreme Court of Cassation found that there were no indications that the claimant had been discriminated against on the basis of his personal characteristics, and that this issue was neither raised or discussed by the lower courts in their decisions.

**Relevant discrimination ground:** Disability

**Name of the court:** European Court of Human Rights

**Date of decision:** 30 June 2020

**Name of the parties:** *Popovic and Others v. Serbia*

**Reference number:** App. Nos. 26944/13, 14616/16, 14619/16 and 22233/16

**Address of the webpage:** [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-203314%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-203314%22]})

**Brief summary:** This case concerned a complaint that the domestic legislation on disability benefits for paraplegics was discriminatory. The applicants alleged in particular that paraplegic civilians, such as themselves, were awarded fewer benefits than war veterans with the same disability. The Chamber of the European Court of Human Rights found no violation of Article 14, read in conjunction with Article 1 of Protocol No. 1. The Court reasoned in particular that the choice made by the Serbian legislator to vary the provision of benefits for paraplegics, depending on whether they were civilians or war veterans, had not been without reasonable foundation. That choice had been based on relevant and sufficient grounds, namely the distinct ways in which the two groups had sustained their injuries. Disabled war veterans were injured in the line of duty, involving greater risk and more difficulties in obtaining redress. On the other side, disabled civilians, such as the applicants, had been injured in accidents and had access to other benefits not necessarily available to all war veterans.

## ANNEX 1: MAIN TRANSPOSITION AND ANTI-DISCRIMINATION LEGISLATION

**Country:** Serbia  
**Date:** 31 December 2020

### **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>319</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>319</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: 1 February 2020

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 2020

| <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?<br><br>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/<br/>reservations relevant<br/>to equality and non-<br/>discrimination</b> | <b>Right of individual<br/>petition accepted?</b> | <b>Can this instrument<br/>be directly relied upon<br/>in domestic courts by<br/>individuals?</b> |
|-------------------------------------------------------------------|--------------------------|-----------------------------|-------------------------------------------------------------------------------------------|---------------------------------------------------|---------------------------------------------------------------------------------------------------|
| ILO<br>Convention<br>No. 111 on<br>Discrimination                 | N/A                      | 24.11.2000                  | No                                                                                        | N/A                                               | Yes                                                                                               |
| Convention<br>on the<br>Rights of the<br>Child                    | N/A                      | 12.3.2001<br>(succession)   | No                                                                                        | N/A                                               | Yes                                                                                               |
| Convention<br>on the<br>Rights of<br>Persons with<br>Disabilities | 17.12.2007               | 31.7.2009                   | No                                                                                        | Yes                                               | Yes                                                                                               |

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