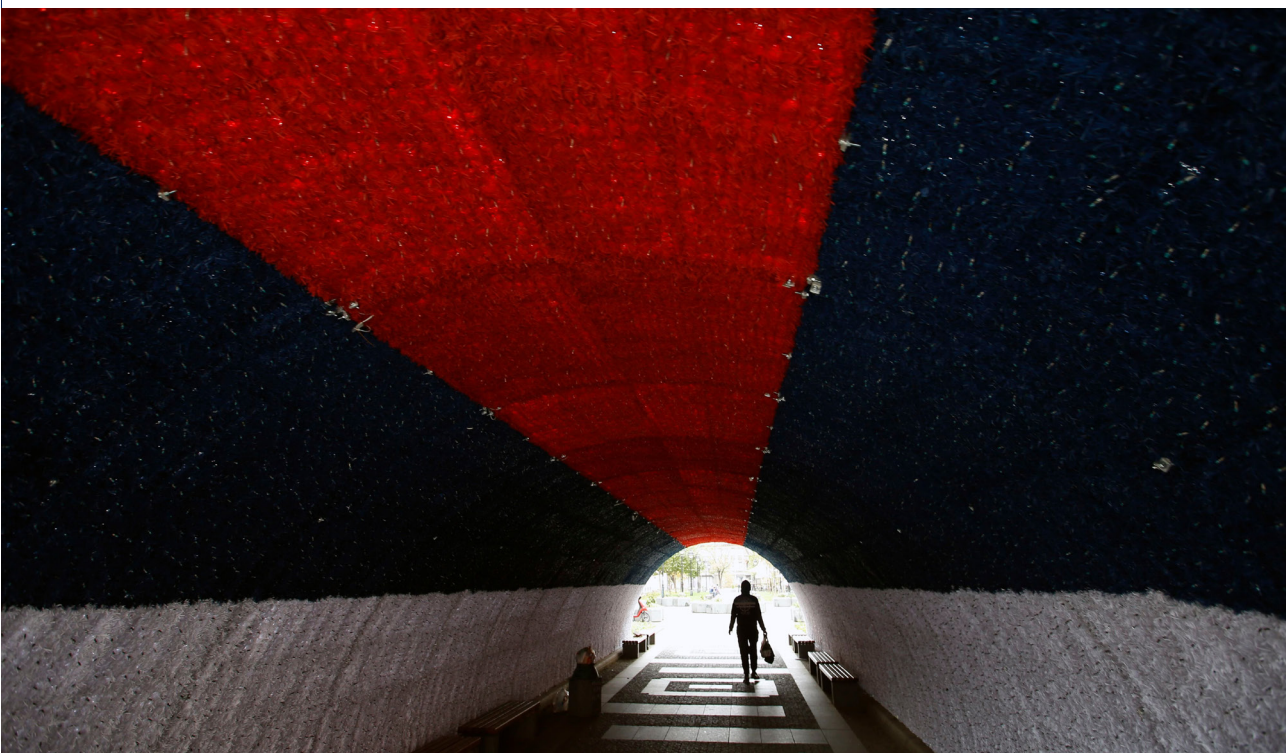


Equality in Practice

IMPLEMENTING SERBIA'S EQUALITY LAWS



EQUAL RIGHTS TRUST

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IMPLEMENTING SERBIA'S EQUALITY LAWS

London, January 2019

The **Equal Rights Trust** is the global centre for excellence in equality law. Our vision is an equal world and our mission is to eliminate discrimination and ensure everyone can participate in society on an equal basis. We work in partnership with equality defenders to secure the adoption and implementation of equality laws.

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Photo caption: "A man walks through the tunnel painted in the colours of the Serbian flag in downtown Belgrade, Serbia."

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The conceptual framework, structure and research methodology were developed by the Equal Rights Trust. The lead researchers of the study were Professor Nevena Petrušić, the inaugural Commissioner for the Protection of Equality in Serbia (2010–2015) and professor at the Faculty of Law at the University of Nis, and Ms Kosana Beker, Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016) and equality law academic and consultant (**Research Consultants**). Lucy Maxwell, Legal and Programmes Officer at the Equal Rights Trust, conducted research on international and regional human rights law and best practice. Professor Petrušić, Ms Beker and Lucy then co-drafted the study. Joanna Whiteman, the Trust's Co-Director, provided guidance and substantive editorial oversight.

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The findings and recommendations of this study are based on extensive field research conducted from mid-2017 to early 2018. As outlined below, the Research Consultants conducted over fifty one-to-one interviews with a wide range of stakeholders including government and private sector representatives and attended focus groups with more than 150 survivors of discrimination, lawyers and civil society organisations in different regions of Serbia. The team would like to thank all of those persons who gave their time and reflections to shape the findings of the study.

Five Serbian civil society organisations, whose work was co-ordinated by Praxis, conducted interviews and focus groups with survivors of discrimination in different regions of Serbia. The organisations were: Da se zna! (It should be known!); Roma Researchers; The Network of the Committees for Human Rights in Serbia (CHRIS); the Association of Students with Handicaps; and the Centre for Prevention of Crime and Post-Penal Help (NEOSTART).

This study has been produced with the financial assistance of the European Union. The contents of the study are the sole responsibility of the Equal Rights Trust and can in no circumstances be regarded as reflecting the position of the European Union. The Trust wishes to extend its sincere thanks to the staff at the European Union who have supported our work.

Acronyms and Abbreviations

Anti-Discrimination	Action Plan for the Implementation of the Anti-Discrimination Strategy
Action Plan	2014–2018
Anti-Discrimination Strategy	Strategy of Prevention and Protection Against Discrimination 2013–2018
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT Committee	Committee against Torture
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHRIS	Network of the Committees for Human Rights in Serbia
Commissioner	Commissioner for the Protection of Equality
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
Criminal Code	Criminal Code of the Republic of Serbia
CRMW	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSO	Civil society organisation
CSRs	Case study reports
Declaration	Declaration of Principles on Equality
ECRI	European Commission Against Racism and Intolerance
ECSR	European Committee of Social Rights

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
Gender Equality Action Plan	Action Plan for the Implementation of the Gender Equality Strategy 2016–2018
Gender Equality Strategy	National Strategy for Gender Equality 2016–2020
HDI	Human Development Index
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
Kosovo and Metohija	Autonomous Province of Kosovo and Metohija
LGBT	Lesbian, gay, bisexual and transgender
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LGBT+	Lesbian, gay, bisexual and transgender and persons of all other sexualities and genders, such as those who are intersex or asexual
LGE	Law on Gender Equality
LPD	Law on the Prevention of Discrimination
LPDPD	Law on the Prevention of Discrimination against Persons with Disabilities
NATO	North Atlantic Treaty Organization
NEOSTART	The Centre for Prevention of Crime and Post-Penal Help
NGO	Non-governmental organisation
OSCE	Organisation for Security and Co-operation in Europe
Praxis	Association of Citizens Praxis
Sandzak Committee	Sandzak Committee for Protection of Human Rights and Freedoms
Serbia	Republic of Serbia
SFRY	Socialist Federal Republic of Yugoslavia
UDHR	Universal Declaration of Human Rights

UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNESCO Convention	United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
Vojvodina	Autonomous Province of Vojvodina

EXECUTIVE SUMMARY

This study explores the efficacy of Serbia's legal framework on equality, identifying the key factors that are preventing the framework on equality from providing effective protection in practice and proposing recommendations for increasing its effectiveness. The study forms part of a two-year project between the Equal Rights Trust, the Association of Citizens Praxis (Praxis) and Sandžak Committee for Protection of Human Rights and Freedoms (Sandžak Committee), which seeks to increase protection from all forms of discrimination in Serbia through legal and policy reform.

On 26 March 2009, the Republic of Serbia adopted the Law on the Prohibition on Discrimination (LPD). This represented a significant move towards bringing Serbia's framework on equality and non-discrimination into compliance with international and European standards. Adding to other important equality laws (Law on the Prevention of Discrimination against Persons with Disabilities 2006 and Law on Gender Equality 2009), and underpinned by a Constitutional protection for equality, the LPD establishes an almost comprehensive regime for the protection of the rights to equality and non-discrimination in Serbia.

Despite this, evident inequality and discrimination persists in all areas of Serbian life. Just short of the LPD's tenth anniversary, this study finds evidence of serious flaws in the administration and implementation of Serbia's equality and non-discrimination framework. These flaws are limiting the effective realisation of the rights to equality and non-discrimination in practice. The study identifies and explores a lack of public awareness, high court costs, fragmented legal aid provision, physical and structural barriers preventing access to courts, procedural delays, and mistrust in the judiciary, alongside some identified weaknesses in the current legislative framework. All of these issues can be resolved and the study makes a series of recommendations to the state to this end. Amongst these recommendations, it is particularly urgent that equality-sensitive legal aid legislation is passed, and that training on the equality framework and monitoring of its implementation is rolled out among public and private service providers, and those responsible for enforcing the LPD, including the judiciary.

Part 1: Background and Context

The purpose of this study is to identify the key factors that are preventing Serbia's framework on equality from providing effective protection in practice, and to propose recommendations for increasing its effectiveness.

The study comprises four parts. **Part 1** sets out the purpose and structure of the study, its conceptual framework and research methodology. It summarises the ongoing patterns of discrimination in Serbia, and provides basic information about Serbia, its history and political structure. **Part 2** analyses the extent to which Serbia's legal framework on equality is consistent with its international and regional legal obligations as well as international best practice. **Part 3** analyses the extent to which Serbia has adopted the legal and practical measures that are necessary to ensure that its equality laws provide protection in practice, such as measures related to access to justice, effective remedies, and enforcement by independent and competent bodies. **Part 4** contains the study's recommendations for measures to increase the effectiveness of Serbia's framework on equality.

The conceptual framework for the study is the unified human rights perspective on equality, as expressed in the Declaration of Principles on Equality (Declaration), a statement of international best practice adopted in 2008, signed initially by 128, and subsequently by hundreds more, experts and activists on equality and human rights from all over the world. This perspective emphasises the integral role of equality in the enjoyment of all human rights and seeks to overcome fragmentation in the field of equality law and policies.

The lead researchers of the study were Professor Nevena Petrušić, the inaugural Commissioner for the Protection of Equality in Serbia (2010-2015) and professor at the Faculty of Law at the University of Niš, and Ms Kosana Beker, Assistant to the Commissioner for the Protection of Equality in Serbia (2010-2016) and equality law academic and consultant. They worked closely with Lucy Maxwell and Joanna Whiteman of the Trust.

Research Methodology

The research for the study consisted of four key aspects, including **desk-based research** of existing published resources; **field research** to document instances of discrimination and attempts to access justice in different regions of Serbia, conducted by five CSOs selected via a competitive public call; five **focus group discussions**, including three community consultation meetings, convened with survivors of discrimination, CSO representatives and lawyers; and 57 **one-to-one interviews** with a wide range of stakeholders including the current Commissioner for the Protection of Equality, the director of the Office for Human and Minority Rights, public authority representatives, private sector representatives and legal experts in the field of human rights and equality. Following the completion of the research and the preparation of a first draft, the draft study was subject to a validation process. A Working Group comprising senior civil society representatives of a range of different marginalised groups attended a two-day validation conference in Serbia in June 2018, at which they interrogated the draft and its findings, and collaboratively formulated its recommendations. The feedback received from the Working Group was subsequently incorporated into the draft.

Scope and Limitations of this Study

The primary objective of the study is to evaluate the effectiveness of the current legal and policy framework on equality in Serbia. It has three key limitations. Firstly, it does not provide a comprehensive analysis of the patterns of discrimination in Serbia. Secondly, while it examines judicial interpretation of Serbia's equality laws, it does so by analysing key examples rather than conducting a comprehensive analysis of existing case law on discrimination. Thirdly, the Research Consultants interviewed a limited sample of individuals from key stakeholder groups and organisations (57). These individuals comprised a representative cross-section of key stakeholders. However, in order to gain input from representatives of private and government entities, it was necessary to agree to some interviews being given anonymously.

Country Context

The Republic of Serbia (Serbia) is a landlocked country situated in south-eastern Europe, in the centre of the Balkan Peninsula, and its capital city is Belgrade. The country is divided into two autonomous territories (Vojvodina, and Kosovo and Metohija); the Belgrade region; the Šumadija and Western Serbia region; and the Southern and Eastern Serbia region. In 2014, Serbia opened formal negotiations for accession to the EU, which remain underway.

The population of Serbia at the time of the most recent census, taken in 2011, was approximately 7.2 million. While the majority of the population identify as Serbian and identify Serbian as their mother tongue, there are 21 other ethnic groups with more than 2,000 members, the largest of which are Hungarians, Roma, Bosniaks and Albanians. Hungarian, Bosnian and Roma are the most commonly spoken languages after Serbian. The main religion of Serbia is Orthodox Christianity (84.6%), followed by Roman Catholicism (5%) and Islam (3%).

While Serbia's economy grew at a solid rate over the period 2001-2008, it was hit hard by the global financial crisis in 2007, and it did not return to positive growth until 2013. In 2016, Serbia's Gross Domestic Product (GDP) was US \$38.80 billion. The United Nations Development Programme ranked Serbia in 66th place in its Human Development Index (HDI) for 2015, with an HDI of 0.776. Serbia's Gini Income coefficient, which measures inequality in the distribution of wealth, of 29.6, placed it 77th out of 187 countries.

Recent Historical and Political Context

From the end of the Second World War until the early 1990s, Serbia formed part of the Socialist Federal Republic of Yugoslavia (SFRY). In 1991, Croatia, Slovenia, and Macedonia declared independence from the SFRY, followed by Bosnia in 1992, leading to the establishment of the Federal Republic of Yugoslavia (FRY), later reconstituted as the State Union of Serbia and Montenegro. Each declaration of independence resulted in violent conflict in which thousands of civilians were killed, wounded, tortured, abused or displaced.

An international tribunal was established to investigate serious violations of international humanitarian law in 1993, with conflict continuing until the signing of the Dayton Peace Accords in 1995. In June 2006, Montenegro declared independence, and the current Constitution of Serbia was adopted.

The status of Kosovo, currently the Autonomous Province of Kosovo and Metohija of Serbia, remains a source of significant contention. In 1998, a campaign for greater autonomy from ethnic Albanians in Kosovo escalated into a civil war, which culminated in forces from the North Atlantic Treaty Organization (NATO) bombing Serbia in the spring of 1999. In June 1999, Serbian military and police forces withdrew from Kosovo, and the UN Security Council authorised an interim UN administration and a NATO-led security force in Kosovo which continues to this day. In 2008, Kosovo unilaterally declared independence, but this is not recognised by the Government of Serbia.

Branches of Government and Statutory Bodies

The Constitution establishes Serbia as a parliamentary democracy and divides powers amongst three branches of government: the executive; the legislature; and the judiciary. The President is the head of State and is elected directly in general elections for a maximum of two five-year terms. Executive power is exercised by the Government, comprising one or more vice-presidents, ministers and the Prime Minister, who is directly appointed by the 250-member National Assembly, the unicameral Parliament of Serbia, on the recommendation of the President.

Patterns of Discrimination

Despite improvements in the legal protection from discrimination in Serbia (as analysed in detail in Part 2), significant, serious and seemingly systemic patterns of discrimination persist. **Part 1.8** of this Study provides an overview of patterns of discrimination within the state. Whilst not intended to be comprehensive, the report finds evidence of significant inequalities, arising in consequence of discriminatory social attitudes, and perpetuated by weak implementation and enforcement of laws (discussed in Part 3). Many groups, including national minorities (such as the Roma), persons with disabilities, sexual and gender minorities, and women face exclusion in diverse areas of life, and experience barriers that prevent the full realisation of their rights to employment, education and healthcare. This Part finds that, despite the existence of a legal framework of protection, more must be done to address ongoing inequality in Serbia.

Part 2: The Legal and Policy Framework Related to Equality

This part of the study analyses Serbia's legal and policy framework related to equality to assess the extent to which it complies with Serbia's international human rights obligations and international best practice on equality.

Part 2.1 of the study assesses Serbia's participation in international instruments. Serbia has a very good record of participation in the major UN human rights treaties, having ratified or acceded to eight of the nine core UN human rights treaties, and permitting individual complaints to be made in respect of six of them. However, Serbia's failure to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represents a notable gap. Serbia also has a very good record in relation to the ratification of other international and regional treaties which are relevant to the rights to equality and non-discrimination. It has ratified or acceded to all but one of the major European treaties and importantly, has ratified the European Convention on Human Rights (ECHR) and Protocol No. 12 to the ECHR which provides a free-standing right to non-discrimination.

Although Serbia is not currently a member of the European Union, it has participated in formal accession negotiations and was granted candidate status in 2012. In September 2013, the government signed a Stabilization and Accession Agreement with the EU and committed to gradually harmonising domestic legislation with the *acquis communautaire* (*acquis*) – the body of common rights and obligations that is binding on all EU member states. As of April 2018, Serbia's anti-discrimination law is broadly consistent with European standards, although further harmonisation and better enforcement and implementation of existing laws is required.

International obligations consistent with the Constitution are directly applicable in Serbian law and, in a number of decisions, the Serbian courts have applied provisions of the ECHR and Protocol 12 of the ECHR in order to protect the rights to equality and non-discrimination.

Serbia's Constitution prohibits discrimination and declares the equality of all persons under the law (Article 21). The open list of protected characteristics provided is broadly consistent with international law and best practice, although several well-recognised grounds of discrimination are omitted. Furthermore, the Constitution fails to prohibit harassment, denial of reasonable accommodation, or associative, perceptive or multiple discrimination. Positive action measures are permitted under Articles 21 and 76 but are not mandated. Although additional "special protection" provisions may be used in practice to permit positive action, the wording of these provisions is problematic and could justify the adoption of paternalistic measures that discriminate against concerned groups. Additional problems stem from the definition of hate speech under Article 49 of the Constitution, which fails to meet international standards, and the diminutive list of grounds protected under Article 50.

Part 2.2.2 assesses the major pieces of equality and anti-discrimination legislation in Serbia. In 2009, Serbia adopted a comprehensive equality law, the Law on the Prohibition on Discrimination (LPD). It has also adopted two detailed laws pertaining to the rights to equality and non-discrimination of specific groups: the Law on the Prevention of Discrimination against Persons with Disabilities, and the Law on Equality Between the Sexes (the Law on Gender Equality), which

is currently under review. The interaction between these pieces of legislation is not set out in Serbian law, leaving confusion and creating an added challenge in the area of enforcement. A comparison is provided in **Part 2.2.2.1**, which sets out the main features of each law, including protection of the rights to equality and non-discrimination, enforcement mechanisms and remedies, before each law is considered in detail.

The LPD is the primary legislation governing the rights to equality and non-discrimination in Serbia. It applies to both state and non-state actors and prohibits discrimination in a wide range of areas of activity regulated by law. Unlike the Constitution, the LPD recognises both perceptive and associative discrimination, and is broadly compliant with international standards, despite containing some overlapping and potentially contradictory provisions. The LPD does not, however, define the denial of reasonable accommodation as a form of discrimination. Victimisation is covered but its definition falls short of international requirements and further difficulties arise in respect of hate speech and association provisions. Part III of the LPD introduces “special cases of discrimination”, which may result in misdemeanour proceedings being brought in respect of certain grounds of discrimination but not others, contrary to best practice and the principle of equal protection. The LPD also introduces an exemption to the ordinary rules regarding discrimination for religious officials and on the ground of political opinion. These exemptions are overly broad, ill-defined and may diminish the nature of the right in practice. As in the Constitution, positive action measures are permitted but not mandated under the LPD.

Part 2.2.2.2 of the study evaluates the Law on the Prevention of Discrimination of Persons with Disabilities (LPDPD). The LPDPD has a similar degree of coverage as the LPD, although under the LPDPD, misdemeanour proceedings may be brought in a greater number of cases involving persons with disabilities. Unlike the LPD, there is no express protection against multiple or perceptive discrimination. The LPDPD does specify some accessibility requirements; however, its effectiveness is significantly undermined by the failure to adequately define denial of reasonable accommodation as a form of discrimination. The Law on Gender Equality (LGE) is examined in **Part 2.2.2.3**. It imposes duties on the state and, most significantly, on many non-state actors to promote gender equality, some of which are enforced by fines and reporting obligations. Although there is significant overlap between the LGE and the LPD, positive action measures are far more demanding in the former. Contrary to best practice, the LGE omits reference to associative, perceptive, and multiple discrimination, or failure to make reasonable accommodations. Furthermore, harassment under the LGE only extends to the workplace.

In addition to these specific anti-discrimination laws, **Part 2.2.3** examines non-discrimination provisions in other pieces of legislation in the fields of civil and criminal law. In respect of the former, the Law on the Protection of the Rights and Freedoms of National Minorities contains specific provisions relating to the rights of national minorities. Various laws contain prohibitions on discrimination, including in relation to health care, employment and labour relations,

all levels of education, and social security. The Criminal Code is the main legal instrument regulating criminal justice in Serbia and contains several provisions criminalising hate-motivated violence and incitement to hatred. Whilst there are many positive aspects, some of these provisions may infringe upon the right to freedom of expression and are contrary to best practice. Several provisions of the Criminal Code criminalise acts amounting to discrimination that extend well beyond those severe manifestations of discrimination to which criminal sanctions are appropriate.

Finally, **Part 2.3** provides a brief review of Serbia's National Strategies, including the Strategy of Prevention and Protection Against Discrimination 2013–2018, and the National Strategy for Gender Equality 2016–2020.

Part Three: Enforcement and Implementation of Serbia's Equality Laws

Part 3 of the study examines the enforcement and implementation of Serbia's equality laws. Drawing upon interviews and focus groups conducted with survivors of discrimination, civil society organisations, state bodies, private sector organisations, equality experts and the current Commissioner for the Protection of Equality, this part finds that whilst, on the whole, Serbia has in place many of the key legal mechanisms necessary to facilitate access to justice, effective remedies and enforcement, the right to equality is undermined in practice both by specific gaps in the mechanisms and by inadequate enforcement measures.

Part 3.1 of the study examines the legal framework relating to access to justice. It finds that despite positive legal provisions governing standing, burden of proof and jurisdiction, which are broadly consistent with international best practice, access to justice for victims of discrimination in Serbia is seriously impeded. In the first instance, the study finds evidence of a significant deficit in public awareness and understanding of anti-discrimination laws, despite positive outreach work conducted by the Commissioner for the Protection of Equality (the Commissioner). The issue is compounded by the high cost of litigation. Although legal aid may be available for a small number of individuals, legal aid provision is incomplete and fragmented. Physical barriers may prevent access to courthouses for persons with disabilities, whilst a decision in 2013 to move discrimination cases to the specialised Higher Courts has increased travel times and costs. A lack of lawyers trained in non-discrimination law, particularly in rural areas, further impedes access.

Remedies and sanctions for acts of discrimination are discussed in **Part 3.2**. The civil law provides for a wide range of remedies and sanctions for violations of the right to non-discrimination, including compensation and declaratory relief. The courts may grant an interim or mandatory injunction to prevent or redress discriminatory acts and may further require that its decision be published in a national newspaper. There is, however, no provision for courts to order struc-

tural remedies. Under the complaints procedure of the LPD, the Commissioner may investigate and make recommendations on alleged violations of the right to non-discrimination. However, the Commissioner's powers are limited, and compliance cannot be compelled. Serbia's three equality laws each provide for misdemeanour proceedings to be commenced with respect to violations of certain provisions. Whilst the CPE has the power to file misdemeanour charges, this study finds that in practice it rarely does so.

Part 3.3 of the study examines enforcement mechanisms. It finds that the effective enforcement of Serbia's equality laws by the judiciary is hampered by a lack of public confidence in the court system as an efficient and independent form of redress, indicating the need for significant institutional reforms. Delays in proceedings caused by a backlog of cases, particularly before the Constitutional Court, continue to hamper access to justice, despite attempts at reform in recent years. Rule of law concerns have been raised by UN treaty bodies, and focus groups facilitated by researchers for the Trust highlight mistrust in the judiciary as a key reason for not initiating discrimination litigation. The Trust also discovered erroneous applications of discrimination law by members of the judiciary in some cases, indicating a need for further equality law training. By contrast, the role of the Commissioner in promoting compliance with Serbia's equality laws appears to be working generally well in practice, through a combination of strategies including the Commissioner's complaint mechanism, strategic litigation and engagement in law reform. However, there is a need for the state to significantly increase awareness amongst duty-bearers of their obligations in order for equality laws to be adequately enforced, as our research indicates that levels of awareness remain persistently low.

Finally, **Part 3.4** of the study examines compliance with equality laws by state and private actors. Having conducted interviews with 47 representatives from a cross-section of small, medium and largescale enterprises and public authorities, the study reveals both a lack of recognition of discrimination as a significant social problem in Serbia, and a lack of awareness surrounding the content of Serbia's equality laws.

Part Four: Recommendations

Despite possessing a strong legal framework on equality and non-discrimination, the right to equality in Serbia is significantly undermined in practice by the absence of practical measures to ensure its effective enforcement. In this respect, in Part 4 of the study, the Trust makes a number of specific and measurable recommendations to government, with the aim of improving enforcement and implementation mechanisms, to enable the state to meet its obligations under international law. All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the essential elements of international law related to equality.

The report makes recommendations in nine areas:

1. Increase public awareness of Serbia's equality laws and methods of enforcement;
2. Increase access to justice by removing financial and physical barriers;
3. Ensure the independent, efficient and effective enforcement of Serbia's equality laws by the judiciary;
4. Strengthen the enforcement of equality laws by the Office of the Commissioner for the Protection of Equality;
5. Increase awareness of, and compliance with, Serbia's equality laws by duty-bearers in the state and private sector;
6. Review Serbia's legal framework to ensure consistency with international law and best practice on the rights to equality and non-discrimination;
7. Strengthen international commitments related to equality;
8. Data collection on equality; and
9. Prohibition of Regressive Interpretation.

1. BACKGROUND AND CONTEXT

In the past 10 years, the Parliament of the Republic of Serbia (Serbia) has adopted numerous laws regulating issues of discrimination and inequality and protecting the rights of vulnerable groups including women, ethnic and religious minorities, lesbian, gay, bisexual, transgender and persons of all other sexualities and genders, such as those who are intersex or asexual (LGBT+), persons with disabilities, children, migrants and internally displaced persons and returnees. The most comprehensive of these is the Law on the Prohibition of Discrimination 2009 (LPD). The LPD also established the role of the Commissioner for the Protection of Equality (Commissioner) who has the power to receive and review complaints and initiate legal proceedings pertaining to violations of the Law. The LPD, albeit imperfect, is widely considered among equality experts to provide strong legal protection for the rights to equality and non-discrimination. It has also been supplemented by numerous national strategies, which the Government has adopted since 2009, with the purpose of combatting discrimination.

Despite these advancements, many groups in Serbia still face significant discrimination and disadvantage. The persistence of discrimination provides the impetus for the present study. It raises the question, “Why is Serbia’s legal and policy framework on equality failing to provide protection in practice?”

Serbia’s legal and implementation framework has not been without scrutiny in recent years. Its equality laws have been explored and considered as part of analysis of the country’s obligations by UN treaty bodies,¹ bodies of the Council of Europe,² the European Commission³ and its associated bodies.⁴ While a variety of recommendations have been made in previous reviews, there has been no holistic exploration of the implementation of Serbia’s equality laws based on the

1 The concluding observations issued by the UN treaty bodies in the past six years are as follows: Committee on the Elimination of Discrimination Against Women (CEDAW Committee) (2013); Committee on Economic, Social and Cultural Rights (CESCR) (2014); Committee Against Torture (CAT Committee) (2015); Committee on the Rights of Persons with Disabilities (CRPD Committee) (2016); Committee on the Rights of the Child (CRC Committee) (2017); Human Rights Committee (HRC) (2017); Committee on the Elimination of Racial Discrimination (CERD) (2018).

2 The Council of Europe’s European Commission Against Racism and Intolerance (ECRI) is a human rights body composed of independent experts. See their report on Serbia’s equality laws: ECRI, *ECRI Report on Serbia: Fifth monitoring cycle*, 2017, available at: <https://rm.coe.int/third-report-on-serbia/16808b5bf4>.

3 See, for example: European Commission, *Serbia 2018 Report: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

4 See, for example: European Commission, European Network of Legal Experts in Gender Equality and Non-discrimination, *Country report, Non-discrimination: Serbia 2017*, 2017, available at: <https://www.equalitylaw.eu/downloads/4408-serbia-country-report-non-discrimination-2017-pdf-1-75-mb>.

experiences and insights of a wide range of stakeholders. Against this backdrop, civil society has found it challenging to identify a clear path forward.

This study seeks to provide a clear road-map for equality advocates in Serbia regarding the measures that are most needed to enhance protection from discrimination in practice. It distinguishes between reforms needed to the **content** of Serbia's equality laws and measures to increase the **enforcement and implementation** of the laws; and prioritises proposals for next steps based on extensive consultation with rights-bearers, civil society organisations (CSOs), legal experts, the Commissioner, public sector and private sector bodies.

1.1 Purpose and Structure of the Study

The purpose of the study is to identify the key factors that are preventing Serbia's framework on equality from providing effective protection in practice, and to propose recommendations for increasing its effectiveness. The study's findings are based on analysis of the content of Serbia's equality laws (Part Two) and their enforcement and implementation (Part Three). The recommendations for reform are contained in Part Four.

Producing a study of this kind is an important stage in the development of Serbia's protection of the rights to equality and non-discrimination. The introduction of the LPD was a very significant development; however, nine years after its enactment, it is crucial to critically evaluate whether it is providing sufficient protection for the rights it was intended to protect.

We hope that the findings and recommendations of the study will provide a reference point and evidence base to be used by human rights organisations, lawyers and activists, and all stakeholders in Serbia working to combat discrimination and promote the equal enjoyment of human rights and fundamental freedoms.

The study comprises four parts:

- **Part One** sets out the purpose and structure of the study, its conceptual framework and research methodology. It summarises the ongoing patterns of discrimination in Serbia, and provides basic information about Serbia, its history and political structure.
- **Part Two** analyses the extent to which Serbia's legal framework on equality is consistent with its international and regional legal obligations as well as international best practice.
- **Part Three** analyses the extent to which Serbia has adopted the legal and practical measures that are necessary to ensure that its equality laws provide protection in practice, such as measures related to access to justice, effective remedies, and enforcement by independent and competent bodies.
- **Part Four** contains the study's recommendations for measures to increase the effectiveness of Serbia's framework on equality.

1.2 Conceptual Framework

The conceptual framework for the study is the unified human rights perspective on equality, as expressed in the Declaration of Principles on Equality (Declaration).⁵ This perspective has a number of key characteristics, including the following:

- It emphasises the integral role of equality in the enjoyment of all human rights;
- It seeks to overcome fragmentation in the field of equality law and policies, by looking at the cumulative impact of discrimination on different grounds, and which also brings together identity/status-related inequalities, and socio-economic inequalities; and
- It notes that full equality not only requires freedom from direct and indirect discrimination, but also demands positive action and the reasonable accommodation of difference.

1.3 Project Team

This study forms part of a two-year project between the Equal Rights Trust, the Association of Citizens Praxis (Praxis) and Sandžak Committee for Protection of Human Rights and Freedoms (Sandžak Committee) which seeks to increase protection from all forms of discrimination in Serbia through legal and policy reform.

The lead researchers of the study were Professor Nevena Petrušić, the inaugural Commissioner for the Protection of Equality in Serbia (2010-2015) and professor at the Faculty of Law at the University of Niš, and Ms Kosana Beker, Assistant to the Commissioner for the Protection of Equality in Serbia (2010-2016) and equality law academic and consultant (Research Consultants). Lucy Maxwell, Legal and Programmes Officer at the Equal Rights Trust, conducted research on international and regional human rights law and best practice. Professor Petrušić, Ms Beker and Lucy then co-drafted the study. Joanna Whiteman, the Trust's Co-Director, provided guidance and substantive editorial oversight.

The conceptual development, research and content of the study were overseen by a six-member expert Working Group comprising the following leaders in Serbian civil society: Dragana Ćirić Milovanović and Lazar Stefanović (Mental Disability Rights Initiative); Milan Đurić (Gayten); Tamara Lukšić Orlandić (independent expert); Vanja Macanović (Autonomous Women's Centre); Osman Balić (S-KRUG League of Roma); and Vladimir Petronijević (Grupa 484). The Working Group provided feedback on the research methodology, facilitated three community consultation meetings, provided written comments on the contents of a draft of the study and attended a two-day study validation meeting in June 2018.

⁵ Declaration of Principles on Equality, Equal Rights Trust, London, 2008, available at: <http://www.equalrightstrust.org/content/declaration-principles-equality>.

1.4 Research Methodology

The Equal Rights Trust defined the scope and structure of the study and set the framework for the research methodology in consultation with the two expert Research Consultants and the Working Group.

At the outset, Serbia's "legal and policy framework on equality" was defined to include:

- International obligations of Serbia in the area of non-discrimination;
- Constitutional provisions on equality and non-discrimination;
- Specific anti-discrimination laws; and
- National policies and regulation on equality and non-discrimination.

The research for the study consisted of four key aspects. First, the Research Consultants undertook **desk-based research** of existing published resources. This included analysis of:

- Academic and government sources for the historical and political context;
- Reports by Serbian and international human rights non-governmental organisations (NGOs), and reports of UN Treaty Bodies and UN Special Mechanisms, among others, for the current human rights situation and ongoing patterns of discrimination;
- Legislation and government policy documents, as well as instruments of international and regional law, for the legal and policy framework on equality;
- Literature on Serbia's equality laws by academics and legal commentators;
- Publications of the Commissioner including annual reports tabled (2010-2017) and special reports on discrimination of women (2015), discrimination of persons with disabilities (2013) and discrimination of children (2013);
- Caselaw from domestic courts (explained in further detail below) and existing analyses of caselaw; and
- Public opinion polls conducted by research bodies and CSOs.

Secondly, in July 2017, five CSOs were selected via a competitive public call to conduct **field research** to document instances of discrimination in different regions of Serbia across a range of grounds of discrimination and areas of life. The organisations produced almost 50 individual Case Study Reports (CSRs) documenting individuals' experience of discrimination and attempts to access justice. Their research was used to illuminate the ongoing patterns of discrimination (Part One) and the effectiveness of Serbia's legal framework in practice (Part Three).

The selected organisations represent a diverse geographical coverage in Serbia and cover a wide range of grounds of discrimination and areas of life, as follows:

- Da se zna! (It should be known!): discrimination on the ground of sexual orientation in five locations across north, south and central Serbia;
- Romi istraživači (Roma Researchers): discrimination on the ground of ethnicity in employment in northern Serbia (excluding Belgrade);
- Mreža odbora za ljudska prava u Srbiji (CHRIS): discrimination on the ground of ethnicity in the provision of health care and social welfare in 15 cities across the country including the Sandzak region.
- Udruženje studenata sa hendikepom (Association of Students with Handicaps): discrimination on the ground of disability in tertiary education in state and private universities in Belgrade;
- Centar za prevenciju kriminala i postpenalnu pomoć - NEOSTART (Centre for Prevention of Crime and Post-Penal Help): discrimination on the ground of criminal record in social care and health care in Belgrade.

Thirdly, a total of five **focus group discussions** were convened with survivors of discrimination, CSO representatives and lawyers. In each focus group, individuals spoke of their experiences of discrimination and attempts to access justice. With the participants' consent, these experiences are reflected in the exploration of some ongoing patterns of discrimination in Serbia (Part One) and the effectiveness of Serbia's legal framework in practice (Part Three). The Research Consultants attended all five focus groups. Three were held as part of the **community consultation meetings** organised by Praxis and Sandzak Committee in Niš (1 November 2017), Belgrade (10 November 2017) and Novi Pazar (15 November 2017). Two further focus groups were convened by the Research Consultants in Pančevo (8 December 2017) and Vranje (21 December 2017).

Fourthly, the Research Consultants conducted 57 **one-to-one interviews** with a wide range of stakeholders, including:

- The current Commissioner for the Protection of Equality;
- The director of the Office for Human and Minority Rights;
- Eight Serbian legal experts in the field of human rights equality and non-discrimination;
- Thirty-four representatives of public authorities, from the national, provincial and local level and from a range of sectors, including education, social protection, health care, employment, judiciary, state administration and local self-government; and
- Thirteen representatives from private sector organisations, including international and domestic large, medium and small businesses (the sizes as defined by the Agency for Business Registers of the Republic of Serbia).⁶

A full list of interviews and focus groups conducted is outlined at **Annex 1**. A summary of the topics covered in the interviews are outlined in **Annex 2**. With the exception of the Commissioner and the director of the Office for Human and

6 The Agency for Business Registers of the Republic of Serbia has developed a methodology for the division of firms/enterprises according to number of employees: Large enterprises – more than 250 employees; Medium enterprises – 50–250 employees; Small enterprises 10–50 employees; Micro enterprises – less than 10 employees. More information available at: <http://www.apr.gov.rs>.

Minority Rights, the participants agreed to be interviewed on the basis that they would not be identified in the study.

Finally, Professor Petrušić and Ms Beker, the Research Consultants, drew upon their extensive professional experience as, respectively, the former inaugural Commissioner for the Protection of Equality in Serbia (2010-2015) and former Assistant to the Commissioner for the Protection of Equality in Serbia (2010-2016), and as leading equality law academics in Serbia.

Following the completion of the research and the preparation of a first draft, the draft study was subject to a validation process. The Working Group attended a two-day validation conference in Serbia in June 2018, at which they interrogated the draft and its findings, and collaboratively formulated its recommendations. The feedback received from the Working was subsequently incorporated into the draft.

Scope and Limitations of the Study

The primary objective of the study is to evaluate the effectiveness of the current legal and policy framework on equality in Serbia through desk-based analysis and interviews with survivors of discrimination, lawyers, state authorities, the current Commissioner and private sector organisations. This focus necessitates a number of limitations in the scope of the study.

First, the study does not attempt to conduct a comprehensive analysis of the patterns of discrimination in Serbia through extensive field research. Rather, the field research commissioned as part of this project is intended to highlight the subjective experience of certain survivors of discrimination in Serbia who continue to suffer, despite the formal protection for non-discrimination.

Secondly, Part Three of the study analyses a wide range of legal and practical measures that are necessary to ensure that Serbia's equality laws provide effective protection in practice. One of these measures is the judicial interpretation of Serbia's equality laws. The study does not purport to conduct a comprehensive analysis of existing caselaw on discrimination. Instead, it highlights certain instances of judicial practice that raise questions about the adequacy of existing judicial practice. Further work may be needed to comprehensively analyse existing caselaw on discrimination in Serbia.

Thirdly, in the 12 months available for the research, the Research Consultants necessarily were only able to interview a limited sample of individuals from key stakeholder groups and organisations (57). While these individuals comprised a representative cross-section of key stakeholders, in order to gain input from representatives of private and government entities, it was necessary to agree to some interviews being given anonymously.

1.5 Country Context

The Republic of Serbia (Serbia) is a landlocked country situated in south-eastern Europe, in the centre of the Balkan Peninsula, and its capital city is Belgrade.⁷ The population at the time of the most recent census, taken in 2011, was approximately 7.2 million people.⁸ Serbia has an important geopolitical position as it stands at the crossroads of Eastern and Western Europe, and shares borders with eight countries: Bulgaria; Romania; Hungary; Croatia; Bosnia and Herzegovina; Montenegro; Albania; and Macedonia. In 2014, Serbia opened formal negotiations for accession to the EU which remain underway.⁹

The Constitution provides that there are two autonomous territories within Serbia: the Autonomous Province of Vojvodina (Vojvodina); and the Autonomous Province of Kosovo and Metohija (Kosovo and Metohija).¹⁰ The administrative divisions of Serbia include: the two autonomous provinces; the Belgrade region; the Šumadija and Western Serbia region; and the Southern and Eastern Serbia region.

Serbia's geographical position contributes to its ethnic, linguistic and religious diversity. While the majority of the population identify as Serbian and identify Serbian as their mother tongue (88.1%),¹¹ there are 21 other ethnic groups with more than 2,000 members,¹² many speaking their own language. Following Serbs, the largest ethnic groups are: Hungarians (mostly living in Vojvodina); Roma (mostly living in Southern and Eastern Serbia, and Vojvodina); Bosniaks (mostly living in Šumadija and Western Serbia); and Albanians.¹³ Hungarian, Bosnian and Roma are the most commonly spoken languages after Serbian.¹⁴ Vojvodina has the most diverse population in Serbia, with more than 20 minorities and four minority languages in official use.¹⁵

The main religion of Serbia is Orthodox Christianity (84.6%), followed by Roman Catholicism (5%) and Islam (3%).¹⁶ While no official statistics are available, the

7 Constitution of the Republic of Serbia 2006, Article 9.

8 Statistical Office of the Republic of Serbia, *2011 Census of Population, Households and Dwellings*, 2011, available at: <http://popis2011.stat.rs/?lang=en>; this excludes the Autonomous Province of Kosovo and Metohija.

9 See; European Commission, "Serbia", updated 6 December 2016, available at: https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en.

10 See above, note 7, Article 182.

11 Government of the Republic of Serbia, "National Minorities", visited 24 September 2018, available at: <http://www.srbija.gov.rs/pages/article.php?id=40>.

12 Government of the Republic of Serbia, "Population, language and religion", visited 24 September 2018, available at: <http://www.srbija.gov.rs/pages/article.php?id=36>; for the full statistics from the 2011 Census, see above, note 8.

13 See above, note 11.

14 *Ibid.*

15 Government of the Republic of Serbia, "Vojvodina", visited 24 September 2018, available at: <http://www.srbija.gov.rs/pages/article.php?id=20618>.

16 See above, note 12.

US Department of State summarises the geographical distribution of religious followers in Serbia as follows: “Catholics are predominantly ethnic Hungarians and Croats residing in Vojvodina Province. Muslims include Bosniaks (Slavic Muslims) in the southwest Sandzak region, ethnic Albanians in the south, and Roma located throughout the country.”¹⁷

While Serbia’s economy grew at a solid rate over the period 2001 – 2008,¹⁸ it was hit hard by the global financial crisis in 2007, and it did not return to positive growth until 2013.¹⁹ In 2016, Serbia’s gross domestic product was US \$38.80 billion.²⁰ The United Nations Development Programme ranked Serbia in 66th place in its Human Development Index (HDI) for 2015, with an HDI of 0.776.²¹ Serbia’s Gini Income coefficient, which measures inequality in the distribution of wealth, of 29.6, placed it 77th out of 187 countries.²²

1.6 Recent Historical and Political Context

From the end of the Second World War until the early 1990s, Serbia formed part of the Socialist Federal Republic of Yugoslavia (SFRY), comprising Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, and Slovenia.²³ The SFRY was ruled by President Tito until his death in 1980. The end of the 1980s gave rise to conflicts between the different nations in the former SFRY due to emergent nationalism and movements for independence within the constituent nations.²⁴

In 1991, Croatia, Slovenia, and Macedonia declared independence, followed by Bosnia in 1992.²⁵ Each declaration of independence resulted in violent conflict in which thousands of civilians were killed and wounded, tortured and sexu-

17 US Department of State, *Serbia 2017 International Religious Freedom Report*, 2017, available at: <https://www.state.gov/documents/organization/281200.pdf>.

18 Economic Institute MAT and Faculty of Economy FREN, *Serbia post-crisis economic growth and development model 2011–2020*, 2010, p. 6, available at: http://pdf.usaid.gov/pdf_docs/pnadz058.pdf; the report indicates that during this period, Serbia’s gross domestic product grew at an annual average rate of 5.4%.

19 World Bank in Serbia, “Overview”, updated 11 October 2018, available at: <http://www.worldbank.org/en/country/serbia/overview>.

20 World Bank, “Country Profile: Serbia”, visited 24 September 2018, available at: http://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=SRB.

21 United Nations Development Programme, *Human Development Report 2016: Overview*, 2016, p. 23, available at: http://hdr.undp.org/sites/default/files/HDR2016_EN_Overview_Web.pdf.

22 United Nations Development Programme, “Income Gini coefficient”, 2013, available at: <http://hdr.undp.org/en/content/income-gini-coefficient>.

23 Encyclopaedia Britannica, “Serbia: Government and Society”, visited 24 September 2018, available at: <https://www.britannica.com/place/Serbia/Government-and-society>.

24 Encyclopaedia Britannica, “Yugoslavia (Former Federated Nation 1929–2003)”, visited 24 September 2018, available at: <https://www.britannica.com/place/Yugoslavia-former-federated-nation-1929-2003>.

25 *Ibid.*

ally abused in detention camps and displaced from their homes.²⁶ In 1993, the UN Security Council established an international tribunal to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former SFRY from 1991.²⁷ The conflicts ended in 1995 when the Dayton Peace Accords were signed.²⁸ The remaining republics of Serbia and Montenegro declared a new Federal Republic of Yugoslavia which existed until 2003 when the State Union of Serbia and Montenegro was formed. In June 2006, Montenegro declared independence, and the current Constitution of Serbia was adopted.²⁹

The status of Kosovo, currently the Autonomous Province of Kosovo and Metohija of Serbia,³⁰ remains a source of significant contention. In 1998, a campaign for greater autonomy from ethnic Albanians in Kosovo escalated into a civil war,³¹ which culminated in forces from the North Atlantic Treaty Organization (NATO) bombing Serbia in the spring of 1999. In June 1999, Serbian military and police forces withdrew from Kosovo, and the UN Security Council authorised an interim UN administration and a NATO-led security force in Kosovo which continues to this day.³² In 2008, Kosovo unilaterally declared independence.³³ The position of the Government of Serbia is that “Serbia will never recognise the unilaterally proclaimed independence of Kosovo” and “the future status of the southern Serbian province can only be defined within the framework of adequate principles and norms of the United Nations and other international organisations, with the respect of the constitutional order of the Republic of Serbia”.³⁴

In recent years, restrictions on political freedoms in Serbia have increased. In 2017, Freedom House decreased Serbia’s rating in terms of political rights due to “serious irregularities in the 2016 parliamentary elections”,³⁵ and an erosion in political rights and civil liberties under Prime Minister Vučić due to political

26 *Ibid.*; BBC News, “Balkans war: a brief guide”, *BBC News*, 18 March 2016, available at: <https://www.bbc.co.uk/news/world-europe-17632399>; UN International Criminal Tribunal for the former Yugoslavia, “About the ICTY”, visited 24 September 2018, available at: <http://www.icty.org/en/about>.

27 UN Security Council, *Resolution 808*, UN Doc. S/RES/808, 22 February 1993; for a full list of the UN Resolutions that are applicable to the operation of the International Criminal Tribunal for the former Yugoslavia, see: UN International Criminal Tribunal for the former Yugoslavia, “Statute of the Tribunal”, visited 24 September 2018, available at: <http://www.icty.org/en/sid/135>.

28 Organisation for Security and Co-operation in Europe, *Dayton Peace Agreement*, 14 December 1995, available at: <https://www.osce.org/bih/126173>.

29 See above, note 7.

30 *Ibid.*, Article 182.

31 See above, note 24.

32 UN Security Council, *Resolution 1244*, UN Doc. S/RES/1244, 10 June 1999.

33 BBC News, “Full text: Kosovo declaration”, *BBC News*, 17 February 2018, available at: <http://news.bbc.co.uk/1/hi/world/europe/7249677.stm>.

34 Government of the Republic of Serbia, “Kosovo-Metohija”, visited 24 September 2018, available at: <http://www.srbija.gov.rs/pages/article.php?id=20619>.

35 Freedom House, *Freedom in the World 2017: Serbia*, 2017, available at: <https://freedomhouse.org/report/freedom-world/2017/serbia>.

pressure being exerted on independent media and CSOs.³⁶ Leading Serbian CSOs identified a similar trend in their joint submission to the UN Human Rights Committee (HRC) in March 2017, expressing great concern at the “narrowing space for debate on issues of public importance, organized campaigns against any critical opinion on Government and its policies, (...) as well as attacks on independent bodies and institutions”.³⁷ The Serbian Ombudsman (Protector of Citizens) has reported persistent threats to its independence as an institution.³⁸ In its concluding observations in 2017, the HRC expressed concern about restrictions on freedom of expression and called on Serbia to refrain from “prosecuting journalists, human rights defenders and other members of civil society as a means of deterring or discouraging them from freely expressing their opinions”.³⁹

Finally, in recent years, the protection of economic and social rights has deteriorated in Serbia. Unemployment affects nearly every fifth person searching for work, with unemployment among young people being significantly higher.⁴⁰ The Belgrade Centre for Human Rights, a CSO, reported in 2017 that Serbia has the highest rates of people at risk of poverty in Europe, and that poverty remained primarily concentrated in non-urban areas, especially in the Southern and Eastern Serbia Region.⁴¹ In the past two years, the Ombudsman has described the status of the rights of citizens in Serbia as “marked by an unfavourable economic situation and an expressed lack of legal certainty”,⁴² and indicated that the majority of complaints received related to violations of social and economic rights.⁴³

1.7 Branches of Government and Statutory Bodies

The current Constitution of Serbia was adopted in 2006, after the dissolution of the State Union of Serbia and Montenegro, replacing the Constitutional Charter of Serbia and Montenegro (1992).⁴⁴ The Constitution establishes Serbia as a parliamentary democracy,⁴⁵ and divides powers amongst three branches of

36 *Ibid.*

37 Human Rights House Belgrade, *Joint NGO Report on key elements of the human rights situation in Serbia: UN Human Rights Committee 119th Session - March 2017*, 2017, p. 3, available at: http://kucaljudskihprava.rs/wp-content/uploads/2017/02/INT_CCPR_CSS_SRB_26659_E.pdf.

38 Serbian Ombudsman, *Regular Annual Report of the Protector of Citizens for 2016*, 2017, available at: https://www.ombudsman.org.rs/attachments/article/134/Introduction_2016%20Annual%20Report.pdf.

39 HRC, *Concluding Observations: Serbia*, UN Doc. CCPR/C/SRB/CO/3, 10 April 2017, Paras 38–39.

40 Government of the Republic of Serbia, *Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia*, 2014, p. 14, available at: <http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2014/11/Second-National-Report-on-Social-Inclusion-and-Poverty-Reduction-final.pdf>.

41 Belgrade Centre for Human Rights, *Human Rights in Serbia: 2017*, 2018, p. 26, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2018/03/Human-rights-in-Serbia-2017.pdf>.

42 See above, note 38, p. 4.

43 Serbian Ombudsman, *Regular Annual Report of the Protector of Citizens for 2017*, 2018, p. 5, available at: <https://www.ombudsman.rs/attachments/article/5671/Regular%20Annual%20Report%20of%20the%20Protector%20of%20Citizens%20for%202017.pdf>.

44 See above, note 7.

45 *Ibid.*, Articles 2, 3, 52, 100.

government: the executive; the legislature; and the judiciary.⁴⁶ The Constitution provides that “[r]elations between three branches of power shall be based on balance and mutual control”, and guarantees the independence of the judiciary.⁴⁷

The President of Serbia serves as the head of state and is elected directly in general elections,⁴⁸ for a maximum of two five-year terms.⁴⁹ The Constitution confers a range of powers and functions on the President, including representing Serbia in international matters, commanding the army, promulgating laws, granting amnesties and awarding honours, and proposing candidates for Prime Minister.⁵⁰

The Constitution provides that executive power shall be exercised by the Government,⁵¹ comprising the Prime Minister, one or more Vice Presidents and ministers.⁵² The Prime Minister serves as the head of government,⁵³ and is elected by the National Assembly upon the recommendation of the President.⁵⁴ The Prime Minister is responsible for presenting the agenda of the government to the parliament and proposing cabinet ministers for approval.⁵⁵

The Constitution establishes the National Assembly as a unicameral parliament of Serbia.⁵⁶ The National Assembly comprises 250 deputies who are elected for a period of four years through direct elections.⁵⁷ The current President of Serbia is Aleksandar Vučić who previously served as Prime Minister from 2014 to 2017. The current Prime Minister is Ana Brnabić. The most recent parliamentary elections were held in 2016 and the next elections are scheduled for 2020.⁵⁸

The Constitution vests judicial power in the courts and guarantees the independence of the judiciary.⁵⁹ The judicial hierarchy in Serbia is outlined in **Table 1A**

46 *Ibid.*, Article 4.

47 *Ibid.*

48 *Ibid.*, Article 114.

49 *Ibid.*, Article 116

50 *Ibid.*, Articles 111–114

51 *Ibid.*, Article 122.

52 *Ibid.*, Article 125.

53 *Ibid.*

54 *Ibid.*, Article 127.

55 *Ibid.*, Article 125.

56 *Ibid.*, Article 98.

57 *Ibid.*, Article 100.

58 National Assembly of the Republic of Serbia, “Multi-party National Assembly of the Republic of Serbia (1991–2018)”, visited 24 September 2018, available at: [http://www.parlament.gov.rs/national-assembly/the-assembly-1804-2018/multi-party-national-assembly-of-the-republic-of-serbia-\(1991-2018\).2174.html](http://www.parlament.gov.rs/national-assembly/the-assembly-1804-2018/multi-party-national-assembly-of-the-republic-of-serbia-(1991-2018).2174.html).

59 See above, note 7, Article 142.

below.⁶⁰ The Supreme Court of Cassation is the highest court in Serbia.⁶¹ It acts as a court of last resort and a court of appeal for decisions of the Appellate Courts, Commercial Court of Appeal, Misdemeanour Appellate Court, and the Administrative Court.⁶²

The High Courts are courts of first instance in a range of civil and criminal proceedings,⁶³ including under Serbia's civil equality laws. Decisions of the High Courts are appealable to the Appellate Courts.⁶⁴ The Basic Courts have jurisdiction with respect to criminal law and their decisions are appealable to the High Courts.⁶⁵ The Misdemeanour Courts have jurisdiction with respect to misdemeanour proceedings and their decisions are appealable to the Misdemeanour Appellate Court.⁶⁶

The Constitutional Court has original jurisdiction with respect to matters relating to the constitutionality of laws,⁶⁷ the compliance of ratified international treaties with the Constitution,⁶⁸ and petitions alleging that the conduct of state entities violates "human or minority rights and freedoms guaranteed by the Constitution", if other legal remedies have been exhausted.⁶⁹ The Constitutional Court comprises 15 judges who are appointed for a term of nine years.⁷⁰ Five justices are appointed by the National Assembly, five are appointed by the President of Serbia, and another five are appointed at the general session of the Supreme Court of Cassation.⁷¹ In Part Three, we outline the issues of judicial delay with respect to decisions of the Constitutional Court.

Serbia's legal system is based on principles of civil law; accordingly, the core substantive and procedural legal principles are transposed into a codified system which serves as the primary source of law. Within this system, judicial decisions are not recognised as binding precedents: the *stare decisis* doctrine (which binds courts to follow the rules of principles laid down in previous decisions) does not apply, and case law functions as a secondary, explanatory source subordinate to statutory law.

60 See also: Republic of Serbia, Supreme Court of Cassation, "Jurisdiction of Courts", visited 24 September 2018, available at: <https://www.vk.sud.rs/en/jurisdiction-courts-0>.

61 See above, note 7, Article 143; Law on the Organisation of Courts of Serbia, "Official Gazette of the Republic of Serbia", Nos. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011, 101/2011, 101/2013, 106/2015, 40/2015 – other law, 13/2016, 18/2016 and 113/2017, Article 11.

62 *Ibid.*, Law on the Organisation of Courts of Serbia, Article 15(1).

63 *Ibid.*, Article 23.

64 *Ibid.*, Article 24, Para 1.1.

65 *Ibid.*, Article 22.

66 *Ibid.*, Articles 27–28.

67 See above, note 7, Article 167.

68 *Ibid.*, Article 167.

69 *Ibid.*, Article 170.

70 *Ibid.*, Article 172.

71 *Ibid.*, Article 172(2).

Table 1A:
Judicial hierarchy in Serbia, with number of courts indicated in brackets

Supreme Court of Cassation		Constitutional Court	
Appellate Courts (4)	Commercial Appellate Court	Misdemeanour Appellate Court	Administrative Court
High Courts (25)	Commercial Courts (16)	Misdemeanour Courts (44)	
Basic Courts (66)			

Finally, of particular significance for the present study, is the role of the Commissioner, as well as that of the Ombudsman. In 2009, Serbia adopted a comprehensive equality law, the LPD.⁷² Article 1 of the LPD establishes the Commissioner as an “independent state organ” in Serbia with a formal mandate to enforce the LPD and protect the rights to equality and non-discrimination more broadly.⁷³ The Commissioner is the only statutory body in Serbia with a specific mandate regarding the rights to equality and non-discrimination. The Commissioner is elected by the National Assembly for a term of five years, and can be re-elected once.⁷⁴ The Commissioner is required to submit an annual report to the National Assembly on the situation of equality in Serbia.⁷⁵ The LPD confers a wide range of powers on the Commissioner which relate both to the enforcement of the LPD itself and, significantly, enable the Commissioner to seek legal and policy reform to address systemic patterns of discrimination.⁷⁶ We discuss the mandate and functions of the Commissioner in detail in Part Three of the study.

The Ombudsman is a national human rights institution, independent and autonomous from government, established by the Law on the Protector of Citizens, with a broad mandate to protect and promote respect for freedoms and rights.⁷⁷ The Ombudsman is elected by the National Assembly for a term of five years, and can be re-elected once.⁷⁸ The Ombudsman is established with powers to control the work of administrative bodies, including, amongst others, the power to establish violations resulting from their acts or failures to act,⁷⁹ launch initiatives for the establishment or amendment of laws, regulations or general acts if where deemed significant for the protection of citizens’ rights,⁸⁰ and to initiate Constitutional Court proceedings for the assessment of the constitutionality of

72 Law on the Prohibition of Discrimination (LPD), “Official Gazette of the Republic of Serbia”, No. 22/2009.

73 *Ibid.*, Article 1.

74 *Ibid.*, Articles 28–29.

75 *Ibid.*, Article 33(5).

76 *Ibid.*, Article 33.

77 Law on the Protector of Citizens, “Official Gazette of the Republic of Serbia”, Nos. 79/2005 and 54/2007, Articles 1–2.

78 *Ibid.*, Article 4.

79 *Ibid.*, Article 17.

80 *Ibid.*, Article 18.

laws, regulations and general acts.⁸¹ However, this mandate does not extend to the rights to equality and non-discrimination, which, as noted above, is the sole mandate of the Commissioner.⁸²

1.8 Discrimination in Serbia: Why is this Study Needed?

While there have undeniably been many improvements in the legal protection against discrimination in Serbia (as analysed in detail in Part Two), significant, serious and seemingly systemic patterns of discrimination persist. It is beyond the scope of this study to explore these patterns of discrimination in any depth. However, before focusing on the study's key question - "Why is Serbia's legal and policy framework on equality failing to provide protection in practice?" - it is necessary to provide an illustrative insight into the scale of ongoing inequality in Serbia.

There is a wealth of analysis at the international and national level regarding persistent discrimination and disadvantage in Serbia. At the international level, in the past six years, each of the seven main UN treaty bodies have issued concluding observations on Serbia's compliance with the core UN treaties protecting the rights to equality and non-discrimination.⁸³ In addition, the third cycle of Serbia's Universal Periodic Review (UPR) conducted by the UN Human Rights Council has taken place over the past 12 months and concluded in June 2018. CSOs have made detailed submissions to both UN treaty bodies and the UPR process. At the national level, since 2010, the Commissioner has submitted annual reports to Parliament on discrimination in Serbia, and prepared special reports on particular instances of discrimination. In addition, for the present study, five CSOs were commissioned to conduct field research on different grounds of discrimination across the country.

It is important to note that reports on discrimination in Serbia largely rely on qualitative evidence, rather than quantitative data, due to the absence of disaggregated data on grounds of discrimination in Serbia. In their recent concluding observations, the HRC, the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and the Committee on the Rights of Persons with Disabilities expressed concern at Serbia's failure to systematically collect and process disaggregated data on grounds of ethnicity and race,⁸⁴ sex,⁸⁵ disability,⁸⁶ and all grounds protected under the International Covenant on Economic, Social and

81 *Ibid.*, Article 19.

82 For further details regarding the function and mandate of the Ombudsman, see: *ibid.* and Serbian Ombudsman, "About us", 27 May 2012, available at: <http://ombudsman.rs/index.php/o-nama/uloga-i-funkcija>, as well as the Law on the Protector of Citizens.

83 See above, note 1.

84 See above, note 39, Para 9.

85 CEDAW Committee, *Concluding Observations: Serbia*, UN Doc. CEDAW/C/SRB/CO/2-3, 30 July 2013, Para 2.

86 CRPD Committee, *Concluding Observations: Serbia*, UN Doc. CRPD/C/SRB/CO/1, 23 May 2016, Para 63.

Cultural Rights to enable an “accurate assessment” of Serbia’s compliance with its treaty obligations to guarantee the rights to equality and non-discrimination, among other rights.⁸⁷ The European Commission’s Network of Legal Experts on Non-Discrimination similarly cited the lack of quantitative data as a “huge problem in assessing and monitoring discrimination”.⁸⁸

Overall Patterns of Discrimination

Despite the absence of quantitative data, recent reports from UN treaty bodies and the Commissioner provide a useful overview of the key forms of discrimination and disadvantage in Serbia today.

A number of groups have been identified by the treaty bodies and the Commissioner as being especially susceptible to discrimination in Serbia. Discrimination against national minorities, particularly the Roma people, has been highlighted as a systemic problem. For instance, the HRC has highlighted “widespread discrimination” against the Roma in relation to employment, housing and education,⁸⁹ while the CESCR has expressed concern that the economic, social and cultural rights of national and ethnic minorities, refugees and internally displaced persons, including Roma, continue to be interfered with, and that this is exacerbated by the fact that anti-discrimination legislation is not systematically applied.⁹⁰ The most recent annual report of the Commissioner included the following assessment of the situation of the Roma minority:

*The position of the Roma national minority continues to be extremely fragile irrespective of fewer complaints that were filed in 2016, and they tend to be discriminated against in all spheres of social life, primarily in the area of education, labour and employment and in exercising their rights before public authorities.*⁹¹

Discrimination is also pervasive on the basis of disability, with the HRC noting difficulties faced by persons with disabilities regarding access to justice, education, employment and political participation.⁹² The CESCR has likewise identified the marginalisation of this group and continued discrimination with regard to accessing economic, social and cultural rights.⁹³ Similarly, the HRC has brought attention to the discrimination faced by persons living with HIV, particularly in

87 CESCR, *Concluding Observations: Serbia*, UN Doc. E/C.12/SRB/CO/2, 10 July 2014, Para 7.

88 See above, note 4.

89 See above, note 39, Para 14.

90 See above, note 87, Para 11.

91 Commissioner for the Protection of Equality, *Abridged version of 2016 Regular Annual Report*, 2017, p. 57, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/10/Poverenik-Skraceni-godisnji-izvestaj-za-2016-engl-za-odobrenje-za-stampu.pdf>.

92 See above, note 39, Para 16.

93 See above, note 87, Para 11.

the context of health care.⁹⁴ The Commissioner summarised the discrimination faced by persons living with disabilities as follows:

*Persons with disability belong to a group of people who are most discriminated against in all areas of private and public life, in particular in the field of education, professional development and extension of public services or utilization of public spaces and facilities as well as in the area of labour and employment.*⁹⁵

Discrimination on the basis of sexual orientation and gender identity is also a significant problem within Serbia. The HRC has highlighted a “very high” number of acts of discrimination, intolerance and violence against the LGBT community in its most recent concluding observations on Serbia.⁹⁶

Cultural attitudes also contribute to the ill-treatment of women. For instance, the HRC has identified “prevalent” patriarchal cultural patterns which result in women being subjected to severe forms of violence.⁹⁷ The Commissioner has noted that “women are particularly exposed to discrimination on the labour market, while gender-based violence continues to be a pressing problem.”⁹⁸

In addition to these common grounds of discrimination, the Commissioner has highlighted the fact that discrimination also persists on the grounds of “marital or family status, membership in political, trade union and other organizations, financial status, [and] religious beliefs or political views.”⁹⁹ To tackle this systemic discrimination, the CESCR urged Serbia to:

*Intensify its efforts to promote equality and combat discrimination against members of ethnic minorities, persons with disabilities, refugees and internally displaced persons, including Roma, lesbian, gay, bisexual and transgender persons and other marginalized persons and groups with regard to access to employment, social security, housing, health and education.*¹⁰⁰

The Commissioner’s most recent annual report also contains detailed findings regarding public opinion in Serbia on the prevalence of discrimination.¹⁰¹ The results of this study show that public perception of the groups most liable to

94 See above, note 39, Para 12.

95 See above, note 91, p. 14.

96 See above, note 39, Para 12.

97 *Ibid.*, Para 18.

98 See above, note 91, pp. 56–57.

99 *Ibid.*, p. 57.

100 See above, note 87, Para 11(a).

101 The research was conducted by an independent research agency in 2016, based on a survey of 1,200 persons living in Serbia (excluding Kosovo and Metohija). See: Commissioner for the Protection of Equality, *Public Opinion Survey Report “Citizens’ Attitudes towards Discrimination in Serbia”*, 2016, available at: <http://ravnopravnost.gov.rs/rs/izvestaj-o-istrazivanju-javnog-mnjenja>.

facing discrimination within Serbia largely reflects those identified by the UN treaty bodies and the Commissioner:

Citizens view the Roma, members of the LGBT population and poor persons as those most discriminated against in the Republic of Serbia, while the area of labor and employment is singled out as the field where discrimination occurs most frequently.¹⁰²

The annual report summarises the findings of research that the Commissioner commissioned in 2016 which surveyed 1,200 persons across the country. A similar survey was conducted in 2013.¹⁰³ Within the annual report, public opinion on the prevalence of discrimination in Serbia was summarised as follows:

[D]espite positive trends, the country is still facing major challenges in its attempts to protect citizens against discrimination. The survey shows that although the conditions necessary for efficiently combatting discrimination have improved, this has not yielded tangible results yet. Thus, the number of citizens who think that discrimination in Serbia is rampant is the same as it was in 2013 and the number of those who think that discrimination is acceptable remains unchanged.¹⁰⁴

Examples of Discrimination in Specific Areas of Life

While a comprehensive analysis of patterns of discrimination in Serbia is outside the scope of the present study, research commissioned as part of the study, including field research by five Serbian CSOs, allows for an analysis of certain aspects of discrimination in Serbia. What follows is not an overarching assessment of patterns of discrimination, but rather examples of discrimination which persist in Serbia today. This summary explores three key areas of life regulated by law: employment, education and health care. The findings indicate the breadth and scope of the discrimination faced. They are illustrative of the wider patterns of discrimination and inequality identified by the Commissioner and UN treaty bodies as referenced above.

Discrimination in Employment

Discrimination in the field of employment affects a range of vulnerable groups in Serbia including women, persons with disabilities, young people, the elderly and persons belonging to national or ethnic minorities.

102 See above, note 91, p. 15.

103 The 2013 survey was conducted on behalf of the Commissioner for the Protection of Equality by the Centre for Free Elections and Democracy, with the support of the United Nations Development Programme. See: Commissioner for the Protection of Equality, *Report on Public Opinion Research "Citizens' Attitudes on Discrimination in Serbia"*, 2014, available at: <http://ravnopravnost.gov.rs/rs/istrazivanje-javnog-mnenja-odnos-gradana-prema-diskriminaciji-u-srbiji>.

104 See above, note 91, p. 15.

Direct discrimination in recruitment with respect to a range of protected characteristics remains a common phenomenon in Serbia. In Part Three of the study we present evidence from interviews with private sector representatives which suggests that such practices are common. The Commissioner has reported that direct discrimination on the grounds of age, sex and family status are common in recruitment processes. Examples of such discrimination includes job advertisements which specify that applicants must be of a particular gender and age, such as “seeking woman of pleasant appearance, aged from 20-30, for administrative job”,¹⁰⁵ and direct questions posed to female candidates during job interviews about their intentions to start a family.¹⁰⁶ In 2013, the Commissioner successfully filed proceedings against a private company to challenge direct discrimination in the context of recruitment. The company had candidates provide information about their marital and family status, health status and information on previous convictions.¹⁰⁷ In 2015, the Commissioner also successfully filed proceedings against an employer who published an advertisement seeking seasonal raspberry pickers which stated:

*Roma workers are not acceptable for this position due to recognised disagreement with workers of other nationalities and the possible consequences that can arise between them during the period of employment.*¹⁰⁸

The reports of the Commissioner and focus group discussions convened for this study highlight that women in Serbia experience a wide range of different forms of discrimination in the context of employment. This includes sexual harassment and professional barriers on returning to work after maternity leave.¹⁰⁹ Roma women and women with disabilities, amongst others, experience multiple discrimination in the workplace on the basis of their sex and/or ethnicity and disability.¹¹⁰ The Commissioner has also found that employers frequently indirectly discriminate against women by prescribing working conditions which disproportionately disadvantage women due to their existing child care respon-

105 See, for example: Commissioner for the Protection of Equality, *Regular Annual Report for 2013*, 2014, p. 98, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/redovan_izvestaj_2013_eng.pdf.

106 Commissioner for Protection of Equality, *Regular Annual Report for 2012*, 2013, p. 76, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/cpe_annual_report_2012.pdf.

107 See above, note 105, p. 99.

108 Commissioner for the Protection of Equality, *Regular Annual Report for 2015*, 2016, p. 101, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2016/09/Commissioner-for-the-Protection-of-Equality-2015-Regular-Annual-Report-1.pdf>.

109 Commissioner for the Protection of Equality, *Abridged version of 2016 Regular Annual Report*, 2017, p. 79, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/10/Poverenik-Skraceni-godisnji-izvestaj-za-2016-engl-za-odobrenje-za-stampu.pdf>; Equal Rights Trust focus group meeting, 1 November 2017, Niš; Equal Rights Trust focus group meeting, 10 November 2017, Belgrade; Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar.

110 See, for example: Commissioner for the Protection of Equality, *Special Report on Discrimination of Women in Serbia*, 2015, p. 170, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_Poseban_izvestaj_o_diskriminaciji_zena_priprema_korigovana-1.pdf.

sibilities.¹¹¹ In 2015, the Commissioner determined that an employer had indirectly discriminated against a female employee in the following circumstances:

A police officer working in an active policing role who was a single mother of a child under the age of seven was demoted due to a selection process that indirectly discriminated against her due to her child caring responsibilities. The selection criteria for demotion included the failure to perform certain field work tasks outside of the police headquarters. The police officer was assessed as having performed poorly in relation to field work and was demoted. This decision was taken despite the fact that she had been unable to fulfil the field work requirement due to her child caring responsibilities.¹¹²

Discrimination against Roma persons in recruitment and in the conditions of employment is also widespread. A Roma woman, known as SJ, spoke to Equal Rights Trust researchers for this study and described her experience of being dismissed from her job as a cook in a restaurant due to prejudice regarding her ethnicity.

SJ* had finished her studies to become a chef and, after many years, obtained employment as a cook in a restaurant. SJ described an incident that occurred to her during her employment:

I heard that one restaurant was looking for a cook, I applied for a job, and I was admitted! I was very happy because finally I was given an opportunity to work (...) I was working like a machine. I was silent, listening, I was not quarrelling with anybody, nor had I any kind of problems – either with the owner, or any of my colleagues.

One day, the waiter came into the kitchen to tell me that one of the guests liked the food that I had cooked, that he was delighted with it and that he would like to meet me. I was truly proud of myself and the waiter who came to me was glad, too. However, when I entered the restaurant and the guest saw me, I immediately knew from looking at him that I could not expect anything good. He realised from my appearance that I was Roma. He looked me up and down and said: "I didn't know that Roma people can cook!" He immediately turned away from me and continued to make jokes about me with a man sitting at his table, without even looking at me. He said: "The black-haired one is cooking" and "I would let her cook up a little, but not here." It was a shame for me. The waiter tried to alleviate the entire situation and said casually with a smile, "Yes, the girl is really good, she cooks so well!", but the guest only pushed the plate away and asked for the bill without even trying the meal I had prepared.

111 See above, note 109, p. 81.

112 Commissioner for the Protection of Equality, Opinion No. 07-00-488/15-02, 28 December 2015.

I went back to the kitchen, as if somebody had beaten me. I felt terrible. In the kitchen, the questions started immediately. The head chef said that cooks would be forbidden from meeting guests in the future and, if it was necessary, he would meet them instead!

SJ indicated that the following day her colleagues started objecting to her work. After 10 days, the head chef spoke with her and said she had gone “too far” and dismissed her from the position. SJ said, “I was left without a job. It was not important that the food I had prepared was tasty – what mattered was the fact that the food was prepared by a Roma woman.”

* The name of the interviewee has been changed to protect her identity

Discrimination in Education

Roma children, children with disabilities and children who identify as LGBT+ are particularly vulnerable to discrimination in education in Serbia.¹¹³

Discrimination against Roma children in education takes many forms. It includes the segregation of Roma children into separate classes, such as in rural pre-schools and elementary schools which were found by the Commissioner to have created segregated classes exclusively attended by internally displaced Roma children.¹¹⁴ Discrimination includes the creation of *de facto* “Roma schools” by the selective application of the residence requirement for school enrolment.¹¹⁵ Roma children are disproportionately represented in “special schools” (schools for education of children with disabilities), and the practice of transferring Roma children from regular to “special schools” is widespread.¹¹⁶ In addition, research indicates that teachers and fellow students foster prejudice and stigma towards Roma children.¹¹⁷

113 Commissioner for the Protection of Equality, *Special Report on Discrimination of Children in Serbia*, 2013, pp. 29-30, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_Poseban%20izvestaj%20o%20diskriminaciji%20dece_sa%20koricama.pdf.

114 Commissioner for the Protection of Equality, Opinion No. 84/2012, 20 January 2012, available at: <http://ravnopravnost.gov.rs/prituzba-d-z-r-d-m-protiv-os-a-s-l-d-zbog-diskriminacije-na-osnovu-nacionalne-pripadnosti-u-oblasti-obrazovanja>.

115 See above, note 113, p. 30.

116 European Roma Rights Centre, *A Long Way To Go – Report by the European Roma Rights Centre: Overrepresentation of Romani Children in “Special Schools in Serbia”*, 2014, pp. 23-24, available at: http://www.errc.org/uploads/upload_en/file/serbia-education-report-a-long-way-to-go-serbian-13-march-2014.pdf.

117 Provincial Ombudsman of Novi Sad, *Implementation of Affirmative Measures in Elementary Education of Roma in the Territory of the Autonomous Province of Vojvodina*, 2017, pp. 29-31.

A Roma woman, S.M., told Equal Rights Trust researchers about the discrimination that one of her children had experienced at school.¹¹⁸

In 2013, S.M.'s daughter was enrolled in the first grade of an elementary school. From the very beginning, S.M. noticed that teacher was not tolerant at all towards her daughter. S.M. informed the teacher about her family's financial situation and indicated that they do not have regular income and asked for understanding if any delays in paying for school expenses, such as excursions, occurred. Despite this, whenever the family was late in paying, the teacher denounced it before the whole class. The other pupils were harsh towards S.M.'s daughter and would laugh at her, saying: "You do not have money, you live in a container" and "You are Gypsy, you smell." The teacher did not respond at all to this taunting. S.M. was forced to enrol her daughter in another school.

The Commissioner has reported that schools frequently ignore measures aimed at preventing discrimination and rarely take into account the fact that they are obliged to make additional efforts in order to provide more effective and timely protection for children from vulnerable social groups.¹¹⁹ The Commissioner has issued numerous recommendations to schools about the need to prevent intolerance and discrimination among children on a national, racial or ethnic basis, particularly when Roma or other minority ethnicity children are involved in a peer conflict.¹²⁰

Children and young people with disabilities are also particularly vulnerable to discrimination. Stereotypes and prejudices regarding their abilities are deeply rooted and widespread in Serbia,¹²¹ and segregation on the basis of disability remains at issue. Further, where inclusive education is, in theory, provided, in practice, many schools and the responsible government department 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.¹²²

118 Mreža odbora za ljudska prava u Srbiji (CHRIS), Case of S.M., Case Study Research Report to Equal Rights Trust, 2018.

119 See above, note 113, p. 30.

120 *Ibid.*

121 *Ibid.* pp. 30–31.

122 Center for Interactive Pedagogy, *Research on Educational, Health and Social Support for Children with Disabilities*, 2013, p. 28.

Case Study of Failure to Provide Reasonable Accommodation of a Child with Visual Impairment

N.P. is a nine-year-old visually impaired girl from Smederevska Palanka Municipality. In failing to provide free transportation to school, the Municipality of Smederevska Palanka prevented N.P. from equal access to education and full inclusion in the educational system, and violated regulations of the LPD. After a finding of discrimination by the Commissioner, the Municipality failed to follow the Commissioner's recommendation to take all necessary measures to provide transportation for N.P., and to avoid violations of the LPD in the future. Praxis, in consultation with the Equal Rights Trust, prepared the lawsuit. The case was successfully litigated and the Court found that the respondent, the Municipality of Smederevska Palanka, had discriminated against N.P. Thus, it violated the anti-discrimination law on several grounds: violation of the principle of equality (Article 4(2)), prohibition of discrimination in the provision of education (Article 19(2)) and prohibition of discrimination of persons with disabilities (Article 26(1)). The Court ordered the respondent to immediately provide transportation for the girl from home to school and vice versa. The Court also ordered the Municipality of Smederevska Palanka to publish the verdict in the oldest and one of the most prominent newspapers in Serbia – "Politika". The Municipality of Smederevska Palanka did not appeal this verdict, and it became final on 29 April 2016. The father of N.P. confirmed that the transport required in the verdict was provided for his daughter, as of Monday, 16 May 2016. Besides the article in the "Politika", another three media outlets produced articles on the case including the national newspaper "Večernje Novosti".¹²³

The success of this case demonstrated that the state has a duty to ensure that the particular needs of individuals with protected characteristics are accommodated such that they can access education on an equal basis with others. The media coverage of the case, and the court order for the Municipality of Smederevska Palanka to publish the verdict ensure that the result of the case is publicly available, and the judgment itself creates a legal precedent. However, at the time of publication, efforts to fully enforce the judgment are ongoing.

The institutionalisation of children with disabilities in Serbia is contrary to Article 19 CRPD which states that all people with disabilities, including people with

123 Ilić, J., "Blind Nikolina will go to school by car!", *Večernje Novosti*, 13 May 2016, available at: <http://www.novosti.rs/vesti/naslovna/reportaze/aktuelno.293.html:605004-Slepa-Nikolina-ici-ce-kolima-u-skolu>; Ilić, J. and Živanović, N, "A blind girl still without transportation", *Večernje Novosti*, 10 May 2016, available at: <http://www.novosti.rs/vesti/naslovna/reportaze/aktuelno.293.html:604517-Slepa-devojci-ca-jos-bez-prevoza>; Ilić, J., "A blind girl is crying over quarrel and politics", *Večernje Novosti*, 11 May 2016, available at: <http://www.novosti.rs/vesti/naslovna/reportaze/aktuelno.293.html:604684-Slepa-devojci-ca-ispasta-zbog-svadje-i-politike> <http://www.novosti.rs/vesti/naslovna/reportaze/aktuelno.293.html:604684-Slepa-devojci-ca-ispasta-zbog-svadje-i-politike>.

mental disabilities, have the right to live independently, and Article 14 CRPD which states that disability should in no case be the basis for deprivation of liberty. The human rights violations consequent on institutionalisation are numerous. In one respect, it significantly restricts access to education. Research indicates that more than half of children with disabilities in institutions are excluded from the education system, while those enrolled only attend “special schools”.¹²⁴ Students are often excluded from education due to the physical inaccessibility of schools, the lack of adequate additional support and deep-set prejudice reported amongst employees in institutions and schools.¹²⁵

L.N. is a woman with a physical disability who is currently undertaking doctoral studies and is an activist in the field of human rights. She spoke with Equal Rights Trust researchers about the failure of educational institutions to make reasonable accommodation for her disability.

*In situations where auditoriums were situated in the basement, it was really difficult for me to go down there, because I use crutches. I have never asked for the auditorium to be modified, although I was told later that I was entitled to do so, because I felt very bad to think that the entire group should change the space just because of me. At that time, I did not perceive it to be discrimination, but now I would react and ask for the auditorium to be modified. I would ask for handrails to be fitted where the stairs lead to the new part of the faculty building. For years, I have been going up and down the stairs, holding the wall only, which is terrible.*¹²⁶

Discrimination in Health Care

There are numerous serious issues of discrimination in the health care sector. people living with HIV/AIDS, people with hepatitis C, persons with rare diseases and persons with mental health issues are particularly affected.

There is significant social stigma towards people living with HIV/AIDS. According to the Commissioner’s 2016 public opinion survey on the prevalence of discrimination, almost a third of citizens report that they do not want to socialise with persons living with HIV/AIDS, over 40% do not want a person living with HIV/AIDS to teach their children, and 61% of citizens would object to marrying, or their children marrying, a person with HIV/AIDS.¹²⁷

124 Janjić, B., Beker, K., *Exclusion and Segregation of Children with Disabilities in Residential Institutions from Educational System*, Mental Disability Rights Initiative of Serbia, 2016, pp. 21–22, available at: <http://www.mdri-s.org/wp-content/uploads/2016/04/Publikacija-SRB-1.pdf>.

125 *Ibid*, pp. 7–9, 49.

126 Udruženje studenata sa hendikepom (Association of Students with Handicaps), Case of L.N., Case Study Research Report to Equal Rights Trust, 2018.

127 Odnos građana i građanki prema diskriminaciji u Srbiji, Poverenik za zaštitu ravnopravnosti i Institut za ljudska prava „Ludvig Bolcman“, Beograd, 2016

Between from 2014-2016, three NGOs organised situation testing¹²⁸ of discrimination in relation to the access to cosmetic services, health and dental services of people living with HIV/AIDS, as well as people living with hepatitis C.¹²⁹ The 2014 situation testing examined more than 300 dental practices. As a result of the situation testing, 64 complaints of discrimination on the basis of HIV/AIDS status were filed with the Commissioner.¹³⁰ The 2015 situation testing of cosmetics salons resulted in 52 complaints to the Commissioner due to refusal of the salons to provide services (pedicure, manicure, etc.) to persons living with hepatitis C.¹³¹ Finally, in 2016, situation testing on access to health services for persons living with HIV/AIDS conducted in 64 health institutions (12 public and 42 private health institutions) resulted in five complaints submitted to the Commissioner.¹³²

Discrimination is also an obstacle to accessing health care for members of the LGBT+ community. Our researchers spoke to Stefan, whose experience is symptomatic of a wider problem.

Stefan is 25-year-old gay man from a small town in South Serbia. In July 2014, he was refused health care by a physician at the Health Center of his presumed sexual orientation. He gave his medical card and when the last patient left the office, he asked when he would be admitted.

“Through an open door I heard the physician saying: ‘Today, we don’t examine gays’. When she said that, I felt physically bad and I did not have any strength (...) I was shocked. I did not know how to react. It is different when somebody addressed you with insulting words in the street or some other place, where you can expect that, but it was her work place. I only expected her to do her part of the job – to prescribe the therapy for me and make a prescription for the medication I needed. What on earth has the sexual orientation to do with it?!”

When he felt better, he reported the case to the Legal Department of the Health Center and to the director of the Health Center. The director ignored Stefan’s claim of discrimination, but a new director was appointed shortly thereafter. The new director ordered that the physi-

128 Situation testing is an experimental method aiming to establish discrimination on the spot, with an aim to reveal and record discriminatory practices whereby a person who possesses a particular characteristic is treated less favourably than a person who does not possess this characteristic in a comparable situation: European Center for Minority Issues Kosovo, *Situation Testing*, visited 7 November 2018, available at: <http://www.ecmikosovo.org/en/Situation-testing>.

129 More information available in the Commissioner for the Protection of Equality’s Annual Reports for 2014, 2015 and 2016, available at: <http://ravnopravnost.gov.rs/en/reports>.

130 Commissioner for the Protection of Equality, *Regular Annual Report for 2014*, 2015, p. 81, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/regular_annual_report_of_the_cpe_2014_spojeno.pdf.

131 See above, note 108, pp. 125–126.

132 See above, note 109, Commissioner for the Protection of Equality, pp. 113–115.

cian and the nurse, who had been present to that event, write a statement about the incident. Stefan wrote about the incident and his testimony was published in newspapers. Since the information about his diagnoses became public, the Medical Center Administration offered to “lock” Stefan’s medical card, meaning only very few people would have access to it. Stefan accepted this proposal and since then, his card has been locked in the Health Center Administration.¹³³

In summary, this short and select analysis provides an insight into the fact that discrimination, in a variety of forms, persists in Serbia, despite the existence of a legal framework of protection. Accordingly, this study’s attempt to answer the question “Why is Serbia’s legal and policy framework on equality failing to provide protection in practice?”, is urgent as a solution to the ongoing inequality in Serbia must be found.

133 Da se zna! (It should be known!), Case of S., Case Study Research Report to Equal Rights Trust, 2018.

2. THE LEGAL AND POLICY FRAMEWORK RELATED TO EQUALITY

This part of the study analyses Serbia's legal and policy framework related to equality to assess the extent to which it complies with Serbia's international human rights obligations and international best practice on equality.

In the last two decades, Serbia has established a strong legal and policy framework to protect the rights to equality and non-discrimination. Serbia has ratified all major international and regional human rights treaties relevant to these rights. It provides protection for the rights to equality and non-discrimination in the Constitution, a comprehensive anti-discrimination law, specific anti-discrimination laws, and a large number of other laws. The legal protection provided is largely consistent with international best practice and international and regional law, with some exceptions. For example, and importantly, the denial of reasonable accommodation is not prohibited as a form of discrimination.

In general, Serbia's legal framework on equality and non-discrimination is characterised by an abundance of measures to protect these rights, rather than significant omissions. The multiplicity of measures to protect the rights to equality and non-discrimination may, however, impede the effective implementation and enforcement of Serbia's equality laws. There are multiple laws governing discrimination and a significant degree of overlap between the laws. In Part Three of the study, we highlight persistently low levels of awareness of Serbia's equality laws of both rights-holders and duty-bearers, despite training and educational initiatives. One reason for this continued phenomenon may be the complexity of Serbia's legal framework on equality.

2.1 International and Regional Law

Since the late 1990s, Serbia has acceded to or ratified almost all international and regional treaties related to equality, without reservations, declarations and derogations.

2.1.1 Major United Nations Treaties Related to Equality

Serbia has a very good record of participation in the major UN human rights treaties.¹ It has ratified eight of the nine core UN human rights treaties: the Interna-

1 See: Office of the High Commissioner for Human Rights, "Ratification Status for Serbia", visited 27 September 2018, available at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=154&Lang=EN.

tional Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD); and the International Convention for the Protection of All Persons from Enforced Disappearances.

Serbia also has a good record of allowing for individual complaints to be made to the relevant treaty bodies. It permits individual complaints to be made with respect to six of the core UN human rights treaties, namely: the ICCPR; the ICERD; the CEDAW; the CAT and the CRPD. The two exceptions are the Optional Protocol to the ICECSR and the Third Optional Protocol to the CRC.

Instrument	Signed	Ratified / Acceded
ICCPR (1966)		12 March 2001 (acceded)
Optional Protocol I to the ICCPR (1976) (allowing individual complaints)		6 September 2001
Optional Protocol II to the ICCPR (1989) (abolition of the death penalty)		6 September 2001 (acceded)
ICESCR (1966)		12 March 2001 (acceded)
Optional Protocol to the ICESCR (2008)	No	No
ICERD (1965)		12 March 2001 (acceded)
Declaration under Article 14 of the ICERD (allowing individual complaints)		12 March 2001
CEDAW (1979)		12 March 2001
Optional Protocol to CEDAW (1999) (allowing individual complaints)		31 July 2003
CAT (1984)		12 March 2001 (acceded)
Declaration under Article 22 of the CAT (allowing individual complaints)		12 March 2001
Optional Protocol to the CAT (2002)	25 September 2003	26 September 2006

Instrument	Signed	Ratified / Acceded
CRC (1989)		12 March 2001 (acceded)
Optional Protocol I to the CRC (2000) (involvement of children in armed conflict)	8 October 2001	31 January 2003
Optional Protocol II to the CRC (2000) (sale of children, child prostitution and child pornography)	8 October 2001	10 October 2002
Optional Protocol III to the CRC (2011) (communicative procedure)	28 February 2012	No
CRPD (2006)	17 December 2007	31 July 2009
Optional Protocol to the CRPD (2006) (allowing individual complaints)		31 July 2009
International Convention for the Protection of All Persons from Enforced Disappearances (2006)	6 February 2007	18 May 2011
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)	11 November 2004	No

The failure to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is arguably the most notable gap in Serbia's international legal obligations related to equality. In its report to the UN Human Rights Council regarding Serbia's third Universal Periodic Review, the UN High Commissioner for Human Rights reported that the UN country team in Serbia considered that ratifying the Convention "would be timely" and emphasised "that around 7,000 to 8,000 non-citizens were in need of international protection."² However, in Serbia's National Report submitted to the UN Human Rights Council, the government indicated that "the implementation of this Convention would call for significant financial resources" and, as such, could not be implemented "at this time".³

Serbia has a good record of compliance with its reporting obligations under the treaties it has ratified. While some reports have been submitted late, many have been on time, and at the time of publication, no reports remain outstanding.

- 2 United Nations Human Rights Council, Universal Periodic Review, *Report of the Office of the UN High Commissioner for Human Rights: Compilation on Serbia*, UN Doc. A/HRC/WG.6/29/SRB/2, 10 November 2017, Para 2.
- 3 United Nations Human Rights Council, Universal Periodic Review, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21**, UN Doc. A/HRC/WG.6/29/SRB/1, 13 November 2017, Para 23.

2.1.2 Other Treaties Related to Equality

Serbia also has a very good record in relation to ratification of other international treaties which are relevant to the rights to equality and non-discrimination. In relation to the rights of refugees and stateless persons, Serbia has ratified the Convention Relating to the Status of Refugees (1951). In the field of education, Serbia has ratified the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (1960) (UNESCO Convention). In the field of labour standards, Serbia has ratified all eight of the fundamental International Labour Organization (ILO) Conventions including the Equal Remuneration Convention and the Discrimination (Employment and Occupation) Convention.⁴

Instrument	Signed	Ratified / Acceded
Convention Relating to the Status of Refugees (1951)		12 March 2001 (succeeded)
Convention Relating to the Status of Stateless Persons (1954)		12 March 2001 (succeeded)
Convention on the Reduction of Statelessness (1961)		7 December 2011 (acceded)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)		12 March 2001 (succeeded)
UN Convention against Transnational Organized Crime (2000)	12 December 2000	6 September 2001
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)	12 December 2000	6 September 2001
Rome Statute on the International Criminal Court (2002)	19 December 2000	6 September 2001
UNESCO Convention Against Discrimination in Education (1960)		11 September 2001 (acceded)
Forced Labour Convention (1930) (ILO Convention No. 29)		24 November 2000
Equal Remuneration Convention (1951) (ILO Convention No. 100)		24 November 2000
Discrimination (Employment and Occupation) Convention (1958) (ILO Convention No. 111)		24 November 2000
Worst Forms of Child Labour Convention (1999) (ILO Convention No. 182)		10 July 2003

4 International Labour Organization (ILO), "Ratifications for Serbia", visited 27 September 2018, available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102839.

2.1.3 Regional Human Rights Treaties

Serbia has a strong record in relation to European treaties which are relevant to the rights to equality and non-discrimination. It has ratified or acceded to all but one of the major European treaties,⁵ and importantly, has ratified the European Convention on Human Rights (ECHR) and Protocol No. 12 to the ECHR which provides a free-standing right to non-discrimination. In relation to the ECHR, domestic laws in Serbia provide that payment of any award made against the state in a decision of the European Court of Human Rights (ECtHR) must come from the state's budget.⁶ Further, both criminal and civil procedure laws in Serbia provide for the enforcement of judgments of the ECtHR by permitting domestic judgments to be overturned pursuant to the decision of the ECtHR.⁷

Instrument	Signed	Ratified / Acceded
ECHR (1950)	3 April 2003	3 March 2004
Protocol No. 12 to the ECHR (2000)	3 April 2003	3 March 2004
European Social Charter (revised) (1996)	22 March 2005	14 September 2009
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)	3 March 2004	3 March 2004
European Charter for Regional and Minority Languages (1992)	22 March 2005	15 February 2006
Framework Convention for the Protection of National Minorities (1995)	Succession 2001	11 May 2001
European Convention on Nationality (1997)	No	No
Convention on Action against Trafficking in Human Beings (2005)	16 May 2005	14 April 2009
Convention on Preventing and Combating Violence against Women and Domestic Violence (2011)	4 April 2012	21 November 2013

5 For a full list of Council of Europe treaties that Serbia has signed and ratified, see: Council of Europe, "Treaty list for Serbia", visited 27 September 2018, available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/SAM?p_auth=ZSU2wCk9.

6 Law on the Public Attorney's Office, "Official Gazette of the Republic of Serbia", No. 55/2014, Article 13, Para 5.

7 Law on Criminal Procedure, "Official Gazette of the Republic of Serbia", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, Article 485, Para 1, point 3; Law on Civil Procedure, "Official Gazette of the Republic of Serbia", Nos. 72/2011, 49/2013 – Decision of the CC, 74/2013 – Decision of the CC and 55/2014, Article 426, Para 11.

2.1.4 European Union Legislation Related to Equality

Serbia is not yet a member of the EU and, as such, EU law does not apply in Serbia. However, since 2014, Serbia has participated in formal accession negotiations with the EU,⁸ having been granted candidate status in 2012. In September 2013, the government signed a Stabilization and Accession Agreement with the EU and committed to gradually harmonizing domestic legislation with the *acquis communautaire* (*acquis*) – the body of common rights and obligations that is binding on all EU member states.⁹

In 2016, Serbia commenced negotiations with the EU on Chapter 23 of the *acquis* which outlines the EU's laws and policies regarding the judiciary and fundamental rights. Serbia has adopted an Action Plan for Chapter 23 which provides, in part, that:¹⁰

The Republic of Serbia plans to achieve full alignment of the anti-discrimination laws with the EU acquis (...) Positive progress has been made in improving the situation of the LGBTI community (...) In the forthcoming period, the good practice of raising awareness about the prohibition and prevention of discrimination is planned to continue, which will be achieved through a series of educational roundtables, training of citizens and civil servants, and printing and distributing manuals for recognizing and responding to discrimination. The state plans to pay due attention to the promotion of the principle of gender equality, including mainstreaming gender in relevant policy areas, both at strategic and legislative level, as well as to strengthen capacity of the institutions and their mutual coordination.

In April 2018, the European Commission published its most recent report on Serbia's progress towards accession to the EU. With respect to Serbia's legal framework on the rights to equality and non-discrimination, the European Commission reported that, "non-discrimination legislation is broadly in line with the European standards, although further alignment with the *acquis* is still needed."¹¹ This is consistent with a detailed report published in 2017 by the European Commission's independent panel of legal experts which

8 For further information, see: European Commission, "European Neighbourhood Policy and Enlargement Negotiations: Serbia", updated 6 December 2016, available at: https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en.

9 Law on ratifying the Stabilization and Accession Agreement between the European community and its member states and Republic of Serbia, "Official Gazette of the Republic of Serbia", No. 83/08.

10 For the government's Action Plan for Chapter 23, see: Republic of Serbia, *Action Plan: For Chapter 23*, 2015, available at: <https://www.mpravde.gov.rs/tekst/9849/finalna-verzija-akcionog-plana-za-pregovaranje-poglavlja-23-koja-je-usaglasena-sa-poslednjim-preporukama-i-potvrdjena-od-strane-evropske-komisije-u-briselu.php>.

11 European Commission, *Serbia 2018 Report: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, 2018, p. 26, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

assessed the compliance of Serbia's legal framework with the EU Directives on non-discrimination.¹²

In its 2018 report, the European Commission emphasised that Serbia must improve the effective enforcement and implementation of the existing equality laws, as follows:

*The legal and institutional framework for the respect of fundamental rights is in place. Its consistent implementation across the country needs to be ensured, including as regards protection of minorities. (...) Further sustained efforts are needed to improve the situation of persons belonging to the most discriminated groups (Roma, LGBTI persons, persons with disabilities, persons with HIV/AIDS and other socially vulnerable groups). A gender equality law needs to be adopted.*¹³

*Serbia needs to address the shortcomings outlined below and in particular: (...)step up actions to protect the rights of the groups facing discrimination, including lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, persons with disabilities, people with HIV/AIDS and other vulnerable groups: actively pursue investigation, prosecution and convictions for hate-motivated crimes.*¹⁴

The enforcement of Serbia's equality laws is addressed in Part Three of the study.

2.1.5 Customary International Law

Under international law, binding legal obligations on states derive from customary international law as well as from treaty law, with customary international law being deduced over time from the consistent practice and behaviour of states, rather than deriving from a written treaty.¹⁵ Certain principles of international law, such as the prohibition of torture, are considered to be so fundamental that no derogation from such norms is permitted; these are known as peremptory norms or *jus cogens*.¹⁶ The prohibition of racial discrimination is widely accepted

12 European Commission, European Network of Legal Experts in Gender Equality and Non-discrimination, *Country report, Non-discrimination: Serbia 2017*, 2017, available at: <https://www.equalitylaw.eu/downloads/4408-serbia-country-report-non-discrimination-2017-pdf-1-75-mb>.

13 See above, note 11, p. 4.

14 *Ibid.*, p. 23.

15 Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, 1998, Article 38(b); one of the sources of international law is "international custom, as evidence of a general practice accepted as law".

16 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Anto Furundzija*, Case No. IT-95-17/1-T, 1998, Para 153; Parker, K. and Neylon, L. B., "Jus Cogens: Compelling the Law of Human Rights", *Hastings International and Comparative Law Review*, Vol. 12, 1988–1989, p. 417; see also: Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 1969, Article 53; Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, 26 July 2017, Para 25.

to be a peremptory norm of customary international law.¹⁷ In addition, it can be said that the prohibition of discrimination on other grounds, such as gender and religion, may now be part of customary international law, although not yet reaching the status of a peremptory norm.¹⁸ It has been posited, including by the Inter-American Court of Human Rights (IACtHR), that the principle of non-discrimination is a peremptory norm of customary international law;¹⁹ however, this remains subject to debate.²⁰

2.1.6 Status of International Obligations in National Law

The Constitution governs the status of international law in national law. Articles 16, 18 and 194 of the Constitution indicate that Serbia is a monist state whereby international obligations are directly applicable in national law.²¹ However, Articles 16 and 194 appear to place a caveat on the direct application of international obligations by providing that ratified international treaties must be “in accordance with” the Constitution. Despite this caveat, the Equal Rights Trust’s legal consultants are not aware of any decisions of the Constitutional Court in which it has determined that an international obligation is inconsistent with the Constitution.

In a number of decisions, Serbian courts have directly applied provisions of the ECHR and Protocol 12 of the ECHR in order to protect the rights to equality and non-discrimination.²² Of particular significance is a 2017 decision of the Appellate Court in Nis which provided that, in circumstances in which Serbia’s comprehensive anti-discrimination legislation did not apply (due to the date of its entry into force), it was correct to directly apply the protection of the right to

17 De Schutter, O., *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 64–68, and the materials referred to therein; Pellett, A., “Comments in Response to Christine Chinkin and in Defense of Jus Cogens as the Best Bastion against the Excesses of Fragmentation”, *Finnish Yearbook of International Law*, Vol. 17, 2006, p. 85; Shaw, M.N., *International Law*, Cambridge University Press, 2008, p. 287, who refers to it as part of customary international law, with no reference to it being a peremptory norm; Tanaka, J. (in dissent), *South-West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, International Court of Justice, 1996, pp. 293, 299–300.

18 *Ibid.*, Shaw, p. 287; *Ibid.*, Pellett, p. 85; Cassel, D., “Equal Labour Rights for Undocumented Migrant Workers”, in Bayefsky, A. (ed.), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick and Arthur Helton*, Martius Nijhoff Publishers, 2006, pp. 511–512.

19 Inter-American Court of Human Rights (IACtHR), *Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion*, OC-18/03, No. 18, 17 September 2003, p. 23; see also, by way of example: Martin, F. F. et al, *International Human Rights and Humanitarian Law: Cases, Treaties and Analysis*, Cambridge University Press, 2006, pp. 34–35.

20 See: Bianchi, A., “Human Rights and the Magic of Jus Cogens”, *The European Journal of International Law*, Vol. 19, 2008, p. 506; see above, note 18, Cassel, pp. 511–512; see above, note 17, Pellett, p. 85.

21 Article 16 provides that “[g]enerally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly”. Article 18 provides that “[t]he Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws”. Article 194 provides that “[r]atified international treaties and generally accepted rules of the international law shall be part of the legal system of the Republic of Serbia”.

22 See, for example: decision of the Appellate Court in Belgrade, GŽ 3216/13, 10 May 2013, in which the Court directly applied Article 14 ECHR; decision of the Appellate Court in Novi Sad, GŽ 67/12, 28 March 2012, in which the Court directly applied Article 1 of Protocol 12 ECHR.

non-discrimination under the Constitution and Article 14 of the ECHR (which Serbia has ratified).²³ The Court held as follows:

According to the provision of Article 197 of the Constitution, retroactive implementation of laws is prohibited. Therefore, in the concrete case, the Law on the Prohibition of Discrimination, adopted in 2009, cannot be applied, because the Agreement and the Government Conclusion were adopted in 2008, and the [Law on the Prohibition of Discrimination] itself does not contain provisions on retroactive application. Having that in mind, the first instance court acted correctly when it applied directly the provision of Article 21 of the Constitution and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.2 National Law

Serbia has an extensive, albeit imperfect, national legal framework to protect the rights to equality and non-discrimination. This includes: protection in the Constitution; a comprehensive anti-discrimination legislation; two further pieces of legislation which seek to address inequality on the basis of gender and disability respectively; and a range of other pieces of legislation which address inequality and discrimination in different areas of life. In this Part, we analyse the compliance of Serbia's constitutional and legislative provisions with its obligations regarding the content and design of such law under international law and best practice.

2.2.1 The Constitution

The Constitution currently in force was adopted in 2006, after the dissolution of the State Union of Serbia and Montenegro, replacing the Constitutional Charter of Serbia and Montenegro (2003). It is the first constitution to govern Serbia that explicitly prohibits discrimination.

Article 21 of the Constitution is the most significant constitutional provision protecting the rights to equality and non-discrimination. It protects the right to equality as follows:

All are equal before the Constitution and law.

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

Article 21 protects two of the core elements of the right to equality, namely: equality before the law; and equal protection of the law; however, it does not provide protection for the more expansive conception of the right to equality, as

²³ Decision of the Appellate Court in Niš, GŽ 1022/17, 24 February 2017.

required by international best practice, exemplified by the Declaration of Principles of Equality (Declaration).²⁴

Article 21 provides the following guarantee of the right to non-discrimination:

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

Article 21 expressly prohibits two of the four forms of discrimination required to be protected under international law²⁵ and best practice,²⁶ namely direct discrimination and indirect discrimination. However, it does not prohibit harassment or denial of reasonable accommodation as forms of discrimination. Nor does it prohibit other forms of discrimination recognised under international human rights law and best practice, such as discrimination by association, discrimination by perception and multiple discrimination.²⁷ However, with the exception of denial of reasonable accommodation, these are protected in Serbia's specific anti-discrimination laws.

The approach to the grounds of discrimination in Article 21, through the use of an open-ended list of protected characteristics, is broadly consistent with international best practice²⁸ and the international treaties to which Serbia is party.²⁹ While Article 21 prohibits discrimination with respect to a large number of express grounds of discrimination, it does not, however, include several grounds that are well-recognised under international human rights law, namely: sexual orientation;³⁰

24 Declaration of Principles on Equality, Equal Rights Trust, London, 2008, Principle 1, available at: <http://www.equalrightstrust.org/content/declaration-principles-equality>.

25 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Paras 7, 10 and 28; Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 6 on equality and non-discrimination*, UN Doc. CRPD/C/GC/6, 2018, Para 18.

26 See above, note 24, Principles 5 and 13.

27 For references to the international law obligations applicable to these forms of discrimination, please see the discussion with respect to the Law on the Prevention of Discrimination under Part 2.2.2 below.

28 See above, note 24, Principle 5, which provides that, in addition to being prohibited on the explicitly listed characteristics, "[d]iscrimination based on any other ground must be prohibited where such discrimination: (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above."

29 See, for example: International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966 (ICCPR), Articles 2 and 26; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 1966 (ICESCR), Article 2(2); Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. No. 005, 1950 (ECHR), Article 14; which refer to "other status".

30 See, for example: Human Rights Committee (HRC), *Young v Australia*, Communication No. 941/2000, UN Doc. CCPR/C/78/D/941/2000, 2003; see above, note 25, Para 32; European Court of Human Rights (ECtHR), *Salgueiro da Silva Mouta v Portugal*, Application No. 33290/96, 21 December 1999; ECtHR, *Smith and Grady v the United Kingdom*, Application Nos. 33985/96 and 33986/96, 27 September 1999; ECtHR, *Karner v Austria*, Application No. 40016/98, 24 July 2003; ECtHR, *Bączkowski and Others v Poland*, Application No. 1543/06, 3 May 2007; ECtHR, *E.B. v France*, Application No. 43546/02, 22 January 2008.

gender identity;³¹ health status;³² marital and family status;³³ and pregnancy and maternity;³⁴ among others.

Article 49 of the Constitution provides that “[a]ny inciting of racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable”. As a party to the ICCPR, Serbia is required to guarantee the right to freedom of expression under Article 19 ICCPR, as well as to comply with Article 20(2) ICCPR which requires the prohibition of “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” The prohibition in Article 49 of the Constitution is arguably broader in scope than required by Article 20(2) ICCPR, as it does not expressly specify that the hatred must incite discrimination, hostility or violence, albeit that the provision prohibits inciting “inequality”. The UN Special Rapporteur on Freedom of Expression has cautioned against “prohibitions on ‘advocacy of hatred’ that do not amount to incitement under article 20 of the Covenant”,³⁵ and indicated that, for the purposes of Article 2(2) ICCPR, “such incitement must lead to one of the listed results, namely discrimination, hostility or violence.”³⁶

Article 50 of the Constitution confers a power on a court to “prevent the dissemination of information (...) to prevent advocacy of racial, ethnic or religious hatred inciting discrimination, hostility or violence.” This closely mirrors the language of Article 20(2) ICCPR. In Parts 2.2.2 and 2.2.3, we discuss in detail the range of civil and criminal penalties that exist in Serbian law and the considerations that apply with respect to the protection of the right to freedom of expression.

The Constitution makes a number of distinctions between citizens and non-citizens with respect to certain rights protected. It guarantees the following rights to citizens only: the right to vote;³⁷ the right to participate in public affairs;³⁸ the right to freedom of assembly;³⁹ the right to social protection which includes pensions;⁴⁰ and the right to higher education.⁴¹

While international human rights law does not require that *all* rights and freedom guaranteed to citizens be extended to non-citizens, exceptions to the gen-

31 See above, note 25, CESCR, Para 32.

32 *Ibid.*, Para 33.

33 *Ibid.*, Para 31.

34 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979 (CEDAW), Article 11(2).

35 UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/71/373, 2016, Para 25.

36 UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/67/357, 2012, Para 43.

37 Constitution of the Republic of Serbia 2006, Article 52.

38 *Ibid.*, Article 53.

39 *Ibid.*, Article 54.

40 *Ibid.*, Article 69.

41 *Ibid.*, Article 71.

eral principle of equality between citizens and non-citizens are extremely limited. For example, under the ICCPR, certain political rights contained within Article 25 (such as the right to vote and to participate in public affairs) are guaranteed to citizens only, and the right to liberty of movement and to choose one's residence under Article 12(1) is guaranteed only for persons "lawfully within the territory of a State"; however, there is no basis under the ICCPR for restricting the right to freedom of assembly to citizens.

A number of provisions in the Constitution provide powers on the state to take measures to advance the position of groups who have experienced discrimination and disadvantage. Article 21 of the Constitution provides that measures may be taken to "achieve full equality of individuals or groups of individuals in a substantially unequal position compared to other citizens", and that such measures "shall not be deemed discrimination". While the provision for measures to achieve full equality is welcomed, international best practice provides that such measures are an essential component of the right to equality, rather than an exception to the prohibition on discrimination.

Principle 3 of the Declaration provides as follows:

To be effective, the right to equality requires positive action. Positive action, which includes a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups, is a necessary element within the right to equality.

The Human Rights Committee (HRC),⁴² the Committee on Economic, Social and Cultural Rights (CESCR)⁴³ and the Committee on the Elimination of Discrimination Against Women (CEDAW Committee)⁴⁴ have similarly affirmed that it is a *duty* on states to take positive action in order to realise the rights to equality and non-discrimination. The CEDAW Committee has provided the following explanation:

[T]he application of temporary special measures in accordance with the Convention is one of the means to realize de facto or sub-

42 HRC, *General Comment No. 18: Non-discrimination*, 1989, Para 10, provides "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant"; see also: HRC, *General Comment No. 28: Equality of rights between men and women*, UN Doc. CCPR/C/21/Rev.1/Add.10, 2000, Para 3, which establishes that states "must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women."

43 See above, note 25, CESCR, Para 9, which provides that "[i]n order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination."

44 CEDAW Committee, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 2004, Para 14, provides "the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality"; see also: CEDAW Committee, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, Paras 9, 18, 20, 24 and 37(d).

*stantive equality for women, rather than an exception to the norms of non-discrimination and equality.*⁴⁵

The following provisions in the Constitution confer power on the state to take measures for the “special protection” of certain groups:

- Women, young and disabled persons shall be provided with “special protection at work and special work conditions in accordance with the law.”⁴⁶
- Children, pregnant women, mothers on maternity leave, single parents with children under seven years of age, and elderly persons are entitled to free health care.⁴⁷
- Families, mothers, single parents and any child “shall enjoy special protection in the Republic of Serbia in accordance with the law”, without further details provided.⁴⁸
- Persons with disabilities, war veterans and victims of war shall receive “special protection” in relation to “social protection” which includes pensions.⁴⁹

In addition, Article 76 of the Constitution provides for a power to take “[s]pecific regulations and provisional measures (...) 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.” Like Article 21, Article 76 conceives of positive action measures as an exception to the prohibition on discrimination, rather than a component, of the right to equality (“shall not be considered discrimination”). However, it expressly states that the purpose of such measures is to “eliminat[e] extremely unfavourable living conditions which particularly affect them.”⁵⁰

These constitutional provisions may, in practice, permit the state to take measures that would constitute “positive action” within the definition of Principle 7 of the Declaration. However, this depends on the particular needs of the groups in the areas of life in question, and whether the measures are designed to “overcome past disadvantage and (...) accelerate progress towards equality of particular groups.” It is noted that the language of “special protection” is problematic and can justify paternalistic measures that discriminate against the groups concerned. This is historically often the practical purpose and effect of “special protection” measures for women in the workplace. Further, the Constitution does not provide express power to take measures to advance the right to equality of other groups who may have also experienced historic disadvantage, such as sexual and gender minorities.

45 *Ibid.*

46 Constitution of the Republic of Serbia 2006, Article 40.

47 *Ibid.*, Article 68, Para 2.

48 *Ibid.*, Article 66.

49 *Ibid.*, Article 69, Para 4.

50 *Ibid.*, Article 76.

In conclusion, the Constitution establishes a relatively strong basis for specific anti-discrimination laws to be adopted to elaborate on the content of the rights to equality and non-discrimination although its “special protection” provisions and its approach to “incitement of hatred” need particular attention.

2.2.2 Specific Anti-Discrimination Laws

Serbia is required to provide effective protection from discrimination in its legal system, including by enacting specific and comprehensive anti-discrimination legislation, pursuant to the obligations under the treaties that it has ratified.⁵¹ As the Declaration provides, “[t]he realisation of the right to equality requires the adoption of equality laws and policies that are comprehensive and sufficiently detailed and specific to encompass the different forms and manifestations of discrimination and disadvantage.”⁵²

In 2009, Serbia adopted a comprehensive equality law, the Law on the Prohibition of Discrimination (LPD).⁵³ It has also adopted two detailed laws pertaining to the rights to equality and non-discrimination of specific groups:

- The Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD),⁵⁴ adopted in 2006; and
- The Law on Equality between the Sexes, also known as the Law on Gender Equality (LGE),⁵⁵ adopted in 2009.

At the time of publication, the National Assembly is also considering a new Law on Gender Equality which would replace the existing LGE and include additional protection from discrimination on the ground of gender identity, among other proposed changes.⁵⁶

In this Part, we analyse the compliance of the existing laws with Serbia’s obligations under international law and best practice.

51 ICCPR, Article 26 (see above, note 43, HRC, *General Comment No. 18*, Para 12); ICESCR, Article 2(2) (see above, note 25, CESCR, Para 37); CEDAW, Article 2(b); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965 (ICERD), Article 2(1)(d); Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006 (CRPD), Article 5(2).

52 See above, note 24, Principles 3 and 15.

53 Law on the Prohibition on Discrimination (LPD), “Official Gazette of the Republic of Serbia”, No. 22/2009.

54 Law on the Prevention Discrimination against Persons with Disabilities (LPDPD), “Official Gazette of the Republic of Serbia”, Nos. 33/2006 and 13/2016.

55 Law on Equality Between the Sexes, also known as the Law on Gender Equality (LGE), “Official Gazette of the Republic of Serbia”, No. 104/2009; We use the terminology of the Law on Gender Equality as this is the title of the law commonly referred to in English translations; see, for example: ILO, “Serbia (3): Equality of opportunity and treatment”, visited 28 September 2018, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102853&p_count=3&p_classification=05.

56 See: Bjelotomic, S., “New Gender Equality Law in Serbia in autumn”, *Serbian Monitor*, 25 August 2017, available at: <https://www.serbianmonitor.com/en/new-gender-equality-law-serbia-autumn/>; B92, “Serbia set to get gender equality law”, B92, 24 August 2017, available at: https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=08&dd=24&nav_id=102149; National Assembly of the Republic of Serbia, “Public Debate on Gender Equality Draft Law at National Assembly”, 26 June 2018, available at: http://www.parlament.gov.rs/Public_Debate_on_Gender_Equality_Draft_Law_at_National_Assembly.34380.537.html.

2.2.2.1 *Interaction Between the Specific Anti-Discrimination Laws*

Serbian law does not specify the legal relationship between the comprehensive equality law (the LPD) and the two other specific anti-discrimination laws (the LPDPD and the LGE). Thus, in instances of discrimination on the grounds of gender or disability, litigants may choose to initiate proceedings under either the LPD or the specific anti-discrimination law. This has led to a great deal of confusion and inconsistent approaches to enforcing the law, as identified in Part Three.

In **Table 2A**, we compare key aspects of the three laws. The LPD is the most comprehensive of the three laws with respect to the forms of discrimination prohibited; however, it does not prohibit denial of reasonable accommodation as a form of discrimination, as required under international human rights law. All three laws prohibit direct and indirect discrimination and victimisation as forms of discrimination. The LPD is the only law to comprehensively prohibit harassment as a form of discrimination, multiple discrimination and discrimination by perception. Only the LPDPD contains two narrow prohibitions on denial of reasonable accommodation, and these fall short of the protection required under international human rights law.

The three laws are similar regarding their scope of application to both public and private-sector duty bearers and to a wide range of activities regulated by law. Each law contains general prohibitions on discrimination and then specific “special cases of discrimination” in areas of activity such as education, health care and employment.

Regarding the enforcement of the laws and available remedies, all three laws provide a broad cause of action in civil proceedings for persons who have experienced discrimination, and the remedies available under such proceedings are similar, and include compensation for pecuniary and non-pecuniary damage and a declaration that discrimination has occurred. The LPD is the only law to provide for a non-judicial complaint mechanism for allegations of discrimination. All three laws provide for misdemeanour proceedings to be initiated in certain cases of discrimination in which the court may impose a fine; however, the scope of activities in which misdemeanour proceedings apply differs. The LPD provides for the greatest scope of such proceedings. We discuss the mechanisms for enforcement of the laws in Part Three of the study.

Finally, the LGE is by far the most advanced of the three laws (and of any law in Serbia) with respect to the obligation to take positive action measures to address past disadvantage and give effect to the right to equality, as required by international best practice.⁵⁷ Both the LGE and the LPDPD impose certain obligations to take positive action measures, but the LGE alone provides that misdemeanour proceedings may be initiated and fines imposed for failure to comply (albeit in respect of the obligations imposed on employers alone).

57 See above, note 24, Principle 1.

Table 2A
Comparison of the three primary anti-discrimination laws

	LPD	LGE	LPDPD
<i>Protection of the right to equality</i>			
Guarantee of the right to equality	Article 4	Article 2	Not specifically defined but “principle” of “equal rights and obligations” referred to in Article 2
Power to take positive action	Article 14	Article 7	Article 8
Duty to take positive action	–	Article 12 (data collection and publication) Article 13, 35 (plan of action and annual report) Articles 14, 19, 21, 32, 37, 38 (representation) Articles 22, 33, 34, 39, 41 (specific sectors)	Part Four
Misdemeanour proceedings if positive action not taken	–	Article 54 (with respect to employers’ duties under Articles 13,19)	–
<i>Protection of the right to non-discrimination</i>			
Protected grounds of discrimination	Open-ended list with 23 grounds expressly listed (Article 2) ⁵⁸	Gender (Arts 4, 10(2)) Sex (Arts 17, 10(1)) Family and marital status (Arts 6, 26, 27)	Disability (Article 3)
Definition of discrimination	Articles 2(1), 4	Articles 2, 4	Article 3(2), Article 6

58 See above, note 54, Article 2, which provides: “on the grounds of race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations and other real or presumed personal characteristics (hereinafter referred to as: personal characteristics)”.

	LPD	LGE	LPDPD
<i>Forms of discrimination required by international human rights law to be prohibited</i>			
Direct discrimination	Article 6	Article 5	Article 6
Indirect discrimination	Article 7	Article 6	Article 6
Harassment	Article 12	Not defined as a form of discrimination, but prohibited expressly in the context of employment (Articles 10(6), 18)	The definition of discrimination refers to “humiliating” treatment (Article 6(4)(2)). “Harassment” is prohibited in a large number of activities as a form of discrimination (Articles 11(3), 15, 17(4), 20, 26, 29)
Denial of reasonable accommodation	–	–	Not defined as a form of discrimination in general definition (Article 6). Partially prohibited in the context of access to public services (Article 13(5)(3)) and employment (Article 22(4))
Victimisation	Article 9	Articles 4, 8	Article 6(4)
Incitement to discrimination	Article 11	–	Articles 6(5), 10
Discrimination by association	Article 2(1)	–	Article 3(2)
Discrimination by perception	Article 2(1)	–	–
Multiple discrimination	Article 13(5)	–	–
Discriminatory violence	Articles 11, 13	Article 29	Not expressly prohibited

	LPD	LGE	LPDPD
Scope of application			
Duty-bearers	State and non-state actors “Everyone shall be obligated to respect the principle of equality, that is to say, the prohibition of discrimination.” (Article 4). “Everyone” includes state and non-state actors (Article 2(2))	State and non-state actors Gender equality must be “respected by all” (Article 2)	State and non-state actors No express statement regarding scope of duty-bearers. Public authorities must guarantee the right to non-discrimination (Article 4) Part Three outlines “special cases of discrimination” in a wide range of activities without limiting the scope to public-sector duty-bearers
Areas of activity to which the prohibition on discrimination applies	Scope not expressly defined Article 4 has been interpreted broadly to include areas of activity regulated by law. Part Three outlines “special cases of discrimination” in specified areas of activity	Gender equality must in “all fields of public and private sector” (Article 2)	Scope not expressly defined Part Three outlines “special cases of discrimination” in private and public-sector activities (see below)
Areas of activity in which discrimination is specifically prohibited			
Procedures before public authorities	Article 15	–	Article 11
Membership of associations	–	–	Article 12
Public facilities and spaces	Article 17 ⁵⁹	–	Article 13 ⁶⁰

59 See above, note 54, Article 17, which provides, in part, that “[e]veryone shall have the right to equal access to objects in public use (objects where the head offices of public administration organs are located, objects used in the sphere of education, health care, social welfare, culture, sports, tourism, objects used for the purpose of environmental protection, protection against natural disasters and the like), as well as public spaces (parks, squares, streets, pedestrian crossings and other public transport routes and the like), in accordance with the law.”

60 See above, note 55, Article 13(3), which provides that “[f]or the purpose of this Law, publicly used facilities are: facilities in the fields of education, health care, social protection, culture, sports, tourism or facilities used for environmental protection, protection against natural disasters and the like”, and Article 13(4), which provides that “[f]or the purpose of this Law, public spaces are: parks, green areas, squares, streets, pedestrian crossings and other public roads and the like.”

	LPD	LGE	LPDPD
Healthcare	Articles 17, 23	Articles 24, 28	Article 17
Pensions and social welfare	Article 17	Article 23	Article 13
Education	Articles 17, 19	Articles 30, 31	Article 18
Employment	Article 16	Articles 11-22	Article 21
Participation in public life	–	Articles 32, 33, 35, 36, 37, 38, 39 (some relate to positive action)	–
Transport	–	–	Article 27
Marital and family relations	–	Articles 26, 27	Article 30
Culture and sport	Article 17	Article 34 (positive action)	Article 37 (positive action)
Media	–	Article 41	Article 9(2) Article 35 (positive action)
<i>Enforcement mechanisms</i>			
Non-judicial complaint procedure	Article 35	–	–
Right to initiate civil legal proceedings for violation of the Act	Article 41: “[a]nyone who has suffered discriminatory treatment”	Article 43: “[a]ny person whose rights or freedoms have been violated because he/she is a member of [a] certain sex”	Article 42: “by a person with disabilities who has been discriminated against” or “a person accompanying the person with disabilities” where that person has experienced discrimination under Articles 21 and 22.

	LPD	LGE	LPDPD
Misdemeanour proceedings in which fines may be imposed	<p>Available in relation to discrimination in certain activities:</p> <ul style="list-style-type: none"> committed by a “public administration organ” (Article 50) employment (Article 51) provision of public services and access to public facilities (Article 52) education (Article 54) healthcare (Article 60) <p>Available in relation to discrimination on certain grounds:</p> <ul style="list-style-type: none"> religion or belief (Article 53) gender (Article 55) sexual orientation (Article 56) affecting children (Article 57) age (Article 58) political belief, membership or non-membership of political party (Article 59) 	<p>Available in relation to discrimination in certain activities:</p> <p>education (Article 53)</p> <p>employment (Article 54)</p> <p>media (Article 55)</p>	<p>Available in relation to discrimination in certain activities:</p> <ul style="list-style-type: none"> associations (Article 46) provision of public services (Article 47) health care services (Article 48) some aspects of education (Article 49) harassment in education (Article 50) public or private transport (Article 51) harassment in the context of transport (Article 52) aspects of legal services (Article 52a)
Remedies available under civil proceedings			
Compensation for pecuniary and non-pecuniary damage	Article 43(4)	Article 43(6)	Article 43(4)
Declaration that discrimination has occurred	Article 43(2)	Article 43(2)	Article 43(3)
Prohibition on conduct amounting to discrimination	Article 43(1)	Article 43(2)–(4)	Article 43(1)
Order to redress the consequences of discrimination	Article 43(3)	Article 43(5)	Article 43(2)
Publication of court’s decision	Article 43(5)	–	–

2.2.2.2 The Law on the Prohibition of Discrimination

The LPD is the primary legislation governing the rights to equality and non-discrimination in Serbia. It came into force on 3 March 2009 (with the exception of Articles 28-40 which came into force on 1 January 2010).

The LPD imposes an obligation on “everyone” to “respect the principle of equality”.⁶¹ The LPD applies broadly to state and non-state actors and prohibits discrimination in a wide range of areas of activity regulated by law, as discussed below. It confers a right on “[a]nyone who has suffered discriminatory treatment” to initiate civil proceedings,⁶² and a right on a person “who considers him/herself discriminated against” to lodge a complaint with the Commissioner for the Protection of Equality (Commissioner).⁶³ In addition, the LPD provides for a regime of misdemeanour proceedings in which a court may order that a fine be imposed for contravention of certain provisions. These are discussed in detail in Part Three of the study.

Article 4 of the LPD provides that “[a]ll persons shall be equal and shall enjoy equal status and equal legal protection regardless of personal characteristics.”

The LPD adopts a complex approach to the protection of the right to non-discrimination: Article 2 defines the term “discrimination”; Article 4 provides a general prohibition on discrimination; Article 5 lists the “forms of discrimination”; and Articles 6 to 12 separately define different forms of discrimination. Article 13 goes on to prohibit additional “severe forms of discrimination”, and Part Three of the Act prohibits “special cases of discrimination”.

The Equal Rights Trust’s legal consultants have indicated that, in civil legal proceedings, claimants usually allege violations of Articles 2, 4 and one of the forms of discrimination in Articles 6 to 12 of the LPD, as well as any of the specific instances of discrimination that are referred to in Article 13 or Part Three of the law.

Article 4 of the LPD provides that, “[e]veryone shall be obligated to respect the principle of equality, that is to say, the prohibition on discrimination.”

The term “discrimination” is defined in Article 2 as follows:

*[T]he 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 persons close to them, **be it overt or covert, on the grounds of race, skin colour, ancestors,***

61 See above, note 54, Article 4.

62 *Ibid.*, Article 41.

63 *Ibid.*, Article 35.

*citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations **and other real or presumed personal characteristics** (hereinafter referred to as: personal characteristics) (emphasis added).*

This definition is consistent with the terms used in the CEDAW,⁶⁴ the ICERD⁶⁵ and the CRPD⁶⁶ – which define discrimination by reference to “distinction”, “exclusion”, “restriction” and “preference” – as well as the definitions adopted by the HRC⁶⁷ and the CESC⁶⁸ when interpreting their respective covenants. However, it is unfortunate that Article 2 of the LPD includes the term “unwarranted” without providing details as to criteria upon which discrimination may be justified.

The LPD does not indicate whether the subjective intention of the perpetrator is relevant to the determination of discrimination; however, courts have interpreted the *absence* of any requirement in the LPD as an indication that the subjective intention is *not* relevant.⁶⁹ This is consistent with international law and best practice which specifies that an act of discrimination may be committed intentionally or unintentionally.⁷⁰

64 CEDAW, Article 1.

65 ICERD, Article 1(1).

66 CRPD, Article 2.

67 See above, note 43, HRC, *General Comment No. 18*, Paras 6–7, which provide that “the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (emphasis added).

68 See above, note 25, CESC, Para 7, which provides that “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment” (emphasis added).

69 For example, in the decision of the Appellate Court in Nis, GŽ 487/16 from 23 March 2016, it has been stated that “in determining the existence of discrimination, intention or motive is not relevant, given that the aim of protection against discrimination is legal clarification of the situation – the unacceptability of conducted act and its consequences, regardless of whether this can be attributed to the defendant.”

70 See above, note 24, Principle 5; the CERD, CEDAW Committee and CRPD each define discrimination by reference to its “purpose or effect” (see: ICERD, Article 1(1); CEDAW, Article 1; CRPD, Article 2). While the text of the ICCPR and ICESCR do not include this language, the HRC and CESC have adopted it when interpreting the relevant provisions regarding non-discrimination: see above, note 43, HRC, *General Comment No. 18*, Paras 6–7, which provide that “the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”; see above, note 25, CESC, Para 7, which provides that “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment” (emphasis added).

The approach to the prohibited grounds of discrimination in Article 2(1) of the LPD is consistent with international best practice. It defines discrimination by reference to an open-ended list of prohibited grounds,⁷¹ and expressly includes all of the grounds protected under the international covenants or recognised by UN treaty bodies under “other status”, with the exception of pregnancy and maternity status,⁷² and “national or social origin”⁷³ (however, “national affiliation” may cover the latter).

Article 2(1) includes discrimination by perception as required by international law⁷⁴ and best practice;⁷⁵ namely, discrimination due to a perception, whether correct or not, that a person has a particular protected characteristic (by referring to “presumed personal characteristics”). Similarly, it includes discrimination due to a person’s association with another person with a protected characteristic (by referring to “members of their families or persons close to them”), as required by international law⁷⁶ and best practice.⁷⁷ While the translation of the term “close to” from Serbian into English appears to be narrower than the English concept of “association”,⁷⁸ the Equal Rights Trust’s legal consultants indicate that the term in Serbian does in fact reflect the concept of “association”, and includes colleagues and professional associates. Finally, it is noted that the main omission from Article 2 is protection from discrimination on multiple grounds; however, this is addressed in Article 13, albeit in an imperfect way, where it is treated as a “severe form of discrimination”.

Forms of Discrimination

Perhaps the LPD’s biggest shortcoming is its approach to forms of discrimination. Under international law, the right to non-discrimination requires that four forms of discrimination are prohibited, as elaborated by the CESC in General

71 See above, note 24, Principle 5, which provides that, in addition to being prohibited on the explicitly listed characteristics, “[d]iscrimination based on any other ground must be prohibited where such discrimination: (i) causes or perpetuates systemic disadvantage; (ii) undermines human dignity; or (iii) adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on the prohibited grounds stated above.”

72 CEDAW, Article 11(2).

73 ICCPR, Article 2(1) and 26; ICESCR, Article 2(2).

74 The CESC has recognised both discrimination by perception and discrimination by association as forms of discrimination: see above, note 25, CESC, Para 16, which provides that “[i]n determining whether a person is distinguished by one or more of the prohibited grounds, identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned. Membership also includes association with a group characterized by one of the prohibited grounds (e.g. the parent of a child with a disability) or perception by others that an individual is part of such a group (e.g. a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group)” (emphasis added).

75 See above, note 24, Principle 5.

76 See above, note 25, CESC, Para 16.

77 See above, note 24, Principle 5.

78 See above, note 12, p. 37.

Comment No. 20,⁷⁹ the CPRD Committee in General Comment No. 6,⁸⁰ and international best practice.⁸¹ The forms are:

- direct discrimination;
- indirect discrimination;
- harassment; and
- denial of reasonable accommodation.

The LPD prohibits a larger number of apparently distinct but practically overlapping forms of discrimination. Between the prohibitions it contains, three of the four forms of discrimination which are required to be prohibited under international law are included. However, and significantly, it omits denial of reasonable accommodation. This constitutes a significant shortcoming in Serbia's legal framework on equality and is discussed further below.

In addition, the Article 5 lists seven “forms of discrimination”:

The forms of discrimination are direct and indirect discrimination, as well as violation of the principle of equal rights and obligations, calling to account, associating for the purpose of exercising discrimination, hate speech and disturbing and humiliating treatment.

In practice, two of these are better characterised as different formulations of direct discrimination and some others may be seen as elaborations of certain of the four key forms of discrimination. They are discussed in more detail below.

Direct Discrimination

Two provisions of the LPD ostensibly prohibit direct discrimination which is a cause of some confusion. Article 6 defines direct discrimination as follows:

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 broadly consistent with international best practice. It includes less favourable treatment by reference to a person or group in a comparable situation (referring to “in the same or a similar situation”).⁸²

However, Article 8 of the LPD defines a concept outside of international best practice: “violation of the principle of equal rights and obligations”. It provides:

⁷⁹ See above, note 25, CESCR, Paras 7, 10 and 28.

⁸⁰ See above, note 25, CRPD Committee, Para 18.

⁸¹ See above, note 24, Principles 5 and 13.

⁸² *Ibid.*, Principle 5.

A violation of the principle of equal rights and obligations shall occur if an individual or a group of persons, based on his/her or their personal characteristics, is unwarrantedly denied rights and freedoms or has obligations imposed that, in the same or a similar situation, are not denied to or imposed upon another person or group of persons, if the objective or the consequence of the measures undertaken is unjustified, and if the measures undertaken are not commensurate with the objective achieved through them.

This does not appear to be clearly distinct from direct discrimination, as properly understood under international law. The denial of rights or freedoms and the imposition of obligations “based on his/her or their personal characteristics” falls squarely within the definition of direct discrimination under Article 6 of the LPD. It is unclear why a separate prohibition under Article 8 is required. Further, Article 8 provides that such conduct may be justified by reference to its “objective” or “consequence” and proportionality of the measures taken to achieve it. International best practice identifies the need for particular scrutiny of attempts to justify direct discrimination. The Declaration provides that direct discrimination “may be permitted only very exceptionally, when it can be justified against strictly defined criteria.”⁸³

Indirect Discrimination

Article 7 defines indirect discrimination as follows:

Indirect discrimination occurs if an individual or a group of individuals, on account of his/her or 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.

This definition of indirect discrimination appears to be an attempt to reflect international best practice; however, the language is somewhat confusing. Article 7 refers to “an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination.” The concept of the “principle of equality and prohibition of discrimination” is vaguely-defined and does not succinctly capture the definitions of indirect discrimination used in the Declaration⁸⁴ and in the EU Directives⁸⁵ which refer to a provision, criterion or practice of general application that has the effect of putting persons with a protected characteristic at a particular disadvantage.

83 *Ibid.*, Principle 5.

84 *Ibid.*

85 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin, Article 2(2)(b), provides “where an apparently neutral provision, criteria or practice can put a person (...) in particular disadvantage compared to other persons”; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 2(2)(b).

Article 7 also appears to refer only to conduct that has already occurred (“is placed in a less favourable position”), rather than including a provision, criterion or practice that has the potential to be discriminatory if applied (i.e. “would put a person (...) at a particular disadvantage”).⁸⁶ This means that persons are unable to challenge the operation of an actual or proposed provision, criterion or practice unless they have already been subjected to it, rather than in advance of its operation/application. The basis upon which indirect discrimination may be justified in Article 7 is, however, consistent with the Declaration⁸⁷ and the interpretation of the HRC⁸⁸ and CESCR.⁸⁹

Harassment

Harassment is a form of discrimination recognised under international human rights law, as explained by the CPRD Committee in its General Comment No. 6⁹⁰ and the CESCR in its General Comment No. 20,⁹¹ and international best practice.⁹²

The LPD defines harassment as a form of discrimination.⁹³ It is defined as follows:

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

The reference to the violation of dignity and the creation of a “hostile, humiliating or offensive environment” closely mirrors the definition of harassment in Principle 5 of the Declaration which provides:

Harassment constitutes discrimination when unwanted conduct related to any prohibited ground takes place with the purpose or

86 See above, note 24, Principle 5.

87 *Ibid.*, Principle 5, which provides that indirect discrimination may be permitted if it is “objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”

88 See above, note 43, HRC, *General Comment No. 18*, Para 13, which provides that “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”

89 See above, note 25, CESCR, Para 13, which provides that “[d]ifferential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.”

90 See above, note 25, CRPD Committee, Para 18.

91 See above, note 25, CESCR, Para 7.

92 See above, note 24, Principle 5.

93 See above, note 54, Article 5.

*effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or offensive environment.*⁹⁴

The CRPD Committee adopted this definition in almost identical terms in its General Comment No. 6 published in 2018.⁹⁵

Lack of Protection for Denial of Reasonable Accommodation

It is a matter of significant concern that the LPD does not define the denial of reasonable accommodation – on any grounds – as a form of discrimination. Principle 13 of the Declaration outlines the duty on public and private sector organisations to provide reasonable accommodation “for different capabilities of individuals related to *one or more prohibited grounds*” (emphasis added). With respect to the ground of disability specifically, Article 5(2) CRPD requires state parties to prohibit all discrimination on the basis of disability, which “includes all forms of discrimination, including denial of reasonable accommodation”⁹⁶ and Article 5(3) requires state parties to “take all appropriate steps to ensure that reasonable accommodation is provided.”

In its Concluding Observations on Serbia’s state report in 2016, the CRPD Committee expressed concern that “neither the concept of reasonable accommodation nor recognition that the denial of such accommodation is a form of discrimination are explicitly included in anti-discrimination laws.”⁹⁷ The CRPD Committee recommended that denial of reasonable accommodation should be prescribed as a form of discrimination on the grounds of disability. The LPDPD provides a narrow conception of the denial of reasonable accommodation, but as discussed below, this falls short of Serbia’s obligations under international human rights law.

Victimisation

The LPD prohibits “calling to account” as a form of discrimination.⁹⁸ It is defined as follows:

*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.*⁹⁹

94 See above, note 24, Principle 5.

95 See above, note 25, CRPD Committee, Para 18(d), provides that “[h]arassment” is a form of discrimination when unwanted conduct related to disability or other prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”

96 CRPD, Article 2.

97 CRPD Committee, *Concluding observations: Serbia*, UN Doc. CRPD/C/SRB/CO/1, 23 May 2016, Para 9.

98 See above, note 54, Article 5.

99 *Ibid.*, Article 9.

This concept is similar to that of victimisation under international law refers to adverse treatment or adverse consequence as a reaction to a person's complaint or to proceedings which seek to enforce compliance with equality provisions.¹⁰⁰ The Declaration and a number of EU Directives specify that a state's legal system must protect individuals from victimisation.¹⁰¹ Defining victimisation as a form of discrimination is one means by which the legal system may protect individuals from the phenomenon; however, it is noted that the LPD does not completely incorporate the requirement under certain EU Directives regarding victimisation as it does not impose a positive obligation on employers to introduce the protection measures against victimisation,¹⁰² nor does it provide express protection from dismissal in the event of a complaint regarding discrimination.¹⁰³

Hate Speech

The LPD prohibits "hate speech" as a form of discrimination.¹⁰⁴ It is defined in Article 11 as follows:

*It is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.*¹⁰⁵

Article 11 is a broad provision that prohibits: (i) incitement of discrimination; (ii) incitement of hatred; and (iii) incitement of violence on the basis of a person or group of persons' protected characteristics.

Serbia has obligations under regional and international human rights law to respect, protect and fulfil the rights to equality and non-discrimination, as well as the right to freedom of opinion and expression.¹⁰⁶ As a party to the ICCPR, Serbia must guarantee the right to freedom of expression in Article 19 and any limitation on the right must comply with Article 19(3), namely that the restriction is "provided by law and necessary for respect of the rights or reputations of others, [or] for the protection of national security (...) public order, or (...) public health or morals."

100 See above, note 24, Principle 5.

101 *Ibid.*, Principle 19.

102 See above, note 86, Council Directive 2000/43/EC, Article 7, and Council Directive 2000/78/EC, Article 11.

103 See above, note 12, p. 11.

104 See above, note 54, Article 5.

105 *Ibid.*, Article 11.

106 See, for example: ECHR, Article 10 (freedom of expression) and Article 14 (non-discrimination); and Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. No. 177, 2000, Article 1 (non-discrimination); ICCPR, Article 19 (freedom of opinion and expression) and Article 26 (non-discrimination); ICESCR, Article 2(2) (non-discrimination); CEDAW, Article 2(b) (non-discrimination); ICERD, Article 2(1)(d) (non-discrimination); CRPD Article 5(2) (non-discrimination).

At the same time, Serbia is required to comply with Article 20(2) ICCPR which requires the prohibition by law of “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Further, Article 4(a) ICERD require states to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts.”

The HRC has emphasised the important relationship between Article 20 and Article 19 ICCPR,¹⁰⁷ and that any prohibition on “hate speech” for the purposes of Article 20(2) must meet the requirements of Article 19(3).¹⁰⁸ In recent years, the HRC and the Committee on the Elimination of Racial Discrimination (CERD) have issued guidance on states parties’ obligations with respect to incitement to hatred and incitement to violence under their respective covenants.¹⁰⁹ The CERD has commented, in particular, on the important interrelationship between the rights to non-discrimination and freedom of expression.¹¹⁰ The UN Special Rapporteur on Freedom of Opinion and Expression has recognised “[t]he continuing challenge faced in identifying ways to reconcile the need to protect and promote the right to freedom of opinion and expression, on the one hand, and to combat intolerance, discrimination and incitement to hatred, on the other.”¹¹¹

The prohibition of incitement to discrimination in Article 11 of the LPD restricts the right to freedom of expression but is arguably justified under Article 19(3) ICCPR on the basis that it is necessary for “respect of the rights (...) of others”, namely the right to non-discrimination protected in Articles 26 and 2(1) ICCPR. Further, it is consistent with the approach adopted by the CESCRC to define incitement to discrimination as a form of discrimination.¹¹²

Similarly, the prohibition on incitement to violence in Article 11 of the LPD is arguably a justified limitation on the right to freedom of expression under Article 19(3) ICCPR. International best practice requires states to “take all appropriate action to penalise, prevent and deter” “incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground.”¹¹³ However, it is noted that Article 11 may benefit from greater clarity regarding the definition of violence, including whether such

107 HRC, *General comment No. 34: Article 19: Freedoms of opinion and expression*, UN Doc. CCPR/C/GC/34, 2011, Paras 50–52.

108 *Ibid.*, Para 50.

109 *Ibid.*; CERD, *General recommendation No. 35: Combating racist hate speech*, UN Doc. CERD/C/GC/35, 2013.

110 See, for example: *ibid.*, HRC, Paras 50–52 and CERD, Para 28, which provides that “[t]he protection of persons from racist hate speech is not simply one of opposition between the right to freedom of expression and its restriction for the benefit of protected groups; the persons and groups entitled to the protection of the Convention also enjoy the right to freedom of expression and freedom from racial discrimination in the exercise of that right. Racist hate speech potentially silences the free speech of its victims.”

111 See above, note 36, Para 3.

112 See above, note 25, CESCRC, Para 7.

113 See above, note 24, Principle 7.

violence must be imminent.¹¹⁴ Further, a key question arises as to the inclusion of this Article in a piece of civil legislation as opposed to within the criminal legal framework.

The prohibition on incitement of hatred *per se* in Article 11 is problematic in terms of freedom of expression. The provision does not require that the hatred lead to discrimination, hostility or violence (such as required under Article 20(2) ICCPR),¹¹⁵ and, as such, it may be difficult to argue that it is a necessary restriction on the right to freedom of expression for the purposes of Article 19(3) ICCPR.

Association for the Purpose of Exercising Discrimination

Finally, the LPD prohibits “associating for the purpose of exercising discrimination” as a form of discrimination.¹¹⁶ It is defined as follows:

*It is forbidden to associate for the purpose of exercising discrimination; that is, this Law prohibits activities of organisations or groups that are aimed at violating freedoms and rights guaranteed by the Constitution, rules of international law and the law, or at inciting nationally, racially, religiously or otherwise motivated hatred, divisions or enmity.*¹¹⁷

As a party to the ICCPR, Serbia is required to protect the right to freedom of association under Article 22 of the Covenant, and any limitation on the right must meet the requirements specified in Article 22(2), namely that the limitation is “prescribed by law” and “necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

It is notable that the CERD has emphasised that Article 4(b) ICERD requires that “racist organizations which promote and incite racial discrimination be declared illegal and prohibited.”¹¹⁸ However, the Committee have also warned against the adoption of overly broad provisions, which may have the effect of being used against discriminated minorities.¹¹⁹ Both the CERD and the HRC have noted concern at broadly drafted criminal law provisions that may have the effect of violating expression or association rights.¹²⁰ The UN Special Rap-

114 See above, note 36, Para 46, which provides that “real and imminent danger of violence resulting from the expression” is “essential” when determining whether expression ought to be prohibited pursuant to Article 20(2) ICCPR.

115 See above, note 36, Para 43.

116 See above, note 54, Article 5.

117 *Ibid.*, Article 10.

118 See above, note 110, CERD, Para 21.

119 *Ibid.*, Para 20.

120 See above, note 108, Para 34.

porteur on the promotion and protection of the right to freedom of opinion and expression has further noted concern at laws criminalising the promotion of religious or racial “division”; rather than the more narrowly defined “incitement of hatred”.¹²¹ The expansive wording of Article 10 leaves room for discriminatory or arbitrary application.

Further Elaboration on “Forms” of Discrimination under the LPD

In addition to those forms of discrimination, the LPD contains two additional categories of discrimination, namely:

- “Severe forms of discrimination” (Article 13); and
- “Special cases of discrimination” (Part III of the LPD).

The purpose of Article 13 and Part III of the LPD appears to be to elaborate on certain manifestations of discrimination which otherwise already fall within one of Articles 6 to 12. However, the effect in many cases is to introduce confusion into the definition of discrimination and duplication.

Article 13 defines the following as “severe forms of discrimination”:

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

Article 13 introduces some confusion into the definition of discrimination. It incorrectly terms as “forms of discrimination” factors that may be present in relation to any of the existing forms of discrimination, defined in Articles 6 to 12 of the LPD. For example, Articles 13(5), (6) and (7) refer to discrimination against a person on multiple grounds, discrimination that is repeated or results in “severe consequences” for the individual. While it is consistent with interna-

¹²¹ See above, note 36, Paras 51–52.

tional law to include protection from discrimination on multiple grounds,¹²² none of these are separate “forms” of discrimination. Nor is multiple discrimination inherently more severe than discrimination on the ground of a single protected characteristic. Further, Article 13(4) refers to offences which should be (and are already) regulated by Serbia’s criminal law rather than civil anti-discrimination law (“slavery, trafficking in human beings, apartheid, genocide, ethnic cleansing”). It is the criminal law, rather than the LPD, in which bias-motives for crimes should be addressed, as discussed in Part 2.2.3 below. Finally, despite the reference to “severe” forms of discrimination, Article 13 does not in fact impose any additional sanctions for violations of the provision.

Part III of the LPD refers to “special cases of discrimination”.¹²³ Four of its Articles outline particular areas of life in which discrimination is prohibited, and nine refer to discrimination on certain grounds or against certain groups, namely: sex;¹²⁴ sexual orientation;¹²⁵ age;¹²⁶ children;¹²⁷ “national minorities”;¹²⁸ political opinion and membership of a political party or trade union;¹²⁹ disability;¹³⁰ and health status.¹³¹

The purpose and effect of Part III are confusing and the approach it takes inconsistent. It conflates references to particular aspects of the scope of the LPD’s protection from discrimination i.e. the areas of life in which discrimination is prohibited, with Articles which elaborate on the right to non-discrimination with respect to certain groups. This arguably creates confusion. Further, it is unclear upon what basis certain protected characteristics e.g. gender and sexual orientation, have been singled out for elaboration in this section and others not.

Scope of Application

The LPD imposes obligations on both state and non-state actors to respect the right to non-discrimination, consistent with international law¹³² and best practice.¹³³ Article 4 of the LPD provides that “everyone shall be obligated to respect

122 See above, note 25, CESCR, Para 17 and CRPD Committee, Para 19, which provides that “[d]iscrimination can be based on a single characteristic, such as disability or gender, or on multiple and/or intersecting characteristics”; see above, note 45, CEDAW Committee, Para 18.

123 See above, note 54, Articles 15-27.

124 *Ibid.*, Article 20.

125 *Ibid.*, Article 21.

126 *Ibid.*, Article 23.

127 *Ibid.*, Article 22.

128 *Ibid.*, Article 24.

129 *Ibid.*, Article 25.

130 *Ibid.*, Article 26.

131 *Ibid.*, Article 27.

132 See above, note 43, HRC, *General Comment No. 18*, Para 12.

133 See above, note 24, Principle 9.

the principle of equality, that is to say, the prohibition of discrimination.” The term “everyone” is defined in Article 2(2) as follows:

*[T]he terms “person” and “everyone” shall be used to designate 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, **as well as any legal entity** registered or operating on the territory of the Republic of Serbia (emphasis added).*

The right to bring civil proceedings under Article 41 of the LPD is not limited to any particular class of duty-bearers. Similarly, a complaint regarding a violation of the LPD may be lodged with the Commissioner against any “person”.¹³⁴

The areas of life in which discrimination must be prohibited have been elaborated upon by UN treaty bodies and in the Declaration. The HRC in General Comment No. 18 indicated that Article 26 ICCPR “prohibits discrimination in law or in fact in any field regulated and protected by public authorities”.¹³⁵ Principle 8 of the Declaration provides that the right to equality, which includes the right to non-discrimination, “applies in all areas of activity regulated by law”.

Part III of the LPD specifically prohibits discrimination in a number of areas of activity, as outlined in **Table 2A**. This includes: discrimination by a public official in a public administration organ;¹³⁶ in labour relations;¹³⁷ in the provision of public services, and use of public premises and public spaces;¹³⁸ in education;¹³⁹ and in the provision of health care services.¹⁴⁰ The LPD does not expressly prohibit discrimination in the provision of goods and services more broadly, such as in retail, hospitality, entertainment, accommodation and housing industries, and public housing;¹⁴¹ however, decisions of the Commissioner have determined that the prohibition applies in such areas.¹⁴²

134 This is based on a reading of the provisions of the LPD, for example: see above, note 54, Article 37 which provides that the Commissioner shall establish the facts of the case, including by taking statements from “the person against whom the complaint was lodged”, and Article 39, which refers to “the person against whom the complaint was submitted”.

135 See above, note 43, HRC, *General Comment No. 18*, Para 12 (emphasis added).

136 See above, note 54, Article 50.

137 *Ibid.*, Article 51.

138 *Ibid.*, Article 52.

139 *Ibid.*, Article 54.

140 *Ibid.*, Article 60.

141 See above, note 12, p. 8.

142 See, for example: Commissioner for Protection of Equality, *Regular Annual Report for 2012, 2013*, p. 79, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/cpe_annual_report_2012.pdf, whereby the Commissioner reported that: “A lawsuit was brought on 2nd October 2012 against the entrepreneur M. A., the owner of the “P. C.” shop, for this catering establishment refused to serve a group of young persons with disability. The First Basic Court in Belgrade passed a decision on 22nd January 2013, which accepted the request of the Commissioner for Protection of Equality contained in the lawsuit in its entirety.”

Exceptions to the Application of the LPD

There are a number of express exceptions to the application of the LPD.

Article 16 provides that direct discrimination against a prospective employee on the ground of a protected characteristic is permitted if that characteristic is a “genuine and decisive precondition for performing the said job” and “the objective to be achieved is justified”. This is broadly in line with international best practice in this area, which provides for exceptions where there is a “genuine occupational requirement” for a prospective employee to have certain particular protected characteristics which are inherent to a person’s ability to perform a certain role.¹⁴³

Article 18 of the LPD provides a broad exemption to the application of the Act for the conduct of religious officials:

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.

Under the treaties to which Serbia is a party, the right to freedom of thought, conscience and religion is not an unlimited right; it may be subject to “such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹⁴⁴ The effect of Article 18 of the LPD is to permit discrimination, including direct discrimination, by religious officials on any grounds provided that the conduct is “in keeping with a religious doctrine, beliefs or the objectives of churches and religious communities entered in the register of religious communities.” The broad permission for direct discrimination is not consistent with international best practice which provides that direct discrimination may be permitted “only very exceptionally, when it can be justified against strictly defined criteria”.¹⁴⁵

Finally, Article 25 of the LPD provides that it is prohibited to discriminate against an individual or group on the grounds of political belief, and membership or non-membership of a political party or trade union. However, it provides a broad exception to this right to non-discrimination as follows:

Limitations pertaining to persons performing certain state functions, as well as limitations necessary to prevent advocating or

143 See above, for example, note 86: Council Directive 2000/78/EC, Article 4(1).

144 ICCPR, Article 18(3); See also: ECHR, Article 9(2) which provides that “[f]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

145 See above, note 24, Principle 5; see also, note 12, p. 8.

pursuing fascist, Nazi or racist activities, prescribed in accordance with the law, shall not be considered to constitute discrimination as referred to in paragraph 1 of this Article.

This exception is vague and ill-defined. It is not clear what type of discrimination is permitted in relation to “persons performing certain state functions”, why such discrimination is necessary and justified, nor the type of persons whom the provision would apply to. It is similarly unclear what type of discrimination on the ground of political belief or other membership is necessary to “prevent advocating or pursuing fascist, Nazi or racist activities”. This exception is overbroad and arguably inconsistent with the exceptional circumstances in which direct discrimination may be justified under the Declaration.¹⁴⁶

Positive Action

As outlined with respect to the Constitution, Principle 3 of the Declaration provides that “to be effective, the right to equality requires positive action”, which includes “a range of legislative, administrative and policy measures to overcome past disadvantage and to accelerate progress towards equality of particular groups.”¹⁴⁷

It is welcome that the LPD permits positive action measures to be taken. However, the LPD falls short of international best practice by failing to *require* that such measures be taken in order to promote the right to equality. Article 14 of the LPD provides:

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.

2.2.2.3 The Law on the Prevention of Discrimination of Persons with Disabilities

The LPDPD was adopted on 17 April 2006 and entered into force on 1 January 2007. The LPDPD was the first anti-discrimination law in Serbia, adopted three years prior to the LPD. It was also adopted prior to Serbia signing the CRPD in December 2007 and ratifying it in 2009. The LPDPD consolidated existing prohibitions on discrimination against persons with disabilities which were previously included in a piecemeal manner in a number of different laws, and imposes duties on state actors to advance equality and social inclusion of persons with disabilities.¹⁴⁸ However, as noted by the CRPD Committee in its most recent Concluding Observations, it does not explicitly define the concept of reasonable accommodation nor recognise that denial

¹⁴⁶ See above, note 24, Principle 5.

¹⁴⁷ *Ibid.*, Principle 3.

¹⁴⁸ See above, note 55, Article 1.

of such accommodation is a form of discrimination,¹⁴⁹ as required by Article 5(3) of the CRPD.

Serbia's comprehensive anti-discrimination law (the LPD) provides largely similar coverage to the LPDPD. The LPD expressly prohibits discrimination on the ground of disability,¹⁵⁰ and provides that discrimination against persons with disabilities is a "special case of discrimination".¹⁵¹ The main difference is that misdemeanour proceedings may be available for slightly more specific forms of discrimination affecting persons with disabilities under the LPDPD, as Part VIII of the LPD does not identify discrimination against persons with disabilities specifically as a basis for misdemeanour proceedings (unlike certain other grounds of discrimination).

The LPDPD contains two key enforcement mechanisms: civil proceedings which may be initiated by "a person with disabilities who has been discriminated against" or "a person accompanying the person with disabilities" where that person has experienced discrimination;¹⁵² and misdemeanour proceedings in which fines may be imposed with respect to discrimination against persons with disabilities in particular activities, as outlined in **Table 2A**.¹⁵³ These are discussed in Part Three of the study.

The LPDPD does not expressly protect the right to equality as a free-standing right; however, Article 2 provides that the Act is based on certain principles, including "respect for human rights and dignity of persons with disabilities", "inclusion of persons with disabilities in all spheres of social life on an equal basis", and "equal rights and obligations".

Article 3(1) of the LPDPD defines "persons with disabilities" as follows:

[P]ersons with a congenital or acquired physical, sensory, intellectual or emotional disabilities who, due to social or other impediments, do not have any or have restricted opportunities to engage in social activities at an equal level with others, irrespective of whether they are capable of performing the aforementioned activities with the use of some technical aids or support services.

By referring to the existence of "social or other impediments" which may deny or restrict opportunities for persons with disabilities, this definition reflects

149 See above, note 98, Para 9.

150 See above, note 54, Article 2(1).

151 *Ibid.*, Article 26.

152 See above, note 55, Article 42.

153 See above, note 55: this includes discrimination arising in respect of: membership of associations (Article 46); provision of public services (Article 47); health care services (Article 48); some aspects of education (Article 49), including harassment in education (Article 50); public or private transport (Article 51), including harassment in the context of transport (Article 52); and aspects of legal services (Article 52a).

the “human rights model of disability”, as required by international human rights law and exemplified in the CRPD. The human rights model of disability “recognises that disability is a social construct”,¹⁵⁴ and requires the state to address the “attitudinal and environmental barriers” faced by persons with disabilities,¹⁵⁵ and thus ensure the full and effective participation of persons with disabilities in society. The CRPD uses the following definition of persons with disabilities:

*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*¹⁵⁶

Given the incorporation of the human rights model of disability in the definition of persons with disabilities, it is particularly unfortunate that the Act does not operationalise the duty on state and non-state actors to make reasonable accommodation to ensure the right to equality of persons with disabilities.

The LPDPD is structured in a similar manner to the LPD: the definitions of discrimination and forms of discrimination are contained in Parts One and Two of the Act; Part Three outlines a number of “special cases of discrimination” in which the prohibition of discrimination in certain areas is elaborated upon; Part Four imposes duties on public authorities to take positive action measures to advance the right to equality of persons with disabilities; and Parts Five and Six of the Act relate to enforcement.

The Act does not contain an overarching express prohibition on discrimination. Article 4 provides that “public authorities shall ensure that persons with disabilities may enjoy the rights and freedoms without discrimination”. Part Three of the Act (“special cases of discrimination”) then contains specific prohibitions on discrimination in a range of activities, applying to both state and non-state actors, as explained below.

Article 3(2) defines “discrimination and discriminatory treatment” as follows:

[A]ny differentiating or unequal treatment and/or omission (excluding, restricting or giving priority) relating to persons or groups, as well as to their family members, or persons close to them, in an open or covert manner, on the grounds of disability or related reasons.

By referring to concepts of “differentiating”, “excluding”, “restricting” and “giving priority”, this definition is consistent with that used in the CEDAW,¹⁵⁷

154 See above, note 25, CRPD Committee, Para 9.

155 CRPD, Preamble, Para e.

156 *Ibid.*, Article 1.

157 CEDAW, Article 1.

the CERD¹⁵⁸ and the CRPD¹⁵⁹ as well as the definitions adopted by the HRC¹⁶⁰ and the CESCR¹⁶¹ when interpreting their respective covenants.

Article 3(2) expressly includes discrimination by association (“family members, or persons close to them”) in the same terms as the LPD, discussed above. However, there is no express protection against multiple discrimination or discrimination by perception as required by international human rights law.

Forms of Discrimination

Article 6(1) provides that, “[t]he forms of discrimination are direct and indirect discrimination, as well as violation of the principle of equal rights and obligations.”

The definitions of direct and indirect discrimination in Articles 6(2) and (3) are similar to those adopted in the LPD, and for this reason will not be analysed further. The definition of “violation of the principle of equal rights and obligations” in Article 7 mirrors Article 8 of the LPD, and the same concerns expressed apply equally here. It prohibits conduct that already falls within the definition of direct discrimination and provides a broad basis upon which such conduct may be justified, contrary to international best practice with respect to the justification of direct discrimination.¹⁶² While not expressly defined as “forms of discrimination”, Article 6 provides that the following conduct “also” amounts to discrimination: conduct amounting to victimisation;¹⁶³ and conduct amounting to incitement of discrimination,¹⁶⁴ as required by international best practice.¹⁶⁵

While Article 6(1) does not expressly define “harassment” as a form of discrimination, as required by international human rights law,¹⁶⁶ Article 6(4) provides that discrimination occurs “if the discriminated person is treated in an obviously humiliating way, solely or mainly because of his or her disability”. This definition

158 CERD, Article 1(1).

159 CRPD, Article 2.

160 See above, note 43, HRC, *General Comment No. 18*, Paras 6-7, which provide that “the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (emphasis added).

161 See above, note 25, CESCR, Para 7, which provides that: “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment” (emphasis added).

162 See the discussion in relation to LPD, Article 8 above.

163 See above, note 55, Article 6(4)(1).

164 *Ibid.*, Article 6(5).

165 For a summary of international best practice relating to victimisation and incitement to discrimination, see the discussion with respect to the LPD above.

166 We refer to the references cited with respect to the definition of harassment under the LPD above.

does not capture all the components of harassment as defined under international human rights law,¹⁶⁷ and international best practice.¹⁶⁸ In particular, it does not refer to “unwanted conduct” which has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile or offensive environment. Despite this limitation, it is notable that many provisions in Part Three of the LPDPD prohibit the “harassment” of persons with disabilities in a wide range of activities.¹⁶⁹ For example, in the context of health services, Article 17(4) provides:

Discrimination against persons with disabilities in the provision of health services is:

...

*4) Any harassment, insulting or disparaging of persons with disabilities during their stay in a health care institution because of their disability.*¹⁷⁰

A full list of the provisions in the LPDPD which prohibit harassment is provided in **Table 2A**.

The LPDPD does not impose a general duty to make reasonable accommodation as required under Article 5(3) of the CRPD, nor does it define denial of reasonable accommodation as a form of discrimination in Article 6(1) of the Act, as required under international human rights law.¹⁷¹ There are two narrowly defined provisions in the LPDPD which refer to the failure to make “technical adaptations” for persons with disabilities, as follows:

Discrimination on the grounds of disability with respect to [public] service availability includes particularly: (...) Refusal to perform the technical adaptation of a facility needed for the provision of services to users with disabilities.¹⁷²

*Discrimination on the grounds of disability in the field of employment is:(...)Refusal to perform the technical adaptation of the workplace, which would allow the efficient work of the person with disabilities, if the costs of adaptation are not borne by the employer or are not disproportionate in relation to the profits earned by the employer by employing the person with disabilities.*¹⁷³

167 See above, note 25, CRPD Committee, Para 18(d), which provides that “[h]arassment” is a form of discrimination when unwanted conduct related to disability or other prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.”

168 See above, note 24, Principle 5.

169 See above, note 55, Articles 11(3), 15, 17(4), 20, 26 and 29, as outlined in Table 2A.

170 *Ibid.*, Article 17(4).

171 We refer to the references cited with respect to denial of reasonable accommodation under the LPD above.

172 See above, note 55, Article 13(5)(3).

173 *Ibid.*, Article 22(4).

While the inclusion of these provisions is welcome, the duty to make “technical adaptations” is significantly narrower than the concept of reasonable accommodation, as defined under the CRPD and understood under Principle 13 of the Declaration.¹⁷⁴ The CRPD defines reasonable accommodation as:

*[N]ecessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.*¹⁷⁵

It is unclear whether “technical adaptations” extends beyond adaptations to the physical environment, which is why it is significantly narrower than the “modification and adjustment” required for reasonable accommodation.

Scope of Application

Article 2 of the LPDPD states that the legislation is based on the principle of “inclusion of persons with disabilities in *all spheres of social life* on an equal basis” (emphasis added). Part Three of the Act specifically prohibits discrimination in a wide range of areas of life, including education, health care services, employment and transportation, and these are not said to be limited to public sector services (with the exception of Article 13). These include:

- Proceedings before a public authority (Article 11);
- Admission to, and leadership of, associations (Article 12);
- Provision of public services and the use of public premises and spaces (Article 13), including “harassment” (Article 15);
- Discrimination in health care services (Article 17), including “harassment” (Article 17(2)(4));
- Discrimination with respect to “admission” to and “exclusion” from educational institutions (Article 18), and “harassment” (Article 20). However, of particular significance is the absence of any express requirement to ensure the reasonable accommodation of students with disabilities in education and denial of reasonable accommodation as a form of discrimination;
- Discrimination in employment and labour relations (Article 21), including “harassment” (Article 26);
- Discrimination in transportation (Article 27), including harassment (Article 29);

¹⁷⁴ See above, note 24, Principle 13, which provides that “[t]o achieve full and effective equality it may be necessary to require public and private sector organisations to provide reasonable accommodation for different capabilities of individuals related to one or more prohibited grounds. Accommodation means the necessary and appropriate modifications and adjustments, including anticipatory measures, to facilitate the ability of every individual to participate in any area of economic, social, political, cultural or civil life on an equal basis with others. It should not be an obligation to accommodate difference where this would impose a disproportionate or undue burden on the provider.”

¹⁷⁵ CRPD, Article 2.

- Discrimination related to marital and family relations (Article 30); and
- Discrimination of associations of persons with disabilities (Article 31).¹⁷⁶

The LPDPD provides that “public authorities” are expressly required to “ensure that persons with disabilities may enjoy the rights and freedoms without discrimination”.¹⁷⁷ There is no similar express statement regarding the responsibilities of non-state actors; however, the activities included in Part Three of the Act, in which discrimination is prohibited, are not limited to public sector activities (with the exception of Article 13); as such, the prohibition on discrimination applies equally to non-state actors operating in the contexts of employment, health care, education, and transport. It would, however, be preferable for the LPDPD to state expressly the areas of activity to which it applies and the persons who owe duties under the Act to ensure compliance with international law.¹⁷⁸

Positive Action

The LPDPD does not specify that positive action is a mandatory part of the right to equality, as required by international best practice.¹⁷⁹ Rather it provides that positive action measures – such as those which seek to “improve the position of persons with disabilities” or “eliminat[e] (...) the disadvantaged position of persons with disabilities” – do not constitute discrimination.¹⁸⁰ Part Four of the Act outlines a range of measures that must be adopted by public authorities, including local governments, “for the promotion of equality of persons with disabilities”. However, as discussed above, many of the measures arguably constitute reasonable accommodation and no sanctions apply for failure to take such measures.

2.2.2.4 The Law on Gender Equality

The LGE was adopted in 2009. It prohibits discrimination on the ground of gender in “any area”,¹⁸¹ as well as prohibiting discrimination on grounds of pregnancy, marital and family status in certain areas.¹⁸² It imposes duties on the state

176 See above, note 55, Articles 11–31.

177 *Ibid.*, Article 4.

178 We refer to the references cited in relation to the scope of application of the LPD above.

179 See above, note 24, Principle 3.

180 See above, note 55, Article 8.

181 See above, note 56, LGE, Article 4, which provides, in part, that “[g]ender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritizing) aimed at hindering, jeopardizing, preventing or denying exercising or enjoyment of human rights and freedoms to a person or a group of persons in the area of politics, economy, social, cultural, civil, family life or any other area.”

182 See above, for example, note 56, LGE, Article 16, which provides, in part, that: “[t]he absence from work because of pregnancy and parenthood must not be the ground for assigning a person to inadequate job and terminate the employment contract in accordance with the law regulating labor”, Article 26, which provides that, “[a]ll people are equal, irrespective of their family and marital status”, and Article 27, which provides that: “[m]arried couples and domestic partners are equal pursuant to law.”

and, most significantly, on many non-state actors to promote gender equality, some of which are enforced by fines and reporting obligations.¹⁸³

The LGE was adopted in the same year as Serbia's comprehensive anti-discrimination law (the LPD) and there is significant overlap between the two laws. The LPD also expressly prohibits discrimination on the ground of "gender"¹⁸⁴ and "marital and family status",¹⁸⁵ and provides that discrimination on the ground of gender is a "special case of discrimination"¹⁸⁶ to which misdemeanour proceedings apply,¹⁸⁷ in addition to the general right to initiate civil proceedings.¹⁸⁸ While the LGE elaborates on the prohibition of gender discrimination in specific areas such as employment, education and participation in public life, these are arguably already covered by the LPD, given its broad scope of application pursuant to Article 4 of the Act. The primary difference between the two laws are the demanding positive action measures that are included in the LGE to promote gender equality in Serbia, which are the most demanding positive action measures included in any legislation in Serbia.

The LGE contains two key enforcement mechanisms: civil proceedings which may be initiated by "any person whose rights or freedoms have been violated because he/she is a member of [a] certain sex";¹⁸⁹ and a regime of misdemeanour proceedings which apply to certain acts of discrimination, as outlined in **Table 2A**.¹⁹⁰ The enforcement of the LGE is discussed in Part Three of the study.

Article 2 of the LGE defines gender equality as follows:

*Gender equality means equal participation of women and men in **all fields of public and private sector**, in accordance with generally accepted rules of international law, recognized international treaties, the Constitution of the Republic of Serbia (hereinafter: the Constitution) and laws, **which are to be respected by all** (emphasis added).*

The LGE does not contain an overarching express prohibition on discrimination on the ground of gender. However, as above, Article 2 provides that persons in "all fields of public and private sector" must respect gender equality.

Article 4 defines "gender-based discrimination" as follows:

183 See references below under "positive action".

184 See above, note 54, Article 2.

185 *Ibid.*, Article 2.

186 *Ibid.*, Article 20.

187 *Ibid.*, Article 55.

188 The general right to initiate civil proceedings is provided under the LPD; see above, note 54, Article 41.

189 See above, note 56, LGE, Article 43.

190 *Ibid.*; this includes discrimination by educational institutions (Article 53), discrimination by employers (Article 54) and discrimination by media companies (Article 55).

Gender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritising) aimed at hindering, jeopardising, preventing or denying exercising or enjoyment of human rights and freedoms to a person or a group of persons in the area of politics, economy, social, cultural, civil, family life or any other area (emphasis added).

With the exception that Article 4 refers only to the *purpose* of conduct rather than also to its effect (in its reference to conduct that is “aimed at...”), the definition is otherwise consistent with the terms used in the CEDAW,¹⁹¹ the ICERD¹⁹² and the CRPD¹⁹³ as well as the definitions adopted by the HRC¹⁹⁴ and the CESCR¹⁹⁵ when interpreting their respective treaties. The Equal Rights Trust’s legal consultants have indicated that the omission of “effect” from the definition in Article 4 is likely the result of oversight in drafting, rather than deliberate omission, and has not arisen in practice.

Article 4 elaborates on the meaning of “unjustified” in the definition of discrimination, as follows:

Unjustified distinction, exclusion, limitation and treatment or other undertaken measures, within the meaning of this law, include in particular, if:

- 1) An undertaken measure is not justified by a lawful or legitimate aim;*
- 2) There is no proportion between the actions undertaken and the aim to be achieved by such actions.*

This is largely consistent with international best practice regarding the circumstances in which indirect discrimination may be justified; however, it does not reflect international best practice with respect to the justification of direct discrimination which may occur under exceptional circumstances, and “against strictly defined criteria”.¹⁹⁶

191 CEDAW, Article 1.

192 ICERD, Article 1(1).

193 CRPD, Article 2.

194 See above, note 43, HRC, *General Comment No. 18*, Paras 6-7, which provide that “the Committee believes that the term “discrimination” as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms” (emphasis added).

195 See above, note 25, CESCR, Para 7: which provides that “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Discrimination also includes incitement to discriminate and harassment” (emphasis added).

196 See above, note 24, Principle 5.

Forms of Discrimination

The LGE prohibits a number of forms of discrimination, as required by international law, including: “direct discrimination” (Article 5), “indirect discrimination” (Article 6), conduct amounting to victimisation (Article 4), and harassment (Article 10(6)). However, harassment is only expressly prohibited in the context of the workplace.¹⁹⁷ The LGE does not, however, define or prohibit denial of reasonable accommodation, multiple discrimination, discrimination by association or discrimination by perception.¹⁹⁸

Scope of Application

Article 4 of the LGE defines the areas of life in which discrimination is prohibited broadly to include: “politics, economy, social, cultural, civil, family life or any other area”.¹⁹⁹ The LGE specifically prohibits discrimination on the basis of gender in a number of areas of activity, including:

- Labour relations including: recruitment;²⁰⁰ promotion;²⁰¹ dismissal;²⁰² remuneration;²⁰³
- Social care;²⁰⁴
- Health care;²⁰⁵
- Educational and scientific institutions: admission; expulsion; assessment; scholarships; qualifications; professional training; promotion.²⁰⁶
- Right to vote and to stand for election;²⁰⁷ and
- Information released by the mass media.²⁰⁸

Positive Action

The LGE is unique among non-discrimination legislation in Serbia in that it imposes a large number of obligations on state and non-state actors to take

197 See above, note 54, Article 18.

198 We refer to the references cited above with respect to the LPD regarding the forms of discrimination that are required to be prohibited under international human rights law and best practice.

199 See above, note 56, LGE, Article 4, which provides that “[g]ender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritizing) aimed at hindering, jeopardizing, preventing or denying exercising or enjoyment of human rights and freedoms to a person or a group of persons in the area of politics, economy, social, cultural, civil, family life or any other area” (emphasis added).

200 *Ibid.*, Article 15.

201 *Ibid.*, Article 16.

202 *Ibid.*

203 *Ibid.*, Article 17.

204 *Ibid.*, Article 23.

205 *Ibid.*, Article 24.

206 *Ibid.*, Article 30.

207 *Ibid.*, Article 36.

208 *Ibid.*, Article 41.

measures to advance gender equality. In this regard, the LGE is in line with international best practice which provides that it is necessary to take measures “to overcome past disadvantage and (...) accelerate progress towards equality of particular groups” in order to make the right to equality effective.²⁰⁹ Of particular significance is that employers may be fined if they do not comply with some of these duties,²¹⁰ and certain duties involve the publication of data to enable public scrutiny.²¹¹

The positive action measures imposed by the LGE include the following:

- *Duty to collect data that is disaggregated by gender.* This is applicable to the state²¹² and “every employer”.²¹³
- *Duty to create a plan to promote equal gender representation.* This is applicable to employers with more than 50 employees,²¹⁴ political parties²¹⁵ and trade unions.²¹⁶ Employers must submit the plan and an annual report on its implementation to the ministry in charge of gender equality issues, and failure to do so can result in a fine.²¹⁷ Political parties and trade unions must publish their plans on their official websites.²¹⁸ In addition, political parties whose candidates are elected as MPs or councilors have to submit their plans to the Gender Equality Committee of the National Assembly.²¹⁹
- *Duty to “make efforts” to ensure equal gender representation in practice.* A number of provisions impose an obligation – generally expressed in terms of “making efforts” – to ensure equal gender representation. The Equal Rights Trust’s legal consultants indicate that there has been no judicial interpretation of this term to date. Such a duty is imposed on: employers with respect to persons participating in vocational training in employment;²²⁰ unions and associations of employers with respect to their negotiating committees;²²¹ state bodies with respect to persons

209 See above, note 24, Principle 3.

210 See above, note 56, LGE, Article 54(1), (2) and (8), which provide that “[a] fine ranging from RSD 10,000 to 100,000 shall be imposed for the violation to the employer having the capacity of a legal entity if: (1) It does not make a plan of measures for the provision of equal gender representation as referred to in Article 13, paragraph 1; (2) It does not prepare an annual report on the implementation of the plan of measures as referred to in Article 13, paragraph 2; (...) (8) It does not comply with the provisions on equal gender representation when arranging for vocational training or training (Article 19).”

211 See, for example, *ibid.*, Article 35.

212 *Ibid.*, Article 40.

213 *Ibid.*, Article 12.

214 *Ibid.*, Article 13.

215 *Ibid.*, Article 35.

216 *Ibid.*

217 *Ibid.*, Articles 54(1)-(2).

218 *Ibid.*, Article 35.

219 *Ibid.*

220 *Ibid.*, Article 19.

221 *Ibid.*, Article 21.

nominated for positions in management in the public service;²²² sports organisations with respect to their management bodies;²²³ the appointment of candidates for the president of the Republic, members of parliament and councillors;²²⁴ the appointment of candidates for elections for all positions in the “public power authorities, financial and other institutions”;²²⁵ and the election or appointment of delegations representing the Republic of Serbia internationally.²²⁶ It is not clear how such obligations are monitored in practice. The obligation on employers is the only one that results in a fine due to non-compliance.²²⁷

- *Duty to incorporate gender equality into school curricula and teaching materials.* The LGE provides that, “[e]ducation about gender equality is an integral part of pre-school, primary, secondary and university education”²²⁸ and requires state bodies to ensure that “the policy of equal opportunities for women and men is implemented” with respect to curricula and teaching materials.²²⁹
- *Duty to promote awareness of gender equality.* The “mass media” are required to “develop the awareness of gender-based equality in their programs as well as undertake adequate measures to amend social and cultural patterns (...) which condition stereotypes, prejudices and discrimination based on the idea of inferiority and/or superiority of either of the sexes.”²³⁰
- *Duty to monitor judicial proceedings under the LGE.* Courts are obliged to forward all final decisions in cases of gender-based discrimination to the ministry in charge of gender equality issues, and the ministry is obliged to keep records of all final decisions on gender-based discrimination.²³¹

The enforcement mechanisms under the LGE are discussed in detail in Part 3 of the study.

2.2.3 Non-Discrimination Provisions in Other Legal Fields

Civil Law

There are a large number of non-discrimination provisions or provisions guaranteeing “equal rights” in various areas of civil law in Serbia. In **Annex 3**, we

222 *Ibid.*, Articles 14 and 32.

223 *Ibid.*, Article 34.

224 *Ibid.*, Article 37.

225 *Ibid.*

226 *Ibid.*, Article 38.

227 *Ibid.*, Article 54(8), which provides that “[a] fine ranging from RSD 10,000 to 100,000 shall be imposed for the violation to the employer having the capacity of a legal entity if: [i]t does not comply with the provisions on equal gender representation when arranging for vocational training or training (Article 19).”

228 *Ibid.*, Article 31.

229 *Ibid.*

230 *Ibid.*, Article 41.

231 *Ibid.*, Article 51.

provide a list of civil laws containing anti-discrimination provisions. In most cases the non-discrimination guarantees, discussed below and listed in **Annex 3**, reiterate the protection provided under the LPD and, in practice, are used in combination with the three specific anti-discrimination laws in litigation. For this reason, we will not analyse these provisions in detail.

The Law on the Protection of the Rights and Freedoms of National Minorities is a specific law relating to the rights of persons belonging to national minorities which was adopted in 2003.²³² Articles 1, 3 and 4 prohibit discrimination against persons belonging to national minorities. However, the law is not specific to non-discrimination and protects many other rights, such as the right to freely express the national minority to which one belongs, the right to co-operate with other members belonging to their minority in the country and abroad, the right of a national minority member to use their own language, among others. The protection for the right to non-discrimination offered by the Law on the Protection of the Rights and Freedoms of National Minorities is supplementary to that provided in the Constitution (which guarantees the right to equality of persons belonging to national minorities,²³³ and prohibits discrimination on the ground of “national origin”²³⁴) and the LPD (which prohibits discrimination on the ground of “national affiliation or ethnic origin”²³⁵ and provides that discrimination against national minorities is a “special case” of discrimination²³⁶).

In other civil laws, discrimination is specifically prohibited in the fields of health care, health protection and health insurance, including anti-discrimination provisions in laws on patients’ rights and on protection of persons with mental disabilities.²³⁷ Discrimination is prohibited at all levels of education, from pre-school education to high education, as well as in the field of education of adults.²³⁸

232 Law on the Protection of the Rights and Freedoms of National Minorities, “Official Gazette of the SRY”, No. 11/2002; “Official Gazette of the Serbia and Montenegro”, No. 1/2003 – the Constitutional Charter; “Official Gazette of the Republic of Serbia”, Nos. 72/2009 and 97/2013 – decision of the CC.

233 See above, note 38, Article 14, which provides that the state shall guarantee “special protection to national minorities for the purpose of exercising full equality and preserving their identity”, and, Article 76, which provides that “[p]ersons belonging to national minorities shall be guaranteed equality before the law and equal legal protection.”

234 *Ibid.*, Article 21.

235 See above, note 54, Article 2(1).

236 *Ibid.*, Article 24.

237 Law on Health Protection, “Official Gazette of the Republic of Serbia”, Nos. 107/05, 72/09- other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15; Law on Health Insurance, “Official Gazette of the Republic of Serbia”, Nos. 107/2005, 109/2005 – correction, 57/2011, 110/2012 – decision of the CC, 119/2012, 99/2014, 123/2014, 126/2014 – decision of the CC, 106/2015 and 10/2016 – other law; Law on the Protection of Persons with Mental Disabilities, “Official Gazette of the Republic of Serbia”, No. 45/13; Law on Patients’ Rights, “Official Gazette of the Republic of Serbia”, No. 45/13; Law on Public Health, “Official Gazette of the Republic of Serbia”, No. 15/16.

238 Law on Foundations of the Education System, “Official Gazette of the Republic of Serbia”, Nos. 72/2009, 52/2011, 55/2013, 35/2015 – auth. interpretation, 68/2015 and 62/2016 – decision of the CC; Law on Preschool Education, “Official Gazette of the Republic of Serbia”, No. 18/2010; Law on Primary Education, “Official Gazette of the Republic of Serbia”, No. 55/13; Law on Secondary Education, “Official Gazette of the Republic of Serbia”, No. 55/13; Law on Education of Adults, “Official Gazette of the Republic of Serbia”, No. 55/13; Law on High Education, “Official Gazette of the Republic of Serbia”, Nos. 76/2005, 100/2007 – auth. interpretation, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015 – auth. interpretation, 68/2015 and 87/2016.

There are also several by-laws related to discrimination, such as by-laws prescribing detailed criteria for recognising discrimination in educational institutions, and by-laws regulating the introduction of special measures to promote the enrolment of Roma students in high school for the purpose of achieving full equality.²³⁹

Discrimination is prohibited in employment and labour relations under several specific laws relating to employment, insurance in the event of unemployment, labour relations, workplace health and safety, and the prevention of abuse at work.²⁴⁰ There is also a special law on professional rehabilitation and employment of persons with disabilities, which contains a set of anti-discrimination provisions and prescribes quotas for employment of persons with disabilities.²⁴¹ However, this does not provide an individual the right to claim reasonable accommodation.²⁴²

Discrimination is prohibited in the areas of social security, including housing and social housing, pensions and disability insurance.²⁴³ In addition, anti-discrimination provisions are provided in laws regulating state administration and local government, the security sector, access to goods and services, including consumer protection, as well as in media, public information and public advertising laws.²⁴⁴ Furthermore, some anti-discrimination provisions are contained

239 Rulebook on criteria and procedures for Roma student high school enrolment under more favourable conditions for the purpose of achieving full equality, "Official Gazette of the Republic of Serbia", No. 12/2016; Rulebook on criteria and procedures for high school enrolment under more favourable conditions for the purpose of achieving full equality of those students who have completed elementary school education as adults, "Official Gazette of the Republic of Serbia", No. 42/2016; Rulebook on detailed criteria for detecting discrimination by staff members, children, students or third party in an educational institution, "Official Gazette of the Republic of Serbia", No. 22/2016; Rulebook on the manner and procedure for giving expert assessment and providing expert opinion on the quality of draft textbooks, manuals and teaching materials, as well as approved teaching materials, teaching aids, didactical tool and didactical play tools, "Official Gazette of the Republic of Serbia", No. 75/2016.

240 Labour Law, "Official Gazette of the Republic of Serbia", Nos. 24/05, 61/05, 54/09, 32/2013, 75/2014 and 13/2017 – decision of the CC; Law on Employment and Insurance in Case of Unemployment, "Official Gazette of the Republic of Serbia", Nos. 36/09, 88/2010 and 38/2015; Law on Prevention of Mobbing (Abuse at Work), "Official Gazette of the Republic of Serbia", No. 36/2010; Law on Safety and Health at Work, "Official Gazette of the Republic of Serbia", Nos. 101/05 and 91/15.

241 Law on Professional Rehabilitation and Employment of Persons with Disabilities, "Official Gazette of the Republic of Serbia", Nos. 36/09 and 32/2013.

242 See above, note 12, p. 43.

243 Law on Social Protection, "Official Gazette of the Republic of Serbia", No. 24/2011; Law on Housing and Maintenance of Buildings, "Official Gazette of the Republic of Serbia", No. 104/2016; Law on Pension and Disability Insurance, "Official Gazette of the Republic of Serbia", Nos. 34/2003, 64/2004 – decision of the CC, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – decision of the CC, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014 and 142/2014; Law on Contributions for Mandatory Social Insurance, "Official Gazette of the Republic of Serbia", Nos. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012 – adjusted amount in dinars, 8/2013 – adjusted amount in dinars, 47/2013, 108/2013, 6/2014 – adjusted amount in dinars, 57/2014, 68/2014 – other law, 5/2015 – adjusted amount in dinars, 112/2015, 5/2016 – adjusted amount in dinars and 7/2017 – adjusted amount in dinars.

244 Law on State Administration, "Official Gazette of the Republic of Serbia", Nos. 79/2005, 101/2007, 95/2010 and 99/2014; Law on Local Self-Government, "Official Gazette of the Republic of Serbia", Nos. 129/2007, 83/2014 – other law and 101/2016 – other law; Law on the Serbian Army, "Official Gazette of the Republic of Serbia", Nos. 116/2007, 88/2009, 101/2010 – other law, 10/2015 and 88/2015 – decision of the CC; Law on Defense, "Official Gazette of the Republic of Serbia", No. 116/2007, 88/2009,

in laws regulating public gathering and association, culture, sport, youth, nationality, citizenship, immigration, national minorities, churches and religious communities.²⁴⁵ Finally, discrimination is prohibited in family law legislation.²⁴⁶

Criminal Law

The Criminal Code of the Republic of Serbia (Criminal Code) is the main legal instrument regulating criminal justice in Serbia. It came into force in 2005 and has been subsequently amended several times.²⁴⁷

Hate Motivated Violence

International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, to offer comprehensive protection from discrimination, certain severe manifestations of discrimination may be dealt with under criminal law. Principle 7 of the Declaration states:

Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated

88/2009 – other law, 104/2009 – other law and 10/2015; Law on Police, “Official Gazette of the Republic of Serbia”, No. 6/2016; Law on Security-Information Agency, “Official Gazette of the Republic of Serbia”, Nos. 42/2002, 111/2009, 65/2014 – decision of the CC and 66/2014; Law on Military Security Agency and Military Intelligence Agency, “Official Gazette of the Republic of Serbia”, Nos. 88/2009, 55/2012 – decision of the CC and 17/2013; Law on Emergency Situations, “Official Gazette of the Republic of Serbia”, Nos. 111/2009, 92/2011 and 93/2012; Law on Reconstruction after Natural and Other Disasters, “Official Gazette of the Republic of Serbia”, No. 112/15; Law on Trade, “Official Gazette of the Republic of Serbia”, Nos. 53/2010 and 10/2013; Law on Electronic Commerce, “Official Gazette of the Republic of Serbia”, Nos. 41/2009 and 95/2013; Law on Energy, “Official Gazette of the Republic of Serbia”, No. 145/2014; Law on Consumer Protection, “Official Gazette of the Republic of Serbia”, Nos. 62/2014 and 6/2016 – other law; Insurance law, “Official Gazette of the Republic of Serbia”, No. 139/2014; Law on Public Information and Media, “Official Gazette of the Republic of Serbia”, Nos. 83/2014, 58/2015 and 12/2016 – auth. interpretation; Law on Electronic Media, “Official Gazette of the Republic of Serbia”, Nos. 83/2014 and 6/2016 – other law; Law on Public Service Media, “Official Gazette of the Republic of Serbia”, Nos. 83/2014, 103/2015 and 108/2016; Law on Advertising, “Official Gazette of the Republic of Serbia”, No. 6/2016; Law on Electronic Communications, “Official Gazette of the Republic of Serbia”, Nos. 44/2010, 60/2013 – decision of the CC and 62/2014; Law on Free Access to Information of Public Importance, “Official Gazette of the Republic of Serbia”, Nos. 120/2004, 54/2007, 104/2009 and 36/2010.

245 Law on Public Gatherings, “Official Gazette of the Republic of Serbia”, No. 6/2016; Law on Associations, “Official Gazette of the Republic of Serbia”, Nos. 51/2009 and 99/2011 – other law; Law on Culture, “Official Gazette of the Republic of Serbia”, Nos. 72/2009, 13/2016 and 30/2016 – correction; Law on Sports, “Official Gazette of the Republic of Serbia”, No. 10/2016; Law on Prevention of Violence and Inappropriate Behavior at Sports Events, “Official Gazette of the Republic of Serbia”, Nos. 67/2003, 101/2005 – other law, 90/2007, 72/2009 – other law, 111/2009 and 104/2013 – other law; Law on Youth, “Official Gazette of the Republic of Serbia”, No. 50/11; Law on Citizenship of the Republic of Serbia, “Official Gazette of the Republic of Serbia”, Nos. 135/2004 and 90/2007; Law on Asylum, “Official Gazette of the Republic of Serbia”, No. 109/2007; Law on Foreigners, “Official Gazette of the Republic of Serbia”, No. 97/2008; Law on Migration Management, “Official Gazette of the Republic of Serbia”, No. 107/2012; Law on National Minority Councils, “Official Gazette of the Republic of Serbia”, Nos. 72/2009, 20/2014 – decision of the CC and 55/2014; Law on the Churches and Religious Communities, “Official Gazette of the Republic of Serbia”, No. 36/2006; Law on Prevention of Domestic Violence, “Official Gazette of the Republic of Serbia”, No. 94/2016; Law on Financial Assistance to Families with Children, “Official Gazette of the Republic of Serbia”, Nos. 16/2002, 115/2005 and 107/2009.

246 Family Law, “Official Gazette of the Republic of Serbia”, Nos. 18/2005, 72/2011 and 6/2015.

247 Criminal Code of the Republic of Serbia (Criminal Code), “Official Gazette of the Republic of Serbia”, Nos. 85/2005, 88/2005 – correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016.

*with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.*²⁴⁸

Under international human rights law, states are obliged to take appropriate action to protect individuals from violence at the hands of public or private actors. This includes “respond[ing] appropriately to patterns of violence against categories of victims”, such as violence against human rights defenders, women, children, persons with disabilities, and sexual and gender minorities.²⁴⁹ States are required to prevent and prosecute such acts.²⁵⁰ Individuals whose rights have been violated are entitled to an effective remedy under Article 2(3) ICCPR.²⁵¹ To this end, states should “take account of the special vulnerability of certain categories of person”.²⁵²

Violence committed against an individual on account of their actual or perceived personal characteristics, or their association with a protected person or group, is a particularly serious form of discrimination, and appropriate action in such cases may differ from that to be taken in relation to similar cases committed without a discriminatory motive.²⁵³ For example, in order to give full effect to the principle of equality, a discriminatory motive in the incitement or commission of violence must be considered an aggravating factor during sentencing.²⁵⁴

The Criminal Code in Serbia provides strong protection against hate motivated violence. In 2012, Article 54a was inserted into the Criminal Code to provide that discrimination on certain specified grounds is an aggravating factor for a criminal offence. It provides:

*If a criminal offence is committed from hate based on race or religion, national or ethnic affiliation, sex, sexual orientation or gender identity of another, the court shall consider such circumstance as aggravating except when it [i.e. hatred] is stipulated as a feature of the criminal offence.*²⁵⁵

248 See above, note 24, Principle 7.

249 HRC, *General Comment No. 35: Liberty and Security of Person*, UN Doc. CCPR/C/GC/35, 2014, Para 9.

250 *Ibid.*

251 ICCPR, Article 2(3)(a).

252 See: HRC, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 15; Committee against Torture (CAT Committee), *General Comment No. 3: Implementation of Article 14 by States Parties*, UN Doc. CAT/C/GC/3, 2012, Para 29, whereby the CAT Committee recognised that in order to access redress mechanisms, “[s]pecial measures should be adopted to ensure access by persons belonging to groups who have been marginalised or made vulnerable.”

253 See, for example: ECtHR, *Identoba and Others v Georgia*, Application No. 73235/12, 12 May 2015, Para 67, whereby the ECtHR recognised that “treating violence and brutality with a discriminatory intent on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.”

254 See above, note 24, Principle 7.

255 Criminal Code, Article 54a (as amended by “Official Gazette of the Republic of Serbia”, No. 121/2012).

The large number of prohibited grounds of discrimination expressly included in Article 54a is to be welcomed; however, it is noted that the provision does not include several well-recognised grounds of discrimination under international human rights law, including disability and age.

Incitement to Hatred

In Part 2.2.2, we discussed Serbia’s obligations under international human rights law with respect to incitement to hatred, violence and discrimination. International best practice requires states to “penalise, prevent and deter” incitement to violence, as well as hate-motivated violence.²⁵⁶

Neither Article 20(2) ICCPR, nor Article 4(a) ICERD, nor the Declaration requires that states use criminal laws to prohibit the speech referred to therein. With respect to Article 20(2) ICCPR, the UN Special Rapporteur on Freedom of Opinion and Expression has expressly commented that:

*[W]hile States are required to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence under article 20 (2) of the Covenant, there is no requirement to criminalise such expression. The Special Rapporteur underscores that only serious and extreme instances of incitement to hatred, which would cross the seven-part threshold, should be criminalised.*²⁵⁷

The UN Special Rapporteur has recommended that a “seven-part threshold” test, developed by ARTICLE 19, an international civil society organisation (CSO), be adopted to determine the circumstances in which incitement to hatred should be criminalised.²⁵⁸ The factors included in the seven-part test include: the “intent of the speaker to incite discrimination, hostility or violence”, the “likelihood or probability of harm occurring”, and the “imminence of the acts called for by the speech”.²⁵⁹

With respect to Article 4(a) ICERD, the CERD has indicated that there is a high standard for the criminalisation of expression; it has stated that, “the criminalisation of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups.”²⁶⁰

Serbia’s Criminal Code contains a number of provisions that criminalise incitement to hatred, violence and discrimination, punishable with jail sentences of

256 See above, note 24, Principle 7.

257 See above, note 36, Para 47.

258 *Ibid.*, Para 45.

259 *Ibid.*

260 See above, note 110, CERD, Para 12.

up to eight years. In general, the provisions are broad in nature and do not refer to the imminence of the harm or the intention of the perpetrator. The broad nature of several criminal prohibitions means they fall short of the requirements of international law. For example, Article 317(1) of the Criminal Code provides that, “[w]hoever instigates or exacerbates national, racial or religious hatred or intolerance among the peoples and ethnic communities living in Serbia, shall be punished by imprisonment of six months to five years.” Similar concerns arise in relation to Article 387 of the Criminal Code which criminalises a range of forms of expression, including the propagation of “racial intolerance” and “racial discrimination” (without a requirement that violence is incited).²⁶¹

Criminalisation of Discrimination

International best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, as indicated above, the exceptions to this principle are certain severe manifestations of discrimination, such as discriminatory violence and incitement to discriminatory violence (albeit that criminalisation of the latter is subject to the permissible limitations on the right to freedom of expression).

Several provisions of the Criminal Code criminalise acts amounting to discrimination which extend well beyond these severe manifestations of discrimination. For example, Article 128 criminalises the act of “den[y]ing] or restrict[ing] the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties” on a number of expressly prohibited grounds of discrimination as well as “other personal characteristic”. The offence is punishable by up to three years’ imprisonment and up to five years’ imprisonment if committed by a public official. Article 387(1) is a similarly broad offence provision, criminalising the violation, on grounds related to the victim’s personal characteristics, of “fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties”, with a penalty of up to five years’ imprisonment.

These provisions are inconsistent with international best practice. There are a number of reasons why, with the exception of severe manifestations of discrimination, it is necessary to treat discrimination as a civil rather than criminal matter.

International law²⁶² and best practice²⁶³ provide that discrimination does not require intent or malicious motive on the part of the discriminator. By contrast, with the exception of strict liability offences (themselves controversial), criminal

261 Criminal Code, Article 387(3).

262 See, for example: HRC, *Broeks v the Netherlands*, Communication No. 172/1984, UN Doc. CCPR/C/OP/2, 1987, Paras 8.4 and 16; HRC, *Simunek v Czech Republic*, Communication No. 516/1992, UN Doc. CCPR/C/54/D/516/1992, 1995, Para 11.7; ECtHR, *D.H. and Others v Czech Republic*, Application No. 57325/00, 13 November 2007, Para 184.

263 See above, note 24, Principle 5.

law generally only punishes intentional acts.²⁶⁴ To criminalise conduct that under civil law does not require intention, and to impose penalties for contravention potentially in the absence of intention, is disproportionate and unjustified.

The effective functioning of equality law necessitates the adoption of specific rules relating to evidence and proof, including notably the transfer of the burden of proof,²⁶⁵ and requires the application of the civil standard of proof (balance of probabilities) rather than the higher criminal standard of proof (beyond reasonable doubt). This is discussed in Part Three of the study. Again, to apply criminal sanctions while applying these rules of evidence and proof would be an inappropriate response.

The focus of remedies and sanctions in equality law is on providing effective remedy for the victim of discrimination, rather than sanction or punishment for the party responsible. This is reflected in the right to an “effective remedy” in Article 2(3) ICCPR and Article 13 ECHR, as well as Principle 18 of the Declaration.²⁶⁶ In the case of *Velasquez Rodriguez*, the IACtHR provided the following explanation:

*States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.*²⁶⁷

Finally, this aim is better achieved through the application of civil law remedies, rather than through the punitive remedies available in the criminal law.

It is noted that Articles 128 and 387 of the Criminal Code also premise criminal liability on ill-defined standards such as “universally accepted rules of international law and international treaties” which makes compliance difficult and which is particularly inappropriate in the context of criminal offence provisions.

2.3 National Policies

At present, Serbia has two key national strategies related to the rights to equality and non-discrimination:

264 See, for example: Rome Statute of the International Criminal Court, Article 30(1), which provides that “[u]nless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.”

265 See above, for example, note 263, ECtHR, Para 177; CAT Committee, Chedi Ben Ahmed Karoui v Sweden, Communication No. 185/2001, UN Doc. A/57/44, 2002, Para 10; see above, note 25, CESCR, Para 40, which provides that “where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively.”

266 See above, note 24, Principle 18, which provides that “persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy.”

267 IACtHR, *Velasquez Rodriguez v Honduras*, Case Series C, No. 4, 29 July 1988, Para 134.

- The Strategy of Prevention and Protection Against Discrimination 2013-2018 (Anti-Discrimination Strategy),²⁶⁸ and its associated Action Plan for the Implementation of the Anti-Discrimination Strategy 2014-2018 (Anti-Discrimination Action Plan);²⁶⁹ and
- The National Strategy for Gender Equality 2016-2020 (Gender Equality Strategy), and its associated Action Plan for the Implementation of the Gender Equality Strategy 2016-2018 (Gender Equality Action Plan).²⁷⁰

Serbia has also adopted strategies to address discrimination in particular fields (e.g. security sector, education, social protection) and for different marginalised groups (e.g. Roma, violence against women). Each strategy contains special measures for the advancement of marginalised groups and fulfilment of their right to equality. A complete list of current strategies is contained in **Annex 4**.

We will not consider the implementation of these strategies in detail, but note that a number of issues have arisen with respect to the implementation of such strategies, including: the absence of an associated action plan (as in the case of the Ageing Strategy 2006–2015); inadequate funding; failure to adopt a new strategy once the time period has expired (for example, no further Ageing Strategy has been adopted since 2015); and overlap between different strategies.

The Anti-Discrimination Strategy is a very comprehensive document which the government adopted upon the recommendation of the Commissioner in 2011, in order to fulfil Serbia's international obligations in this area. It provides for public policy measures and instruments which must be implemented in order to reduce discrimination and advance equality in Serbia. The Anti-Discrimination Strategy refers to measures needed to advance the right to equality of all persons; however, it focuses in particular on improvement of nine groups who are identified as particularly vulnerable to discrimination, namely: women; persons with disabilities; older people; children; members of the LGBTI community; national minorities; refugees, IDPs and other migrant groups; people whose health condition may be the ground for discrimination; and members of religious communities.²⁷¹

The Anti-Discrimination Action Plan was adopted for the period 2014–2018. It prescribes specific measures and actions necessary for the realisation of the Anti-Discrimination Strategy, and specifies deadlines, responsible entities and resources for implementation.

The Gender Equality Strategy and the Gender Equality Action Plan were adopted after the evaluation of the National Action Plan for the Advancement of Women

268 The Strategy of Prevention and Protection Against Discrimination 2013–2018, "Official Gazette of the Republic of Serbia", No. 60/2013.

269 Action Plan for the Implementation of the Anti-Discrimination Strategy 2014–2018, "Official Gazette of the Republic of Serbia", No. 107/2014.

270 Action Plan for the Implementation of the Gender Equality Strategy 2016–2018, "Official Gazette of the Republic of Serbia", No. 4/2016.

271 See above, note 269, p. 14.

and Promotion of Gender Equality 2010–2015.²⁷² The evaluation revealed a lot of shortcomings in its implementation, including the lack of gender mainstreaming of all relevant laws, the lack of subsidiary laws, and the lack of consistent and effective coordination and management of the activities, which contributed to its modest impact.²⁷³

The Gender Equality Strategy identifies three main strategic objectives: to promote a culture of gender equality and change traditional gender patterns; to increase equality of women and men and improve the status of women; and to apply systematic integration of gender mainstreaming in decision making. The Gender Equality Strategy also focuses on improving the position of women who experience multiple and intersectional discrimination, based on grounds such as their ethnicity, disability, place of living (rural/urban), age, employment status, education status, and/or experience of domestic violence.

CSOs monitor the implementation of different policies in Serbia, particularly in relation to Serbia's accession to the EU. In 2013, a coalition of seven CSOs called Coalition prEUgovor was formed in order to monitor the implementation of policies by Serbia related to Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security) of the acquis. In its latest report, Coalition prEUgovor assessed Serbia's progress with respect to the Anti-Discrimination Strategy and Gender Equality Strategy, as follows:

*Less than a half of the measures listed in the [Anti-Discrimination Action Plan] have been implemented, and for a quarter of activities there are no data on the fulfilment. There is no publicly available data about the consultation process regarding amendments to the Law on the Prohibition of Discrimination. The new Law on Gender Equality has not yet been adopted, because the two ministries have not given their consent to the second draft of the Law. There is no publicly available report on the implementation of measures from the [Gender Equality Strategy] and the Action Plan for its implementation in 2016.*²⁷⁴

272 The evaluation was conducted by the UN Women Office in Serbia, Social Inclusion and Poverty Reduction Unit, and the Coordination Body for the Gender Equality in 2015.

273 Dokmanović, M., *Gender Analysis for Serbia: Final Report*, 2016, available at: http://europa.rs/files/Gender_Equality/Gender-Analysis-Serbia-dec-2016.pdf.

274 Aleksić, M. (eds), *prEUgovor Alarm: Report on the progress of Serbia in Chapters 23 and 24*, 2017, p. 11, available at: https://www.womenngo.org.rs/images/vesti-17/PDF/Na_ENG/preugovor-20171014-alarm-en-web.pdf.

3. ENFORCEMENT AND IMPLEMENTATION OF SERBIA'S EQUALITY LAWS

Comprehensive equality laws are the first step in the protection of the rights to equality and non-discrimination. Effective protection of these rights, however, demands much more. States are required to facilitate access to justice, provide effective remedies and ensure enforcement of equality laws by independent and competent bodies. A sophisticated regime of legal and practical measures is required to do this, comprising: technical legal provisions to facilitate access to justice; appropriate powers and independence of enforcement bodies; legal aid funding; efficient and accessible courts; public education campaigns; and training of the judiciary. In the absence of such measures, discrimination and inequality will persist, regardless of the strength of a state's equality laws.

In this Part, we analyse the extent to which Serbia has adopted the measures that are necessary to ensure that its equality laws provide effective protection in practice. We draw upon interviews and focus groups conducted with victims of discrimination, civil society organisations (CSOs), state bodies, private sector organisations, equality experts and the current Commissioner for the Protection of Equality (Commissioner).

Our findings indicate that, overall, Serbia has in place the key *legal* mechanisms necessary to facilitate access to justice, effective remedies and enforcement. What is missing are the *practical* measures to enable individuals to enforce their rights. There is a widespread lack of public awareness of the existence of Serbia's equality laws amongst both individuals and duty-bearers. Individuals are unable or unwilling to seek legal redress due to the cost of proceedings and a lack of confidence in the judiciary as an efficient and independent form of redress. To ensure that its equality laws provide protection in practice, Serbia needs to take measures to increase public awareness, adequately fund legal aid, address court delays and restore public faith in the independence of the judiciary.

3.1 Access to Justice

Fulfilment of the rights to equality and non-discrimination requires that victims of discrimination are able to seek legal redress for violations of these rights through judicial, administrative or specialised equality bodies. Effective access to justice requires a combination of both legal and practical measures. The legal measures include provisions governing causes of action, jurisdiction, rules of evidence and standing, among others. The practical measures include public education to ensure that individuals understand their rights and the avenues for legal redress, access to appropriate legal aid funding and physical access to court buildings.

According to Principle 18 of the Declaration of Principles on Equality (Declaration):

Persons who have been subjected to discrimination have a right to seek legal redress and an effective remedy. They must have effective access to judicial and/or administrative procedures, and appropriate legal aid for this purpose. States must not create or permit undue obstacles, including financial obstacles or restrictions on the representation of victims, to the effective enforcement of the right to equality.

The Committee on Economic, Social and Cultural Rights (CESCR) has similarly emphasised the need for equal access to institutions dealing with allegations of discrimination, as follows:

*Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, **which should be accessible to everyone without discrimination.***¹

3.1.1 Legal Framework

Causes of Action and Rules of Standing

The Constitution and Serbia’s anti-discrimination laws provide causes of action to initiate judicial proceedings for violations of the right to non-discrimination. The Law on the Prohibition of Discrimination (LPD) also provides for an independent complaints mechanism conducted by the Commissioner.

Article 22 of the Constitution guarantees the judicial protection of rights specified in the Constitution. It provides:

Everyone shall have the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, they shall also have the right to elimination of consequences arising from the violation. The citizens shall have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution.

There are two mechanisms by which a person may enforce their rights to equality and non-discrimination, as protected in Article 21 of the Constitution.

First, a legal or natural person, or their representative, may file a petition in the Constitutional Court alleging violation of their human rights as guaran-

1 Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 20: Non-discrimination in economic, social and cultural rights*, UN Doc. E/C.12/GC/20, 2009, Para 40 (emphasis added).

teed by the Constitution.² Additionally, a constitutional appeal can be filed on behalf of such persons, with written authorisation, by other natural person, state and other authorities in charge of the monitoring and exercise of human and minority rights and freedoms.³ A petition may relate to acts of a state body or “organisations exercising delegated public powers” on the basis that they “violate or deny human or minority rights and freedoms guaranteed by the Constitution.”⁴ The right to initiate a constitutional appeal is subject to the exhaustion of other legal remedies if they are available.⁵ However, this requirement will be waived “in the event of a breach of an applicant’s right to a trial within a reasonable time.”⁶

Secondly, “[a]ny legal or natural person”⁷ or an authorised proposer,⁸ including the Commissioner, may apply to the Constitutional Court to assess the constitutionality of a law that is alleged to be inconsistent with rights protected in the Constitution, including the rights to equality and non-discrimination.⁹

Serbia’s three specific anti-discriminations laws each specify mechanisms for legal redress for violation of the right to non-discrimination, as outlined in **Table 2A** in Part Two of the study.

The LPD¹⁰ provides a broad cause of action to initiate judicial proceedings in relation to “discriminatory treatment”.¹¹ The right to commence proceedings is not limited to violations of particular provisions of the Act and would appear to include all forms of discrimination defined in Parts Two and Three of the LPD. As outlined in **Table 2A** of Part Two of this study, the LPD provides protection against various forms of discrimination including direct discrimination, indirect discrimination and harassment. It provides protection from discrimination by association, discrimination by perception, multiple discrimination and victimisation. The rules on standing are similarly broad; judicial proceedings may be initiated by “anyone who has suffered discriminatory treatment” and, with the exception of proceedings in which compensation is sought, may also be initiated by the Commissioner or by an organisation “engaged in the protection of human rights or the rights of a certain group of people.”¹² If the matter concerns discrimination against an individual, the

2 Law on the Constitutional Court, “Official Gazette of the Republic of Serbia”, Nos. 109/2017, 99/2011, 18/2013 – decision of the CC, 103/2015 40/2015 – other law and 103/2015, Article 83, Para 1.

3 *Ibid.*, Article 83, Para 2.

4 Constitution of the Republic of Serbia 2006, Article 170.

5 *Ibid.*, Article 82.

6 This requirement was amended by the Law on the Constitutional Court: see above, note 2, Article 82.

7 See above, note 4, Article 168.

8 See above, note 2, Article 50.

9 See above, note 4, Article 168.

10 Law on the Prohibition on Discrimination (LPD), “Official Gazette of the Republic of Serbia”, No. 22/2009.

11 *Ibid.*, Article 41.

12 *Ibid.*, Article 46.

Commissioner or such an organisation must obtain the written consent of an individual to commence proceedings.¹³

The Law on Equality Between the Sexes, also known as the Law on Gender Equality (LGE),¹⁴ provides a broad cause of action to “any person whose rights or freedoms have been violated because he/she is a member of certain sex.”¹⁵ Again, this cause of action is not limited to violations of particular provisions of the LGE; however, there is no practice of persons relying upon this broad cause of action without specifying the provisions of the LGE upon which they rely. The rules of standing are similarly broad: proceedings may be initiated by “any person” and by a trade union or association “whose objectives are related to the promotion of gender equality” on behalf of a person, with their consent.¹⁶ After the initiation of the proceedings, trade unions and associations may inform, through the mass media or another adequate manner, other persons possibly affected, trade unions and associations about the initiated proceedings and invite them to join as the intervening party or a co-plaintiff.¹⁷

The rules of standing are narrower under the Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD)¹⁸ than under the two other anti-discrimination laws. The right to initiate legal proceedings is limited to an affected person and their legal representative.¹⁹ A personal assistant of a person with a disability may initiate proceedings if they are discriminated against but only due to discrimination that occurred in relation to the employment and working relations of the person with a disability.²⁰ Organisations and associations are not allowed to bring cases of discrimination on behalf of individuals.

In addition to judicial proceedings, the LPD also provides an independent complaints mechanism for investigation and adjudication of violations of the Act which is conducted by the Commissioner. The rules of standing with respect to lodging a complaint are broad. An individual who “considers him/herself discriminated against” has the right to file a complaint.²¹ A complaint may also be filed by an organisation “engaged in the protection of human rights” or another person on behalf of an individual with their consent.²² Unlike judicial proceed-

13 *Ibid.*

14 Law on Equality Between the Sexes, also known as the Law on Gender Equality (LGE), “Official Gazette of the Republic of Serbia”, No. 104/2009.

15 *Ibid.*, Article 43(1).

16 *Ibid.*, Article 43(2).

17 *Ibid.*, Article 43, Paras 2–4.

18 Law on the Prevention of Discrimination against Persons with Disabilities (LPDPD), “Official Gazette of the Republic of Serbia”, Nos. 33/2006 and 13/2016.

19 *Ibid.*, Article 42, Para 2.

20 *Ibid.*, Article 42, Para 3.

21 See above, note 10, Article 35.

22 *Ibid.*

ings, there is no fee associated with filing a complaint²³ and, in the majority of cases, individuals participate in the complaints mechanism without a lawyer. In addition, the Commissioner is required to provide information to an individual making a complaint about their rights and legal mechanisms for protection.²⁴ The Commissioner may also provide assistance in the drafting of a complaint, in exceptional circumstances, if a person makes a complaint orally and is unable or does not want to file a written complaint.²⁵

There is a very structured process by which the Commissioner must investigate complaints and make a determination.²⁶ This was designed to ensure the timely resolution of allegations, while affording the alleged perpetrator procedural fairness. On receiving a complaint, the Commissioner may determine to take no further action due to lack of merit²⁷ and must take no further action if legal proceedings have been initiated or an enforceable decision has been passed.²⁸ Within 15 days of receiving an eligible complaint, the Commissioner must forward it to the alleged perpetrator.²⁹ The alleged perpetrator has the right to make a statement within a further 15 days.³⁰ The Commissioner must then establish the facts of the case by reviewing the evidence submitted and taking statements from the complainant and other relevant persons.³¹

Within 90 days of receiving the complaint, the Commissioner must conclude its fact-finding process, and provide an “opinion” on whether there has been a violation of the LPD.³² If the Commissioner finds that there has been a violation, it must include a recommendation to the perpetrator “suggesting a way of redressing the violation in question”.³³

The LPD also emphasises the need to consider alternative dispute resolution in discrimination matters. Prior to concluding the fact-finding process, the Commissioner may propose to the parties that they consider resolving their dispute via mediation.³⁴

23 *Ibid.*

24 *Ibid.*, Article 33(2).

25 *Ibid.*, Article 35(1), which provides that a person may lodge a complaint in writing or “under exceptional circumstances, orally for the record” (emphasis added).

26 *Ibid.*, Articles 35–40.

27 *Ibid.*, Article 36.

28 *Ibid.*

29 *Ibid.*, Article 35.

30 *Ibid.*, Article 37.

31 *Ibid.*

32 *Ibid.*, Article 39.

33 *Ibid.*

34 *Ibid.*, Article 38.

Burden of Proof

Procedural rules regarding the burden of proof in discrimination proceedings can have a significant impact on a person's ability to successfully enforce anti-discrimination laws. International law recognises that it can be difficult for a person to prove that discrimination has occurred. It requires that legal rules on evidence and proof are adapted to ensure that victims can obtain redress. Principle 21 of the Declaration provides:

Legal rules related to evidence and proof must be adapted to ensure that victims of discrimination are not unduly inhibited in obtaining redress. In particular, the rules on proof in civil proceedings should be adapted to ensure that when persons who allege that they have been subjected to discrimination establish, before a court or other competent authority, facts from which it may be presumed that there has been discrimination (prima facie case), it shall be for the respondent to prove that there has been no breach of the right to equality.

International law requires that the burden of proof in cases of discrimination be transferred to the defendant, once the plaintiff has established a *prima facie* case that discrimination has occurred. The reversal of the burden of proof in discrimination proceedings has been recognised by the CESC, the Committee on the Elimination of Racial Discrimination (CERD),³⁵ the European Court of Human Rights (ECtHR)³⁷, and in all EU anti-discrimination Directives.³⁸

In Serbia, the LPD and the LGE are consistent with international law with respect to the shifting of the burden of proof.³⁹ The LPDPD does not prescribe a shifting of the burden of proof however.

Jurisdiction

The three specific anti-discrimination laws in Serbia each contain a special rule on jurisdiction to promote access to justice; the claimant may choose to initiate pro-

35 See above, note 1, Para 15, which provides that "[w]here the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively."

36 *Ibid.*, Para 40; Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation No. 30: Discrimination against Non-citizens*, UN Doc. CERD/C/64/Misc.11/rev.3, 2004, Para 24.

37 European Court of Human Rights (ECtHR), *Nachova and Others v Bulgaria*, Application Nos. 43577/98 and 43579/98, 6 July 2005, Para 147; ECtHR, *Timishev v Russia*, Application Nos. 55762/00 and 55974/00, 13 December 2005, Para 39.

38 See: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin, Article 8; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Article 10; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 9; and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Article 19.

39 See above, note 10, Article 45, Para 2; see above, note 14, Article 49.

ceedings in a court with jurisdiction over either the claimant or the defendant's place of residence, whichever is more convenient.⁴⁰ This is an exception to the usual rules on jurisdiction in Serbia which are based on the defendant's place of residence.⁴¹

In general, with the exception of the absence of legal provision for financial aid to enable individuals to access courts (which is discussed further in Part 3.1.2 below), the legal framework to facilitate access to justice in Serbia is strong and consistent with international best practice, like Serbia's equality laws themselves. There are enforceable causes of action and the rules of standing are broad. However, as outlined below, there are significant practical barriers that impede access to justice.

3.1.2 Practical Barriers

Despite the excellent legal provisions on standing, burden of proof and jurisdiction outlined above, access to justice for victims of discrimination in Serbia in practice is seriously impeded by three key factors: many individuals in Serbia are unaware of their rights to equality and non-discrimination; they cannot afford to seek legal redress when violations occur; and they have difficulties in physically accessing courts.

Public Awareness

Research conducted for this study and other published reports indicate that there is a significant lack of public understanding of the existence of anti-discrimination laws in Serbia and the mechanisms available to seek legal redress.

Principle 17 of the Declaration provides as follows:

States have a duty to raise public awareness about equality, and to ensure that all educational establishments, including private, religious and military schools, provide suitable education on equality as a fundamental right.

Since 2010, the Commissioner has conducted a series of educational programs and awareness raising campaigns, including specific programs for journalists, judges, public prosecutors and police. These include:

- Training on the implementation of anti-discrimination standards for employees in local self-governments (2012–2014);
- Training of security sector employees responsible for dealing with gender equality and discrimination issues in the police, military and other security sector institutions (2013);
- Training on anti-discrimination legislation, the mechanisms for protection from discrimination, and the rights of LGBT people for young people (2013–2014);

40 See above, note 18, Article 41; *ibid.*, LPD, Article 42; *ibid.*, LGE, Article 46.

41 Petrušić, N. (ed.), *Court Civil Protection from Discrimination*, Commissioner for Protection of Equality (Commissioner), 2012, p. 240.

- Training of Roma activists and leaders to recognise discrimination and the use of legal protection mechanisms (2014);
- Training of employees in the education system on preventing segregation (2015);
- Training of paediatricians and nurses on preventing discrimination against Roma and other vulnerable groups of children in the provision of health services (2015);
- Training of local self-government employees on promoting tolerance, combating discrimination and respecting the rights of internally displaced persons (2015);
- Training for labour inspectors on different aspects of anti-discrimination legislation (2017–2018); and
- Training for civil servants, as part of permanent training program organised by the Human Resource Management Service of the Government (2012 – ongoing).

In addition, in recent years, the Commissioner, in partnership with non-governmental organisations (NGOs), has held over 200 lectures and workshops on Serbia's equality laws, and has participated in numerous conferences, round tables and panels. While this significant outreach work is welcome, it appears that further work is needed to increase levels of public understanding of the prohibition on discrimination and the avenues for redress available.

In late 2017, Equal Rights Trust researchers convened focus groups in Belgrade, Niš, Vranje, Pančevo and Novi Pazar with representatives of CSOs who work with victims of discrimination. The participants emphasised that a lack of awareness of the existence of Serbia's equality laws and means of enforcement is one of the main reasons why individuals do not enforce their right to non-discrimination in Serbia.⁴² During the focus groups and interviews, participants were directly asked whether there were aware of any mechanisms available for complaining about discrimination. Their responses included:

*We don't know how to use legal mechanisms for protection of our rights.*⁴³

*In 90% of cases, people recognise discrimination, but they do not know what to do when it happens and how to react to it.*⁴⁴

*I don't know if there are some other institutions [such as the Ombudsman] dealing with protection of human rights or protection against discrimination.*⁴⁵

42 Equal Rights Trust focus group meeting, 10 November 2017, Belgrade; Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar; Equal Rights Trust focus group meeting, 21 December 2017, Vranje.

43 Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar.

44 Equal Rights Trust focus group meeting, 21 December 2017, Vranje.

45 Romi istraživači (Roma Researchers), Case of S.V., Case Study Research Report to Equal Rights Trust, 2018.

*Many people know that anti-discrimination laws have been passed and appropriate protection mechanisms have been established, but they know nothing more about it.*⁴⁶

Our findings are similar to those reported by other organisations who have conducted wide-ranging surveys with individuals in Serbia, albeit with different focuses. In 2013, two Serbian NGOs surveyed 1,200 people in relation to access to justice on general legal matters. The questionnaire consisted of 29 typical legal problems, such as divorce, inheritance, property rights, mobbing and housing matters.⁴⁷ The report found that 17% of respondents did not know who to contact in relation to a legal problem, while 13% did not even know they could seek judicial protection in practice.⁴⁸

Complaints submitted to the Commissioner also highlight significant gaps in public understanding of the concepts of discrimination. The Commissioner has reported that many complaints attribute less favourable treatment to matters that do not constitute grounds of discrimination. For example:

- An allegation that an employee was treated unfavourably because she was married to a former director of the company.⁴⁹
- An allegation that an employee was treated unfavourably because of her expertise and conscientiousness which caused others to be envious.⁵⁰
- An allegation that a primary school student was treated unfavourably because he was naughty.⁵¹
- An allegation that the police failed to investigate an allegation because the alleged perpetrator was related to a police officer.⁵²

Serbia's equality laws cannot be effectively enforced in practice unless the government supports a wide-ranging public education campaign to inform those whom the laws are designed to protect and empower, about their rights and available remedies.

46 Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar.

47 Lawyers Committee for Human Rights (YUCOM) and SeConS, *Access to Justice and Free Legal Aid in Serbia: Challenges and Reforms*, 2013, p. 21, available at: http://www.yucom.org.rs/upload/vestgaleri-ja_103_9/1363187570_GSO_BPP%20veliki%20_web.pdf.

48 *Ibid.*, p. 44.

49 Commissioner for the Protection of Equality, *Regular Annual Report for 2011, 2012*, p. 50, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/2011%20Regular%20Annual%20Report.pdf>.

50 Commissioner for the Protection of Equality, *Regular Annual Report for 2010, 2011*, p. 56, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/regular_annual_report_2010.pdf.

51 Commissioner for the Protection of Equality, *Regular Annual Report for 2015, 2016*, p. 191, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2016/09/Commissioner-for-the-Protection-of-Equality-2015-Regular-Annual-Report-1.pdf>; this case did not relate to a child with an intellectual disability.

52 See above, note 50, p. 62.

Cost of Litigation

Many individuals in Serbia, particularly amongst marginalised groups who are overrepresented among the poor, are unable to enforce their rights to equality and non-discrimination due to the absence of state-funded legal aid and high court fees.

International law does not expressly require states to provide legal aid for plaintiffs in discrimination proceedings;⁵³ however, it does require states to provide an “effective remedy” for violations of human rights including of equality and non-discrimination.⁵⁴ It is arguable that state-funded legal representation for victims of discrimination, who cannot otherwise afford representation, is necessary in order to ensure the right to an effective remedy. While the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) does not expressly contain the right to an effective remedy, the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW Committee) has emphasised the connection between legal aid and effective remedies, as follows:

*States must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary.*⁵⁵

International best practice similarly requires that “appropriate legal aid” be provided in cases where an individual asserts their right to equality or non-discrimination.⁵⁶

In Serbia, there is no single scheme under which an individual can apply for free or reduced-fee legal services. For the past seven years, a draft Law on Free Legal Aid has been debated (the first draft from 2011 and the second from 2016), but it remains to be adopted. The draft Law has been opposed by both civil society and members of the legal profession. CSOs criticise the proposed eligibility criteria, including financial means test, which they say would leave large numbers of persons ineligible for legal aid and still unable to afford private lawyers. There is strong opposition from certain lawyers and their associations on the basis that it would permit NGOs and legal clinics without legal training to provide free legal aid services. At its 41st session in March 2018, the Committee on the Legal System and State Authorities set out plans for a

53 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966 (ICCPR), Article 14(3)(d), and Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. No. 005, 1950 (ECHR), Article 6(3)(c), which provide that an individual has the right to state-funded legal assistance with respect to criminal proceedings, where a person cannot afford representation, and “when the interests of justice so require”.

54 See, for example: ICCPR, Article 2(3)(a); and ECHR, Article 13.

55 Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *General Recommendation No. 28: On the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/2010/47/GC.2, 2010, Para 34.

56 *Declaration of Principles on Equality*, Equal Rights Trust, London, 2008, Principle 18, available at: <http://www.equalrightstrust.org/content/declaration-principles-equality>.

public debate on the Draft Law on Free Legal Aid. The Ministry of Justice has now harmonised the text of the law in accordance with the remarks received, though the Law still remains to be adopted.⁵⁷

Consequently, at present, legal aid programs are provided through an incomplete and fragmented network of services. There are some state-funded municipal legal aid centres which provide free or reduced-cost legal advice in discrimination matters; however, such centres cover only approximately one-third of the country's territory and about half of the total population of Serbia and cannot provide legal representation for discrimination proceedings in court. A small number of CSOs provide legal advice to individuals; however, few organisations are able to support individuals with litigation.

There is provision in the Law on Civil Procedure for courts to appoint a free legal representative to a person if it is necessary for the protection of their rights.⁵⁸ However, this only applies if the court has already ordered that court costs be waived for the person (such as taxes and expert fees).⁵⁹ Since, as indicated below, courts are often restrictive in granting the exemption from payment of court fees, individuals are rarely provided with free legal representative.

An additional financial barrier to initiating anti-discrimination litigation is the fees that courts impose on all civil litigation in Serbia.⁶⁰ A plaintiff is required to pay court filing fees, fees to file expert evidence and a fee to receive the court's decision (the fees themselves will depend on the value of the subject matter of the dispute).⁶¹ The following is an example of the average costs of discrimination proceedings.

Legal and court fees applicable in discrimination proceedings

A plaintiff seeks a finding of discrimination against a medical practice in relation to the refusal to provide health services on the ground of sexual orientation, and compensation for damages in the amount of EUR 3,000. The approximate costs of such a proceeding could amount to more than EUR 1,000, as follows:

- Drafting of lawsuit: EUR 50;
- Court fee for filing a lawsuit: EUR 150;

57 Accurate as of 12 November 2018. For the harmonised text, see: Ministry of Justice, "Working Versions of Regulations", visited 4 October 2018, available at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

58 Law on Civil Procedure, "Official Gazette of the Republic of Serbia", Nos. 125/04 and 111/2009, Article 170, Para 1.

59 *Ibid.*

60 World Bank, *Serbia Judicial Functional Review*, 2014, p. 24, available at: <http://www.mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>.

61 See: Law on Court Fees, "Official Gazette of the Republic of Serbia", Nos. 28/94, 53/95, 16/97, 34/2001 – other law, 9/2002, 29/2004, 61/2005, 116/2008 – other law, 31/2009, 101/2011, 93/2012, 93/2014 and 106/2015, Article 22.

- Legal representation for at least three hearings, according to the Advocate's Tariff: EUR 180 (EUR 60 per hearing);
- Fee paid to expert for assessment of damages: EUR 500;
- Court fee for decision: EUR 150.

The LPD does not provide for any release from payment of such fees in discrimination proceedings. While the Law on Civil Procedure provides for prior exemption from such fees for plaintiffs who cannot afford to pay,⁶² our research indicates that judges do not consistently apply this exemption in practice. In some cases, judges have even declined to decide on a plaintiff's request for exemption from fees which means that there is no decision on fees eligible to be appealed.⁶³ Finally, there is no regime in Serbia to protect an individual against the payment of adverse costs in the case of unsuccessful discrimination law proceedings.

Consistent with the general lack of public awareness of discrimination law, many citizens are not aware of the limited existence of free legal services in their municipality,⁶⁴ or their right to ask for an exemption from payment of court fees.⁶⁵

Physical Access to Courts and Lawyers

There are two key physical barriers to access to justice for persons in Serbia.

In 2013, jurisdiction for discrimination proceedings was changed from the more numerous Basic Courts (of which there are 66) to the more specialised Higher Courts (of which there are 25).⁶⁶ This has resulted in individuals from certain regions travelling very long distances to attend court hearings. For example, inhabitants of village Markovac in Vršac municipality need to travel 85km to the Higher Court in Pančevo. This increase in the cost and time involved in initiating legal proceedings is particularly disadvantageous for those from lower socio-economic backgrounds and rural regions.

In addition, there are a number of barriers that prevent the equal access to justice of persons with disabilities. Lawyers' offices and court buildings are often physically inaccessible to persons with physical disabilities.⁶⁷ Despite philanthropic

62 See above, note 59.

63 Equal Rights Trust interview with representative of the Legal Clinic in Niš, 27 December 2017, Niš.

64 *Ibid.*

65 See above, note 61, p. 24.

66 Law on Organisation of Courts of Serbia, "Official Gazette of the Republic of Serbia", Nos. 116/2008, 104/2009, 101/2010, 31/2011 – other law, 78/2011 – other law, 101/2011, 101/2013, 106/2015, 40/2015 – other law, 13/2016, 108/2016 and 113/2017, Article 23.

67 Commissioner for Protection of Equality, *Report on Accessibility of Public Authorities Premises to Persons with Disabilities*, 2013, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_lzvestaj_o_pristupacnosti_poslovnih_zgrada_drzavnih_organa.pdf; Action Plan for Chapter 23, Efficiency of Judicial Services, Annex 1, Recommendation 54, p. 403, available at: <https://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacr-%20Konacna%20verzija1.pdf>.

efforts to support renovations to Serbian court buildings,⁶⁸ some courts remain partially inaccessible to persons with physical disabilities, due to the high costs of refurbishing buildings and heritage provisions.⁶⁹ However, the reorganisation of the courts and low cost interventions could significantly increase accessibility for persons with physical disabilities.⁷⁰ Further barriers exist due to the lack of state funding for translation and sign language facilities for individuals in meetings with their lawyers, as reported during focus group discussions with Equal Rights Trust researchers.⁷¹ However, it is noted that state-funded sign language and translation facilities are provided in court proceedings.⁷² Finally, judicial and other documents are not automatically available in accessible formats for persons with visual impairments.⁷³ In general, court documents are available only in hard-copy and not in other formats, such as audio format or braille. However, there is no research available as to whether persons with disabilities are provided with court documents in an accessible format on request.

Experienced Legal Practitioners

A final barrier to access to justice for victims of discrimination in Serbia is the limited number of lawyers, especially outside big cities, with experience in anti-discrimination law. Efforts to provide training to the legal profession on Serbia's equality laws have been limited. For example, Equal Rights Trust researchers were informed that the Bar Chamber of Serbia has not organised any training on anti-discrimination laws for lawyers. CSOs rarely initiate discrimination litigation due to both the cost of litigation and their professional capacities.⁷⁴

3.2 Remedies and Sanctions

Under international law, protection of the rights to equality and non-discrimination requires that victims of discrimination be provided with "accessible and effective remedies to vindicate those rights".⁷⁵ The CESC has stated that institutions dealing with discrimination "should(...) be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guaran-

68 Milan Antonijević, *Improving the Delivery of Justice in Serbia – Report: Improvement of Equal Opportunities within the Serbian Judicial System in three areas of interest to IMG*, International Management Group, 2013, p. 4.

69 *Ibid.*

70 *Ibid.*; this report documented the case of a person with a physical disability who works in the High Court in Niš in an office on the second floor of the court building, and who has to be carried to his office, in circumstances where a relocation of office location would appear feasible.

71 Equal Rights Trust focus group meeting, 10 November 2017, Belgrade.

72 See above, note 59, Article 256.

73 Equal Rights Trust focus group meeting, 10 November 2017, Belgrade.

74 According to the Commissioner's annual reports from 2010–2017, 75% of complaints were submitted by individuals, while only around 15% were filed by CSOs. Annual reports available at: <http://ravno-pravnost.gov.rs/en/reports>.

75 Human Rights Committee (HRC), *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add. 13, 2004, Para 15.

tees of non-repetition and public apologies.”⁷⁶ This is reflected in Principle 22 of the Declaration which provides:

Sanctions for breach of the right to equality must be effective, proportionate and dissuasive. Sanctions must provide for appropriate remedies for those whose right to equality has been breached including reparations for material and non-material damages; sanctions may also require the elimination of discriminatory practices and the implementation of structural, institutional, or organizational, or policy change that is necessary for the realisation of the right to equality.

In addition, international best practice requires that, for the most part, discrimination be dealt with as a matter of civil rather than criminal law. However, to offer comprehensive protection from discrimination, certain severe manifestations of discrimination may be dealt with under criminal law. Principle 7 of the Declaration states:

*Any act of violence or incitement to violence that is motivated wholly or in part by the victim having a characteristic or status associated with a prohibited ground constitutes a serious denial of the right to equality. Such motivation must be treated as an aggravating factor in the commission of offences of violence and incitement to violence, and States must take all appropriate action to penalise, prevent and deter such acts.*⁷⁷

Serbia’s equality laws provide for a wide range of remedies and sanctions for violations of the right to non-discrimination ranging across civil proceedings, the complaints procedure, as well as misdemeanour proceedings, as outlined in **Table 2A**. The remedies available in civil proceedings and the complaints procedure exemplify the requirements of international law and best practice and provide for both victim-focused and structural remedies. It is important to note, however, that with the exception of the financial sanctions imposed under the LGE, no remedies are provided for the failure to take positive action under the Constitution or Serbia’s three equality laws meaning there is a lack of adequate remedy for important state obligations for the realisation of the right to equality.

3.2.1 Civil Proceedings

As noted above, the Constitution confers remedial powers on the Constitutional Court in the event that there is a violation of the rights granted therein, which includes the right to equality and non-discrimination under Article 21. The Court has the power, on its own motion or where instituted by state bodies, bodies of territorial autonomy or local self-government, or 25 deputies of the National Assembly, to initiate proceedings to assess the constitutionality of laws and

⁷⁶ See above, note 1, Para 40.

⁷⁷ See above, note 57, Principle 7.

other general acts. Any “legal or natural person” also has the right to an initiative to institute such proceedings. Following a finding of unconstitutionality by the Court, the law or general act which is not in compliance shall cease to be effective on the day of publication of the Court’s decision.⁷⁸

Additionally, the Constitutional Court is granted the power to hear appeals against individual general acts or actions performed by state bodies or organisations with delegated powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution.⁷⁹ As previously stated, the Law on the Constitutional Court provides that these appeals can also be filed by any “legal or natural person” or their representative, or on behalf of such persons with written authorisation.⁸⁰

Remedies available in judicial proceedings for violations of Serbia’s three equality laws (LPD, LGE and LPDPD), as outlined in **Table 2A**, include:

- Interim injunction where there is a risk of violence or “major irreparable damage”;⁸¹
- Injunction on discriminating or engaging in conduct that “poses the threat of discrimination”;⁸²
- Mandatory injunction to “tak[e] steps to redress the consequences of discriminatory treatment”;⁸³ including to establish the position prior to the discriminatory conduct (LGE only)⁸⁴ and to remove material that constitutes discrimination (LGE only);⁸⁵
- Declaration that the defendant discriminated against the plaintiff or another person;⁸⁶
- Compensation for material and non-material damage;⁸⁷ and
- Order that the court’s decision be published in one or more daily newspapers with national coverage (LPD only).⁸⁸

78 See above, note 4, Article 168; these powers extend not just to laws and general acts in effect prior to the decision, but to those which have ceased to be effective within six months of the proceedings being initiated, or, under Article 169, prior to their coming into force.

79 *Ibid.*, Article 170.

80 See above, note 2, Article 83.

81 See above, note 10, Article 44; see above, note 14, Article 50(2); see above, note 18, Article 45(1).

82 *Ibid.*, LPD, Article 43(1); *ibid.*, LGE, Article 43(2)-(3); *ibid.*, LPDPD, Article 43(1).

83 *Ibid.*, LPD, Article 43(2); *ibid.*, LGE, Article 43(5); *ibid.*, LPDPD, Article 43(2).

84 *Ibid.*, LGE, Article 43(5), which provides “[t]o eliminate the violation and establish the position, i.e. the state before the violation.”

85 *Ibid.*, Article 43(4), provides “[t]o put out of use the means, namely the objects having made a violation (the textbooks that are discriminatory or present a certain sex in a stereotype manner, printed matter, advertising aids, promotional material, etc.)”

86 See above, note 10, Article 43(3); see above, note 14, Article 43(1); see above, note 18, Article 43(3).

87 *Ibid.*, LPD, Article 43(4); *ibid.*, LGE, Article 43(6); *ibid.*, LPDPD, Article 43(4).

88 *Ibid.*, LPD, Article 43(5).

With the exception of an order for compensation, all remedies are available regardless of the nature of the claim or whether the plaintiff is an individual or an organisation acting on behalf of an individual or group. Under the LPD, compensation is *not* available for proceedings brought by the Commissioner as a plaintiff, a human rights organisation, or a person engaging in test case litigation who deliberately exposed him/herself to discriminatory treatment.⁸⁹

Serbian legal commentators interviewed for this study consider that these remedies provide strong protection from discrimination by including measures to prevent the repetition of discrimination and eliminate its consequences.⁹⁰ For example, the publication of a court's judgment in a discrimination case is a significant remedy under the LPD as it involves the publication of the court's decision in the media, and the judgment will include details that are not usually published in civil proceedings, such as the full name of the defendant and the location of the enterprise.⁹¹ The main drawback to the judicial remedies available in civil proceedings under Serbia's equality laws is their exclusive focus on victim-specific remedies. There is no provision for courts to order structural remedies that target the cause of discrimination. The Human Rights Committee (HRC) in its General Comment No. 31 emphasised the importance of structural change to avoid the repetition of discrimination, as follows:

*[W]here appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and **changes in relevant laws and practices**, as well as bringing to justice the perpetrators of human rights violations (...). In general, the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee in cases under the Optional Protocol to include in its Views **the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question. Such measures may require changes in the State Party's laws or practices.***⁹²

International best practice requires that the power be conferred on courts to provide structural remedies that go beyond providing individual reparations to the victim. For instance, where a rights violation stems from a piece of legislation, courts might have the power to remedy the injustice by directly striking

89 *Ibid.*, Article 46, Paras 1 and 3.

90 Equal Rights Trust interview with judge of the Appellate Court in Belgrade and with lawyer from Belgrade, 23 November 2017, Belgrade; Equal Rights Trust interview with professor of the Law Faculty in Novi Sad, 28 November 2017, Novi Sad; Equal Rights Trust interview with lawyer from Novi Sad, 28 November 2017, Novi Sad; Equal Rights Trust interview with professor of the Law Faculty in Belgrade, 23 January 2018, Belgrade.

91 Gajin, S. (ed.), *Anti-discrimination laws – Guide*, CUPS, Belgrade, 2010, pp. 69–76.

92 See above, note 76, Paras 16–17 (emphasis added).

down, amending or providing a required interpretation of the legislation.⁹³ Similarly, courts might be empowered to impose structural injunctions, which are judicial orders that tell a party what they must and must not do. In particular, these injunctions dictate how government officials must change their behaviour to be in compliance with their constitutional obligations.⁹⁴ As discussed in Part 3.2.2 below, the powers of the Commissioner include the ability to engage in legal and policy reform to address the underlying causes of discrimination.

3.2.2 Complaints Procedure to the Commissioner

The primary “remedy” available under the complaints procedure in the LPD is that the Commissioner shall receive and review complaints relating to violations of the provisions of the LPD and issue opinions and recommendations in specific cases for action to be taken to address the discrimination alleged.⁹⁵ While the Commissioner has limited powers to enforce compliance with her recommendations, some consequences do flow from non-compliance. The LPD specifies that a perpetrator must act upon the recommendation within 30 days.⁹⁶ The Commissioner may issue a “caution” if the perpetrator fails to comply with the recommendation,⁹⁷ and may inform the public if the perpetrator does not comply with the caution.⁹⁸ The Commissioner cannot, however, *compel* compliance with the recommendations issued under the LPD.

The Commissioner reports annually on the rate of compliance with its recommendations issued under the complaint procedure (Article 33(1)) and pursuant to the general power to make recommendations (Article 33(9)) under the LPD. Annual reports from 2015–2017 indicate that there is compliance with the majority of the Commissioner’s recommendations.⁹⁹ The Commissioner does not, however, report on the number of public notifications issued in cases of non-compliance with recommendations.

Examples of recommendations given by the Commissioner pursuant to the complaint procedure include:

- *Complaint by an NGO against a primary school for discrimination committed on the basis of national identity in the field of education* (File no. 84,

93 These various options are discussed in detail in the leading case of: Supreme Court of Canada, *Schachter v Canada* [1992] 2 SCR 679; for a more detailed discussion, see: Equal Rights Trust, *Economic, Social and Cultural Rights in the Courtroom: A Litigator’s Guide to Using Equality and Non-Discrimination Strategies to Advance Economic and Social Rights*, 2014, p. 100.

94 Hirsch, D.E., “A Defense of Structural Injunctive Remedies in South African Law”, *Oregon Review of International Law*, Vol. 9, 2007, p. 19.

95 See above, note 10, Article 33(1).

96 *Ibid.*, Article 39.

97 *Ibid.*, Article 40.

98 *Ibid.*

99 Regular annual reports of the Commissioner for Protection of Equality for 2015, 2016 and 2017, available at: <http://ravnopravnost.gov.rs/rs/izvestaji>.

20 January 2012). By forming segregated classes attended exclusively by Roma children from internally displaced families, the primary school discriminated against children from internally displaced Roma families on the basis of their national identity. The Commissioner recommended the desegregation of the classes and the provision of training and education on the prohibition of discrimination for both staff and students.¹⁰⁰

- *Complaint by an NGO against the City Administration of the City of Belgrade for discrimination committed on the basis of national identity in the field of housing* (File no. 1673, 16 October 2012). A contract on the use of mobile housing units by the Roma national minority, which allowed for unilateral termination of the contract by the Belgrade City Administration, was not in accordance with the LPD. The Commissioner recommended removal of the right to unilaterally terminate the contract and other restrictive rules placed on the Roma minority.¹⁰¹
- *The complaint by M. G. against NES for discrimination on the basis of disability in the field of work and employment* (File no. 906, 15 June 2012). Officials of the National Employment Service treated M.G. in a degrading manner due to his disability (which means he requires sign language interpretation) which constituted an act of discrimination. The Commissioner recommended a written apology be issued, and measures be taken to prevent persons with disabilities being discriminated against, including sensitivity training of employees.¹⁰²

100 Specifically, the Commissioner issued the following recommendations: 1) the director of the primary school shall without delay undertake all necessary actions and measures to desegregate the classes composed exclusively of Roma children from internally displaced families; 2) the director shall without delay undertake all necessary actions and measures to provide that all school employees pass a training/professional development course on the topic of the prohibition of discrimination in order to ensure a larger degree of discrimination sensitivity of all employees; 3) the director shall undertake all necessary measures within his competences in order to provide appropriate programs, trainings and education with the aim of developing a spirit of tolerance, acceptance of diversities and non-discriminatory behaviour among pupils.

101 The contract, which the Secretariat for Social and Children's Protection of the Belgrade City Administration concluded with the displaced members of the Roma national minority, prescribes that the Secretariat can unilaterally terminate the contract in case the beneficiary does not show an active attitude towards the activities of the City Administration aiming to socialise individuals and members of their families, the "house rules" notice in the newly formed mobile housing units settlement as well as the written notice forbidding visits in mobile housing units to the persons who do not live in the container settlement are not in accordance with the provisions of the LPD. The Commissioner's recommendations specifically were: 1) removal from the contract regulating the use of mobile housing units of the provision prescribing that the Secretariat can unilaterally terminate the contract in case that the beneficiary does not demonstrate an active attitude towards activities of the City Administration aiming to socialise individuals and members of their families; 2) amending the "house rules" information notice placed in mobile housing units, that is, placing the new information with the content that will not differ from the house rules that apply to the rest of the citizens from the social housing system; 3) removal of the written notice issued to the beneficiaries of the mobile housing units that the persons who do not live in their settlement are forbidden to visit or to stay overnight in their housing units.

102 Specifically, the Commissioner issued the following recommendations: 1) NES shall address a written apology to M. G. because of the harassment and degrading treatment by their officials; 2) NES shall undertake all necessary measures in order to provide that all persons with disabilities have a procedure that respects individual specificities and prevents any form of direct and indirect discrimination when using the services of the NES; 3) NES shall undertake without delay all necessary measures to provide that its employees pass training/professional development on the topic of discrimination in general, and discrimination of persons with disabilities in particular in order to achieve a larger degree of sensitivity of all employees in regard to this social phenomenon.

Examples of cases in which the Commissioner has made a public notification following non-compliance with a caution include:

- A complainant alleged he was not hired by General hospital “Laza K. Lazarević” Šabac, because of his Roma identity and the hospital could not provide any evidence to disprove this.¹⁰³ In its opinion, the Commissioner recommended the hospital take measures to remove such discrimination. As the hospital failed to act upon this recommendation, even after warning, the Commissioner made a public notification in order to inform the public of the discrimination and failure to act to rectify it.¹⁰⁴
- JKP “Gradska Čistoća”, a company from Novi Pazar, prevented the complainant from choosing her own tombstone for her father at a cemetery, in circumstances which the Commissioner held constituted discrimination on the grounds of religious belief.¹⁰⁵ The Commissioner issued a recommendation that a written apology be given to the complainant and that she be able to choose her own tombstone. It further recommended that steps were taken to ensure that this kind of discrimination did not take place in future in the business’s activities. The company did not act upon these recommendations and the Commissioner made a public notification.¹⁰⁶
- The Commissioner gave an opinion that an article in the Informer newspaper constituted an act of discrimination against LGBT persons.¹⁰⁷ The Commissioner recommended that the newspaper meet with representatives of an NGO to be informed of issues facing the LGBT community and the effects that the article had on them, and to encourage them to contribute to change negative attitudes and stereotypes against the community. The newspaper did not act upon these recommendations and the Commissioner issued a public notification in response.¹⁰⁸

103 The complainant stated that he had applied for the job in this hospital many times, submitting all required documentation and fulfilling all required conditions, but he was never hired because he belongs to the Roma national minority. During the proceeding, the hospital did not offer any evidence that would prove that he was not hired because of objective reasons that had no relation to his nationality.

104 Commissioner for Protection of Equality, “General hospital ‘Laza Lazarevic’ discriminated a Roma nationality member”, 23 February 2018, available at: <http://ravnopravnost.gov.rs/en/general-hospital-laza-lazarevic-discriminated-a-roma-nationality-member>.

105 The company didn’t allow the complainant to place a pyramidal tombstone for her late father at the cemetery near Petar’s church in Novi Pazar. Instead, they conditioned her to choose one of five tombstones in the shape of a cross.

106 Commissioner for Protection of Equality, “Announcement to the public – ‘Gradska Cistoca’ Novi Pazar discriminated Nelica Grujić’s family member”, 20 October 2017, available at: <http://ravnopravnost.gov.rs/en/announcement-to-the-public-gradska-cistoca-novi-pazar-discriminated-nelica-grujics-family-member>.

107 The article titled, “Horrible! Pajtić requests that faggots may adopt children! Shocking turnover of Democratic Party leader”, was published on 24 June 2016 in the Informer daily newspaper. The author commented that “[i]t is totally clear that accepting of Pajtić’s proposal would mean in practice that faggot couples in Serbia should be allowed to adopt children!”, expressing disturbing and deteriorating ideas and attitudes that insult the dignity of persons with a sexual orientation other than heterosexual, thereby violating the provisions of LPD.

108 Commissioner for the Protection of Equality, “Announcement for the Public – Informer discriminated LGBT population”, 1 July 2017, available at: <http://ravnopravnost.gov.rs/en/announcement-for-the-public-informer-discriminated-lgbt-population>.

3.2.3 Misdemeanour Proceedings

Serbia's three equality laws each provide for misdemeanour proceedings to be commenced with respect to violations of certain provisions, as outlined in **Table 2A**.¹⁰⁹ Misdemeanour procedure is regulated by the Law on Misdemeanours.¹¹⁰ Misdemeanour procedure can be initiated by different public authority bodies and persons who are discriminated against. As outlined further in Part 3.3.2 below, the Commissioner has the power to file misdemeanour charges but in practice rarely does so.

In misdemeanour proceedings, a court may award a fine against a person or entity found to have committed discrimination. Fines range from between EUR 40 to 420 for individuals,¹¹¹ to between EUR 40 to EUR 840 for legal entities.¹¹²

3.3 Enforcement

Effective enforcement of equality laws may occur through judicial and administrative mechanisms, as well as by national human rights institutions.¹¹³ The CESCR has emphasised that such institutions "should adjudicate or investigate complaints promptly, impartially, and independently."¹¹⁴ Currently, the effective enforcement of Serbia's equality laws by the judiciary is hampered by a lack of public confidence in the court system as an efficient and independent form of redress, indicating the need for significant institutional reforms. By contrast, the role of the Commissioner in promoting compliance with Serbia's equality laws appears to be working generally well in practice, through a combination of strategies including the Commissioner's complaint mechanism, strategic litigation and engagement in law reform. However, there is a need for the state to significantly increase awareness amongst duty-bearers of their obligations, in order for equality laws to be adequately enforced, as our research indicates that levels of awareness remain persistently low.

3.3.1 The Judiciary

Certain aspects of the judicial system in Serbia impede the effective enforcement of Serbia's equality laws. These include: delays in proceedings; a lack of public confidence in the judiciary; and the need for additional training on Serbia's equality laws.

109 See above, note 10, Articles 50-60; see above, note 18, Articles 46-52; see above, note 14, Articles 53-55.

110 Law on Misdemeanours, "Official Gazette of the Republic of Serbia", Nos. 65/2013, 13/2016 and 98/2016 – Decision of the CC.

111 See above, note 10, Part VIII; see above, note 14, Part VII; see above, note 18, Part Six (RSD 5,000 to 50,000).

112 *Ibid.* (RSD 5,000 to 100,000).

113 See above, note 76, Para 15.

114 See above, note 1, Para 40.

Delays in Proceedings

Delays in court proceedings in Serbia, particularly in the Constitutional Court, are well-documented. The European Commission has noted that while efforts to tackle the backlog of cases are ongoing, lengthy court proceedings continue to hamper citizens' access to justice.¹¹⁵ It is notable that delays were so significant in the Constitutional Court that the constitutional appeal was not considered an effective remedy by the ECtHR until 2008.¹¹⁶

Despite attempts at reform in recent years, the lengthy delays in proceedings before the Constitutional Court, remain one of the biggest barriers to enforcement of the Constitution. The procedure for a constitutional appeal lasts on average approximately three years.¹¹⁷ In order to increase efficiency, the Law on Changes and Amendments to the Law on the Constitutional Court 2011 changed the composition of the panel which decides on constitutional appeals, by requiring that, instead of all 15 justices, decisions on the admissibility of a constitutional appeal are made by a so-called Small Chamber (three judges), while decisions on the merits should be decided by one of two so-called Grand Chambers, composed of the President of the Constitutional Court and seven justices.¹¹⁸

Participants in interviews and focus groups facilitated by Equal Rights Trust researchers indicated that the duration of judicial proceedings, combined with a lack of legal aid funding, is a major disincentive to seeking legal redress for discrimination. Comments included (with emphasis added):

*Many give up as soon as they are informed that the **procedure is very long**.*¹¹⁹

*In practice, there are many problems: the unwillingness of the discriminated person to fight for her/his rights, attitude that protection from discrimination will not be provided, and **delays of the state institutions (at all levels)** to conduct procedures in accordance with the Constitution and the law.*¹²⁰

115 European Commission, *Serbia 2018 Report: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, 2018, p. 17, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>.

116 ECtHR, *Vinčić and others v Serbia*, Application No. 44698/06 and others, 1 December 2009, Para 51.

117 According to the last available Constitutional Court report from 2016, there were 22,712 constitutional appeals before this court, as follows: 12,556 unsolved constitutional appeals from previous years, six re-activated and 10,150 newly received constitutional appeals. Constitutional Court Report for 2016, Belgrade, 2017, p. 4, available at: http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/%D0%9F%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4_2016.pdf.

118 Law on Changes and Amendments to the Law on the Constitutional Court, "Official Gazette of the Republic of Serbia", No. 99/2011.

119 Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar.

120 Equal Rights Trust interview with representative of the local self-government, department for child protection and social welfare, 23 January 2018, Belgrade.

*All such proceedings last for a very long time, they are expensive and we don't have money to pay the lawyers, courts, etc.*¹²¹

*There is a lack of money for paying the court fees. People believe that court proceedings are expensive, **that the judiciary system is slow**, they do not know the legal terminology, and there are no free legal aid systems in all municipalities.*¹²²

The European Commission has called for reforms to be made, such as the adoption of a human resources strategy including a uniform and functioning case management system to improve the efficiency and effectiveness of the judiciary.¹²³

Independence

Our research also indicated a general lack of confidence in the judicial system as an independent mechanism for seeking legal redress. Such concerns have been raised by the UN treaty bodies, including the HRC, CERD and the Committee Against Torture (CAT Committee),¹²⁴ as well as the European Commission which has stated that the current constitutional and legislative framework leaves room for “undue political influence over the judiciary.”¹²⁵

In focus groups facilitated by Equal Rights Trust researchers, participants cited a lack of trust in the judiciary and other non-specified “institutions” as a key reason for not initiating discrimination litigation.¹²⁶ Comments included (with emphasis added):

*[M]echanisms for protection are politicised and **corrupted**.*¹²⁷

*Instead of the balance of power there is an imbalance, thus citizens immediately take a step back because it is too much for him/her, as an individual, to deal with alone.*¹²⁸

*I didn't think that the discrimination I experienced [discrimination based on sexual orientation in health sector] was serious enough and **I didn't trust the institutions**.*¹²⁹

121 Romi istraživači (Roma Researchers), Case of S.J., Case Study Research Report to Equal Rights Trust, 2018.

122 Equal Rights Trust focus group meeting, 1 November 2017, Niš.

123 See above, note 116, p. 13.

124 HRC, *Concluding Observations: Serbia*, UN Doc. CCPR/C/SRB/CO/3, 10 April 2017, Para 35; CERD, *Concluding Observations: Serbia*, UN Doc. CERD/C/SRB/CO/2-5, 3 January 2018, Paras 11–12; Committee Against Torture (CAT Committee), *Concluding Observations: Serbia*, UN Doc. CAT/C/SRB/CO/2, 3 June 2015, Para 22.

125 See above, note 116, p. 14.

126 Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar; Equal Rights Trust focus group meeting, 1 November 2017, Niš; Equal Rights Trust focus group meeting, 8 December 2017, Pančevo.

127 Equal Rights Trust focus group meeting, 8 December 2017, Pančevo.

128 Equal Rights Trust focus group meeting, 15 November 2017, Novi Pazar.

129 Da se zna! (It should be known!), Case of M., Case Study Research Report to Equal Rights Trust, 2018.

*Many Roma, like myself, don't know that there are some institutions, dealing with protection against discrimination, because from our very birth we get used to it and fight it throughout our life. We each do this in our own way and without the institutions because, unfortunately, **we don't trust them**. We fight for our own life, and, somehow, we survive discrimination, raise our head and go on.*¹³⁰

These findings are similarly corroborated by other research surveys undertaken in Serbia. The 2013 study on access to justice, discussed in Part 3.1.2 above, found that 30% of respondents had decided not to initiate court proceedings due to a lack of trust in the judicial system.¹³¹ A 2014 study by the World Bank which surveyed 3,288 people – roughly half of whom had had experience of judicial proceedings¹³² – similarly found that only 26% of respondents trusted the judicial system.¹³³ The reasons cited for the lack of trust included: the duration of proceedings; corruption; political influence; lack of fairness in court decisions; and failure of the state to prosecute certain cases.¹³⁴ Similar findings were made in the research conducted by the News Agency Beta in November 2014.¹³⁵

It is important to note, however, that some interviewees who spoke to Equal Rights Trust researchers cited a broader loss of faith in institutions in Serbia that extended beyond the judiciary. For example, a Roma man, who had experienced discrimination, said to the Trust's researchers, "to whom should we complain? Would it be worth complaining?"¹³⁶ Similarly, a Roma woman expressed the following view:

*I have completely lost my will. I have no power to fight, not even to hope [...] Having a formal job is for me pure imagination, as is a pension, which I know I will never have. Unfortunately, the stories of my mother and my grandmother will be confirmed – that we, Roma women, are meant to give birth, to serve our husbands and to wait for old age to come. And the stories of protection against discrimination sound good, but they remain only stories.*¹³⁷

Given the well-documented concerns as to the independence of the judiciary, several bodies have called for reform. For instance, the European Commission

130 Romi istraživači (Roma Researchers), Case of S.J., Case Study Research Report to Equal Rights Trust, 2018.

131 See above, note 48, p. 44.

132 World Bank, *Experiences and Perceptions of Justice in Serbia: Results of the survey with the general public, enterprises, lawyers, judges, prosecutors and court administrative staff*, 2014, p. 142, available at: <http://www.mdrtfjss.org.rs/archive//file/Experiences%20and%20Perceptions%20of%20Justice%20in%20Serbia%20-%20EN.pdf>; 1,349 with experience with court cases and 1,939 without experience with court cases.

133 *Ibid.*, p. 71.

134 *Ibid.*, pp. 71–72.

135 EurActiv, "Citizens of Serbia do not trust the institutions", 2 January 2015, available at: <http://www.euractiv.rs/pregovori-sa-eu/8212-graani-srbije-ne-veruju-institucijama>.

136 Equal Rights Trust focus group meeting, 1 November 2017, Niš.

137 Romi istraživači (Roma Researchers), Case of L.J., Case Study Research Report to Equal Rights Trust, 2018.

has suggested that amendments must be made to the constitutional and legislative framework on the basis of European standards to remove the potential for undue political interference.¹³⁸ Similarly, the CAT Committee has suggested that the role of politicians in the appointment of judges should be reviewed.¹³⁹

Judicial Interpretation

The judicial interpretation of anti-discrimination law in Serbia is a vast topic, a full exploration of which falls outside the scope of this study. However, as the application of the law by the courts is a key element of the implementation of equality laws, we have conducted an illustrative preliminary analysis of judicial interpretation in a cross-section of discrimination cases.

Serbia’s court case database categorises discrimination cases poorly. Proceedings under Serbia’s three main equality laws are not separately recorded as “discrimination proceedings”, but rather fall under other categories, such as “discrimination and mobbing” which can include a wide range of other cases that are unrelated to discrimination. This results in a lack of visibility and makes conducting research on discrimination jurisprudence a time-consuming enterprise. However, Equal Rights Trust researchers have concluded that there are approximately 200 court decisions in Serbia in respect of the three main equality laws and have undertaken a preliminary analysis of more than 100 of these decisions.

From this preliminary analysis, a number of instances of misapplication of discrimination law have been identified, indicating that some members of the judiciary may benefit from additional training on Serbia’s equality laws in order to more effectively enforce them. However, a more in-depth study would be required to draw more specific and detailed conclusions:

- The shifting of the burden of proof from the plaintiff to the defendant, once the plaintiff has established a *prima facie* case of discrimination, is a key procedural mechanism to promote access to justice in discrimination proceedings under Serbia’s equality laws.¹⁴⁰ However, analysis of case law indicates that Serbian courts rarely engage with the concept of the shifting burden of proof. In the course of discrimination proceedings in Serbia, it is rare for judges to refer to the concept of the shifting burden of proof or indicate whether the plaintiff has established a *prima facie* case of discrimination.¹⁴¹ Similarly, such discussion is often absent from or cursory in the court’s judgments.¹⁴² Most concerningly, there are a number of decisions in which courts have dismissed discrimination proceedings on the basis that the plaintiff “did not prove” the existence

138 See above, note 116, p. 14.

139 See above, note 125, CAT Committee, Para 22.

140 See above, note 10, Article 45, Para 2; see above, note 14, Article 49.

141 See above, note 42, p. 272.

142 Tasić, A., *Civil Procedure in Antidiscrimination Lawsuits*, Faculty of Law, University of Nis, 2016, p. 321.

of discrimination,¹⁴³ indicating that the burden of proof had not been shifted at all.

- There are some examples of courts incorrectly characterising cases as cases of discrimination. For example, in the initial years of implementation of the LPD, a number of court decisions incorrectly characterised discrimination as “unequal treatment” without considering whether the conduct had occurred in relation to a prohibited personal characteristic. For example, the Supreme Court of Cassation stated in one decision that “the basic characteristic of discrimination is unequal treatment in relation to other persons in the same or similar situation”, and found that a woman had experienced discrimination in the workplace, but did not examine whether this treatment has occurred “on the grounds of [her] personal characteristics”, as required by the definition of direct discrimination under Article 6 of the LPD.¹⁴⁴
- There are instances in which the relevance of protected characteristics has been misunderstood by a court. For example, in one case, the court erroneously found that an employer had discriminated on grounds of marital status when refusing to employ a person due to her marriage with the former husband of one of the other employees.¹⁴⁵ In another case, a judge held that the dismissal of an employee on return from maternity leave was not discriminatory because the employee was replaced by another woman.¹⁴⁶
- In more complex cases, it appears evident that some judges do not recognise the distinction between direct and indirect discrimination. In one of the cases reviewed, the court did not indicate whether direct or indirect discrimination occurred, and its decision quoted provisions prohibiting both direct and indirect discrimination in interpreting the facts.¹⁴⁷

3.3.2 The Commissioner for the Protection of Equality

Principle 23 of the Declaration highlights the important role of specialised bodies in the protection of the right to equality:

States must establish and maintain a body or a system of coordinated bodies for the protection and promotion of the right to equality. States must ensure the independent status and competences of such bodies in line with the UN Paris Principles, as well as adequate funding and transparent procedures for the appointment and removal of their members.

143 *Ibid.*, p. 327.

144 Decision of the Supreme Court of Cassation, Rev2 687/2012, 27 December 2012; the court held that “the use of free days, the allocation of a larger number of patients, the exclusion from supplementary work, the inability of the plaintiff to present her opinion in the morning meetings or the interruption of the plaintiff in her presentation, shouting at her and degrading her before the colleagues and patients, etc., are discriminatory behaviour towards the plaintiff.”

145 Decision of the Appellate Court in Kragujevac, GŽ 734/14, 3 March 2015.

146 Decision of the First Basic Court in Belgrade, 73 P. br. 18254/2012, 17 September 2013; Decision of the Appellate Court in Belgrade, GŽ 2746/14, 10 September 2014.

147 Šolić, N., and Golubović, K., *Analysis of the cases of Appellate Courts – legal protection from discrimination in Serbia*, Judicial Academy, Belgrade, 2015.

The CESCER has also highlighted the importance of specialised bodies, as follows:

*National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions **dealing with allegations of discrimination** customarily include courts and tribunals, administrative authorities, **national human rights institutions and/or ombudspersons**, which should be accessible to everyone without discrimination.*¹⁴⁸

Since 2010, the Commissioner has operated as an “independent state organ” in Serbia with a formal mandate to enforce the LPD and protect the rights to equality and non-discrimination more broadly.¹⁴⁹ The Commissioner is the only statutory body in Serbia with a specific mandate regarding the rights to equality and non-discrimination.¹⁵⁰

Competence and Mandate

The LPD confers a wide range of powers on the Commissioner which relate both to the enforcement of the LPD itself and, significantly, enable the Commissioner to seek legal and policy reform to address systemic patterns of discrimination.¹⁵¹ This is consistent with the UN Paris Principles which require that a national human rights institution be given “as broad a mandate as possible”.¹⁵²

The Commissioner has three key mechanisms to promote compliance with the LPD:

- A complaints mechanism (discussed above),¹⁵³
- Strategic litigation;¹⁵⁴ and
- Initiation of misdemeanour and criminal charges.¹⁵⁵

The Commissioner also has the power to engage in legal and policy reform to address underlying causes of discrimination. This includes the power to:

148 See above, note 1, Para 40 (emphasis added).

149 See above, note 10, Article 1.

150 The Serbian Ombudsman (Protector of Citizens) is a national human rights institution with a broad mandate in relation to human rights, but it does not extend to the rights to equality and non-discrimination, despite some misunderstanding to the contrary. For details regarding the function and mandate of the Ombudsman, see: Serbian Ombudsman, “Role and Function”, visited 4 October 2018, available at: <http://ombudsman.rs/index.php/o-nama/uloga-i-funkcija>.

151 See above, note 10, Article 33.

152 United Nations General Assembly, Principles relating to the Status of National Institutions (the Paris Principles), G.A. Res. 48/134, 1993, “Competence and responsibilities”, Para 2.

153 See above, note 10, Articles 35–40.

154 *Ibid.*, Article 35.

155 *Ibid.*, Article 33(4).

- Provide public information about “frequent, typical and severe cases of discrimination”;¹⁵⁶
- Submit special reports to the National Assembly on particular issues of discrimination;¹⁵⁷
- Monitor the implementation of laws and other regulations that relate to equality,¹⁵⁸ initiate the adoption of or amendments to regulations,¹⁵⁹ and give opinions on draft laws related to discrimination;¹⁶⁰ and
- Make recommendations to public administration and other bodies on advancing the right to equality.¹⁶¹

As indicated in **Table 3A** below, the Commissioner uses the general power to issue recommendations for measures to achieve equality most frequently, followed by the power to issue opinions and recommendations under the complaints mechanism.¹⁶² The information presented in **Table 3A** is based on the data reported by the Commissioner publicly and does not contain all of the enforcement mechanisms available, such as the number of cautions issued and public notification issued under the complaints mechanism.

Table 3A
Overview of certain enforcement mechanisms
under the LPD used by the Commissioner for the Protection of Equality

	2010	2011	2012	2013	2014	2015	2016	2017	Total
Complaints mechanism									
Opinions and recommendations under LPD Article 33(1)	30 (26+4)	55 (36+19)	56 (29+27)	140 (32+108)	109 (43+66)	149 (50+99)	51 (5+46)	51 (18+33)	641
Misdemeanour and criminal charges									
Criminal charges	0	2	6	2	1	0	3	3	17
Misdemeanour charges	0	0	1	2	3	1	1	1	9

156 *Ibid.*, Article 33(6).

157 *Ibid.*, Articles 48–49.

158 *Ibid.*, Article 33(7).

159 *Ibid.*

160 *Ibid.*

161 *Ibid.*, Article 33(9).

162 Data is obtained from regular annual reports of the Commissioner for Protection of Equality for 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017, available at: <http://ravnopravnost.gov.rs/en/reports>.

	2010	2011	2012	2013	2014	2015	2016	2017	Total
Litigation									
Strategic litigation	0	3	5	3	2	0	0	3	16
Proposals for assessment of constitutionality and legality	0	2	3	6	2	1	1	1	16
Public information and recommendations on equality matters									
Recommendations under LPD Article 33(9) (relating to equality)	2	22	117	24	198	215	665	501	1,744
Public statements ¹⁶³	4	22	17	15	20	35	25	20	158
Public warnings ¹⁶⁴	1	8	2	10	6	9	9	13	58
Legal and policy reform									
Initiatives for amending and changing laws	0	2	1	0	0	0	1	2	6
Opinions on draft laws and other legal acts	0	3	5	3	2	17	40	41	111

Source: Annual Reports of the Commissioner from 2010 to 2017.¹⁶⁵

163 A “public statement” is a statement given by the Commissioner on the occasion of an international day relevant to human rights or equality, such as International Women’s Day.

164 A “public warning” is a statement given by the Commissioner in response to a public event, such as sexist comments in a newspaper.

165 Available at: <http://ravnopravnost.gov.rs/en/reports>.

Complaints mechanism

Our research indicates that the complaints mechanism under the LPD operates well in practice, subject to the need for some small modifications. The complaints mechanism is free, designed to be simple to use, and operates according to a prescribed timetable, making it more accessible and efficient for the resolution of discrimination matters than judicial proceedings. While there are no legally binding sanctions that flow from the complaints mechanism, it enables the independent investigation of alleged discrimination and recommendations for redress that a perpetrator is instructed to follow.

Since 2010, the Commissioner has received a total of 4,097 complaints as outlined in **Table 3B** below.

Table 3B
Number of complaints received by the Commissioner
pursuant to Article 33(1) of the LPD

Year	2010	2011	2012	2013	2014	2015	2016	2017	Total
Number of complaints	124	335	465	552	666	797	626	532	4,097

Source: *Annual Reports of the Commissioner from 2010 to 2017*.¹⁶⁶

Research conducted in 2016 by the Commissioner indicated that the number of persons in Serbia expressing readiness to approach the Commissioner with cases of discrimination is increasing; in 2013, only 2% of persons were willing to contact the Commissioner in cases of discrimination,¹⁶⁷ whereas by 2016, 18% of persons expressed such willingness.¹⁶⁸ However, there appears to remain a need for greater public awareness about the role of the Commissioner. The same research conducted by the Commissioner in 2016 found that people perceive the police as an institution responsible for discrimination, rather than the Commissioner, and more people would report discrimination to the police (21%) than to the Commissioner.¹⁶⁹

Comments made to Equal Rights Trust researchers during focus group discussions also indicated some reluctance to submit complaints to the Commissioner:

LGBTTIQA community members are not informed enough about the existence and activities of the Commissioner. The lack of information

166 Available at: <http://ravnopravnost.gov.rs/en/reports>.

167 Commissioner for the Protection of Equality, *Regular Annual Report for 2013, 2014*, p. 30, available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/download/redovan_izvestaj_2013_eng.pdf.

168 Commissioner for the Protection of Equality, *Abridged version of 2016 Regular Annual Report*, 2017, p. 32, available at: <http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/10/Poverenik-Skraceni-godisnji-izvestaj-za-2016-engl-za-odobrenje-za-stampu.pdf>.

169 *Ibid.*, p. 32.

*results in narrowing down the choice of mechanisms for protection from discrimination, hence access to justice for victims of discrimination becomes even more difficult. Not only the Commissioner needs to be more promoted to the LGBTTIQA community, but also the Commissioner must publicly address cases of hate speech and discrimination based on sexual orientation and gender identity.*¹⁷⁰

*I heard about the Commissioner, but have never addressed her. I believe they would manage to help me, but I didn't want to initiate procedures due to the fear from the possible revanchist behaviour at the faculty.*¹⁷¹

*I have never thought of addressing the Commissioner. I don't even know what he/she deals with, but I do doubt that it would be beneficial.*¹⁷²

In relation to the general operation of the complaints system, there was strong support amongst interviewees regarding the optional nature of the complaints mechanism under the LPD. Currently, there is no requirement for a party to submit a complaint *prior* to commencing litigation, as is the case in some other jurisdictions. Most interviewees indicated that they would oppose any change to this, on the basis that it would unnecessarily constrain the right to initiate judicial proceedings. Similar opinions were expressed during two roundtables organised by the Commissioner and attended by this study's researchers in February and March 2017 with eminent legal experts in the field of anti-discrimination (law professors, judges, academics, and lawyers) in order to discuss whether changes to the LPD are needed.

Serbian legal experts interviewed for this study differ in their views as to whether the Commissioner should have greater powers to impose sanctions for non-compliance with recommendations under the complaints procedure. Some legal experts favour greater powers to sanction perpetrators, including the power to propose the dismissal of public officials, like the Serbian Ombudsman (Protector of Citizens),¹⁷³ and to initiate litigation to require compliance with recommendations made. However, the present Commissioner,¹⁷⁴ and the previous Commissioner, do not support the use of litigation to enforce compli-

170 Equal Rights Trust focus group meeting, 8 December 2017, Pančevo.

171 Udruženje studenata sa hendikepom (Association of Students with Handicaps), Case of S., Case Study Research Report to Equal Rights Trust, 2018.

172 Romi istraživači (Roma Researchers), Case of B.J., Case Study Research Report to Equal Rights Trust, 2018.

173 Law on the Protector of Citizens, "Official Gazette of the Republic of Serbia", Nos. 79/2005 and 54/2007, Article 20, provides that the Ombudsman has the power to publicly recommend the dismissal of an official who is responsible for a violation of citizens' rights, i.e. to initiate disciplinary proceedings against an employee of the administrative authorities who is responsible for an injury, when the recurring behavior of the official or employee reveals the intent to refuse co-operation with the Protector of Citizens, or when it is determined that the injury made to the person caused material or other serious damage to that person.

174 Equal Rights Trust interview with the Commissioner, 1 February 2018, Belgrade.

ance with recommendations, instead taking the view that litigation should be reserved for strategic purposes. The present Commissioner, in an interview for the present study, expressed the view that, in this regard, “the Commissioner’s mandate is generally adequate”.¹⁷⁵

Nevertheless, there was general consensus amongst interviewees about the need for reform to enable the Commissioner to initiate an investigation into alleged discrimination on her own motion, without waiting for a complaint to be received (in line with the mandate which is available to the Ombudsman). This is reflected in the recommendations in Part Four of the study.

The Commissioner also indicated that reform was needed to procedural rules in the complaint’s procedure. In an interview with Equal Rights Trust researchers on 1 February 2018, the Commissioner noted that the LPD should explicitly state that the rule on the shifting of the burden of proof applies to both the complaint procedure, and judicial proceedings under the LPD.¹⁷⁶ Some legal experts interviewed by Equal Rights Trust researchers also suggested that a limitation period be introduced within which complaints must be filed, with flexibility for exceptional circumstances.¹⁷⁷ This would encourage victims to file complaints in a timely manner and would enable the Commissioner to investigate matters before evidence is lost or destroyed.

Strategic Litigation

Strategic litigation is an important mechanism by which the Commissioner can seek redress for violations of the LPD and achieve wider societal change. Each year, the Commissioner initiates a small number of strategic cases (approximately three per year) under the LPD, arising from complaints received. The Commissioner initiates litigation in order to promote the consistent implementation of the LPD and to encourage victims of discrimination to seek legal redress.¹⁷⁸ The Commissioner does not have a mandate, nor a budget, to conduct litigation in relation to large numbers of individual cases, nor to enforce compliance with recommendations following the complaints procedure. However, this is not well understood by members of the public who sometimes apply for assistance with *ad hoc* cases, likely due to the absence of state-funded legal aid.

The most significant limitation on the Commissioner’s ability to conduct litigation under the LPD is that it must relate to a complaint received.¹⁷⁹ There was

175 Equal Rights Trust interview with the Commissioner, 1 February 2018, Belgrade.

176 See above, note 10, Article 45, Para 2.

177 Including: two roundtables organised by the Commissioner in February and March 2017 with eminent legal experts in the field of anti-discrimination (law professors, judges, members of Academia, lawyers, etc); and Equal Rights Trust interview with professor of the Law Faculty in Novi Sad, 28 November 2017, Novi Sad; Equal Rights Trust interview with professor of the Law Faculty in Belgrade, 23 January 2018, Belgrade.

178 See above, note 52, p. 171.

179 See above, note 10, Article 35(1); Rules of Procedure for the CPE, Article 15. available at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_POSLOVNIK%20O%20RADU.pdf.

broad consensus amongst those whom the Equal Rights Trust consulted for this study that this unnecessarily limits the ability of the Commissioner to address a violation of the LPD to which it is alerted, for example by the press, in the absence of a complaint. This is reflected in the recommendations in Part Four of the study.

Under the LPD, if the litigation relates to a single individual, the Commissioner must seek the individual's consent;¹⁸⁰ however, this is not needed if the complaint has been brought by a group of persons.¹⁸¹ The Commissioner may also initiate proceedings before the Constitutional Court for the assessment of constitutionality of legislation and legality of conduct,¹⁸² and may intervene in a lawsuit initiated by another authorised party.¹⁸³

Prominent examples of strategic litigation conducted by the Commissioner since 2010 include:

- A case of gender-based discrimination against a pizza restaurant chain which only employs women. After a job advertisement was posted for “girls needed to work at the front desk”, one male student and one female student applied at three different restaurants. The woman was offered a job each time while the man was turned down on the basis of company policy to only employ women. The Appellate Court ruled that this amounted to direct discrimination on the grounds of gender, prohibited the defendant from committing acts of discrimination in future and ordered the publication of the judgement in a daily newspaper with national coverage. In February 2015 the Supreme Court of Cassation upheld the decision of the Appellate Court, accepting the arguments of the Commissioner in full.¹⁸⁴
- A case of discrimination against the Roma minority concerning statements made by the president of the local community of Sirča on 17 July 2014 that: “Sirča is having difficult times. Neither floods nor earthquakes have degraded Sirča as much as the settlement of Roma from Kosovo. We are not racists, but we cannot live together with them because our peace is

180 *Ibid.*, LPD, Article 46, Para 3.

181 See, for example: Decision of the Supreme Court of Cassation, Rev. 853/2014, 9 September 2014, which related to discrimination against three Roma children whereby a restaurant refused them entry with a woman who wanted to buy them food. The defendant claimed that the Commissioner had failed to obtain the consent of the children's parents before initiating litigation and the claim should be dismissed. The Commissioner claimed that the consent was not necessary as the discrimination related to two or more persons on the basis of the same personal characteristic. While the courts of lower instance rejected the Commissioner's claim, the Supreme Court of Cassation held “[i]f the lawsuit for the determination of discrimination relates to a group of persons, which is the subject of this lawsuit, the Commissioner is not obliged to have consent, as wrongly considered by the lower courts. Namely, the lawsuit is not directed at determining discrimination against a particular person, in which case the Commissioner would be required to have a written consent for filing a lawsuit in this legal matter, but for the discrimination that was committed against a particular group: an indefinite number of persons – children of the Roma nationality. The Commissioner is not required to have a written consent to file a lawsuit in this legal matter.”

182 See above, note 4, Article 168, Para 1.

183 See above, note 59, Article 215.

184 See above, note 52, p. 178.

disrupted. During the Turkish occupation, the villagers of Sirča were running into the hills, in Trgovište, it seems we will have to do the same again. We cannot mix with them". The Higher Court in Belgrade on 8 June 2015 held that this constituted a severe form of discrimination against members of the Roma minority. The Court forbid the president from giving such statements in the future, and ordered him to, at his own expense, publish, together with the decision of the Court, a public apology to the Roma national minority in a daily newspaper with national coverage.

Initiating Misdemeanour and Criminal Charges

The violation of certain provisions of Serbia's equality laws can result in a misdemeanour or criminal charges. The Commissioner has the power, but no obligation, to file misdemeanour¹⁸⁵ or criminal charges for acts so prescribed under the LPD.¹⁸⁶ In practice, the Commissioner rarely exercises this power, as outlined in **Table 3A**. Since 2010, the Commissioner has filed 17 criminal charges and nine misdemeanour charges, compared with making 1,744 recommendations pursuant to its power to make recommendations to public administration and other bodies on advancing the right to equality.¹⁸⁷

Public Education and Engagement in Legal and Policy Reform

Since 2010, the Commissioner has engaged in a wide range of public education campaigns and contributed to debate on legal and policy reform affecting equality. As indicated in **Table 3A**, the Commissioner frequently gives recommendations to public authorities and other persons regarding measures to achieve equality, to eliminate the causes of structural and institutional discrimination, and to improve the functioning of state institutions in creating equal opportunities. Prominent examples include providing written advice (known as "opinions") on: amendments to the Criminal Code (September 2016);¹⁸⁸ a draft law to replace the current LGE (December 2015);¹⁸⁹ amendments to the LPDPD (November 2015).¹⁹⁰

Some experts interviewed for this study indicated that reform was needed to strengthen the Commissioner's power to initiate draft laws relating to equality. At present, the Commissioner cannot propose a draft law for debate by the National Assembly, unlike the Ombudsman; instead, the Commissioner is required to find a ministry that is willing to support the draft law in Parliament.

185 See above, note 10, Article 33(4).

186 Law on Criminal Procedure, "Official Gazette of the RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 280.

187 See above, note 10, Article 33(9).

188 See above, note 169, p. 109.

189 See above, note 52, p. 173.

190 *Ibid.*, p. 168.

The current Commissioner, in an interview for the present study, also proposed a new requirement for mandatory consultation with the Office of the Commissioner prior to introducing legislation relevant to equality and non-discrimination. The Commissioner proposed that the government should:

*[I]ntroduce a legal obligation on all public authorities to ask for the Commissioner's opinion on draft laws, because practice shows that more attention needs to be paid to the compliance of regulations, and cross-sectoral cooperation.*¹⁹¹

Independence

It is a key requirement of the UN Paris Principles that members of national human rights institutions have a “stable mandate”,¹⁹² and that the institution receives funding for “its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”¹⁹³

The LPD establishes the Commissioner as an “independent state organ” and includes a number of mechanisms to guarantee its independence.¹⁹⁴ The Commissioner is elected by a majority of parliamentarians in the National Assembly for a five-year term and may only be re-elected once.¹⁹⁵ There are only a small number of circumstances in which a majority of the National Assembly may dismiss the Commissioner.¹⁹⁶ The Commissioner has the same immunity as an MP and receives a salary that is equivalent to that of a judge of the Supreme Court of Cassation.¹⁹⁷ The Commissioner is required to submit an annual report to the National Assembly which contains an evaluation of equality and non-discrimination in Serbia, and the activities conducted by the Commissioner.¹⁹⁸

While no concerns were directly raised regarding the independence of the Commissioner, some interviewees indicated that the Office of the Commissioner should

191 Equal Rights Trust interview with the Commissioner, 1 February 2018, Belgrade

192 Paris Principles, “Composition and guarantees of independence and pluralism”, Para 3.

193 *Ibid.*, Para 2.

194 See above, note 10, Article 1.

195 *Ibid.*, Article 28, which provides that a citizen of the Republic of Serbia, who has a bachelor’s degree in law and at least ten years of experience in the field of protecting human rights and who has high moral and professional qualities can be elected as a Commissioner. The Commissioner cannot hold any other public or political duty or professional activity as stated in the law.

196 *Ibid.*, Article 30, which provides that these include: if the Commissioner performs his/her 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 the Commissioner loses his/her citizenship; 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.

197 See above, note 10, Articles 29–31.

198 *Ibid.*, Article 33(5).

be established pursuant to the Constitution, like the Ombudsman, rather than in legislation which is subject to amendment and potential political interference.¹⁹⁹

In relation to funding, the LPD provides that the Commissioner is entitled to three assistants who have responsibility for certain areas of work, as well as a number of expert staff, all of whom the Commissioner may appoint directly, following the procedure outlined in the Law on Civil Servants.²⁰⁰ The LPD further provides that the state budget shall provide the funds required for the work of the Commissioner and its staff, following submission of a proposal by the Commissioner.²⁰¹ In an interview for the present study, the current Commissioner indicated that the annual budget was usually sufficient for the performance of its statutory responsibilities; however, the Commissioner noted that the full amount requested in its 2018 budget was not approved by the National Assembly.²⁰² It is the general practice of the Office of the Commissioner to obtain funding from international organisations, foreign embassies and NGOs to conduct some of its activities, such as public education campaigns and opinion polls, to cover a shortfall in funding, which is evidently an inadequate situation for a national equality body to be in.

A number of interviewees indicated that further funding should be allocated to enable the Commissioner to establish additional regional offices. Currently, the Office of the Commissioner is headquartered in Belgrade and has only one regional office in Novi Pazar. The lack of regional offices makes the Commissioner less visible and accessible to individuals living in other geographical areas.²⁰³ The Commissioner's 2016 Annual Report stated that, as in previous years, "the Regional Office of the Commissioner for the Protection of Equality in Novi Pazar had an extremely small number of complaints claiming discrimination on any grounds filed by the local population."²⁰⁴ However, based on our research, this is not attributable to a lack of need for the Commissioner's service but rather inadequate levels of public awareness.

3.4 Compliance with Equality Laws by State and Private Actors

The ongoing patterns of discrimination in Serbia, discussed in Part One, indicate that many state and private actors do not comply with their obligations under Serbia's

199 Equal Rights Trust interview with representative of the Faculty of Law in Niš, 22 December 2017, Niš; Equal Rights Trust interview with representative of the Legal Clinic in Niš, 27 December 2017, Niš; Equal Rights Trust interview with professor of the Law Faculty in Belgrade, 23 January 2018, Belgrade; see also: Petrušić, N. and Molnar, A., "The Status and Correlations between the Ombudsman and the Commissioner for the Protection of Equality in the Serbian Legal System", in Lazić, M. and Knežević, S. (eds.), *Legal, Social and Political Control in National, International and EU law*, Faculty of Law, University of Niš, 2016, pp. 81–82.

200 See above, note 10, Article 32.

201 *Ibid.*

202 Equal Rights Trust interview with the Commissioner, 1 February 2018, Belgrade.

203 See above, note 10, Article 33, Para 1, point 8.

204 See above, note 169, p. 21.

equality laws. The reasons for non-compliance with equality laws are often complex. To understand the issue, Equal Rights Trust researchers conducted interviews with 13 representatives from international and domestic large, medium and small enterprises,²⁰⁵ and 34 representatives of public authorities at the national, provincial and local level from a range of sectors, including education, social protection, health care, employment, judiciary, state administration and local self-government.

The topics covered in the interviews included:

- Their knowledge about prohibition of discrimination, the scope and obligations imposed under anti-discrimination laws;
- Their awareness of the prevalence of discrimination in the society;
- Issues encountered in implementing and complying with their obligations under anti-discrimination laws;
- Whether further training on anti-discrimination law is needed.

In this section, we summarise the findings of the interviews conducted with duty-bearers, highlighting their current levels of awareness of Serbia's equality laws and areas in which significant additional training is required.

Recognition of Discrimination as a Social Problem in Serbia

Many of the respondents interviewed by Equal Rights Trust researchers did not consider discrimination to be a serious social problem in Serbia, given the existence of other problems, such as corruption and nepotism. For example, one public authority official said:

*Speaking from experience, discrimination is less present in our country than in the western world. The biggest problem is nepotism, and not gender or other discrimination.*²⁰⁶

While respondents from the public sector were generally aware of the fact that discrimination is widespread in all sectors of society, approximately half of the respondents interviewed indicated that they did not consider discrimination to be widespread in Serbia. This is particularly concerning when considering the prevalence of discrimination, as outlined in Part One of this study.

When asked who they considered to be particularly vulnerable to discrimination, most respondents, both from public and private sector, cited persons with

205 The Agency for Business Registers of the Republic of Serbia has developed a methodology for the division of firms/enterprises according to number of employees: large enterprises – more than 250 employees; medium enterprises – between 50 and 250 employees; small enterprises between 10 and 50 employees; micro enterprises – less than 10 employees. More information available at: <http://www.apr.gov.rs/%D0%A0%D0%B5%D0%B3%D0%B8%D1%81%D1%82%D1%80%D0%B8/%D0%A4%D0%B8%D0%BD%D0%B0%D0%BD%D1%81%D0%B8%D1%98%D1%81%D0%BA%D0%B8%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%D0%B8/%D0%A0%D0%B0%D0%B7%D0%B2%D1%80%D1%81%D1%82%D0%B0%D0%B2%D0%B0%D1%9A%D0%B5%D0%BF%D1%80%D0%B0%D0%B2%D0%BD%D0%B8%D1%85%D0%BB%D0%B8%D1%86%D0%B0.aspx>.

206 Equal Rights Trust interview with representative of the University of Niš, 27 December 2017, Niš.

disabilities, particularly those with mental disabilities, while their opinions differed significantly regarding other social groups vulnerable to discrimination. Regarding discrimination against the LGBT+ population, Roma persons and the elderly, attitudes varied from “not discriminated at all” to “the most discriminated group”. A number of respondents indicated that there was no discrimination against Croats, Albanians, Bosniaks and Hungarians and national minorities generally. One respondent claimed that “[...] there is not a single group of people discriminated in Serbia”.²⁰⁷

Most respondents, from both the public and private sector, when asked directly whether there were any barriers to access to services for marginalised groups in Serbia, denied that barriers existed and indicated that all services were accessible and available under equal conditions. For example, a university representative responded as follows:

*All students and teachers have the same treatment in accessing services provided by the Office of International Cooperation. Problems can arise from the fact that a small number of people provide services to a large number of interested persons, but not because of discrimination. According to the nature of the University as a state institution, recognising a person as marginalised is not appropriate, and everyone has equal access to opportunities in accordance with the rules specified by law or by internal acts and programs.*²⁰⁸

The only exception to this phenomenon was some recognition that persons with physical disabilities experience physical barriers in accessing certain services:

*[T]he main obstacles are physical barriers. We do not have an elevator in our institution, and persons with disabilities cannot move unobstructed through the Clinic building. Namely, the Clinic in which I work, provides healthcare for children with disabilities from nine administrative districts of Serbia. These children are examined on the second floor of the Clinic, and their parents and clinical staff have to carry them on to the second floor, because no one has so far provided funds to set the electronic platform for wheelchairs or an elevator.*²⁰⁹

*Persons with disabilities have limited access to legal services due to the inaccessibility (lawyers' offices).*²¹⁰

A public call for projects, as well as allocation of funds on various bases is published in the Official Gazette of the Autonomous Prov-

207 Equal Rights Trust interview with employee of the firm for computer engineering, 28 November 2017, Novi Sad.

208 Equal Rights Trust interview with representative of the University of Niš, 27 December 2017, Niš.

209 Equal Rights Trust interview with representative of the regional health institution, 15 January 2018, Novi Sad.

210 Equal Rights Trust interview with lawyer from Novi Sad, 28 November 2017, Novi Sad.

*ince of Vojvodina, daily newspapers and on the website of the Provincial Secretariat [...], but these media is neither available nor accessible to everyone.*²¹¹

Lack of Awareness of Content of Serbia's Equality Laws

Duty-bearers interviewed by the Equal Rights Trust for this study were overwhelmingly unfamiliar with the key elements of Serbia's comprehensive equality law, the LPD. Of the 47 persons interviewed, most were aware that discrimination was prohibited in Serbia, but they were not aware of their duties under the LPD. In addition, approximately 30% of the respondents incorrectly believed that the prohibition on discrimination only applies to the conduct of public authorities. However, levels of awareness were somewhat higher with respect to certain duties imposed on employers under the LGE and the LPDPD.

Duty bearers' lack of awareness of Serbia's equality laws was made starkly apparent by their willingness to discuss blatantly discriminatory practices with Equal Rights Trust researchers, apparently without recognition of the unlawful nature of this conduct. Some of the respondents openly discussed recruitment processes which, on the facts, constitute direct discrimination. The respondents in question did not appear to be aware that the acts they were describing were unlawful. A small number of respondents indicated that they engaged in practices which amount to direct discrimination (although they did not identify the practices as such) by including specifications regarding a candidate's sex in job advertisements. Other respondents denied that there were express prescriptions in job advertisements but went on to acknowledge that they "took into account" (i.e. directly discriminated on the basis of) a candidate's age, health status and ability to "fit into the working environment" which, it was suggested in subsequent comments, could include a consideration of a person's religion, sexual orientation and ethnicity.²¹²

Most concerning of all, of the 13 respondents from the private sector who were interviewed for this study, a number indicated that they would not hire members of specific social groups (due to deep-seated prejudices), as follows:

- While most private sector respondents indicated they would not oppose employing a Roma person, three indicated they would not hire Roma individuals because they would not "fit" into the workplace environment.
- Similarly, while most private sector respondents indicated they would not oppose employing an LGBT person, five indicated that they would not employ an LGBT person, citing resistance from other employees or concerns about "fitting" into the workplace environment.

211 Equal Rights Trust interview with representative of the provincial authority responsible for family accommodation and adoption, 15 January 2018, Novi Sad.

212 Equal Rights Trust interview with representative of the firm for audit and financial reporting, 17 January 2018, Belgrade; Equal Rights Trust interview with representative of the firm for air conditioning, 6 December 2017, Belgrade.

- Five private sector respondents indicated that they would not employ a Muslim women wearing traditional clothes (including a head covering) on the basis that this would be contrary to a “no religion at work” rule and, similarly, citing concerns about such employees “fitting” into the workplace environment.
- Four private sector respondents expressed doubts about employing persons living with HIV/AIDS.

Awareness of Specific Obligations under Serbia's Equality Laws

The respondents from public sector organisations were, in general, unaware of the specific obligations with respect to non-discrimination that apply in their particular sectors, such as housing, healthcare or education, under Serbia's equality laws.

Most respondents were aware of the obligation to make technical modifications to a workplace to accommodate the needs of a persons with disabilities under the LPDPD; however, one respondent insisted, incorrectly, that the obligation only arises “if the disability has occurred during the work for the employer”,²¹³ while another insisted that “the state should be obliged, not the employer” to make the necessary adaptations.²¹⁴ Significantly, when asked about the accessibility of their premises, only two of the 13 private sector company representatives surveyed stated that their premises are fully accessible.

Most respondents were similarly aware of the obligation on companies with 20 to 49 employees to hire one person with a disability, and companies with 50 or more employees to hire at least two persons with disabilities (with the quota increasing by one for each additional 50 employees).²¹⁵ However, a number of the companies interviewed for this study indicated much lower rates of employment for persons with disabilities than required under the legislation.

Most respondents were also aware of obligations imposed under the LGE on employers with more than 50 employees.²¹⁶ However, some respondents acknowledged that they were not complying with the obligation or expressed the view that compliance was “not possible” which raises questions about the monitoring of compliance with the LGE.

In general, respondents were not aware that their organisations had taken any special measures in order to eliminate inequalities, or to achieve the substantial equality of certain groups. One exception was an employee of a provincial

213 Equal Rights Trust interview with representative of the firm for production of leather accessories, 21 December 2017, Vranje.

214 Equal Rights Trust interview with representative of the firm for insurance services, 6 December 2017, Belgrade.

215 Law on Professional Rehabilitation and Employment of Persons with Disabilities, “Official Gazette of the Republic of Serbia”, No. 36/2009, Article 24, Para 3.

216 See above, for example, note 14, Articles 12–13.

authority who gave the following example of positive action by the state in its call for applications for government funding:

[T]he criteria for granting of funds provides that a certain number of points will be given [to applicants] on the basis of the proportion of women in the ownership of the company, as well as on the basis of the number of employed persons with disabilities in that legal entity.²¹⁷

In conclusion, our findings indicate that levels of awareness of Serbia's equality laws remain concerningly low amongst public and private sector duty bearers. It is clear that a range of measures are needed to increase their awareness of the prevalence of discrimination, and their obligations under Serbia's equality laws, particularly under the LPD. The design of additional training programs must also consider how to retain institutional equality knowledge, such as a database of those personnel who have received equality law training within an organisation and process for providing refresher training. We provide detailed recommendations in these respects in Part Four of the study.

Conclusion

Serbia has in place a strong legal framework on equality and non-discrimination, including some aspects of the *legal* structure to facilitate access to justice, effective remedies and enforcement of its equality laws by judicial and non-judicial bodies. However, Serbia's equality framework is significantly undermined by the absence of practical measures to ensure its effective enforcement in practice.

To ensure the enforcement of Serbia's equality laws in practice, it is necessary to address the persistently low levels of awareness of the laws amongst both rights holders and duty bearers. We include a number of specific recommendations in this respect in Part Four of the study. Further, the current lack of publicly-funded legal aid and significant court fees constitute major barriers to access to justice for survivors of discrimination in Serbia. In addition, persons with disabilities and persons located in regional areas face additional barriers to justice due to the inaccessibility of court facilities. Finally, the lack of public confidence in the judiciary as an efficient and independent form of redress significantly undermines its role in enforcing Serbia's equality laws and indicates that institutional reform is needed to address delays in court proceedings and to strengthen judicial independence.

²¹⁷ Equal Rights Trust interview with representative of the provincial authority for economy and tourism, 27 November 2017, Novi Sad.

4. RECOMMENDATIONS

This Part sets out recommendations directed to the government of Serbia. The recommendations are made in order to enable Serbia to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality.

The recommendations have been developed collaboratively by the Equal Rights Trust, Praxis, Sandzak Committee and the members of the project Working Group: Mental Disability Rights Initiative; Gayten; Tamara Lukšić Orlandić (independent expert); Autonomous Women's Centre; S-KRUG League of Roma; and Grupa 484. The recommendations were developed following detailed discussion and consideration of the conclusions reached in Parts 1, 2 and 3 of this report.

The recommendations focus on **priority measures** that are required to strengthen the enforcement and implementation of Serbia's existing legal framework on equality. This is a deliberate choice. It is hoped that, by focusing first and foremost on these priority areas, progress towards compliance with Serbia's international equality obligations, may accelerate.

Recommendation 1: Increase public awareness of Serbia's equality laws and methods of enforcement

The Serbian government must ensure that all persons in Serbia have access to information about the phenomenon of discrimination and their rights and obligations under Serbia's equality laws, to enable them to effectively promote and claim those rights, and to respect the rights of others. Given the persistently low levels of public awareness of Serbia's equality laws that are documented in Part Three of the report, the government should develop a multi-layered strategy that involves the whole of government and is developed in consultation with the Commissioner for the Protection of Equality (Commissioner) and civil society. This will build on the public awareness raising work that has previously been undertaken by the Commissioner and civil society. The strategy for increasing public awareness of Serbia's equality laws and methods of enforcement could include measures such as:

- Introduction of units on equality and non-discrimination in primary and secondary school syllabi under the supervision of the Ministry of Education, Science and Technological Development and the involvement of the Commissioner;

- Funding and resources allocated to the Office of the Commissioner to prepare, publish and distribute user-friendly guides on Serbia's equality laws;
- Funding and resources to support a collaboration between the Ministry of Culture and Information, the Commissioner and the national television broadcaster to produce a monthly television broadcast that summarises the work of the Commissioner. This could include information about recent complaints of discrimination that the Commissioner has investigated.
- Support for a collaboration between the Ministry of Culture and Information and the national television broadcaster to produce a fictional drama series featuring a diverse range of characters, including persons from vulnerable groups who experience discrimination. The production of the series should be done in consultation with the National Public Service Broadcaster (RTS) Program Council which is a specialist advisory council to the national broadcaster, comprising members of civil society.

Recommendation 2: Increase access to justice by removing financial and physical barriers

The Serbian government should ensure that all persons in Serbia have access to affordable and accessible remedies for violations of Serbia's equality laws, including by taking measures to:

- Establish an adequately-funded legal aid scheme to provide legal services to individuals who are unable to afford for legal services for matters arising under Serbia's equality laws. In designing such a scheme, the government should ensure that individuals are able to access legal advice and representation from persons with existing expertise regarding Serbia's equality laws, whether those practitioners are in private practice or based in civil society organisations.
- Reduce or remove the court fees associated with legal proceedings under Serbia's equality laws to ensure that those who cannot afford to pay the fees are not prevented from enforcing their rights.
- Conduct a comprehensive audit of the physical and other accessibility barriers that currently exist with respect to the courts located throughout the country which prevent the access of any person the courts.
- Support initiatives by the Commissioner and the Bar Association to provide training to members of the legal profession to increase their understanding of Serbia's equality laws to enable victims of discrimination to enforce their rights under Serbia's equality laws.

Recommendation 3: Ensure the independent, efficient and effective enforcement of Serbia's equality laws by the judiciary

The Serbian government, and the Ministry of Justice, in particular, should strengthen the enforcement of equality laws by the judiciary by improving safeguards for judicial independence, addressing court delays and providing additional technical support for judges on the operation of equality laws. This includes taking the following measures:

- Strengthen the independence of the judiciary by making necessary amendments to the constitutional and legislative framework to remove the potential for undue political interference, such as those recommended by the European Commission in its most recent report on Serbia's accession to the European Union (EU).¹
- Reduce court delays, particularly in matters relating to Serbia's equality laws. This could include taking measures to ensure efficient judicial administration, as identified by the European Commission in its most recent report on Serbia's accession to the EU.²
- Provide additional technical support to the judiciary and judicial personnel to increase judges' knowledge of the operation of Serbia's equality laws. This should include the provision of resources and support for a training program to be operated with the involvement of the Judicial Academy and Commissioner.

Recommendation 4: Strengthen the enforcement of equality laws by the Commissioner for the Protection of Equality

The Serbian government should ensure the full and effective enforcement of the Law on the Prevention of Discrimination (LPD) by the Commissioner. In particular, it should conduct a full review of the powers of the Commissioner and the funding allocated to the Commissioner to determine whether both are adequate to ensure that the Commissioner can effectively enforce the LPD. The review should consider, in particular, the feasibility and appropriateness of the following measures:

- The conferral of additional powers on the Commissioner, pursuant to an amendment of the LPD, to initiate litigation for violations of the LPD and to investigate reports of discrimination on its own motion, without the need for receipt of a complaint. The conferral of such powers is support-

1 EU Commission Report, 2018, page 14.

2 EU Commission Report, 2018, page 13: "ensure that the High Judicial Council and the State Prosecutorial Council can fully assume their role and achieve a coherent and efficient judicial administration in line with European standards, including regarding the management of the judicial budget"; and "adopt and implement a human resources strategy for the entire judiciary including the establishment of a uniform and functioning case management system, which will in combination lead to a measurable improvement in efficiency and effectiveness of the justice system".

ed by a large number of civil society organisations on the basis that it would enable the Commissioner to swiftly respond to allegations of discrimination reported in the press and is consistent with the powers conferred on the Office of the Protector of Citizens (Serbian Ombudsperson);

- Whether the funding allocated to the Office of the Commissioner is sufficient to enable the Commissioner to exercise its full range of functions under the LPD, particularly given the high level of need identified in the present report for the Commissioner to contribute to greater public awareness of the LPD (Recommendation 1), and the expertise of the Commissioner which could be drawn upon in training of the judiciary, state and non-state actors regarding the operation of the LPD (Recommendations 3 and 4).
- Whether the entrenchment of the Commissioner in the Constitution through a constitutional amendment would be appropriate and effective. A number of civil society organisations considered that constitutional entrenchment of the Commissioner would strengthen the independence and stature of the Commissioner and would be consistent with the position of the Protector of Citizens.
- Whether additional measures are required to ensure that the National Assembly takes into consideration the matters contained in the annual reports and special reports submitted by the Commissioner pursuant to Article 33(5) of the LPD. A number of civil society organisations indicated that there is currently little engagement in the National Assembly with the substantive content of the Commissioner's reports.

**Recommendation 5:
Increase awareness of, and compliance with, Serbia's equality laws
by duty-bearers in the state and private sector**

The Serbian government should ensure effective compliance with Serbia's equality laws by increasing awareness amongst duty-bearers in the state and private sector of discrimination, and their obligations under Serbia's equality laws. In this respect, the government should take measures to:

- Provide funding and support for a systematic training program for public officials on Serbia's equality laws at the national, regional and local government level to be designed in collaboration with the Commissioner.
- Provide funding and resources to support a collaboration between the Ministry of Labour, Employment, Veterans and Social Issues to adopt and implement a training monitoring and evaluation system to ensure appropriate coverage.
- Provide funding and resources to support a collaboration between civil society organisations, the Chamber of Commerce, the Commissioner, and the Serbian Union of Employers to provide a structured training program on equality law for private sector entities.
- Implement a system allowing for the retention of institutional equality law knowledge through the creation of a national equality law training database, maintained by the state at the national, regional and local levels.

**Recommendation 6:
Review Serbia's legal framework to ensure consistency
with international law and best practice on the rights
to equality and non-discrimination**

While it is the Trust's recommendation that the focus of efforts should be, first and foremost, on the proper enforcement of existing equality laws, we also recommend that Serbia should keep its existing legal framework on equality and non-discrimination under regular review with a view to improving its compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party, by amending laws, regulations and policies which do not fully enshrine the right to equality.

**Recommendation 7:
Strengthen international commitments related to equality**

Serbia should ratify the following European and United Nations human rights instruments, which are relevant to the rights of equality and non-discrimination:

- European Convention on Nationality (1997).
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008).
- The Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure) (2011).

**Recommendation 8:
Data collection on equality**

During the research for this report, it has been established that there is a lack of quantitative data in relation to key indicators of equality in Serbia. State authorities should collect and publicise information, including relevant statistics, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate the different experiences of disadvantaged groups within Serbian society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Serbia should further ensure that such information is not used in a manner that violates human rights.

Recommendation 9:
Prohibition of Regressive Interpretation

In adopting and implementing laws and policies to promote equality, Serbia should not allow any regression from the level of protection against discrimination that has already been achieved.

Annex 1:

Focus Groups and Interviews Conducted

Focus Groups

1. Focus group held on 1 November 2017 in Niš attended by 17 persons comprising of CSO representatives and survivors of discrimination.
2. Focus group held on 10 November 2017 in Belgrade attended by 21 persons comprising of CSO representatives, lawyers and survivors of discrimination.
3. Focus group held on 15 November 2017 in Novi Pazar attended by 14 persons comprising of CSO representatives and survivors of discrimination.
4. Focus group held on 8 December 2017 in Pančevo attended by 13 persons comprising of CSO representatives and survivors of discrimination.
5. Focus group held on 21 December 2017 in Vranje attended by 13 persons comprising of CSO representatives and survivors of discrimination.

One-to-One Interviews

1. Interview held on 1 February 2018 with the Commissioner for Protection of Equality on 1 February 2018.
2. Interview with the Director of the Office for Human and Minority Rights on 6 February 2018.

Legal Experts

1. Interview with representative of the Legal Clinic in Niš on 27 December 2017 in Niš.
2. Interview with professor of the Law Faculty in Belgrade on 23 January 2018 in Belgrade.
3. Interview with professor of the Law Faculty in Novi Sad on 28 November 2017 in Novi Sad.
4. Interview with judge of the Appellate Court in Belgrade on 23 November 2017 in Belgrade.
5. Interview with lawyer from Novi Sad on 28 November 2017 in Novi Sad.

6. Interview with lawyer from Belgrade on 23 November 2017 in Belgrade.
7. Interview with lawyer from Pančevo on 8 December 2017 in Pančevo.
8. Interview with judge of the Higher Court in Novi Sad on 28 November 2017 in Novi Sad.

Government Officials or Employees of Government Bodies

1. Interview with representative of the Judicial Academy on 23 November 2017 in Belgrade.
2. Interview with representative of the Bar Chamber on 27 November 2017 in Novi Sad.
3. Interview with representative of the Faculty of Law on 22 December 2017 in Niš.
4. Interview with representative of the local self-government, department for education on 27 December 2017 in Niš.
5. Interview with representative of the local self-government, department for social protection on 14 December 2017 in Pančevo.
6. Interview with representative of the University of Niš on 27 December 2017 in Niš.
7. Interview with representative of the provincial authority for economy and tourism on 27 November 2017 in Novi Sad.
8. Interview with representative of the regional center for housing and adoption on 22 December 2017 in Niš.
9. Interview with representative of the local self-government, department for minority integration on 23 January 2018 in Belgrade.
10. Interview with representative of the Ministry of Justice on 24 November 2017 in Belgrade.
11. Interview with representative of the provincial authority responsible for integration of Roma on 27 November 2017 in Novi Sad.
12. Interview with representative of the provincial authority responsible for demography and gender equality on 15 January 2018 in Novi Sad.
13. Interview with representative of the Ministry for Employment, Veteran and Social Protection on 24 November 2017 in Belgrade.
14. Interview with representative of the centre for social protection on 14 December 2017 in Pančevo.
15. Interview with representative of the regional health institution on 22 December 2017 in Niš.

16. Interview with representative of the regional health institution on 15 January 2018 in Novi Sad.
17. Interview with representative of the local self-government responsible for local security and safety on 11 January 2018 in Leskovac.
18. Interview with representative of the provincial authority responsible for family accommodation and adoption on 15 January 2018 in Novi Sad.
19. Interview with representative of the Ministry of Culture and Information on 6 December 2017 in Belgrade.
20. Interview with representative of the Ministry of Education on 23 January 2018 in Belgrade.
21. Interview with representative of the local self-government, department for advancement of Roma inclusion on 21 December 2017 in Vranje.
22. Interview with representative of the elementary school on 6 December 2017 in Belgrade.
23. Interview with representative of the secondary vocational school on 13 December 2017 in Vršac.
24. Interview with representative of the Provincial Assembly on 15 January 2018 in Novi Sad.
25. Interview with representative of the local self-government, protection of the rights of patients on 12 January 2018 in Novi Sad.
26. Interview with representative of the local self-government, department for gender equality on 11 December 2017 in Pančevo.
27. Interview with representative of the City Council on 4 December 2017 in Niš.
28. Interview with representative of the Women Parliamentary Network on 6 December 2017 in Belgrade.
29. Interview with representative of the Ministry of Health on 6 December 2017 in Belgrade.
30. Interview with representative of the local self-government, department for legal aid on 30 November 2017 in Kragujevac.
31. Interview with representative of the Institute for Social Sciences on 23 January 2018 in Belgrade.
32. Interview with representative of the Ministry of Interior on 17 January 2018 in Belgrade.
33. Interview with representative of the Ministry of Defense on 17 January 2018 in Belgrade.
34. Interview with representative of the local self-government, department for child protection and social welfare on 23 January 2018 in Belgrade.

Private Sector Employees

1. Interview with employee of the firm for audit and financial reporting on 17 January 2018 in Belgrade.
2. Interview with employee of the firm for production, service and maintenance of equipment at petrol stations and warehouses on 30 November 2017 in Kragujevac.
3. Interview with employee of the firm for construction of hydro-technical infrastructure on 30 November 2017 in Čuprija.
4. Interview with employee of the firm for production of pumps and compressors on 17 January 2018 in Belgrade.
5. Interview with employee of the firm for computer consulting on 4 December 2017 in Niš.
6. Interview with employee of the firm for production of medical and dental instruments and materials on 28 November 2017 in Novi Sad.
7. Interview with employee of the firm for air traffic services on 17 January 2018 in Belgrade.
8. Interview with employee of the firm for production of leather accessories on 21 December 2017 in Vranje.
9. Interview with employee of the firm for steam and hot water production on 13 December 2017 in Zrenjanin.
10. Interview with employee of the firm for computer engineering on 28 November 2017 in Novi Sad.
11. Interview with employee of the firm for air conditioning on 6 December 2017 in Belgrade.
12. Interview with employee of the firm for insurance services on 6 December 2017 in Belgrade.
13. Interview with employee of the firm for production of furniture on 30 November 2017 in Jagodina.

Annex 2:

Topics Covered in Interviews Conducted

The interviews with representatives from the private sector covered the following topics:

- General information about the business (year of establishment, data on employees (gender, ethnicity, disability, age), number of women in leadership positions);
- Their knowledge about prohibition of discrimination, anti-discrimination laws and to what extent the prohibition of discrimination is respected in society;
- Awareness of the prevalence of discrimination in society and the most vulnerable groups;
- Scope of the prohibition of discrimination – public and/or private bodies;
- Knowledge and awareness of the obligations under anti-discrimination law;
- Issues encountered in implementing and complying with their legal obligations with respect to anti-discrimination law;
- Obligations under the LGE;
- Reasonable accommodation for persons with disabilities;
- General impact on the LPD;
- Employment policies, equality and diversity management and internal policies (equality and non-discrimination);
- Availability and accessibility of services to different marginalised groups;
- Any claims of discrimination made by employees; and
- Opinion on whether training on legal obligations under anti-discrimination laws is needed.

The interviews with representatives from the public authorities covered the following topics:

- Awareness of the prevalence of discrimination in society and prevalence of discrimination in their sector;
- Awareness and knowledge of the obligations under anti-discrimination law – for public authorities in general and for their respective sectors;
- General impact on the LPD;
- Current anti-discrimination framework – effectiveness/ineffectiveness;
- The state's effectiveness in combating, and providing protection from, discrimination;
- Their sector/institution's effectiveness in combating, and providing protection from, discrimination;

- Knowledge and familiarity with measures and effects of the measures taken to prevent discrimination in their sectors;
- Knowledge/awareness of positive action measures introduced in their sector for the advancement of the position of vulnerable groups;
- Obstacles and challenges for vulnerable groups in their sector/institution; and
- Opinion on whether training on anti-discrimination for employees is needed.

Annex 3:

Civil Laws that Contain Protection for the Right to Non-Discrimination in Serbia

Health

- Law on Health Protection, "Official Gazette of the Republic of Serbia", Nos. 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.
- Law on Health Insurance, "Official Gazette of the Republic of Serbia", Nos. 107/2005, 109/2005 – correction, 57/2011, 110/2012 – decision of the CC, 119/2012, 99/2014, 123/2014, 126/2014 – decision of the CC, 106/2015 and 10/2016 – other law.
- Law on the Protection of Persons with Mental Disabilities, "Official Gazette of the Republic of Serbia", Nos. 45/13.
- Law on Patients' Rights, "Official Gazette of the Republic of Serbia", No. 45/13.
- Law on Prevention and Diagnostics of Genetic Diseases, Genetically Caused Anomalies and Rare Diseases, "Official Gazette of the Republic of Serbia", No. 8/2015.
- Law on the Protection of Population from Infectious Diseases, "Official Gazette of the Republic of Serbia", No. 15/2016.
- Law on Public Health, "Official Gazette of the Republic of Serbia", No. 15/16.

Education

- Law on Foundations of the Education System, "Official Gazette of the Republic of Serbia", Nos. 72/2009, 52/2011, 55/2013, 35/2015 – auth. interpretation, 68/2015 and 62/2016 – decision of the CC.
- Law on Preschool Education, "Official Gazette of the Republic of Serbia", No. 18/2010.
- Law on Primary Education, "Official Gazette of the Republic of Serbia", No. 55/13.
- Law on Secondary Education, "Official Gazette of the Republic of Serbia", No. 55/13.
- Law on Education of Adults, "Official Gazette of the Republic of Serbia", No. 55/13.
- Law on High Education, "Official Gazette of the Republic of Serbia", Nos. 76/2005, 100/2007 – auth. interpretation, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015 – auth. interpretation, 68/2015 and 87/2016.
- Law on Scientific-Research Activity, "Official Gazette of the Republic of Serbia", Nos. 110/2005, 50/2006 – correction, 18/2010 and 112/15).

- The Law on Textbooks, “Official Gazette of the Republic of Serbia”, No. 68/15.
- Rulebook on criteria and procedures for Roma student high school enrolment under more favorable conditions for the purpose of achieving full equality, “Official Gazette of the Republic of Serbia”, No. 12/2016.
- Rulebook on criteria and procedures for high school enrolment under more favorable conditions for the purpose of achieving full equality of those students who have completed elementary school education as adults, “Official Gazette of the Republic of Serbia”, No. 42/2016.
- Rulebook on detailed criteria for detecting discrimination by staff members, children, students or third party in an educational institution, “Official Gazette of the Republic of Serbia”, No. 22/2016.
- Rulebook on the manner and procedure for giving expert assessment and providing expert opinion on the quality of draft textbooks, manuals and teaching materials, as well as approved teaching materials, teaching aids, didactical tool and didactical play tools, “Official Gazette of the Republic of Serbia”, No. 75/2016.

Employment and Labour Law

- Labour Law, “Official Gazette of the Republic of Serbia”, Nos. 24/05, 61/05, 54/09, 32/2013, 75/2014 and 13/2017 – decision of the CC.
- Law on Employment and Insurance in Case of Unemployment, “Official Gazette of the Republic of Serbia”, Nos. 36/09, 88/2010 and 38/2015.
- The Law on Professional Rehabilitation and Employment of Persons with Disabilities, “Official Gazette of the Republic of Serbia”, Nos. 36/09 and 32/2013.
- Law on Prevention of Mobbing (Abuse at Work), “Official Gazette of the Republic of Serbia”, No. 36/2010.
- Law on Safety and Health at Work, “Official Gazette of the Republic of Serbia”, Nos. 101/05 and 91/15.
- Rulebook on measures for the safe and healthy work of an employed woman during pregnancy, maternity and breastfeeding, “Official Gazette of the Republic of Serbia”, No. 102/2016.

Social Protection, Housing, Pension and Disability Insurance

- Law on Social Protection, “Official Gazette of the Republic of Serbia”, No. 24/2011.
- Rulebook on detailed conditions and standards for providing social protection services, “Official Gazette of the Republic of Serbia”, No. 42/201.
- Rulebook on Prohibited Behaviour/Treatment of Employees in Social Protection, “Official Gazette of the Republic of Serbia”, No. 8/2012.
- Bylaw (Decree) on dedicated transfers in social protection, “Official Gazette of the Republic of Serbia”, No. 18/2016.
- Law on Housing and Maintenance of Buildings, “Official Gazette of the Republic of Serbia”, No. 104/2016.

- Bylaw (Decree) on conditions and criteria for determining the order of priority of tenants of apartments built within the program of social housing, "Official Gazette of the Republic of Serbia", No. 140/2014.
- Law on Pension and Disability Insurance, "Official Gazette of the Republic of Serbia", Nos. 34/2003, 64/2004 – decision of the CC, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – decision of the CC, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014 and 142/2014.
- Law on Contributions for Mandatory Social Insurance, "Official Gazette of the Republic of Serbia", Nos. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012 – adjusted amount in dinars, 8/2013 – adjusted amount in dinars, 47/2013, 108/2013, 6/2014 – adjusted amount in dinars, 57/2014, 68/2014 – other law, 5/2015 – adjusted amount in dinars, 112/2015, 5/2016 – adjusted amount in dinars and 7/2017 – adjusted amount in dinars.

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- Law on Trade, "Official Gazette of the Republic of Serbia", Nos. 53/2010 and 10/2013.
- Law on Electronic Commerce, "Official Gazette of the Republic of Serbia", Nos. 41/2009 and 95/2013.
- Law on the Chamber of Commerce, "Official Gazette of the Republic of Serbia". No. 112/2015.
- Law on Communal Activities, "Official Gazette of the Republic of Serbia", Nos. 88/2011 and 104/2016.
- Law on Energy, "Official Gazette of the Republic of Serbia", No. 145/2014.
- Bylaw on conditions of electricity distribution and supply, "Official Gazette of the Republic of Serbia", No. 63/2013.
- Law on Consumer Protection, "Official Gazette of the Republic of Serbia", Nos. 62/2014 and 6/2016 – other law.
- Insurance Law, "Official Gazette of the Republic of Serbia", No. 139/2014.
- Law on Protection of Competition, "Official Gazette of the Republic of Serbia", Nos. 51/2009 and 95/2013.

Media, Public Information and Public Advertising

- Law on Public Information and Media, "Official Gazette of the Republic of Serbia", Nos. 83/2014, 58/2015 and 12/2016 – auth. Interpretation.
- Law on Electronic Media, "Official Gazette of the Republic of Serbia", Nos. 83/2014 and 6/2016 – other law.
- Law on Public Service Media, "Official Gazette of the Republic of Serbia", Nos. 83/2014, 103/2015 and 108/2016.
- Law on Advertising, "Official Gazette of the Republic of Serbia", No. 6/2016.

- Rulebook on advertising and sponsorship in electronic media, "Official Gazette of the Republic of Serbia", No. 101/2016.
- Law on Electronic Communications, "Official Gazette of the Republic of Serbia", Nos. 44/2010, 60/2013 – decision of the CC and 62/2014.
- Law on Free Access to Information of Public Importance, "Official Gazette of the Republic of Serbia", Nos. 120/2004, 54/2007, 104/2009 and 36/2010.

Public Gathering and Association

- Law on Public Gatherings, "Official Gazette of the Republic of Serbia", No. 6/2016.
- Law on Associations, "Official Gazette of the Republic of Serbia", Nos. 51/2009 and 99/2011 – other law.

Culture, Sport, Youth

- Law on Culture, "Official Gazette of the Republic of Serbia", Nos. 72/2009, 13/2016 and 30/2016 – correction.
- Rulebook on the criteria for acquiring the status of a prominent artist, or a prominent expert in culture, "Official Gazette of the Republic of Serbia", No. 58/2012.
- Law on Sports, "Official Gazette of the Republic of Serbia", No. 10/2016.
- Law on Prevention of Violence and Inappropriate Behavior at Sports Events, "Official Gazette of the Republic of Serbia", Nos. 67/2003, 101/2005 – other law, 90/2007, 72/2009 – other law, 111/2009 and 104/2013 – other law.
- Law on Youth, "Official Gazette of the Republic of Serbia", No. 50/11.

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- Law on Citizenship of the Republic of Serbia, "Official Gazette of the Republic of Serbia", Nos. 135/2004 and 90/2007.
- Law on Registry Books, "Official Gazette of the Republic of Serbia", Nos. 20/2009 and 145/2014.
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- Law on Asylum, "Official Gazette of the Republic of Serbia", No. 109/2007.
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- Law on Employment of Foreign Citizens, "Official Gazette of the Republic of Serbia", No. 128/2014.
- Rulebook on the manner of keeping and content of the records in the Ministry of the Interior on the basis of the Law on Foreigners, "Official Gazette of the Republic of Serbia", No. 59/2009.

- Law on Migration Management, "Official Gazette of the Republic of Serbia", No. 107/2012.
- Rulebook on social assistance for persons seeking or granted asylum, "Official Gazette of the Republic of Serbia", Nos. 44/2008 and 78/2011.

Family Law

- Family Law, "Official Gazette of the Republic of Serbia", No. 18/2005, 72/2011 and 6/2015.
- Law on Prevention of Domestic Violence, "Official Gazette of the Republic of Serbia", No. 94/2016.
- Law on Financial Assistance to Families with Children, "Official Gazette of the Republic of Serbia", Nos. 16/2002, 115/2005 and 107/2009.
- Rulebook on detailed conditions and manner of exercising the right to financial support to the family with children, "Official Gazette of the Republic of Serbia", Nos. 29/2002, 80/2004, 123/2004, 17/2006, 107/2006, 51/2010, 73/2010 and 27/2011 – decision of the CC.
- National Minorities, Churches and Religious Communities
- Law on Protection of Rights and Freedoms of National Minorities, "Official Gazette of the SR Yugoslavia", No. 11/2002, "Official Gazette of the Serbia and Montenegro", No. 1/2003 – the Constitutional Charter, "Official Gazette of the Republic of Serbia", Nos. 72/2009 and 97/2013 – decision of the CC.
- Law on National Minority Councils, "Official Gazette of the Republic of Serbia", Nos. 72/2009, 20/2014 – decision of the CC and 55/2014.
- Rules on the work of the electoral boards for the direct elections for members of national councils of national minorities, "Official Gazette of the Republic of Serbia", No. 98/2014.
- Bylaw on the procedure for allocating funds from the budget of the Republic of Serbia for financing the work of national councils of national minorities, "Official Gazette of the Republic of Serbia", Nos. 95/2010 and 33/2013.
- Instructions for conduct of electoral assembly for election of members of national councils of national minorities, "Official Gazette of the Republic of Serbia", No. 113/2014.
- Conclusion on measures to increase the participation of members of national minorities in state administration bodies, "Official Gazette of the Republic of Serbia", No. 40/2006.
- Law on the Churches and Religious Communities, "Official Gazette of the Republic of Serbia", No. 36/2006.
- Rules on the Contents and Manner of Keeping the Register of Churches and Religious Communities, "Official Gazette of the Republic of Serbia", No. 64/2006.
- Law on Restitution of Property to Churches and Religious Communities, "Official Gazette of the Republic of Serbia", No. 46/2006.
- Regulation on the Payment of Contributions for Mandatory Pension and Disability Insurance and Health Insurance for Priests and Religious Officials, "Official Gazette of the Republic of Serbia", No. 46/12.

- Regulation on the Organization and Realization of Religious Education and an Alternative Subject in the Elementary and High Schools, "Official Gazette of the Republic of Serbia", No. 46/2001.
- Regulation on Religious Service in the Serbian Armed Forces, "Official Gazette of the Republic of Serbia", No. 22/2011.
- Security Sector
- Law on the Serbian Army, "Official Gazette of the Republic of Serbia", Nos. 116/2007, 88/2009, 101/2010 – other law, 10/2015 and 88/2015 – decision of the CC.
- Law on Defense, "Official Gazette of the Republic of Serbia", Nos. 116/2007, 88/2009, 88/2009 – other law, 104/2009 – other law and 10/2015.
- Law on Police, "Official Gazette of the Republic of Serbia", No. 6/2016.
- Law on Security-Information Agency, "Official Gazette of the Republic of Serbia", Nos. 42/2002, 111/2009, 65/2014 – decision of the CC and 66/2014.
- Law on Military Security Agency and Military Intelligence Agency, "Official Gazette of the Republic of Serbia", Nos. 88/2009, 55/2012 – decision of the CC and 17/2013.
- Bylaw on Special Criteria and Procedures for Admission to Employment and Termination of Employment in the Military Security Agency and Military Intelligence Agency, "Official Gazette of the Republic of Serbia", No. 86/2010.
- Law on Emergency Situations, "Official Gazette of the Republic of Serbia", Nos. 111/2009, 92/2011 and 93/2012.
- Law on Reconstruction after Natural and Other Disasters, "Official Gazette of the Republic of Serbia", No. 112/15.
- State Administration and Local Government
- Law on State Administration, "Official Gazette of the Republic of Serbia", Nos. 79/2005, 101/2007, 95/2010 and 99/2014.
- Law on Local Self-Government, "Official Gazette of the Republic of Serbia", Nos. 129/2007, 83/2014 – other law and 101/2016 – other law.

Annex 4: List of Government Strategies Relevant to the Rights to Equality and Non-Discrimination in Serbia

Specific Anti-Discrimination Strategies

- Strategy of Prevention and Protection against Discrimination, “Official Gazette of the Republic of Serbia”, No. 60/2013.
- Action Plan for the Implementation of the Strategy for Prevention and Protection Against Discrimination for the period 2014–2018, “Official Gazette of the Republic of Serbia”, No. 107/2014.
- National Strategy for Gender Equality 2016–2020 and the Action Plan for its implementation in the period 2016–2018, “Official Gazette of the Republic of Serbia”, No. 4/2016.
- Decision on the Establishment of the Coordination Body for Gender Equality, Government of Serbia, October 2014.
 - Decision on the Establishment of the Council for Suppression of Domestic Violence, “Official Gazette of the Republic of Serbia”, No. 69/2017.
 - General Protocol on the Procedure and Cooperation of Institutions, Bodies and Organizations in situations of Domestic Violence and Partnership Violence, Government of Serbia, November 2011.
 - Special protocol of the Ministry of Labor, Employment and Social Policy of the Government of the Republic of Serbia on the procedures of centers for social work – guardianship authorities in cases of domestic violence and violence against women in partnership relations, March 2013.
 - Special protocol of the Ministry of Interior of the Government of the Republic of Serbia on the procedures for police officers in cases of domestic violence and violence against women in partnership relations, October 2012.
 - Special protocol of the Ministry of Health for protection and the treatment of women exposed to violence, June 2010.
 - Special protocol for the Judiciary in cases of domestic violence and violence against women in partnership relations, January 2014.
- Strategy for Social Inclusion of Roma Men and Women in the period 2016–2025, “Official Gazette of the Republic of Serbia”, No. 26/2016.
 - Decision of the Establishment of the Coordination Body for Monitoring the Implementation of the Strategy for Social Inclusion of Roma for the period from 2016 to 2025, “Official Gazette of the Republic of Serbia”, No. 17/2017.

Other Strategies Relevant to the Rights to Equality and Non-Discrimination

- Social Protection Development Strategy, “Official Gazette of the Republic of Serbia”, No. 108/2005.
- National Strategy of Social Housing, “Official Gazette of the Republic of Serbia”, No. 13/2012.
- Strategy on Free Legal Aid Development in Republic of Serbia, “Official Gazette of the Republic of Serbia”, No. 74/2010.
- National Strategy on Aging, “Official Gazette of the Republic of Serbia”, No. 76/2006.
- Strategy on Development of Sport in Republic of Serbia in the period 2014–2018, “Official Gazette of the Republic of Serbia”, No. 1/2015.
- National Strategy Against Violence and Inappropriate Behavior at Sports Events in the period 2013–2018, “Official Gazette of the Republic of Serbia”, No. 63/2013.
- Migration Management Strategy, “Official Gazette of the Republic of Serbia”, No. 59/2009.
- Strategy of Returnees’ Reintegration based on the Readmission Agreement, “Official Gazette of the Republic of Serbia”, No. 15/2009.
- National Strategy for Addressing the Issues of Refugees and Internally Displaced Persons for the period 2015–2020, “Official Gazette of the Republic of Serbia”, No. 62/2015.
- Strategy of Prevention and Suppression of Human Trafficking, especially Women and Children and protect victims 2017–2022, “Official Gazette of the Republic of Serbia”, No. 77/2017.
- National Action Plan for the Implementation of United Nations Security Council Resolution 1325 – Women, Peace and Security in the Republic of Serbia (2016–2020), “Official Gazette of the Republic of Serbia”, No. 53/2017.
- National Employment Strategy for Period 2011–2020, “Official Gazette of the Republic of Serbia”, No. 37/11.
- Strategy for Development of Education in Serbia till 2020, “Official Gazette of the Republic of Serbia”, No. 107/12.
- National Youth Strategy for Period 2015–2025, “Official Gazette of the Republic of Serbia”, No. 22/2015.

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International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 1966.

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- Law on Electronic Commerce, "Official Gazette of the Republic of Serbia", Nos. 41/2009 and 95/2013.
- Law on Electronic Communications, "Official Gazette of the Republic of Serbia", Nos. 44/2010, 60/2013 – Decision of the CC and 62/2014.
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The Equal Rights Trust is the global centre for excellence in equality law. Our vision is an equal world and our mission is to eliminate discrimination and ensure everyone can participate in society on an equal basis. We work in partnership with equality defenders to secure the adoption and implementation of equality laws.

In 2009 the Republic of Serbia adopted the Law on the Prohibition on Discrimination (LPD), which, alongside other important pieces of equality legislation and underpinned by a Constitutional protection for equality, establishes an almost comprehensive regime for the protection of the rights to equality and non-discrimination.

Despite this, evident inequality and discrimination persists in all areas of Serbian life. Just short of the LPD's tenth anniversary, this study finds evidence of numerous flaws in the implementation of Serbia's equality and non-discrimination framework. These flaws are limiting the effective realisation of the rights to equality and non-discrimination in practice.

This study identifies the key factors that are preventing Serbia's framework on equality from providing effective protection. It finds, *inter alia*, evidence of a lack of public awareness of equality law and concepts, high court costs, fragmented legal aid provision, physical and structural barriers preventing access to courts, procedural delays, mistrust in the judiciary, and weaknesses in the current legislative framework.

The study notes that none of these issues are insurmountable and concludes by making a series of recommendations to the state to this end. By following these recommendations, it is hoped that the aspiration evident in the LPD of an equal Serbia, may begin to come to fruition.



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