

PRACTICUM FOR PROTECTION AGAINST DISCRIMINATION



**PARTNERSHIP FOR TOLERANCE AND
ANTI-DISCRIMINATION PROTECTION IN SERBIA**





PRACTICUM FOR PROTECTION AGAINST DISCRIMINATION

Belgrade, 2012



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Published by:

Partners for Democratic Change Serbia
Alternative Dispute Resolution Center

For the Publisher:

Blažo Nedić

Proofreading:

Vera Nedić

Design and page break:

Mlađan Petrović

Print:

Manuarta, Belgrade

Copies:

500

This publication has been produced with the assistance of the European Union and Sigrid Rausing Trust. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the donors.

All terms are used in the text in the male grammatical gender include the male and female individuals to which they relate.

“In our society, there are people like you or me who are confronted with injustice on a daily basis just because they are different than the majority. They are different because they have different color of skin, because they are women, they believe in God, or have another sexual orientation. Liberating from such injustice and inequality is the essence of the issue about equal opportunities”.

Clements Phil and Tony Spinks
Guide to Equal Opportunities – How to
Cope with Injustice

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FOREWORD

The “Practicum for the Protection against Discrimination” was developed under the “Partnership for Tolerance and Anti-Discrimination Protection in Serbia” (PTAPS) project, jointly conducted by Partners for Democratic Change Serbia (Partners Serbia) and the Alternative Dispute Resolution Center (CARS), in cooperation with the institution of the Commissioner for the Protection of Equality and with the support of the EU Delegation in Serbia and Sigrid Rausing Trust.

The PTAPS project aims to improve the system of protection against discrimination in Serbia and contribute to building social cohesion. It seeks to do so by increasing citizens’ awareness on issues of discrimination and the available protection mechanisms, as well as building the capacity of civil society organizations, legal aid providers and other representatives of marginalized groups to respond adequately and establish conditions for the use of mediation in discrimination cases.

Significant progress has been made during the recent years in improving the legislative and institutional framework for combating discrimination in Serbia. The Law on the Prohibition of Discrimination in 2009 established an independent and autonomous state institution, the Commissioner for the Protection of Equality, responsible for acting in cases of discrimination, as well as several tools for protection of discrimination victims. However, despite the improved legislative framework and establishment of a new institution of the Commissioner, a number of researches and practice confirm that discrimination remains widespread in Serbia, while the existing protection mechanisms are not sufficiently and adequately utilized.

In an effort to support an open dialogue about discrimination in Serbia, a series of panel discussions, workshops, trainings, conferences and other activities (preparation of leaflets, posters, promotional video, film and other promotional materials) as well as the production and distribution of the “Practicum for the Protection against Discrimination” have been organized within the PTAPS project.

The distinct part of the project features activities aimed at developing a system for the use of mediation in discrimination cases. It includes a series of seminars informing the public about the opportunities and specificities of mediation in this field, advanced trainings for building skills necessary for representation in mediation, and specialized training for mediators acting in discrimination cases. As the Law on the Prohibition of Discrimination authorizes the Commissioner to propose mediation in discrimination cases, a separate model for managing the process of mediation will be implemented as a part of the project and adapted to available resources and responsibilities of the Commissioner for the Protection of Equality.

For more details on the PTAPS Project, please visit www.partners-serbia.org.

Blažo Nedić
Partners for Democratic Change Serbia

THE WORD OF THE AUTHORS

Dear Readers,

This Practicum for the Protection against Discrimination was prepared to help people better understand the essence and characteristics of discrimination, who can protect them from discrimination and in what way, and how they can avoid becoming discriminators themselves.

The Practicum provides general and basic knowledge, which, we believe, will be helpful to readers in recognizing and responding to discrimination. Using many examples and making abstract legal concepts and definitions intelligible, we have attempted to offer straightforward responses to complex questions concerning discrimination and protection from it. We hope that the Practicum will help readers distinguish discrimination from other unlawful conduct and realize the harm it causes. We also hope that the Practicum will encourage readers to re-examine their own attitudes and behaviors, and become actively engaged in combating widespread discrimination, which runs counter to basic human rights and hinders social progress.

The Practicum consists of five parts. In the first part, a brief overview of relevant legislation is provided. In the second part, the essential elements of discrimination are explained. The third section contains basic information on legal mechanisms for protection against discrimination, while the fourth part is devoted to the Commissioner for the Protection of Equality, an autonomous and independent body specialized in combating discrimination. We focus on the competence of this body and its functioning methods, and provide practical guidance for the preparation of complaints for discrimination. The fifth part of the Practicum provides basic information about mediation in discrimination cases, whose application allows the parties to overcome the situation in a peaceful manner with the help of a mediator. This part of the Practicum was written by Ms. Dragana Cuk Milankov, the president of the working group that developed a special model of mediation tailored

to discrimination cases, organized and supported by the Office of the Commissioner for the Protection of Equality. For this, we thank her warmly. This part also includes the text by Blazo Nedic on the role of lawyers and other representatives in the mediation process, to whom we are also grateful.

The examples we used are based on actual cases of discrimination, primarily those from the practice of the Commissioner for the Protection of Equality. Certain examples are based on cases from practice of the European Court of Human Rights and similar independent bodies for protection against discrimination in European countries. In the text of the Practicum, the referenced literature is not cited as it is based on general knowledge. Of course, this does not mean that we invented this alone. Part of the literature used is included in the Appendix of the Practicum. The Appendix also contains information on relevant international laws, regulations, and useful Internet addresses, as well as the sample of the complaint form.

It is necessary to bear in mind that the adoption of legislation represents solely an initial step in the fight against discrimination. In order to successfully combat discrimination and intolerance against national, ethnic, religious, sexual and other minorities, the strict implementation and establishment of a value system in which equality and tolerance for others is accepted by the society-at-large, and differences among individuals are respected and perceived for their wealth and developmental potential.

Finally, we wish to send a message: discrimination is not a condition that should be tolerated! You need to react and seek protection! Each successfully completed case of discrimination is a valuable contribution to building a society where all citizens have equal chances to develop their potential, to participate in all aspects of social life, and contribute productively and actively to society's development.

The authors

1 REGULATIONS PROHIBITING DISCRIMINATION

In contemporary society, the *principle of equality of people* is applied, as one of the most important legal and moral principles. This principle means that all people are worthy of respect and that, despite the differences among them, they are the same in terms of dignity and rights, i.e. they are *equal*. In order to achieve this principle, all forms of discrimination are prohibited and everyone is granted the right to freedom from discrimination.

By ratifying international treaties on human rights and adopting appropriate legislation in the national legal system in an effort to integrate the highest international standards in this field, Serbia has joined the countries that value combating discrimination and achieving equality. A number of regulations prohibiting discrimination and legal mechanisms for the prevention and protection against discrimination have been adopted in recent years.

The Constitution of the Republic of Serbia (2006) prohibits any discrimination, direct or indirect, on any grounds, particularly on the basis of race, sex, national origin, social origin, birth, religion, political or other opinion, socio-economic status, culture, language, age, mental or physical disability (Art. 21).

The Law on the Prohibition of Discrimination (2009) establishes a comprehensive and integrated system of protection against discrimination in the Republic of Serbia. This Law regulates a general prohibition of discrimination, defines forms and cases of discrimination, as well as methods of protection from discrimination, and establishes the Commissioner for the Protection of Equality.

The Law on Protection of Rights and Freedoms of National Minorities (2002) prohibits any form of discrimination of the national minorities based on nationality, ethnicity, race and language spoken,

and regulates the protection of national minorities from all forms of discrimination in exercising their rights and freedoms.

The Law on Prevention of Discrimination against Persons with Disabilities (2006) regulates the general regime of protection from discrimination on the basis of disability, special cases of discrimination against persons with disabilities, the procedure for protection of persons exposed to discrimination, and measures undertaken by the state to encourage equality and social inclusion of people with disabilities. The law defines discrimination, stipulates the prohibition of all forms and cases of discrimination, and regulates the legal protection for people who are victims of discrimination.

The Law on Gender Equality (2009) governs the creation of conditions for implementation of the so-called equal opportunities policy for women and men, development of regulations and undertaking special measures to prevent and eliminate discrimination based on sex, marital or family status, pregnancy or parenthood. The law prohibits any form of direct and indirect discrimination, guarantees gender equality, provides special measures to achieve gender equality and regulates the legal protection against discrimination based on sex.

Prohibition of discrimination is also contained in the laws governing specific areas of social relations.

The Labor Law (2005, with the 2009 amendments), prohibits discrimination against employees and job seekers on the basis of any personal attribute, in terms of employment conditions and selection of candidates for a particular job, working conditions and all labor-related rights, education, training and specialization, promotion and termination of employment contract. The law explicitly provides that any employment contract provisions are void if they establish discrimination on the basis of personal attributes.

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities (2009) provides institutional support to employment and active participation of persons with disabilities in social life.

The Health Care Law (2005) prohibits discrimination on the basis of any individual characteristic in the provision of health services.

The Law on the Foundations of the Education System (2009) sets forth the principle of equality in exercising the right to education regardless of any personal attribute.

The Law on Churches and Religious Communities (2006) guarantees the right to freedom of thought, conscience and religion and prohibits religious discrimination. It provides that no one can be harassed, discriminated against or privileged because of their religious beliefs, belonging or not belonging to a religious community, participation or non-participation in worship and religious practices and the use or non-use of guaranteed religious freedoms and rights.

Discrimination is explicitly prohibited in many other laws, such as the *Law on Social Protection* (2011), *Law on Employment and Unemployment Insurance* (2009), *Law on Higher Education* (2008), *Law on Public Information* (2003), *Law on Broadcasting* (2002), *Law on Free Access to Information* (2004), *Law on Prevention of Violence and Misbehavior at Sports Events* (2009), *Law on Juvenile Offenders and Criminal Protection of Minors* (2005), *Law on Sport* (2011), *Law on Youth* (2011), *Law on Volunteering* (2010) and others.

In many laws prohibiting discrimination, penalties for transgressors are prescribed.

The Criminal Code of the Republic of Serbia 2005 and its amendments in 2009 provide a number of criminal offenses concerning the prohibition of discrimination, such as violation of freedom of expression of national or ethnic origin, confession of faith and performance of religious ceremonies, promotion and incitement to hatred, and violence against a person or a group of persons on the basis of some of their personal characteristics, etc.

Overall, Serbian legislation on protection of freedom from discrimination is in line with international and European standards and provides a good legal framework for prevention and suppression of discrimination.

The list of international documents and relevant laws on protection against discrimination is provided at the end of this Practicum.

2 WHAT IS DISCRIMINATION AND HOW TO RECOGNIZE IT

Recently, there have been numerous discussions and publications about discrimination. However, this term is often not used in its true meaning, but rather to indicate a variety of injustices, indecencies, offensive behaviors and other violations of various rights. Therefore, it is necessary to understand the essence of discrimination and clearly distinguish this phenomenon from other prohibited and illegal behaviors.

The term “*discrimination*” means “*distinction*” and is used to indicate illegal differentiation.

Discrimination was not always prohibited. On the contrary, in certain historical periods some forms of discrimination were common and widely socially accepted (e.g. slavery, caste system in India, the segregation of blacks in the U.S., etc.). Throughout the development of modern societies, many forms of discrimination have become unacceptable and prohibited. Nowadays, the rules on prohibition of discrimination are enshrined in numerous international documents on human rights, and states have enacted laws that explicitly prohibit discrimination and prescribe anti-discrimination protection. The purpose of these regulations is to provide each individual equal and fair access to opportunities offered by society.

The legal definitions of discrimination are contained in many laws adopted in Serbia in recent years, which seek to prevent and combat discrimination. In considering the phenomena of discrimination, the definition contained in the Law on the Prohibition of Discrimination will be used, as this represents a general and basic anti-discrimination law in Serbia. Here’s how the law defines discrimination:

“The terms “discrimination” and “discriminatory treatment” involve any unjustified discrimination or unequal treatment, or omission

(exclusion, restriction or preference), in relation to individuals or groups as well as their family members or persons close to them, in an open or covert manner, which is based on race, color, ancestry, citizenship, nationality or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade unions and other organizations and other real or supposed personal characteristics “(Article 2 of the Law on the Prohibition of Discrimination).

This legal definition, and any other legal definitions, is quite complicated, so we will try to explain it and provide a simple explanation of its essence.

2.1. WHAT IS THE ESSENCE OF DISCRIMINATION?

Simply put, discrimination is essentially the unequal treatment of equals and the equal treatment of individuals with differences.

Discrimination occurs when an individual or group of persons in a same or similar situation are treated less favorably due to a certain personal characteristic (e.g. a job posting that exclusively seeks a person under 30 for work that could be performed by someone above that age).

Discrimination also occurs when an individual or group of persons are treated equally to others, even though they have a personal trait that differentiates them from others (e.g. a rule stipulating that the registration of children in a school requires submitting a birth certificate for the child. The rule applies to everyone equally, but it unequally (unfavorable) affects Roma children, of whom many were not registered at birth).

The first type of discrimination occurs because individual or group of persons are treated unequally based on a personal characteristic. In the latter type, discrimination occurs because equal treatment produces differential and disadvantaging effects for the individual or group because of a personal characteristic that is not taken into account. What is common to both cases of discrimination is the outcome. A person is disadvantaged, and the source of this inequality is his/hers personal attributes. The same is true with regard to a group of persons.

It is important to know that a behavior can be defined as discriminatory, regardless of whether it was the perpetrator's intention to discriminate. The matter of intent is not relevant, as far as the law is concerned. It can occur when an individual expresses something publicly, without being aware that it is illegal and constitutes an act of discrimination.

Consider the following example. A group of friends sits in a café, and among them there is a famous actor who tells a joke: "Going down the street, a man sees someone carrying a Gypsy on a shoulder. – Hey, man, what are you doing? – Well, don't you know? Hunting Gypsies is allowed. You go to the hunting club; you take a gun and ... The guy leaves, takes a gun, see two Gypsies next to a container, shoots and kills them. Police approaches him, puts the handcuffs and arrests him. – Hey, man, isn't it allowed to hunt the Gypsies?! – Yes, but not at the shelter!" Everyone laughs uproariously, except a Roma man and woman who are sitting at a different table.

2.2. HOW CAN DISCRIMINATION BE PERPETRATED?

Discrimination can be perpetrated in various ways. Based on a personal attribute, a person is denied or limited in a right available to others, or is disadvantaged by being excluded from privileges that are given to others.

Discrimination is usually an action that an individual perpetrates, like publishing a job posting stating that only Serbians are eligible for the position or implementing rules of procedure that give employees who are married men 10% higher salary. It can also be perpetrated by the omission of carrying out a legal duty (e.g. a medical institution fails to provide access to persons who use wheelchairs).

2.3. IS ANY ACT OF DIFFERENTIATION CONSIDERED DISCRIMINATION?

Differentiation does not necessarily imply discrimination. In order for differentiation or unequal treatment to qualify as discriminatory, this treatment, or omission of it, must be unjustified. Therefore, there are instances when differentiation is justified.

At times, it is easy to determine when differentiation is justified. For example, it is justified to have separate dressing rooms for women and men in recreation centers. However, other times it is only with complex analysis that the purpose and effect of unequal treatment and the proportionality between intentions and a given action can be examined and determined justifiable or not. More details on this issue are provided in the section of the Practicum that explains the indirect discrimination and violation of the principle of equal rights and obligations.

Examples of reasonable differentiation:

- Parking spaces for vehicles for persons with disabilities are particularly marked and located close to public buildings' entrances. Although this is a case of differentiation (privileging one group of people there is no discrimination, because it is reasonable to provide more convenient and free access to the facilities for people who have challenges with mobility).
- The separation between men and women in sporting competitions can also be regarded as justified differentiation. Men and women differ significantly in terms of body constitution and physical strength, which explains considerable differences in results achieved (e.g. the world record for the 100-metre dash is 9.72 seconds for men, while for women it is 10.49 seconds. The record for the marathon is 2:04:26 for men and 2:15:25 for women, and the difference is even more stark for the pole vault world record, which is 6.14 meters for men, and 5.06 meters for women).

2.4. PERSONAL CHARACTERISTICS AS A BASIS FOR DISCRIMINATION

2.4.1. What is a personal characteristic?

For unequal treatment to be considered discrimination, it is necessary that it be based on a personal characteristic. In other words, the person is treated unequally because of his/her nationality, religion, sex, disability and the like, rather than the content of his character or personal habits. The same is true when individuals are grouped according to a common personal characteristic. The particular characteristic is referred to as the "*basis of discrimination.*"

A person who is unequally treated is only a victim of discrimination if it is based on a personal characteristic.

Examples of unequal treatment **not** based on a personal characteristic:

- The head of a department in which all employees are late in completing work tasks punishes only one employee because he dislikes him, while others get only a verbal warning;
- An Officer of the municipality allows a friend to enter, while others are waiting in queue.
- The new director bullies and humiliates an employee who is married to a former director.

These behaviors are unacceptable, unfair, unprofessional and illegal, but cannot be considered discriminatory. Protection against such behavior is achieved by other means than those used for protection from discrimination.

2.4.2. Which personal characteristics are included in the basis of discrimination?

The list of personal characteristics listed in the Law on Anti-discrimination is detailed, but not exhaustive, making it possible to characterize unequal treatment based on personal attributes that are not explicitly stated.

List of personal characteristics that are explicitly stated in the law:

- **race**
- **skin color**
- **ancestry**
- **citizenship**
- **national or ethnic origin**
- **language**
- **religious or political beliefs**
- **sex**

-
- **gender**
 - **sexual orientation**
 - **economic status**
 - **birth**
 - **genetic traits**
 - **health**
 - **disability**
 - **marital and family status**
 - **previous conviction**
 - **age**
 - **appearance**
 - **membership in political, trade unions or other organizations**

It should be noted that in the European Union, and many other countries, the list of personal characteristics is significantly smaller. Indeed, the EU directives banning discrimination include the following personal characteristics: gender, sexual orientation, disability, age, religious or other beliefs, race or ethnic origin.

The meaning of most of these personal characteristics are clear and do not require additional explanation. However, others require clarification.

“Sex” means the biological classification of humans into male and female human beings. Male and female bodies are biologically different and have different roles in the process of reproduction. These biological differences have always existed regardless of a person’s living conditions, social status, and ethnic or racial origin. They are generally universal, obvious, and fixed.

“Gender” refers to the social roles, behaviors and responsibilities that are attributed to men and women in a society. Society’s expectations of men and women’s behavior and the roles that are assigned to each is affected by social, religious, political, economic and other factors, as well as customs, traditions, morals and values. The attitudes and

behaviors that society prescribes based on gender are learned and evolve over time.

The difference between “sex” and “gender” is illustrated by the following example: the birth of a child is a biological role of women, while the role of care and custody of the newborn child is a gender role, which is usually attributed to women, even though men can successfully take care of a child as well.

Traditionally, differences in social status and gender roles have been perceived as the result of natural differences. Indeed, some believe that the division of labor between men and women is natural. Such a belief is based on the idea that women give birth to children, so it is natural that they should be responsible for care giving. Likewise, the assumption is that because men are physically stronger, they should naturally be the head of the family, making more money and decisions. Evidently, these divisions do not result from biological and natural differences, but rather are socially constructed.

It is important to bear in mind that gender identity involves self-definition of gender and does not necessarily depend on a person’s biological sex. Everyone has the right to choose how they wish to express their gender, including the right to be gender-ambiguous, or to move from one gender to another.

“Sexual orientation” implies a permanent emotional and sexual attraction to persons of a particular sex. According to sexual orientation, there are people who are attracted to the opposite sex (heterosexual), people who are attracted to the same sex (lesbians and gays), as well as people who are attracted to both sexes (bisexual). There are also transsexual persons. The internationally accepted abbreviation LGBT is used to refer to all these individuals. Among us, there are transgender, transsexual and asexual individuals, as well as people who do not accept that there are only two sexes, or only two genders. Accordingly, the recently expanded abbreviation LGBTTIAQ has been adopted by some.

Examples of discrimination on the basis of personal traits are listed below.

– **race / skin color**

- The bouncer at a club does not allow a Roma to enter on the basis that he/she needs to have a prior reservation, while this is not required for other guests.
- An employer refuses to hire a Roma.

– nationality or ethnic origin

- A Roma family came to see a land sold by the owner and residents of nearby houses began to yell: “Land cannot be sold to the Gypsies! Turks or anyone else can buy it, but not the Gypsies!”, “We will not allow you to buy this land, even if you buy a house, it will be flying in the air!” Because of these threats, the family decided to withdraw from purchasing the plot.
- A store clerk requests a young Roma man to leave, as a respected guest does not want to sit in the same room as a Roma.
- A social worker refuses to refer a Roma woman to a shelter for women victims of violence under the pretext that there are no available places.
- A bus driver orders a Roma woman with a child who has a bus ticket to get out of her seat and go to the back of the bus.
- Two young men harass a person on the bus due to his accent, because they think he is an Albanian;
- As a football player from Zimbabwe shot a penalty kick, the opposing team’s fans chanted: “Boo, monkeys!”, “Boo nigger!” and at the panel there was a transparent with Ku Klux Klan symbols.

– language

- Failure to say the names of public buildings, streets and businesses in the official minority language of a particular territory;
- Refusal of a vendor to serve a customer who does not speak “his” language.

– religious or political beliefs

- An employer does not authorize an employee who is not Orthodox to take a day off during his/her religious holidays;
- The opposition to the majority population to build mosques or synagogues in their neighborhood;
- An employer refuses to hire a person because he is Catholic, even though he/she received the best results on a test;
- A boxing club accepts only men who have a membership card for the political party to which the club president belongs.

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- An employed Muslim woman is informed by the union president that she cannot go on the union trip, because they will visit Orthodox monasteries.

– **sex**

- An employer requires a person of a particular sex for jobs that can be performed by both men and women (e.g. an attractive girl needed in the boutique)
- An employer fires a pregnant woman.
- An employer places a woman to a less significant and lower paid position after her return from maternity leave.
- A newspaper publishes a text stating: “Women’s place is in the house and they should not be allowed to engage in politics.”

– **gender**

- A man fails to get a job as a professor, because it is not a typical job for men;
- A school refuses to hire a teacher who has short hair, wears pants and plays football, because her appearance is not common for women;
- The employment service sends notification of job vacancies for mechanical engineers only to the men and not the women who have completed mechanical engineering training;
- A university professor refuses to test the candidate who came wearing eye makeup and jewelry, saying that it is rude and inappropriate to be dressed like that, and that he can take the exam when he comes “dressed as a man”;
- Employees make fun of a man who has submitted a request to use personal leave for child care.

– **Sexual orientation**

- The transfusion service does not allow homosexuals to voluntarily donate blood;
- On the bus, a group of supporters physically and psychologically abuses a person wearing a rainbow badge on his/her coat lapel with the words “LGBT rights”;

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- On the eve of the Pride Parade, a group of hooligans printed graffiti on building facades with the words “Kill the gays” and “We are waiting for you”;
 - A church official, in a public address to believers, calls the participants of the Pride parade “stench of Sodom, which has poisoned and polluted the city”.

– **Economic status**

- The counter staff of a café provide worse treatment to poor people, than those who are better off;
- The provision of a law that a party may only be represented by a lawyer before court, when there is no law that provides free legal aid to indigent citizens who are unable to pay for legal services.

– **nationality**

- The prescription of higher prices of hotel accommodation for foreign nationals;
- The refusal of investors to sell the apartment to a foreign citizen, explaining that this could lead to disapproval of potential domestic buyers, and complicate the selling of other apartments.

– **birth**

- Adoption of rules that excludes the right to receive financial assistance to people who were not born in the territory of the municipality allocating financial assistance.

– **ancestry**

- A director refuses to sign an employment contract with a person who has achieved the best results in the competition, because that person’s father was a former director of the company;
- The newspaper publishes a text that states that children of mixed marriages are problematic and less intelligent.

– **genetic characteristics**

- The complete unfitness of working machines and equipment for people who are left handed;
- Mockery of people who have albinism (lack of pigmentation).

– health

- A health center marks the medical records of people living with HIV/AIDS;
- A junior basketball club refuses coaching a boy, because he suffers from epilepsy;
- An employee diagnosed with Hepatitis C is placed in a separate office and denied contact with other employees;
- A child living with HIV/AIDS is separated from others and placed in a special classroom at school.

– disability

- Unfitness of public spaces and public institutions for individuals who use wheelchairs – e.g. city park that is surrounded by stairs or a municipal building with a few steps at the entrance to the building;
- An employer requires employees working at the cashier to stand all the time, although this job can be reasonably adjusted to a person who cannot stand, by setting up a chair;
- The employer refuses to hire a person with controlled bipolar disorder, even though this disorder has no impact on the ability of that person to perform the job successfully.

– marital and family status

- Club offers membership cards at preferential prices for married couples;
- A director always calls up management meetings when pre-school children are let out of the nursery, which discriminates against the members of management who have children at that age;
- An owner of the company refuses to hire a married woman as a secretary, explaining that due to frequent travel, single women will have the advantage;
- Hours of kindergarten are not adapted to the normal working hours for working parents (e.g. it closes at 4pm, and the usual working hours are until 5pm);
- During a family dinner at a restaurant, a woman breastfeeding a baby is asked by the restaurant's manager to leave and breastfeed elsewhere.

– previous conviction

- A person is not given a job in a boutique, because of a traffic offense;
- A landlord refuses to rent a house to a person who was in prison.

– age

- A job classified excludes candidates over the age of 35;
- A gynecologist refuses to perform a regular check-up for a seventy-year old woman, since, in his opinion, she passed the age limit for regular gynecological examinations;
- An employer refuses to hire a person who meets all the criteria for a managerial position, explaining that the person is too young and would not have authority over the other employees;
- Bank provides that a loan for the current account holders can be approved only to persons less than 65 years old.

– appearance

- Publishing a job posting that seeks for people with “pleasant looks”;
- Refusal to hire people who have piercings or tattoos on their face, claiming it would not appeal to the customers;
- Refusal to provide social assistance based on a person’s appearance, followed by the comment “you have money for a tattoo, so you do not need social assistance.”

– membership in political, trade unions and other organizations

- An employer refuses to promote an employee who meets all the requirements for promotion, due to outstanding involvement in the union;
- A person receiving the best results on a test is not accepted for employment, because of activism in a political party with whose program the director disagrees;
- A director fires an employee, because he organized the establishment of a trade union in the company.

2.4.3. Real and assumed/perceived personal traits as the basis of discrimination

The basis of discrimination can be a real or assumed personal characteristic. A real personal characteristic is one that actually exists, which is part of the identity of a person (e.g. a person belonging to a nation, certain sex, certain age, etc.). The assumed/perceived personal characteristic is one that does not exist in a person, but the perpetrator of discrimination believes that it does.

It often happens that a person who has friends of homosexual orientation is also discriminated against, because the perpetrator of discrimination assumes that this person is a homosexual as well. If the surname of a person does not end in “ic”, one can wrongfully assume that he/she is not of Serbian nationality, and discriminate against this person accordingly.

Therefore, discrimination can be based on a personal characteristic that a person really has, or that he/she is believed to have.

The law prohibits discrimination on the basis of personal characteristics, regardless of whether it really exists or not.

2.4.4. Whose personal traits may represent the basis of discrimination?

A personal trait upon which a person is discriminated against is often associated to that same person. Sometimes, however, the person is discriminated on the basis of personal characteristics of family members or the person with whom he/she is closely related. Given this, two types of discrimination are distinguished:

- Discrimination on the basis of personal characteristics of the victim of discrimination. This type is based on actual or assumed personal characteristics of the individual. For instance, an employer refuses to hire a pregnant woman.
- Discrimination on the basis of personal characteristics of a family member or a person associated with the victim of discrimination. For instance, a girl of Serbian nationality is insulted and threatened, because of her relationship with a young Roma man, or an employer fires a woman because her husband is diagnosed with AIDS).

2.5. WHO CAN PERPETRATE AN ACT OF DISCRIMINATION?

The answer to this question is simple. Anyone can perpetrate an act of discrimination. In this respect, the law does not set any limits. It is stipulated that discrimination is prohibited, that everyone is obliged to respect the principle of equality of human beings and that no person may discriminate against another person. The prohibition of discrimination, therefore, applies to all state bodies, local self-governments and other public authorities (the National Assembly, the Government of the Republic of Serbia, the president of the state, ministries, courts, agencies, municipal assemblies, health centers, doctors, social welfare centers etc.), each individual (our friends, colleagues, services clerks, salesmen, architects, doctors, teachers, professors and others), and to any legal entity (companies, associations, banks, sports organizations).

2.6. WHO CAN BE A VICTIM OF DISCRIMINATION?

The answer to this question is –the same: everyone. A victim of discrimination may be an individual, group or legal entity.

Discrimination can happen to an individual (e.g. an employer refuses to hire someone because they belong to Jehovah's Witnesses). It should be considered that protection from discrimination refers not only to local citizens, but also to foreigners residing in our country.

A group of individuals linked by the same personal characteristics may also be exposed to discrimination (e.g. when someone says that the place of women is in the house, one discriminates against all women; or when a health center does not provide appropriate access to people who use wheelchairs, it discriminates against any person who uses a wheelchair and requires the services of the health center).

A victim of discrimination may also be a legal entity, on the basis of some attributes related to the status of legal entity (e.g. place of registration, the seat), personal characteristics of the founders, shareholders or members of the legal entity (ethnicity, nationality and other characteristics), the goals that the legal entity is trying to accomplish (e.g. non-governmental organization that promotes LGBT rights) and the like.

Here are some examples:

- In the public procurement procedure, a company is excluded because it is owned by an Albanian;
- Bylaws of a sports association provide that transfer of female players to the senior women’s football clubs involve payment of lower fees for investment in player development compared to compensation paid to men’s football clubs.
- The call for funding a project is denied to an NGO that deals with the rights of persons of homosexual orientation, although it is best evaluated;
- The newspaper publishes a call to boycott purchasing products in stores owned by foreign commercial company.

2.7. IN WHICH RELATIONSHIPS CAN DISCRIMINATION OCCUR?

Discrimination can happen in all areas of social life, both in the public and private sphere. A person or group of persons may be discriminated in the areas of education, employment, labor relations, provision of health care and social protection, in traffic, trade, commerce and the like. Therefore, people may be discriminated in the exercise of their rights and interests in a restaurant, when buying a bus ticket, interacting with an employee at the municipality, in school, university, hospital, on the street, in the sports hall, courtroom, when they go to the bank to raise a loan, when they apply for a job and the like.

2.8. FORMS OF DISCRIMINATION

Law on the Prohibition of Discrimination (Article 5) defines as special forms of discrimination: direct and indirect discrimination, 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.

2.8.1. The immediate (direct) discrimination

The immediate (direct) discrimination is based on the concept of human equality. As such, people who are in the same situation must

be treated equally, regardless of their gender, race, nationality, religion, political beliefs, disability or any other personal characteristic.

Law on the Prohibition of Discrimination (Art. 6) provides that direct discrimination occurs when a person or 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 implies that direct discrimination occurs when a person, due to some personal characteristic, is treated less favorably than another person who does not have that personal characteristic and is in the same situation. This form of discrimination is directly based on personal characteristics. In other words, it is the personal attribute of a person that represents the cause of the unequal treatment.

It is not only individuals who can be exposed to direct discrimination, but also groups of people (e.g. people with disabilities, members of religious communities, women, people over 65 years old, etc.).

Therefore, for direct discrimination, the following elements are important: 1) the person (or group of persons) is placed at a disadvantageous position, 2) because of a personal characteristic 3) in relation to other persons in the same or similar situation, who do not have that personal characteristic.

In examining whether direct discrimination occurred, it is necessary to use a “parallel”, which represents a person who is in the same situation as the victim of discrimination, but differs in a way that he/she does not have the personal characteristic as the victim of discrimination. “Parallel”, however, sometimes cannot be found, so a “hypothetical parallel” is used. There are situations when a “parallel” is not needed. Thus, for example, if the employer does not hire a pregnant woman, there is no “parallel” because a man cannot be pregnant.

We will show in one case the process of determining whether direct discrimination is committed.

A person of Albanian ethnicity is poorly paid for the work performed. That, in itself, does not constitute discrimination, unless it is determined that his salary is lower than the salary of the other employees performing same or similar work. In order to determine this, it is necessary to find a person who will be a “parallel”, that is, a person who is doing the same or similar job and is in similar circumstances in which that person of

Albanian ethnicity is, but differs in that he/she is not ethnically Albanian. If the comparison shows that the “parallel” receives greater compensation for the work, then it means that a person of Albanian nationality, because of his personal characteristics, was discriminated in terms of payment.

Examples of direct discrimination:

- *An apartment landlord refuses to rent a property to a Roma.*
- *An employer informs an employee that he will not be sent for training to work on the new machine, because he is too old to learn new skills.*
- *An employer introduces a rule that married employees receive a 10 percent increase in their salary.*
- *A bank provides loans on the current account (overdraft) only to clients who are younger than 65 years.*
- *An employer announces publicly that members of national minorities will not be employed.*
- *An employer requires a person of a particular sex in a job posting, although it is a job that can be performed equally by a man or woman*
- *An employer provides that the employer’s severance pay for retirement involves 300 euros per year of service for men, and 200 for women.*

It should be noted that the prohibition of direct discrimination is absolute in the sense that it can never be justified.

2.8.2. Indirect discrimination

Indirect (indirect) discrimination is based on the idea that people who are in a different position should be treated differently to the extent to which it is necessary to allow them equal access to social goods and equal opportunities to enjoy rights and freedoms. In line with this idea, when prescribing certain rules, setting the criteria, conditions, requirements, etc. which apply to all, the position that certain groups of people have because of some personal characteristics, should be taken into account. If this is ignored, such a rule, criterion, condition,

requirement, etc. is discriminatory, as it produces a very unfavorable effect to certain groups.

While the direct discrimination involves different treatment of persons in a similar situation, indirect discrimination refers to the same treatment towards those who are in a different situation. In other words, the direct discrimination involves a different (less favorable) treatment, and indirect discrimination does not involve different treatment, but different effects, which are disproportionately adverse for a particular group of persons or individuals belonging to that group of persons.

Unlike direct discrimination, where the differentiation or placement in a less favorable position, based directly on a personal trait, is overt, indirect discrimination is more covert. Indeed, it seems that the treatment is based on the principles of equality and non-discrimination, but upon reviewing the effects it can be seen that equal treatment puts a person or a group at a disadvantageous position in relation to another person or group, because of some of their personal characteristics. The Law on the Prohibition of Discrimination (Article 7) provides that 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 favorable position through an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination, unless it is justified by a lawful objective, and the means of achieving that objective are appropriate and necessary. This definition implies that indirect discrimination against people who are in the same or similar situation involves: 1) a seemingly neutral rule (requirement, criterion, condition, practice), 2) which places a person or a group of persons in a disadvantageous position, 3) because of some of their personal characteristics, 4) compared to others who do not have these characteristics.

For the determination of indirect discrimination, it is therefore necessary that there is a neutral rule, or certain criteria, condition, requirement, etc. which applies to all or that the actual treatment (practice) is neutral i.e. it applies to everyone. Then, it is necessary that the neutral rule (request, requirement, criterion, and practice) places the person or group at a disadvantageous position due to a personal characteristic, compared to other persons who do not have that personal characteristic, and are in the same or similar situation.

In order to determine that the disadvantage is associated with some personal characteristic, it is examined whether a seemingly neutral policy disproportionately adversely affects a group of people with

these personal characteristics in relation to others. In some cases, it is examined whether the apparently neutral rule insults a person's interest belonging to a particular group, which is relevant to his/her identity.

Examples of indirect discrimination:

- *A job posting sets as a condition a successfully passed driving exam (driving license), although this job does not necessarily require a driving license. For instance, an administrator or vendor at the market is required to have a driver's license. This condition excludes those who do not have a driver's license, regardless of whether or not they meet the other requirements of the recruitment. Most people with disabilities will not be able to compete, because there is still a small number of people with disabilities in Serbia who have a driving license, because their physical condition or the high costs of adapting the vehicle may not permit them to drive.*
- *An employer requires that all job applicants are tested to determine their physical strength and stamina, although it is a job in which physical strength is not of decisive importance for successful performance. This requirement may be discriminatory against older persons if the test prefers those in full physical condition.*
- *A general manager introduces the assessment of employees at the end of the year as a condition for appointment to a better position, but concurrently determines that only the employees who worked for more than six months during the year will be evaluated. This rule discriminates the employees who were using leave for child care for more than six months during the year.*

In certain cases, rules and criteria applicable to all are non discriminatory. This will be the case when there is an objective and reasonable justification for their introduction: when there is a legitimate aim, and when the means utilized to achieve this goal are appropriate and necessary. Thus, in determining the existence of indirect discrimination it is necessary to examine two things: 1) whether the particular case has a lawful purpose, and 2) whether the means of achieving that aim are appropriate and necessary. If not, there is indirect discrimination.

The justification of the goal, and the fact that the means used to achieve this goal are appropriate and necessary, should be proven by the

one who is claimed to have committed indirect discrimination. (More on this can be found in the section of the Practicum on proving).

The answer to the question whether the means are “appropriate” is given on the basis of an assessment whether it is really suitable for achieving the goal. The answer to the question whether the means are “necessary” for achieving the goal is given based on an assessment whether a specific goal was possible to be achieved, in total or to a great extent, without the use of that means, i.e. whether other means could have been used which would cause less harm than the consequences caused by the means utilized.

We will show one example of how to assess the legality and appropriateness of the objectives and the necessity to use the means applied to achieve the objectives:

A director of a company forbids employees to wear any jewelry in the workplace. This decision may constitute indirect discrimination against those employees who, for religious reasons, want to wear religious symbols (e.g. Cross, Star of David, etc.). However, such a ban may be allowed, depending on the goal of the prohibition and the assessment whether this ban was necessary to achieve the desired goal. If, for example, a company for the production of metals, in which employees work on the machines, prohibits wearing jewelry, the ban would be justified, since it aims to ensure the safety of employees at work, thus the ban itself is necessary, proportionate to the risk and based on the regulations on safety at work . However, if the case was a travel agency where employees do administrative work, the nature of work and their own working conditions are such that the ban on wearing jewelry has no objective and reasonable justification.

Sometimes it happens that the aim of introducing a neutral rule is legitimate and justified, but that the means used to achieve this goal are not appropriate and necessary, therefore making the rule discriminatory.

Here is an example to illustrate this:

The rule stipulates that for a child to enter the school, the parents need to submit certain personal documents that confirm the identity of the child. The aim of this policy is lawful and justified because it provides record keeping for children and budget. However, it is known that many Roma children do not have identity documents and that the application of

this rule results in remaining outside the education system. It is therefore necessary to examine whether the lawful and legitimate purpose (keeping track of children) can be achieved by other, less restrictive means. Since such means exist (e.g. providing oral testimony about child's birth, with data on age, place of birth, parents, etc.), the rule that school enrollment is conditioned by the submission of the personal documents of the child constitutes indirect discrimination against Roma children.

Indirect discrimination is often called the “hidden” discrimination, because it is considered that the discriminator intended to use a seemingly neutral rule to exclude certain persons or group of persons from the ability to exercise certain rights. However, one should bear in mind that the purpose of indirect discrimination is not relevant. In many cases, a certain rule, criterion, or condition is introduced in order to genuinely achieve a legitimate objective, but it does not take into account the different situations of certain categories of people, even though it was not intended to discriminate against them. The absence of discriminatory intent does not mean that the perpetrator is not responsible for discrimination.

2.8.3. Violation of the principle of equal rights and obligations

Violation of the principle of equal rights and obligations is a special form of discrimination based on the idea that all people have the same rights and obligations as the law is equal for all and everyone is equal before the law, regardless of personal characteristics.

The Law on the Prohibition of Discrimination (Article 8) provides that violation of the principle of equal rights and obligations exists if an individual or a group of persons, on account of his/her or their personal characteristics, is unwarrantedly denied rights and freedoms or has obligations imposed that, in the same or a similar situation, are not denied to or imposed upon another person or group of persons, if the objective or the consequence of the measures undertaken is unjustified, and if the measures undertaken are not commensurate with the objective achieved through them.

The essence of this form of discrimination is usually not sufficiently clear, so people often assume that each inequality is a violation of the principle of equality.

When determining whether the principle of equal rights and obligations is violated, the following is explored:

1) Whether the person or group of persons is deprived of certain rights (e.g. right of a person who is infected with HIV to join a sports club) or is any obligation imposed on them (e.g. people with disabilities can attend the concert only with a companion), which is not denied or imposed to others in the same situation,

2) Whether the denial of rights or imposing obligations is based on a certain personal characteristic,

3) Whether the aim or the effect of the measures taken is legitimate,

4) Whether there is proportionality between the measures taken and the aim achieved by these measures.

Here is an example that illustrates this:

Local self-government decision stipulates that after marriage the couple is paid one-time assistance in the amount of 3000 euros. The purpose of this decision refers to the increasing birth rate in the territory of the local self-government. It prescribes the requirements to obtain this one-time assistance, seeking, inter alia, that this is the first marriage of the spouses, that one of the spouses was born in the territory of that local self-government, the spouses do not have children from previous marriages, and that before marriage spouses were not living together.

The aim of this decision is to increase the birth rate, which is objectively justified, and the local self-government may prescribe measures to encourage childbearing. However, the analysis of conditions under which they can obtain financial assistance shows that the right to receive this assistance is unjustifiably denied to certain citizens, namely: those who have made common-law marriage, those who were not born in the territory of the local self-government, who have children from previous marriages, and those who were out of wedlock before marriage. Considering that the aim is to increase the childbirth, this decision sets conditions without objective and reasonable justification. The fact whether one is married or is in common-law marriage, or whether one was previously out of wedlock, if one has children from previous marriage or where he/she was born – is not relevant in relation to the objective to be achieved, which is to increase birth.

2.8.4. Calling to account

In practice, it often happens that people who express an intention to seek protection from discrimination, or indeed request it, as well as those who testify or express willingness to testify in favor of victims of discrimination, are exposed to various inconveniences. Often, for this reason, they are treated worse than others. In order to encourage people to report and seek protection from discrimination and testify about discrimination, the Law provides a special form of discrimination and explicitly prohibits it, the so-called “calling to account”.

For this form of discrimination, the term “victimization” is often used. This term comes from the word “victim”, and is used to describe what has been committed against someone in retaliation for their reaction to discrimination.

According to the Law on the Prohibition of Discrimination (Article 9), 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.

The purpose of this provision is to prevent that persons who have identified discrimination or requested protection from discrimination, testified, or intend to testify in favor of victims of discrimination suffer negative consequences. Prohibition of victimization protects the victim of discrimination, but also the third parties who assist victims of discrimination or were willing to assist in achieving legal protection against discrimination.

Examples:

- *A young man living with HIV/AIDS launched the procedure for protection from discrimination at work because he is subjected to constant harassment. Other employees avoid contact with him, and he often receives negative comments and insults. The management treats him in a similar manner. After initiation of the anti-discrimination proceeding, the director transfers him to another office, where he sits alone.*
- *A person, who testified in court proceedings against the discriminator for hate speech against LGBT population, is subjected to threats and insults by the transgressor and his supporters.*

2.8.5. Association for the purpose of exercising discrimination

Conspiracy to commit discrimination represents a particular form of discrimination. Although freedom of association is an important human right, this freedom is subjected to restrictions in order to prevent abuse of this right and prevent conspiracy to achieve illegal goals.

The Law on the Prohibition of Discrimination (Article 10) prohibits association 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.

Association to exercise discrimination existed in many historical periods and in different societies. It occurred with the Ku Klux Klan (KKK), which operated in the United States since the second half of the 19th century and which is responsible for the deaths of thousands of people. Members of the association felt the white race to be superior, more intelligent, and that it should rule over all other races, opposed the arrival of immigrants in the U.S., and in the mid 20th century added communism on the list of things they opposed.

An example of this form of discrimination in Serbia are groups of people who commit violence, spread and incite hatred against the Roma and other ethnic minorities, members of the LGBT population, cleric-fascist organization ... It is not necessary that these groups are registered, it is enough that these groups are united individuals and their actions cause racial, religious or other hatred, discord or intolerance.

The Constitutional Court may prohibit the entry of such associations in the registry, or prohibit their work. For instance, in June 2011, the Serbian Constitutional Court prohibited the organization, “National Front”, to operate, promote and expand its program, goals and ideas, and ordered the state and other agencies and organizations to take measures to implement this decision within their jurisdiction and powers.

2.8.6. Hate Speech

Hate speech is a public communication of hate messages, or intolerance towards a racial, national, ethnic, religious, sexual or other social group or its members. It promotes, glorifies or justifies

discrimination based on race, ethnic origin, sex, religion, sexual orientation or other personal characteristics.

Although freedom of speech is a very important human right guaranteed to everyone, this right may be restricted by law if it is necessary to protect the rights and reputation of others and other important social values. Due to harmful and dangerous consequences it causes, hate speech is banned, and some serious forms of hate speech constitute criminal offence.

According to the Law on the Prohibition of Discrimination (Article 11), hate speech is a special form of discrimination. This law explicitly prohibits the expression of ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics in the media and other publications, at events and places accessible to the public, writing out and displaying messages or symbols, and otherwise.

Hate speech, as a form of discrimination, can be manifested in different ways: graffiti and messages on the facades of buildings (e.g. message “Gypsies, get out of Serbia”, “Kill the Albanians”), or posting messages in the media the content of which is such that it reinforces discrimination, hatred or violence against persons or groups because of their belonging or not belonging to a certain race, religion, nationality, ethnic group, gender, or because of their sexual orientation. In addition, the Law on Public Information explicitly prohibits the publication of such ideas, information and opinions.

Not every expression of ideas, attitudes and opinions constitutes hate speech, even when those ideas, views and opinions are unacceptable for most people. As long as these attitudes do not encourage discrimination, intolerance and violence against individuals or groups because of their personal characteristics, they can be expressed freely.

Hate speech represents a dangerous social phenomenon because it can cause devastating consequences for the group against which it is directed, especially when it is not addressed promptly, and if transgressors are not punished. An example from recent history is the civil war and genocide in Rwanda, during which between 500 000 and 800 000 people were killed, mostly members of the Tutsi people. Media propaganda had a major influence on the events in Rwanda, and hate speech had been widely used, supported and accepted. The extent of hate speech is best illustrated by the fact that the media used the terms “Tutsi” and “cockroaches” interchangeably.

In Serbia, hate speech against members of the LGBT population is particularly common. For example, an association has issued a statement regarding the Gay Pride Parade which, inter alia, stated that it represents “parade of sexually deviant, and that it opens a Pandora’s Box, which includes one day of the promotion and acceptance of various other deviant preferences such as pedophilia, necrophilia and the like “. Also, the cases in which public figures (politicians, church officials, and medical professionals) publicly express similar ideas and attitudes are very common. Hate speech is often directed against the Roma population as well.

Even though people whose ideas and attitudes constitute hate speech, often call for freedom of speech, we should bear in mind that freedom of speech should never be an excuse for hate speech. The law sets a clear framework and determines the boundary between freedom of speech and hate speech.

2.8.7. Harassment and humiliating treatment

Discrimination often occurs when treating an individual or group of persons, for some of their personal property, in an insulting and degrading manner that offends their dignity. The Law on the Prohibition of Discrimination (Article 12) prohibits harassment and humiliating treatment aiming to or violating, the dignity of individuals or groups based on their personal characteristics, and especially if it induces fear or hostile, humiliating or offensive environment.

Harassment and humiliating treatment can be performed in different ways – verbally (e.g. by saying offensive words), non-verbally (e.g. a gesture) or through action (e.g. graffiti).

In order for a conduct to constitute harassment and humiliating treatment, it is necessary that negative attitude towards a person or group of persons based on a their personal characteristic is manifested, that this behavior aims or objectively violates the dignity of the person or group of persons, especially if such conduct creates an intimidating, hostile, humiliating or offensive environment towards them.

It should be known that this form of discrimination does not require any comparisons to prove harassment and humiliating treatment. The reason for this lies in the fact that the harassment itself is undesirable, because of the way it is performed and its potential consequences. It should also be noted that in determining whether

there has been harassment, it is crucial how the victim understands the particular behavior, i.e. how it relates to him/her. However, even if the victim did not experience certain behavior as harassment, it can also be characterized as harassment on the basis of objective criteria.

Examples:

- *A prominent actor and director in a statement at a press conference says that he invested all his talent and cinematic skill in the film “to tell his people that there is someone who loves them, respects and appreciates them, who does not treat them as Gypsies or a gang of murderers and lunatics from the Balkans without a future”. Bringing the entire Roma population in connection with a gang of murderers and lunatics from the Balkans, the negative context of the entire statement, the use of a derogatory term “Gypsy”, undermine the dignity of members of the Roma minority, and create a humiliating and offensive environment.*
- *A person wanted to buy the puppy, but the salesman, after he realized that the buyer is a homosexual, refuses to sell him a puppy, saying that gays tend to have sex with animals.*

A particular case of harassment is sexual harassment, where victims are often women. Sexual harassment can be done in different ways, for example, sending obscene messages, sexist comments, referring to sexual intercourse and the like. Sexual harassment often occurs when the victim is in a subordinate position to the one who sexually harassed her (e.g. relation of professors and students and employers and employees).

2.8.8. Severe forms of discrimination

Some forms and cases of discrimination are particularly dangerous, given the fact who exercises discrimination, where it is performed and what consequences it may cause. Usually such cases are distinguished and qualified as severe forms of discrimination.

According to the Law on the Prohibition of Discrimination (Article 13), severe forms of discrimination include:

- 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;

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- Advocating or exercising discrimination on the part of state bodies or in the course of proceedings conducted before state bodies;
 - Advocating discrimination through public media;
 - Slavery, human trafficking, apartheid, genocide, ethnic cleansing and their propagation;
 - Discrimination against individuals on the basis of two or more personal characteristics (multiple or intersecting discrimination);
 - Discrimination performed several times (repeated discrimination) or committed over an extended period of time (extended discrimination) against the same person or group of persons;
 - 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.

Multiple discrimination occurs when a person is discriminated on the basis of several personal characteristics. For instance, Roma women with disabilities can be discriminated on the basis of sex, ethnicity and disability. Multiple discrimination is a serious form of discrimination due to the multiple negative consequences for the victim.

2.8.9. Special cases of discrimination

The law regulates certain specific cases of discrimination. These are cases of discrimination often performed in practice and affect a wide circle of individuals. Some of these cases are related to discrimination in certain areas (e.g. in the field of labor, provision of services), and some are related to personal characteristics of persons exposed to discrimination (e.g. discrimination based on sex, sexual orientation). Norms regulating specific cases of discrimination facilitate suppression of discrimination as they prescribe which behaviors are prohibited and enable easier detection of discrimination.

Discrimination Act prescribes the following cases of discrimination:

- *Discrimination in the course of proceedings before state bodies,*
- *Discrimination in the sphere of labor,*

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- *Discrimination in the provision of public services and in the use of premises and spaces,*
 - *Prohibition of religious discrimination,(?)*
 - *Discrimination in the sphere of education and professional training,*
 - *Discrimination on the grounds of gender,*
 - *Discrimination on the grounds of sexual orientation,*
 - *Discrimination against children,*
 - *Discrimination on the grounds of age,*
 - *Discrimination against national minorities,*
 - *Discrimination on the grounds of political party or union membership,*
 - *Discrimination of disabled persons,*
 - *Discrimination on the grounds of health.*

It should be considered that these are not the only special cases of discrimination, because other laws also regulate some specific cases of discrimination.

2.8.10. The causes of discrimination

Key causes of discrimination involve a variety of prejudices and stereotypes that people have towards certain groups of people.

Prejudices are a form of attitudes on certain social groups that are not based on knowledge and serious reflection, but an unfounded opinion and lack of argument (e.g. prejudice that homosexuality is a disease).

Prejudices harm certain social groups, as they are easily spread and affect the formation of negative opinions and attitudes towards that group. Prejudice usually results from ignorance, socialization, fear, conformity, a desire to maintain a certain social group in an inferior position, etc. Many think that prejudices are not dangerous, but they can lead to unforeseeable consequences. Remember the fate of Jews in the World War II, which was preceded by a widely held view that they were less worthy than other people.

Stereotypes provide a usually negative and false image of a particular social group, with certain characteristics or behavior

attributed to all members of the group (e.g. the stereotype that all Roma are dirty).

Discrimination is associated with many terms, such as racism, sexism, homophobia, ageism, xenophobia and the like. Many of these concepts are indicated by expressions (terms) that originate from foreign languages, and have entered our daily speech. Many people do not exactly understand the meaning of these terms, and we will therefore briefly explain those most commonly used, which are important for understanding the causes of discrimination and identification of discriminatory attitudes and behaviors.

Racism is the belief that there are inherent and defined differences between the races, and it considers one race to be more important and better than others. Distinctions among people based on their race constitute racial discrimination.

Sexism is the belief that one of the sexes is inferior, less capable and less valuable than the other (e.g. prejudice that women are unable to engage in politics). It originates from the English word *sex*. This term includes hatred against a particular sex (*misogyny* – hatred of women and *misandry* – hatred of men). Sexism results in gender discrimination.

Ageism is a disparaging attitude towards people of older age. It originates from the English word *age*. Age-based discrimination stems from ageism.

Homophobia is the belief that lesbian, gay, and bisexual are sinful, immoral, sick, and inferior to heterosexuals. The term also includes the fear or hatred of homosexuals.

Xenophobia is the hatred and mistrust of strangers. It is based on ethnic and religious prejudice, racism, nationalism and chauvinism.

In order to successfully combat discrimination, a systematical work towards overcoming prejudices and stereotypes is necessary, where educational institutions, media, public authorities and NGOs play an important role. It should be acknowledged that discriminatory behavior is a part of our daily lives and that many forms of discrimination are so deeply established in the minds of people, that most of them perceive them as acceptable. Therefore, suppressing discrimination requires not only strict application of laws and undertaking special measures towards those social groups who are not in equal position with other citizens, but also the development of tolerance towards national, ethnic, religious, sexual and other minorities and respect for and appreciation of differences among the people.

2.9. Special (affirmative) measures

Special (affirmative) measures involve various legislative and other measures taken to enable certain social groups that are actually placed in a subordinate position to attain real equality. In fact, some groups have been systematically denied rights for centuries, such as women, Roma, and persons with disabilities. Therefore, their position in society is bad, so they are not treated equally in terms of opportunities for employment, schooling, and other forms of social welfare and progress to achieve positions of influence. In order to correct this historical injustice, it is necessary to take certain measures to eliminate the effects of earlier discrimination against certain social groups. These measures give social groups some advantage to get the same “starting point” as any other citizen. In such way, people who belong to these groups are lead to the actual state of equality and the conditions are created for them to enjoy all the rights recognized to other members of society.

Our Constitution and laws stipulate the possibility of taking special measures to achieve real equality, protection and advancement of persons or groups of persons who are in an unequal position and explicitly state that these measures are not considered discriminatory.

In recent years, many special measures have been implemented in relation to women, Roma, people with disabilities and other social groups that are disadvantaged.

Examples of specific measures:

- *The introduction of rules that the election lists of political parties in parliamentary elections must reserve every third position for members of the underrepresented sex. This is a special measure to promote women’s political participation, which should lead to an increase in their representation in the parliament. It was introduced because of the very few women in the National Assembly of the Republic of Serbia (22%), despite the fact that women represent 51.4% of Serbian population. On the other hand, the use of the term ‘underrepresented sex’ allows this provision to be applied to men in case the future brings more women into the parliament.*
- *The introduction of rules by which each company with more than 20 employees that works more than two years, has an obligation to employ a certain number of people with disabilities, depending on the total number of employees;*

granting of subsidies to employers who create jobs to employ disabled people. These are special measures that are aimed to encourage greater employment of people with disabilities and create conditions for their inclusion in the labor market, thereby contributing to improving their overall social status.

- Regulation under which Roma students can exercise their right to scholarships without meeting all the requirements prescribed which enables Roma students' easier access to education. The reason for introducing these measures is the fact that the Roma ethnic minority in Serbia has a very bad position in society. It is one of the most discriminated groups in all spheres of public and private life, and very few Roma have completed higher education compared to the majority population.*

3 REVIEW OF LEGAL MECHANISMS FOR PROTECTION AGAINST DISCRIMINATION

In order to realize the principle of equality, it is not enough to only proclaim the prohibition of discrimination, it is necessary to establish an *effective and efficient system of legal protection against discrimination*. Like other states, our state has established a variety of legal mechanisms that can be used in discrimination cases.

Each legal mechanism for protection against discrimination is regulated by law and each has its own goal and purpose. There are laws to protect the discriminated person, to prevent the recurrence of discrimination and harmful effects of discrimination, and to punish the discriminator for what he did. In some cases of discrimination, it is sufficient to use only one mechanism, but it is sometimes necessary to use several, as it is the only way to prevent further manifestation of discrimination.

The law provides when and under what conditions certain legal mechanisms can be used and what form of legal protection is required. Which legal mechanism can be used in an actual case of discrimination, depends on many circumstances: who committed discrimination, which form of discrimination, whether it is committed against a person or a group of persons, whether it was based on personal characteristics, what are the consequences of discrimination and the like. It is therefore necessary to determine in each case of discrimination, on the basis of all circumstances, which path to take and which action to undertake to realize the protection against discrimination.

One cannot predict in advance which legal mechanisms can be used for protection against discrimination, as this is assessed on a case-by-case basis. Below we have broadly outlined the legal mechanisms aimed at combating, preventing and protecting against discrimination.

We classified them into four groups:

- Protection from discrimination before the Commissioner for the Protection of Equality,
- Litigation for protection against discrimination,
- Judicial protection against discrimination,
- Misdemeanor protection against discrimination.

3.1. PROTECTION AGAINST DISCRIMINATION BEFORE THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

The Commissioner for the Protection of Equality is an autonomous and independent body which has one task – to fight against discrimination. It is a specialized and independent state body established by the Law on the Prohibition of discrimination. Through its work, the Commissioner shall contribute to the prevention of all forms and types of discrimination, the elimination of the effects of discrimination, and the realization and protection of equality in all spheres of social life. In his work, the Commissioner applies the international regulations in the field of human rights and protection from discrimination, as well as constitutional and legal norms on the prohibition of discrimination.

In a separate section of the Practicum, the role and responsibilities of the Commissioner and the manner of operations and activities are further explained. Therefore, here we only mention that the Commissioner conducts the procedure for discrimination complaints, that a complaint can be lodged by anyone who is discriminated against, as well as by non-governmental organizations engaged in human rights protection, and others.

In almost all European countries there are independent bodies responsible for combating discrimination. They are connected into a network called EQUINET. At the end of 2010, the institution of the Commissioner for the Protection of Equality of Serbia became a full member of this network, which enables it to use the rich experience of those who have been successfully fighting against discrimination for many years.

3.2. LITIGATION FOR PROTECTION AGAINST DISCRIMINATION

The Law on the Prohibition of Discrimination provides judicial protection against discrimination, by stipulating the methods to seek protection, the person who may request protection, which type of protection may be requested and how to proceed when court is requested protection from discrimination.

3.2.1. How to seek legal protection from discrimination

The protection by the court is requested by lodging a *lawsuit* before the competent court which initiates the *litigation for protection against discrimination*.

3.2.2. Who may file a lawsuit for protection against discrimination

Anyone who claims to be discriminated against, that is any natural person, legal person and group of persons. In addition to those who are discriminated against, a lawsuit may be filed by:

- *The organization engaged in human rights protection or protecting the rights of groups of persons* (e.g. association, NGO engaged in protecting the rights of persons with disabilities). If discrimination is committed only against a certain person, then an organization that wishes to file a lawsuit for the protection of the discriminated person must previously obtain a consent for filing a lawsuit; consent must be in writing and the person concerned must manually sign it.
- *Voluntary assessor of discrimination* (tester) – a person who exposes discriminatory treatment, in order to directly verify the application of rules prohibiting discrimination in the specific case.
- *The Commissioner for the Protection of Equality* initiates litigation when he evaluates a case of discrimination as strategically important and should be taken to court. You can learn more on this in the section of the Practicum devoted to the work of the Commissioner.

Organizations engaged in human rights protection and the Commissioner initiate litigation in strategically important cases (so-called strategic lawsuits). Strategic litigation are those contributing

to the proper interpretation and consistent application of regulations prohibiting discrimination, raising public awareness and encouraging victims of discrimination themselves to lodge the complaint and seek court protection. Verdicts in these cases lead to long-term changes that exceed the importance of individual cases.

3.2.3. What kind of protection may be required

Law on the Prohibition of discrimination (Art. 43) stipulates that a complaint before court may require the provision of these forms of legal protection:

- *That the defendant is prohibited to execute the act that may be discriminatory, further discriminatory activity or repeated acts of discrimination: “action for the prevention of discrimination”.* This requirement is intended to prevent discrimination or to prevent the execution of the same or other discriminatory actions, thus achieving the preventive protection against discrimination. (For example, the court is requested to prohibit the owner of the pool to continue denying Roma access to the pool.)
- *To court is asked to establish that the defendant acted in a discriminatory manner: “action to establish discrimination”.* This request seeks a determination that the defendant’s particular conduct (act or omission) represents an act of discrimination, emphasizing that the need for this requirement especially refers to situations where the perpetrator of the offense denies having committed discrimination and claims that he is entitled to act as he did. (For example, the court asks to establish that the employer committed discrimination by announcing a job posting in which girls under 25 years of age are asked to work in a boutique, which discriminates all women older than 25 years, and all men.)
- *Order the defendant to take steps to redress the consequences of discriminatory treatment: “action for the removal of the state of discrimination”.* The request asks the court to order the defendant to undertake one or more actions which eliminate (redress) the state of discrimination that still exists. The request is directed towards removal of the source of discrimination and return of the situation which existed before discrimination was made. The plaintiff shall specify in the lawsuit the acts that the defendant should take to remove the condition (consequences) of discrimination. These actions may vary depending on the circumstances of each case. Sometimes, this will be legal action

(for example, that the defendant annuls a discriminatory decision), and sometimes real (actual) actions (e.g. the defendant shall remove from his premises inscription insulting LGBT).

- *That the defendant is ordered to reimburse the material and non-material damages that a victim has suffered as a result of discrimination: “action for damages for discrimination”.* This request asks the court to order the defendant to pay material and non-material damages suffered as a result of discrimination; material damages include “actual damage” (e.g. the prosecutor had to paint the facade to remove offensive graffiti from his home) and “loss of profits” (e.g. *the plaintiff has not made a profit because he was banned from setting up kiosks because of being Albanian*). Non-material damage is reflected in emotional pain, physical pain or the fear experienced by the discriminated person. For this type of damage, the plaintiff may seek an apology and withdrawal of discriminatory statements or a certain amount of money.
- *To order the publication of the decision rendered against the defendant because of discrimination.* This request asks the court to order the defendant to publish the decision against him for the discrimination committed at his expense. This requirement may be pointed out if the discrimination was made in public (e.g. through newspapers, billboards, stadiums, etc.).

It should be noted that one or more requests may be put in a single lawsuit. Thus, for instance, the prosecutor may ask the court solely to establish that the defendant acted in a discriminatory manner. However, it can also stress more demands: that the court prohibits defendant further discriminative actions, to order the redress of the consequences of discrimination, including compensation for damages suffered by the discriminated person. The prosecutor determines the precise aspects of the legal protection sought.

The Law on the Prohibition of discrimination (Art. 44) stipulates that the plaintiff may demand in the course of the proceedings, as well as after the termination of the proceedings, until the court decision is enforced after, that the court should pass a temporary measure in order to prevent discriminatory treatment, with a view to eliminating the danger of violence or some major irreparable damage. The court may pass a *temporary measure* if the plaintiff proves the *likelihood* that his request in the complaint is grounded and that the measures are necessary to prevent the risk of violence because of discriminatory treatment, the use

of force or the occurrence of irreparable damage. Thus, for example, the plaintiff in the lawsuit may ask the court to order the defendant to stop broadcasting the video claimed to contain discriminatory statements pending to the end of litigation.

The law stipulates that a proposal for an interim measure requires the court to decide without delay and not later than three days from receipt of the proposal. The court determines how long the temporary measure will last and may extend it, at the request of the prosecutor.

Legislation allows the plaintiff to demand the court in the lawsuit to *threaten* the defendant that he/she shall have to pay a certain amount of money to the victim if he/she does not meet the requirements ordered by the court. In such case, the prosecutor is requesting the issuance of court penalties. It is justified to point out such a request if the behavior of the defendant indicates that he/she refuses to comply with the court order (for example, to comply with the court ban to repeat discriminatory action). Release of court penalties represents an additional pressure on the defendant to comply with a court order, be it to refrain from performing the discriminatory act or to remove the state of discrimination.

3.2.4. Who proves what

In order to succeed in a lawsuit, the facts should be determined, and when they are disputed by the parties, they must be proved. There are standard rules on “burden of proof”, which provide that the party that refers to a fact that is favorable must prove such fact to a degree of certainty. If the party fails to do so, the court will assume that such fact does not exist, and the party may lose the lawsuit on this basis.

The procedure for the protection against discrimination, however, applies different rules than the “burden of proof”. That is, as it is extremely difficult to prove with absolute certainty that the unequal treatment of a person or group of persons is based on their personal characteristics, special rules are introduced facilitating the position of the prosecutor. These rules consist of the following: the plaintiff only needs to *make probable* that the discrimination was performed – that the defendant placed the plaintiff at a disadvantageous position because of his personal characteristic. If the plaintiff succeeds, there is a presumption that the principle of equality has been violated; then the defendant must prove that the action did not violate this principle, and if he fails, the court will assume that the principle of equality has been violated, i.e. that discriminated was perpetrated.

Example:

An employed woman claims that the employer pays her a lower salary than the salary paid for a man doing the same work. If she proves that her salary is lower; there is an assumption that discrimination based on sex happened. An employer may dispute this assumption by, for instance, proving that the jobs they perform are not equal, or that the man was paid more money, but this difference stems from the fact that he was paid both the salary and compensation for hotel accommodation for living apart from his family, which is in another city.

This legal rule is of major importance. If the court determines that an act of direct discrimination has been made or this is undisputed by the parties, the defendant cannot be relieved from liability by proving that he is not guilty.

Finally, one should bear in mind that motives and reasons why someone committed discrimination are not being proven. Some discriminate because of their racist attitudes towards the Roma, prejudices against women, hatred towards the LGBT population, and the like. From the perspective of the law, it is irrelevant, as the law cannot prohibit people's attitudes, but solely the actions that express those views.

3.2.5. What is a volunteer discrimination examiner and what is his function

A Volunteer Discrimination Examiner (tester) is a person who exposes discriminatory treatment, and verifies whether the person suspected of committing discriminatory treatment is doing so. Voluntary testing of discrimination, which is also called a *situational test*, represents a special technique that is used to demonstrate that unequal treatment is based on a personal characteristic. It is often the only way of proving discrimination, especially in cases of indirect discrimination.

The method of performing the voluntary testing technique will be demonstrated in one example.

Private security at the entrance to a nightclub did not allow two people to enter the club, and the explanation they were given was that reservations were required. There were reasons to believe that these persons were denied entry because they are Roma, as some Roma were previously denied entry to that nightclub. The president of an NGO

engaged in protection of human rights was informed of this situation, so she proposed to that they conduct a discrimination test (opportunistic testing). The Commissioner for the Protection of Equality was informed about the intended test, in line with the law.

Two groups of two persons were formed, and went to the club one night. In one group both persons were Roma, and in the second group, there were no Roma. They were all decently dressed and behaved properly. The only difference between them was their skin color. The Roma were the first who tried to enter the club. The private security guards asked them whether they had reservations, and when the Roma explained that they did not have reservations, they were told they could not enter. They left quietly. Then another group tried to enter the club. The guards allowed them to enter without asking them whether they had a reservation.

Due to this discrimination, the non-governmental organization filed a lawsuit in court and suggested as evidence, the experience of the persons who participated in the voluntary testing of discrimination. All volunteer discrimination examiners were heard in the court proceedings, and their statements provided crucial proof of discrimination.

3.3. LEGAL PROTECTION FROM DISCRIMINATION

Some cases of discrimination are very dangerous and harmful to society and, therefore, they constitute criminal offenses, for which the offenders are punished by imprisonment and/or a fine.

In our legal system, protection against discrimination is regulated by the Criminal Code, which prescribes three offenses in connection with the prohibition of discrimination: the violation of equality (Article 128), the violation of the right to use a language or Alphabet (Article 129), and racial and other discrimination (Article 387). A range of criminal offenses against human rights and freedoms is prescribed, such as the violation of freedom of expression of national or ethnic origin (Article 130), the violation of the freedom to worship and performance of religious rites (Article 131), the violation of free speech and public expression (Article 148), the prevention of political, union and other association and activities (Article 152) and others. In 2009, Article 387 which prohibits racial and other discrimination was amended, by adding two new paragraphs that define the offences of the promotion of hatred, violence and

discrimination, and public threats to commit offenses against the person or group of persons on the basis of some of their personal characteristics. All these crimes are prosecuted *ex officio*.

Here, for example, we include the definition of two criminal offenses prescribed by the Criminal Code:

Violation of equality (Article 128):

(1) Whoever denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties on grounds of nationality or ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants another privileges or benefits, shall be punished with imprisonment up to three years.

(2) If the act specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment of three months to five years.

Racial and Other Discrimination (Article 387):

(1) Whoever on grounds of race, color, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and international treaties ratified by the Republic of Serbia, shall be punished by imprisonment of six months to five years.

(2) The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organizations or individuals due to their commitment for equality of people.

(3) Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished by imprisonment of three months to three years.

(4) Whoever spreads or otherwise makes publicly available text, images or any other representation of ideas or theories, which advocate or incite hatred, discrimination or violence against any person or group of persons based on race, color, religion, nationality, ethnic origin or other personal property, shall be punished by imprisonment of three months to three years.

(5) Whoever publicly threatens to commit a criminal offense punishable by imprisonment of four years, against a person or group of persons because of a particular race, color, religion, nationality, ethnic origin or because of other personal property, shall be sentenced by imprisonment of three months to three years.

Public authority bodies are obliged to report criminal offenses prosecuted ex officio, if they learn about them in any way. This obligation exists for all persons who perform a public authority or are professionally involved in the protection and security of persons. This also includes those working in property, health care, social services, and child care if they learned about a criminal offense in connection with their activities. The offense which is prosecuted ex officio may and should be reported by anyone who learns about it, and if the offense is committed against a minor, everyone is obliged to report it.

Criminal offenses are reported to the police or public prosecutor by filing a criminal complaint in writing or orally.

The detection and prosecution of offenses involves, in line with their jurisdiction, the police, public prosecutor and the court.

3.4. MISDEMEANOR PROTECTION FROM DISCRIMINATION

The law stipulates consequences for cases of discrimination, as well as the failure to comply with legally stipulated special (affirmative) measures, prescribing them as misdemeanors and establishing sanctions.

For instance, here are several misdemeanors established in the Law on the Prohibition of Discrimination:

- The authorized official or the responsible person in a public administration body shall be fined in the amount of 10,000 to 50,000 dinars for committing a discriminatory act (Article 50).
- A legal entity or an entrepreneur shall be fined in the amount of 10,000 to 50,000 dinars for violating the principle of equal opportunity of employment or exercising all the rights in the sphere of labor under equal conditions (Article 16 Para 1) on the grounds of personal characteristics, in the case of a person doing temporary and occasional work, a person doing additional work, a student or a pupil undergoing vocational practice, a person

undergoing professional training and development without concluding a contract of employment, or a volunteer (Art. 51 Para 1). The responsible person in a legal entity or a public administration body, as well as a physical person, shall be fined in the amount of 5,000 to 50,000 dinars for a violation referred to in paragraph 1 of this Article (Art. 51 Para 2).

- A legal entity or an entrepreneur shall be fined in the amount of 10,000 to 100,000 dinars if, within the framework of his/her activities, he/she refuses to provide services, demands that conditions should be fulfilled for the provision of services that are not required of other persons or groups of persons, or if he/she unwarrantedly gives priority to another person or a group of persons when providing services, on the grounds of the personal characteristics of a person or a group of persons (Art. 52 Para 1). The person in charge within the framework of a legal entity or a public administration body, or any other individual, shall be fined in the amount of 5,000 to 50,000 dinars (Art. 52 Para 3).
- A legal entity or an entrepreneur, owner, or user of an object in public use or a public space shall be fined in the amount of 10,000 to 100,000 dinars for denying access to the said object or public space to an individual or a group of persons on the grounds of their personal characteristics (Art 52 Para 2 and 4).
- For acting contrary to the principle of free expression of faith or belief; that is to say, if he/she denies an individual or a group of persons the right to acquire, maintain, express and change faith or belief, as well as the right to express, or act in accordance with, their beliefs, he/she will be punished: responsible person in a public administration body shall be fined in the amount of 5,000 to 50,000 dinars; a legal entity or an entrepreneur shall be fined in the amount of 10,000 to 100,000 dinars; a responsible person in a legal entity and a physical person shall be fined in the amount of 5,000 to 50,000 dinars (Art 53 Para 1,2 and 3).
- A legal entity or an entrepreneur that discriminates against individuals or obstructs the provision of health care or other public services to them on the grounds of age shall be fined in the amount of 10,000 to 100,000 dinars (Art 58 Para 1); responsible person in a legal entity or a public administration body, as well as any other person, shall be fined in the amount of 5,000 to 50,000 dinars (Art. 58 Para 2).

A number of other laws prescribe penalties for discrimination acts and failure to comply with the special measures.

Misdemeanor proceedings are initiated and conducted by the misdemeanor court, based on a motion to initiate misdemeanor proceedings. This motion is lodged by the authorized bodies or the damaged party. Misdemeanor complaints can also be lodged by the Commissioner for the Protection of Equality.

NOTES:

- It is necessary to bear in mind that protection against discrimination primarily implies that people are able to recognize it, and, which is especially important, to have awareness that discrimination is prohibited by law and must not be tolerated.
- It should be acknowledged that each individual fight against discrimination is a contribution to the civilization’s struggle for a fairer, better and more humane world, and every success in this struggle, makes progress towards achieving these ideals.
- It should be acknowledged that protection from discrimination is a sort of battle, “fighting for the right” and that is why, in addition to the determination and readiness for the battle, it is necessary to have all the information on how certain legal protection mechanisms operate and which procedures are applicable. When it comes to filing complaints of discrimination to the Commissioner for the Protection of Equality, special legal knowledge is not necessary because it is easy to write a complaint, and the procedure itself is simple. However, if a person wants to initiate court proceedings and is not legally trained, it is best to seek legal advice and assistance of a lawyer, contact the municipal legal aid services, a non-governmental organization engaged in protection of human rights, trade union or someone else who can help.
- If you decided to seek court protection from discrimination, you should know that this process requires significant time, effort and resources, and often results in people becoming discouraged and giving up. The fight for rights requires determination and firm resolve to overcome all obstacles on the arduous road to justice.

4 PROTECTION AGAINST DISCRIMINATION BEFORE THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

4.1. WHO IS AND WHAT IS THE FUNCTION OF THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

The Commissioner for Protection of Equality is an independent, autonomous and specialized state body in charge of protection against discrimination and the promotion of protection of equality. The Commissioner for the Protection of Equality is an individual, not a collective state body. This means that all decisions are made by the Commissioner himself/herself.

As we said, this body is established by the Law on the Prohibition of Discrimination and has a wide range of legal powers that make it a central state body for the fight against all forms and types of discrimination. The seat of the Commissioner is in Belgrade, on Belgrade Street no. 70.

4.2. WHO ELECTS THE COMMISSIONER AND IN WHAT WAY

The Commissioner for the Protection of Equality shall be elected by the majority vote of all deputies, shall be elected by a majority vote of the overall number of representatives of the people, acting upon a proposal submitted by the committee authorised to deal with constitutional matters. Each parliamentary group is entitled to propose the competent candidate to the committee, and the committee makes a decision on the proposal by majority vote of all members. The first Commissioner was elected in May 2010.

4.3. WHO CAN BE ELECTED AS COMMISSIONER FOR THE PROTECTION OF EQUALITY

In order to be appointed as the Commissioner for the Protection of Equality, you must be a lawyer and a citizen of the Republic of Serbia, with at least ten years of legal experience in the field of human rights. You must also have high moral and professional qualities in order to be appointed. The Commissioner may not perform any other public or political function, or professional activity, in line with the law. The mandate of the Commissioner is five years, and the same person may be appointed for Commissioner for two terms.

4.4. GUARANTEE OF INDEPENDENCE AND AUTONOMY

The Commissioner for the Protection of Equality enjoys the same immunity enjoyed by the representatives of the people at National Assembly (he/she may not be called to criminal or other responsibility for any opinion expressed in the exercise of the functions), is entitled to a salary equal to that of a judge of the High Court of Cassation, and the right to reimbursement of expenditures incurred in connection with performing his/her function..

In addition, in order to guarantee the independence and autonomy of the Commissioner, the cessation of his/her mandate is precisely regulated and reasons for relief of duty and relief of procedure are explicitly provided. The function of the Commissioner for the Protection of Equality's ceases upon the expiry of his/her mandate, by resignation, qualification for retirement, relief of duty, and in case of death.

The Commissioner may be relieved of his/her duty due to: improper and negligent work, if he/she is convicted for an offense and sentenced to prison which renders him/her unfit or unsuitable for this function, if he/she loses their citizenship, or their ability to perform any other public function or professional activity, perform other duties or business that might affect his/her independence and autonomy, or acting contrary to the law governing conflict of interest while performing public functions.

The procedure for relief of duty may be initiated by one-third of the deputies. The Committee on constitutional affairs is responsible for establishing evidence for relief of duty and to inform the National

Assembly, which decides on the relief of duty by a majority vote of all deputies.

The Commissioner for the Protection of Equality independently decides on who to employ so that he/she can professionally and efficiently exercise their jurisdiction. The Commissioner shall allocate three assistants who manage the specific field of work.

Resources for the Commissioner, his/her assistants and professional services are provided in the budget of the Republic of Serbia, based on the proposal of the Commissioner.

4.5. FUNCTIONS OF THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

In accordance with international standards, the Commissioner's jurisdiction is broadly defined, in order to enable efficient and effective prevention and protection against discrimination and contribute to the achievement of equality.

One of the primary responsibilities of the Commissioner is to act on complaints of discrimination against persons or groups who share the same personal characteristics and to carry out the procedure based on complaints in cases of discrimination against persons or groups of persons shared by the same personal characteristic. The Commissioner is equipped to receive and consider complaints of discrimination, to issue opinions and recommendations in concrete discrimination cases, and to stipulate measures defined by the law. In addition, the Commissioner is obliged to inform the complainant about his or her rights and the possibilities to initiate a court procedure or another protection measure, including the reconciliation procedure. The Commissioner can also authorize the filing of complaints for protection from discrimination, with the approval of the discriminated person. The Commissioner is also competent to file offence reports against discrimination acts prohibited by the antidiscrimination regulations.

There is a set of competencies related to the promotion of the protection of equality. Within this activity, the Commissioner is authorized to warn the public of the most common, typical and severe cases of discrimination. In the public warning, the Commissioner points out the methods of performing discrimination, the discriminators, individuals and groups that were subjected to the most common,

typical and severe forms of discrimination, in line with personal data protection obligation, for violations of the provisions on prohibition of discrimination, as well as the consequences or potential consequences of the most common, typical and severe forms of discrimination.

The Commissioner monitors the implementation of laws and regulations and is authorized to initiate the adoption or amendment of regulations to implement and improve the protection against discrimination, and to give an opinion on the provisions of the draft laws and other regulations pertaining to the prohibition of discrimination.

Example of opinions on draft laws

Acting within the statutory competence to monitor implementation of laws and regulations, initiate the adoption or amendment of regulations for the implementation and improvement of protection against discrimination, and provide opinions on the provisions of the draft laws and other regulations concerning discrimination (Article 33, Para 1, item 7 of the Law on prohibition of discrimination, "Official Gazette of RS", No. 22/09), the Commissioner for the Protection of Equality gives

OPINION

- 1. The provision of Article 7, Para 1 of the Draft Law on Free Legal Aid, determining procedures to exercise the right to free legal aid, it should be explicitly provided that the right to free legal aid is also realized in the proceedings before independent government agencies.*
- 2. The provision of Article 16 of the Draft Law on Free Legal Aid under section "The right to free legal aid, regardless of economic status, personal attributes or status in the proceedings before state bodies", persons who are discriminated and persons against whom proceedings for complete or partial deprivation and restitution of the legal capacity have been initiated should be included in the category of persons who are entitled to free legal aid regardless of their financial status.*
- 3. In the drafting process of the Law on Free Legal Aid, gender-differentiated language should be used consistent with the use of words in the masculine and feminine gender, or by introducing appropriate clauses.*

The authority of the Commissioner to recommend measures for achieving equality to public authorities and other persons is also important. Recommendations for measures can be directed towards preventive action to avoid and remove structural and institutional discrimination, as well as to improve the operation of institutions of the system in eliminating and preventing discrimination and achieving complete equality of citizens. Also, through the recommendations, the Commissioner indicates to public authorities and other stakeholders the need to take special (affirmative) measures to achieve full equality, protection and advancement of persons or groups of persons who are in an unequal position compared to other citizens.

Examples of recommendations to public authorities to undertake measures

Acting within the statutory authority to monitor implementation of laws regarding prohibition of discrimination and recommend public authorities measures to achieve equality (Article 33 item 7 and 9 of the Law ON Prohibition of Discrimination (“Off. Gazette RS” no. 22/2009), the Commissioner for the Protection of Equality provides the Government of the Republic of Serbia

RECOMMENDATIONS

1. In order to achieve full and effective equality in social relations, it is necessary to promptly prepare and adopt a National Strategy to combat discrimination, which would establish comprehensive and coordinated measures and actions for prevention and suppression of discrimination and equality assurance.

2. In order to operationalize the National Strategy for Combating Discrimination, it is necessary to adopt an action plan for implementation of planned measures and activities, with precisely defined tasks, stakeholders, indicators and timelines for implementation.

Acting within the statutory authority to monitor implementation of laws and regulations pertaining to the prohibition of discrimination and recommending that public authorities and other persons take measures to achieve equality (Article 33 items 7 and 9 of the Law on Prohibition of Discrimination “Official Gazette of RS”, No. 22/2009), the Commissioner for the Protection of Equality gives

RECOMMENDATION

- 1. The National Bank of Serbia shall take appropriate measures, within its legal powers in order to eliminate the discriminatory condition of the upper age limit for the use of banking services, prescribed by the bylaws of the commercial banks.*
- 2. The National Bank of Serbia shall notify the Commissioner for the Protection of Equality of the planned measures in order to comply with this recommendation within 30 days.*

Acting within the statutory authority to monitor implementation of laws regarding non-discrimination and recommend public authorities and others measures to achieve equality (Article 33 items 7 and 9 of the Law on Prohibition of Discrimination (“Off. Gazette RS” No. 22/2009), regarding the events concerning the ratification of accreditation of the delegation of the National Assembly of the Republic of Serbia at the session of the Parliamentary Assembly of the Council of Europe and the announcement that the Serbian Parliament shall change the composition of the delegation in accordance with the rules of the Parliamentary Assembly of the Council of Europe, the Commissioner for the Protection of Equality gives

RECOMMENDATIONS

- 1. When deciding on the composition of the delegation of the Serbian Parliament in the Parliamentary Assembly of the Council of Europe, it is necessary to apply the provision of Article 38 of the Law on Gender Equality (“Off. Gazette of RS”, no. 22/2009), which provides: “During the election or appointment of delegations representing the Republic of Serbia, the composition of the delegation must make sure that at least 30% of those involve persons of under-represented sex, in accordance with international standards”. Accordingly, given the total number of members of the parliamentary delegation, the composition of the delegation must include at least two women.*
- 2. Serbian Parliament shall without delay regulate the method in which it will be ensured that the composition of all parliamentary delegations participating in international cooperation, the delegation involves of at least 30% of the under-represented sex, in line with the regulation the Article 38 Para 2 of the Law on Gender Equality.*

The Commissioner shall submit to the Parliament, an annual report on the state and protection of equality, which includes assessment of the work of public authorities, service providers and others, as well as identified gaps and recommendations for their elimination. The report may contain statements about the implementation of laws and regulations and the need for the adoption or amendment of regulations for the purpose of implementation and improvement of protection against discrimination. If there are particularly important reasons, the Commissioner may, on his own initiative or at the request of the National Assembly, submit separate reports to the National Assembly.

In his work, the Commissioner shall cooperate with the National Assembly, agencies and bodies engaged in related activities or protection of human rights and freedoms and the protection of equality with government agencies, autonomous provinces and local self-governments and public services, associations, scientific and educational institutions in the country and abroad.

The Commissioner cooperates with NGOs engaged in protection of human rights and individual rights of vulnerable and marginalized social groups, which represent the main partners in the fight against discrimination.

4.6. HOW TO CONTACT THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

Proceedings before the Commissioner are initiated very simply – by lodging a complaint. The complaint may be lodged by any natural or legal person or group of persons who consider they were discriminated on any grounds by any act, action or omission.

Normally, a complaint is lodged by an individual. In the case of the violations of the rights of a group of people, a complaint may be lodged by any person from the group, and the consent of other group members is not necessary. In addition, under certain conditions, the proceedings can be initiated by organizations engaged in human rights protection and other persons, provided that the proceedings are instituted for the protection of a specific person, and only on the basis of consent of that person.

There is no prescribed form of complaint, but the Commissioner for the Protection of Equality designed the complaint form which is available in hard copy at the Commissioner's premises, as well as on the website of the Commissioner in the electronic form www.ravnopravnost.gov.rs.

The complaint form is provided in the appendix of this Practicum. It is not necessary that a complaint is lodged in this form in order to be proceeded. The complaint form is only a guide to provide all information necessary in order to proceed on the complaint.

The complaint should provide the following data:

- *Target of discrimination*—it is necessary to specify who was discriminated against; in case of an individual person, it is necessary to specify the name, address and contact details, while the legal entity must state the name, seat, address and contact details of the representative; if it is a case of group discrimination, it is necessary to specify which group is in question, i.e. personal characteristics that connect the group members, and contact details of a person who acts on behalf of the group or the person who lodged the complaint.
- *Details of the discrimination case* – it is necessary to describe the event: what happened, by which act, action or omission discrimination was made, where and when the event occurred, who was present etc.
- *What is the basis of discrimination* –it is necessary to specify the personal characteristics upon which discrimination is made.
- *Who committed the act of discrimination* –it is necessary to specify the details of the person who committed the act of discrimination (name, surname, address, contact details, or company name, address, name and surname of the authorized representative, and contact information), so that the Commissioner is able to deliver a complaint for response.
- *Evidence* – it is necessary to specify the means of evidence that can be used to determine the facts related to the act of discrimination— these may be decisions, statutes and other documents confirming the facts alleged in the complaint; if the complainant refers to a document (e.g. a decision), and he/she knows who is in its possession (e.g. the employer), it is sufficient to indicate this in the complainant and the Commissioner will obtain the specified document during the procedure; if the specific case was assessed by the so-called voluntary discrimination tester, his statement may be attached to the complaint, or his data may be indicated in the complaint (name, address, contact details), so that the Commissioner can obtain his statement; if someone can testify to a fact related to the act of discrimination, this witness' testimony can be attached to the complaint or the

complaint may include data about the witness (name, address, contact details), so the Commissioner will obtain his testimony.

It is important to know that the Commissioner does not act on anonymous complaints. The complaint must be signed, and the signed complaint can be scanned and sent electronically.

As a rule, the complaint shall be lodged in writing, by sending a complaint to the address of the Commissioner, or fax, e-mail with the scanned motion and signature of the applicant, in electronic form with electronic signature of the applicant.

In exceptional cases, a complaint may be lodged orally for the record. Staff at the Commissioner's Office provides the use of interpreters and translators in case of making a complaint orally, in order to enable persons with disabilities and individuals who do not know the official language the possibility to file the complaint.

Recognizing citizens' need to obtain explanations, legal advice and information, and eliminate potential dilemmas as to whether what happened to them constitutes discrimination, the professional staff service of the Commissioner has organized a special reception office. The lawyers who had special training in conducting interviews and providing legal advice work in the reception office.

NOTES:

- If you require any further information and legal advice, call the Commissioner's office by phone or send an email and an official will make an appointment to discuss your case in the reception office.
- If you are not sure whether discrimination was performed, it is better to file a complaint because it is the best way to resolve your dilemma.
- It is best that the complaint is typed, but you can also write by hand; make sure you accurately document your case.
- The content of the complaint allegations must be true; describe exactly what happened and how; if you reacted as a response to discrimination, describe how you did it.
- It is important that you elaborate on the event in the complaint; if the one against whom you are submitting the complaint insulted you, be sure to specify his exact words, even if they are vulgar and obscene; if it is a behavior, describe in detail the behavior.

If some behaviors were repeated several times, write the number of times when this was committed; in case of omission, please specify what the discriminator was required to do, and did not do; if you are still subject to discrimination, state that fact.

- If you have a dilemma as to whether your personal characteristic was the basis for discrimination, specify which characteristic you are referring to.
- It is not necessary to specify which form of discrimination was executed in the complaint, it is only important that you explain what happened, how and who participated in it;
- It is necessary that the complaint includes evidence for what has happened. For example, if you received a decision from the employer, get a copy and attach it to the complaint; if you were physically hurt by someone, and a doctor examined you, provide a copy and attach medical documentation; if you were insulted by the manager in the presence of colleagues, state their names in the complaint; do not worry if they are not willing to testify about what happened – the Commissioner will remind them of their obligation to testify and tell the truth.
- If you have not listed some facts you consider important, or some of your statements are insufficiently clear, the Commissioner will ask you to provide additional information and explanation of the facts.
- If you reported the case to the police or public prosecutor, or initiated court proceedings, state this in the complaint
- No matter how angry you are with the individual who discriminated against you, the complaint must not be insulting and disrespectful; please note that your complaint will be submitted for response to the one you claim to have discriminated against you.

4.7. HOW THE COMMISSIONER ACTS ON THE COMPLAINT

The proceedings before the Commissioner are outlined in the Law on Prohibition of Discrimination, and the Commissioner was required to determine in more detail the process of acting upon the complaints. The Commissioner has fulfilled this duty, and developed the

Rules of Procedure. The text of the Rules is available on the website of the Commissioner <http://www.ravnopravnost.gov.rs>.

Proceedings before the Commissioner are simple and without excessive formality, which contributes to its effectiveness. Not all the proceedings are the same as the cases of discrimination are different. In some cases there are no disputed facts, while in others almost all the facts are disputed. Sometimes, a complaint has all the necessary information, and sometimes it is necessary to supplement the information or provide further clarification. However, it is possible to broadly describe the usual course, “scheme” of typical proceedings upon complaint, in order to get an overall picture of how the process is implemented.

When a complaint is received in the office, the authorized person in the professional service primarily examines whether the Commissioner is competent to decide on the violation of the rights indicated in the complaint. As people are not always able to distinguish discrimination from other illegal actions, and many do not know the Commissioner’s competencies, there are often complaints related to certain illegal activities and illegal acts that do not constitute discrimination. If the authorized person determines that the Commissioner is not competent in a certain case, a decision dismissing the complaint is made and it is delivered to the complainant, along with advice on which authority is competent to provide legal protection in the specific case.

If the complaint is not dismissed for lack of competence, the authorized person is checking whether it contains all the necessary elements in order to be processed. In case the complaint is incomplete, incomprehensible or contains deficiencies which hinder processing (e.g. not signed), the authorized person in the Commissioner’ Office shall refer the complaint without delay to the complainant to remove the deficiencies within 15 days and inform him about which deficiencies exist and how to remove them. If the deficiencies are not corrected in the given time, a decision rejecting the complaint is made and delivered to the applicant.

The complaint is also assessed by another test – it is examined by determining whether there are possible legal obstacles that prevent the Commissioner from conducting the procedure. That is, the Law on the Prohibition of Discrimination (Article 36) provides that the Commissioner does not act on complaints in the following cases:

1. When court proceedings are initiated or finalized on the same matter
2. When it is obvious that there is no discrimination to which the complainant refers,

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3. When the same matter was already proceeded, and no new evidence was submitted
 4. When the time elapsed since the violation of rights makes it impossible to achieve the purpose of proceedings.

If any of these reasons exist, the Commissioner shall make the decision informing the complainant that the complaint will not be proceeded.

If the conditions for the proceedings are met, it is examined on the basis of whether there is a possibility of peaceful resolution of the problems through mediation. Information about what mediation is and how it is performed are contained in a separate part of the Practicum.

If there are no conditions for mediation, the complaint is delivered, within 15 days of its receipt, to the person who is alleged to have committed an act of discrimination. Along with the complaint, this person also receives a request to make a statement; within 15 days of receipt of the complaint he/she must plead on allegations and merits in the complaint. The request specifies which facts need to be stated. Thus, for example, the person is asked to list and explain why the competition for scholarships set a requirement for the candidates, to provide data on the number of people with disabilities who are employed, the amount of monthly income gained by employed men and women who work in the same or similar posts, to explain the reasons why the complainant was assigned to another job, etc.

It is important to highlight that the person against whom a complaint was lodged has no legal duty to make a statement; according to the law, one “may make a statement” (Art. 37). However, most of the individuals against whom complaints have been lodged tend to provide the required explanations.

During the proceedings, the facts will be determined by examining the submitted evidence, taking statements from the complainant, the person against whom the complaint was lodged, and other persons, in line with the law (Article 37 LPD).

In order to provide effective and efficient protection, based on the decision of the Commissioner, cases are classified by degree of urgency into two categories: 1. “*Immediate*” – when the collected data indicates that due to discrimination, the person is at high risk of harm, and that they may be subject to repeated or continued discrimination. The proceedings begin immediately and the opinion or recommendation

is given as soon as possible and no later than 30 days after lodging the complaint; 2. “*Regular*” – when the collected data do not indicate that the person is at risk due to discrimination, in which case an opinion or recommendation is given within 90 days of lodging the complaint.

The proceedings based on the complaint must be completed within 90 days. It is important to bear in mind that the proceedings before the Commissioner are free – the taxes or any other charges are not paid.

4.8. WHAT THE COMMISSIONER DOES IF HE/SHE DETERMINES THAT THERE WAS DISCRIMINATION

If the collected facts and legal regulations indicate that discrimination was committed, the Commissioner shall issue an *opinion* along with a *recommendation* that states what the individual who committed the act of discrimination must do to terminate their violation of the law. The opinion and recommendations must be substantiated.

In the *opinion*, the Commissioner expresses a view that the behavior of a particular person i.e. one’s action or omission are discriminatory.

The *recommendation* specifies what the person who committed the act of discrimination should undertake to prevent further discriminatory behavior, how they should redress the effects of discrimination and how they will provide adequate restoration to the victim of discrimination. The law does not provide a list of recommendations, but merely states that recommendation must address how to redresses the violation of rights. The recommendation of the Commissioner depends on many circumstances – how the act of discrimination was committed, what it reflects, the consequences that ensued, and who the victims of the discrimination were.

Thus, for instance, in case of harassment and humiliating treatment of an employed woman, the person who commits the act of discrimination will be asked to apologize to the victim of discrimination and to refrain from future harassment and humiliating treatment which offends the dignity of women; in case of discrimination committed by adoption of a legal document containing discriminatory provisions, the person(s) responsible, will be asked to repeal those provisions and the like. The individual who committed the act of discrimination can be asked to take measures to ensure access to the building, to refrain from making statements or disseminating ideas, opinions, and information reinforcing discrimination, hatred or violence, and the like.

An example of an opinion and recommendation

Acting within the statutory authority to receive and consider complaints for violations of the Law on Prohibition of discrimination, provide opinions and recommendations and measures imposed by law (Article 33, para 1, item 1 of the Law on Prohibition of Discrimination “Official Gazette of RS”, No 22 / 2009), in regards to the complaint by E. P. from B, the Commissioner for the Protection of Equality gives

OPINION

A general act of the A bank ‘Product Description: Current Account Overdraft’ from 18th January 2011, which prescribes in Article 3, para 2 eligible categories of customers – “a natural person not younger than 18 years at the time of application and not older than 67 years at the time of full repayment – the duration of the overdraft,” denies the right of persons older than 67 years to use banking overdraft services, which directly discriminates these persons on the basis of personal characteristic – age.

The Commissioner for the Protection of Equality, in accordance with Article 33 Para 1 Item 1 and 39, Para 2 of the Law on Prohibition of Discrimination gives the A bank

RECOMMENDATION

1. A. Bank will eliminate from the general act of Product Description: Current Account Overdraft of 18th January 2011 the criteria that are directly discriminating persons over 67 years old in the use of banking overdraft services on the basis of age as a personal characteristic

2. A. Bank will continue to take into account that its future general acts and decisions do not violate the provisions of the Law on Prohibition of Discrimination, or to refrain from unjustified discrimination or unequal treatment and failure (exclusion, restriction or preference), in relation to the person or persons on the basis of a personal characteristic.

3. A. Bank shall notify the Commissioner for the Protection of Equality, within 30 days of receiving the opinion and recommendation on measures to be implemented for the purpose of complying with the recommendation

Opinions and recommendations must be substantiated. The explanation involves the facts and their legal evaluations, as well as the motives and reasons justifying the adoption of opinions and recommendations with the given content.

Opinions and recommendations are submitted to the complainant and the person against whom the complaint was lodged. In accordance with the law, the person who committed the act of discrimination has a period of 30 days to act upon the recommendation and to redress the violation of a right. He is obliged to act upon the recommendation and redress the violation within 30 days of reception and notify the Commissioner.

If the person who committed the act of discrimination does not act upon the recommendation or fails to inform the Commissioner that he acted upon the recommendation, the Commissioner shall issue a decision on caution measures and give a new deadline of 30 days to remove the infringement. The decision is final and no appeal is allowed. The decision is delivered to the complainant and the person who committed the act of discrimination. If within the new deadline of 30 days, the discriminator does not redress the violation, the Commissioner is obliged to inform the public.

The public is informed by public announcement that a person has committed discrimination, the details of the case, the recommendations they received and whether or not they acted on the recommendations. The announcement shall include information on the person who committed the act of discrimination (for natural persons – name and place of residence, and for legal persons name and address). The announcement shall be published in a daily newspaper with national circulation and at the Commissioner's website.

Example of public announcement

Priboj municipality did not introduce the Bosnian language and script in official use, although it was obliged to do so, resulting in a complaint filed to the Commissioner for the Protection of Equality. The Commissioner conducted the proceedings and concluded that there was discrimination on the basis of national origin and made a recommendation that the municipality Priboj introduce the official use of the Bosnian language and Latin script, as the Constitution, inter alia, provides that national minorities have the right to use their language and alphabet. Also, the Law on Protection of Rights and

Freedoms of National Minorities stipulates that local governments must introduce the official use of language and script of national minorities if the percentage of a national minority on its territory reaches 15%; according to the latest census in more than 18% of members of the Bosniak national minority live in Priboj. Given that the municipality Priboj did not comply with the recommendation, the Commissioner for the Protection of Equality notifies the public.

The Commissioner has no authority to punish those committing acts of discrimination if they do not comply with the recommendations, but they can be assured that the authority of the institution, the strength of the case and public pressure will ensure this.

It should also be acknowledged that the opinions and recommendations of the Commissioner do not decide on one's right, and therefore they cannot be appealed, or objected. Complainants and those who committed acts of discrimination sometimes submit appeals, or objections, dissatisfied by the views and recommendations of the Commissioner. The Commissioner is not obliged to answer to these appeals and objections.

4.9. WHAT THE COMMISSIONER DOES IF IT IS ESTABLISHED THAT THERE WAS NO DISCRIMINATION COMMITTED

Upon determining that no act of discrimination was committed, the Commissioner shall issue an opinion stating this standpoint. The opinion shall be given in writing and must be substantiated. It is always delivered to the complainant and the person against whom the complaint was lodged.

Examples of the opinion that discrimination was not committed

Acting within the statutory authority to receive and consider complaints of violations of the Law on Prohibition of discrimination, provide opinions and recommendations and impose statutory measures (Article 33, Para 1, item 1 of the Law on Prohibition of Discrimination "Official Gazette of RS" no. 22/2009), in regards to the complaint by J.M.M. from B., the Commissioner for the Protection of Equality gives

OPINION

The procedure was carried out upon the complaint by J. M. M. from B. against A. b.d.o.o. due to lack of reception of free tickets for the concert for singer by Sade for M. M., the son of the complainant who has autism; it was not found that A. b. d. o. o. refused to issue a free ticket for any personal characteristic of M. M., thus, the conduct of the company A. b. d. o.o. does not qualify as discriminatory.

Acting within the statutory authority to receive and consider complaints of violations of the Law on Prohibition of discrimination, provide opinions and recommendations and impose statutory measures (Article 33 Para 1 item 1 of the Law on Prohibition of Discrimination “Off. Gazette no. 22/2009), the Commissioner for the Protection of Equality gives

OPINION

The decision of the City of Uzice number 06-82/10 of 12 November 2010, dismissing of functions B. V. at the Administrative Board of the JKP does not constitute an act of discrimination on the basis of personal characteristics – political opinion (not belonging to a political party)

4.10. WHEN THE COMMISSIONER FILES A LAWSUIT AGAINST THE DISCRIMINATOR

The Law on the Prohibition of Discrimination authorizes the Commissioner to file a lawsuit against the person who committed an act of discrimination. It should be noted that the lawsuit is not intended to ensure compliance with the recommendations of the Commissioner, nor it is a part of the complaints procedure. The Commissioner shall file a lawsuit when he/she deems that a case of discrimination is of strategic importance and there is a need to conduct the so-called *strategic litigation*.

Strategic litigation is always performed in the public interest, regardless of whether the reason for the litigation is discrimination of a person or group of persons. Conducting these cases enables the ability

to improve the judicial practice, to sensitize the public to the problem of discrimination, and to influence public opinion. For strategic litigations, those that hold good prospects for success are usually selected.

In the proceedings, the Commissioner is the plaintiff, and not representative of the discriminated person or group of persons. He files a lawsuit in his name and in the public interest, provided that he has the written consent of the discriminated person and if discrimination was committed against a specific person. The Commissioner may stress any requirements prescribed by the law in the complaint, except the request for material and non-material damage. This request can only be set by the discriminated person.

The creditor bears the burden of conducting the proceedings, so that litigation does not cause any costs to the discriminated person. Discriminated persons can be invited to testify. In the litigation, the voluntary discrimination tester can also testify. All other means of evidence such as documents, statistics, hearing the parties, the expertise, etc. can be utilized.

4.11. WHEN THE COMMISSIONER FILES MISDEMEANOR CHARGES

The Commissioner files misdemeanor charges when in the course of the proceedings upon the complaint or otherwise, he/she becomes aware that certain acts or omissions constitute an offense prescribed by laws in the field of protection against discrimination. As explained above, many cases of discrimination and non-implementation of the legally established special (affirmative) measures are prescribed in the laws as offenses and penalties are provided.

5 MEDIATION IN THE COMMISSIONER'S OFFICE FOR THE PROTECTION OF EQUALITY

Law on the Prohibition of Discrimination stipulates that the Commissioner, before taking other steps in the proceedings (Article 38), propose mediation in accordance with the Law on Mediation. Accordingly, mediation represents one of the methods of peaceful (agreement-based) resolution of situations arising from an event for which the complainant claims constitutes discrimination. If on the basis of certain indicators it is concluded that the case is suitable for mediation, the authorized person in the Commissioner's Office undertakes actions to inform the individuals involved about the possibility of mediation.

It should be noted that mediation is not performed by staff in the Commissioner's Office nor it is an integral part of the complaints procedure. In relation to mediation, the institution of the Commissioner appears as a kind of special service and its role is to enable the organizational and technical requirements for implementation of mediation. In other words, the institution of the Commissioner only has an administrative role that provides support to the mediation process.

Basic information about mediation process is provided below.

5.1. WHAT IS MEDIATION

Mediation is a method of resolving conflict in which a third, neutral party (the mediator) guides the conversation between individuals in conflict, helping them reach a solution that suits everyone. People who are in conflict often adopt a rigid view of the conflict and its solution – they believe they know what the actual problem is and what would be the best solution. Mediators help them review the problem, observe it from

a new perspective, understand the other party, and come up with other possible solutions, eventually choosing the one that is acceptable to all. Mediators do not make decisions for the parties. Individuals between which the conflict arose have exclusive power to decide upon a solution.

Mediation is always voluntary – it can be implemented only with the consent of all parties. It is also confidential – everything that is said during mediation remains among the participants in the process. Data obtained during mediation may not be disclosed to third parties, or used in any other proceedings. Parties are treated equally – regardless of their status, position in society, etc. They all have equal respect during the interview, equal opportunity to express their views and decide on a solution.

The dialogue established between the parties during mediation encourages their mutual understanding, respect and understanding of the problem from the perspective of another person. Parties focus on understanding the problem, rather than looking for a culprit by labeling and blaming each other. In this way, mediation, in addition to concrete problem solving, also provides a model approach to communication and conflict, which can help people maintain good relations with those who are important.

5.2. MEDIATION IN CASES OF DISCRIMINATION

The goal of mediation in discrimination cases is to resolve a situation that is the basis of complaints, end harmful behavior and prevent its recurrence. The mediator, as a neutral party, assists people in discussing the problem, perceiving the problem differently and resolving the conflict. The way that a conversation occurs between the person who lodged the complaint and the person against whom the complaint was lodged is designed to avoid secondary victimization and make relative, the violence that occurred.

5.3. WHEN IS MEDIATION APPLICABLE

Mediation is not applicable in all cases related to the complaint.

Mediation is *applicable* when the discriminatory act on which the complaint relates was committed by an individual (natural person) or a group, especially if the parties are connected to each other in everyday life (neighbors, work colleagues, etc.). Moreover, it is applicable in cases

where a discriminatory act was committed by an individual within a professional role, doing something that is not part of the rules of service (e.g. counter officer who insults the customer on a national basis). If the act on which the complaint relates was committed by a legal entity, mediation is applicable if the behavior that is the subject of a complaint relates to a person or an individual act (e.g. termination of employment).

Mediation is *not applicable* when the complaint relates to a behavior that is based on a general act of a legal entity, such as regulations, statutes, and the like.

To assess the suitability of mediation, criteria concerning the very person in the process are also important – the complainant and the person against whom a complaint is lodged. In this sense, mediation is applicable if the person against whom a complaint was lodged agrees that the event occurred as stated; when the person against whom the complaint was lodged recognizes that the act harmed the other side; when the person accepts personal responsibility for the act committed; when the objectives of both parties are in accordance with the potential of mediation (e.g. the person who filed the complaint wants the person who caused the injury solely to hear how it feels – mediation can provide that).

Mediation is *not applicable* when the person against whom a complaint is lodged does not agree with the allegations in the complaint (for example, denies that the incident took place in the way described in the complaint); when the person against whom a complaint is lodged does not realize that his behavior harmed the complainant (for example, thinking that he did nothing wrong, that his behavior is common towards members of certain groups); when the objective of a party is not in accordance with mediation potential (e.g. the person who lodged the complaint aims for an official assessment of an independent authority whether the act of discrimination was performed – the mediation does not offer that kind of assessment).

5.4. WHAT CAN YOU EXPECT IF YOU ARE INTERESTED IN MEDIATION?

Proceedings before the Commissioner for the Protection of Equality begin by lodging complaints. If the Commissioner is authorized to act upon a complaint, the authorized person assesses the complaint in order to examine whether the case described in the complaint is suitable for mediation. If it is estimated that the case is suitable for mediation, a

letter to the person against whom a complaint is filed will be addressed, in which, inter alia, implementation of mediation will be recommended. If this person is not interested in mediation, the complaints are handled in the usual procedure.

Mediation is offered to the complainant only if the other party has accepted the implementation of mediation process. This avoids any possibility of secondary victimization, i.e. the possibility that the complainant who has already been subjected to discrimination comes to a position to accept the mediation first, and then experiences rejection.

If both parties are interested in mediation, that is, they agree to implement this procedure, separate, preparatory meetings are organized first. In the preparatory meetings, the mediator meets the persons who will participate in a conversation, hears their views of the contested situation and their expectations of mediation. Based on this, the method to perform mediation is estimated, in order to sufficiently adapt the process to the needs of the parties – it is estimated whether it is better to organize a joint meeting or mediation will be performed through separate meetings (e.g. in case of concern for the safety of persons in a joint meeting).

Following the preparatory interviews, mediation is conducted through joint, separate meetings, or a combination of these two modes.

5.5. HOW TO CHOOSE A MEDIATOR

Mediation organized by the Commissioner's Office can only be conducted by a person from the list of mediators at the office of the Commissioner for the Protection of Equality. Professionals from different fields who are specially trained in mediation in discrimination cases are on the list of mediators. Conditions of training and qualifications necessary for entry to the list of mediators were set by the Commissioner for the Protection of Equality.

If the parties agree to engage in mediation, the authorized person in the service of the Commissioner engages a mediator from the list as a temporary mediator who organizes and leads the preparatory meetings. At these meetings, inter alia, the parties choose a mediator from the list who further continues mediation. If the parties cannot agree on the mediator, the mediator is determined by the Commissioner.

5.6. WHAT MEDIATION OFFERS

In mediation, parties can reach any agreement that suits their needs and interests, unless it is contrary to compulsory regulations, public order and good customs. In relation to the recommendation issued by the Commissioner, the agreement reached in mediation may be more inventive, constructive and increasingly tailored to the needs of the parties.

Mediation may enable the parties to meet, talk, and to provide a chance for a person who has experienced violence to tell another side how he/she felt in that situation, the opportunity to gain understanding, acceptance, strengthen confidence, and to hear from the other side why he/she harmed her, which is usually very important for emotional recovery of the victims of violence. (It should be noted that in mediation the event described in the complaint is perceived as violence in general.)

On the other hand, mediation provides an opportunity for the person who committed violence to share the bad feelings about it with someone who has suffered. This can be particularly important to the perpetrators of violence in order to overcome the bad feelings and continue living on.

Mediation also provides an opportunity for people to renew or establish a relationship, which may be important in situations where person are related to each other in everyday life (e.g. neighbors, work colleagues, associates).

As individuals make the decision about what will constitute their final agreement, the presumption is that it is reasonable for them and they will respect it. However, the agreement reached in mediation may be submitted to the court for judicial settlement. If the court finds that the agreement is allowed, i.e. that is not contrary to compulsory regulations, public order and good customs, it will testify the contents of the agreement and provide it the power of judicial settlement, representing executive title. In case that one party does not fulfill the obligation which is established in the judicial settlement, the other party may seek enforcement if the nature of the obligations is such that it may be enforced (e.g. obligation to pay damages).

As mentioned above, mediation cannot be implemented if the person who filed the complaint seeks the establishment (an opinion) that the behavior of the other party represents discrimination. In mediation, the event described in the complaint is understood as violence in general,

but mediation is not aimed at analysis of events in order to establish discrimination. In the proceedings conducted by the Commissioner for the Protection of Equality upon complaint, an opinion is made as to whether an act constitutes discrimination or not.

Considering that confidentiality is one of the essential principles of mediation, this principle excludes the possibility of informing the public about the incident that gave rise to the complaint. Therefore, through mediation public awareness of discriminatory practices cannot be raised. To alleviate this drawback, there is a rule that parties are not referred to mediation if the case is suitable for strategic litigation, and in regards to which the Commissioner has decided to file a lawsuit.

5.7. HOW LONG IS MEDIATION

Mediation begins after the preparatory meetings and often ends after only one meeting, which lasts two to three hours. Sometimes, two or more meetings are necessary, depending on many factors – the nature of behavior that is the reason of mediation, willingness of the parties to engage in an open dialogue and so on. If mediation is conducted through separate meetings, more time is needed to complete the process. The deadline for the completion of the mediation process is 30 days from its initiation.

5.8. WHO PARTICIPATES IN MEDIATION

Participants in mediation are the persons who lodged the complaint and the persons against whom a complaint is lodged. In order to successfully implement mediation, or achieve a final agreement, it is important that persons attending mediation have the power to decide. This primarily refers to situations where one party is a legal entity. The representative of the legal entity must have the authority to make decisions in the field addressed in mediation (e.g. if mediation involves discussion on the cancellation of contracts perceived by the employee as an act of discrimination, a person who participates on behalf of the employer must have the authority to make decisions in a potential agreement area – the power to decide on potential return of the employee, the power to decide on the possible payment of material compensation, etc.). If a representative of the legal entity does not have the necessary authorization, the mediator may suspend further discussion.

Besides the parties, their attorneys may also participate in mediation. It is important to note that in this case, the parties must be present – mediation will not take place if only the lawyer is present.

Since the cause of mediation is violence, mediation may be attended by trusted people. They are not equal interlocutors, but are primarily there to provide a person with emotional support by their presence.

5.9. WHERE MEDIATION TAKES PLACE

Mediation is usually conducted in the place of residence of the persons who participate in it, or a place in which the parties have agreed mediation to be held. The premise in which the meeting takes place is chosen so as to not favor any side in advance and must be accessible to persons with disabilities.

5.10. WHO PAYS FOR MEDIATION

Mediation that takes place within the Office of the Commissioner for the Protection of Equality is completely free. All costs of conducting mediation, as well as the costs of other actions undertaken, shall be borne by the Commissioner for the Protection of Equality.

5.11. EVALUATION

Mediation procedures are evaluated in terms of their efficiency and satisfaction of the participants. At the end of mediation process, all participants have the opportunity to document their experiences by filling the questionnaire.

5.12. THE ROLE OF LAWYERS IN MEDIATION

In many countries, the development of mediation has been followed by resistance from lawyers, based on a false assumption that such “alternative” methods of resolving conflicts and disputes could negatively affect their incomes. International practice and a growing number of lawyers who are themselves trained in the field of mediation to be able to offer clients better protection and, possibly, an additional type of services, indicates that resistance to a wider use of mediation is

ungrounded and result from prejudice, and that mediation is essentially in the interest of the parties, lawyers and other legal representatives. By supporting participation in mediation, a lawyer can expect higher clients' satisfaction and develop better professional reputation. Lawyers who know and accept mediation process are aware of the benefits it provides them in relation to court proceedings and may effectively protect the interests of their clients. Moreover, mediation creates opportunities for additional engagement of lawyers, as they can represent clients prior to the court proceedings, in order to resolve disputes through mediation.

In terms of mediation in discrimination cases, the role of lawyers is very important, regardless of whether they represent the victim of discrimination in mediation or the person alleged to have committed discrimination, although it should be noted that a significant number of these situations is resolved without the presence of a legal counsel. That is, the controversial situation where the victim claims that discrimination occurred may appear in mediation in three ways: after a lawsuit is filed before court, after lodging a complaint to the Commissioner, or before initiating any other proceedings. As mentioned above, mediation is not applicable in all cases of discrimination, especially in order to protect victims of violence from secondary victimization, as well as for the purpose of conducting "strategic litigation", or obtaining a formal decision establishing that discrimination was committed and impose other obligations provided by law, which would have the character of "precedent" and would have the capacity to shape and direct future practice in similar cases.

In practice it often happens that the court or the Commissioner proposes mediation to the parties as a means of peaceful settlement of conflict; as mediation is voluntary and still insufficiently known, the parties typically request their legal counsel for further advice. Therefore, the role of lawyers and other legal representatives is very important, primarily due to assessment of eligibility for mediation, provision of the most adequate legal advice and further effective representation of the clients' interests in mediation or in any other proceedings for the protection against discrimination.

In addition to participating as representatives engaged by the parties, lawyers who participate in mediation in cases of discrimination, also have an important role as providers of free legal aid, namely in the complaints procedure before the Commissioner for the Protection of Equality, in litigation for protection against discrimination, as well as in mediation, as provided by the Draft Law on Free Legal Aid.

APPENDIX

INTERNATIONAL DOCUMENTS

The Charter of the United Nations, 1948.

The Universal Declaration of Human Rights

The UN Convention on the Elimination of All Forms of Racial Discrimination, 1965, “Official Gazette, SFRY”, 31/67.

International Covenant on Civil and Political Rights, 1966, “Official Gazette SFRY – International Treaties”, 7/71.

International Covenant on Economic, Social and Cultural Rights, 1966, “ Official Gazette SFRY – International Treaties, 7/71.

The Convention on the Rights of the Child, 1989, “Official Gazette of the SFRY – International Treaties”, no. 15/90 and 2/97.

International Convention on the Elimination of All Forms of Discrimination against Women, 1979, “Official Gazette SFRY – International Treaties”, no. 11/81.

The UN Convention on the Rights of Persons with Disabilities, 2006, “ Official Gazette of RS”, no. 42/09.

European Convention on Human Rights and Fundamental Freedoms, 1950.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 2002.

European Charter for Regional or Minority Languages, 1992.

Council of Europe Framework Convention for the Protection of National Minorities, 1994.

Revised European Social Charter, 1996.

Recommendation R (91) 5 of the Committee of Ministers to member states on the right to short reporting on events of major importance in cases where exclusive rights for their television broadcast received in a Trans-border Context

Recommendation CM / Rec (2010) 5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity

“Strasbourg Declaration on Roma” A high level meeting on Roma Council of Europe, Strasbourg, 2010.

DOMESTIC REGULATIONS:

The Constitution of the Republic of Serbia (“Official Gazette RS”, no. 98/2006)

Law on the Prohibition of Discrimination (“Official Gazette RS”, no. 22/2009)

Law on Protection of Rights and Freedoms of National Minorities (“Official Gazette”, no. 11/2002, “Off. Gazette”, no. 1/2003 – The Constitutional Charter and “Off. Gazette of RS”, no. 72/2009 – oth. law)

Law on Prevention of Discrimination against Persons with Disabilities (“Off. Gazette of RS”, no. 33/2006).

Law on Vocational Rehabilitation and Employment of Persons with Disabilities (“Off. Gazette RS”, no. 36/2009).

Gender Equality Law (“Off. Gazette RS”, no. 104/2009)

Labor Law (“Off. Gazette RS”, no. 24/2005, 61/2005 and 54/2009)

Health Care Law (“Off. Gazette of RS”, no. 107/2005 72/2009 – oth. Law, 88/2010 99/2010 and 57/2011)

Law on Public Information (“Off. Gazette RS”, no. 43/2003, 61/2005, 71/2009 89/2010 – Decision U.S. and 41/2011 – Decision U.S.)

Law on Primary Education (“Off. Gazette RS”, no. 72/2009 and 52/2011)

Law on Preschool Education (“Off. Gazette of RS”, no. 18/2010)

Law on Churches and Religious Communities (“Off. Gazette of RS”, no. 36/2006)

Law on Social Protection (“Off. Gazette RS”, no. 24/2011)

Law on Sports (“Off. Gazette RS”, no. 24/2011)

Law on Youth (“Off. Gazette of RS”, no. 50/2011)

Law on Volunteering (“Off. Gazette of RS”, No. 36. / 2010)

Advertising Law (“Off. Gazette of RS”, no. 79/2005)

Broadcasting Law (“Off. Gazette RS”, no. 42/2002, 97/2004 76/2005 79/2005)

The Criminal Code of the Republic of Serbia (“Official Gazette. Gazette RS”, no. 72/2011 and 101/2011)

SELECTED REFERENCES

Analysis of the Law on Gender Equality, Goran Selanec, CESI, Zagreb, 2008.

Anti-discrimination laws – a guide, Gajin Sasa et al., Center for Advanced Legal Studies, Belgrade, 2010.

Discrimination against Women in the Workplace – A Handbook for the inspection work, Perisic Pavlovic Natasa, Gender Equality Directorate, Belgrade, 2009.

Discrimination based on Sexual Orientation and Gender Identity in Europe, Thomas Hammarberg, Council of Europe, 2011.

Hate speech, Proceedings, Defendology, Center for Security, Sociological and Criminological Research, Banja Luka, 2010.

Civil Protection from Discrimination in the Western Balkans, Nevena Petrusic, current trends in the development and implementation of European Continental Law, Center publications, Faculty of Law in Nis, Nis, 2010.

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Comment on Laws prohibiting Discrimination, with Explanations and Review of the Practice of Comparative Law, Vehabović Faris et al., Human Rights Centre University of Sarajevo, Sarajevo, 2010.

Human Rights, Instructions for Use, Nenad Popovic (Eds.), Committee for Civic Initiative, Nis, 2004.

Human Rights for Women, Gorana Djuric, (Eds.), Committee for Civic Initiative, Nis, 2004.

Human Rights in Serbia 2011, Belgrade Centre for Human Rights, Belgrade, 2012.

Minority Rights, Dragan Zunic (eg), Committee for Civic Initiative, Nis, 2005.

Legally Invisible Persons in Serbia – and still no solution, Praxis, Belgrade, 2011.

Implementation of the Criminal Code in Cases of Discrimination, Alexander Olenik, the United Nations Development Programme, Belgrade, 2010.

Prejudice to the Fore – Homophobia in Serbia in 2010, Gay Straight Alliance, Belgrade, 2010.

Handbook of European Anti-discrimination Law, the European Union Agency for Fundamental Rights, Council of Europe, Luxembourg, 2010.

Manual for Training of Judges and Public Prosecutors on Antidiscrimination Law, a group of authors, UNDP, 2010.

Manual for Implementation of Anti-discrimination Legislation, Dr. Mario Reljanović., Association of Public Prosecutors and Deputy Public Prosecutors, Belgrade, 2010.

Manual for Lawyers representing the Roma – Victims of Discrimination, the Center for Minority Rights, Belgrade, 2005.

Paths to Gender Equality and Equal Opportunities, from Concept to Practice, Nevena Petrusic, (eds.), Gender Equality Council of the Serbian government, the Organization for Security and Cooperation, OSCE Mission in Serbia, Belgrade, 2007.

Freedom of Expression, the Guidelines for the Application of Article 10 of the European Convention on Human Rights, Monica Macovei, the Council of Europe, 2010.

Similar but different, Discrimination in the European Union and the Republic of Croatia, Snjezana Vasiljevic, Zagreb, 2011.

Prohibition of Discrimination in Serbia and Vulnerable Social Groups, Mirna Kosanović et al., the United Nations Development Programme, Belgrade, 2010.

Proceedings of the texts of the Council of Europe on Gender Equality, the Council of Europe, Belgrade, 1999.

Religions of Minorities and Minority Religions, Dragoljub Djordjevic et al., JUNIR, Zograf, Niš, 2001.

Guide to the Anti-Discrimination Act, Aida Grgic et al., Office of Human Rights of the Republic of Croatia, Zagreb, 2009.

Guide to the Law on Prohibition of Discrimination, Dejan Milenkovic, Helsinki Committee for Human Rights in Serbia, Belgrade, 2010.

Discrimination Guide, Sasa Gajin et al., Center for Democracy and Human Rights, Podgorica, 2006.

USEFUL LINKS AND INTERNET ADDRESSES

National Assembly of the Republic of Serbia

<http://www.parlament.gov.rs>

President of the Republic of Serbia <http://www.predsednik.rs/>

Government of the Republic of Serbia <http://www.srbija.gov.rs/>

Commissioner for the Protection of Equality

<http://www.ravnopravnost.gov.rs/>

Ombudsman <http://www.ombudsman.rs/>

Commissioner for Information of Public Importance and Personal Data Protection <http://www.poverenik.org.rs/>

Administration for Human and Minority Rights

<http://www.ljudskaprava.gov.rs/>

Administration for Gender Equality <http://www.gendernet.rs/>

European Court for Human Rights

http://www.echr.coe.int/ECHR/Homepage_EN

EU Court of Justice <http://curia.europa.eu/>

European Ombudsman

<http://www.ombudsman.europa.eu/start.faces>

UN High Commissioner for human rights

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

Commissioner for human rights of the Council of Europe

http://www.coe.int/t/commissioner/default_en.asp

UNDP <http://www.undp.org.rs/>

UN Agency for Gender Equality and Women Empowerment (UN Women) <http://www.unwomen.org/>

UNICEF <http://www.unicef.rs/>

Council of Europe <http://www.coe.int/>

EQUINET <http://www.equineteurope.org/>

European Agency for Fundamental Rights (FRA)

http://fra.europa.eu/fraWebsite/home/home_en.htm

European Commission against racism and intolerance

(ECRI) http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp

Complaint form



REPUBLIC OF SERBIA
COMMISSIONER FOR THE
PROTECTION OF EQUALITY



COMMISSIONER
FOR PROTECTION OF EQUALITY

COMPLAINT

IMPORTANT NOTICE: Complaint will be copied and delivered to the natural person and/or legal entity, or the body against which it is lodged.

PERSONAL DATA ON THE COMPLAINANT

1. NAME: _____
2. ADDRESS: _____
3. TITLE _____ (if the complainant is a legal entity)
4. ARE YOU LODGING A COMPLAINT ON BEHALF OF ANOTHER PERSON: _____ (answer YES or NO)
5. IF THE PREVIOUS ANSWER IS YES, PLEASE INDICATE ON WHOSE BEHALF YOU ARE LODGING THE COMPLAINT:

6. DO YOU HAVE THE CONSENT OF THE PERSON ON WHOSE BEHALF YOU ARE LODGING THE COMPLAINT: _____ (answer YES or NO and attach the consent if you have one)
7. ADDRESS/SEAT:

8. PHONE: _____
9. E-mail: _____
10. DATE OF BIRTH: _____ (not mandatory)

DATA ON LEGAL ENTITY AND/OR NATURAL PERSON OR THE BODY AGAINST WHICH THE COMPLAINT IS LODGED

A) IF THE COMPLAINT REFERS TO LEGAL ENTITY/BODY

1. NAME OF THE LEGAL ENTITY/BODY _____
2. SEAT AND ADDRESS _____
3. PHONE _____
4. ARE YOU EMPLOYED IN THIS LEGAL ENTITY _____
(answer YES or NO)

B) IF THE COMPLAINT REFERS TO NATURAL PERSON

1. NAME AND SURNAME _____
2. ADDRESS _____
3. PHONE _____
4. DID THE PERSON YOU CLAIM TO HAVE DISCRIMINATED AGAINST YOU DONE THIS AT WORK/IN PERFORMING WORK DUTIES

(answer YES or NO)
5. IF THE PREVIOUS ANSWER IS YES, PLEASE INDICATE WHERE THIS PERSON IS EMPLOYED _____

(name of the company/institution/organization, address, phone, Position held/post)

NOTICE: In case there are several legal entities and/or natural persons or bodies against which you complain, please file the complaint for each separately.

BASIS OF DISCRIMINATION

Please circle one or more reasons (personal characteristics) based on which you consider you have been discriminated.

1. Race
2. Color
3. Ancestors
4. Citizenship
5. National or ethnic origin
6. Language
7. Religious or political beliefs
8. Sex
9. Gender
10. Sexual orientation
11. Financial status
12. Birth
13. Genetic traits
14. Health
15. Disability
16. Marital and family status
17. Previous conviction
18. Age
19. Appearance
20. Membership in political, union or other organizations
21. Other personal characteristic _____ (please specify)

Please briefly explain why you believe that personal characteristic was the basis of discrimination.

WHERE THE EVENT FOR WHICH YOU FILE THE COMPLAINT TOOK PLACE

1. PROCEEDINGS BEFORE PUBLIC AUTHORITY BODIES (court, municipality, ministry, commission...)
2. EMPLOYMENT PROCEDURE OR AT WORK
3. DURING THE PROVISION OF PUBLIC SERVICES OR UTILIZATION OF PUBLIC OBJECTS OR SPACES
4. EXERCISE OF RELIGIOUS RIGHTS
5. EDUCATION AND TRAINING
6. EXERCISE OF MINORITY RIGHTS
7. HEALTH SERVICES
8. OTHER _____
_____ (please specify)

DESCRIPTION OF EVENT – Please describe the event you refer to in detail, including information on time, place, persons present, etc.

NOTICE: In case you need more space for the description, feel free to use additional paper.

EVIDENCE: Please specify the evidence attached to the complaint.

1. _____
2. _____
3. _____

1. **HAVE YOU INITIATED COURT PROCEEDINGS** _____
(answer YES or NO)

2. **IF YES, BEFORE WHICH COURT AND WHEN** _____

_____ (please submit a copy of the lawsuit)

Date

Signature

