



**THE GOVERNMENT OF THE  
REPUBLIC OF SERBIA**

# **ANTI-DISCRIMINATION STRATEGY**

for 2013 - 2018

**- UNOFFICIAL TRANSLATION -**

Pursuant to article 45, paragraph 1 of the Law on the Government (“Official Gazette of the RS” nos 55/05, 71/05 – corrigendum, 101/07 and 65/08),

the Government hereby adopts the

## **ANTI-DISCRIMINATION STRATEGY**

### **I INTRODUCTION**

The Anti-discrimination Strategy (hereinafter: the Strategy) is a consolidated set of public policy measures, conditions and instruments to be implemented by the Republic of Serbia with a view to preventing or reducing all forms and specific cases of discrimination, in particular against specific individuals or groups of individuals with respect to their personal characteristics (hereinafter: vulnerable social groups).

A comprehensive social, political and economic reform process is under way in the Republic of Serbia. Over time, a thorough reform of the Serbian legal system has occurred, many substantive and procedural laws have been passed, significantly affecting the present international standing of the Republic of Serbia, which became a candidate for membership in the European Union in March 2012. This status requires further alignment of the national legislation with the European Union standards or legislation, as well as their full implementation. This also pertains to the sphere of preventing and prohibiting discrimination, wherein numerous significant reforms have been introduced and should be continued in the forthcoming period.

A significant step in this area was taken in late March 2009, when the National Assembly of the Republic of Serbia passed the *Law on the Prohibition of Discrimination*<sup>1</sup>. The civil (non-government) sector and individuals engaging in the promotion, advancement and protection of human rights contributed a lot to the adoption of this Law. This framework, or general anti-discrimination law was passed almost three years after the first comprehensive anti discrimination law in Serbia, the *Law on the Prevention of Discrimination against Persons with Disabilities* from April 2006.<sup>2</sup> As the first law in the region addressing solely matters of preventing discrimination and ensuring the equality of a vulnerable social group, the *Law on the Prevention of Discrimination against Persons with Disabilities* constitutes a pioneering step in combating discrimination and has served as an example for numerous regulations adopted subsequently.

Although between 2000 and 2009 (until the passage of the *Law on the Prohibition of Discrimination*) new laws included provisions governing protection against discrimination, the successful fight against discrimination required the passage of a structural, framework law, which would consistently integrate and link the differing and often isolated individual legal norms contained in other, sector-specific laws. This step was taken with the passage of the *Law on the Prohibition of Discrimination* and, after the establishment and commencement of operation of the institution of the *Protector of Citizens* (the Ombudsman) in 2007, the fight against discrimination has been supported by another independent authority as a form of institutionalised prevention of discrimination – the *Commissioner for Protection of Equality*. Legal changes and the establishment of new institutions provided the prerequisites for building a comprehensive legal

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<sup>1</sup> *Law on the Prohibition of Discrimination*, “Official Gazette of RS”, no. 22/09.

<sup>2</sup> *Law on the Prevention of Discrimination against Persons with Disabilities*, “Official Gazette of RS”, no. 33/06.

and institutional setting where discrimination can be combated, ensuring that the state would sanction all discrimination, irrespective of whether its officials and authorities, or natural persons and legal entities, are responsible for it.

Based on the annual reports of independent authorities (Protector of Citizens and Commissioner for Protection of Equality), reports of civil society organisations, the European Commission and monitoring media coverage of discrimination cases, it may be stated that discrimination does exist in Serbia, in various areas.

The reasons for the existence of discrimination may be sought in the fact that a certain level of intolerance exists in any society, and also in the long-term consequences of the violent dissolution of Yugoslavia and armed conflicts that have led to grave economic and social problems in Serbia, a halt in the development of democracy and human rights and difficult post-socialist transformation. During one period, this resulted in the emergence of a culture of intolerance, with *specific vulnerable social groups and their individual members* exposed to it (ethnic minorities – in particular the Roma, small religious communities, women, people with different sexual orientations and gender identities, persons with disabilities, the elderly, children, refugees and internally displaced persons, persons whose health status may give rise to discrimination and others). Through the work of public authorities and civil society organisations, the culture of intolerance is increasingly being replaced by the culture of tolerance and respect; however, given that discrimination is still present, it is necessary to continue the efforts towards its prevention and eradication, in particular regarding vulnerable social groups.

The obligations of the state in the field of human rights are not exhausted by mere passage of positive legislation prohibiting discrimination. The obligations also extend to the effective enforcement of those provisions and include the obligation of the state to protect all citizens against discrimination, irrespective of who practices it (a private person or a public official). Under General Comment No 18, the UN Human Rights Committee emphasises that it wishes to “draw the attention of States parties to the fact that the [International] Covenant [on Civil and Political Rights (ICCPR)] requires them to take measures to guarantee the equality of rights of [all] persons” and that “[s]uch steps may take the form of legislative, administrative or other measures...”<sup>3</sup>

The general prohibition of discrimination, stated by Protocol no. 12 to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* from 2000, building on the basic principle that all people are equal before the law and are entitled to equal legal protection, prescribes that any right foreseen by law is enjoyed without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. In this context, there are at least four reasons why the adoption of this Strategy is appropriate and justified at this time:

- (1) Ensuring the principle of equality, equal rights and prohibiting discrimination provide not only for the protection and advancement of human rights, but also for all other rights envisaged by law;
- (2) Violation of human rights and other rights stated by law in a significant number of instances entails the violation of the principle of equality:

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<sup>3</sup> *General Comment no. 18, paragraph 5: Non-discrimination: 10/11/89. CCPR General Comment No. 18., [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument)*

- (3) "Vulnerable social groups" or groups of individuals or individual members of a group are particularly frequently exposed to violations of human rights and other rights stated by law, with respect to their personal characteristics;
- (4) A proactive approach through a successful fight against discrimination will ensure observance of the principle of equality and equal rights, and hence prevent violations of human rights and other rights envisaged by law, indirectly leading to the advancement of those rights.

The above considerations give rise to the conclusion that the Strategy and its implementing Action Plan reflect the obligation of the Republic of Serbia to set the direction for further development of the process of strengthening the legal framework in this sphere, and also to identify the measures to be taken in the medium (five-year) term with a view to their effective implementation.

## II CORE PRINCIPLES

The Strategy for the period from 2013 to 2018 pertains to the prevention and prohibition of all forms, types and specific cases of discrimination. The Strategy covers all individuals or groups of individuals with respect to their personal characteristics, particularly national minorities and vulnerable social groups that are most commonly subject to discrimination

The fulfilment of international commitments and consideration of EU directives in the process of European integration are certainly of crucial importance for the future international standing of Serbia, and their further legal regulation, monitoring and implementation within our legal system are required. This enhances the need for the adoption of the Strategy and Action Plan.

Reporting to UN treaty bodies should be highlighted as a mechanism for checking the extent to which international commitments are adhered to.

The need for the adoption of this strategic document and action plan is also reflected in the European Commission 2010 Annual Progress Report on Serbia and the European Commission Opinion on Serbia's Application for Membership of the EU, adopted on 12 October 2011. According to the Commission Opinion, Chapter 23 – Judiciary and Fundamental Rights and Chapter 24 – Justice, Freedom and Security are particularly difficult to align with the EU standards and will be in focus during negotiations; they will be opened at the beginning and closed at the very end and – since negotiations, commonly, take longer than five years – this will enable candidate countries to implement European standards as far as possible prior to accession.

This has become particularly important since the Republic of Serbia attained the status of a candidate for EU membership on 1 March 2012. As regards fundamental rights, the Commission has found that the legal and institutional framework is good, but the enforcement of legislation is unsatisfactory. The Commission has also found that, in Serbia, *the Roma, women, persons with disabilities, LGBT persons* are subject to discrimination, stating that such practice is prohibited by the Constitution and laws, but that *better control mechanisms* are required. Another problem is that a high proportion of the elderly and persons with intellectual and mental disabilities are institutionalised. The Commission has also found problems in the registration of small religious communities, etc.

A clear anti-discrimination strategy is of crucial importance for strengthening and advancing the control mechanisms and adopting appropriate laws and bylaws, and for the Republic of Serbia to fulfil and actually implement standards to remedy or significantly reduce discrimination and discriminatory practices, in particular regarding the aforementioned vulnerable social groups, in the next five-year period.

## **2.1. International Legal Framework**

This section briefly presents the key documents and activities of international organisations (United Nations, Council of Europe and European Union) in the area of preventing and combating discrimination.

### **2.1.1. United Nations Conventions and Other Documents Relevant to Combating Discrimination**

The Republic of Serbia, as the legal successor of the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro, is a member of the United Nations. As a member of the United Nations (and the legal successor of former states), the Republic of Serbia is party to the *Charter of the United Nations* (1945), the *Universal Declaration of Human Rights* (1948) and eight basic international human rights treaties, including the *International Covenant on Civil and Political Rights* (1966) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (1965).<sup>4</sup>

1) *Charter of the United Nations*, adopted in 1945, in article 55, point (c), obliges all parties to “respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

2) *Universal Declaration of Human Rights* (1948), in articles 1 and 2, guarantees to all people freedom and equality in dignity and rights, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

3) *International Covenant on Civil and Political Rights* (1966), in article 20, paragraph 2, states: “Any advocacy of national, racial or religious hatred that constitutes *incitement to discrimination, hostility or violence* shall be prohibited by law.” Article 26 of the Covenant states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

4) *International Covenant on Economic, Social and Cultural Rights* (1966), in article 2, paragraph 2, guarantees the enjoyment of all rights foreseen by the Covenant “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

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<sup>4</sup> Note: Following changes in October 2000, in March 2001 the FRY submitted a successor statement to the UN relating to re-accession to the international human rights treaties.

5) *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) is the main UN instrument against racism and discrimination. The Convention, *inter alia*, states that “*States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form*”.

In addition to these, other UN conventions are relevant to prohibition of discrimination, for example: *Convention on the Elimination of All Forms of Discrimination against Women*, *Convention on the Rights of Persons with Disabilities*, *Convention on the Rights of the Child* and others. All these international treaties have established *treaty bodies (committees)* responsible for overseeing the fulfilment of obligations by state parties. In addition to general competences, some committees are empowered to consider *individual communications*. This competence is *optional* in nature, which means that states give special statements or ratify additional protocols accepting this competence of UN treaty bodies. The Republic of Serbia has accepted such *competence* of the *UN Human Rights Committee*, *UN Committee on the Elimination of Racial Discrimination*, *UN Committee on the Elimination of Discrimination against Women*, *UN Committee against Torture*, *UN Committee on the Rights of Persons with Disabilities*, *UN Committee on Enforced Disappearances*.

### **2.1.2. Council of Europe Conventions and Other Documents and Competences of Specific CoE Bodies**

The State Union of Serbia and Montenegro became a Council of Europe member state on 3 April 2003, when it also signed the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1950). The Convention was ratified on 26 December 2003 and entered into force on 3 March 2004, when ratification instruments were deposited with the Council of Europe. Following the dissolution of the State Union in 2006, the Republic of Serbia has retained the membership in the Council of Europe as the legal successor.

*Prohibition of discrimination* is envisaged by article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, but the provision of article 14 was only auxiliary in character, given that it prohibited discrimination only in respect of the enjoyment of the rights guaranteed by the Convention. However, *Protocol No 12 to the Convention* from 2000 remedied this deficiency. It states the *general prohibition of discrimination*. The Protocol entered into force on 1 April 2005, facilitating a more comprehensive protection of persons against discriminatory practices.

To date, almost 10,000 Serbian citizens have applied to the European Court of Human Rights maintaining violations of human rights stated by the Convention. A relatively common reason for applying to the European Court of Human Rights is the violation of article 14 – prohibition of discrimination, or of Protocol No 12 introducing the general prohibition of discrimination.

Two other very important Council of Europe documents are the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* ("Lanzarote Convention"), ratified by Serbia in 2010<sup>5</sup>, and the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* ("Istanbul Convention").

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<sup>5</sup> *Law Ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, "Official Gazette of RS – International Treaties", no. 1/2010.

A specific Council of Europe body having prohibition of discrimination as its main mandate is the *European Commission against Racism and Intolerance – ECRI*. This body was founded on 22 March 1994 with the aim of combating racism, xenophobia, anti-Semitism and intolerance endangering human rights and democratic values in Europe. By analysing the state of affairs in Council of Europe member states, the ECRI issues recommendations aimed at reviewing member states' legislation, policies and other measures towards combating racism. In addition to analysing the state of affairs in member states by means of periodic reports that states are required to submit to the ECRI, this organisation issues general recommendations pertaining to different manifestations of racism and examples of intolerance, such as general recommendations on the prevention of discrimination against the Roma and Muslims, propagation of racist content through the Internet, advice to member states' legislatures, etc. The recommendations are not binding, but are considered seriously by member states and mostly implemented.

### **2.1.3. Directives of the EU Council Pertaining to Prohibition of Discrimination**

Although Serbia is not a member of the EU, in view of its candidate status and the orientation towards accession, the *acquis communautaire* must be taken into account and the relevant legislation must receive scrupulous attention, regardless of the fact that, formally, they are not binding for us at the moment.

The three key EU directives pertaining to prohibition of discrimination are: *Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*, *Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* and *Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*. Only the main features of the first two directives will be outlined here.

*Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* is significant in that it contains a specific section on the need for member states to establish a separate independent body for the promotion of equal treatment of people. It requires member states to appoint an authority or authorities for the promotion of equal treatment of all people, without discrimination on the grounds of racial or ethnic origin; these can also be within a national authority tasked with the defence of human rights or protection of individual rights, usually the Ombudsman. This authority (body) should have the powers to: provide independent assistance to discrimination victims in lodging discrimination petitions, without prejudice to the rights of victims and associations, organisations or other legal entities; to conduct independent investigations into discrimination cases and publish independent reports and issue recommendations on any discrimination-related matter. Nowadays, in countries aspiring towards full EU membership, particular attention is paid to the fit of their legal frameworks within the said directives.

*Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* identifies five areas for the prevention of discrimination, namely those of: religion, belief, disability, age and sexual orientation, with the aim of implementing the principle of equal treatment in EU member states. The first chapter of the Directive defines the concept of discrimination, covering, *inter alia*, direct and indirect discrimination, ill treatment, instruction to discriminate as a form of discrimination. Further, the Directive defines the scope, difference in treatment based on a characteristic that does not constitute discrimination, the matter of accommodation for persons with disabilities, the

justifiability of differential treatment based on age, positive action, etc. The second chapter of the Directive concerns remedies and the implementation of the anti-discrimination principle, and contains provisions on judicial, administrative and other procedures to be set in the national legislation of EU member states, which should contribute to the prevention of and protection against discrimination. The Directive focuses, in particular, on the burden of proof, which, according to this Directive, should not be on the discrimination victim, but on the respondent. Also, the Directive devotes special attention to the concept of victimisation. The Final Provisions of the Directive lay down how member states should ensure adherence to the principle of equal treatment, sanctions for violations of this principle, implementation of the Directive and reports to be submitted by member states to the European Parliament and the Council.

## **2.2. National Legal Framework**

### **2.2.1. Constitution of the Republic of Serbia and the Prohibition of Discrimination**

The principle of equality and prohibition of discrimination are guaranteed by the Constitution.<sup>6</sup> Article 21 of the Constitution of the Republic of Serbia prohibits discrimination and states: (1) that all are equal before the Constitution and law; (2) that everyone has the right to equal legal protection, without discrimination; (3) that any direct or indirect discrimination on any grounds, in particular race, sex, ethnic affiliation, social background, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability is prohibited. The same article of the Constitution states that special measures that may be introduced by the Republic of Serbia with a view to achieving full equality of persons or groups of persons who are in an essentially unequal position in relation to other citizens do not constitute discrimination.

Many other provisions of the Constitution of the Republic of Serbia directly or indirectly pertain to prohibition of discrimination. Thus, for example, it is worth highlighting article 76 of the Constitution of the Republic of Serbia, which prohibits discrimination against national minorities. It states that "[p]ersons belonging to national minorities shall be guaranteed equality before the law and equal legal protection" and that any discrimination on the grounds of affiliation to a national minority, other than positive action, is prohibited. Article 77, paragraph 1 of the Constitution, pertaining to equality in conducting public affairs, states that "[m]embers of national minorities shall have the right to participate in administering public affairs and assume public positions, under the same conditions as other citizens". With respect to the concept of discrimination, relevant articles of the Constitution of the Republic of Serbia include article 48 – *promotion of and respect for diversity*, article 49 – *prohibition of inciting racial, ethnic and religious hatred*, article 50 – *freedom of the media*, which, amongst other things, provides for the possibility that the competent court may prevent the propagation of information and ideas by media only if this is necessary in a democratic society "to prevent advocacy of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence". Article 44 of the Constitution, pertaining to *churches and religious communities*, envisages, amongst other things, that the Constitutional Court may *ban* a religious community only if its activity "...incites religious, national or racial intolerance". Similar restrictions are stated with respect to freedom of thought, conscience and religion (article 43) and freedom of association (article 55).

### **2.2.2. Specific Laws and Combat against Discrimination in the Legal System of the Republic of Serbia**

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<sup>6</sup> *Constitution of the Republic of Serbia*, Official Gazette of RS No 98/06.



Under the process of legislative reform between 2000 and 2009, anti-discrimination provisions were introduced in a considerable proportion of new sector-specific laws. A part of them yielded results, but some legal norms prohibiting discrimination in specific areas remained isolated owing to a lack of system-wide approach, which created the need to build an integrated system of measures and instruments for combating discrimination, achieved by the passage of the *Law on the Prohibition of Discrimination* in March 2009. Even after the passage of this Law, during the period up to 2011, the practice of including specific anti-discrimination provisions in many sector-specific laws continued, further strengthening the fight against discrimination. Although discrimination still exists in real life in Serbia, in particular when it comes to specific groups of individuals or individual members of such groups, it is not a system-wide phenomenon.

*Prohibition of discrimination in specific areas* is stated by many currently applicable laws. Only some will be mentioned here.

In the area of health care, an anti-discrimination clause is included in the *Health Care Law* (2005).<sup>7</sup> In the area of education, the *Law on Higher Education* (2005)<sup>8</sup> also contains an anti-discrimination clause, and the *Law on the Fundamentals of the Education System* (2009)<sup>9</sup> introduced inclusive education for the first time, whereby Serbia opened a new chapter of practical implementation of this principle, crucial for the prevention and prohibition of discrimination in this field.

In the area of labour and employment, anti-discrimination provisions are contained in the *Law on Employment and Unemployment Insurance* (2009), *Labour Law* (2005), *Law on Vocational Rehabilitation and Employment of Persons with Disabilities* (2009), *Volunteering Law*<sup>10</sup>, while in media, there are also several important norms in the *Media Law* (2003) and *Broadcasting Law* (2002).<sup>11</sup> The *Law on Free Access to Information of Public Importance* (2004)<sup>12</sup> also prohibits discrimination in the exercise of this freedom, and in the area of sports and staging of sports events, prohibition of discrimination is contained, for example, in the *Law on the Prevention of Violence and Misbehaviour at Sports Events* (2003)<sup>13</sup>.

*Prohibition of discrimination against specific groups* with respect to a personal characteristic of an individual or a group of individuals is also stated in a significant number of laws.

Prohibition of *discrimination against national minorities* is stated in the *Law on the Protection of Rights and Freedoms of National Minorities* (2002)<sup>14</sup>, prohibiting all forms of discrimination on national, ethnic, racial, linguistic grounds, against persons belonging to national

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<sup>7</sup> Cf. *Health Care Law*, "Official Gazette of RS", nos 107/05, 72/09, 88/10, 99/10, 57/11.

<sup>8</sup> Cf. *Law on Higher Education*, "Official Gazette of RS", no. 85/05, article 4.

<sup>9</sup> Cf. *Law on the Fundamentals of the Education System*, "Official Gazette of RS", no. 72/09.

<sup>10</sup> Cf. *Law on Employment and Unemployment Insurance*, "Official Gazette of RS", nos 36/09, 88/10, article 5; *Labour Law*, "Official Gazette of RS", nos 24/05, 61/05, 54/09, articles 18–23, 26, 80, 82, 89, 94 etc.; *Law on Vocational Rehabilitation and Employment of Persons with Disabilities*, "Official Gazette of RS", no. 36/09, article 2, articles 21–26; *Volunteering Law*, "Official Gazette of RS", no. 36/10, article 6.

<sup>11</sup> Cf. *Media Law*, "Official Gazette of RS", nos 43/93, 61/05, article 17, articles 38–40; *Broadcasting Law*, "Official Gazette of RS", nos 42/02, 97/04, 76/05 etc., articles 17, 21, 79.

<sup>12</sup> Cf. *Law on Free Access to Information of Public Importance*, "Official Gazette of RS", no. 120/04, article 6.

<sup>13</sup> Cf. *Law on the Prevention of Violence and Misbehaviour at Sports Events*, "Official Gazette of RS", nos 67/03, 90/07 etc.

<sup>14</sup> Cf. *Law on the Protection of Rights and Freedoms of National Minorities*, "Official Journal of the FRY", nos 11/02, 57/02, article 3 and article 21.

minorities. State authorities, authorities of an autonomous province, city or municipality may not issue legal instruments or take measures contrary to this prohibition.

Prohibition of *discrimination on religious grounds* is stated by the Law on Churches and Religious Communities (2006)<sup>15</sup>. Prohibition of discrimination against persons with disabilities is comprehensively regulated by the passage of the *Law on the Prevention of Discrimination against Persons with Disabilities* (2006).<sup>16</sup> Prohibition of *discrimination against job seekers and employees* is partly regulated by the Labour Law (2005)<sup>17</sup>, which contains a separate chapter concerning prohibition of *discrimination against job seekers and employees*. Prohibition of discrimination against *patients* is stated by the *Health Care Law* (2005)<sup>18</sup>, and prohibition of discrimination against persons serving penal sanctions is regulated by the *Law on the Enforcement of Penal Sanctions* (2005)<sup>19</sup>. Prohibition of discrimination against children and juveniles is regulated by the *Family Law* (2005)<sup>20</sup>, *Law on the Fundamentals of the Education System* (2009)<sup>21</sup> and the *Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles* (2005)<sup>22</sup>, etc.

The *Law on the Prohibition of Discrimination* is not one that provides the basis for the passage of other laws, nor did its passage obviate the need for the passage of other special laws or norms pertaining to discrimination in sector-specific laws, such as those pertaining solely to specific particularly vulnerable social groups, as the *Law on the Prevention of Discrimination against Persons with Disabilities*. This anti-discrimination law defines the concept, forms and special cases of discrimination in general terms, as well as the new procedure and form of institutional protection embodied in the Commissioner for Protection of Equality; immediately before and also after its passage, many other laws were passed that partly or predominantly prohibit and prevent various manifestations of discrimination.

For example, this is the case with the *Law Banning Events of Neo-Nazi or Fascist Organisations and Associations and the Use of Nazi Symbols and Emblems* (2009).<sup>23</sup> This Law pertains to freedom of peaceful assembly and freedom of expression, but it is, at the same time, directly linked to prohibition of discrimination.

Equality of the sexes and gender equality, i.e. prohibition of discrimination with respect to sex and gender, are also regulated by a specific law. This is the *Gender Equality Law*<sup>24</sup>, passed in December 2009. This Law regulates fostering equal opportunities for the exercise of rights and fulfilment of obligations, taking special measures for the prevention and remedying of discrimination on the grounds of sex and gender and the procedure for legal protection of persons subject to discrimination. The Law defines the concepts of "sex" and "gender" and prohibits direct and indirect discrimination on the grounds of sex. Equality of the sexes, in terms of this Law, entails equal participation of women and men in all spheres of the public and private sectors, in

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<sup>15</sup> Cf. *Law on Churches and Religious Communities*, "Official Gazette of RS", no. 36/06, article 2, para. 2.

<sup>16</sup> Cf. *Law on the Prevention of Discrimination against Persons with Disabilities*, "Official Gazette of RS", no. 33/06.

<sup>17</sup> Cf. *Labour Law*, "Official Gazette of RS", nos 24/05, 61/05, articles 18–23 and article 273.

<sup>18</sup> Cf. *Health Care Law*, "Official Gazette of RS", no. 107/05, article 26.

<sup>19</sup> Cf. *Law on the Enforcement of Penal Sanctions*, "Official Gazette of RS", no. 85/05, article 7.

<sup>20</sup> Cf. *Family Law*, "Official Gazette of RS", no. 15/05.

<sup>21</sup> *Law on the Fundamentals of the Education System*, "Official Gazette of RS", no. 72/09.

<sup>22</sup> *Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles*, "Official Gazette of RS", no. 85/05, article 88.

<sup>23</sup> *Law Banning Events of Neo-Nazi or Fascist Organizations and Associations and the Use of Nazi Symbols and Emblems*, "Official Gazette of RS", no. 41/09.

<sup>24</sup> *Gender Equality Law*, "Official Gazette of RS", no. 104/09.

conformity with the generally accepted rules of international law, ratified international treaties, the Constitution of the Republic of Serbia and laws.

A significant step in achieving the principle of equality and equal rights for persons with disabilities was taken by the passage of the *Law on Vocational Rehabilitation and Employment of Persons with Disabilities* in May 2009.<sup>25</sup>

This "trend" continued during the 2010–2011 period. The 2011 *Social Welfare Law* also considerably improved the status of persons with disabilities and, for example, the Roma national minority in the context of full achievement of the principle of equality and prevention of discrimination against social welfare beneficiaries on the grounds of any personal characteristic. The Ombudsman has expressed the view that this Law has failed to ensure high-quality support to families caring for children with developmental and other disabilities and children suffering from severe illnesses.<sup>26</sup> The 2011 *Law on Youth*<sup>27</sup> defines the principle of equality and prohibition of discrimination and expressly states that all youth are equal and that any direct or indirect distinction or differential treatment of youth on any grounds, in particular on the grounds of race, sex, national affiliation, religion, language, social origin, property, membership in political, trade union or other organisations, mental or physical disability, health status, physical appearance, sexual orientation, gender identity or other actual or presumed personal characteristic is prohibited. Prohibition of discrimination against sportsmen and women is also stated by the new *Law on Sports* of 2011.<sup>28</sup>

### **2.2.3. The Law on the Prohibition of Discrimination as a Framework Law, the Commissioner for Protection of Equality, Protector of Citizens, Provincial Ombudsman and Local Ombudsmen**

An important point in the building of an effective and efficient integrated system for the protection against and prevention of discrimination within the legal system of the Republic of Serbia was the passage of the general *Law on the Prohibition of Discrimination* in March 2009.<sup>29</sup> This Law governs the general prohibition of discrimination, forms and cases of discrimination, and sets the means of legal protection for the purpose of combating discrimination. It also establishes the Commissioner for Protection of Equality, as an autonomous public authority, independent in the exercise of its competences. The subject of the Law clearly indicates that this Law regulates an integrated system of measures, conditions and instruments ensuring successful implementation of constitutional provisions on the prohibition of discrimination.

This Law defined the concepts of "discrimination" and "discriminatory treatment" for the first time in Serbia, designating any unwarranted differentiation or unequal treatment or omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, overt or covert, on the grounds of race, colour, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, property status, birth, genetic characteristics, health status,

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<sup>25</sup> *Law on Vocational Rehabilitation and Employment of Persons with Disabilities*, "Official Gazette of RS", no. 36/09.

<sup>26</sup> *Social Welfare Law*, "Official Gazette of RS", no. 24/11; *Annual Report of the Protector of Citizens* 2011.

<sup>27</sup> *Law on Youth*, "Official Gazette of RS", no. 50/11.

<sup>28</sup> *Law on Sports*, "Official Gazette of RS", no. 24/11.

<sup>29</sup> Cf. *Law on the Prohibition of Discrimination*, "Official Gazette of RS", no. 22/09.

disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations and other actual or presumed personal characteristics. In addition to the terms "discrimination" and "discriminatory treatment", the Law defines other concepts, the most important of which, in terms of the scope of the Law, is the concept of "public authority", denoting a state authority, autonomous province authority, local government authority, public enterprise, institution, public agency and other organisations to which public powers have been delegated, as well as a legal entity established or entirely or predominantly funded by the Republic, an autonomous province or a local government. The Law also states *protected rights and persons*, aiming to ensure that everyone, whether they are a citizen of the Republic of Serbia or not, is entitled to protection against all forms of discrimination. In that regard, everyone has the right to be protected against all forms of discrimination efficiently by competent courts and other public authorities of the Republic of Serbia, and a foreigner in the Republic of Serbia, in conformity with an international treaty, is entitled to all rights guaranteed by the Constitution and law, with the exception of rights reserved for Serbian citizens by the Constitution and law. The Law also prohibits the exercise of the rights stated by this Law contrary to the goals they are recognised for, or with the intention of violating or restricting the rights of others.

The Law<sup>30</sup> also states *general prohibition of discrimination and forms of discrimination* and, in that regard, it first elaborates on the *principle of equality*. The principle of equality is the basis for prohibition of discrimination, since discrimination exists precisely when citizens are placed in an unequal position on the grounds of a personal characteristic by an institution, employer or other legal entity or natural person. The Law states that everyone enjoys equal status and equal legal protection, irrespective of their personal characteristics, while everyone is obliged to observe the principle of equality, without distinction, i.e. everyone is obliged to observe prohibition of discrimination and act in accordance with it. In this chapter, the Law recognises *seven different forms of discrimination*, namely: direct discrimination, indirect discrimination, violation of the principle of equal rights and obligations, calling to account, association for the purpose of exercising discrimination, hate speech, and harassment and humiliating treatment. In addition to these "basic" forms of discrimination, the Law recognises *severe forms of discrimination*, which comprise:

- Causing and inciting inequality, hatred and intolerance on the grounds of national, racial or religious affiliation, language, political opinion, sex, gender identity, sexual orientation or disability;
- Advocating or exercising discrimination on the part of public authorities or in the course of proceedings conducted before public authorities;
- Advocating discrimination through the media;
- Slavery, trafficking in human beings, apartheid, genocide, ethnic cleansing, as well as advocating any of these;
- Discrimination against individuals on the grounds of two or more personal characteristics (multiple or intersecting discrimination);
- Discrimination committed multiple times (repeated discrimination) or committed over an extended period of time (extended discrimination) against the same individual or a group of individuals;
- Discrimination resulting in severe consequences for the individual discriminated against, other persons or property, especially if it involves an act punishable by law, predominantly

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<sup>30</sup> Cf. *Law on the Prohibition of Discrimination, Chapter II General Prohibition and Forms of Discrimination*, "Official Gazette of RS", no. 22/09, articles 4–14

or solely motivated by hatred or intolerance towards the aggrieved party on the grounds of a personal characteristic of his/hers.

*Special measures (affirmative action measures)* introduced with a view to achieving full equality, protection and progress of individuals or groups of individuals in an unequal position *do not constitute discrimination*. Therefore, these are measures that constitute state intervention, are regulated by law and have the essential purpose of achieving full equality, in particular for a specific group of individuals. The measures themselves are temporary, since the achievement of equality obviates the need for their further existence.

The Law, in addition to general cases, defines special cases of discrimination. The list of possible cases of discrimination contained in this chapter of the Law is by no means exhaustive; therefore, the possibility for passing specific laws regulating such cases in more detail is not exhausted. By their nature, *some of the special cases of discrimination pertain to specific areas* (such as discrimination in proceedings before public authorities, discrimination in the sphere of labour, discrimination in the provision of public services and the use of facilities and spaces, discrimination in the sphere of education and vocational training), *while another group of specific cases of discrimination could be classified as discrimination with respect to a specific personal or group characteristic of "vulnerable" social groups* (discrimination with respect to practising religion, on the grounds of sex, gender identity and sexual orientation, discrimination against children, on the grounds of age, discrimination of national minorities, on the grounds of political affiliation or trade union membership, discrimination on the grounds of disability and on the grounds of health status).

The Law establishes a special, independent authority – the *Commissioner for Protection of Equality*.<sup>31</sup> The Commissioner for Protection of Equality should ensure successful prevention and prohibition of, and combating all forms, types and cases of discrimination. With this provision and with the subsequent election of the Commissioner in May 2010, the Republic of Serbia took a great step towards fulfilment of international standards in the sphere of prohibition of discrimination.

Another important feature of this Law is that it introduces another form of judicial protection pertaining to prevention of, and combating discrimination – *special litigation proceedings for the purpose of protection against discrimination*.<sup>32</sup> Anyone who believes that he/she has suffered discriminatory treatment is entitled to file a lawsuit<sup>33</sup>. By a lawsuit, the plaintiff may seek: ban on the action that poses the threat of discrimination, ban on proceeding with a discriminatory action, or ban on repeated discriminatory action; that the court find that the respondent has treated the plaintiff or another party in a discriminatory manner; taking steps to redress the consequences of discriminatory treatment; compensation for pecuniary and non-pecuniary damage; publication of the judgment delivered on a lawsuit under this Law. A special burden of proof rule prescribes that the burden of proof that the action in question did not violate the principle of equality or equal rights and obligations is on the *respondent*, if the plaintiff establishes probable cause to believe that the respondent has committed an act of discrimination. Yet, full enforcement of these provisions was possible only after the National Assembly passed the new *Law on Litigation Proceedings* in 2011.<sup>34</sup>

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<sup>31</sup> Cf. *Law on the Prohibition of Discrimination*, Chapter IV Commissioner for Protection of Equality, “Official Gazette of RS”, no. 22/09, articles 28–34.

<sup>32</sup> Cf. *Law on the Prohibition of Discrimination*, “Official Gazette of RS”, no. 22/09, articles 41–46

<sup>33</sup> Cf. *Law on the Organization of Courts*, “Official Gazette of RS”, no. 116/2008.

<sup>34</sup> *Law on Litigation Proceedings*, “Official Gazette of RS”, no. 72/2011.

The Law introduces *two forms of monitoring*:<sup>35</sup> (1) *monitoring of the enforcement of the Law* and (2) *parliamentary oversight*. The enforcement of the Law is monitored by the ministry competent for human and minority rights, unless it is delegated to another ministry by a special law.

*The Protector of Citizens (the Ombudsman)*, as an independent public authority established by the *Law on the Protector of Citizens*<sup>36</sup>, also plays an important role in preventing and combating discrimination. Despite the accepted view that the Protector of Citizens, as a rule, no longer initiates proceedings on citizens' applications alleging discriminatory treatment by public authorities unless they previously approached the Commissioner for Protection of Equality in conformity with the law, in many cases, dealing with human rights violations and, in particular, protection of the rights of members of national minorities, rights and status of persons with disabilities, matters of gender equality and rights of sexual minorities, children's rights, rights of the elderly (i.e. "vulnerable" social groups) and the like, the Protector of Citizens deals with the areas of general prohibition of discrimination since these cases are, in their essence, usually a matter of violation of the principle of equality or equal treatment on the grounds of a personal characteristic of an individual or group of individuals.

At lower levels of government in the Republic of Serbia, it is worth mentioning the institution of the Provincial Ombudsman, which plays an important role in combating discrimination in the AP of Vojvodina. Also, local ombudsmen have been introduced in about 20 cities and municipalities in the Republic of Serbia.

### III OVERALL OBJECTIVES AND TASKS OF THE STRATEGY

#### 3.1. Goal of the Strategy

**Observance of the constitutional principle of prohibition of discrimination against a person and/or group of persons on the basis of their personal characteristics, in particular vulnerable social groups (national minorities, women, LGBT persons, persons with disabilities, elderly persons, children, refugees, internally displaced persons and other vulnerable migrant groups, members of religious communities and any person on the basis of their health status).**

#### 3.2. Tasks of the Strategy

**The task of the Strategy and the Action Plan is to identify the objectives, measures and activities to ensure a reduction in the number of cases of violation of the constitutional and legal principle of the prohibition of discrimination, in particular those committed against the vulnerable social groups, through:**

- 1) Legislative and regulatory reforms to ensure the harmonization of the legal framework of the Republic of Serbia in the field of prohibition of discrimination with the international documents adopted by the United Nations, the Council of Europe and the European

<sup>35</sup> Cf. *Law on the Prohibition of Discrimination*, Chapter VII Monitoring, "Official Gazette of RS", no. 22/09, articles 47–49

<sup>36</sup> *Law on the Protector of Citizens*, "Official Gazette of RS", nos 79/05, 54/07.

Union, in particular those documents which the Republic of Serbia has ratified and which are legally binding thereof;

- 2) Consistent implementation and application of the existing legal and regulatory framework relating to the prevention of violation of the prohibition of discrimination;
  - 3) Prevention of discriminatory practices in specific fields against a person/group of persons on the basis of their personal characteristics, in particular members of vulnerable social groups;
  - 3) Creation of a secure environment for the members of vulnerable social groups and advancement of the level of tolerance thereof;
  - 4) Ensuring that all persons, irrespective of their personal characteristics, equally enjoy human rights guaranteed by the Constitution, without discrimination and in line with the principle of equality and equal rights and obligations;
  - 5) Eradication and/or elimination of hate speech and acts of physical and mental violence and the destruction of property of a person/group of persons on the basis of their personal characteristics and bringing the perpetrators of such acts and activities before justice;
  - 6) Empowering the position, influence and providing full institutional autonomy of independent bodies in charge of prevention and identification of violations in the field of discrimination (Equality Commissioner, the Ombudsman, Provincial Ombudsman, local self-government ombudsmen), and ensuring the full respect of their recommendations and other documents by government bodies / individuals.
- 7) Establishing guidelines for combating discrimination in local self-government units and public advocacy for the need to prevent discrimination and promote cultural tolerance.

## **IV SPECIFIC OBJECTIVES OF THE STRATEGY IN RELATION TO NATIONAL MINORITIES AND VULNERABLE SOCIAL GROUPS**

### **4.1. Discrimination and Vulnerable Social Groups – State of Play and Objectives**

Vulnerable social groups are particularly exposed to discrimination and discriminatory practices in specific areas. Based on the analysis of regulations, the reports of the Commissioner for Protection of Equality, the reports of the Protector of Citizens, the reports of the European Commission, civil society organizations fighting for the advancement and protection of human rights, media reports etc, as mentioned beforehand, it is evident that some persons and groups of persons are more exposed to discrimination and discriminatory practices on the following

grounds: 1) members of national minorities; 2) women; 3) LGBT persons; 4) persons with disabilities; 5) elderly persons; 6) children; 7) refugees, internally displaced persons and other vulnerable migrant groups; 8) religion and 9) persons whose health status may be cause of discrimination. The Strategy therefore offers a distinct response to how these social groups will be further protected, how the principle of equality, equal rights and equal treatment is to be ensured, which fields the cases of discrimination against vulnerable social groups are most common in and how the state of play in some fields may be enhanced, directions for further legislative reforms and the adoption of by-laws to advance their protection etc.

## 4.2. National Minorities

### 4.2.1. Legal Framework

The Republic of Serbia has ratified a large number of international instruments relating to the protection of human and minority rights guaranteeing the rights of national minorities. In addition to the United Nations instruments, the instruments adopted under the auspices of the Council of Europe should also be mentioned: the *European Convention for the Protection of Human Rights and Fundamental Freedoms*<sup>37</sup>, the revised *European Social Charter*<sup>38</sup>, the *Framework Convention for the Protection of National Minorities*,<sup>39</sup> the *European Charter for Regional or Minority Languages*<sup>40</sup>, the *European Cultural Convention*<sup>41</sup>, etc. After the Republic of Serbia obtained the status of candidate state for membership in the European Union in March 2012, although it is not a EU member state, European Union documents should also be taken into account in the course of formulating antidiscrimination objectives and measures, primarily *Directive no. 2000/43/EC of June 29, 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*.<sup>42</sup>

The Republic of Serbia is fully committed to the minority policy. Minority policy entails a full integration of national minorities into the life of society with further preservation and development of their national and cultural characteristics. One of the foundations of thus defined minority policy is the development of comprehensive legal regulations in the domain of minority rights. The most important legal instruments regulating the status of national minorities in the Republic of Serbia are the Constitution of the Republic of Serbia, the Law on the Protection of Rights and Freedoms of National Minorities, the Law on the National Councils of National Minorities<sup>43</sup> and other laws and by-laws referring to national minorities.

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<sup>37</sup> The *European Convention for the Protection of Human Rights and Fundamental Freedoms*, "Official Journal of SMN – International Treaties", no. 9/03, 5/05 and 7/05 - amendment.

<sup>38</sup> The *Law on the Ratification of the Revised European Social Charter*, "Official Gazette of RS - International Treaties", no. 42/09.

<sup>39</sup> The *Law on the Ratification of the Framework Convention for the Protection of National Minorities*, "Official Journal of SRY - International Treaties", no. 6/98.

<sup>40</sup> The *Law on the Ratification of the European Charter for Regional or Minority Languages*, "Official Journal of SMN – International Treaties", no. 18/05

<sup>41</sup> The *Law on the Ratification of the European Cultural Convention*, "Official Journal of the SFRY - International Treaties", no. 4/87.

<sup>42</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180 , 19/07/2000 P. 0022 – 0026.

<sup>43</sup> The *Constitution of the Republic of Serbia*, "Official Gazette of RS" no. 98/06, the *Law on the Protection of Rights and Freedoms of National Minorities*, "Official Journal of SRY", no. 11/02, "Official Journal of SMN", no. 1/03 – Constitutional Charter and "Official Gazette of RS" no. 72/09 – other law, the *Law on National Councils of National Minorities*, "Official Gazette of RS" no. 72/09.



The Constitution of the Republic of Serbia states that the Republic of Serbia shall protect the rights of national minorities and shall guarantee special protection to national minorities for the purpose of exercising full equality and preserving their identity. Furthermore, the Constitution states that national affiliation may be expressed freely and that no person shall be obliged to declare their national affiliation. The Constitution also envisages the promotion and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and media.<sup>44</sup>

The second part of the Constitution of the Republic of Serbia – “Human and Minority Rights and Freedoms” – contains a specific chapter dedicated to the rights of persons belonging to national minorities.<sup>45</sup> This chapter envisages that members of national minorities shall be guaranteed special individual or collective rights in addition to the rights guaranteed to all citizens by the Constitution. By means of collective rights, directly or through their representatives, members of national minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script in accordance with the law. Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance. The Constitution guarantees equality before the law to members of national minorities and prohibits any discrimination on the grounds of affiliation to a national minority, and envisages the possibility of adoption of specific regulations and provisional measures which may be introduced in economic, social, cultural and political life for the purpose of achieving full equality. The Constitution prescribes equality in administering public affairs, prohibits forced assimilation of members of national minorities and guarantees the right to preservation of specific characteristics through:

- Expression, preservation, fostering, developing and public expression of national, ethnic, cultural, religious specificity;
- Use of their symbols in public places;
- Use of their language and script;
- Hold proceedings conducted in their language before state bodies, organizations with delegated public powers, bodies of autonomous provinces and local self-government units, in areas where they make up a significant majority of the population;
- Education in their language in public institutions and institutions of autonomous provinces;
- Founding private educational institutions;
- Use of their name and family name in their language;
- Traditional local names, names of streets, settlements and topographic names also written in their language, in areas where they make up a significant majority of the population;
- Complete, timely and objective information in their language, including the right to expression, receiving, sending and exchange of information and ideas;
- Establishing their mass media, in accordance with the Law.

The Constitution also prescribes that members of national minorities shall have the right to association and cooperation with compatriots outside of the territory of the Republic of Serbia and that they may found educational and cultural associations, funded voluntarily. The Republic of Serbia, as a country, is constitutionally bound to stimulate the spirit of tolerance and intercultural dialogue in the field of education, culture and information. In this respect, it shall undertake efficient measures for enhancement of mutual respect, understanding and cooperation among all people living within its territory, regardless of their ethnic, cultural, linguistic or religious identity.

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<sup>44</sup> *Constitution of the Republic of Serbia*, “Official Gazette of RS”, no. 98/06, articles 14, 47-48.

<sup>45</sup> *Constitution of the Republic of Serbia*, “Official Gazette of RS”, no. 98/06, articles 75-81.

The National Assembly shall ensure equality and representation of members of national minorities, in accordance with Law, and a proportional representation of national minorities in assemblies shall be provided for in those autonomous provinces and local self-government units with mixed nationality populations.<sup>46</sup>

The protection of national minorities is provided for in bilateral agreements entered into with Hungary, Macedonia, Croatia and Romania.

*The Law on the Protection of Rights and Freedoms of National Minorities*<sup>47</sup> contains the definition of the term “national minority”. A national minority in accordance with this law is “... every group of citizens of the SRY which is sufficiently representative in numbers although it represents a minority in the territory of the SRY (today Serbia), belongs to a group of the population which has had a long-lasting and solid connection with the territory of the SRY (Serbia) and owns characteristics such as language, culture, nationality or ethnicity, origin or religion, which make them different from the majority of the population and whose members are characterized by effort to maintain their common identity, including their culture, tradition, language or religion.” National minorities are all groups of citizens who call or identify themselves as nations, national or ethnic communities, national or ethnic groups, nationalities and ethnicities if they meet the abovementioned conditions set forth by law.<sup>48</sup> The fundamental principles of this law include the prohibition of discrimination against persons belonging to national minorities, measures for providing full equality, the freedom of national affiliation and expression, the right to cooperation with compatriots in the country and abroad, the obligation of respect for constitutional order, the principles of international law and public morals, as well as the protection of obtained rights. The rights relating to preserving specific characteristics which are guaranteed by this law include: the choice and use of personal name, the right to the use of the mother tongue, official use of language and script, the right to nurture culture and tradition, education in the mother tongue, the use of national symbols, public announcements in languages of national minorities. In order to exercise the right to self-governance in the field of using language and script, education, information and culture, the Law on the Protection of Rights and Freedoms of National Minorities has introduced the national councils of national minorities into the legal system of the Republic of Serbia for the first time. The Law prescribes that national councils of national minorities shall have the status of legal entities and be elected for a period of four years, adopt their statutes and budgets, and be financed from the budget and donations, with their registries maintained by the competent body.

The Republic of Serbia adopted the *Law on the National Councils of National Minorities*<sup>49</sup> in 2009 and regulated the election and financing of national councils as national minority self-governance institutions, along with their competencies in the field of culture, education, information and official use of language and script, as well as other issues relevant to the work of the councils, thus further advancing the status of national minorities. However, due to certain ambiguities and imprecision, the Constitutional Court, on the occasion of numerous submitted initiatives, launched a procedure for assessing the constitutionality of the Act (in particular in relation to the direct election of national councils, and competence of the Council). If the

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<sup>46</sup> *Constitution of the Republic of Serbia*, “Official Gazette of RS”, no. 98/06, Article 100, Article 180.

<sup>47</sup> *The Law on the Protection of Rights and Freedoms of National Minorities*, “Official Journal of SRY”, no. 11/02 “Official Journal of SMN”, no. 1/03 – Constitutional Charter and “Official Gazette of RS”, no. 72/09 – other law.

<sup>48</sup> *The Law on the Protection of Rights and Freedoms of National Minorities*, “Official Journal of SRY”, no. 11/02 “Official Journal of SMN”, no. 1/03 – Constitutional Charter and “Official Gazette of RS”, no. 72/09 – other law, Article 2, paragraphs 1-2.

<sup>49</sup> *Law on National Councils of National Minorities*, “Official Gazette of RS”, no. 72/09.

Constitutional Court decides that certain provisions of this Act are unconstitutional, it shall be necessary to harmonize this law with the Constitution. It is important to empower the position and influence of independent bodies and ensure their full institutional autonomy in the future and continue to work on improving the status of national councils of national minorities, including through continued strengthening of the existing regulatory framework.

*The Law on the Prohibition of Discrimination* (2009)<sup>50</sup> is also significant for the implementation of minority policy. In addition to the terminology of direct and indirect discrimination, in relation to the status of national minorities, of particular importance are the provisions on hate speech, harassment and demeaning actions and association with the purpose of discrimination as forms of discrimination, including the severe forms of discrimination, among which are the incitement and encouragement of inequality, hatred and intolerance on the basis of nationality, race and religion, language and other characteristics, genocide, ethnic cleansing and their promotion. Furthermore, the law envisages affirmative measures and/or specific measures relevant to the advancement and management of minority policy. The Law explicitly states that discrimination of national minorities is a specific form of discrimination. Particularly important is the fact that, in comparison to the Law on the Protection of Rights and Freedoms of National Minorities, the Law on the Prohibition of Discrimination contains penal provisions, as an indirect channel for consistent achievement of full equality and the prohibition of discrimination of national minorities and their members. Furthermore, in comparison to the Law on the Protection of Rights and Freedoms of National Minorities which contains a single provision on the option for members of national minorities and their council to lodge an appeal for compensation of damages, the Law on the Prohibition of Discrimination regulates court protection in detail. However, the court procedure and compensation of damages, as well as the penalties laid down in the Law on the Prohibition of Discrimination have relevance only in situations when national minorities and/or their members are victims of some form of discrimination, whereas these mechanisms would not apply in cases of violation of another guaranteed right of national minorities which may not be considered discrimination. The Law on the Prohibition of Discrimination contains a significantly more liberal solution with regard to lodging appeals in comparison to the Law on the Protection of the Rights and Freedoms of National Minorities, which states that the appeal may be lodged only by members of national minorities and national councils with the aim of more effective protection of their rights, whereas according to the Law on the Prohibition of Discrimination this may also be done by the Commissioner for Protection of Equality and organizations dealing with the protection of human rights and/or rights of a specific group of persons.

*The Law on Registers* ("Official Gazette of RS", No. 20/09) states the right of persons belonging to national minorities to enter their personal name into the registers in the language and orthography of their national minority.

The Law on Political Parties ("Official Gazette of RS", No. 36/09) regulates the establishment and legal status of political parties, registration and removal from the Register, the cessation of political parties and other issues relevant to the operation of political parties. Thus, Article 3 of the *Law on Political Parties* ("Official Gazette of RS", No. 36/09) establishes for the first time the notion of political parties of national minorities, that is, defines that a political party of national minorities in the sense of this law is a political party whose actions are, in addition to

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<sup>50</sup> Cf. *Law on the Prohibition of Discrimination*, "Official Gazette of RS", no. 22/09, articles 10-14, Article 24.

features from Article 2 of this law<sup>51</sup>, specifically targeted to presenting and representing the interests of a minority and promotion of the rights of that national minority in accordance with the Constitution, laws and international standards, regulated by the Articles of Association, and the program and the statute of the political party. This provision of the Law on Political Parties can be assessed from the perspective of promoting values of a democratic society and in the context of positive state measures relating to members of ethnic minorities, as the Constitution guarantees additional (individual or collective) rights of national minorities to preserve their uniqueness. In addition, the solution contained in Article 3 of the Law on Political Parties provides the necessary conditions for the effective participation of members of national minorities in political life.

In addition, Article 9 of the Law on Political Parties states that political parties of national minorities may be established by at least 1,000 adult and able-bodied citizens of the Republic of Serbia, thus this provision of the Act may be assessed as a tool to foster the gained right to political association specifically targeted at representing minority interests and promoting national minorities' rights under conditions that are much more liberal in relation to the establishment of political parties under Article 2 of the Act (which may be established by at least 10,000 adult able-bodied citizens of the Republic of Serbia). Application of Article 9 in conjunction with Article 3 of the Law on Political Parties encourages and greatly improves directly (within the political party of national minorities) and indirectly (as the electorate) activities of members of national minorities in the process of construction and improvement of political institutions and the society as a whole, which is in the context of good practice for national minorities' participation in political life. As an illustration of the achievement of rights of national minorities in accordance with this law, facts show that the Register of Political Parties of the Ministry of Justice and Public Administration registered 91 political parties by 3 April 2013, out of which 53 political parties are of national minorities (2 Croatian nm parties, 2 Ruthenian nm, 6 Albanian nm, 3 Bulgarian nm, 4 Vlach nm, 6 Hungarian nm, 7 Roma nm, 1 Macedonian nm, 2 Slovak nm, 3 Bunjevac nm, 1 Montenegrin nm, 1 Gorani nm, 2 Romanian nm, 12 Bosniak nm, and 1 Russian nm).

Besides the Law on Political Parties, the fulfillment of rights of national minorities to use their language and writing is allowed by the Law on Associations and Single Electoral Roll Law.

Therefore, the Law on Political Parties and the Law on Associations require that the name of minority political parties and associations, if so provided by statute, may be in the language and script of a national minority, and that this information is entered into the Register of Political Parties and the Register of Associations, while the Single Electoral Roll Law states that the name and surname of voters belonging to a national minority is registered in the single electoral list also in the language and writing of their national minority.

In addition to the abovementioned laws, the protection of minority rights in the Republic of Serbia is also regulated by a number of laws in different areas of life: e.g. in the field of education (the *Law on the Foundations of the Education System*, the *Law on Primary School*, the *Law on Preschool Education*, the *Law on Secondary School*, etc. which regulate the issue of education in national minority languages), the *Law on Local Self-Government* (which regulates the establishment of councils for international relations in local self-government units of mixed nationalities), the *Criminal Code* (which penalizes the violation of the equality of citizens and the

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<sup>51</sup> Article 2 of the Law on Political Parties states that a political party in terms of this Act is an organization of citizens freely and voluntarily associated, which is established for the purpose of achieving political goals through the democratic formation of citizens' political will and participation in elections.

violation of equality in using language and script as criminal offences), the *Law on Official Use of Language and Script* and the *Law on the Stamp of State and Other Bodies* (regulates the official use of language and script of national minorities, etc), the *Law on National Holidays in the Republic of Serbia* (establishes the right of employees not to work on the days of specific religious holidays), the *Law on Broadcasting* (regulates the issuing of broadcasting permits, prevention of hate speech etc), as well as other laws, in particular in the field of judiciary, culture, health and health protection, information etc.

As for by-laws, the following should be mentioned in the context of minority policy: the *Decree on Education of the Council of the Republic of Serbia for National Minorities* (2006), the *Decree on the Council of the Republic of Serbia for National Minorities* (2009), the *Decree on the Procedure of Allocation of Funds from the Budget of the Republic of Serbia for Financing the Work of National Councils of National Minorities* (2010), the *Decree on Education of the Council for Advancing the Status of Roma and the Implementation of the Decade of Roma* (2008), the *Rules of Procedure on Maintaining the Special List of Voters of National Minorities* (2009), the *Rules of Procedure on the Form and Contents of Forms for Collecting the Signatures of Voters Supporting Electors* (2009), the *Rules of Procedure on the Manner of Maintaining the Register of National Councils of National Minorities* (2009), etc.<sup>52</sup>

#### **4.2.2. Overview of the Situation**

##### *4.2.2.1. Existing Legal Framework, Respecting the Legal Framework and Its Implementation*

The majority of national minority representatives believe that the status of members of national minorities in the Republic of Serbia was improved during the past ten years.<sup>53</sup> The improvement of the status of national minorities is primarily reflected in the existence of a solid legal framework and high standards defined by law in the area of protection of rights and freedoms of members of national minorities.

However, there is a notable need for the further improvement of the legal framework, higher consistency regarding its observance and application, reduction of the gap between the legal framework and actual situation, as well as strengthening the work of certain institutions competent for its implementation, as stated in the European Commission Opinion on Serbia's Application for Membership of the EU, adopted on 12 October 2011<sup>54</sup>, emphasizing that the National Minority Council of the Republic of Serbia, responsible for harmonizing the work of national councils and state bodies, is not operational, that the national minority councils are politicized, as well as that there is no efficient control over their financing and expenditures.

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<sup>52</sup> The *Decree on Education of the Council of the Republic of Serbia for National Minorities*, "Official Gazette of RS", no. 61/06, the *Decree on the Council of the Republic of Serbia for National Minorities*, "Official Gazette of RS", no. 50/09, the *Decree on the Procedure of Allocation of Funds from the Budget of the Republic of Serbia for Financing the Work of National Councils of National Minorities*, "Official Gazette of RS", no. 95/10, the *Decree on Education of the Council for Advancing the Status of Roma and the Implementation of the Decade of Roma*, "Official Gazette of RS", no. 24/08, the *Rules of Procedure on Maintaining the Special List of Voters of National Minorities*, "Official Gazette of RS", no. 91/09, the *Rules of Procedure on the Form and Contents of Forms for Collecting the Signatures of Voters Supporting Electors*, "Official Gazette of RS", no. 91/09, the *Rules of Procedure on the Manner of Maintaining the Register of National Councils of National Minorities*, "Official Gazette of RS", no. 91/09 and other.

<sup>53</sup> Note: Observation from the minutes of the Republic Council

<sup>54</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/sr\\_analytical\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/sr_analytical_rapport_2011_en.pdf)

The Government of the Republic of Serbia adopted the Conclusion on Measures to Increase the Participation of National Minority Members in Public Administration Bodies, in 2006. However, this important affirmative measure has not been adequately implemented, and its full application is still pending.<sup>55</sup>

There are certain deficiencies within the existing legal framework regarding national minorities that should be remedied through future improvements to the legal framework. For example, the legal definition of the term “national minority” contains certain criteria, such as, e.g. long-term and firm links to the territory of the state, sufficient representation, and others that are not specifically and clearly regulated and determined. Certain criteria for financing national councils of national minorities envisaged by the Decree on the Procedure for the Allocation of Funds from the Budget of the Republic of Serbia for Financing the Work of National Minorities (2010) also require further clarification, such as the issue of what may be considered a national minority institution in the field of official use of language and script, methods for determining their numbers, as well as the scope of their activity.

Another question regarding the gap between the provisions of the legal framework and the existing situation is related to the National Minorities Fund, with its formation envisaged by the Law on the Protection of Rights and Freedoms of National Minorities, without its work being legally regulated as of yet.

#### *4.2.2.2. Interethnic Incidents, Discrimination, Violation of Rights, Intolerance and Incitement of National, Racial and Religious Hatred*

Incidents that may, in the widest sense of the word, have interethnic properties are on the decrease during recent years, but they are still relatively frequent. Likewise, cases of ethnic intolerance and distancing between members of the majority population and national minorities, along with hate speech, are still present. Available data from competent institutions (Commissioner for Protection of Equality, Protector of Citizens, Provincial Ombudsman) and public administration bodies further indicate this to be the case.<sup>56</sup> Data from the Ministry of the Interior for the period 1 January 2007 – 1 March 2012 are particularly significant. The Ministry recorded, during this period, a total of 1,411 incidents (in 2007 – 354, in 2008 – 329, in 2009 – 253, in 2010 – 202, in

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<sup>55</sup> Conclusion of the Government of Serbia on Measures for Increasing the Participation of National Minority Members in Public Administration Bodies, “Official Gazette of RS”, no. 40/06. Note: with certain national minorities, their considerably lower percentage of representation in the work of public institutions is noticeable. For example, in Novi Pazar, Bosniaks participate with approximately 82 percent in the total population, but their representation in the work of public administration bodies is considerably lower: there are 14 Bosniaks and 14 Serbs working in the County Court in Novi Pazar, four Bosniaks and four Serbs are employed at the County Public Prosecutor’s Office, 8 Bosniaks and 5 Serbs at the Municipal Public Prosecutor’s Office, 17 Bosniaks and 22 Serbs at the Misdemeanour Office, and 70 Bosniaks and 66 Serbs at the Tax Administration. Members of the Bosniak national minority are underrepresented in the army and police: for example, Bosniaks comprise only one quarter of the police officers at the Regional Police Administration in Novi Pazar, also in other republic bodies.

<sup>56</sup> For example, violence and ethnic intolerance against Roma in the village Jabuka, the attack against members of the Gorani national minority in Bor a, the fight between Hungarian and Serb youth in Temerin in 2010, as well as the breaking of windows on the Islamic Centre in Novi Sad, the attack against the mosque in Bor a, hate graffiti against Hungarians in Zrenjanin and Novi Sad, vandalizing of the offices of the Hungarian Cultural Centre “Petofi Sandor” in Novi Sad, the breaking of the windows on the building of the National Council of the Croatian National Minority in Subotica, the burning of the offices of the Citizens’ Initiative of Gorani, etc. all during 2011 – the above cases were also mentioned in the reports of the Protector of Citizens for 2010 and the Commissioner for Protection of Equality for 2011, as well as the Provincial Ombudsman.

2011 - 242 and during the first two months of 2012 - 31), that could be of importance for interethnic relations in the widest sense.

The structure of incidents is comprised of:

- Physical assault - 117 (over 60% regarding persons of Roma nationality);
- Fights between persons of different nationalities - 33;
- Anonymous threats - 31;
- Verbal confrontations - 212;
- Damage to religious facilities - 232;
- Damage and desecration of graves and memorials - 41;
- Damage to facilities owned by persons of Albanian, Gorani and Turkish nationality - 81;
- Damage to facilities of persons of Roma nationality - 32;
- Damage to other facilities - 23;
- Writing slogans, graffiti and drawing symbols of hatred against minorities - 580;
- Other cases - 29.

Among the total number of incidents, criminal charges were filed for 503 criminal violations, along with 197 requests for initiating misdemeanour proceedings, whereas in the remaining cases and through contact with the competent prosecutorial bodies it was determined that there are no elements of criminal violations or misdemeanours. The requests for initiating criminal proceedings encompassed 413 persons of varied national affiliation. Of the total of 503 criminal acts 303, or 60.2% were solved, with criminal charges filed against 457 persons (347 Serbs, 34 Hungarians, 30 Muslims, 18 Roma, 6 Slovaks, 7 Albanians, 6 Croats, 2 Bosniaks and 2 Romanians, and one person each of German, Turkish, Montenegrin, Macedonian and Vlach nationality).

The structure of the criminal violations includes: the crime of attempted aggravated murder (against a Gorani person, solved); the crime of attempted murder (against a person of Hungarian nationality - solved); nine crimes of grave bodily harm (seven solved); nine crimes of light bodily harm (all solved); 220 crimes of inciting national, racial and religious hatred and intolerance (133 solved); two crimes of racial and other discrimination (one solved); 40 crimes of violent behaviour (38 solved); 127 crimes of destruction and damage to others' property (41 solved); 23 crimes of desecration of graves (10 solved); five crimes of causing general hazard (all solved); 14 crimes of endangering safety (13 solved); two crimes of illegal detention (one solved); six crimes of violation of reputation due to racial, religious, national or other affiliation (five solved); three crimes of violation of the reputation of the Republic of Serbia (all solved); five participations in fights (all solved); three crimes of violations of the freedom of religious practice and observance of religious rituals (two solved); three crimes of endangerment by dangerous items in a fight or quarrel (all solved); eight crimes of illegal production, keeping, bearing or sale of weapons and explosive substances (six solved); 13 crimes of interfering with officials in undertaking security work or preserving public order (solved); one crime of preventing an official in performing official duties (solved); the crime of violent behaviour at a sporting event or public meeting (solved); the crime of inciting panic and disorder (solved); the crime of false reporting (solved); two other crimes.

Analysing the above structure of incidents and the national structure of the victims in more depth, cases of damage to facilities and property (particularly religious facilities), physical assault and fights, along with verbal assaults are clearly dominant among the incidents, with the most frequent victims members of the Roma, Albanian and Gorani national minorities.

Regarding interethnic incidents, of particular note is that their number, territorial disposition and frequency are impacted by the economic situation, poverty, unresolved political issues, particularly the situation in Kosovo and Metohija, activities of extremist and sports fan groups, lack of tolerance and sensitization, as well as premeditated problems and abuses of certain issues regarding the affirmation of national values and the exercise of minority rights.<sup>57</sup>

The fact of state authorities reacting, uncovering, processing and punishing the perpetrators and instigators of interethnic incidents speaks in favour of the willingness of public and other authorities to swiftly and efficiently suppress such occurrences. Significant attention needs to be dedicated during the coming period not only to repressive actions after the above incidents, but to preventive activities and resolving the causes of problems leading to such incidents.

Independent state institutions, primarily the Commissioner for Protection of Equality and the Protector of Citizens, as well as the Provincial Ombudsman as an independent body at the AP Vojvodina level, have an increasing importance in preventing the discrimination of national minorities, with their recommendations, opinions and other activities having an affirmative and preventive role in preventing discrimination.

According to data from the Commissioner for Protection of Equality, by 5 April 2012 the Commissioner received 506 complaints for discrimination. Of this number, 94 complaints were submitted based on national affiliation or ethnic origin.

During the 2008-2011 period the Protector of Citizens received the following number of complaints regarding minority rights:

- During 2008 there were 22 complaints indicating violations or failure to exercise recognized individual and collective rights of national minorities. Most complaints were in regards to exercising the right to education in the national minority language.
- During 2009 there were 66 complaints received and in three cases proceedings were initiated at the initiative of the Protector of Citizens. Most complaints were against discrimination, the right to information, education and protection of cultural identity, the right to the official use of language and script, freedom of expression of national identity, etc.
- During 2010 there were 91 complaints and in five cases proceedings were initiated at the initiative of the Protector of Citizens. Most complaints regarding violations of special collective rights were submitted regarding elections to the national councils of national minorities, the right to equality in conducting public affairs, information and cultural creation in the national minority language, as well as the right to the official use of language and script.
- During 2011 there were 221 proceedings held in the field of national minority rights, with 51 cases of proceedings initiated at the initiative of the Protector of Citizens. Among the 58 cases regarding violations of special individual and collective rights of national minorities, most were in regards to the official use of language and script – 21.

Similar data may be found in the Provincial Ombudsman Report.<sup>58</sup>

#### 4.2.2.3. *Status of Roma*

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<sup>57</sup> E.g. erecting monuments and memorials without respecting the envisaged procedure, as well as (ab)use of symbols and signs of national minorities and the traditional names of settlements.

<sup>58</sup> Cf. Provincial Ombudsman, *Report of the Provincial Ombudsman for 2011*, pp. 41-57



The status of Roma who, according to the 2011 Census data, number 147,604 in the Republic of Serbia, is still very difficult in various areas of social life, but noticeably, a number of steps were taken to improve the status of this national minority and its members. To this end, it bears noting that the Strategy for the Improvement of the Status of Roma and the relevant Action Plan for its implementation for 2009-2011 were adopted in 2009, representing an operationalization of priorities and recommendations of the Strategy for the Improvement of the Status of Roma, aiming for its more efficient implementation. Also, the Council for the Improvement of the Status of Roma and Implementation of the Roma Inclusion Decade was formed, presided over by the Deputy Prime Minister of the Republic of Serbia. However, despite the adoption of the Strategy, analyses of the status of members of the Roma community in certain areas, particularly in the field of access to personal identification documents, employment, healthcare and housing, indicate that, despite the improvements, the Roma are still a vulnerable group susceptible to discrimination, as stated in the EC Report of 10 October 2012, emphasizing that Roma are the most frequently discriminated group (along with persons with disabilities and sexual minorities).<sup>59</sup> Areas where discrimination of members of this national minority occurs most frequently are personal documents and citizenship, healthcare protection, education, housing and employment.

In the area of access to personal documents, there are still cases of legally invisible persons, most of whom are members of the Roma minority, who are unable to exercise their rights. In order to solve this problem, the Registers Law from 2009 should first be mentioned because with the adoption of the above mentioned law and by-laws was carried out on the basis of this law- The Guideline on Managing Registers and Registers' Forms ("RS Official Gazette", no. 109/09 4/10-correction, 10/10, 25/11 and 5/13) significantly enhanced the right to register a birth in the registers even after the registration deadline (late registration) in a way that allows the right guaranteed by the Serbian Constitution to equal protection of all citizens' rights, including those of ethnic minorities such as from the ranks of the Roma minority. During 2011, the Republic of Serbia amended the *Law on Identity Cards* and the *Law on Republic Administrative Fees* and adopted the new *Law on Permanent and Temporary Residence of Citizens*. At the end of 2012, the Ministry of Interior passed on the basis of the law a special *Regulation for the Form of Residence Registration at Institutions or Social Work Centers*, which regulates registration of residence at social work centers, which is an important step in overcoming this problem<sup>60</sup>. In August 2012, The National Assembly of the Republic of Serbia adopted the Law on Amending the Law on Extra-Judicial Proceedings, which establishes the legal basis for establishment of birth facts in court proceedings, and shall significantly reduce the future number of "legally invisible" persons<sup>61</sup>. This law, among other things, regulates the procedure for determining the time and place of birth, and is carried out when a person who is not registered at birth cannot prove the time and place of his birth in the manner prescribed by regulations governing the maintaining and keeping of registers.

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<sup>59</sup> European Commission, *Serbia Progress Report for 2012*, p. 20.

<sup>60</sup> Problems that arise during proceedings of subsequent civil registration are described in detail in publications of the NGO Praxis: *Legally Invisible Persons in Seven Images* (2008), *Legally Invisible Persons in Serbia* (2009), *Legally Invisible Persons in Serbia - Still No Solution* (2011), *Persons at Risk of Statelessness in Serbia* (2010), *Persons at Risk of Statelessness in Serbia - Case Studies* (2011), as well as in the *Report on the Status of "Legally Invisible" Persons in the Republic of Serbia*, the Ombudsman (2012)

Statelessness in Serbia - Case Studies (2011), as well as in the report on the status of "legally invisible" persons in the Republic of Serbia, the Ombudsman (2012)

<sup>61</sup> "The Law on Amendments to the Law on Extra-Judicial Proceedings", "The Official Gazette of RS", no. 85/12.

This law is a regulation that should enable numerous legally invisible persons to exercise the right to entry of their facts of birth into registers, but the issue of how these persons will obtain citizenship still remains open. A particular problem is posed by Article 71, paragraph 2 of the Law on Non-Contentious Proceedings, stating that the body competent for the procedure of obtaining citizenship is not bound by court decisions establishing the place and time of birth.

How this works out in practice with registrars and the Ministry of the Interior remains to be seen, but it is already clear that the issue of obtaining citizenship is not sufficiently clear and precisely regulated, leaving the possibility that these people swap the status of legally invisible persons with the status of persons at risk of statelessness. Likewise, the *Law on Healthcare*<sup>62</sup> envisages and specially states that healthcare protection encompasses persons of Roma nationality who, due to their traditional lifestyle, have no permanent or temporary residence in the Republic of Serbia. The Law on Healthcare Insurance envisages for the right to healthcare protection to be provided to persons encompassed by mandatory healthcare insurance, and by force of law the categories of persons encompassed by healthcare insurance include persons of Roma nationality having no permanent or temporary residence in the Republic due to their traditional lifestyle. However, until recently there were cases when this right was derogated by bylaws.<sup>63</sup> The situation changed positively in late 2012 when the Government, during its session on 29 December, adopted the Decree on Amendments to the Decree on the Contents, Form and Method of Submitting a Unified Application for Mandatory Social Insurance, Unified Methodological Principles and Unified Codes for Data Entry in the Unified Database of the Central Registry of Mandatory Social Insurance<sup>64</sup>, thereby prescribing that, in regards to grounds for insurance, the Unified Database of the Central Registry of Mandatory Social Insurance shall include insurance as per the law regulating social insurance in regards to the law regulating healthcare insurance, and encompassing persons of Roma nationality with no permanent residence in the Republic of Serbia due to their traditional lifestyle, along with members of their immediate family.

The most prominent danger of discrimination in the field of education is in regards to potential segregation, i.e. the creation of classes exclusively for Roma children,<sup>65</sup> as well as in regards to lack of execution of obligations envisaged by the Strategy for the Improvement of the Status of Roma and the Law on the Protection of Rights and Freedoms of National Minorities and

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<sup>62</sup> *Law on Healthcare*, “Official Gazette of RS”, nos 107/05, 72/09, 88/10, 99/10, 57/11.

<sup>63</sup> Despite the Law on Healthcare Insurance enabling Roma to gain the status of insured person regardless of whether they have reported a temporary or permanent residence – representing a positive example of affirmative measures – persons of Roma nationality without temporary or permanent residence are denied access to the right to healthcare insurance. Numerous branches of the National Healthcare Insurance Fund of the Republic of Serbia, referencing the Decree on the Contents, Form and Method for Submitting Unified Applications for Mandatory Social Insurance, stating that persons of Roma nationality need to supply a residence report, still request persons of Roma nationality to provide a residence application as evidence when applying for healthcare insurance, preventing access to insured person status to those with no registered residence. The Praxis NGO submitted an initiative for the assessment of the legality of this Decree to the Constitutional Court, and the Protector of Citizens found, through their Recommendation, that the Decree is contrary to the law.

<sup>64</sup> Government of the Republic of Serbia, Decree on Amendments to the Decree on the Contents, Form and Method of Submitting a Unified Application for Mandatory Social Insurance, Unified Methodological Principles and Unified Codes for Data Entry in the Unified Database of the Central Registry of Mandatory Social Insurance, “Official Gazette of RS”, no. 124/2012, Article 7, paragraph 2, item 18.

<sup>65</sup> Thus, for example, in the village Vožegrinci-Blaževo at Novi Pazar segregated classes/groups were formed for Roma children. The Commissioner for Protection of Equality found, in their recommendation, that in the above places the Preschool Institution “Mladost” and the “Aleksandar Stojanovi Leso” Primary School discriminated children (members of the Roma national minority) based on their national affiliation.

the Application of Affirmative Action Measures in Favour of Members of the Roma National Minority. It is highly important to: provide the Roma with all conditions for obtaining primary education, including quality preschool education; reduce the number of Roma abandoning education (representing a basis for improving their status) and stimulating and encouraging their further education (secondary, higher). This requires, as a minimum, completion of primary education, and young Roma should be encouraged to continue their further education, at the secondary and higher level.

A special problem is posed by housing since, according to 2003 data listed in the Second Report of the Republic of Serbia on Implementing the European Council Framework Convention for the Protection of National Minorities (submitted by the Republic of Serbia in 2007, and used as a basis for the Advisory Committee to adopt, in 2009, the opinion on the implementation of the Framework Convention in Serbia), as many as 72% of Roma settlements in Serbia are deemed illegal by status.<sup>66</sup> Based on the preliminary results of the last Census, there are approximately 780 Roma settlements in Serbia, with approximately 170 in Belgrade. The conditions in informal Roma settlements are poor, there is no potable water, electrical energy, and frequently other infrastructural conditions for the humane life of citizens. Several informal settlements were relocated in Belgrade, and thereafter the City of Belgrade provided the relocated Roma with container housing, but this type of housing cannot be considered an acceptable permanent solution. Additionally, the Commissioner for Protection of Equality found that certain provisions of the contract on the use of mobile housing units and other documents used by the city to set the conditions of their use are not harmonized with regulations on the prohibition of discrimination.<sup>67</sup> In practice, there are cases where the stakeholders, when relocating illegal settlements, do not receive a relocation decision, prior notice, adequate alternative housing, or the opportunity to lodge complaints against the relocation. Therefore, it is ultimately necessary to continue social housing programmes for vulnerable persons.

The employment of Roma is a very prominent problem. The Republic of Serbia adopted the *National Employment Strategy for 2011-2020*<sup>68</sup>. The Strategy establishes the priorities and goals of the employment policy for the above period, along with special categories of persons holding the status of persons difficult to employ. The national employment action plans, adopted at the annual level, represent the basic instrument for the implementation of the established strategic framework and defined programmes and measures of the active employment policy to be implemented at the annual level. The National Action Plan for 2013<sup>69</sup> also envisages a set of measures aimed at stimulating the employment of Roma.

The improved database on unemployed persons of Roma nationality established at the National Employment Service, and the fact that all data on the number of unemployed persons of Roma nationality and data on persons included in active employment policy measures have been disaggregated by gender since 2010, facilitate the monitoring of the situation and implementation of programmes and measures intended for the easier employment of Roma.

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<sup>66</sup> The Second Opinion on Serbia of the Advisory Committee on the Framework Convention for the Protection of National Minorities of 25 June 2009 contains the information that of the total of 593 settlements comprised of members of the Roma community in Serbia, 72% still have the status of illegal settlements.

<sup>67</sup> The opinion of the Commissioner for Protection of Equality no. 214/2012 f 16.10.2012, adopted based on the complaint lodged by the Praxis NGO.

<sup>68</sup> Government of the Republic of Serbia, *National Employment Strategy for the Period 2010-2020*, "Official Gazette of RS", no. 2011-2020.

<sup>69</sup> *National Action Plan for Employment for 2013*, "Official Gazette of RS", no. 117/2012.

### Number of unemployed persons of Roma nationality registered with the NES

Year	2009	2010	2011
Number of unemployed	13,416 persons (6,571 women)	15,867 persons (7,637 women)	19,398 persons (9,180 women)

The number of Roma registered at the unemployment registry varies, since persons get employed, or removed from records if they are not active job seekers (non-reporting or failure to meet obligations). Data on the increase of the number of Roma who have registered as unemployed in NES indicates a trend of an increasing number of Roma trying to obtain employment through system institutions, but also confirms the very high unemployment rate among members of this national minority. Particularly worrying is the increase of unemployment with Roma women. The unfavourable educational structure of the Roma population represents a large challenge, since over 85% of Roma registered with the National Employment Service records have no trade or professional education.

In addition to Roma having priority in inclusion in all measures of active employment policies as a category of persons difficult to employ, the National Employment Service, aiming to increase their employability and employment rate, also issues special public calls intended for the employment of persons of Roma nationality (for awarding subsidies for self-employment and awarding subsidies to employers for new employment), and also implements special motivational trainings intended for employment, organizes trainings for active job seeking, self-effectiveness trainings, job seeking clubs, employment fairs and undertakes programmes of additional education and training. With the aim of formalizing the status of Roma under the framework of the measures and activities for the implementation of the Strategy for the Improvement of the Status of Roma in the Republic of Serbia in the field of employment, the occupation "waste collectors" has been introduced in a unique nomenclature of jobs that RSO conducts in accordance with international standards.

#### 4.2.3. Overall Objective

Prevent violations of the prohibition of discrimination against national minorities by improvements to the legal framework and effective implementation of regulations leading to a decreased gap between the normative and real situation; affirmation of tolerance and good interethnic relations, *inter alia*, through the full integration of national minorities in social life, particularly the work of public institutions, prevention and processing of hate speech and interethnic incidents; abolishing discriminatory practices against national minorities, particularly members of the Roma national minority; amendment of public policies that may be a source of discrimination of national minorities in certain areas.

#### 4.2.4. Measures

- 1) Harmonizing the existing legal framework of prohibition of discrimination with standards contained in EU directives, particularly Directive 2000/43/ C on the implementation of principles of equal treatment regardless of racial or ethnic origin;
- 2) Renewing the operation of the National Minorities Council of the Republic of Serbia and envisage its obligation of holding sessions at least once every six months;
- 3) Improving the existing legislative framework of preventing discrimination against this group of persons, as well as other laws improving their status, in accordance with the

- needs determined in practice, and adopt the required bylaws, and particularly, regulating in more detail certain criteria from the legal definition of national minorities, elaborating certain criteria for financing national councils of national minorities, increasing participation of members of national minorities in public administration bodies and normatively regulating the work of the National Minorities Fund by adopting/amending laws and other regulations;
- 4) Reviewing the electoral system for the election of national councils of national minorities, re-examining the rules on the electoral list of members of national minorities, as well as the monitoring of the legality of the operation of national councils of national minorities;
  - 5) Consistently implementing the provisions of the Law on Local Self-Government and forming councils for interethnic relations in all nationally mixed local self-governments;
  - 6) Securing effective prevention, investigation and punishment of interethnic incidents, particularly those bearing the marks of the crime of inciting national, racial and religious hatred and intolerance, *inter alia*, through the intensified role of the council for interethnic relations at the local level, aiming for full equality;
  - 7) Combating discriminatory practices against members of national minorities in all areas, particularly through the analysis of specific cases of discrimination of members of national minorities faced by the Commissioner for Protection of Equality, Protector of Citizens and the Provincial Ombudsmen, in order to remedy the causes and consequences of their occurrence;
  - 8) Providing adequate knowledge of the language and script of national minorities in public administration bodies and local self-government bodies in order to avoid potential discrimination of speakers of these languages;
  - 9) Undertake measures for the prevention of hate speech and acts of violence or threats of violence, as well as other cases of discrimination against national minorities;
  - 10) Providing professional education of competent state bodies for familiarity, interpretation and application of laws in the field of minority policies, additional sensitization in working with members of national minorities and providing official and public authority training to recognize special situations many members of national minorities are found in (particularly Roma);
  - 11) Include in the existing programs of the educational system at all levels education and acquisition of knowledge about minority rights and fundamental characteristics of national minorities living in the Republic of Serbia, and prevent any form of segregation in educational institutions through school inspections;
  - 12) Monitoring and consistently implementing existing strategies and action plans related to national minorities, particularly the Roma, and adopting the relevant Action Plan as part of the Strategy for the Improvement of the Status of Roma, and in particular adopting general regulations regulating in more detail the application of affirmative measures for the enrolment of students of Roma nationality in secondary schools and faculties, as well as resolving issues of relocation from illegal Roma settlements;
  - 13) Ensure active participation of Roma in planning their housing needs and respecting their need and right to participate in decision-making on all issues that concern them, especially on the local government level, including relocation and method of social integration and providing conditions for social housing in accordance with international standards and guidelines for relocation of citizens from informal settlements.

#### **4.2.5. Specific Objectives**

#### 4.2.5.1. Labour and Employment

Improve the application of the principle of equality in the field of labour and employment, both in the public and the private sector, particularly regarding the prevention of different treatment in employment and at work in relation to other employed persons due to their national affiliation. The full implementation of Directive 2000/78 of the EU Council of Ministers in the field of equal treatment of employees. In order to make the exercise of the right to participation in governance and public administration more specific, regulations need to be consistently implemented and action plans need to be adopted to increase the participation of members of national minorities in public administration bodies and public services, and provide measures for the improvement of such participation and the dynamics of their implementation pursuant to the constitutional principles of equality of citizens and with regard to the national composition of the population and the adequate representation of members of national minorities during employment in state bodies, public services, autonomous province bodies and local self-government units. Regulate, through bylaws, the methods for keeping records on the number of members of national minorities employed in public administration bodies and local self-government units and adopt a plan of activities that should contribute to the increased participation of members of minorities in public administration bodies.<sup>70</sup>

#### 4.2.5.2. Public Safety and Public Information

Preventive action aimed at preventing cases of ethnic intolerance and violence by promoting national identities and cultural heritage of national minorities, as well as advancing a culture of tolerance between members of the majority and minority community. Act preventively and repressively to prevent hate speech that may lead to acts of violence and intolerance against members of national minorities.

#### 4.2.5.3. Use of Language and Script and Education

Provide efficient, complete and non-discriminatory application of laws and other regulations regarding the official use of language and script. Work on the further improvement of the legal framework regarding the official use of language and script. Provide textbooks and other teaching aids in the languages of national minorities.

#### 4.2.5.4. Preventing Discrimination against Members of the Roma National Minority

In accordance with the *Strategy for the Improvement of the Status of Roma in the Republic of Serbia and the Action Plan*<sup>71</sup> representing its integral part, particular attention should be paid to the Roma national minority and the elimination of various cases of discrimination, discriminatory practices and use of stereotypes Roma are exposed to (in education, healthcare, use of public services, access to justice, obtaining personal identification documents, proceedings before public authorities). Continue the implementation of adopted strategic documents related to members of the Roma national minority and documents providing professional instructions for the implementation of some of the envisaged measures, such as the *Guidelines for the Improvement and Legalization of Informal Roma Settlements* (2007). Work on preventing various forms of

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<sup>70</sup> This problem was also identified in the Recommendation of the Protector of Citizens no. 45-218-09 of 25/06/2009

<sup>71</sup> Government of the Republic of Serbia, *Strategy for the Improvement of the Status of Roma in the Republic of Serbia*, "Official Gazette of RS", no. 27/09.

discrimination of members of the Roma national minority (indirect, direct, hate speech, harassment, degrading treatment, etc.), and sanction perpetrators of such actions pursuant to the law. Prevent the spreading of stereotypes, hate speech and intolerance through media against members of the Roma community, stimulating discrimination, hatred and violence. Provide the Roma with an opportunity to participate in decision making regarding all issues pertaining to them, including relocation and methods of social integration pursuant to international standards for the relocation of citizens from informal settlements. Undertake measures for strengthening the capacities of the Roma community.

### 4.3. Women

#### 4.3.1. Legal Framework

The Republic of Serbia (as the legal successor of former states) ratified several important international documents related to the position, status and prohibition of discrimination against women. The key document regarding the prevention of discrimination of women was adopted by the *United Nations General Assembly*. It is the *Convention on the Elimination of All Forms of Discrimination against Women*, adopted on 18 December 1979 and coming into force on 1 September 1981. The United Nations then adopted the Optional Protocol with the Convention, in October 1999, coming into force in 2000. The Convention was ratified by the *Law on the Ratification of the Convention of the Elimination of All Forms of Discrimination against Women*, and the *Optional Protocol* was ratified in 2002.<sup>72</sup> According to the Convention, the expression “discrimination against women” denotes any difference, exclusion or limitation regarding the sex of the person, leading to or aimed at endangering or preventing the recognition, exercise or performance, by women, of human rights and basic freedoms in the fields of politics, economy, society, culture, civic life, or any other field, regardless of their marital status, based on the equality of men and women.

With the Republic of Serbia gaining European Union membership candidate status in March 2012, although it is not an EU member, when formulating anti-discriminatory goals and measures related to women as a vulnerable social group, it is worth noting *Directive 2006/54 EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*.<sup>73</sup>

The Constitution of the Republic of Serbia contains several provisions aimed at achieving full equality of men and women. The Constitution primarily guarantees gender equality and the implementation of equal opportunities policies in the Republic of Serbia, prohibits discrimination based on numerous personal characteristics, including sex, prohibits sexual exploitation, guarantees equality in marriage and the family, establishes special protection for mothers, etc.<sup>74</sup> The Constitution also guarantees the freedom of decision on giving birth<sup>75</sup> in the following way: “[e]veryone shall have the freedom to decide whether they shall procreate or not.” However, the freedom of decision on giving birth should be constitutionally determined as a right belonging

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<sup>72</sup> *Law on the Ratification of the Convention of the Elimination of All Forms of Discrimination against Women*, “Official Gazette of SFRY – International Treaties”, no. 11/81; *Law on the Ratification of the Optional Protocol to the Convention of the Elimination of All Forms of Discrimination against Women*, “Official Gazette of SFRY – International Treaties”, no. 13/2002.

<sup>73</sup> Cf. *Law on the Ratification of the Convention of the Elimination of All Forms of Discrimination against Women*, “Official Gazette of SFRY – International Treaties”, no. 11/81, Article 1.

<sup>74</sup> Cf. *Constitution of the Republic of Serbia*, “Official Gazette of RS”, no. 98/06, articles 15, 21, 26, 62, 64-66.

<sup>75</sup> Cf. *Constitution of the Republic of Serbia*, “Official Gazette of RS”, no. 98/06, Article 63.

exclusively to women. That solution is contained in the Family Law,<sup>76</sup> prescribing that “... a woman is free to decide on giving birth.”

*The Law on the Prohibition of Discrimination* establishes sex based discrimination as a special case of discrimination determined by this law.<sup>77</sup>

Sexual equality and gender equality, i.e. the prohibition of discrimination based on sex and gender, has been regulated since 2009 by a special law – the *Gender Equality Law*.<sup>78</sup> It regulates the creation of equal options for exercising rights and obligations, undertaking special measures for preventing and eliminating discrimination based on sex and gender and the procedure of legal protection of persons exposed to discrimination. The law defines the terms “sex” and “gender” and prohibits both indirect and direct discrimination based on sex. The equality of sexes, as per this law, involves equal participation of women and men in all areas of the public and private sector.

One important step forward in the field of increased participation of women in public and political life is the adoption of the *Law on the Amendments to the Law on the Election of Members of Parliament* (2011). This law prescribes that among every three candidates there shall be at least one member of the underrepresented sex. Similar provisions are envisaged by the *Law on Local Elections*.<sup>79</sup>

*The Family Law* contains basic provisions regarding the equality of men and women, the principle of equality in respecting family life, equality regardless of marital or family status, as well as the equality of spouses regarding rights and obligations. Pursuant to the obligations undertaken by Serbia through the Convention on the Elimination of All Forms of Discrimination of Women, one primary obligation of the state is to enter the principle of equality of women and men in the field of family relations in the relevant laws, as has been done.<sup>80</sup> Contrary to the Law on the Prohibition of Discrimination and the Family Law, the *Law on Foreign Nationals*<sup>81</sup> discriminates extramarital partners and prevents foreign citizens to exercise the right of temporary residence based on underage children who are citizens of Serbia.

*The Criminal Code* contains acts punishing family violence and sexual violence, while the *Law on the Criminal Procedure* regulates the rights of direct victims of criminal violations.<sup>82</sup> *The Labour Law* regulates, *inter alia*, the status and rights of employed women and prohibits indirect and direct discrimination at work.<sup>83</sup>

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<sup>76</sup> *Family Law*, “Official Gazette of RS”, no. 18/05, 72711, Article 5.

<sup>77</sup> *Law on the Prohibition of Discrimination*, “Official Gazette of RS”, no. 22/09, Article 20.

<sup>78</sup> Cf. *Gender Equality Law*, “Official Gazette of RS”, no. 104/09.

<sup>79</sup> *Law on the Amendments to the Law on the Election of Members of Parliament*, “Official Gazette of RS”, no. 36/11, *Law on Local Elections*, “Official Gazette of RS”, no. 129/07, 54/11.

<sup>80</sup> Cf. *Family Law*, “Official Gazette of RS”, no. 18/05, 72711, Article 5.

<sup>81</sup> *Law on Foreign Nationals*, “Official Gazette of RS”, no. 97/2008

<sup>82</sup> *Criminal Code*, “Official Gazette of RS” no. 85/2005, 88/2005 - corr., 107/05 - corr., 72/09, 111/09 and 121/12. *Law on the Criminal Procedure*, “Official Gazette of RS”, no. 72/11, 101/11 and 121/12.

<sup>83</sup> *Labour Law*, “Official Gazette of RS”, no. 24/05, 61/05 and 54/09, e.g. under the provisions on the prohibition of discrimination, articles 18-23, protection of motherhood, articles 89-93, maternity leave and child care leave, articles 94-100, equality of pay for the same work, articles 104, etc.



The Republic of Serbia also adopted the *National Strategy for Improving the Position of Women and Promoting Gender Equality*<sup>84</sup> in 2009, thereafter adopting the *Action Plan (2010)* for its implementation. This strategy has six strategic objectives: (1) improve the status of women and improve gender equality: exercise of the rights of women to participate in decision making equally with men; (2) root out economic inequality between men and women; (3) achieve gender equality in education; (4) improve the health of women and improve gender equality in healthcare policies; (4) prevent and combat all forms of violence against women and provide a comprehensive system of protection for women victims of violence, and (6) establish gender equality in all media, eliminate gender stereotypes and eliminate hate speech (misogyny). Likewise, the Republic of Serbia adopted the *National Action Plan for the Implementation of United Nations Security Council Resolution 1325 – Women, Peace and Security in the Republic of Serbia (2010-2015)*<sup>85</sup> and the *National Strategy for Preventing and Combating Violence against Women in the Family and Partner Relations (2011)*.<sup>86</sup>

### 4.3.2. Overview of the Situation

#### 4.3.2.1. Legal and Factual Status of Women

The analysis of the legal and factual status of women in certain areas indicates that women are as of yet not equal to men, reflected through still frequent cases of discrimination of women in various areas.

The necessity and need for the further improvement of the legal framework and its harmonization with international standards, along with the incomplete and insufficient implementation of the valid, and/or the incomplete implementation of adopted strategies and action plans, are one of the reasons for the unequal status and discrimination of women.

Another factual reason stems from existing, traditional, patriarchal social stereotypes as indicated by the Report of the Commissioner for Protection of Equality, referencing data from the National Strategy for Improving the Position of Women and Promoting Gender Equality, 2008-2014: "... discrimination based on sex occurs mostly against women, with its key causes being the firmly rooted traditional, patriarchal stereotypes on the gender roles of women and men in the family and wider community. Available data confirm women to be in a less favourable situation than men in all areas of social life and that the negative consequences of the structural and indirect discrimination of women are visible in the public and private sphere."<sup>87</sup>

Particularly worrying, from the aspect of consequences, is discrimination against women regarding participation in decision-making, discrimination against women in the economic sphere and education, gender-based violence against women, gender inequality in media, etc. It is necessary to also keep in mind that regarding the ability to enjoy human rights under equal conditions and to a full extent, women from so-called doubly or multiply discriminated groups are particularly vulnerable, especially Roma women, women with disabilities, single mothers, refugee

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<sup>84</sup> *National Strategy for Improving the Position of Women and Promoting Gender Equality*, "Official Gazette of RS", no. 15/09.

<sup>85</sup> *National Action Plan for the Implementation of United Nations Security Council Resolution 1325 – women, Peace and Security in the Republic of Serbia (2010-2015)*, "Official Gazette of RS", no. 102/2010.

<sup>86</sup> *National Strategy for the Prevention and Combating Violence against Women in the Family and Partner Relations*, "Official Gazette of RS", no. 27/11.

<sup>87</sup> Commissioner for Protection of Equality, *Regular Annual Report for 2011*, pp. 24-25.

or displaced women, poor women, women from rural areas, women victims of violence, elderly women, women of alternative sexual orientation, etc.<sup>88</sup>

#### 4.3.2.2. Existing Legal Framework, Respect for the Legal Framework, the Need for Its Further Improvement and State of Play in Specific Fields

The Constitution of the Republic of Serbia, despite providing considerable guarantees aimed at contributing to the prevention and prohibition of discrimination of women and their equality, contains important deficiencies regarding women's decision making in regards to giving birth, since it envisages that "... [e]veryone shall have the freedom to decide whether they shall procreate or not". The freedom of deciding on giving birth should, however, be determined as a right belonging solely to women, and this solution is contained in the *Family Law*, prescribing, under Article 5, that "the woman has the right to freely decide on childbirth."

Although the *Family Law* contains considerable clauses aimed at providing equality between women and men, in practice they exist only *de jure*, but not *de facto*, therefore leading to a need to introduce a number of measures and changes that stimulate (mandate) men to undertake family obligations. Protection from family violence is still insufficiently efficient, while existing laws and regulations still need to be consistently implemented and improved. The Ministry of the Interior therefore drafted the Special Protocol on the Actions of Police Officers in Cases of Violence against Women in the Family and Partner Relations, with its adoption expected in 2013. The factual situation indicates women spend considerably more time than men in doing unpaid housework. Home budgets are centralised, and strategic money management is mostly in the hands of men.<sup>89</sup> Workplace absence due to newborn care is annually used by 33,000 women and only 10-15 men.<sup>90</sup> Of all the employees in 2010, women were absent from work due to child care in 77% of the cases, while in 63% of the cases women worked shorter hours due to lack of childcare services.<sup>91</sup> Single parents (women comprise 77%) have difficulties exercising their legal right to child support, with 90% of the perpetrators of failing to provide child support being men.<sup>92</sup>

Family violence is still widespread. Among adult registered victims of family violence in the social protection system women comprise 79.6% of the victims,<sup>93</sup> while victims of adults legally convicted of the crime of family violence are women in 75% of the cases.<sup>94</sup> Women and girls are exposed to other forms of gender based violence more frequently, such as sexual abuse, rape, stalking, violations due to customary practices and so called "honour", human trafficking. The system of protection and support for victims of gender based violence is insufficiently developed, existing protection is inefficient, and the existing legal regulations need to be amended, consistently implemented and further improved.

*The Criminal Code*, containing acts punishing family violence and sexual violence, should be amended by new acts and provisions in order to establish the most adequate institutional system of protection for women and children, pursuant to Conventions ratified and acceded by the

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<sup>88</sup> Commissioner for Protection of Equality, *Regular Annual Report for 2011*, p. 25.

<sup>89</sup> UNDP, 2007, *Status of Women on the Labour Market in Serbia*, p. 76

<sup>90</sup> Data obtained at the Sector for Family Care and Social Protection of the Ministry of Labour and Social Policy, 9/2/2012

<sup>91</sup> Republic Statistical Office, *Women and Men in the Republic of Serbia*, 2011

<sup>92</sup> Republic Statistical Office, <http://webzrzs.stat.gov.rs>

<sup>93</sup> Republic Institute for Social Policies, *Report on the Work of Social Work Centres in Serbia in 2011*

<sup>94</sup> Republic Statistical Office, *Women and Men in the Republic of Serbia*, 2011.

Republic of Serbia.<sup>95</sup> *The Law on the Criminal Procedure*, although regulating the rights of direct victims of crime to an extent, needs to be further harmonized and aligned with *Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime*.<sup>96</sup>

It should be noted that some of the acts, which are primarily related to the promotion of cooperation and operation of certain public authorities relating to domestic violence cases, have in the meanwhile been adopted. Thus, the Ministry of Labour, Employment and Social Policy, the Ministry of Interior and the Ministry of Health have adopted, in accordance with the obligations set forth in the General Rules of Procedure and Cooperation of Institutions, Agencies and Organizations in a situation of violence against women in the family and in intimate relationships, special protocols of treatment, which define the procedures and content of the employees work in institutions in cases of violence against women in the family and in intimate relationships, as well as ways of cooperation in these systems and between systems, which will certainly lead to more effective combating of these forms of violence in the future.

Although the *Labour Law* regulates the status and rights of employed women to an extent, cases of discrimination against women are still present in this field. The very *Labour Law* contributes to this to an extent, as the basic law in this field, since certain provisions do not clearly regulate the status and rights of employed women. Therefore this legal text needs to be improved, particularly those provisions related to the field of prohibition of discrimination, harassment and sexual harassment, mechanisms of protection of violated rights, with particular emphasis on the protection of women seeking employment and the protection of women during maternity leave and absences due to child care.

Statistical data indicate that the employment rate of the population is falling, women are less employed than men (27.7 to 41.5), the unemployment rate is higher among women (26.1 to 25.0), along with the rate of inactivity (62.5 to 44.7). The percentage of self-employed men is higher (27.9 to 12.7), while women comprise the majority in the group of assisting household members (12.3 to 4.6).<sup>97</sup> There are more men among individual farmers (77 to 23%) and women among assisting members in agriculture (71 to 21%)<sup>98</sup>. There are at least twice as many male employers than female. Other than in the finance sector, women make up most of the employees in the worst paid activities.<sup>99</sup> During 2010, highly educated women received RSD 16,368 less than highly educated men. Women on average received 18% less age related and 14% less disability related pensions than men.<sup>100</sup> Women encounter discrimination in employment more frequently, with particularly unfavourable conditions for pregnant women, mothers with children and women older than 40.<sup>101</sup> There are 52.1% of women below the poverty line, as opposed to 47.9% men.<sup>102</sup>

Although a considerable step forward was made in the field of increased participation of women in public and political life through the adoption of the *Law on the Amendments to the Law*

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<sup>95</sup> The Republic of Serbia ratified the *Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse* in 2010, acceding to the *Council of Europe Convention on the Prevention and Combat against Violence against Women and Family Violence* in 2012, that should be ratified in 2013

<sup>96</sup> Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

<sup>97</sup> RSO, *Workforce Survey*, April 2012

<sup>98</sup> RSO, *Women and Men in the Republic of Serbia*, 2011.

<sup>99</sup> *Second and Third Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination of Women*, Republic of Serbia, Ministry for Human and Minority Rights, 2010, pp. 39-49.

<sup>100</sup> RSO, *Women and Men in the Republic of Serbia*, 2011.

<sup>101</sup> *Second and Third Periodic Report on the Implementation of the Convention*, 2010, p. 41 and 48.

<sup>102</sup> *Ibid*, p. 39-49.

on the *Election of Members of Parliament* (2011), since it envisages for at least one member of the underrepresented sex to be present among every three candidates, the Law does not prescribe the duty whereby, in case of the termination of the mandate of the person of the underrepresented sex, their place should be filled by a person of the underrepresented sex.<sup>103</sup> Similar provisions are envisaged by the *Law on Local Elections*: “The electoral list shall, among every three candidates in order on the list (first three spots, second three spots, third three spots and so on, until the end of the list), include at least one candidate – member of the less represented sex on the list.”<sup>104</sup>

Changes to the laws influenced an increase in the number of female deputies in the National Assembly, from 20.4% during the 2008-2012 period, to 34% after the May 2012 elections. There are 5 female ministers in the Government of the Republic of Serbia, of the total of 18 ministries, comprising 27.8%. At the local level, there are 31.1% of women among representatives, while municipal/town councils hold a mere 15.9% of women.<sup>105</sup> The diplomatic corps of the Republic of Serbia has ten women ambassadors and four women consul generals or consuls (9.24%). The Commissioner for Protection of Equality issued a recommendation to the National Assembly of the Republic of Serbia in 2011 to provide for the participation of women in the international delegation.<sup>106</sup> Only in the “third branch of power” – courts, women were the majority among the elected judges (1,703 women of the total of 2,399 judges).<sup>107</sup>

Data in other areas are similar. For example, women comprise the majority of the population with lower education levels: 0.6% of men and 1% of women have no education, 3.5% of men and 5.6% of women have incomplete primary education, 21.9% men and 25.9% women have completed primary school, and 60.9% of men and 51.6% of women have secondary education. Simultaneously, women make up the majority of the population with higher education (10.3% versus 8.3%).<sup>108</sup> Gender segregation according to areas of education is still marked. Approximately 7% of the students in a generation abandon primary school before completion, along with 23.5% of students at the three-year and 9.3% of students in the four-year secondary school education.<sup>109</sup> Other than poverty, early marriage and pregnancy are reasons for interrupting education for girls. There are not enough gender sensitive contents in textbooks and educational materials.<sup>110</sup> Based on appeals received by the Commissioner for Protection of Equality, recommendations were issued to the Ministry of Education and Science, the National Educational Council and the Institute for the Improvement of the Quality of Education, in order to remove discriminatory contents from teaching materials and teaching practice, *inter alia* those related to gender inequality.<sup>111</sup>

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<sup>103</sup> *Law on the Amendments to the Law on the Election of Members of Parliament*, “Official Gazette of RS”, no. 28/11, Article 8.

<sup>104</sup> *Law on Local Elections*, “Official Gazette of RS”, no. 129/07, 54/11, Article 20, paragraph 3

<sup>105</sup> SCTM, *Gender Equality in Serbia* (summary data, 104 questionnaires), available: <http://rr.skgo.org>

<sup>106</sup> *Regular Annual Report of the Commissioner for Protection of Equality for 2011*, p. 52

<sup>107</sup> *Second and Third Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination of Women*, Republic of Serbia, Ministry for Human and Minority Rights, 2010, p. 34.

<sup>108</sup> Republic Statistical Office, *Workforce Survey*, 2010.

<sup>109</sup> *First National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia*, 2011, p. 144. and 147.

<sup>110</sup> Stjepanovi -Zaharijevski, D. et al, *Education for Gender Equality: Analysis of Teaching Materials for Primary and Secondary School*, UNDP, 2010; Ba evi , J. et al, *Analysis of the Gender Dimension in Higher Education Materials*, UNDP, 2010.

<sup>111</sup> Cf. Recommendation of the Commissioner for Protection of Equality to the Ministry of Education and Science of the Republic of Serbia, the National Assembly, National Educational Council and the Institute for the Improvement of the Quality of Education, no. 649/211 of 10/06/2011, for the removal of discriminatory content from teaching materials and teaching practice and promotion of tolerance, respecting diversity and respecting human rights, p 1, 8 and others.

Women are considerably less represented in the sports system: only 8.4% of employees are women, with as much as 90% of them employed in administration.<sup>112</sup> Likewise, discrimination exists in amateur and professional sports. The Commissioner for Protection of Equality filed charges to the competent court in 2011 due to the discrimination of women's football clubs in relation to male football clubs, based on the sex of players, assessing this to be a strategically important case.<sup>113</sup>

In the field of education, the coverage of women over 15 in preventive gynaecological examinations is still low (10.3% in 2007), while family planning counsellors were contacted by approximately 5% of women of fertile age. Maternal mortality, although showing a tendency of decrease, was at 5.6 during the 2000-2005 period, still more than the average for European Union countries. Approximately 4,000 women get breast cancer, and approximately 1,400 get cervical cancer. Breast cancer represents 25% of all malignant tumours in Serbia.<sup>114</sup> Thereby, since 10 December 2012, organized screenings have begun for early detection of cervical and breast cancer, with the European Commission notified. The Ministry of Health, in order to reduce the multiple discrimination of Roma women, employed 75 Roma women since 2009 as healthcare mediators in 59 healthcare centres in the Republic of Serbia.

Likewise, the discrimination of women in media is also present, both in regards their position in media companies, as well as the image of women in media content, remaining stereotypical and following the patriarchal pattern of the role of women in the family and society.<sup>115</sup>

#### **4.3.3. Overall Objective**

Harmonize the legal framework with international standards. Prevent violations of the prohibition of discrimination against women, through constitutional, legislative and regulatory reform and the monitoring of their implementation. Change the traditional, patriarchal stereotypes in gender roles and the elimination of discriminatory practices against women, particularly multiply discriminated groups of women (particularly Roma women, women with disabilities, single mothers, refugee or displaced women, elderly women, women victims of violence, women of alternative sexual orientation, etc.)

#### **4.3.4. Measures**

- 1) Improving the implementation of international treaties ratified by the Republic of Serbia, related to the prohibition of discrimination of women and gender equality;
- 2) Harmonizing the existing legal framework with standards of preventing discrimination of women contained in European Union directives, particularly Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women regarding issues of employment and occupation;

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<sup>112</sup> Cf. *Strategy for the Development of Sports in the Republic of Serbia, 2009-2013*.

<sup>113</sup> *Regular Annual Report of the Commissioner for Protection of Equality for 2011*, p. 51.

<sup>114</sup> *Second and Third Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*, Republic of Serbia, Ministry for Human and Minority Rights, 2010, p. 50-54.

<sup>115</sup> Cf. Commissioner for Protection of Equality, Opinion no. 303/2012; *Second and Third Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination of Women*, Republic of Serbia, Ministry for Human and Minority Rights, 2010, p. 25.

- 3) improving the constitutional provisions on gender equality, particularly Article 63 related to the freedom of deciding on childbirth;
- 4) Improving and securing the implementation of the Law on the Prohibition of Discrimination and the Gender Equality Law;
- 5) Improving the existing legislative framework in the field of labour and employment, personal and family life, education, healthcare and participation of women in political life, as well as protection from violence, advertisement and public information, and harmonize them with the prohibition of discrimination and the principle of equality and equal rights;
- 6) Monitoring the implementation of existing strategies and action plans regarding the status of women and secure their full implementation;
- 7) Suppressing discriminatory practices against women in all areas, particularly through the analysis of specific cases of discrimination of women encountered by the Commissioner for Protection of Equality and the Provincial Ombudsman, in order to remedy the causes and consequences of their arising;
- 8) Paying special attention to the prevention of discrimination of multiply discriminated groups of women, particularly Roma women, women with disabilities, single mothers, refugee or internally displaced women, elderly women, women victims of violence, women of alternative sexual orientations or gender identities, etc.
- 9) Endeavour on establishing and improving gender sensitive statistics;
- 10) Changing traditional, patriarchal stereotypes on the gender roles of women and men in the family and wider community in order to achieve factual equality through a proactive approach.

#### **4.3.5. Specific Objectives**

##### 4.3.5.1. Labour and Employment

Make amendments to the *Labour Act*, which would provide clear rules on the prevention of discrimination against women at work (and in the exercise of other rights in relation to work). Consistent enforcement of anti-discrimination policy instruments in the field of employment (especially national employment action plans and included measures aimed at encouraging the employment of women) and informing the public about the results of monitoring and evaluation of the effects of established measures. Ensure measures to reduce gender inequality in the labor market. Eliminate differences in pay between women and men. Prohibit discriminating conditions in employment calls and procedures, as well as discriminatory workplace conditions, including sexual harassment and blackmail. Harmonize legislation in the field of labour and employment with the standards contained in Directive 2006/54 EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

##### 4.3.5.2. Education

Within the educational system, include contents on the unacceptability of all forms of discrimination of women, including gender stereotypes, in the curricula of primary and secondary schools and higher education. Create inclusive policies in the educational system for young women and girls, particularly for multiple vulnerable groups of girls, girls abandoning the regular educational system due to early marriage or pregnancy. Create

affirmative measures for the reduction of sexual segregation in the selection of educational profiles.

#### 4.3.5.3. Sports

Provide women with equal opportunities for active engagement in amateur and professional sports, including adequate financing of women's sports clubs. Secure greater employment of women in the sports system.

#### 4.3.5.4. Political and Public Life

Undertake the required amendments of existing laws to provide for equal participation of women in the political life and eliminate obstacles leading to the discrimination and unequal status of women in that field. Secure proactive access in the affirmation of the participation of women in the political life. Secure the equal participation of women in the creation and implementation of government policies. Create the possibility of women, like men, holding public positions and undertake public duties at all levels of authority. Secure equal participation of women in the representation of the Government at the international level and the work of international organizations.

#### 4.3.5.5. Private and Family Life

Change traditional, patriarchal stereotypes on gender roles of women and men in the family and wider community. Eliminate customs and other practices founded on the idea on the inferiority of one sex. Provide for marriage to be solely based on free will and the full consent of the woman. Secure the same rights and obligations of parents in all issues relating to children. Implement joint responsibility of both parents in raising and educating children. Improve existing and introduce new public sector services providing for the harmonization of family and work obligations. Enable foreign citizens – parents to obtain the right to temporary residence in the country through underage children who are citizens of Serbia. Further development of the established comprehensive system of protection against domestic and gender-based violence, in accordance with the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, following its full implementation and ongoing provision of funds in the budget, which guarantees its sustainability.

#### 4.3.5.6. Healthcare and Reproductive Rights of Women

Secure available and adequate measures for women in healthcare, throughout their lives, particularly in the field of family planning, pregnancy, and the period after childbirth. Pay special attention to the healthcare needs and rights of women from multiple marginalized groups. Improve prevention and early detection of malignant diseases in women. Include information and education of youth of both sexes on sexual and reproductive health in the educational system. Provide available contraception, family planning counselling and information for women and men on sexual and reproductive health, as well as adequate protection of the health of women with experience of violence and women at work.

#### **4.3.4.6. Media and Advertising**

Prevent discriminatory practices in public media and advertising. Adopt adequate regulations on electronic media reporting regarding gender equality that will include measures related to the improvement of the role of media in combating discrimination against women. Introduce gender sensitive language in media.

## 4.4. LGBT Persons

### 4.4.1. Legal Framework

The rights of persons with different sexual orientation or gender identity of (hereinafter – LGBT persons - lesbian, gay, bisexual and transgender persons<sup>116</sup>) are proclaimed and guaranteed by a number of international documents, *inter alia*, by the Universal Declaration of Human Rights (1948) and other United Nations conventions on human rights.

The UN Yogyakarta principles (2007)<sup>117</sup> contain standards which governments and other UN actors should apply in the interpretation of provisions on human rights in order to stop violence, harassment and discrimination against lesbian, gay, bisexual and transgender persons, and to ensure their full equality.

On 24 March 2011, the Republic of Serbia signed the Joint Statement on ending acts of violence and related human rights violations based on sexual orientation and gender identity submitted to the UN Human Rights Council by Columbia on behalf of 85 member states of the United Nations. Due to this document, these 85 countries also issued special and rather pronounced announcements (some of them as a warning to those ready for violence against persons with different sexual orientation), placing their country among those that respect human rights of all individuals and minority communities.

Having obtained candidate status and despite not being an EU member, in formulating anti-discriminatory objectives and measures related to LGBT persons as a vulnerable social group, we should start from specific primary and secondary sources of EU law directly or indirectly referring to LGBT persons. First, it should be noted that the Treaty on the European Union empowers the Union to adopt measures for combating discrimination based, *inter alia*, on sexual orientation, as well as measures relating to the promotion of the principle of equality.<sup>118</sup> Then, the

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<sup>116</sup> LGBT – a broader acronym for lesbians, gay men, bisexual, transsexual, transgender, intersexual and queer individuals. The term “queer” was in the English language first used as a jargon term having a homophobic note. “The initial use of the term in English referred to something that is strange, weird and disturbed. Later, in informal speech, it signified a male homosexual. The International Lesbian and Gay Association (ILGA) adopted this term to refer to gay men, lesbians, bisexuals, transvestites and transsexuals. In accordance with its linguistic philosophy, the ILGA translates this negative term into a neutral one, thus reducing a number of negative terms related to the persons who disrupt norms with their sexuality”. (Mršević, Dictionary of Basic Feminist Concepts, Belgrade: IP Žarko Albulj, 1999, 69). Today, it is used in its original form as it contains several meanings and also denotes, for example, persons whose sexual orientation and gender identity are ambiguous, strange, vary or deviate from the stereotypical images of the appearance, behaviour, sexual and emotional practices, in short, persons with nonheteronormative sexual existence.

<sup>117</sup> The document was adopted in Yogyakarta, Indonesia, at the UN meeting from 6 to 9 November 2006, as guiding principles in interpreting provisions on human rights. (The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity). <http://www.yogyakartaprinciples.org/>

<sup>118</sup> Cf. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal, 2007/C 306/01, Art 1.3, Arts 5-6



European Charter on Human Rights is also important as it prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, affiliation with a national minority, property, birth, disability, age or sexual orientation. In terms of the secondary legislation, it is particularly important to mention the Directive 2000/43/EC and Directive 2000/78/EC prohibiting direct or indirect discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation. After the entry into force of Directive 2000/78/EC, EU member states, which previously had not done so, were obliged to harmonise their legislation with this Directive. They regulate access to employment, working conditions, compensation for work, and employment-related rights and benefits associated with employment, and the European Commission did not allow any exclusion of sexual orientation as a basis for discrimination from internal labour and legal regulations of member states.

The Resolution on Homophobia in Europe, adopted by the European Parliament in 2006, strongly condemns homophobia and discrimination based on sexual orientation in EU member states and invites all European institutions and EU member states, as well as candidate countries for EU membership, to immediately stop current processes of discrimination based on sexual orientation and to promote and protect human rights of all persons concerning their sexual orientation. The new Resolution was adopted in 2012.<sup>119</sup>

The Constitution of the Republic of Serbia contains a number of provisions relating to the prohibition of discrimination. According to the Constitution, ...“*All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited*”. “Sexual orientation” in the Constitution is not explicitly mentioned as one of the personal characteristics, but is non-explicitly included in the formulation “on any grounds”.<sup>120</sup>

*The Law on the Prohibition of Discrimination* (2009), in the definition of the term “discrimination”, explicitly determines sexual orientation as one of the personal characteristics marking, in terms of terminology and practice, a significant progress in the protection of LGBT persons (Article 2). Also, *the Law on the Prohibition of Discrimination* recognises discrimination on the grounds of sexual orientation as a special form of discrimination. Article 21 of the Law envisages that sexual orientation shall be a private matter, and no one may be called to publicly declare his/her sexual orientation, and everyone shall have the right to declare his/her sexual orientation, and discriminatory treatment on account of such a declaration shall be prohibited.<sup>121</sup>

Other laws also contain anti-discriminatory provisions with explicit reference to sexual orientation as a basis for anti-discrimination protection or (insufficiently explicitly) by stating “other personal characteristics”. *The Law on Broadcasting* envisages that the Republic Broadcasting Agency shall ensure that broadcasters’ programmes do not contain information inciting discrimination, hatred or violence against an individual or a group of individuals on the grounds of their different sexual orientation. Also, the same Law imposes an obligation on public broadcasting service carriers stating that they shall, in their news programme production and

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<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

<sup>119</sup> European Parliament Resolution on the Fight against Homophobia in Europe, 2012/2657 (RSP) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2012-0234+0+DOC+XML+V0//EN>

<sup>120</sup> Constitution of the Republic of Serbia, “Official Gazette of RS”, no. 98/06, Art. 21

<sup>121</sup> Cf. *The Law on the Prohibition of Discrimination*, “Official Gazette of RS”, no. 22/09, Art. 2, Art. 21

broadcasting, abide by the principles of impartiality and fairness in treating different political interests and different persons, uphold the freedom and pluralism of the public expression of opinions, and prevent any form of racial, religious, national, ethnic or other intolerance, or hatred or intolerance on the grounds of sexual orientation. *The Law on Higher Education* envisages that all individuals who have previously completed secondary education shall have the right to higher education regardless (*inter alia*) of their sexual orientation. *The Law on Public Information* prohibits hate speech as well as publishing ideas, information and opinions inciting discrimination, hatred and violence against an individual or a group of individuals also due to their sexual orientation. *The Labour Law* prohibits both direct and indirect discrimination against persons seeking employment and employees in respect of their sexual orientation. *The Law on Youth* prescribes that all young people shall be equal and any unjustified difference made between or any unequal treatment of young people, direct or indirect, on any grounds, in particular on the grounds of sexual orientation and gender identity, shall be prohibited. *The Law on Social Welfare* envisages the principle of the prohibition of discrimination against social welfare beneficiaries also on the grounds of sexual orientation. *The Law on Advertising* envisages that advertising may not directly or indirectly encourage discrimination on any grounds, without explicitly mentioning sexual orientation and gender identity. *The Law on Sports* prohibits any direct or indirect discrimination against athletes in sports activities without mentioning sexual orientation and gender identity other than in terms of a personal characteristic.<sup>122</sup>

#### 4.4.2. Overview of the Situation

##### 4.4.2.1. Status of LGBT Persons

The issue of preventing discrimination against persons on the grounds of their sexual orientation and gender identity (LGBT persons) is a sensitive topic in the Serbian public. Different forms of discrimination, violence and threats against LGBT persons still exist. Public and private expression of homophobia and hate speech, and open forms of violence motivated by hostility towards non-heterosexual persons are the most common forms of discrimination and violations of human rights of LGBT persons. LGBT activists often point to this in Serbia as well as reports on the human rights situation in domestic and foreign organisations. LGBT persons are faced with a high level of homophobia in the society and social distance, as reported in some studies, for example, reports of the Belgrade Centre for Human Rights over several years.<sup>123</sup> Similar data were also stated in reports of other organisations such as, for example, Gay-Straight Alliance in 2010 and 2011, and Labris in 2009, 2010 and 2011.<sup>124</sup> Also, the publication “LGBT People and Security Sector Reform in the Republic of Serbia” states the following: “... The topic of security for members of the LGBT population is an integral part of their daily lives, as their fear from

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<sup>122</sup> Cf. *Law on Broadcasting*, “Official Gazette of RS”, nos. 42/02, 97/04, 97/04, 76/05 and other, Art. 21, 79; *Law on Higher Education*, “Official Gazette of RS”, no. 85/05, Art. 8; *Law on Public Information*, “Official Gazette of RS”, nos. 43/03, 61/05, Art. 38; *Labour Law*, “Official Gazette of RS”, nos. 24/05, 61/05, 54/09, Art. 18; *Law on Youth*, “Official Gazette of RS”, no. 50/11, Art. 5; *Law on Social Welfare*, “Official Gazette of RS”, no. 24/11, Art. 25; *Law on Advertising*, “Official Gazette of RS”, no. 79/05 Art. 7; *Law on Sports*, “Official Gazette of RS”, no. 24/11, Art. 10

<sup>123</sup> Thus, research was published in the Report for 2004 determining a high level of homophobia, as 53% of the population stated that there is discrimination against and boycott of homosexuals. There is no tolerance as 48% of the respondents said that they would mind having persons with homosexual affiliations living in their neighbourhood, 63% would oppose to placing of a gay man or a lesbian on a managing position, 64% do not want to socialise with them, and 75% would not like a homosexual to be a teacher of their children.

<sup>124</sup> *Are We Equal? – Cases of Violence and Discrimination against LGBTIQ Persons for 2011*, Labris – Lesbian Human Rights Organisation, Belgrade, 2012  
<http://www.labris.org.rs/izdanja/slucajevi-nasilja-i-diskriminacije-prema-lgbtiq-osobama-u-2011-godini.html>

becoming victims of violence restricts their freedom of movement, choice, and style of clothing.<sup>125</sup> In addition, data obtained from the Commissioner for Protection of Equality from 2012 indicate the fact that LGBT population is poorly perceived in Serbia, 80% of the citizens would not like to have them in their family, 50% for their friends, and one third does not want them for their neighbours or colleagues.

After the adoption of the Law on the Prohibition of Discrimination, the situation has changed for the better, but there are still major obstacles in the implementation of the Law. Now, Serbia has a better legal framework for combating discrimination, however, elimination of discrimination and homophobia is an objective yet to be achieved.

#### *4.4.2.2. Respecting the Legal Framework, the Need for Its Further Improvement and State of Play in Specific Fields*

The Government of the Republic of Serbia is showing willingness to ensure the right to freedom of assembly for citizens with different sexual orientation and gender identity. Practice has also shown professional progress of members of the police in protecting LGBT persons from violence. According to the Constitution of the Republic of Serbia, citizens may assemble freely, and assemblies held indoors shall not be subject to permission or registering. The Law on Citizens' Assembly determines a procedure for exercising the right to peaceful assembly outdoors that is subject to the registration principle. Also, the Law determines that "...the competent authority may ban a public meeting to prevent interference... with the safety of people and property..." which has usually been the basis for the prohibition of holding the "Pride Parade", as the competent authority could not control violence against participants expressed by fan and extremist groups.<sup>126</sup> Safety, particularly with regard to the exercise of the right to peaceful assembly is the most important priority in terms of LGBT persons. Without achieving complete safety, there can be no progress in the improvement of their legal and social status. The obligation of the state to protect all citizens from violence without discrimination should be met fully, and this requires more efficient operation of the police, judiciary and prosecution.

*The Law on Healthcare*, then *the Law on Higher Education* and *the Law on Employment and Unemployment Insurance* contain significant anti-discrimination provisions. However, none of these laws explicitly state "sexual orientation" and "gender identity", which should be changed with their amendments. An exception to the rule is the *Labour Law* explicitly prohibiting discrimination also in respect of sexual orientation in Article 18 (but not in respect of gender identity).<sup>127</sup>

In some cases it is still difficult to detect discrimination against LGBT persons. Such is, for example, the case of recognising the legal status of transsexual persons and/or recognising their newly acquired sex and new name for the purposes of ensuring legal continuity they commenced with the hormonal and surgical procedure. In terms of transsexual persons, there are no legal solutions to protect their rights and clearly ensure a quick change of identity documents.

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<sup>125</sup> *LGBT People and Security Sector Reform in the Republic of Serbia*, OSCE Mission to Serbia, Belgrade, 2012

<sup>126</sup> Cf. *Constitution of the Republic of Serbia*, "Official Gazette of RS", no. 98/06, Art. 54, *the Law on Citizens' Assembly*, "Official Gazette of RS", nos. 51/92, 53/93, 67/93 and 48/94, Official Journal of FRY, no. 21/2001 – decision of the Federal Constitutional Court, Art. 11

<sup>127</sup> Cf. *Law on Health Care*, "Official Gazette of RS", nos. 107/05, 72709, 88/10, 99/10, 57/11, Art. 20, *Law on Higher Education*, "Official Gazette of RS", no. 85/05, Art. 4; *Law on Employment and Unemployment Insurance*, "Official Gazette of RS", no. 71/03, Art. 1. para. 1, *Labour Law*, "Official Gazette of RS", nos. 24/05, 61/05, 54/09, Art. 18

The current uneven practice relating to this issue has also led to the denial of numerous other rights to transsexual persons such as, for example, the right to work, and transsexual persons have been subjected to inappropriate treatment by the employees in competent administrative authorities. All statuses of transgender persons are questionable, marital and parental relationships, employment, the issue of violence motivated by hatred, continuation of education, etc. Younger transgender persons are permanently being bullied by people from their environment and peers, particularly in primary and secondary schools, which is why they abandon education. Since the issue of the status of transsexual persons is still legally unregulated, amendments and additions need to be made to the existing legal framework referring or applying to these individuals.<sup>128</sup> Regarding the status of transsexual persons, two decisions are important for contributing to the improvement of their status: *Commissioner v. Faculty of Law in Belgrade* requiring change of name of a transsexual person<sup>129</sup>, and *Constitutional Court v. Municipality* regarding a name change after a sex change.<sup>130</sup> Since these decisions create new institutional practice, they must be entered in the legal text. In the field of healthcare, the Ministry of Health has taken specific steps: establishing a Commission in the Ministry of Health (consisting of a surgeon, endocrinologist, psychiatrist, lawyer, urologist), and developing guidelines: *Approaches to Sex Change of Transsexual Persons*, in June 2012. They were forwarded to the Republic Health Insurance Fund (RHIF), which resulted in the allocation of funds for a sex change in the RHIF financial plan (RHIF bears two-thirds and the patient one-third of the costs).

The right to education must be effectively enjoyed without discrimination on the grounds of sexual orientation or gender identity. A certain amount of misunderstanding in terms of LGBT persons still exists in this field. This is visible in specific analyses of textbooks for primary and secondary schools produced during the last ten years in Serbia.<sup>131</sup> Also, one of the recommendations of the Commissioner for Protection of Equality sent to the Ministry of Education and Science of the Republic of Serbia, National Council and Institute for Improving the Quality of Education referred to taking necessary measures to ensure implementation of affirmative and correct representations of same-sex sexual and emotional orientation,

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<sup>128</sup> Conclusions made in the Recommendation of the Joint Working Group of the Commissioner for Protection of Equality and the Protector of Citizens on the analysis of legal regulations relevant for transsexual persons, Belgrade, 2012

<sup>129</sup> *Commissioner v. Faculty of Law in Belgrade*, Case no. 297/2011 of 24 February 2012. The Commissioner concluded, in the opinion "... that equal treatment of persons who changed their name due to a sex change and persons who changed their name for other reasons is not allowed, because, although the Faculty of Law had a justified and lawful objective, means for achieving the objective were inappropriate and unnecessary, that is, taken actions were disproportionate to consequences, thus, in the specific case, the Faculty of Law committed an act of indirect discrimination".

<sup>130</sup> During the 6<sup>th</sup> session of the Second Great Council, the Constitutional Court of the Republic of Serbia adopted a decision in case UŽ-3238/2011 on adopting a constitutional appeal of the appellant X and found that the Municipal Administration Y, with the adoption of the conclusion on the actual incompetence, failed to decide on the request of the appellant to change gender information and, thus, violated his right to dignity and free development of personality guaranteed by Article 23 of the Constitution, as well as the right to respect for private life guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In this specific case, the Constitutional Court determined that the appellant, registered in registers of births as a woman, underwent a sex adjustment, and that today, he lives in the society as a man, but is still treated as a woman in legal terms, and that an undoubtedly existing gap between the factual and legal situation is affecting the life of the appellant, particularly his human dignity and free development of his personality...

<sup>131</sup> *Towards a Non-homophobic Secondary School. An Analysis of a Portion of Secondary School Textbooks in Relation to the Treatment of Homosexuality*. Editor: Dušan Maljkovi . Belgrade, 2008. This collection contains a qualitative and quantitative analysis of textbooks in Sociology, Art History, Philosophy, Biology, Psychology and Constitution and Rights of Citizens, listing numerous examples illustrating the existing situation in education.

transgenderness, transsexuality and intersexuality in all textbooks (of both natural and social sciences).<sup>132</sup> Lately, such practice has been increasingly changing through the work of specific public authorities.

In the field of workplace relationships, education and healthcare, there are cases of discrimination against LGBT persons in practice (harassment in the workplace by superiors and colleagues, use of discriminatory language in official communication, belittling and insulting, etc.)<sup>133</sup> Many LGBT persons keep their sexual orientation and gender identity a secret at the workplace, in school or in healthcare facilities because they feel they will be condemned by the environment, stigmatised, and that their public declaration will reflect on their employment and legal status.

Another issue that is a taboo topic in Serbia in terms of LGBT persons is the issue of civil unions. It is important to consider legal recognition of such unions in the form of a registered partnership that would regulate mutual rights and obligations of partners and their recognition in various official communications. For example, this would enable implementation of a number of legal provisions such as inheritance, retirement, civil, family and provisions regulating different procedures, for example, criminal and administrative proceedings, visits to hospitals and jails. Essentially, the current legal framework of the Republic of Serbia in this field is not harmonised with the principle of equal treatment, and brings LGBT persons to an unequal position which calls for certain amendments of the existing legal framework, and Constitution of the Republic of Serbia in the future.

During the Initial Seminar of the Office for Human and Minority Rights and the Council of Europe, held in mid-December 2012, it was pointed out that the family situation of LGBT persons is complex. It has increasingly become common that young LGBT persons, when their parents and family members learn about their sexual orientation, are ostracised and thrown out of their home and family. These are most often juveniles and young adults, many of whom did not finish their education and/or are unemployed, and therefore they usually end up as homeless persons. At this time, there are no preventive measures to prevent this problem or measures to ensure non-discriminatory housing conditions.<sup>134</sup> Safe houses still do not exist as a form of temporary housing of LGBT persons in the Republic of Serbia.

Spreading, promotion and incitement of hatred and other forms of intolerance towards LGBT persons at public meetings, in the media and on the internet, as well as through hate graffiti and in other ways, is still common.

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<sup>132</sup> Recommendation that the Commissioner for Protection of Equality sent to the Ministry of Education and Science of the Republic of Serbia, National Assembly, National Council of Education and Institute for Improving the Quality of Education, no. 649/211 of 10 June 2011 on elimination of discriminatory contents from teaching materials and teaching practice, and promotion of tolerance, respect for diversity and human rights, p. 2, 10-11

<sup>133</sup> Valid judgement of the Appellate Court in Novi Sad identifying discriminatory behaviour and severe discrimination against . . . (25) from Vršac by his colleague D.K. (26) from Vljakovac, pronounced on 9 January 2013. Discrimination was performed for several consecutive months at a workplace in a private company in Vršac where both of them were employed. <http://www.e-novine.com/drustvo/77208-Potvrena-presuda-teku-diskriminaciju-radnom-mestu.html>

<sup>134</sup> At the Initial Seminar of the Council of Europe and Office for Human and Minority Rights of the Government of the Republic of Serbia held on 13 December 2012, several participants indicated an increased risk of homelessness of LGBT persons rejected by their families.

Previous national and international reports clearly indicate an increased vulnerability of persons with non-heterosexual orientation in situations when they are, at the same time, members of national minorities (the Roma minority in particular) and other marginalised and traditionally discriminated groups such as, for example, persons with disabilities, religious minorities, single mothers, unemployed persons, etc. There is a need to take measures based on laws, bylaws and policies to prevent discrimination on multiple grounds.

#### **4.4.3. Overall Objective**

Harmonise the legal framework with international standards. Prevent violations of the prohibition of discrimination against LGBT persons through constitutional, legislative and regulatory reforms, and adopt policy documents. Eliminate or reduce discriminatory practices against LGBT persons in different fields. Provide conditions for the implementation of the Law on the Prohibition of Discrimination in the part referring to discrimination against LGBT persons. Amend public policies in specific fields that can be the “source of discrimination” against LGBT persons. Institutional protection of LGBT persons from public and private violence, particularly in the field of labour and employment, healthcare and social system, personal and family life, education, sports, etc. Change the traditional and negative stereotype of LGBT persons. Prevent and punish hate speech and physical attacks on LGBT persons. Improve the status and position of LGBT persons.

#### **4.4.4. Measures**

- 1) Harmonising the existing legal framework with standards for the prevention of discrimination against LGBT persons contained in the Treaties and directives of the European Union and other international documents;
- 2) Ensuring full exercise of the right to peaceful assembly, both outdoors and indoors, for LGBT persons by providing mechanisms for the protection of participants in such assembly and acting preventively towards identifying potential safety threats and their elimination;
- 3) Determining mandatory “recognition” of sexual orientation and gender identity as one of the personal characteristics in creating future and amending existing laws that contain anti-discrimination provisions;
- 4) Improving position of transsexual persons by amending a larger number of laws (the Law on Registers of Births, Marriages and Deaths, the Family Law, the Law on Pension and Disability Insurance, the Law on Foundations of the Education System, the Labour Law, etc.), and prescribing effective procedures for changing the name and sex of transsexual persons or regulating them with a special law, or regulating all the issues related to the status of transgender (including transsexual) persons with a special law (taking into account the principle of legal continuity and identity, rights and obligations of a transsexual person, and relevance of newly obtained sex);
- 5) Continuing with ongoing monitoring of contents of textbooks and other teaching supplementary materials for primary and secondary schools and universities for the purposes of eliminating possible discriminatory contents related to sexual orientation and gender identity;
- 6) Combating discriminatory practice against LGBT persons in all fields, in particular by analysing specific cases of discrimination against LGBT persons faced by the Commissioner for Protection of Equality, Protector of Citizens and Provincial Ombudsman for the purposes of eliminating the causes and consequences of their occurrence;

- 7) Providing training and systematic education of civil servants and employees in the public sector about the application of anti-discrimination regulations on sexual orientation and gender identity, and about additional sensitisation of employees encountering LGBT persons (in education, healthcare, police and other fields);
- 8) Considering possible amendments in the field of family and inheritance law granting the right to a registered partnership/civil union to same-sex partners and regulating the right to legal inheritance;
- 9) Providing temporary care for LGBT persons who are, by being condemned by the environment due to their personal characteristic, abandoned by their family and environment;
- 10) Preventing the spread, promotion and encouragement of hatred and other intolerance to LGBT persons, regardless of whether they are expressed at public meetings, in the media and on the internet, through hate graffiti, and in other manners;
- 11) Promote the culture of tolerance for a broad range of citizens against LGBT people and promote dialogue between civil society and government bodies in order to improve the situation of LGBT people and achieve equality in accordance with the standards established by the existing legal framework
- 12) Encourage and promote LGBT culture and other activities that empower the LGBT community, its positive visibility and social inclusion.

#### **4.4.5. Specific Objectives**

##### *4.4.5.1. Freedom of Peaceful Assembly, Freedom of Expression, and Political and Social Participation of LGBT Persons*

Enable organisation of public manifestations in accordance with positive regulations and ensure safety of participants before, during and after an event. Take preventive and protective measures for ensuring the safety of participants of peaceful public meetings organised in favour of human rights of lesbians, gays, bisexual and transsexual persons against any attempts of unlawful interference or prevention of effective exercise of their right to free expression and peaceful assembly. Take preventive actions for the purposes of preventing any attempt of threat, attack or disruption of the organisation of such public meetings. Educate about the rights of LGBT persons. Provide non-discriminatory conditions for political participation of LGBT persons in political parties, representative bodies, security institutions, independent institutions for human rights, and local self-governments.

##### *4.4.5.2. Private and Family Life*

Consider introducing amendments to the existing legal framework in the field of family and inheritance law, which would legally regulate partnership relations between LGBT persons, and which would grant the right to a registered partnership/civil union to same-sex partners and, consequently, the right to legal inheritance, and other mutual rights and obligations. Regulate the process of sex adjustment in a manner enabling and ensuring easier and more accessible necessary medical treatment and legal recognition of the acquired sex. Protect data on sexual orientation and gender identity as particularly sensitive personal data.

##### *4.4.5.3. Labour and Employment*

Non-discriminatory employment and work at a public employer and in the private sector. Effective protection against discrimination based on sexual orientation or gender identity in employment and occupation in the public and private sector. Use of non-discriminatory language and behaviour towards persons of actual or perceived non-heterosexual orientation and transgender persons. Confidentiality and protection of gender identity and sexual orientation data during work or employment. Enable education directly in the working environment and, thus, help employers understand the need for, and manners of protection of the LGBT population.

#### *4.4.5.4. Education*

Ensure that the right to education is effectively enjoyed without discrimination on the grounds of sexual orientation, assumed sexual orientation or gender identity. Specifically ensure protection of the right of children and youth to education in a safe environment, without violence, harassment, social exclusion or other forms of discriminatory or degrading treatment based on sexual orientation or gender identity. Raise awareness through the educational system about the fact that all people are equal and that LGBT persons are also included in the circle of equal people. There is a need to promote mutual tolerance and respect regardless of sexual orientation, perceived sexual orientation or gender identity. Provide objective information about sexual orientation and gender identity in school curricula and textbook material. Provide support and assistance in classes to LGBT pupils and students, as well as protection of teaching staff against discrimination, harassment, dismissal, due to actual or perceived sexual orientation and gender identity.

#### *4.4.5.5. Health and Healthcare*

Raise the level of received information and awareness of people, institutions, youth, media, etc. about homosexuality not being a contagious disease but a minority variety of human sexuality, and about the absence of danger of the spread of homosexuality by talking about the topic openly and without prejudice. It is necessary to actively work against discriminatory and unlawful practice of treating homosexuality and transgenerness as a health problem. Prevent the occurrence of discriminatory practices leading to discrimination in the field of healthcare due to sexual orientation or gender identity. Provide effective access for transgender persons to sex adjustment services, including psychological, endocrinological and surgical expertise.

#### *4.4.5.6. Social Welfare*

Accredit programme for the education of personnel engaged in the field of social welfare for the purposes of improving the quality of services provided to LGBT persons. Standardise a social service that will be in accordance with the needs of the LGBT population and their family members, particularly to prevent them from becoming homeless. Take specific measures in the field of social care in terms of LGBT persons and their protection from domestic violence.

#### *4.4.5.7. Sports, Housing and Cross-Discrimination*

There is a need for legal provisions against discrimination and elimination of LGBT athletes from sports at all levels, as the existing legal provisions do not adequately protect athletes from discrimination. Ensure that all sports activities and facilities are accessible without discrimination on the grounds of sexual orientation and gender identity, and stadiums and other arenas stop being places of mass “allowed” expressions of homophobia and transphobia as a form of hate speech. Ensure non-discriminatory use of apartments by LGBT persons and a possibility of non-



discriminatory legal inheritance of property rights regardless of sexual orientation and gender identity. Prevent discrimination against LGBT persons on several grounds.

## **4.5. Persons with Disabilities**

### **4.5.1. Legal Framework**

A larger number of international documents today refer to the prevention of discrimination against persons with disabilities. The most important is the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention ratified by the Republic of Serbia in May 2009.<sup>135</sup> Prior to the adoption of the Convention by the UN General Assembly, an important part was played by the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, although not legally binding for member states, but they had a significant moral obligation to apply them. The Republic of Serbia incorporated a significant portion of these standards to the Law on the Prevention of Discrimination against Persons with Disabilities from 2006. Both of these documents, the UN Convention and the Optional Protocol, contain provisions related to the obligation of the signatory state to take specific measures for the elimination of multiple discrimination against women and girls with disabilities.

Among the documents of the Council of Europe, with the Republic of Serbia becoming its member state in 2004, an important role is played by the revised *European Social Charter* (Art. 15) signed by the former State Union of Serbia and Montenegro in 2005, envisaging that "... persons with disabilities shall have the right to independence, social integration and full inclusion in the community life." The Republic of Serbia ratified the revised European Social Charter in May 2009. Other important documents of the Council of Europe are the Recommendations on a Coherent Policy for Persons with Disabilities, as well as the European Action Plan for Persons with Disabilities for the period 2006-2016.

Among the documents of the European Union relating to the prevention and prohibition of discrimination, Directive no. 2000/78/ES of November 27, 2000 should also be mentioned, a general framework for equal treatment of citizens in employment and work, which also devotes considerable attention to the prevention and prohibition of discrimination against persons with disabilities (related to employment and labor).

At the national level, the National Assembly of the Republic of Serbia adopted the *Law on the Prevention of Discrimination against Persons with Disabilities* in April 2006. This is the first anti-discrimination regulation in the country that comprehensively defines the term "discrimination of persons with disabilities", special forms of discrimination, and specific cases of discrimination against persons with disabilities in specific sectors of organised social life, starting from treatment before public authority bodies, to employment and workplace relationships, education, healthcare, use of public services and goods, access to public transport, inclusion in associations of citizens, and equality of organisations of persons with disabilities and protection of these persons from discrimination in marriage and family life. The law prohibits direct and indirect discrimination, victimisation, prescribes particularly severe cases of discrimination and court protection mechanisms for victims of discrimination based on disability. In early 2007, the Government of the

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<sup>135</sup> *The Law on the Ratification of the Convention on the Rights of Persons with Disabilities*, "Official Gazette of RS – International Treaties" no. 42/09

Republic of Serbia also adopted the Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia.<sup>136</sup>

Since March 2009, when the National Assembly of the Republic of Serbia also adopted the *Law on the Prohibition of Discrimination*, provisions on the mechanisms of protection from discrimination harmonised with the highest European standards in this field are also available to persons with disabilities.

The Republic of Serbia adopted the *Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia* from 2007 to 2015, also important from the aspect of discrimination prevention.

Significant improvements in the field of work and employment were made in 2009, with the adoption of the *Law on Vocational Rehabilitation and Employment of Persons with Disabilities*, which, to a large extent, follows the provisions of the above Convention. The Law enables the application of the inclusiveness principle when employing persons with disabilities by introducing the quota system, which determines employers' obligations to engage persons with disabilities or help in the process of employment of these persons through several different modalities.

Meanwhile, other laws in specific fields of importance for the improvement of the position of persons with disabilities and for the prevention of discrimination against these individuals have been adopted or revised such as, for example, *the Law on the Fundamentals of the Education System*, *the Law on Social Welfare*, the Law on Healthcare, the Law on Healthcare Insurance, etc. serving as a basis for the adoption of a whole range of general bylaws.

#### **4.5.2. Overview of the Situation**

In the field of education, *the Law on the Fundamentals of the Education System* was adopted in 2009. Through this Law, the Republic of Serbia introduced inclusive education and prevented the exclusion of children from the regular education system on the basis of their personal characteristics, while the decision on the selection of the school to be attended by a child is made by its parents.<sup>137</sup> The new Law on Social Welfare from 2011 introduced a whole set of innovations relevant for persons with disabilities: creating equal opportunities for independent life and fostering social inclusion of persons with disabilities, extension of the circle of beneficiaries of the right to custodial care and assistance, providing support to the parents taking care of their children with developmental impairments, and introduction of a range of new services for these persons to be provided by local self-government units, also including innovative services of housing with personal assistance support.

One problem significantly contributing to the discrimination against persons with disabilities is the issue of accessibility. Although the *Law on the Prohibition of Discrimination* and the *Law on the Prevention of Discrimination against Persons with Disabilities* explicitly prohibit discrimination against persons with disabilities in terms of the use of public facilities and areas, as well as public services, there is a need for amending the existing specific laws and bylaws in this field, particularly acts of local self-government units, but also a need for developing new legal texts. The Commissioner for Protection of Equality often receives complaints about discrimination

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<sup>136</sup> Government of the Republic of Serbia, *Strategy for Improving the Position of Persons with Disabilities*, "Official Gazette of RS", no. 1/07

<sup>137</sup> Cf. *The Law on the Fundamentals of the Education System*, "Official Gazette of RS", no.72/09, Art. 6, Art. 96

against persons with disabilities in this field. A large number of schools are inaccessible,<sup>138</sup> 91% of police directorates (where identity documents are obtained) are inaccessible, and an example illustrating the situation in this field is the Annual Report on the Operation of Social Welfare Centres for 2011 (where a large number of financial benefits are obtained and rights to the use of social welfare services exercised), stating that out of 160 Social Welfare Centres in Serbia, only 16% have entrance ramps, 15.5% handrails, 29% an accessible ground floor, 0% have elevators, and 14% have an accessible toilet. In respect of certain categories of persons with disabilities, there is a need to adopt new legislation such as the law on the use of a guide dog and the law ensuring to the deaf and persons hard of hearing the use of sign language in communication with others in all spheres of public life, for example, in proceedings before public authorities, as well as in the use of healthcare services, in education, etc.

The adoption of *the Law on the Prevention of Discrimination against Persons with Disabilities* provided a possibility, by referring to the provisions of the Law, to resolve problems related to access to buildings for persons with disabilities where courts and other bodies are located and where proceedings which they participate in are conducted. Namely, a problem affecting a person with a physical disability in any proceedings they are part of, is the problem of physical access to a building, to be able to participate in the proceedings. However, *the Civil Procedure Law*, *the Criminal Procedure Law* and *the Law on Administrative Procedure* do not envisage an obligation that a trial or hearing before an administrative authority should take place outside the courthouse or other public authority facility if the party is a person with disability who, due to the inaccessibility of the place where proceedings are being conducted, is unable to attend the proceedings. Procedural laws only recognise a possibility for a trial to be held outside the courthouse. In practice, this means that the problem is solved on a case-by-case basis, and that a party is forced to pay costs of the court or administrative authorities going out of the courthouse to the site. A significant problem is also the fact that none of the procedural laws recognises the term “person with disability” or regulates their rights or comments on their specific position and needs, which creates problems in practice, resolved either by broad interpretation of the law or by calling on the good will of participants instead of the law.

The new *Law on Social Welfare* introduced a whole set of innovations that should improve the position of persons with disabilities in this field. In the sphere of financial support, the circle of beneficiaries of the allowance for care and assistance of another person was extended, and the right to permanent monthly allowance for the parents with minimum 15 years of direct care for a child, who acquired the right to an increased allowance for care and assistance of another person, was granted. The Law is also based on the concept of the system of services, and introduces plurality of service providers in a local community, which should facilitate the process of deinstitutionalisation, and provide new rights for beneficiaries to participate in the assessment of their situation and decision-making, and the right to free choice of services. Groups of new services also include social welfare services for the development of beneficiary potential to live independently in the community. However, the process of the adoption of bylaws is going slow, and, according to the European Commission Progress Report on Serbia for 2012, availability of social services in the community in the whole country is still limited. A particular challenge is presented by the fact that funding of a larger number of services in the field of social welfare (such as personal companions for children, or personal assistance service, as an example of a service for independent life of persons with disabilities), is entirely transferred to local self-governments that often have insufficient funds and also lack expertise required for organising

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<sup>138</sup> According to submitted data from the Ministry of Education, certain progress has been made in the field of higher education and in student centres, however, similar activities in primary and secondary schools are only expected to be undertaken in the future.

such services in local communities, where persons with disabilities live. It should however be noted that the Law on Social Protection (Article 207) states that funding local governments from the state budget for the development of these services at the local level is provided through targeted transfers. Another challenge is also the situation in social welfare centres, where these rights are exercised, which are, as mentioned above, to a large extent inaccessible to persons with disabilities. Only 28% of them have a leaflet about beneficiaries' rights, and none of them a leaflet for blind persons, whereas beneficiaries' message boards exist only in 14% of centres. *The Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia* from 2007 to 2015 envisages sixteen specific objectives and a whole range of measures for achieving each of them. In practice, however, a significant part of measures for the achievement of the envisaged objectives is yet to be ensured, because, since the adoption of the Strategy until today, no operating Action Plan has been adopted or specific resources for its implementation allocated.

Persons with disabilities also belonging to other marginalised social groups in practice often face discrimination on several grounds (so called "multiple" discrimination). This is primarily the case with women with disabilities; children and young people with disabilities; persons with disabilities belonging to national minorities, and refugees and internally displaced persons with disabilities.

Women with disabilities suffer multiple discrimination either due to their disability or due to the socially stereotypical roles of men and women in general. It is also harder for them to gain education, find employment, they receive less pay for the same work and they are more often victims of domestic violence than women without disabilities. Discrimination is also visible in cases of reproductive health and parenting issues, and it is not uncommon in case of a divorce that children are awarded to the father and not to the mother, due to disability. Children and young people with disabilities represent a particularly vulnerable group. The Law on Social Welfare envisages that a child under the age of 3, except in exceptional circumstances, shall not be placed in social welfare institutions,<sup>139</sup> but the discriminatory practice of sending children "from the maternity ward to the institution" has not been terminated yet. Supporting services for inclusive education and equal inclusion of children and young people with disabilities in community life are still underdeveloped and not adequately defined in the budgets of local self-governments. Inadequately understood inclusion programmes direct funds to specific programmes and daily care centres where children with disabilities are separated from the majority child population and often grouped by the type of disability. According to the opinion of associations of citizens concerned with promotion, improvement and protection of rights of persons with disabilities, daycare centres, as a form of "separation", are not in compliance with the principle of inclusion. The opinion of the Ministry of Labour, Employment and Social Policy concerning this issue is the exact opposite, thus, this issue needs to be resolved in the future by experts from both sides.<sup>140</sup> Likewise, there are still no truly inclusive cultural, education and recreation programmes equally including children and young people with disabilities in peer groups and community life. Persons with disabilities belonging to national minorities also encounter multiple discrimination in exercising their rights to social welfare and healthcare, employment, inclusion in cultural and religious life of a community, in proceedings before authorities and the provision of public services. The least visible group of persons with disabilities are persons with disabilities in the population of refugees and internally displaced persons. Their number is not available, there are no data or databases about them and they often remain "invisible" in the programmes referring to this group of persons. They are not included in forming specialised services for persons with

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<sup>139</sup> *The Law on Social Welfare*, "Official Gazette of RS" no. 24/2011, Art.52, p. 2-3

<sup>140</sup> The comment of the Ministry of Labour, Employment and Social Policy, no. 011-00-00132/2013, of 14 March 2013, on the Second Draft Strategy for Combating Discrimination, p. 4-5

disabilities, and they often remain dependent on family members, preventing them from becoming independent.

A special group of persons with disabilities is made up of persons with intellectual disabilities. They are faced with specific additional problems, for example, with deprivation of working ability (and with the consequences of such a decision)<sup>141</sup>, and with being placed in specific institutions, often for life. Studies show that as many as 55% of persons with intellectual disabilities stay in institutions for over ten years.<sup>142</sup> Also, if the court decides in non-contentious proceedings to revoke working capacity, in 93.93 cases there is complete deprivation of working capacity, and only in 6.08% of the cases partially. One of the serious oversights in the deprivation of legal capacity, indicated by the European Court of Human Rights, is the lack of hearings involving the party whose capacity is being determined. Of special concern is the practice of institutions (social welfare centers) to advise parents of persons with intellectual disabilities to initiate the process of complete deprivation of working capacity for their child, and at this point not fully inform of the consequences of complete deprivation, or the possibility of partial deprivation of working capacity.<sup>143</sup>

### 4.5.3. Overall Objective

Harmonise the legal framework with international standards. Prevent violation of prohibition of discrimination against persons with disabilities by ensuring full implementation of *the Law on the Prohibition of Discrimination against Persons with Disabilities* and *the Law on the Prohibition of Discrimination*, and abolish discriminatory practices against persons with disabilities. Monitor and implement *the International Convention on the Rights of Persons with Disabilities* and *the Strategy for Improving the Position of Persons with Disabilities* in the Republic of Serbia from 2007 to 2015, emphasising the objectives leading to the adherence to constitutional and legal guarantees of the prohibition of discrimination against persons with disabilities. Establish an integral system of measures for the improvement of the position of persons with disabilities, especially of those exposed to multiple discrimination.

### 4.5.4. Measures

- 1) Improve the implementation of international treaties ratified by the Republic of Serbia relating to the prohibition of discrimination against persons with disabilities and harmonize the existing legal framework with the standards laid down in the EU Directive 2000/78/ES of November 27, 2000 on the general framework for equal treatment of citizens in employment and labor

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<sup>141</sup> More about this issue: Protector of Citizens, *Report of the Protector of Citizens for 2011*, p. 68

<sup>142</sup> Tucked Away and Forgotten: Segregation and Neglect of Children with Developmental Impairments and Adults with Intellectual Difficulties in Serbia, Belgrade

<sup>143</sup> Compare: SIPRI study, *Deprivation of work capacity, rehabilitation and employment of persons with disabilities*, Belgrade, April 2013

- 2) Ensuring application and implementation of the Law on the Prohibition of Discrimination, the Law on the Prevention of Discrimination against Persons with Disabilities, and other laws relevant for the equality of persons with disabilities;
- 3) Improving the existing legislative framework for the prevention of discrimination against persons with disabilities according to the needs determined in practice, and adopting necessary bylaws;
- 4) Monitoring implementation of the existing strategy and action plan concerning the position of persons with disabilities, and ensuring their full implementation, and working towards adoption and implementation of local action plans for persons with disabilities in local self-government units;
- 5) Combat discriminatory practices against persons with disabilities in all areas, especially through the analysis of specific cases of discrimination against persons with disabilities faced by the Commissioner for the Protection of Equality, the Ombudsman, the Provincial Ombudsman and the protectors of citizens at the local self-government level (where they exist) with the aim of eliminating the causes and consequences of their occurrence;
- 6) Ensuring dissemination of information on acts of discrimination against persons with disabilities by raising awareness about human rights of persons with disabilities, education, building capacities of professionals and employees in different fields and by conducting information campaigns against discrimination and stigmatisation of those persons;
- 7) when depriving persons with intellectual disabilities of work capacity, provide treatment in accordance with the views expressed in the judgments of the European Court of Human Rights (provide the right to a hearing, right of access, right to a fair trial, etc.), and develop the work of social welfare centers in regards to their role in the implementation of the institute of incapacity

#### **4.5.4. Specific Objectives**

Change public policies in specific fields that can be a “source of discrimination” against persons with disabilities, particularly in the field of labour, employment and vocational training, personal status and family life, abuse and neglect of education, social welfare and healthcare, provision of services and use of public land, promotion of inclusion of persons with disabilities in political and public life, and access to justice by persons with disabilities. Improve the status and position of persons with disabilities, especially groups simultaneously belonging to other minority groups exposed to discrimination: women, children, refugees and displaced persons, national minorities.

##### *4.5.4.1. Labour, Employment and Vocational Rehabilitation*

Provide conditions for the prevention of discrimination against persons with disabilities in the field of work and employment, both in public and private sector, especially for the purposes of preventing different treatment in comparison to other employees due to their personal characteristic. Through the amendment of the Act, provide employment for people with disabilities in the "open" market, since working capacity is a requirement for employment, and in many cases these people are completely deprived of work capacity, which prevents them from gaining employment.. Ensure consistent and full implementation (enforcement) of *the Law on Vocational Rehabilitation and Employment of Persons with Disabilities*. Continually ensure and increase allocations of budgetary funds for encouraging employment of persons with disabilities and their vocational training. Ensure development of the employment policy and appropriate

vocational training of persons with disabilities. Ensure physical and architectural and technical conditions for access to workplaces of persons with disabilities, as well as accessible information and communications, public transportation, appropriate support services such as, for example, work assistants or personal assistants. Encourage application of persons with disabilities to the National Employment Service. Reduce the number of registered persons with disabilities in the National Employment Service with their active employment. Conduct an assessment of living and employment conditions of refugees and displaced persons with disabilities for the purposes of identifying skills and abilities and creating conditions for persons with disabilities to independently gain necessary income for living;

#### *4.5.4.2. Personal Status and Private and Family Life*

Change discriminatory practices related to personal and family life of persons with disabilities by raising awareness about rights of persons with disabilities to sexuality, starting a family and giving birth to children, and by promoting examples of good practice. Regarding personal status, execute a legislative reform in the field of deprivation of business abilities of persons with disabilities and provide alternative solutions referring to their personal status. Provide conditions for making the family environment the primary and the best solution for a person with a disability, and strongly support the process of their deinstitutionalisation and continuous development, improvement and enrichment of support to the families of children with disabilities and developmental impairments. Provide support services for women with disabilities wanting to start a family, give birth and raise children. Provide budgetary funds for support programmes and services for women and children with disabilities experiencing domestic violence.

#### *4.5.4.3. Education*

Monitor progress in the field of inclusive education and application of *the Law on the Fundamentals of the Education System*, analyse problems and deficiencies related to its consistent application, and take measures for amendments and improvement of the relevant legislative framework in order to eliminate deficiencies, and ensure, in the further development of legislation in the field of education (laws about primary and secondary education), continuous adherence to the principles of an inclusive approach. Encourage continuation of education of persons with disabilities in accordance with their abilities. Support persons with disabilities in choosing educational profiles for the purposes of their employment and full social inclusion and for the purposes of achieving their independence, personal development and active life in all fields. Ensure that individualised support measures are provided to persons with disabilities within the education system for the purposes of achieving maximum academic and social development in accordance with the concept of an inclusive society, (including necessary budget projection at the national and local level). Continue with the removal of architectural, information-communication and other barriers in educational institutions, provide reasonable adjustments for pupils and students with disabilities, ensure adequate financial, technical and human resources for effective inclusion into the education system, including engagement of qualified pedagogical assistants. Through the amendment of the existing legal framework, solve problems of accessibility of textbooks and other teaching materials to blind and visually impaired people, which is a significant barrier to their education and further training. Develop inclusive programmes of informal education (implying equal participation of children with and without disabilities). Ensure that refugees and displaced children with disabilities have full and equal access to the education system and/or inclusive education.

#### *4.5.4.4. Social Welfare and Health Care*

Improve criteria for exercising the right to custodian care and assistance for all persons with disabilities. Provide greater support to the parents taking care of their children with developmental impairments through an analysis of possibilities for amending *the Law on Social Welfare* that would ensure a legal framework for the parent/guardian of a child (“parent caregiver”) who, due to an illness, disability or developmental impairments, requires constant parental care, to receive a special allowance in the amount of the minimum wage in the Republic of Serbia. Monitor adoption and implementation of bylaws of local self-government units referring to the provision of services. Improve services that would enable independent living of persons with disabilities, especially women and children. Take measures to ensure that local self-governments consistently perform their legal obligations of providing services at the local level, particularly services in the local community and support services for independent living, especially home care, personal companions for children and personal assistance.

Improve the level of healthcare for persons with disabilities, specially focusing on women with disabilities. Identify the number of persons with disabilities in the population of refugees and internally displaced persons, as well as the level of inclusion in the existing services designed for both refugees and displaced persons, and persons with disabilities, specially focusing on the households in rural areas. Provide access to regular services for all refugees and displaced persons with disabilities, and ensure accessibility of accommodation considering that in the Republic of Serbia part of displaced persons still lives in collective accommodation. Increase access to healthcare services including services for mental health, develop mobile care and home visit programmes and improve regulations on the provision of orthotic and prosthetic aids.

#### *4.5.4.5. Use of Public Facilities and Areas*

Take active measures for ensuring the application of *the Law on the Prohibition of Discrimination and the Law on the Prevention of Discrimination against Persons with Disabilities* in terms of the use of public facilities and areas, as well as public services, by amending existing laws and bylaws in this field. Ensure consistent adherence to the accessibility standards from *the Law on Construction and Planning*, and strengthen monitoring mechanisms at the local level, sanction investors building inaccessible facilities, contrary to legal obligations and/or consistently adhere to the accessibility standards prescribed in *the Law on Construction and Planning* when building new and reconstructing old facilities open for public. Monitor adoption and implementation of bylaws of local self-government units referring to the use of facilities and areas for persons with disabilities and adopt specific local construction plans and regulations ensuring adherence to the accessibility rules both during construction of new facilities and reconstruction of old facilities, ensure road structures and horizontal communications. Adopt laws providing use of a guide dog to blind and visually impaired persons and ensuring the use of sign language to the deaf and hard of hearing in the public sphere, for example, in proceedings before public authorities, in using healthcare services, in education, ensure that the names on buildings of important government institutions are made available in Braille, provide legal mechanisms for the recognition of facsimile as a way of endorsement for a number of persons with disabilities and so forth; provide information easy to understand by people with intellectual disabilities, etc.

#### *4.5.4.6. Access to Justice and Provision of Information*

Undertake a reform of the procedural legislative framework (procedural laws) in the Republic of Serbia paying special attention to the status of persons with disabilities in court proceedings and other proceedings before public authorities, and, thus, provide non-



discriminatory access to justice. Provide appropriate information to persons with disabilities about their rights and inform them on the measures available to them for exercising rights. Include persons with disabilities in campaigns against discrimination and stigmatisation for the purposes of raising social awareness about problems and discrimination faced by persons with disabilities.

#### 4.5.4.7 Participation in Political and Public Life

It is necessary to provide conditions which will ensure persons with disabilities equal participation in public and political life, particularly conditions for participation in political parties and all levels of public authorities as well as full participation in designing, implementing and monitoring public policies at all levels, in accordance with the obligation of public authorities to conduct the policy of equal opportunities. Particular attention should be paid to creating opportunities for the exercise of the general voting right for persons with disabilities, which also implies ensuring accessibility to polling stations and accessible information and electoral materials, in accordance with the needs of persons with different types of disabilities.

## 4.6. Elderly Persons

### 4.6.1. Legal Framework

There is still no global or European convention fully dedicated to the human rights and dignity of elderly persons. In spite of this deficiency, there are specific human rights instruments and universal international instruments which refer to “elderly persons” under specific provisions. The Universal Declaration of Human Rights of 1948, although it fails to refer to elderly persons explicitly, recognizes the right of all to security and “... in the event of unemployment, sickness, disability, widowhood, old age...”<sup>144</sup> Furthermore, elderly persons are referred to in three out of nine major international instruments regulating human rights issues. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families explicitly prohibits the discrimination on the basis of old age.<sup>145</sup> Elderly persons are mentioned in the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>146</sup> and the *Convention on the Rights of Persons with Disabilities*.<sup>147</sup>

The issues and challenges faced by elderly persons are also contained in the *Madrid International Plan of Action on Ageing* (2002) and the related *Regional Implementation Strategy* adopted by the UN Economic Commission for Europe. In early 2010, the UN Human Rights Council Advisory Committee delivered a working document on “the necessity of a human rights approach and an effective United National mechanism for the human rights of the older person”, speaking in favour of an international agreement as a framework for setting standards and a basis for reporting or supervision mechanisms. In July 2011, the Secretary General submitted a Report to the General Assembly focusing on the human rights of the elderly and identifying four major challenges faced by elderly persons in view of their human rights: 1) discrimination, 2) poverty, 3) violence and abuse and 4) lack of specific measures and services.

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<sup>144</sup> Cf. *Universal Declaration of Human Rights*, 1948, Article 2 and Article 25.

<sup>145</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, Article 7, Article 11. Note: the Convention was signed by the Socialist Republic of Yugoslavia, yet it has not been ratified.

<sup>146</sup> *Law on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, “Official Journal of the SFRY – International Treaties”, no. 11/81; Article 11.1

<sup>147</sup> *Law on the Ratification of the Convention on the Rights of Persons with Disabilities*, “Official Gazette of RS – International Treaties” no. 42/09, Art. 25.2. Art. 28.2.b.

The Constitution of the Republic of Serbia does not mention elderly persons as a specific social group, yet it recognizes age as a personal characteristic in the article referring to the prohibition of discrimination.<sup>148</sup> *The Law on the Prohibition of Discrimination* envisages discrimination on the basis of old age as a specific form of discrimination. The Law specifically envisages that elderly persons shall have the right to dignified living conditions without discrimination, and particularly the right to equal treatment and protection from neglect and harassment in using health care and other public services. The Law on the Prohibition of Discrimination is more explicit in its later provisions in terms of discrimination in the field of health status and underlines that discrimination against a person or a group of persons is when, based on their personal characteristics (including age), specific conditions are set unjustifiably or when provision of services or diagnostics is denied or information is held back on the current health status, undertaken or intended measures of treatment or rehabilitation... as well as harassment, insults and demeaning treatment during their stay in a health care institution.<sup>149</sup>

The Government of the Republic of Serbia has adopted three significant strategies which, directly or in certain segments, refer to elderly persons: the *Poverty Reduction Strategy for Serbia* (adopted in 2003 and expired in early 2008), the *National Ageing Strategy (2006 – 2015)*<sup>150</sup> and the *Social Welfare Strategy (2006-2012)*.<sup>151</sup> On the local level, according to the Standing Conference of Towns and Municipalities, local social protection strategies have been developed in 79 towns and municipalities in the Republic of Serbia<sup>152</sup>, some of which are valid through 2015, and all of which recognize the elderly as one of the three priority vulnerable groups.

It should also be noted that the National Employment Action Plan for 2013 envisages the realization of activities aimed at promoting the employment of elderly, with further sensitization of stakeholders in the labor market on the concept of active aging and employment of elderly persons based on the implementation of the Law on Mandatory Social Security (Article 45) and the Decree on the Promotion of Employment

#### 4.6.2. Overview of the Situation

##### 4.6.2.1. Status of Elderly Persons and the Need to Define the Term “Elderly Person”

The share of elderly persons in the total population of the Republic of Serbia is increasing. According to the 2011 Census, there are 1,250,316 persons aged 65 or over in the Republic of Serbia, accounting for 17.4% of the total population. The average age of the Serbian population is exceedingly high and totals 42.2 years of age.<sup>153</sup> The demographic ageing process will continue in the immediate future. Poverty and social exclusion is widespread among elderly persons, and housing conditions and consumption characteristics are more adverse among the elderly in comparison to the rest of the population. Adverse demographic trends and issues faced by the elderly impose considerable challenges for social welfare and health care, including the pension system.

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<sup>148</sup> Constitution of the Republic of Serbia, “Official Gazette of RS” no. 98/06. Art. 21.

<sup>149</sup> Cf. *Law on the Prohibition of Discrimination*, “Official Gazette of RS” no. 22/09, Art. 23, Art. 27.

<sup>150</sup> *National Ageing Strategy (2006-2015)*, website of the Government of the Republic of Serbia, [http://www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=45678](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678)

<sup>151</sup> Government of the Republic of Serbia, the *Social Welfare Strategy*, “Official Gazette of RS” no. 108/05

<sup>152</sup> Data taken from the website of the Standing Conference of Towns and Municipalities on December 23, 2012: <http://strategije.skgo.org/>

<sup>153</sup> Data of the Republic Statistical Office.

The rising number of elderly persons increases the need to respond to the specific challenges of respecting their human rights. For example, elderly persons may be particularly vulnerable when it comes to poverty, more fragile health and neglect, which very often results in a form of abuse and/or violence, most frequently taking place within the family. The reasons thereof most often are founded on the belief that elderly persons represent a burden for society and do not contribute to the community and/or their contribution is not valuable enough for the family or the community, representing prejudices and preconditions for discrimination.

The term “elderly persons” as a vulnerable group of population is not unanimously defined in different relating legal instruments. Pursuant to the Law on Health Care, all persons older than 65 have the right to free health care irrespective of the basis for insurance, whereas pursuant to the Law on Pension and Disability Insurance the age limit for retirement is 65 for men and 60 and four months for women for 2013, extending the limit for four months every year. The age limit is also present in the Law on Social Welfare. It should be mentioned that elderly persons do not constitute a homogenous group. Elderly men and women age differently and discrimination they face is multidimensional and/or based not only on age, but other factors such as gender, ethnicity, place of residence or literacy.

#### *4.6.2.2. Respecting the Legal Framework, the Need for Further Improvement and the State of Play in Specific Fields*

There is no “umbrella” law in the Republic of Serbia which would pool the various provisions of laws regulating issues relating to elderly persons, including those in relation to the prohibition of discrimination of this vulnerable group of population. Specific issues faced by elderly persons as a group constituting a significant segment of the population in Serbia raise issues of discrimination thereof.

Regarding the legal framework, at this point we shall mention the laws relating to the exercise of voting rights, which are directly or indirectly related to the exercise of voting rights of the elderly. The Single Electoral Roll Law and Guidelines for the Implementation of the Single Electoral Roll Law ("Official Gazette of RS ", No. 15/12) allow voters to vote according to their location in the country if on election day they are not in present in their place of residence. This facilitates the voters, and therefore elderly people, to exercise their right to vote taking into consideration their personal, medical, professional, and other needs. Thus, Section 8 of the Guideline, in conjunction with Article 15 of the Law prescribes registering data according to which voters in elections for deputies of the National Assembly of the Republic of Serbia or presidential election shall vote on the basis of their place of residence in the country (chosen polling places), upon a citizen's submitted request, and this is conducted according to a decision of the municipal or city government in the region where the voter resides in the country (chosen polling place). After the decision that voters shall vote in the upcoming elections according to their current location and the inclusion of this data in the voter's list, voters are either registered in the electoral roll based on their place of residence or where they are currently located.

In addition, the provisions of Art. 72, and 72a of the Law on the Election of Deputies to the Assembly("Official Gazette of RS ", no. 35/00, 57/03. - CCRS, 72/03 - other law, 18/04, 85/05 - other code 101/05 - other law 104/09 - other law, 28/11 - U.S. 36/11) provide that a voter who is unable to vote in person in a polling station (blind, disabled or illiterate person) has the right to take a person who will replace him/her in the manner that he/she determines, fill out the ballot, that is vote. In other words, the voter who is unable to vote at the polling place (helpless or

prevented person) may, not later than 11 am on election day, inform the electoral committee that he/she wants to vote.

A number of findings and studies indicate that there is age-based discrimination in the Republic of Serbia. For example, the study entitled “*Stari radnici, - nekine poslu, nekine poslunipnzi*” (“*Elderly Workers – Some at Work, Some without Employment or Retirement*”) indicates that more than 190,000 persons, out of a million unemployed persons in Serbia, are persons over 50 years of age. These persons include more than 120,000 unemployed women in their fifties. The study indicates that the generation aged 40 – 50 has suffered the major burden of the transition process and economic crises and that this generation accounts for more than a half of the dismissed workers.<sup>154</sup>

The most common form of age-based discrimination is the inaccessibility of employment for citizens over 50 years of age. This is discrimination in four areas of the labour market. The first area has been mentioned (the loss of jobs in the process of transition and restructuring). Another area is facing difficulty in finding employment for jobless workers who have previous working experience of at least 15 or often more years of experience. A third area is a scarce number of professional development programs targeting elderly workers and, finally, the fourth issue is that there is often pressure made in economic entities (companies and other organizations) to have elderly employees retired sooner so as to make jobs for younger employees. There are registered cases of elderly persons dismissed one or two years prior to their term of retirement, or cases of purchase of their remaining duration of service, in order to vacate their job as soon as possible.<sup>155</sup>

When it comes to age-based discrimination, this does not only include the discrimination against elderly persons as a specifically vulnerable group. In one case a person filed a complaint to the Commissioner for Protection of Equality on account of age-based discrimination in the employment procedure, as the open competition set a condition which stated that nurses/medical technicians should not be older than 35. It was established that, by setting this condition in the competition, the employer violated the principle of equal employment opportunities for persons older than 35, thus committing direct age-based discrimination.

There is an increasing number of cases of discrimination against elderly persons in a number of fields. This phenomenon is particularly common in using public services. An example is the business relations between banks and similar institutions and elderly persons. One such case was looked into by the Commissioner for Protection of Equality, and is mentioned in the Report of the Commissioner for 2011.<sup>156</sup> A bank refused to extend the contract on a loan against the current account to the person filing the complaint, stating the reason that the person was older than 67. It was established that the bank had committed direct age-based discrimination and a recommendation was forwarded to the bank. Furthermore, a recommendation was submitted to the National Bank of Serbia (NBS) to undertake appropriate measures within its law-prescribed competencies to eliminate discriminatory conditions of the ceiling age limit for using bank-related services, which commercial banks lay down in their general instruments. The National Bank of Serbia notified the Commissioner that it had identified that a high proportion of banks (19 out of 33) laid down the ceiling age limit for specific bank-related services in their general conditions, and that the NBS had forwarded a letter to the Association of Banks of Serbia and a

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<sup>154</sup> ih lvi S., ih lvi V., “*Stari radnici, - nekine poslu, nekine poslunipnzi*”, Center for Democracy, Belgrade, 2011.

<sup>155</sup> ih lvi S., ih lvi V., “*Stari radnici, - nekine poslu, nekine poslunipnzi*”, Center for Democracy, Belgrade, 2011, p. 85.

<sup>156</sup> Cf. Commissioner for Protection of Equality, Annual Report 2011.

recommendation to the banks to analyse and revise their General Terms so as to harmonize their general instruments with the relevant provisions of the antidiscrimination legislation, which some of the banks subsequently did.

In practice, there is a common phenomenon of neglect or abuse of elderly persons within the family, where elderly persons are exposed to discrimination directly. According to the Report on the Work of Centres for Social Work in 2011<sup>157</sup>, a total of 3,742 elderly persons were registered to have been neglected or were under risk of being neglected, 3,505 elderly persons with disrupted family relations and 910 cases of elderly persons being victims of violence. The number of registered cases in 2011 is higher in comparison to 2010, however it is certain that the centres for social work identify a significantly lower number of cases than is the case in reality, where elderly persons are severely neglected or discriminated against (for example, they do not have disposal of their retirement allowance, which is used by their family neglecting their real needs; often they do not have disposal of their property, they are placed into retirement homes against their will, etc.) The Protector of Citizens also indicated, in the Report on Supervision Conducted in Elderly Residence Homes, that predominantly the needs of the elderly person's family are kept in mind when placing an elderly person into the retirement home, such as the extension of their living space. It is also indicated that "... beneficiaries have a discernible feeling of abandonment by their children and other family members, as well as the feeling of rejection, displacement from their natural environment, the unfairness of being placed into elderly homes and inevitability (this was supposed to happen, there was no other solution)."<sup>158</sup>

In practice, there are sporadic cases where elderly persons are exposed to discrimination in institutions, such as demeaning treatment or the insulting of beneficiaries by employees.<sup>159</sup>

The existing Standards for Opening Institutions for the Elderly refer to technical aspects and/or space, equipment and the number of professionals, yet there are no standards on the qualifications and experience of the professionals in view of providing services needed by the beneficiaries of the institutions for the elderly – immobile persons, persons with dementia and persons with psychiatric or other severe chronic illnesses. Thus, there are cases of denial of human rights such as the right to privacy, to adequate care, information, decision making on protection options, appeals, contact with the external environment etc.

The Protector of Citizens has been notified of the retention of the place of residence left by the beneficiary to be placed in an institution, in spite of the fact that sometimes the beneficiary lives in the institution for years. The issue of the place of residence has impact on the exercise of the voting right as one of the fundamental rights of the beneficiary. Namely, the beneficiary must go to the polling station allocated on the basis of their address, which the beneficiary has left to be placed in the institution. This is particularly difficult with semi-dependent or fully dependent beneficiaries, as most often they are unable to go to the polling station and therefore fail to take part in elections. The Ombudsman has issued a recommendation: "It is necessary to amend the Law on Permanent and Temporary Residence of Citizens, in order to enable the beneficiaries placed in social institutions for elderly persons to have the address of the institution they reside in

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<sup>157</sup> Report on the Work of Centres for Social Work in 2011, Republic Institute for Social Protection.

<sup>158</sup> Protector of Citizens, *The Special Report of Supervision Conducted in Elderly Residence Homes in 2010*, Belgrade, 2011, p. 72.

<sup>159</sup> Protector of Citizens, *The Special Report of Supervision Conducted in Elderly Residence Homes in 2010*, Belgrade, 2011, p. 73.

entered as their place of permanent residence. Thus would the level of efficiency of the centres for social work, who are to look after the beneficiary in all segments of their rights, be raised.”<sup>160</sup>

In providing services and programs of support for elderly persons so that they may live independently in their apartment/house/local community and have a better quality of life, the issue is that services do not exist in more than a third of local communities. Support services do not exist in the majority of rural areas. Thus the rights of elderly persons, guaranteed under the Law on Social Welfare, are violated, leading to direct discrimination thereof. An additional issue is that there is insufficient coordination between the healthcare sector and the social welfare sector in providing support services in local communities, resulting in an inefficient use of existing services and reduced coverage of elderly persons who need them. Thus the poorest elderly persons are severely excluded and discriminated against, in particular those who live in rural areas. This is confirmed by some surveys which indicate that the most severely excluded are elderly persons who live on their own or in elderly households, in rural areas, who are not covered by the pension system or who do not have a regular source of income. Some 13% of these do not have health insurance and do not use health care, although the Law prescribes that all elderly persons aged over 65 have the right to free-of-charge health care, irrespective of the basis of insurance.<sup>161</sup>

It is necessary to continue enhancing prevention programs in the health care sector and ensure larger capacities for palliative care to be used by a higher proportion of elderly persons. When it comes to illnesses which occur most commonly among persons over 65 years of age (such as Alzheimer’s disease), there is insufficient access to therapy, placement and treatment services. The principle stated by the by-law<sup>162</sup> to prescribe orthopaedic devices and sanitary items solely on the basis of diagnosis instead of the health status should be amended. This was indicated by the Provincial Ombudsman: “The provisions of the Rules of Procedure on Medical and Technical Devices of the Republic Institute for Health Insurance which treat medical diagnoses instead of the health status of the person are discriminatory, because persons who need these items (such as diapers) are treated differently depending on the diagnosis (or lack of it), wherefore it is necessary to amend the provisions so that all beneficiaries of health insurance are equal.”<sup>163</sup> A similar thing was prescribed by the Protector of Citizens in the previously mentioned Report.<sup>164</sup>

#### 4.6.3. Overall Objective

Prevent the violation of the prohibition of discrimination against elderly persons through legislative and other reforms, prevent and eliminate discriminatory practices against elderly persons, conduct monitoring and implementation of existing strategies which may lead to respect for constitutional guarantees of the prohibition of discrimination and amend public policies particularly in the fields relating to the social and financial status of elderly persons, during service provision and the involvement of elderly persons in their social life. Improve the status and position of elderly persons.

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<sup>160</sup> Protector of Citizens, *The Special Report of Supervision Conducted in Elderly Residence Homes in 2010*, Belgrade, 2011, p. 76.

<sup>161</sup> Cf. Cv i , S., B b vi , .., P tr vi , .., B gd n v, N., Vuk vi , .., *Social Exclusion in Rural Areas of Serbia*, UNDP, Belgrade, 2010.

<sup>162</sup> Republic Institute for Health Insurance, *The Rules of Procedure on Medical and Technical Devices Provided from the Funds of Mandatory Health Insurance* (edited wording), no. 22/08, 42/08, 106/08, 110/08-corrigendum, 115/08, 120/08- corrigendum, 17/10 and 22/10-corrigendum.

<sup>163</sup> Report of the Provincial Ombudsman 2010, p.104. The Report is available at: [http://www.ombudsmanapv.org/ombjo/attachments/article/98/godisnji\\_izvestaj\\_PO\\_2010.pdf](http://www.ombudsmanapv.org/ombjo/attachments/article/98/godisnji_izvestaj_PO_2010.pdf)

<sup>164</sup> Protector of Citizens, *the Special Report of Supervision Conducted in Elderly Residence Homes in 2010*, Belgrade, 2011, p. 76.

#### **4.6.4. Measures**

- 1) Advancing the implementation of international instruments ratified by the Republic of Serbia, in segments relating to the prohibition of discrimination against elderly persons;
- 2) Advancing and ensuring the implementation of the Law on the Prohibition of Discrimination in provisions relating to elderly persons;
- 3) Initiating the development of a separate overarching law relating to elderly persons and identifying and developing antidiscrimination clauses in the fields relating to elderly persons and establishing the term “elderly person” in the law;
- 4) Advancing the existing legislative framework relating to prevention of poverty and advancement of the financial status of elderly persons, in the field of provision of services, health care and social protection, personal and family life and involvement of elderly persons in the life of society;
- 5) Monitoring the implementation of the existing Strategy and Action Plan relating to the status of elderly persons and ensuring their full implementation;
- 6) Eliminating discriminatory practices against elderly persons in different fields, in particular by means of analysis of specific cases of discrimination against elderly persons brought to the attention of the Commission for Protection of Equality, the Protector of Citizens and the Provincial Ombudsman, in order to eliminate the causes and consequences of their occurrence;
- 7) Specific attention should be paid to preventing discrimination of those groups of elderly persons who are discriminated against on multiple grounds, in particular elderly persons with disabilities, refugees and internally displaced elderly persons, elderly persons in rural areas, victims of violence, etc;
- 8) Promoting affirmative action measures targeting elderly persons.

#### **4.6.5. Specific Objectives**

##### *4.6.5.1. Poverty Reduction and Better Financial Status of Elderly Persons*

Initiate the development and adopt a separate overarching law relating to elderly persons and identify and develop antidiscrimination clauses in the fields relating to elderly persons. Monitor and ensure implementation of measures set forth in the National Ageing Strategy in this field by 2015. Provide in continuation and increase budget allocations for poverty reduction among elderly persons. Conduct necessary reforms of the pension system and the system of social protection in order to advance the financial status of elderly persons. Ensure minimum financial benefits for elderly persons who lack personal income or income from property and who have no relatives to provide for them (e.g. establish the mechanism of social pensions). Monitor and implement the Social Welfare Development Strategy in the segment relating to elderly persons.

##### *4.6.5.2. Prevent Domestic and/or Other Forms of Violence against Elderly Persons*

Advance the normative framework of criminal law protection of elderly persons from domestic violence, by redefining the criminal offence of domestic violence (envisaged under

Article 194 of the Criminal Code of the Republic of Serbia<sup>165</sup>) to include the act of violence perpetrated against an elderly or helpless person in the qualified act of domestic violence. Penalize the neglect and abuse of elderly persons as a separate criminal offence so as to effectively prevent and prosecute all forms of neglect and abuse of elderly persons. Consider the possibility that the crime of "Violation of Family Obligations" (Art. 196 CC) also expands to abuse, and as possible perpetrators of this crime include employees in health and social care institutions, or determine this through incrimination of a particular criminal offense of neglect and abuse.

#### *4.6.5.3. Service Provision*

Change discriminatory practices in relation to the provision of services to elderly persons in various fields, which violate the principle of equality and prohibition of discrimination (e.g. in the field of banking and other fields). Amend and harmonize legal instrument of the actors of public and private law – service providers, violating the prohibition of age-based discrimination.

#### *4.6.5.4. Healthcare and Social Protection*

Provide community-based services in the field of social protection and healthcare, in particular for elderly persons in rural areas, women and persons with disabilities. Provide services for elderly persons in residential institutions based on the individual needs of beneficiaries instead of organizational needs of service providers. Adopt standards and rules of operations and behaviour of service providers working with elderly persons in health care and social protection and residential institutions and services. Adopt a separate law on the protection of patients' rights to include antidiscrimination clauses, including those relating to older age. Ensure real equality in access to health care services and equal provision of medical interventions and making therapy and diagnostic procedures accessible, irrespective of age.

#### *4.6.5.5. Inclusion in the Life of Society*

Undertake affirmative measures to stimulate integration and active involvement of elderly persons in the development of society based on the principle of equality. Monitor and ensure implementation of measures set forth in the *National Ageing Strategy* in the segment of involvement of elderly persons in the life of society by 2015. Undertake measures for more effective satisfaction of cultural and recreational needs of elderly persons, with full respect for their personal interests and affinities. Ensure adequate education among elderly persons as consumers.

#### *4.6.5.6. Education*

Conduct education programmes to enable retraining, further training and other forms of professional development of elderly persons who have lost their jobs, so as to be more competitive in the labour market. Stimulate lifelong education through involvement of all generations in the

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<sup>165</sup> The *Criminal Code of the Republic of Serbia*, "Official Gazette of RS" no. 85/05, 88/05 - corrigendum, 107/05 – corrigendum, 72/09 and 111/09.



lifelong learning process. Ensure the extension of the network of the Third Age University to all regions of Serbia.

## 7. Children

### 4.7.1. Legal Framework

The United Nations opened the Convention on the Rights of the Child<sup>166</sup> for signature on November 20, 1989, which came into force on November 2, 1990. The Convention prohibits, directly and/or indirectly, discrimination against children in a number of provisions. Signatory states shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or their parent's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. The states are to take all measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of status, activities, expressed opinions or beliefs of the child's parents, legal guardians or family members. The convention specifies, under a number of articles, the obligations of signatory states in reference to specifically vulnerable categories of children, such as refugee children or children with developmental impairments or disability. Furthermore, the Convention contains several articles which prescribe the protection of children against various forms of exploitation based on discrimination.<sup>167</sup> According to the opinions of the Committee on the Rights of the Child "...the non-discrimination obligation requires States actively to identify individual children and groups of children for whom recognition and realisation of their rights may demand special measures"<sup>168</sup> and/or calls for proactive approach of the states to secure preconditions for full exercise of the rights of the child and protection in case of violation of the rights.

In addition to the Convention on the Rights of the Child, the Republic of Serbia has ratified two additional protocols to the Convention on the Rights of the Child: *the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* and *the Optional Protocol on the Involvement of Children in Armed Conflict* in 2002.<sup>169</sup>

The *Constitution of the Republic of Serbia*, in addition to the general provision on the prohibition of discrimination which applies to children as well, contains a number of provisions which specifically guarantee the rights of the child. The Constitution guarantees the child's right to enjoy human rights suitable to their age and mental maturity, specifically guarantees individual rights and equal rights of children born in and out of wedlock, prescribes specific protection of the family, mother, single parent and guarantees specific protection of children looked after by persons other than their parents, children with mental or physical disability and prohibition of

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<sup>166</sup> *Law on the Ratification of the Convention on the Rights of the Child*, "Official Journal of SFRY – International Treaties", no. 15/90 and "Official Journal of SRY – International Treaties", no. 4/96 and 2/97.

<sup>167</sup> Cf. *Law on the Ratification of the Convention on the Rights of the Child*, "Official Journal of SFRY – International Treaties", no. 15/90 and "Official Journal of SRY – International Treaties" no. 4/96 and 2/97, Art. 2, 22-23 and other.

<sup>168</sup> The Committee on the Rights of the Child, General Comment no. 5, 2003 CRC/GC/2003/5, para. 12.

<sup>169</sup> *Law on the Ratification of the Protocol on the Sale of Children, Child Prostitution and Child Pornography*, "Official Journal of SRY - International Treaties", no. 7/02 and *the Law on the Ratification of the Protocol on the Involvement of Children in Armed Conflict*, "Official Journal of SRY -International Treaties", no. 7/02.

work for children under 15 years of age. Furthermore, pursuant to the Constitution, the child has the right to healthcare from public revenues unless it is provided for in another manner.<sup>170</sup>

A number of laws regulating the rights of the child specifically regulate the exercise of rights without discrimination. The *Family Law* treats as equals children born in or out of wedlock, as well as adopted and biological children. The Family Law regulates the matter of general legal capacity of the child, as well as the representation of the child deprived of legal capacity. The Law identifies specific situations when the child is allocated a temporary guardian and/or temporary or collisional representative. This issue is significant for securing equal access to proceedings for the child and the protection of their rights and legal interests. The Family Law is regulated, to a degree, as a corpus of child rights (right to origin, life with parents, personal relations, development and education of the child), as well as the obligations of the child. The Law takes into account other fundamental principles of the Convention on the Rights of the Child, including the right to participation and principle of the best interest of the child. Individual rights of the child are specified in other abovementioned and other provisions of the Law thereof.<sup>171</sup>

*The Law on the Prohibition of Discrimination*<sup>172</sup> identifies the prohibition of discrimination against children as a specific case of discrimination. Prohibition of discrimination refers to children and/or minors, meaning that this protection is enjoyed by all persons who have not completed 18 years of age. The prohibition of discrimination in this case means exercising equal rights and the protection of every child and/or minor, irrespective of their personal characteristics or the personal characteristics of their parents, guardians or members of their family. Therefore, discrimination against the child is prohibited not only in relation to their personal characteristics, but in relation to the personal characteristics of their legal representatives, such as parents or guardians, including the members of their family. The Law prescribes specifically the prohibition of behaviours which constitute discrimination, wherefore specific forms of discrimination against children and/or minors are listed, namely: discrimination against the child and/or minor on the basis of health status, birth in or out of wedlock; public incitement to give advantage to children of one sex in relation to children of another sex; making preference on the basis of health status, property, profession and other characteristics relating to the social status, activities, expressed opinion or belief of the child's parents and/or guardians and members of their family wherefore the provision thereof is harmonized with the Convention on the Rights of the Child.

The *Law on Prohibition of Discrimination against Persons with Disabilities* identifies the child as a victim of discrimination only in relation to the specific case of discrimination in education. The Law prescribes that discrimination is prohibited on all levels of education and that it includes denying enrolment of a child of pre-school age, a pupil of a primary school and/or students with disabilities into an educational institution appropriate to their previously acquired knowledge and/or educational capacities, exclusion from the educational institution the child is attending for reasons relating to the child's disability and setting the lack of disability as a specific condition for entry into the educational institution, including the submission of a certificate on the health status and previous examination of mental and physical abilities, unless the condition is established in line with the regulations in the field of education. Furthermore,

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<sup>170</sup> *Constitution of the Republic of Serbia*, "Official Gazette of RS" no. 98/06, Art. 21, Art. 64. para. 1-2, Art. 65, Art. 68.

<sup>171</sup> *The Family Law*, "Official Gazette of RS" no. 18/05, Art. 59-65, 72, Art. 98, Art. 116, Art. 127, Art. 132, Art. 263, Art. 346. and other.

<sup>172</sup> Cf. *Law on the Prohibition of Discrimination*, "Official Gazette of RS" no. 22/09. Art. 22 and other.

specifically severe forms of discrimination include harassment, insulting and demeaning of the child with disability (developmental disability) of pre-school age, the pupil and/or student due to their disability (developmental disability) when performed by a pre-school teacher, teacher or another employee of the education institution. The Law prescribes measures for securing the equality of persons with disabilities, such as measures of providing an accessible environment, measures of securing equality before public authorities, securing access to information, participation in cultural, sports and religious life of the community.<sup>173</sup>

*The Law on the Foundations of the System of Education* prescribes that every person shall have the right to education free of discrimination, and particular support is provided for persons with developmental and other disabilities who shall exercise their right to education in the regular system with individual and/or group support, as well as persons with exceptional abilities in the regular system in special classes or a special school.<sup>174</sup> Competent ministries are working on preparation and adoption of the rules of procedure which regulates prohibition of discrimination in educational institutions.

In order to protect the child in the field of criminal law, a separate law has been adopted – the *Law on Minor Perpetrators of Criminal Offences and the Criminal Law Protection of Minors*<sup>175</sup> which fundamentally provides for protection of minors<sup>176</sup> who have entered the system of criminal law on the basis of indirect discrimination by adults. Such specific protection is not envisaged by misdemeanour legislation.

Other laws, around 80 in total, have significant impact on children as a specifically vulnerable group in specific segments or provisions. The most significant include the Law on Health Care, the Law on Health Insurance, the Law on Social Welfare, the Law on Public Information, the Law on Broadcasting, etc.

#### **4.7.2. Overview of the Situation**

##### 4.7.2.1. Status of Children

According to the final results of the Census of the Population, Households and Apartments of 2011, there are a total of 1,263,128 children living in the Republic of Serbia.<sup>177</sup> Children account for some 21% of the population. A long-term unfavourable social context has exposed all children in the Republic of Serbia to an increased risk of discrimination. The poverty risk rate in the Republic of Serbia indicates that children are under the highest risk of poverty in comparison to other age groups. The poverty trends increase the danger from incidence of other risks, such as the risk of the child entering the life and work on the street, to drop out of school, etc. Vice versa, there are a number of other risks which affect a higher poverty risk for the family of the child. This refers primarily to the families of children with developmental and other disabilities, children with rare illnesses, children living in single-parent families or without parents, children living in distant regions with underdeveloped infrastructure and scarce economic activities etc, who have increased living costs and/or more unfavourable conditions for

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<sup>173</sup> Cf. *Law on Prohibition of Discrimination against Persons with Disabilities*, “Official Gazette of RS”, no. 33/06, Art. 18, Art. 20, Art. 32-38.

<sup>174</sup> Cf. *the Law on the Foundations of the System of Education*, “Official Gazette of RS” no. 72/09, 52/11. Art. 6.

<sup>175</sup> Cf. *the Law on Minor Perpetrators of Criminal Offences and the Criminal Law Protection of Minors*, “Official Gazette of RS” no 85/05.

<sup>176</sup> Note: The term minor as prescribed in the criminal legislation corresponds to the term of the child as prescribed in the Convention on the Rights of the Child and/or includes persons who have not completed 18 years of age.

<sup>177</sup> Census of Populations, Households and Apartments 2011 in the Republic of Serbia, Republic Statistical Office, Belgrade, 2011, available at [www.popis2011.stat.rs](http://www.popis2011.stat.rs);

employment of family members or the child after finishing education (on condition that their education is successful).

The specific characteristic of children as a vulnerable group, when it comes to discrimination, is that there are “more specific” vulnerable groups of children within this group who are particularly exposed to discrimination (Roma children, children with disabilities, refugee children, internally displaced persons and migrants, children who live and work on the street, children of specific health status etc). The children of Roma nationality<sup>178</sup> are particularly exposed to the risk of discrimination, often the consequence of the specific status of the overall Roma community and/or a significant number of its members (Roma as legally invisible persons, discriminatory practices in a number of fields, etc.)<sup>179</sup>

The Amendments to the Law on Health Insurance adopted towards the end of 2012 constitute progress in reference to the health care of children, as the Law prescribes that health care “... includes single parents with children below the age of 7, whose monthly income is below the income identified pursuant to the law regulating health insurance”<sup>180</sup>.

There are no precise data on the status of children which would affect the planning of services for children and the necessary funds, wherefore the scope of services provided is insufficient, often on an *ad hoc* basis and without appropriate planning,<sup>181</sup> opening space for the discrimination against children and violation of the principle of equality and equal treatment. Unbalanced regional development has the same consequences because a large proportion of services targeting children are in the competence of local self-governments.

#### 4.7.2.2. *Respecting the Legal Framework, the Need for Further Improvement and the State of Play in Specific Fields*

There is no “overarching” law on the rights of the child in the Republic of Serbia and/or a “single corpus” of the rights of the child which would, in a general manner, pool the numerous provisions of specific laws relating to children (including those which would, in a general manner, regulate the prohibition of discrimination against this vulnerable social group).

Further harmonization of regulations with the obligations of the Convention on the Rights of the Child and their mutual harmonization for a more effective implementation thereof calls for the adoption of a unique Law on the Rights of the Child. The work on the preparation of the Law on the Rights of the Child, which would comprehensively and evenly regulate the status of children, was launched by the Protector of Citizens in 2011. The draft wording of the law has undergone a number of expert reviews and the draft law should enter the legislative procedure in the forthcoming period.

Although the Family Law contains significant measures which should advance the status of the child, children who do not live with both parents have not been provided adequate protection in view of the exercise of the right to legal child support, which often remains

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<sup>178</sup> Children of Roma nationality account for 37.5% (40,554) of the total Roma population (108,193). More details on the discrimination against Roma children may be found in the segments of this Strategy referring to national minorities, persons with disabilities, refugees and internally displaced persons.

<sup>179</sup> More details on the status of the Roma community on which cases of discrimination against Roma children are based on in item 4.2.2. of this Strategy.

<sup>180</sup> The *Law on Amendments to the Law on Health Insurance*, “Official Gazette of RS” no. 119/2012, Art. 1.

<sup>181</sup> Cf. Protector of Citizens, Annual Report 2012, p. 54.

unrealized. Illness or behaviour of the child's parents, their social background, being members of a national minority or poverty can also be a reason for discrimination against children in their peer group. Although most children who do not live with parents are included in the education system, they are rarely accepted by their peer group and face rejection, distrust or pity by their peers. The consequence is that children often avoid school and attain worse results.

At this moment, three and a half years after the Law on the Foundations of the Education System has come into force, there is still no clear set of rules regulating the procedures, mechanisms, resources, obligations and responsibilities for the exercise of children's right to inclusive education, whereas the existing rules are either not implemented or are implemented inadequately and selectively. Education of a child with developmental disabilities in the regular education system largely directly depends on the capacities, skills and knowledge of parents to face a set of challenges in the education of their child, and the level of sensitivity, competencies, skills and knowledge of managers and employees in education institutions.<sup>182</sup> The system of inclusive education is linked to the development of community-based services. Community-based services and additional education, health and social support are financed from local self-government budgets. Therefore there is an uneven practice both in terms of the service development level and the manner of organization of Inter-sector Committees and financing the services they recommend. Children living in poorer and underdeveloped municipalities can thus find themselves in an unfavourable position.

Furthermore, access to education in poor municipalities is not provided for all children living further than 4 km from school.<sup>183</sup> Some 29% of children from rural areas are covered by pre-school education. Children with developmental and other disabilities in rural areas are in a rather unfavourable situation, they often live in poverty, isolated from the local community and are often exposed to a high degree of prejudice, they are not included in the social welfare system, etc. as indicated in the Regular Annual Report of the Protector of Citizens for 2011.

Apart from the above-mentioned system-related deficiencies, when children are not fully enabled to exercise their right to education, it should be underlined that children who are fully included in the education system are often exposed to various forms of discrimination on the part of their peers and adults. The survey conducted by the Provincial Ombudsman has indicated that children of older age (final years of secondary school) "recognize" different forms of discrimination that they are often exposed to themselves (psychological - manifested through mockery and threatening, social - manifested through catcalls, ignoring or exclusion from the group, physical - shoving, spitting, fights, etc. IT abuse - most commonly through harassing SMS, MMS, Facebook messages and other means).<sup>184</sup> At this moment there are no (mandatory) educational contents aiming to strengthen the tolerance of children or adequate control of schoolbooks in the sense of discriminatory or intolerant contents. The establishment of a system of protection of children from abuse and neglect in the Republic of Serbia has advanced significantly the response to violent activities manifesting discriminatory attitudes<sup>185</sup>, yet it deals

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<sup>182</sup> Cf. Protector of Citizens, Annual Report 2013, p. 61.

<sup>183</sup> More than 400 students of primary schools from 11 municipalities in the category of least developed municipalities in Serbia do not have organized and paid transportation to schools. According to the survey conducted by the Coalition for Monitoring the Rights of the Child in the Republic of Serbia in the other half of 2011 within the action entitled "From Home to School" which tackled the issue of accessibility of primary education for children who live further than 4km from their primary schools.

<sup>184</sup> Cf. Provincial Ombudsman, *Vojvodina Students on Discrimination*, Novi Sad, 2011, p. 30.

<sup>185</sup> The system is set up by the General Protocol for the Protection of children against Abuse and Neglect which was adopted in 2005 by the Council for Child Rights, and the system is continuously enhanced based on the Protocol.

with the prevention of causes and/or development of tolerance and change of discriminatory attitudes to a smaller degree and with less success.

According to the data of the Ministry of Internal Affairs from 2006 through 2010, actions were taken against 9,320 foreign citizens for entering the country illegally, 1,034 of which were minors. The trend indicates a constant increase in illegal crossings (with the exception of 2007 and 2008), as well as a high percentage (more than 10%) of minors in the total number of registered illegal migrants.<sup>186</sup> There are no reliable data on their (failing to) exercise their rights and the cases of discrimination. Also, according to the data of the Ministry of Internal Affairs from 2008 through 2010, in line with the Readmission Agreement and on the basis of deportation from EU member states, the return of a total of 10,087 citizens of the Republic of Serbia has been registered, of which 16% are minors. The majority of minors were accompanied by parents.<sup>187</sup> They face multiple issues related to reintegration: not speaking the language, poverty-related risk, unresolved legal status, particularly relating to the place of residence, while support services are insufficiently developed to resolve the issues faced by families upon their return in a timely manner, which often represents a basis for discrimination.

Children who are victims of trafficking and prostitution and pornography abuse are particularly exposed to discrimination. The data of the Office for Coordination of the Protection of Trafficking Victims indicate a high rate of minor victims (close to 50%), whereas the programs of identification, protection and particularly reintegration of victims are not fully adapted to the specific characteristics of children, which leads to the violation of a number of child rights, as well as violations of the prohibition of discrimination.<sup>188</sup>

Children and families of children with rare illnesses face the unresolved issue of health care in line with the principles proclaimed in the Convention on the Rights of the Child, as treatment is often not covered by mandatory health insurance, the law limits the absence of the parent during the treatment of the child irrespective of the status of the child and adequate support for families is not provided through the labour legislation or other types of support for the family.<sup>189</sup> There are other deficiencies in the system of health insurance which should be eliminated.<sup>190</sup> The most common issue is the conditions for the certification of health cards of children which disregard, when the right to health insurance is not exercised on other grounds<sup>191</sup>, that the child has a law-prescribed right to health insurance on the grounds of being – a child.<sup>192</sup> The Rules of Procedure on the Certificate on Health Insurance and the Special Certificate for Using Health Care was amended in 2012, following the intervention of the Protector of Citizens, yet it is necessary to find a permanent solution to this issue which leads to the violation of the rights of the child to health care.

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<sup>186</sup> Draft National Strategy for the Prevention and Protection of Children against Trafficking and Abuse in Pornography and Prostitution (2012-2016), Centre for the Rights of the Child, Belgrade, 2011, p. 50.

<sup>187</sup> Draft National Strategy for the Prevention and Protection of Children against Trafficking and Abuse in Pornography and Prostitution (2012-2016), Centre for the Rights of the Child, Belgrade, 2011, p. 51.

<sup>188</sup> Exact data on the scope, specific forms of the phenomenon and the characteristics of children who are trafficking victims and abuse of children in pornography and prostitution in the Republic of Serbia are not available as there is no unique system of registering and monitoring these phenomena.

<sup>189</sup> More details on this issue in the segments of the Strategy referring to persons with disabilities and health status.

<sup>190</sup> For example, insulin prescriptions for children up to 7 years of age are not secured for children without conditions which apply for adults (failed results for insulin therapy), although the Diabetes Commission has proposed the elimination of this condition as far back as in 2009 due to risk for children present among children of this age. A high number of children with specific difficulties do not have the right to spa treatment in spite of indications, etc.

<sup>191</sup> Most commonly through an employed parent.

<sup>192</sup> Cf. Protector of Citizens, *Annual Report 2012*, p.

### **4.7.3. Overall Objective**

Prevent the violation of the prohibition of discrimination against children, through legislative and regulatory reforms and eliminate discriminatory practices against children, in particular children of Roma nationality, refugees and internally displaced children, child victims of violence and exploitation (trafficking and prostitution and pornography abuse, children who live and work in the street), children living in rural areas, children with developmental and other disabilities, children on the basis of their family status and health status etc. Ensure the implementation of the Law on the Prohibition of Discrimination in the segment relating to the discrimination of children as a special case of discrimination.

### **4.7.4. Measures**

- 1) Advancing the implementation of international instruments (conventions) ratified by the Republic of Serbia which refer to children, ensuring non-discriminatory exercise of the child's rights and harmonizing the existing legal framework with the standards contained therein;
- 2) Adopting a separate law on the rights of the child which would specifically define the anti-discriminatory clause in line with the Convention on the Rights of the child and other fundamental principles of the rights of the child;
- 3) Advancing the existing legislative framework in different fields and within the overall legislative framework, adopting or amending the existing by-laws which may be a basis for discrimination of children in specific areas considering their personal characteristics, personal characteristics of their parents/guardians or their family status;
- 4) Specifically advancing the legislative framework for representation of the child in all situations of decision-making on issues relating to the child and strengthening professional capacities of the custody authority for their implementation;
- 5) Eradicating discriminatory practices against children in different fields, particularly through an analysis of specific cases of discrimination against children brought to the attention of the Commissioner for Protection of Equality, the Protector of Citizens and the Provincial Ombudsman and citizen associations to eliminate the causes and consequences of their occurrence;
- 6) Monitoring and implementation of the existing strategies which may lead to the observance of constitutional guarantees of the prohibition of discrimination;
- 7) Special attention should be paid to the prevention of discrimination of children discriminated against on multiple grounds, particularly Roma children, children with disabilities, children on the basis of their health status, children who are victims of violence and exploitation, children of persons with disabilities, children who are victims of trafficking and abuse relating to prostitution and pornography, refugee and displaced children, migrant children etc;
- 8) Raising awareness on the human rights of the child through education, capacity building of professionals and persons employed in different areas, information campaigns on tolerance among children, strengthening tolerance and reducing stigmatization of children.

### **4.7.4. Specific Objectives**

#### **4.7.4.1. Education**

Monitor progress in the field of inclusive education of children and implementation of education-related laws and elimination of negative and discriminatory practices in education. Ensure support in education for children with developmental and other disabilities, Roma children, children living and working on the street, refugee and internally displaced children, children undergoing readmission, children who are victims of violence and exploitation, children living in rural areas and their families, in line with the principle of equal rights and free of discrimination on the basis of their personal characteristics and social background and advance coordination of support with other systems of protection. Acquaint children with the cultures and customs of other national and ethnic groups and multiculturalism in general and develop tolerance within educational programs. Harmonize learning content and the contents of schoolbooks and teaching aids with the principles of non-discrimination and tolerance.

#### **4.7.4.2. Healthcare and Social Protection**

Harmonize the scope of health insurance for children and the conditions for its achievement with the highest standards of healthcare through a revision of relevant laws and by-laws. Build capacities of medical practitioners and other health workers to work with children from vulnerable groups and their families through programs of continued education. Build capacities of social workers and service providers to work with children and their families in line with the principles of non-discrimination and tolerance. Stimulate advanced coordination among service providers on the local level working with children and families from vulnerable groups. Increase participation of the private sector in financing community-based services for children from particularly vulnerable groups through incentives and promotion of corporate social responsibility.

### **4.8. Refugees, Internally Displaced Persons and Other Vulnerable Migrant Groups**

#### **4.8.1. Legal Framework**

The Republic of Serbia has signed all the major international instruments in this field, *inter alia*, the *Convention Relating to the Status of Refugees with the closing instrument of the Conference of Plenipotentiaries of the United Nations on the Status of Refugees* (1960) and the *Protocol on the Status of Refugees* (1967) laying down the term of refugee, the legal status, access to rights and other issues relevant to the status of refugees and asylum seekers.<sup>193</sup> Furthermore, the UN document entitled “*Guiding Principles of the United Nations on Internal Displacement*” (1998) which, although its implementation is not mandatory, represents a document followed by the Republic of Serbia to ensure the proclaimed level of protection and observance of human rights of internally displaced persons. The Republic of Serbia is signatory to the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families of 1990, however this Convention has not been ratified. Another significant international document is the Framework on Durable Solutions for Internally Displaced Persons, which was created within the Brookings Institute and project on internal displacement, which is also supported by Walter Kalin, Representative of the UN Secretary General for Human Rights of Internally Displaced Persons.

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<sup>193</sup> *Convention Relating to the Status of Refugees with the closing instrument of the Conference of Plenipotentiaries of the United Nations on the Status of Refugees*, “Official Journal of FNRJ - International Treaties”, no. 7/60; the *Protocol on the Status of Refugees* “Official Journal of SFRY–International Treaties and other treaties”, no 15/67.



This document establishes key principles based on human rights law for establishing durable solutions regarding the issue of internal displacement, as well as criteria and indicators, which must be taken into account when assessing the achievement of these solutions.<sup>194</sup>

On the national level, the status, situation and rights of refugees from the territory of republics of former Yugoslavia in the Republic of Serbia are regulated by the *Law on Refugees* (1992 and subsequent amendments) and regulations laying down the manner of care for refugees and expelled persons, i.e. *Decree on Care for Refugees* (1992 with subsequent amendments) and the *Decree on the Manner of Care for Expelled Persons* (1995).<sup>195</sup>

To resolve the housing issues of refugees, the National Assembly of the Republic of Serbia adopted the *Law on Amendments to the Law on Refugees* on May 5, 2010.<sup>196</sup> Pursuant to its solutions, aimed at ensuring a normative framework for regulating the issues relevant to the local integration of refugees in the territory of the Republic of Serbia, in particular their housing issues, refugees will be in a position to utilize the property for a definite period of time, to purchase or take them on lease, as well as to obtain assistance for advancing the housing conditions, purchase construction material or village houses. Refugees, up to that point, utilized facilities (houses and apartments) in public property on a temporary basis, constructed by means of earmarked or donor funds, and will be able to purchase them under favourable conditions and lower market prices.

In order to provide international protection to asylum seekers and regulate the status of foreign nationals in Serbia, the implementation of the *Law on Asylum*<sup>197</sup> was launched on April 1, 2008, as well as the *Law on Foreign Nationals*<sup>198</sup> on April 1, 2009. The Law on Asylum prescribes the principle of non-discrimination (Article 7) as a fundamental principle which, in the procedure of granting asylum in the Republic of Serbia, prohibits any form of discrimination on any grounds, in particular on the basis of race, colour, sex, nationality, social background or any similar status, birth, religion, political or any other affiliation, property, culture, language, age or intellectual, sensory and/or physical disability. Furthermore, the Law envisages that persons granted the right to shelter in the Republic of Serbia shall enjoy rights equal to the citizens of the Republic of Serbia in view of rights to intellectual property, unrestricted access to courts, legal aid, exemption from paying court and other expenditures before state bodies and the right to freedom of religion (Article 42), whereas persons granted the right to shelter in the Republic of Serbia shall have equal rights as permanently settled foreign nationals in view of the right to work and work-related rights, entrepreneurship, the right to permanent settlement and the freedom of movement, the right to movable and fixed assets, as well as the right to association (Article 43).

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<sup>195</sup> *Law on Refugees*, “Official Gazette of RS”, no. 18/92, “Official Journal of SRY”, no. 42/02 and “Official Gazette of RS”, no. 45/02; *Decree on Care for Refugees*, “Official Gazette of RS”, no. 20/92, 70/93, 105/93, 8/94, 22/94, 34/95 and 22/04; *Decree on the Manner of Care for Expelled Persons*, “Official Gazette of RS”, no. 47/95.

<sup>196</sup> *Law on Amendments to the Law on Refugees*, “Official Gazette of RS”, no. 30/10.

<sup>197</sup> *Law on Asylum*, “Official Gazette of RS” no. 109/07.

<sup>198</sup> *Law on Foreign Nationals*, “Official Gazette of RS” no. 97/08.

*The Law on the Enforcement of Penal Sanctions*<sup>199</sup> envisages that persons undergoing penal sanctions shall not be placed in an unequal position due to their race, colour, sex, language, religion, political or other affiliations, nationality or social background, property, education, social status or other personal characteristics. The law applies to irregular migrants who are placed in institutions for the enforcement of penal sanctions throughout Serbia.

In the course of 2009, the Government of the Republic of Serbia adopted the *Strategy for Combating Illegal Migrations 2009 - 2014*.<sup>200</sup> The Strategy envisages the development of capacities and abilities of stakeholders developing and preparing the Strategy, cooperation with partners and other stakeholders, the methodology for combating illegal migrations, the system of measures targeting diverse categories of illegal migrants and the establishment of a national concept for combating illegal migrations. One of the fundamental values of the Strategies is the humane treatment of illegal migrants.

The Government of the Republic of Serbia adopted a systemic, comprehensive and overarching *Migrations Management Strategy* towards the end of July 2009, as well as a revised and new *National Strategy for Resolving the Issues of Refugees and Internally Displaced Persons 2011-2014* in March 2011. Towards the end of 2012, the Government of the Republic of Serbia adopted a complex Migration Profile of the Republic of Serbia 2011.

*The Law on Permanent and Temporary Residence of Citizens*<sup>201</sup> envisages alternative forms of determining the residence of citizens: at the address where they are permanently settled, the residence of their spouse or *de facto* partner, the residence of their parents or the address of the institution where they are permanently settled or the centre for social work in charge of the territory of their residence.<sup>202</sup>

*The Rulebook on the Form of the Application of Residence at the Address of the Institution and/or Centre for Social Work*<sup>203</sup> lays down the form for the application of residence at the address of the institution wherein the citizen is permanently resident, and/or the social work centre covering the territory they are located in.

*The Law on Amendments to the Law on Extrajudicial Proceedings*<sup>204</sup>, adopted by the National Assembly of the Republic of Serbia on August 31, 2012, lays down the procedure of determining the time and place of birth of persons who have not been entered in the birth registry, thus taking the first step towards resolving the issues of several thousand legally invisible persons in the Republic of Serbia. By laying down the procedure, persons who do not meet the conditions for being registered in the birth registry under the provisions of the administrative procedure will be able to exercise their rights in a specific court procedure which recognizes the specific aspects of the issue they are facing.<sup>205</sup>

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<sup>199</sup> *Law on the Enforcement of Penal Sanctions*, "Official Gazette of RS" no. 85/05, 72/09, 31/11.

<sup>200</sup> Government of the Republic of Serbia, the Strategy for Combating Illegal Migrations 2009-2014, "Official Gazette of RS", no. 25/09.

<sup>201</sup> Law on Permanent and Temporary Residence of Citizens, "Official Gazette of RS", no. 87/11, Art. 11.

<sup>202</sup> <http://www.mup.g v.rs/cms/r sursi.nsf/Z k n-pr b-b r-gr d .pdf>

<sup>203</sup> *Rulebook on the Form of the Application of Residence at the Address of the Institution and/or Centre for Social Work*, "Official Gazette of RS", no. 113/12.

<sup>204</sup> *Law on Amendments to the Law on Extrajudicial Proceedings*, "Official Gazette of RS" no. 85/12..

<sup>205</sup> More information: website of the association PRAXIS, [www.praxis. rg.rs](http://www.praxis. rg.rs)

In November 2012, the National Assembly of the Republic of Serbia adopted the *Migrations Management Law*<sup>206</sup> laying down the competency of the Commissariat to conduct activities relating to the identification, putting forward and undertaking measures for integration of persons who, in line with the Law on Asylum (Official Gazette of RS, no. 109/07), have been acknowledged the right to shelter and reintegration of returnees pursuant to the readmission agreement; advancement of living standards of internally displaced persons while remaining displaced; putting forward programs for the development of a system of measures targeting families of foreign nationals who reside illegally in the territory of the Republic of Serbia and putting forward programs for supporting voluntary return of foreign nationals who reside illegally in the territory of the Republic of Serbia into their respective countries of origin. The Law prescribes that the Commissariat for Refugees shall continue to work as the Commissariat for Refugees and Migrations in line with the mandate established in this law and other laws.<sup>207</sup>

In order to resolve the issues of internally displaced persons and create conditions for their permanent and sustainable return, the Government of the Republic of Serbia adopted the *Strategy of Sustainable Return and Stay in Kosovo and Metohija*<sup>208</sup> in mid-April 2010. Pursuant to the Strategy, security and the rule of law should be the key to return and sustainable stay, which entails the exercise and protection of fundamental human rights and freedom of displaced persons – returnees, primarily the right to secure life and freedom of movement, including property rights, in particular when it comes to some 40,000 houses and apartments which used to belong to displaced persons and which have been devastated or usurped.”

A Regional Ministerial Conference was held in November 2011 in Belgrade, dedicated to permanent solutions for refugees and internally displaced persons in the Southeast Europe region, in particular to resolving their housing issues. An International Donor Conference was held in Sarajevo in April 2012, dedicated to permanent housing solutions for 27,000 most vulnerable households of refugees and displaced persons in the region, totalling 74,000 members, when a total of 584 million Euros was to be collected for these purposes. A total of 300 million Euros was collected of the sum, accounting for 60% of donor funds necessary for resolving housing for the most vulnerable refugees and displaced persons in Serbia, Bosnia and Herzegovina, Montenegro and Croatia.

## **4.8.2. Overview of the Situation**

### *4.8.2.1. Legal and Factual Status of Refugees, Internally Displaced Persons and Migrants*

Due to numerous measures undertaken by the Republic of Serbia during the course of last few years, the status of refugees and internally displaced persons has been improved, but it is still necessary to undertake numerous measures in order to additionally improve their position.

According to the data of the Commissariat for Refugees and Migrations of the Republic of Serbia as of 20 June 2012, there are 66,408 refugees from Croatia and Bosnia and Herzegovina in our country and approximately 210,000 internally displaced persons. There are more than 20,000 internally displaced persons on the territory of the Autonomous Province of Kosovo and Metohija.

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<sup>206</sup> *Migrations Management Law*, “Official Gazette of RS” no.

<sup>207</sup> More information: website of the Commissariat for Refugees of the Republic of Serbia, [www.kirs.gov.rs](http://www.kirs.gov.rs)

<sup>208</sup> Government of the Republic of Serbia, *Strategy of Sustainable Return and Stay in Kosovo and Metohija*, “Official Gazette of RS” no. 32/10.

On 1 November 2012, there were 33 collective centres within the territory of the Republic of Serbia which provided accommodation for 2,697 persons. Out of the total number of collective centres within the territory of Serbia, there are 20 collective centres outside of Kosovo and Metohija which provide housing for 2,173 persons, while there are 13 collective centres on the territory of Kosovo and Metohija and they provide housing for 524 persons.<sup>209</sup> The authorities of the Republic of Serbia adopted the annual plan for closure of collective centres and it is gradually being implemented. The accommodation conditions in collective centres are, as a rule, not good, primarily in respect to hygiene and decrepitude of the facilities which are no longer being invested in, since they are all included in the program of closure.

In addition to refugees and internally displaced persons a significant number of returnees under the Readmission Agreement reside in Serbia, along with those who returned voluntarily from EU countries. According to the estimate of the Commissariat for Refugees of the Republic of Serbia, approximately 40,000 of its citizens have returned to Serbia due to the fact that they lost their permit to stay in the countries of the EU. At the same time, there is a significant increase in the number of persons who expressed intention to seek asylum in the Republic of Serbia. Namely, in 2010, that number was doubled compared to 2009 (in 2009 there were 275; in 2010 – 522). Statistical data for 2011 undoubtedly confirmed this trend. The number of persons who expressed intention to seek asylum in the Republic of Serbia has increased 6 times compared to 2010, so in 2011, a total of 3,134 persons expressed their intention to seek asylum in the Republic of Serbia. Most of them are from Afghanistan, Somalia or Pakistan, as well as from Iran and some North African countries. During 2012, 2,723 persons expressed their intention to seek asylum in Serbia.

As a transit country, Serbia has been facing the phenomenon of mixed migration flows and the fact that an increased number of irregular migrants stay on the territory of the Republic of Serbia. Irregular migrants enter the Republic of Serbia by illegal crossing of state borders, and due to this fact approximately 4,232 measures were undertaken against foreign citizens due to the offence of illegal crossing of the border during the period 1 January 2012 – 30 October 2012. The persons against whom measures were undertaken mostly include citizens of Afghanistan (1546) and Pakistan (908). A total of 2,729 foreign citizens were convicted to stay in correctional facilities due to violations of the Law on Foreign Citizens and the Law on the Protection of State Borders during the period 1 January 2012 – 30 October 2012. Most of those foreign citizens are from Afghanistan (718) and Pakistan (714), while a significant number of foreigners are from Algeria (270), Syria (120), Palestine (107), Tunisia (102), Bangladesh (90) and Morocco (70). The highest number of foreign citizens were placed in the County Prison in Subotica – 1,533, correctional facility in Sremska Mitrovica numbered 325 foreign citizens, the correctional facility in Niš – 220, the correctional facility Padinska skela – Belgrade – 211<sup>210</sup>

At the end of 2011, there were 17,590 foreigners with a permit for temporary residence in Serbia. A total of 6,381 foreign citizens were granted permit for temporary residence for the first time, and it is not insignificant to state that the purpose for granting permit for temporary residence was work (47%). Most citizens with temporary residence permits are from China (5,297), followed by Russia (1,398) and Macedonia (1,335). In 2011, there were 7,272 permanent inhabitants who are foreign citizens, which signifies an increase compared to 2010, when there were 6,750 of them.

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<sup>209</sup> For more information visit: web presentation of the Commissariat for Refugees of the Republic of Serbia <http://www.kirs.gov.rs/articles/centri.php?lang=SER>

<sup>210</sup> The data does not include county prisons in Vranje and Belgrade. For more information see: Group 484, Challenges of Forced Migrations, 2013, page.18, 23.

Among foreign citizens with permanent residence permits most of them are from Romania, the Russian Federation, Macedonia and Ukraine.<sup>211</sup>

Provisions of certain special laws apply to the position of certain groups of migrants particularly in the field of: the right to personal identification documents, right to medical and social protection, education, employment, rights arising from pension insurance etc. At the same time, provisions of general legal provisions apply to internally displaced persons, same as to other citizens of the Republic of Serbia. The *Law on the Prohibition of Discrimination* does not recognize discrimination against refugees, asylum seekers, and/or persons subject to legally prescribed measures of international protection and internally displaced persons as a special type of discrimination.

Serbia does not have a comprehensive system of free legal aid, which could be used by these persons in exercising their rights in the country of displacement, i.e. the place of their temporary residence, as well as in the country of their origin, i.e. the place of their permanent residence, and they still depend on free legal aid provided by associations, supported by international donor organizations. This statement also refers to the persons seeking international protection in the Republic of Serbia.

The attitude of the local community and majority population towards groups of migrants presents an important indicator of the possibility of discrimination against these groups. Survey data from the Commissariat for Refugees and Migrations<sup>212</sup> show, *inter alia*, that 64.4% of the citizens support the programmes for solving housing issues of refugees /internally displaced persons implemented by the state. These programs are mostly supported by the citizens of Vojvodina, compared to the citizens from other parts of Serbia, with 9% of the citizens objecting implementation of these programs by the state, 38% of the citizens feeling compassion when refugees and internally displaced persons are mentioned, 28% of the citizens feeling sadness, while 18.8% of the citizens do not have any special feelings. A total of 4.8% of those surveyed felt anger at the mention of refugees and internally displaced persons. On a scale from 1 to 5, the highest grade was received by the statement that the state should take more care of the refugees and internally displaced persons (3.74), while the statement with the lowest level of agreement was that these groups are discriminated in Serbian society (2.43%). By comparing the data received on the scales of social distance towards the refugees, internally displaced persons (from Kosovo) and asylum seekers, it is visible that the acceptance of all three groups is at its highest at the highest distance, i.e. for the item "To live in the same states as I", and the least accepted is marrying members of these groups. There is a great difference among the groups in acceptance at all levels of social distance. The best accepted at all the levels are the refugees, and the least accepted are the asylum seekers, i.e. 60% of the respondents would accept to marry a refugee, 57,7% an internally displaced person (from Kosovo), and 30,4% of the respondents stated that they would marry an asylum seeker. Life in the same country with a refugee is acceptable for 93, 6% of the respondents, with an internally displaced person is acceptable for 91% of the respondents, and 61.2% of the respondents considers life in the same country with an asylum seeker to be acceptable. There is still prejudice against the population of refugees and internally displaced persons, with 29.3% of the respondents stating that persons from their surrounding have generally positive opinion of the refugees and internally displaced persons, while 26.9% of the respondents think that people from their surrounding have a negative opinion of these groups of people. Some of the most frequent

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<sup>211</sup> For more information: Migration profile of the Republic of Serbia for 2011, pages 15-16  
[http://www.kirs.gov.rs/docs/migracije/Migracioni\\_profil\\_Republike\\_Srbije\\_za\\_2011.pdf](http://www.kirs.gov.rs/docs/migracije/Migracioni_profil_Republike_Srbije_za_2011.pdf)

<sup>212</sup> Commissariat for Refugees and Migrations, Opinion of the citizens towards refugees, internally displaced persons and asylum seekers, October 2012, pages 10-11

reasons for negative opinions towards refugees and internally displaced persons were that due to these groups of people the number of jobs for local citizens has decreased, as well as that they are bothered by different cultural habits of refugees and internally displaced persons. Also, more than 41% of the respondents think that refugees and internally displaced persons should return to the country of their origin i.e. permanent residence. It is interesting that 41% of the respondents think that the community has accepted this group poorly. Within the survey, 8.3% of the persons declared themselves to be refugees and internally displaced persons and out of that percentage 5.4% of them have a resolved housing issue, 2.9% do not, while 5.2% of them think that their monthly income does not meet their needs, and 4.5% of them are partially informed of their rights in Serbia.

Refugees and internally displaced persons have been recognized by the National Employment Strategy for the period 2011- 2020. The Strategy recognizes the fact that during 2009, the Youth Employment Fund (Fund) was established within the National Employment Service, which has been funded from different sources. The goal of the Fund is to assist in the acquisition of knowledge and skills, and the employment of those young people who need special assistance, such as ... returnees in the process of readmission and refugees and internally displaced persons.”

The Republic of Serbia has recognized the issue of housing of refugees and internally displaced persons as one of the key issues this population faces. According to the data published in the Migration Profile of the Republic of Serbia for 2011<sup>213</sup>, assistance in providing housing was offered to 1439 families. Naturally, the needs of this population for housing are great. According to the survey *Situation and Needs of the Refugee Population in the Republic of Serbia for 2008*, undertaken by the Commissariat for Refugees, UNHCR and IOM, 61% of the refugees lived as subtenants or with their family or friends. At the same time, according to the survey *Evaluation of the Needs of IDP* undertaken by the Commissariat for Refugees and Migrations in cooperation with UNHCR and the Statistical Office of the Republic of Serbia, it was established that an average household of internally displaced persons has 4.42 members, and Roma households have 5.21 members. It is estimated that assistance in solving housing issues is needed by 21,420 households, with the most wanted being construction material packages and apartments from the social housing programme.<sup>214</sup>

Independently from public perception, refugees, internally displaced persons, and asylum seekers face objective problems in exercising their rights in the Republic of Serbia.

#### *4.8.2.2. Compliance with the Legal Framework, Need for its Further Improvement and State of Play in Specific Fields*

Just like other citizens of the Republic of Serbia, internally displaced persons are entitled to request personal identification documents, while relevant state authorities are under the obligation to provide them with these documents. Personal identification documents are public documents which are mostly required in order to exercise rights in the field of education, health and social protection, work and employment, pension insurance etc. Among these personal documents, the most significant ones are birth certificates, marriage certificates and death certificates, because these documents confirm the legal status of an individual, and present the basis for issuing of other personal documents, such as identification cards, passports, work booklets and medical cards, etc. The legal regime for issuing personal documents is defined by numerous laws and bylaws.

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<sup>213</sup> Migration Profile of the Republic of Serbia for 2011, page 73  
[http://www.kirs.gov.rs/docs/migracije/Migracioni\\_profil\\_Republike\\_Srbije\\_za\\_2011.pdf](http://www.kirs.gov.rs/docs/migracije/Migracioni_profil_Republike_Srbije_za_2011.pdf)

<sup>214</sup> Ibid. page 52.

However, even today, more than 10 years after their forced displacement, certain number of internally displaced persons still live without personal documents. These “legally invisible” persons, who include a high number of Roma, cannot exercise their rights, primarily the right to recognition of their legal subjectivity. In this context, these persons are not provided equal access and equal protection before the courts and state authorities, which is the basis for a special type of discrimination – in procedures before public authorities.<sup>215</sup> With the adoption of amendments to the Law on Non -Contentious Proceedings, conditions were created to solve this key issue which is crucial for equal and complete access to the rights of internally displaced persons, primarily Roma, Ashkali and Egyptians. Also, the Law on Registers and Guideline on Keeping Registers clearly state the procedure for restoring damaged or missing registry books kept for the Autonomous Province of Kosovo and Metohija. The Law on Registers regulates that the process of keeping registers and finding resolutions in first instance administrative proceedings in the sector of registers of the Autonomous Province of Kosovo and Metohija is run by the city governments of Nis (for Pristina and Podujevo, Glogovac, Obilic, Lipljan and Kosovo Polje ), Kragujevac (for the municipalities of Pec, Istok and Klina), Kraljevo (for the municipalities of Kosovska Mitrovica, Srbica, Zubin Potok, Vucitern, Zvecan and Leposavic), Krusevac (for the municipalities of Prizren, Orahovac, Suva Reka and Gora), Jagodina (for the municipalities of Djakovica and Decani), Vranje (the municipalities of Gnjilane, Vitina, Kosovska Kamenica and Novo Brdo) and Leskovac (for the municipalities of Urosevac, Kacanik Stimlje and Strpce).<sup>216</sup> These positive legal regulations and contained solutions provide internally displaced people from the Autonomous Province of Kosovo and Metohija, whose data has been destroyed or lost in the registers, to exercise their rights in this area, but there are still problems that are primarily related to the length of proceedings and unequal practice in their implementation<sup>217</sup>

Even though a high number of refugees, displaced and war affected persons have been naturalized, these persons still need assistance to solve issues of employment, as well as in exercising their rights in their country of origin.

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<sup>215</sup> Cf. Decision of the Basic Court in Novi Sad P. 56984/2010 upon lawsuit of the association of citizens Praxis, against the City Administration of Novi Sad – CANS openly acted in discriminatory manner towards one member of the Roma minority, rejecting his request with the following explanation: “referring to the current situation in Novi Sad, with increased inflow of the persons of Roma nationality, and the fact that more and more of them claim for themselves or their children to have been born in Novi Sad, we think that the hasty, careless and frivolous approach to solving this request we are not authorized to resolve could cause a mass of similar requests“.

<sup>216</sup> The Law on Registers, "Official Gazette of RS" no. 20/09, Art. 6, Guidelines on Keeping Registers and on Forms of Registers, "Official Gazette of RS", no. 109/09, 4/10-correction, 10/10 25/11 and 5 /13

<sup>217</sup> Problems related to the implementation of these procedures primarily concern the length of their life. Thus, these procedures usually last between one and six months, and in some cases even longer. In addition, the practice of the authorities responsible for acting is uneven, so that depending on the body where the application is submitted, the process of renewal of registration requires different evidence. Thus, for example, some authorities in the absence of evidence required, accept evidence that the stakeholder is in possession of, for example, according to an old birth certificate or ID card allow renewal of registration into the birth and citizenship registers, while others on the basis of the same evidence may renew registration in the birth register. Finally, the authorities responsible for conducting re-registration procedures frequently refer to the court stakeholders who do not have the evidence required by that authority - which further prolongs proceedings. Positive change has been achieved in the sense that now the authorities comply with their legal obligation to accept any submitted request, regardless of whether the claim is substantiated by an adequate and sufficient number of evidence or not. This positive development is the result of many years of reminding acting bodies of the obligation to respect the law and its consistent application by non-governmental organizations dealing with the protection of human and civil rights, the Ombudsman, as well as the relevant Ministry. Source: Association "Praxis"

The population of returnees under the Readmission Agreement also faces difficulties in obtaining personal documents. Possession of personal documents presents the main prerequisite for the exercise of all other rights. The first document which must be held by returnees based under the Readmission Agreement is a travel document. Issues with documents mostly arise with returnees displaced from Kosovo. Procedures for obtaining documents, as well as registration in birth registries or re-registration in birth registries are lengthy and complicated. Without personal documents, returnees cannot register temporary or permanent residence, and therefore cannot obtain personal identification cards, and they cannot exercise their guaranteed rights to health care, social protection, the right to work. These issues are even more serious when the returnees live in the facilities without address, such as unrecognized collective centres or informal Roma settlements and they cannot register their temporary and permanent residence. Even those returnees who rent real-estate often do not possess documents to prove legal grounds of housing, because the owners of real-estate do not want to register them as tenants. Returnees and internally displaced persons, primarily of Roma nationality, also face the problem of access to health care (See Section 4.2.2.3 Status of Roma).

Refugees from the territory of former Yugoslavia are faced primarily with two basic problems: employment and housing. There are also problems in access to other economic and social rights.

Refugees do not exercise their right to social financial aid and they are not recognized by the Law on Social Protection as the beneficiaries of the service of social protection, but they exercise their right to social protection pursuant to the Law on Refugees. At the same time, the Law on Asylum, as a special regulation, states, under certain conditions, the right to financial aid for asylum seekers. This inconsistency in the legal system inflicts refugees from the area of former Yugoslavia who did not opt for integration in the Republic of Serbia, and who still cannot return to their country of origin. At the same time, many refugees live in rented apartments and a significant number of them live with their family and friends. The same as in the case of general population, significant number of owners do not want to register them at the address of their real-estate, which presents an obstacle in successful integration and access to rights in the local community where they live. At the end of 2012, an important step forward was made in regulating health insurance of refugees, because the amendments to the Law on Health Insurance provide the right for refugees to also exercise this right in the Republic of Serbia with payment of the contributions in the amount of 12.3% of their pensions, without waiving their health insurance i.e. permanent residence in the Republic of Croatia. This is especially important for elderly refugees, who are the most vulnerable health-wise. This has created the legal presumption for solving this extremely important problem for this vulnerable community.

An increasing problem faced by the Republic of Serbia has been access to the rights of the seekers of international protection. Since it is surrounded by the countries of the EU, there is an increased number of persons in the Republic of Serbia expressing their intention to seek asylum in the Republic of Serbia. After almost 5 years of implementation of the Law on Asylum, numerous serious deficiencies have been noticed in the text of the law which result in a difficult procedure for establishing refugee status and negative effects on exercising the rights of asylum seekers in the Republic of Serbia. The lack of clear legal deadlines for certain actions which precede submission of the request for asylum influences the duration of the procedure and position of the asylum seekers during the course of the procedure. In practice, it often happens that the persons who express their intention to seek asylum, need to wait several months in order to submit the official request and receive identification document – personal identification card of asylum seeker. That document is the only identification document for an asylum seeker and the official



document before the authorities of the Republic of Serbia, as well as evidence of regulated temporary residence within the territory of the state. Capacities for accommodation of asylum seekers are insufficient, and it is significant to provide new accommodation capacities. Direct xenophobia and hostility towards asylum seekers and other migrants are expressed in local communities where the centres are located (Banja Koviljača), and in the communities where new accommodation capacities are to be established (Mladenovac). According to a survey by the Commissariat for Refugees and Migration “Opinions of the citizens of Mladenovac, Lajkovac and Loznica about asylum seekers”<sup>218</sup>, 39.2% of the respondents stated that there was tension between asylum seekers and the citizens in their municipalities and that conflicts in the future could be expected, and 38.5% of the respondents stated that there was possible tension, but that conflicts of any kind could not be expected. More than half of the respondents from Mladenovac (54.2%) state that there is tension between them and asylum seekers and that conflicts could be expected in the future, while a significantly lower number of respondents from Lajkovac and Loznica state the same. A total of 45% of the respondents think that there is nothing that could be done in order for asylum seekers to completely fit in their community, because they will never fit in. The remaining 65% of the respondents who think that something could be done in order for the asylum seekers to fit in their community mostly state the use of media for the purpose of better education of the citizens as the method for the asylum seekers to fit into the social community.

In order to respond to these challenges arising, primarily, due to the sudden increase of asylum seekers in the Republic of Serbia in 2010, 2011, and 2012, especially after intensified armed conflicts in Syria, the Government of the Republic of Serbia opened a new asylum centre in Bogovača. A particular problem was posed by the situation in front of the Asylum Centre in bogovača, where 90 to 200 foreign citizens were found every day. Those persons did not have access to accommodation capacities of the centre and food distributed to asylum seekers located in the centre. At the same time, those persons did not have access to the procedure for establishing refugee status, undertaken exclusively for persons located in the asylum centres. The Commissariat for Refugees and Migrations reacted by providing additional accommodation capacities by renting private facilities and providing food for the persons who previously could not be accommodated in the existing centre in Bogovača. This solution helped temporarily solve this difficult situation in Bogovača. Pursuant to the decision of the Government of the Republic of Serbia, a new centre should be located in Mladenovac, but was rejected by the local government by a decision issued by the Municipal Assembly.

A separate problem is posed by the increased number of unaccompanied underage asylum seekers. Such persons are directed to centres for social work, where they are assigned temporary guardians under urgent procedure, and in case the person demonstrates intention to seek asylum, they are directed to one of two existing centres in the Republic of Serbia. Since there are no available capacities in the existing centres, centres for social work find temporary solutions and place these persons in facilities intended for other types of social protection i.e. shelters or reception centres for children without parental care. Another problem is accommodation of unaccompanied underage foreign citizens without parents or guardians in working units of the facilities for care of children and youth in Belgrade and Niš. These units can accept 22 underage male persons, while girls are placed with other underage girls within existing departments of the facilities, because there are no separate rooms where the girls could stay.

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<sup>218</sup> Commissariat for Refugees and Migrations, *Survey of the Opinions of Citizens about Asylum Seekers*, October 2012, page 5

There is a problem with the regime of enforcement of sentences and rooms in the facilities where correctional measures are implemented, and where irregular migrants are placed. Those rooms are different from those where other persons sentenced to a term in correctional facilities are placed. It is not a rare situation that irregular migrants are kept locked in the rooms for 23 and half hours a day, where some of them sleep on the floor. In certain facilities, foreign citizens do not have access to common spaces, and they spend entire days in the rooms where they sleep. Furthermore, they are deprived of the right to be in an open space for one hour a day.<sup>219</sup>

### **4.8.3. Overall Objective**

Use legal reforms and comprehensive implementation of existing regulations to enable equal access to rights for refugees, internally displaced persons, returnees based on the readmission agreement, asylum seekers and other migrant communities in accordance with international and regional standards and undertake measures for the prevention of all forms of discriminatory practice, and particularly increase the level of acceptance of refugees, internally displaced persons and other migrant groups by the general population, through sensitization of local community for social, cultural and religious specificities of these vulnerable groups.

### **4.8.4. Measures**

- 1) Improving the implementation of international treaties ratified by the Republic of Serbia which are related to refugees, IDPs of other vulnerable migrant groups and provide conditions for the realization of demands arising from the International Convention on the Rights of All Migrant Workers and Members of their Families, in order to create conditions in the future for its ratification;
- 2) Introducing amendments to the Law on the Prohibition of Discrimination and defining discrimination of refugees, asylum seekers i.e. persons who are beneficiaries of legally prescribed forms of international protection and internally displaced persons as a special type of discrimination;
- 3) Improving the existing legal framework to prevent discrimination of this group of persons, as well as other laws which improve their position, pursuant to the needs recognized in practice and adopt required bylaws;
- 4) Providing for implementation and monitoring of the adopted Law on amendments to the Law on Extra-Judicial Proceedings and Law on Temporary and Permanent Residence of Citizens and simplifying the procedure for issuing of personal documents for internally displaced persons and returnees under the Readmission Agreement, for the purpose of obtaining complete equality of rights with other citizens of the Republic of Serbia and solving numerous cases of “legally invisible“ internally displaced persons, the majority of whom are of Roma nationality;
- 5) Adopting the Law on Free Legal Aid, which would enable associations to serve as providers of legal aid for refugees, internally displaced persons, asylum seekers and other vulnerable migrant groups;
- 6) Monitoring implementation of the existing Strategy and other strategic documents which refer to the position of this valuable social group, performing regular evaluations of their implementation and secure their comprehensive application;

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<sup>219</sup> Jovana Zori , Belgrade Centre for Human Rights, information gathered through monitoring visits to institutions for the enforcement of penal sanctions, 2012

- 7) Preventing discriminatory practice against refugees, internally displaced persons, persons with disabilities in all fields, particularly through analysis of specific cases of discrimination against this group of persons encountered by the Commissioner for Protection of Equality, the Protector of Citizens, the Ombudsman of the Autonomous Province and associations of citizens, for the purpose of removing the causes and consequences of their occurrence;
- 8) Providing equal treatment for refugees and asylum seekers in regards to exercising of the rights to social financial aid until their return to the country of origin;
- 9) Accelerating procedures for establishing refugee status and systematic solution of the issuing of housing for asylum seekers, through construction of additional capacities and preventive and repressive actions and prevention of hate speech and acts of violence and threats against asylum seekers;
- 10) Increasing the visibility of refugees, internally displaced persons, asylum seekers and other migrants, raising public awareness on specificities of their position and providing education of media employees on reporting and transfer of information on asylum seekers and other groups of migrants;
- 11) Providing conditions for serving prison sentences for irregular migrants (material conditions, health protection, time in open space, communication with prison personnel, etc.) equal to those available to citizens of the Republic of Serbia;
- 12) Paying special attention to the prevention of discrimination of multiply discriminated groups of refugees, internally displaced persons and migrants, especially the elderly, children, persons with disabilities, victims of violence, etc.

#### **4.8.5. Specific Objectives**

##### *4.8.5.1. Labour and Employment*

Provide conditions for prevention of discrimination against refugees and internally displaced persons in the field of work and employment, both in the public and private sector, especially with intention to prevent different treatment of other employees due to their different personal characteristics. As shown by the data on work and employment of refugees and internally displaced persons, there is a significant number of unemployed persons from this group, although the education structure of refugees is above average, this problem should be approached in a systematic and responsible way, through active and realistic implementation of existing programs. Amend provisions of Article 5 of the Rules on the Work Booklet and enable obtaining the work booklet pursuant to the place of temporary residence. Secure registration of refugees and internally displaced persons with the National Employment Service and provide education and distribution on information on this. Use grants and subsidized loans to encourage self employment, the founding of various cooperatives and social companies, agricultural farms, handicraft activities, small manufacturing shops etc. It is necessary to include migrants in local employment plans. Inform the employers of the rights of refugees and internally displaced persons to work, right to employment and equal treatment and penalties stated for discrimination at workplace. Ensure that proposals and recommendations of the associations of refugees and internally displaced persons are respected to the greatest extent at all levels of government.

##### *4.8.5.2. Housing*

In addition to housing under socially protected conditions, also encourage other types of housing for refugees and internally displaced persons (social housing for rent or

ownership), which would secure a higher level of access to the right to adequate housing for these vulnerable categories.

#### 4.8.5.3. Assistance, Programmes and Projects

In cooperation with international organizations and associations, provide additional funds for improved access to rights under equal conditions for refugees, internally displaced persons, asylum seekers, and returnees under the Readmission Agreement. These funds should be directed to the programs for strengthening of these vulnerable groups in order to exercise their financial and social rights. Special attention should be placed on the programs which encourage intercultural dialogue, education of state administrators on discrimination and mechanisms for its recognition and elimination, inclusion of vulnerable groups through access to educational courses, language courses, etc.

### 4.9. Religious Discrimination

Religion in international acts is one of the prohibited grounds of distinction in terms of ownership and scope of rights. In this sense, it can be noted that, in addition to proclaiming and safety, freedom of religion is additionally guaranteed by the prohibition of discrimination on grounds of religion, which is provided by all relevant international instruments.

The Universal Declaration in Article 2 provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, including, with respect to religion. Article 2 Paragraph 1 of the International Covenant on Civil and Political Rights states that the pact's member states commit to respecting and ensuring to all individuals within its territory the rights recognized in the Covenant which are subject to their jurisdiction, without distinction of religion, while Article 4 prohibits discrimination based on religion even in emergency situations (situations of public emergency threatening the preservation of the nation). Moreover, according to Article 24 Paragraph 1 of the Covenant, every child, without discrimination based, inter alia, on faith, is entitled to have his family, society and state undertake measures of protection as required by his status as a minor. Article 27 further provides that persons belonging to religious minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms explicitly mentions religious beliefs as an example of prohibited basis for discriminatory treatment: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

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respect for the law and its consistent application by non-governmental organizations dealing with the protection of human and civil rights, the Ombudsman, as well as the relevant Ministry. Source: Association "Praxis

The prohibition of discrimination enshrined in Article 14 is obviously limited, since it only applies to the "rights and freedoms" provided for in the Convention. It is important, however, that Protocol no. 12 of the Convention establishes a *more general* prohibition of discrimination, because it provides that any right which the law provides shall be secured without discrimination

on any ground such as religion for example. Consequently Protocol no. 12 provides additional protection from discriminatory treatment in countries that have ratified the agreement. Article 21 par.1 of the EU Charter of Fundamental Rights states that any discrimination, including on grounds of religion or belief, is banned.

The Serbian Constitution provides in Article 11 that the Republic of Serbia is a secular state in which churches and religious communities are separate from the state and that no religion may be established as state or obligatory. Article 21 of the Constitution prohibits discrimination. This Article provides that before the Constitution and the law, everyone is equal, everyone is entitled to equal protection of the law without discrimination, and that any discrimination, direct or indirect, of any kind, including, in particular on the basis of religion, is prohibited. Freedom of thought, conscience, belief and religion, the right to keep one's belief or religion or to change them by choice and the freedom of declaration of one's religious or other beliefs, are guaranteed by the Constitution in Article 43. The same article also states that everyone has the freedom to manifest their convictions or religious beliefs, publicly or privately, through the conduct of religious ceremonies, attending religious services or classes, individually or in community. According to paragraph 3 of this article of the Constitution, freedom may not be restricted by law only if it is necessary in a democratic society for the protection of people's life and health, morals of a democratic society, the rights and freedoms guaranteed by the Constitution, public safety and public order, or to prevent promoting and inciting religious, ethnic or racial hatred. The Constitution also provides, in Article 44 Paragraph 1, that churches and religious communities in Serbia are equal and separate from the state, and that the constitutional obligation of the state is to promote understanding, appreciation and respect for the differences that exist due to ethnic, cultural, linguistic or religious identity of its citizens (Article 48). Promoting and inciting racial, ethnic, religious or other inequality, hatred and intolerance, under Article 49 of the Constitution, is prohibited and punishable by law.

According to Article 18 of the *Anti-Discrimination Act*, discrimination in the area of freedom of religion exists if actions are taken contrary to the principle of free expression of religion or belief. The Law links this form of anti-discrimination to cases where a person or group of persons are deprived of their right to acquire, maintain, express and change their religion or belief and the right to privately or publicly manifest or act in accordance with their beliefs. Therefore, this guarantee of equality applies to both *individuals' and groups of people*, including *religious organizations*.

The fundamental law governing the legal status of churches and religious communities in the Republic of Serbia is the *Law on Churches and Religious Communities*.<sup>220</sup> In Article 2 which determines the prohibition of discrimination, the Act states that no person shall be subject to coercion which would endanger freedom of religion, nor be forced to declare their religion, religious belief or their absence. In paragraph 2 the same article, the law states that no one can be harassed, discriminated or privileged because of their religious beliefs, belonging or not belonging to a religious community, participation or non-participation in religious services and the use or non-use of guaranteed religious freedom and rights. The law governs restrictions on the freedom of religious expression, autonomy, registration, property and finance, as well as liturgical, educational and cultural activities of churches and religious communities.

The law defines the subjects of religious freedom in the sense of that law, namely: traditional churches and religious communities, confessional communities and other religious organizations.

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<sup>220</sup> Compare: Law on Churches and Religious Communities, " Official Gazette of RS " .br.36/06.

Traditional churches and religious communities are those with centuries-long historical continuity and legal personality acquired by special laws, and among them the law includes the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Evangelical Church, Reformed Christian Church, Evangelical Christian Church, the Islamic community and the Jewish community. Confessional communities are churches and religious organizations whose legal status was regulated by application in accordance with the laws in force in the era of socialist Yugoslavia. Other religious organizations mentioned by the Act are clearly those that can be identified as newly created. The Register of Churches and Religious Communities has the responsibility of the ministry in charge of religious affairs (at the time of preparation of the Strategy - Ministry of Justice and Public Administration), while conditions for admission and initiating the procedure of registration are regulated by the *Law on Churches and Religious Communities*, the *Law on General Administrative Procedure* and the *Book of Regulations on the Content and Manner of Keeping the Register of Churches and Religious Communities*.

#### **4.9.2. Description of the situation**

##### **4.9.2.1. Criticism, character and impact of the Law on Churches and Religious Communities**

The National Assembly of the Republic of Serbia adopted the Law on Churches and Religious Communities on 20 April 2006. The law came into force on 5 May 2006. The reason for the adoption of the Law on Churches and Religious Communities lies in the fact that in the legal order of the Republic of Serbia, starting from 1993 until the adoption of the Law on Churches and Religious Communities, there wasn't a general legal act that regulated the legal status of churches and religious communities, as well as the relationship between church and state. In 1993, the former Act on the Legal Status of Religious Communities in SR Serbia of 1977 became no longer valid and was repealed. The Act stated that citizens who founded a religious community shall file an application on establishment to the municipal authorities in charge of internal affairs within 30 days. A similar system was provided also by the Law on the Legal Status of Religious Communities adopted in the former Yugoslavia in 1953 at the federal level. A characteristic of both laws passed during the socialist period was that a central registry of reported religious organizations had not been kept. Otherwise, the legal status of religious communities in general was not regulated in the period from 1945 to 1993. Abrogation in 1993 of the Act adopted in 1977 was solved by a transitional legal regime, thus the state, churches and religious communities were faced with a number of unresolved relationships and open questions in the legal system until the adoption of the Law on Churches and Religious Communities 2006. Outside the legislation remained important issues: the question of the legal status of churches and religious communities, the status of their property, manner of funding, rights of the clergy, religious education issues, as well as the issues of establishment and registration of religious organizations. The adoption of the Law on Churches and Religious Communities comprehensively regulates the legal status of churches and religious communities in the legal order of the Republic of Serbia, as well as relations between the state, churches and religious communities.

The law followed the model registration of churches and religious communities in separate administrative proceedings, but envisaged different ways of acquiring legal subjectivity of churches and religious communities. Specifically, according to solutions contained in the law, traditional churches and religious communities, which the law defines as those with a centuries-long historical continuity and that have had their legal personality regulated in the past by special laws, are according to the law, recognized of having legal subjectivity, so that they do not submit

applications for registration, while other religious organizations must submit request forms for registration. The Law on Churches and Religious Communities in Article 18 Paragraph 1 provides that for the registration of churches and religious communities, an application must be submitted to the Ministry containing the name of the religious organization, the address of the religious organization's seat and the name and status of the person authorized to represent the church or religious community. According to Article 18, paragraph 2 of the Law on Churches and Religious Communities of the Republic of Serbia, religious organizations, except those that are traditional, must submit a request for registration with the Ministry containing the decision on establishing the organization with the names, surnames, ID numbers and signatures of at least 0.001% of adult Serbian citizens who have residence in the Republic of Serbia according to the last official census or foreign nationals with permanent residence in the territory of the Republic of Serbia, as well as the charter or other document of the religious organization that, among other things, contains a description of the organizational structure, manner of management, the rights and obligations of members, as well as a display of religious teachings, religious rites, religious goals and basic activities of religious organizations, and finally information on permanent sources of income. On the basis of the above provisions of the Act, it is clear that the registration procedure makes a distinction between traditional churches and religious communities, on the one hand, and other churches, religious communities and religious organizations on the other.

This approach initiated part of the domestic political and cultural public to view the law as unfair to many churches and religious communities, that it was discriminatory and insufficiently protected and promoted individual freedom of religion. Based on initiatives, which contained a similar argument, the Constitutional Court initiated proceedings on the constitutionality of the Law on Churches and Religious Communities.

The Constitutional Court in its decision of 7 February 2013,<sup>221</sup> among other things, also decided in the case of basic procedural issues - Does legal separation of the traditional churches and religious communities, on the one hand, and denominational religious organizations, on the other hand, violate the principle of equality of churches and religious organizations under Article 44 of the Constitution and the constitutional guarantee of non-discrimination under Article 21 of the Constitution, and do the differences in the registration process lead to the violation of the principle of equality and the right to equal legal protection under Article 21 of the Constitution. The court "found that the traditional churches and religious communities, on the one hand, and other religious organizations, on the other hand, are not in formally analogous situations when attempting to register." The Court reached this conclusion on the basis of the opinion that "the difference during the registration of traditional churches and religious communities, on the one hand, and all the other religious organizations, on the other hand, according to challenged provisions of Article 18 of the Law, exists in terms of providing evidence during the registration process as compared to traditional churches and religious communities, and in relation to "recent" religious communities that are not provided for by Article 10 of the law". In a careful analysis of the differences in the registration process, both between the subjects of freedom of religion and association of citizens, and between different religious organizations, the Constitutional Court first concluded that "churches and religious communities that ex lege entered in the Register, or religious organizations that acquire this legal subjectivity in this manner by submitting evidence that the law defined in Article 18 Paragraph 2 of the Law, actually submit the same evidence submitted by associations in any other field of association for the sake of showing what kind of organization it is, namely that it is a religious organization and not another type of organization ....", and then, by just starting with the key elements of the registration process, that is providing proof that an association of people is by nature religious, the Court held that unequal treatment of traditional and non-traditional churches and religious communities, and different legal regimes for

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<sup>221</sup> "Official Gazette of RS" No. 23/13

the registration in the Register, does not lead to a less favorable position of non-traditional churches and religious communities during registration. Specifically, the Court held that " these churches and religious communities must meet the same conditions as traditional churches and religious communities," and that "the difference ... is just that traditional churches and religious communities have met these conditions in the past, which is why their legal status was recognized by special laws".

Therefore, the Constitutional Court of Serbia stood on the view that the distinction between traditional churches and religious communities, on the one hand, and other churches and religious communities, that is religious organizations, on the other hand, is not discriminatory. The court in its decision clearly "states that the prohibition of discrimination does not mean that any legal distinction between individuals and collectives is not allowed", and that "certain differences among individuals and groups of people are legitimate and sometimes necessary ...". However, in its decision the Court did not derive any conclusion regarding the legitimacy of the distinction between traditional churches and religious communities, on the one hand, and confessional communities, on the other hand? Specifically, if the difference between traditional churches and religious communities and other religious organizations are legitimate because traditional churches and religious communities in the past met the requirement of proving that they are religious organizations, then the fundamental question arises why cannot the view stand that this requirement was also met in the past by confessional communities, especially as the Law on Churches and Religious Communities clearly in Article 16 designates as such all those churches and religious organizations whose legal status was regulated by application in accordance with the Law on the Legal Status of Religious Communities ("Official Gazette of the SFRY", No. 22/1953) and the Law on the Legal Status of Religious Communities ( "Official Gazette of RS", No. 44/1977). Confessional communities under the laws in force in socialist Yugoslavia, and as stated in Article 16 of the Law on Churches and Religious Communities, had the status of legal persons that was retained even after the termination of the law under which it was acquired, so that envisaging registration and religious communities can be understood in a way that brings confessional communities in the same position with newly formed churches and religious communities, thus actually envisaging the re-establishment of religious communities that already exist.

#### *4.9.2.2. Religious affiliation and exceptions to the prohibition of violating equal treatment*

Equal treatment of unequal situations also constitutes discrimination and should be treated through a strategic anti-discrimination document. With regard to the fight against discrimination based on religion, it should be pointed out that in many European legislation religion is considered permissible grounds for exemption from the general prohibition of discrimination. Namely, Directive 2000/78/EC establishes a general framework for equal treatment in employment and occupations, which, according to Article 1, intends to prescribe a general framework for combating discrimination, inter alia, on the basis of religion in employment and occupation, and provides a significant number of exceptions to the general prohibition of discrimination. In this regard it should be noted that the Directive envisages the possibility that EU member states may establish that treatment based on a characteristic related to the grounds on which discrimination is prohibited, shall not constitute discrimination if, due to the nature of the particular occupational activities or the context in which they are performed, such characteristics represent a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is justified.



In terms of professional requirements, the Directive expressly provides that member states may envisage, in the case of professional services in churches and other public or private organizations whose system of values are based on religion, that difference based on the religion of a person shall not constitute discrimination where religions are a true, legitimate and justified occupational requirement. The difference in treatment shall be applied under the provisions of the Directive, taking into account the provisions and principles of the Constitution of the member states, as well as general principles of the Community Law, and shall also not justify discrimination on other grounds. A question arises whether the definition of terms for a specific religion in the broadly defined current legislative framework in the Republic of Serbia, in the case of professional services in churches and other public or private organizations whose system of values are based on religion, would be considered discrimination which after all caused a legitimate complaint of churches and religious communities during the enactment of the Anti-Discrimination Act.<sup>222</sup>

The Anti-Discrimination Act provides in Article 18 paragraph 2 an exception to the general prohibition of discrimination, but only for the conduct of priests and religious officials, which is consistent with religious doctrine, beliefs or goals of churches and religious communities registered in the register of religious communities, in accordance with a special law governing the freedom of religion and the status of churches and religious communities, and therefore not for the treatment of churches and religious communities, or other public or private organizations whose system of values are based on religion.

#### 4.9.2.3. Attacks on objects of religious communities and hate speech

Cases of attacks on facilities of churches and other religious communities, hate speech against members of religious communities and various forms of harassment and degrading treatment, which themselves represent special forms of discrimination, are still sporadically experienced by members of certain religious communities, their religious monuments and features. Tolerance of citizens towards a number of religious organizations that are small in numbers, is still not high, especially when it comes to public expression of religious particularities of its members.

Crimes, misdemeanors and other events committed against religious sites can be a) those in which the motive is obtaining unlawful gain, and b) those that according to the manner of execution and the environment in which they were carried out point to religious intolerance as the likely motive. Statistics show that the largest number of events committed against religious sites in recent years were motivated by illegal profit gain (in 2007 - 79.6%, in 2008 - 64.8%, in 2009 - 74.8%, in 2010- 77.9%, in 2011 - 78.5% and from 1 January to 1 March 2012 - 87.8% of the total amount of events), due to the fact that cash donations from the faithful, sacred objects, copper gutters, and objects of cultural, historical and religious significance were generally taken from religious sites. In addition, there is a record of events performed in places of worship, which due to their manner of execution (by breaking glass and writing insulting graffiti on religious

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<sup>222</sup> For example, would a church that calls for a public competition for the recruitment of a director of their own museum, in which only a believer of that church may be employed, be found responsible for discrimination? According to Article 4 paragraph 2 of Directive 2000/78 such treatment would be within the scope of professional requirements that do not discriminate, while in the Republic of Serbia, this issue would be legally very questionable.

sites) and environment in which they were carried out, can be put in the context of religious intolerance. Statistical data indicate a decrease in such incidents (in 2007 - 83 or 20.4% of the events at religious sites in that year, in 2008 - 81 or 21.6%, in 2009 - 54 or 11.6%, in 2010 - 51 or 12.1%, in 2011- 47, or 9.7%, and from 1 January to 1 March 2012 - 4 or 5.4%).

In the structure of acts that have the characteristics of religious intolerance the following statistics can be observed. The Christian Adventist Church in 2007 was the target of arrogant and intolerant individuals in 16 cases that manifested as damage to buildings of this community. In 2008, there was a decrease in expression of intolerance towards this religious community, given that there were 10 reports of damage to their facilities; in 2009, there were 9 cases; In 2010 - 10 cases and in 2011 - 11 cases. In the first two months of 2012, there were no recorded cases of religious intolerance at the expense of the Adventist church.

Damage to the Roman Catholic Church can be included in the context of religious intolerance (10 - in 2007, 13 - in 2008, 9 - in 2009, 8 - in 2010, 5 - in 2010, and from January 1 to March 1 2012 - 2), as well as damage to the Serbian Orthodox Church (10 - in 2007, 2 - in 2008, 4 - in 2009 and in 2010 and 2011 - one each); objects of the religious community Jehovah's Witnesses (8 each- 2007 and 2008, 7 - in 2009, 9 - in 2010, 5 in 2011, and one for the period from 1 January to 1 March 2012); the Church of Jesus Christ of Latter Day Saints (2 each- 2007 and 2009, 7 - in 2008, 3 - in 2010, and one in 2011); objects of the Islamic community (1 - in 2007, 4 - in 2008, 3 - 2009, 2 - in 2010, and 5 - in 2011); objects of the Jewish religious community (2 each - in 2008, 2010 and 2011, and one in the period from 1 January to 1 March 2012) etc.. In addition to damage to buildings, in the period between 2007 to March 2012, a number of other cases were registered against the Jewish community and its members - three anonymous threats; 23 cases of writing slogans insulting the dignity of the Jewish people and three cases of damage to the Jewish cemetery.<sup>223</sup>

#### **4.9.3. General purpose**

Preventing the possibility of violations of the prohibition of discrimination on religious grounds by improving the legal framework and effective enforcement of regulations; affirmation of religious tolerance, including taking measures to promote respect, understanding and cooperation between the churches and religious communities and persons belonging to different religions, particularly by encouraging interfaith dialogue.

#### **4.9.4. asures**

- 1) Harmonize the existing legal framework prohibiting discrimination with the standards contained in the EU Directives, in particular Directive 2000/78;
- 2) carry out reform (or authentic interpretation of the Act) regarding registration of churches and religious communities into the Register of churches and religious communities, which could provide continuity of legally recognized subjectivity not only of traditional but also confessional religious communities;
- 3) continuously take active measures in preventing the spread of hate speech against members of religious communities and improving public safety of their members,

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<sup>223</sup> All information according to the Third Periodic Report of the Republic of Serbia on the Implementation of the Framework Convention for the Protection of National Minorities, available at [http://www.ljudskaprava.gov.rs/images/konvencije/treci\\_izvestaj\\_o\\_sprovodjenju\\_okvirne\\_konvencije\\_srp.pdf](http://www.ljudskaprava.gov.rs/images/konvencije/treci_izvestaj_o_sprovodjenju_okvirne_konvencije_srp.pdf)

property and religious sites, which certainly includes, but is not limited to measures on improving the level of tolerance of citizens towards religious communities and their members.

#### **4.9.5. Special goals**

##### *4.9.5.1. Ensuring equal treatment of churches and religious communities*

In order to ensure equal treatment of churches and religious communities in the Republic of Serbia, enable continuity of legally recognized subjectivity not only for traditional but also for confessional religious communities whose legal status was regulated by application, in accordance with previous laws.

##### *4.9.5.2. Security*

Continuous prevention of the destruction of property, buildings and religious sites of religious communities, finding the perpetrators of such acts and adequately punishing them.

##### *4.9.5.3. Affirmation of tolerance and dialogue*

Promote dialogue between churches and religious communities, as well as the level of citizens' tolerance, towards religious communities and their members.

## **4.10. Discrimination of Persons whose Health Status May be Grounds for Discrimination**

### **4.10.1. Legal Framework**

Physical and mental health conditions have always been grounds for unjustified different treatment of people. The cause of discrimination is most frequently the fear of certain diseases and stigmatization of persons who suffer from them. In recent decades, the discrimination of persons because of their health status, particularly as a result of HIV infection, has opened numerous delicate issues regarding the adjustment of necessary efficient measures for combating diseases and the protection of public health as well as the equally important requirement of respect for human rights. A great number of physical and mental illnesses have significant social implications, and the consequences of these illnesses are not restricted only to persons immediately affected by them; namely, the whole social environment wherein a sick person lives is affected: the family, the people who take care of the sick person, professional and work environment and other people with whom the sick person enters into contact regarding participation in formal and informal social groups, cultural, religious, educational, recreational or sports activities.

General provisions on the prohibition of discrimination include health status as grounds for discrimination as well. The United Nations Commission for Human Rights stated in 1996 that in the classical definition of prohibition of discrimination, the term “or other grounds” legally determines that discrimination based on personal characteristics is prohibited when any health

condition is in question, including HIV/AIDS.<sup>224</sup> The legal system of the Republic of Serbia, besides general provisions of the Constitution on the prohibition of discrimination, expressly prohibits discrimination on the grounds of health status in the *Law on the Prohibition of Discrimination*<sup>225</sup>, regarding all persons, particularly discrimination against children because of their health status.

Apart from the provisions that prohibit discrimination, other rights and obligations of sick people in the Republic of Serbia have not been regulated systemically, but are scattered in numerous laws and regulations. The *Law on Healthcare*<sup>226</sup> regulates the rights and obligations of patients using health care services; the *Law on Health Insurance*<sup>227</sup> regulates rights on the basis of compulsory health insurance; the *Law on Protection of Population Against Communicable Diseases*<sup>228</sup> regulates actions concerning cases of the spreading of communicable infections; the *Criminal Code*<sup>229</sup> regulates responsibility in case of failure to meet the obligation regarding protection of public health and HIV transmission; the *Law on Personal Data Protection*<sup>230</sup> treats data on health status of a person as particularly sensitive. Inconsistency of laws and lack of regulatory provisions can be, in certain cases, grounds for unequal treatment or lack of sanctions for discrimination of persons because of their health condition.

Other important documents in preventing discrimination of persons on grounds of their health status are international agreements and declarations accepted by the Republic of Serbia within the United Nations and Council of Europe, and strategies adopted by the Government of the Republic of Serbia, such as Strategy on HIV Infection and AIDS in the period 2011-2016.<sup>231</sup>

#### **4.10.2. Overview of the Situation**

##### *4.10.2.1 Status of Persons whose Health Status May Be Grounds for Discrimination*

In Serbia, discrimination of persons on the grounds of their health status is still present. It is the result of deeply rooted prejudices due to various phobia fears, lack of basic knowledge and incorrect information on the manner of transmission of infections or the nature of disease. Forms of discrimination are numerous and influence social exclusion of the affected persons, including as follows: denying the right to primary and secondary education, losing their job and difficulties in employment, denial of basic and urgent medical care, media campaigns and sensationalistic media coverage of critical events concerning the participation of persons living with diseases, family rejection, isolation within educational or prison and correctional and other institutions, insults and scorn, beating and physical abuse of persons living with diseases.

##### *4.10.2.2. Respecting the Legal Framework; Need for its Further Improvement and Factual Status in Certain Areas*

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<sup>224</sup> UN Commission for Human Rights Resolution, No. 1996/44.

<sup>225</sup> *Law on the Prohibition of Discrimination*, "Official Gazette of the Republic of Serbia", No. 22/09.

<sup>226</sup> *Law on Health Care*, "Official Gazette of the Republic of Serbia", No. 107/05.

<sup>227</sup> *Law on Health Insurance*, "Official Gazette of the Republic of Serbia", nos 107/2005, 109/2005 - corr. and 57/2011.

<sup>228</sup> *Law on Protection of Population Against Communicable Diseases*, "Official Gazette of the Republic of Serbia", no. 125/04

<sup>229</sup> *Criminal Code*, "Official Gazette of the Republic of Serbia", nos 85/05 and 72/09.

<sup>230</sup> *Law on Personal Data Protection*, "Official Gazette of the Republic of Serbia", nos 97/08 and 104/09.

<sup>231</sup> Government of the Republic of Serbia, Strategy on HIV Infection and AIDS in the period 2011-2016. "Official Gazette of the Republic of Serbia", no. 26/2011.

Within the sphere of the right to education, children living with HIV, those whose parents have been infected with this virus, suffer from AIDS or died from AIDS, are sometimes isolated by the school board or other children. Children suffering from celiac disease do not have equal opportunities and cannot avoid eating any foods that contain gluten in schools, since food without gluten is not prepared in school kitchens. In the field of workplace relations, there were cases where people lost their jobs because of their health status, despite it not being directly linked with their job, without any right to professional retraining or another job, or because of rumours spread throughout workplace about the person suffering from some sexually transmissible infection or some other disease that involves socially sensitive issues. *The Labour Law* prohibits discrimination of job seekers and employees on the grounds of their health condition, although its overly broad provisions are interpreted by employers to the disadvantage of the sick persons.<sup>232</sup> In the sphere of health care protection, the most frequent cases of discrimination relate to denying urgent medical care, providing specialist services or care services to persons living with communicable diseases, or measures offending human dignity and personality of the diseased, such as, for instance, disinfection of the whole room after examination and intervention, putting on two pairs of gloves and surgical masks, and the like. Also, different procedures are imposed in exercising health care and social protection, introduced on the pretext of protection of public health or saving funds, while in fact they cause unequal and unfair treatment of certain persons because of their health status. Regarding persons serving prison sentences, cases of isolation of prisoners with health issues by other prisoners are characteristic, as well as denying the right to medical care. Furthermore, there were also cases of abuses or brutal beatings of persons because of their health status, e.g. their HIV positive status. Until this day, no judgments have been made in the Republic of Serbia relating to discrimination on the grounds of health status. This fact is crucial in persons living with sick persons deciding to hide their condition; they do not even go for regular medical checkups and quickly lose contact with the social environment.

There are no special measures in the Serbian legal system for encouraging equality of persons whose health status may be grounds for discrimination. These measures are allowed according to the *Law on the Prohibition of Discrimination* if they are undertaken with a goal to improve the status of discriminated groups of persons. This implies that the measures in this case should include, as follows: ensuring equality before state authorities and institutions; providing access to information through creating info centres for the prevention, counselling and support to persons living with diseases; printing information materials and distribution of information on various diseases in educational, health care, prison and correctional institutions, military and other institutions; ensuring equality in the educational field; encouraging employment of persons with certain health difficulties, etc.

The problem of persons whose health status can be grounds for discrimination also exists in the field of personal data protection. In order to ensure data protection for persons living with diseases, particularly in terms of guaranteed rights when undesired disclosure of information that they have been infected and/or diseased is in question, it could be stated that the *Law on Personal Data Protection* is on the right track to include basic solutions, primarily of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981, but it is also in compliance with the solutions on personal data protection of the European Union, primarily EU's Directive 46/95. However, in further normative development in the field of personal data protection, particularly in the possible Law on the Protection of Patients' Rights or through adoption of special Law on HIV/AIDS, it must be determined more clearly what this special manner of processing data of this group of persons means. Also on the basis of the

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<sup>232</sup> Labour Law, "Official Gazette of the Republic of Serbia", nos 24/2005, 61/2005 and 54/2009, Articles 15 and 18.

Law on Personal Data Protection special by-law on processing particularly sensitive personal data needs to be adopted.

The problem of legal framework concerning this group of persons in the Republic of Serbia is visible, namely, there were no activities related to the adoption of a single law on the Protection of Patients' rights, while special legislative solutions in individual legal branches have been proposed and adopted independently of one another, without encompassing the whole spectrum and observing the latest medical achievements. The rules related to rights and obligations of the sick persons cannot be found in a single law, but are inconsistently dispersed throughout the legal system. This is the reason why the quality of positive legal norms concerning HIV/AIDS and other diseases is far below the standards in the field of comparative law. Furthermore, it is visible that legal norms relating to this field are mostly not found in the highest laws, only numerous by-laws. The adopted strategies as well as international documents have not yet been implemented adequately.

#### **4.10.3 Overall Objective**

Prevent violation of the prohibition of discrimination against persons whose health status can be grounds for discrimination, through legislative and regulatory reforms. Provide full implementation of the Law on the Prohibition of Discrimination in the part relating to discrimination because of health status. Monitor and implement current strategies that may lead to observance of Constitutional guarantees concerning the prohibition of discrimination. Change public policies in certain fields that may be the “source of discrimination“ and prevent discriminatory practices in relation to the health status in the field of protection of health, education, labour, private and family life, participation in public life and in other fields. Fulfil conditions for observance of the right to privacy of persons regarding their health status. Prevent cases of physical and psychological violence against persons regarding their health status. Encourage mechanisms of court and institutional protection of persons who suffer discrimination because of their health status, as well as the ones who take care of them, in cases of direct and indirect discrimination, and undertake measures to encourage the equality of these persons.

#### **4.10.4. Measures**

- 1) Providing implementation of the Law on the Prohibition of Discrimination and other laws of importance for the equality of all persons based on their health status;
- 2) In further elaboration of the legal framework in this field, adopting a special law on the prohibition of discrimination based on an individual's health status; as well as the Law on Patients' Rights, which shall include anti-discrimination principles;
- 3) Performing analysis of by-laws, which can be basis for discrimination because of health status, particularly in the fields of health care, social security, labour, education, private and family life, etc.; and improving the framework of bylaws based on the results obtained;
- 4) Analyzing specific cases of discrimination based on an individual's health status, the Commissioner for Protection of Equality, Protector of Citizens and the Provincial Ombudsman are dealing with as independent and autonomous state/provincial authorities, as well as citizens associations, for the elimination of causes of their occurrence and consequences.
- 5) Revealing and eliminating potential discriminatory practices against individuals because of their health status (particularly against persons living with HIV, persons infected by hepatitis, persons with serious or rare diseases, etc.) in providing medical, social and

- other services, employment, labour, education, court proceedings, in exercising rights to private and family life, and in other fields;
- 6) Encouraging equality of persons whose health status can be grounds for discrimination, and empowering associations whose objective is to protect and improve the rights of these persons;
  - 7) Raising public awareness of citizens on the need for the protection of personal health and observing the rights of persons whose health status can be grounds for discrimination, through developing and implementing informational, educational and humanitarian public campaigns and eradicating deeply rooted prejudice against these persons due to lack of knowledge and wrong information on the way of transmission of diseases and their character;
  - 8) Improving the sensitivity of media coverage of the health status of individuals or sick persons by increasing educational contents on the equality of persons living with diseases that tend to be socially unacceptable diseases;
  - 9) Paying special attention to preventing discrimination of multiply discriminated groups of persons whose health status can be grounds for discrimination, particularly LGBT people, children, women, people with disability, etc.

#### **4.10.5. Specific Objectives**

##### **4.10.5.1. Healthcare System and Healthcare Protection**

Adopt a special Law on the Protection of Patients' Rights, which shall include anti-discriminatory clauses as well. Protect data on health status, which may lead to discrimination in the health care field. Improve knowledge of employees in the health care system on diseases and sick persons who can be discriminated on the basis of their health status. Prevent potential and possible discriminatory practices in providing health care services (e.g. through keeping unnecessary records, unnecessary disclosure of health status, etc.). Ensure the rights of all persons to health care and protection regardless of current health status.

##### **4.10.5.2. Private and Family Life and Personal Data Protection**

Amend laws in the field of personal data protection and elaborate, through the adoption of new laws, a special legal “regime“ for the protection of personal data of persons whose health status can be grounds for discrimination. Provide full observance of human rights and privacy of persons whose health status can be grounds for discrimination when introducing new information systems, in order to create a single database within the health care and health insurance systems, like electronic health insurance cards and electronic medical records. Adopt by-laws in accordance with the *Law on Personal Data Protection*, in order to specify terms and conditions for gathering and processing particularly sensitive data relating to health status, and determine measures for the protection of such data in a way that will not endanger human rights of persons bearing in mind their health status. Provide observance of the rights of persons whose health status can be grounds for discrimination in provisions that regulate private and family life of citizens.

##### **4.10.5.3. Labour and Employment**

Prevent discriminatory practices against persons because of their health status regarding labour and employment (e.g. National Employment Service is avoiding to invite persons qualified for a certain job to open calls for employment because of their health status, and/or employers are refusing to employ a qualified and capable person because of his/her health status). Omit personal

data relating to health status, which may be the source of discrimination in the employment records. Educate employers and employees in the National Employment Service on diseases of persons whose health status can be grounds for discrimination. Provide affirmative measures when employing persons living with diseases and unhindered exercise of all rights relating to labour relations and on the basis of employment.

#### **4.10.5.4. Education**

Monitor progress in the field of inclusive education and implementation of the Law on the Fundamentals of the Education System, and eliminate negative and discriminatory practices in education, particularly when children/youth and their health status are in question (e.g. prevent the transfer or withdrawal of a child from an educational institution due to his/her health status, pay adequate attention to the education of sick persons, prevent psychical and psychological abuse, etc.) Provide omission of personal data in school records relating to health status which can be grounds for discrimination. Ensure education of employees in educational institutions on diseases and on persons whose health status can be grounds for discrimination. When adopting/amending regulations on education, envisage and elaborate special provisions on the prevention of discrimination of children/youth because of their health status in the education system.

## **V MONITORING AND ASSESSMENT OF THE IMPLEMENTATION OF THE STRATEGY**

The aim of monitoring and assessment of the implementation (monitoring and evaluation) of this Strategy is systematic gathering of data, monitoring and supervision process of implementation, and assessing the implementation of the Strategy in order to propose possible modifications in envisaged measures on the basis of findings and assessments. Continuous and long-term monitoring, as a systematic process of data gathering, has been implemented during the 2013-2018 period. Success assessment - evaluation (as data analysis and assessment) shall be performed each calendar year, by 31 March for the previous year.

The Office for Human and Minority Rights shall prepare a Joint Report on Monitoring the Implementation of the Strategy, pursuant to individual reports of all relevant state administration bodies, prepared by designated contact persons and harmonized at the level of the Office for Human and Minority Rights, as well as pursuant to Reports of the Commissioner for Protection of Equality and the Protector of Citizens, along with an alternative report related to the implementation of the Strategy of the association of citizens engaged in promotion, improvement and protection of human rights, particularly those engaged in preventing discrimination of vulnerable social groups, and submit the Joint Report to the Government.

The Office shall implement an internal evaluation of the implementation of this Strategy every two years, through cooperation with all the above-mentioned bodies. The Evaluation Report shall also be submitted to the Government. Final evaluation shall be performed by 31 March 2018.

The Office for Human and Minority Rights shall be responsible for monitoring and assessment of the implementation of this Strategy, through monitoring the implementation of the Strategy, preparing the Joint Report on Monitoring of the Implementation of the Strategy (annually, periodically – every two years and finally – at the end of the strategy period). The Office shall define, in cooperation with all parties, the manner in which the monitoring and assessment of the implementation of the Strategy shall be organized.



## **VI FUNDS FOR THE IMPLEMENTATION OF THE STRATEGY**

Funds for the implementation of the National Strategy shall be provided from different sources, as follows: regular budget funds, budgets of local self-government units, donor funds, i.e. through programmes and projects to be adopted based on this Strategy and its Action Plan. In order to ensure the implementation of the Strategy, civil society organizations shall be included in certain implementation activities in each individual field. Funds for the implementation of the Strategy may be allocated from budget line 481 – subventions to nongovernmental organizations, through specially drafted competitions for the implementation of certain parts of the Strategy.

## **VII ACTION PLAN**

The Government will adopt Action Plan for the implementation of the Strategy.

## **VIII FINAL PROVISION**

The Strategy hereof shall be published in the “Official Gazette of the Republic of Serbia”.

In Belgrade, June 27<sup>th</sup> June 2013

## **THE GOVERNMENT**

Prime Minister

Ivica Dačić