# REGULAR ANNUAL REPORT FOR 2011 COMMISSIONER FOR PROTECTION OF EQUALITY

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All terms used in this report in masculine grammatical gender relate to both female and male gender of the mentioned persons

## INTRODUCTION

Respected members of the Parliament, Respected readers,

This is the second regular report of the Commissioner for Protection of Equality of the Republic of Serbia and it refers to the period between 1 January and 31 December 2011. As the public is well aware of, by adopting the Law on Prohibition of Discrimination in 2009, Serbia rounded-off its anti-discrimination legislation and set necessary legal presumptions for successful combat against discrimination and fulfilment and protection of equality. In the last previous years, Serbia established comprehensive system of protection from discrimination and the system consists of compatible mechanisms for criminal, civil and misdemeanour legal protection. The Commissioner for Protection of Equality has important place in this protection system – it is independent, autonomous and specialized state body established with the aim of contributing to suppressing all forms and types of discrimination, removing the consequences of discrimination and fulfilling and respecting equality in all areas of social life. By adhering to its legally binding duties, the Commissioner is expected to be one of the key actors together with courts and other institutions in suppressing discrimination and promoting equality.

A year of continual work has passed. During the last year, we received 335 complaints, 11 notices and initiatives and we published 98 opinions and 17 recommendations to the public administration bodies on taking measures to improve equality. We also gave four opinions and initiatives for changing legislation, initiated three law suits for protection from discrimination, filed two misdemeanour charges and published 29 admonitions and releases, as well as seven public information about non-adhering to the Commissioner's recommendations. Our work in the previous year was marked with intentions to form the Commissioner's Office, build institution's capacities, enhance the visibility of the institution in Serbia and provide information to people about authorities and duties of the Commissioner, react preventively within the legislative framework in order to prevent discriminatory behaviour and accelerate the process of factual equality of legal subjects in all social relations.

The report before you gives insight into the key problems in fulfilling equality and identifies the most frequent victims of discrimination and social relations areas where the discrimination is most prevalent. It is important to emphasise that we used all available sources to have better insight and description of the current situation – reports of the public authorities, institutions and civil society organizations. This approach was necessary, because the data collected in complaint proceedings was insufficient to reach conclusions about prevalence and characteristics of the discrimination in Serbia, especially by having in mind that the number of complaints is still small. On the other hand, no unique and centralized system of collecting, registering and analysing data about discrimination and legal protection from discrimination has been established on the national level, and such system would ensure creation of a database necessary for continual discrimination monitoring.

The second regular report has six parts. The first part of the report gives details about activities taken to provide working conditions, including forming the Office and building its capacities, ensuring working premises etc. The second and central part of the report gives information about key problems in equality fulfilment and protection, analysis of the complaints and their results, overview of the activities taken to suppress discrimination, recommendations given to public administration bodies, and an overview of published admonitions and releases. The third part of the report gives information about various forms of cooperation established at international level and collaboration with state administration bodies, civil society organizations and the media. The fourth part of the report contains information about fulfilling obligations in accordance with financial and other laws. The fifth part gives framework-working plan for 2012, and the last sixth part of the report gives recommendations given to state authorities with the aim of taking measures for efficient suppression of discrimination and fulfilment of factual equality of legal subjects.

At the end, I want to remind you of the well-known fact - adoption of positive laws and establishment of the institution of the Commissioner for Protection of Equality are only first and easiest steps in combating discrimination. Even if the legal provisions were implemented in the most effective manner and discrimination was severely punished, it would not have been enough for alleviating intolerance and suppressing discrimination. Therefore, besides special measures intended for achieving full equality of underprivileged social groups, wide mobilization of all progressive social forces is needed in order to promote equality and tolerance towards national, ethnic, religious, sexual and other minorities that will represent mutual values accepted by this society with full awareness and with crucial understanding that without them there is no peaceful life, dialogue, cooperation, social stability and improvement. This change also incorporates establishment of the value system that accepts, respects and understands diversity as richness and developmental potential. Such value system is possible only when ideologies of traditionalism, authoritarian mentality, political unculture and prejudices are overcome, and what is especially important, only when the cultural matrix presuming that that the majority can be better off only if minority is worse off is not dismantled. People have to be

openly faced with negative consequences of intolerance and discrimination, as well as individual benefits of respecting right to diversity. If these aspects are not set in place, we will maintain a society still facing challenges of extremism, intolerance, hatred and violence towards others and different and thus we will miss the chance to pave the road to young generations towards open society of true equality in which the human diversities are respected for the general well-being and in which all individuals are given equal opportunities to develop their potentials and equally, actively and productively participate in all segments of social life by giving full contribution to the societal development.

Nevena Petrušić PhD, The Commissioner for protection of equality

### **SUMMARY**

The Commissioner for Protection of Equality¹ is independent, autonomous and specialized state body established in accordance with the Law on Prohibition of Discrimination from 2009 and with the aim of suppressing all forms, types and cases of discrimination, protects equality of legal subjects in all areas of social relations, monitors the implementation of antidiscrimination legislation and improves fulfilment and protection of equality. For the purposes of fulfilling its duties, the Commissioner is authorised to have the complaint proceedings for discrimination, file lawsuits for protection from discrimination, file misdemeanour charges, inform public about cases of discrimination and give recommendations on measures for improving and protecting equality.

During 2011, the Commissioner for Protection of Equality received 335 complaints and 11 notices and initiatives. The number of complaints has tripled in comparison to 2010 because of numerous activities implemented in Serbia in cooperation with civil society organizations that raised public awareness about discrimination and protection mechanisms, and enhanced the visibility of the Commissioner. In the last year, the Commissioner gave 98 opinions and 17 recommendations to the public administration bodies on measures to improve equality, gave two opinions about legislation and three initiatives for changes of the legislation, initiated three law suits for protection against discrimination, issued 29 admonitions and releases and seven notices to the public about non-compliances with the Commissioner's recommendations.

Majority of complaints related to the discrimination in the area of employment and work. In addition, substantial number of complaints stated nationality, disability or gender as a ground for discrimination. One third of the complaints were submitted against public administration bodies. There were relatively large number of complaints not related to violating right to equality but to other illegal behaviour, which actually shows that the citizens are not well informed about the phenomenon of discrimination and authorities of the Commissioner for Protection of Equality.

NB: for the purpose of the clarity of the text, the institution of the Commissioner will hereinafter be referred as the Commissioner for Protection of Equality, and the person holding the position will be referred to as the Commissioner for protection of equality

In the last year, the Office of the Commissioner intensively worked on promoting principles of equality and non-discrimination by holding lectures and presentations, organising promotional events, participating at conferences, expert meetings and round-table conferences organised by civil society organizations.

The institution of the Commissioner has improved cooperation with other public administration bodies, similar international institutions, partner and donor organisations in Serbia and abroad and civil society organisations in Serbia. Full membership in the European Network of Equality Bodies (EQUINET) provided exchange of experiences with similar institutions in the EU and the region.

In 2011, the Commissioner for Protection of Equality was granted 96.213.000 RSD, and the 2012 Law on budget allocated 89.471.000 RSD for the Commissioner.

In the previous period, the media intensively covered and informed public about the work of the Commissioner, and broadcasted and published its releases, opinions and attitudes.

The Office of the Commissioner was formed in 2011. Three Assistants to the Commissioner were appointed and 17 persons were employed, so the Office of the Commissioner now has 18 persons. Ten-month construction works on renovating the Commissioner's premises were finished in June 2011 when the Office moved into these new premises.

In order to achieve more efficient discrimination suppression and improvement of factual equality of legal bodies, the following needs to be done:

- 1. Create National Strategy for Combating Discrimination holistic and comprehensive document that will define comprehensive short-term, medium-term and long-term measures and activities to be implemented by public administration bodies and other social actors with the aim of suppressing and preventing discrimination.
- 2. Establish and operationalize unique and centralized system of collecting, registering and analysing data about discrimination cases, which will provide continual monitoring of prevalence and occurrence of discrimination and effects of legal protection against discrimination.
- 3. Intensify the work on implementing measures set by national and local strategic documents and action plans with the aim of removing obstacles and circumstances that hinder full equality of deprived, vulnerable and marginalized social groups: Roma, persons with disabilities, older persons, refugees and internally displaced, the poor and other social disadvantaged persons, including children and women belonging to these groups.
- 4. Ensure integration of gender perspective in all decisions and policies of the public administration bodies, local self-government bodies and relevant institutions

in the process of implementing measures for improving the position of women and improving gender equality that was established by national and local strategies and action plans.

- 5. Provide effective access to justice to victims of discrimination, which also includes ensuring adequate legal aid that will be free or at reduced costs to victims of discrimination when they are not able to pay or when the interests of justice determine so.
- 6. Ensure that all relevant public authorities work in coordination and in accordance with their authorities on suppressing media promotion of hate speech, violence, intolerance and discriminatory attitudes and that, the media, especially public broadcasting services and cultural public services and institutions become the key promoters of the equality, tolerance and non-discrimination.
- 7. Without any delay, undertake all necessary measures for integrating in the curriculum at all levels of education, textbooks and other teaching materials topics that will develop students' peace culture, tolerance, solidarity, understanding and respecting diversities, gender equality and non-discrimination. Also, eliminate all contents from the teaching materials that sustain gender and other stereotypes and prejudices.
- 8. Create and conduct training programmes for teachers in primary and secondary schools for raising their sensitivity for the discrimination and building their capacities to develop students' spirit of tolerance, solidarity, understanding and accepting diversity and non-discriminatory behaviour, so that teachers can contribute with their pedagogic practice to creation of friendly surrounding for all students.
- 9. Adopt without any delay appropriate by-law regulating criteria and indicators for recognizing discrimination in schools, determining the methods for suppressing discrimination and regulating procedures and activities taken against discriminators, in accordance with the Law on foundations of education system.
- 10. Create and implement training programme for employers, which will enable practical knowledge and development of mechanisms for introducing principle of equal opportunities and non-discrimination in the area of work and employment, prevention of all forms of direct and indirect discrimination and diversity management at workplace.
- 11. Plan and implement measures for enabling that the composition of public administration bodies, local self-government bodies and other public authorities and their organizational units corresponds to the national composition of the population in the given territory to the highest possible extent.
- 12. Ensure that the public broadcasting services produce and broadcast programmes that enable expression of the cultural identity of national minorities and

ethnic groups, including also setting pre-requisite for having the programmes at mother tongue in places where they live and work.

- 13. Plan and implement measures for building capacities of national councils of national minorities in order to for them to have factual opportunities to exercise efficiently their roles in education, culture, informing in the minority language and official usage of language and alphabet.
- 14. Take adequate measures for efficient implementation of legislation in the areas of education, employment and professional rehabilitation of persons with disabilities and removing barriers that hinder access to buildings, transport, information, communication and other public services.
- 15. Ensure that in the process of drafting laws and other general acts of state administration bodies, local self-governments and other public authorities provides careful analysis of harmonization of the provisions with the equality principle in order to eliminate possibilities of adopting legislation that contains discriminatory provisions.
- 16. By appropriate legislative intervention, ensure comprehensive incrimination and adequate punishments for hate crimes, namely acts motivated by hatred based on race, colour, ethnicity and nationality, religion, political and other opinion, language, sex, sexual orientation, gender identity, age, health condition, disability, education, social status, social background, financial position, or other personal characteristic;
- 17. Conduct a training of police officers for suppressing hate crimes in order to enable them to adequately react, investigate, collect and exchange information, cooperation with public prosecution, but also to cooperate with other social actors with the aim of proactively acting on suppressing hate crimes.
- 18. Harmonize legislation regulating conditions and procedures for registering non-traditional religious communities with domestic, European and international standards on equality of churches and religious communities in order to prevent indirect discrimination of such religious communities and their followers.
- 19. Continue trainings for judges, public prosecutors and lawyers in the area of protection from discrimination in order to ensure that the judiciary bodies correctly and equally interpret antidiscrimination legislation.
- 20. Develop mechanisms and procedures for public administration bodies ensuring that in the complaint proceedings before the Commissioner for Protection of Equality all asked information and data are provided, and that they implement the Commissioner's recommendations for removing, preventing and suppressing discrimination.
- 21. Provide support to the development of the Office of the Commissioner for Protection of Equality to its full capacity by providing bigger working premises.

# 1. PROVIDING WORKING CONDITIONS, FORMING AND BUILDING CAPACITIES OF THE OFFICE OF THE COMMISSIONER

The Commissioner for Protection of Equality is independent, autonomous and specialized public authority established by the Law on the Prohibition of Discrimination<sup>2</sup> and it has wide range of legal authorities, which make it a central state body for combating all forms and types of discrimination. Authorities of the Commissioner are widely determined in accordance with the international standards in order to enable efficient and effective prevention of and protection from discrimination and contribution to equality improvement.

In accordance with the Article 33 of LPD, one of the basic authorities of the Commissioner is to act upon complaint proceedings in cases of discrimination inflicted against individuals of group of persons who are connected by the similar personal characteristic. The set of authorities relates to improvement of equality protection. As part of this authority, the Commissioner is authorized to inform public about most frequent, typical and grave cased of discrimination, monitor the implementation of legislation, initiate adoption or changes of legislation for the implementation and improvement of protection from discrimination, and to give opinion on draft laws provisions related to discrimination. The Commissioner is also authorized to recommend measures to the public administration bodies and other persons on achieving equality.

One part of the Commissioner's authorities relates to the monitoring of situation in equality protection, and the Commissioner submits annual report about it to the National Assembly of the Republic of Serbia. When necessary, the Commissioner can submit special report on its own initiative or on the request of the National Assembly, especially in cases of frequent and multiple forms of discrimination, discrimination inflicted by the public administration bodies etc. In the course of its work, the Commissioner is obliged to establish and maintain cooperation with bodies authorised for equality fulfilment and human rights protection on the territory of the Province and local self-governments.

# 1.1. Providing Working Premises

By the decision of the Government of the Republic of Serbia from 27 August 2010, the Commissioner was provided with temporary working premises in the building in Street Beogradska 70, the size of 256 m2. The premises were completely devastated, useless, without central heating and adequate water, and electric

<sup>&</sup>lt;sup>2</sup> Official gazette of the Republic of Serbia, number 22/09 (hereinafter will be referred as LPD)

installations, inaccessible to persons with disabilities. Therefore, it was necessary to start total reconstruction, renovations, and having the construction works. The construction works lasted almost 10 months and they were completed in June 2011. After seven months of working in only two rooms in the building of the National Assembly of the Republic of Serbia (Street Kralja Milana 14, Belgrade), the office of the Commissioner moved to the new premises in June 2011 which provided basic spatial and technical conditions for proper work.

Temporary premises limit the development of the Office of the Commissioner to its full capacity, which can be negative effect to the efficiency of the work and tasks given to the Commissioner. The Rulebook on internal organization and job systematization in the Office of the Commissioner for Protection of Equality, which was approved by the National Assembly of the Republic of Serbia, number 33, on 23 November 2010 (Official Gazette of the Republic of Serbia, number 8/11) plans 60 systematized jobs needed for efficient, quality and operative implementation of the Commissioner's duties. Taking into account the scope of work that has a tendency of continual growth, there is an objective need for more employees in the Office, but this need can only be partially met because current premises provide working place for only 23 employees. Therefore, it is necessary to provide bigger working premises in the following period. In addition, it should be taken into account that the 2012 Staff plan of the Commissioner for Protection of Equality, which is a part of the approved 2012 financial plan, sets engagement of 11 new employees in the Office of the Commissioner. This number of employees corresponds to realistic needs for timely and efficient implementation of the Commissioner's duties.

On the other hand, it is important to take into account that in accordance with the LPD, one of the significant Commissioner's duties is providing information to the citizens about their rights and mechanisms of legal protection from discrimination, including also information about possibilities of peaceful conflict resolutions. The Law also provisions oral complaint submission on record and that in the procedure of establishing factual status the statements of appellants and other persons are also taken or ally on record. Regarding the fact that from the beginning of the Commissioner's work, the citizens have sought direct contact with employees in order to get information, clarification and legal information, it would be necessary to organize reception office as soon as possible. Given the fact that the current premises do not fulfil the physical and safety conditions for sufficient number of employees and accepting appellants, the Commissioner addressed several times in 2011 the Republic Agency for Property of the Republic of Serbia and the Commission for Housing Issues and Division of Public and Business Buildings of the Government of Serbia with the request for providing temporary premises for reception office. At the end of 2011, the Commissioner was temporary provided with one office in the building of the Administration for Common Service of the Republic of Serbia in Nemanjina Street 22-26. Although the employees in the Office of the Commissioner will work at two different locations, which will make work and internal communication more difficult, the Commissioner accepted this solution and expressed expectations that the suitable permanent premises will be soon provided.

When it comes to technical equipment, the Commissioner for Protection of Equality acquired technical equipment for the work of the Office from its own resources (from the institution's budget and donations). This includes office equipment, computers and other technical appliances. However, it is necessary to continue work on acquiring necessary material resources and building capacities of the institution as a pre-requisite for full achievement of the Commissioner's function at the whole territory of Serbia.

# 1.2. Forming and Building Capacities of the Office of the Commissioner

During 2011, the Commissioner for Protection of Equality worked intensively on forming its Office. At the beginning of 2011, only one person was employed in the Office, but at the end of the year there were 18 persons, including also three assistants to the Commissioner appointed in accordance with the law. Two Commissioner's assistants were appointed on 1 March 2011 and the third assistant for the Sector for common services was appointed on 1 November 2011. In March 2011, another two persons were employed after the first public call at which 62 persons applied. In July, another seven persons were employed after the second public call (at which 492 candidates applied), and in November another three persons after the third public call (at which six candidates applied). Two persons were employed by taking over from other public bodies, and one person was employed without the public call because it is a job in the Cabinet.

Various activities were implemented in the last year for improving knowledge and skills of employees to work on complaints, raising their sensitivity to problems of minority and marginalized social groups and better understanding of the phenomenon of discrimination. For this purpose, two seminars for all employees were organized. Almost all employees had study visits in order to learn more about experiences and results of similar independent bodies in the European Union and the region. The financial and logistic support for organizing study visits were provided by international organizations working in Serbia – OSCE, UNDP and UN WOMEN.

In order to set conditions for proper work of employees in the reception office, the Commissioner prepared the training programme for gaining skills for successful legal interviewing and proper legal qualification of the case, including skills of active listening, expressing empathy, asking questions etc. the programme was supported

by OSCE Mission to Serbia. The reception office will be operational after the training.

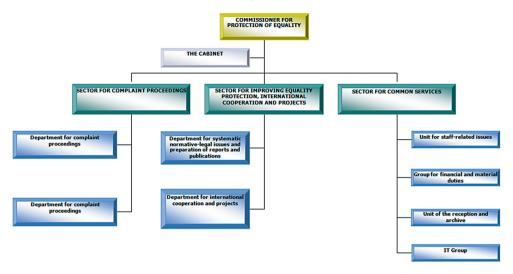
The Office staff was also involved in the preparation of general acts to be adopted by the Commissioner. In the middle of May 2011, the Rules of procedure were adopted (Official gazette of the Republic of Serbia, number 34/11). They closely determine the working methods and proceedings by the Commissioner, the scope of its organizational units, Commissioner's acts, establishing cooperation and advancing professional work, publicity of work and personal data protection, keeping evidences and documentation and other important issues for the institution. Besides employees in the Office, distinguished national experts also participated in the preparation of the general act. In December 2011, the Decision of replacement and omission (making them anonymous) of data in the Commissioner for Protection of Equality acts was adopted.

Furthermore, the Commissioner set the internal procedures determining functioning of specific departments, operationalized management and acting methods in complaint cases in order to establish efficient system of quality management. In addition, with the aim of more efficient and quality work of the Office, digitalization of the process of work has been initiated and the software package for forming database was prepared. The institution also worked on setting conditions for greater mobility and presence of the staff on the field.

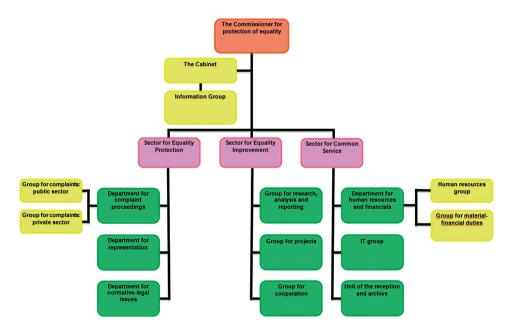
One part of the activities was directed at preparing new job systematization, which will, based on current experiences, restructure the Office. Common assignments would be connected and grouped in a more functional manner. The draft of the new Rulebook on internal organization and job systematization in the Commissioner's Office was prepared and discussed at staff meetings. The draft is created so to ensure efficiency and effectiveness in the Commissioner's acting, especially by taking into account the rules on procedures related to public officers, analysis of the institution's needs, methods, type and scope of work implemented in the Commissioner' Office etc. The new Rulebook does not provision increase in the number of systematized jobs in the Commissioner's Office nor demands additional budget allocations.

The Annex of this chapter gives organizational structure of the Office in accordance with the current job systematization, and the organizational structure in accordance with the draft of the new act of job systematization.

# Organizational structure in accordance with the current Act on job systematization



# Organizational structure in accordance with the new Act on job systematization



# 2. THE STATE OF FULFILLING AND PROTECTING EQUALITY

# 2.1. The Normative Framework of Fulfilling and Protecting Equality

In understanding the importance of suppressing discrimination and fulfilling equality of the legal subjects, the Republic of Serbia has built a solid anti-discrimination legal framework in the previous years. The most important universal and regional human rights agreements were adopted and made part of Serbia's legislation. Serbia also worked on adoption and implementation of optional protocols as part of these agreements.

The Constitution of the Republic of Serbia<sup>3</sup> prohibits any form of direct or indirect discrimination on any given ground, and especially on the grounds of race, sex, nationality, social background, birth, religion, political or other belief, financial status, culture, language, age and psychological or physical disability (Article 21). General and special anti-discrimination laws were also adopted: Law on prohibition of discrimination (2009)<sup>4</sup>, Law on protecting rights and freedoms of national minorities (2002)<sup>5</sup>, Law on preventing discrimination against persons with disabilities (2006)<sup>6</sup> and Law on gender equality (2009)7. The prohibition of discrimination is also incorporated in many other laws regulating particular social relations: Law on employment (2005)8, Law on professional rehabilitation and employment of persons with disabilities (2009)9, Law on health protection (2005)10, Law on foundations of education system (2009)11, Law on churches and religious communities (2006)12. Criminal protection from discrimination is regulated by the Criminal law of the Republic of Serbia<sup>13</sup>. The Criminal law provisions several criminal acts related to prohibition of discrimination, such as violation of the right and freedom to express nationality or ethnicity, express religion and practice religious rituals, prohibition of promotion or enticing hatred and violence towards a person or groups of persons on the grounds of their personal characteristic etc.

<sup>3</sup> Official gazette of the Republic of Serbia, number 98/06

<sup>&</sup>lt;sup>4</sup> Official gazette of the Republic of Serbia, number 22/09

Official gazette of the Federal Republic of Yugoslavia, number 11/02, Official gazette of Serbia and Montenegro, number 1/03 – Constitutional Declaration and Official gazette of the Republic of Serbia, number 72/09 – other laws)

<sup>&</sup>lt;sup>6</sup> Official gazette of the Republic of Serbia, number 33/06

Official gazette of the Republic of Serbia, number 104/09 (hereinafter it will be referred as LGE)

<sup>&</sup>lt;sup>8</sup> Official gazette of the Republic of Serbia, number 24/05 and 54/09

<sup>9</sup> Official gazette of the Republic of Serbia, number 36/09

<sup>&</sup>lt;sup>10</sup> Official gazette of the Republic of Serbia, number 107/05 and 72/09 – other law

<sup>&</sup>lt;sup>11</sup> Official gazette of the Republic of Serbia, number 73/09

<sup>&</sup>lt;sup>12</sup> Official gazette of the Republic of Serbia, number 36/06

 $<sup>^{13}</sup>$  Official gazette of the Republic of Serbia, number  $\frac{85}{05}$ ,  $\frac{88}{05}$  – corrections,  $\frac{107}{05}$  – corrections  $\frac{72}{09}$  and  $\frac{111}{09}$ 

The system of legal protection from discrimination has been established and it incorporates compatible mechanisms of civil, criminal and misdemeanour legal protection. The Commissioner for Protection of Equality has important place in this system.

The general assessment is that current legislation gives solid legal framework and adequate instruments for protection from discrimination, its prevention and suppression, in accordance with the international and European standards.

The antidiscrimination laws have not been changed in the previous year. However, some laws important for protection from discrimination and improving equality were adopted in 2011.

On 26 September 2011, the new Law on civil procedure was adopted (Official gazette of the Republic of Serbia, number 72/11). This law regulates, besides other aspects, new rules for representing parties in the litigation and it regulates the special litigation proceeding for the protection of collective rights and interests of the citizens.

The provision given in the Article 85, paragraph 1 of the Law on civil procedure provisions that the lawsuit parties can act in the litigation independently or via legal representative, but the representative has to be a lawyer. This provision violates the principle of equality in realizing right to access to justice as one of the elements on the right to fair trial guaranteed by the Article 32 of the Constitution of the Republic of Serbia (Official gazette of the Republic of Serbia, number 98/06) and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Further information about the Commissioner's reaction to this provision can be found in the chapter related to improving the protection of equality.

The new Law on civil procedure regulates special litigation proceeding for protection of collective rights and interests of the citizens (Chapter XXXVI, Articles 494-505). This is a completely new domestic proceeding system. The rules of this proceeding are implemented subsidiary also in the lawsuits for the protection from discrimination inflicted on the group of persons, namely the protection of rights of certain group of persons (Article 46 of the Law on civil procedure).

The provisions of the Article 496 of the Law on civil procedure regulate intervening in the lawsuit for protecting collective rights and interests of the citizens. These provisions enable that during the litigation proceeding for protection from discrimination of the group of persons, which was initiated by the human rights organization, the plaintiff can be joined by other organization having standing and the organization has a role of intervening party with the position of unique co-litigator. Furthermore, it is also provisioned that persons whose collective interests and rights have been violated can intervene in the litigation proceeding on the side of the plaintiff.

The new Law on civil procedure has also provisions regulating specific widened effect of the final judgement that established violation of the collective rights and interests of the citizens (Article 504). These provisions enable that in the proceeding for reparation suffered by the person because of the discrimination of the group he/she belongs to, the person can call upon the final judgement that established the discrimination against the group of persons. In addition, these provisions enable that the final judgement that established discrimination of the group of persons can lead to prejudice effect in prospective proceedings for reparation initiated by the member of the group, which eases their position in the litigation for reparation for inflicted discrimination.

From the perspective of protection from discrimination, provisions in the Articles 499 and 500 of the Law on civil procedure are also important. These provisions enable a person for whom the organization (organization, association of organization, Article 495, paragraph 1 of the Law on civil procedure) claims that he or she acts in a manner that threatens collective rights and interests of the citizens to file lawsuit against the organization, namely counter-suit. The charge can seek to establish that the implemented actions has not threatened or violated collective rights and interests of the citizens or that he/she has not threatened them in a forbidden manner. The charge can also seek to forbid certain action to the organization, especially public appearances related to claiming that the person is acting by threatening collective rights and interests, and it can also determine that the organization has to pay damage inflicted to a person by giving untrue statements. Furthermore, the judgement that adopted appellant's statement can be publicly published on the costs of the defendant. The law also provisions that the complaint can be filed against persons representing the organization, members of its bodies, and persons speaking publicly on behalf of the organization (Article 500, paragraph 1 of the Law on civil procedure). Furthermore, the Article 500, paragraph 2 of the Law on civil procedure admits the right to reparation to a person against whom the organization led the proceeding for protection of collective rights and interests. The request for reparation can be stated against the organization and persons representing the organization, members of its bodies, and persons representing the organization in public.

The analysis of the rules enabling that the person, for whom the organization claims he/she acts in a manner that threatens collective rights and interests of the citizens, can bring a lawsuit against such organization and its representatives show that they can have negative impact on the work of the equality organizations. The circumstances allowing the organization risks lawsuit can be important factor in its determination to publicly identify discriminators and file complaints for the protection from discrimination against a group of persons. Giving the fact that the Law on civil procedure will be implemented from 1 February 2012, the practical effects of the provisions for protecting collective rights and interests are still unclear.

On 5 July 2011, the Law on Youth (Official gazette of the Republic Serbia, number 50/11) was adopted and it determines the principles of equality and prohibition of discrimination. It clearly provisions that all young persons are equal and that making difference or unequal treatment towards youth being it direct or indirect, on any ground and especially on the grounds of race, sex, nationality, religion, language, social background, financial status, membership in political, union or other organizations, psychological or physical disability, health, physical appearance, sexual orientation, gender identity or other factual or assumed characteristics are prohibited (Article 5).

On 31 March 2011, the Law on social protection (Official gazette of the Republic of Serbia, number 24/11) was adopted and it prohibits discrimination against social welfare beneficiaries on any given ground, including also the nature of their social exclusion (Article 25).

On 31 March 2011, the Law on Sports (Official gazette of the Republic of Serbia, number 24/11) was adopted and it prohibits all kinds of indirect discrimination of sportspersons in their sport activities on the grounds of their personal characteristic, such as sex, status, orientation or beliefs. It also includes prohibition of discrimination against professional sportspersons who want to become professionals in terms of employment, earnings and working conditions unless when making difference or putting sportspersons in less favourable position to other sportspersons in the same or similar situation is based on the nature or factual and determining conditions needed for sport activities. The objectives are thus justified. It is also provisioned that the contract provisions between sportsperson and the sport organization that established discrimination against them are nullified. Furthermore, the provisions for sport rules and general acts of sport organization are not to be implemented in cases of established discrimination against the sportsperson. The sportsperson have a right for reparation for discrimination inflicted against them by the sport organization.

On 25 May 2011, the Law on changes and additions to the Law on electing members of the Parliament (Official gazette of the Republic of Serbia, number 36/11) was adopted. This law is a significant improvement in terms of fulfilling gender equality. The law operationalizes special measure that enables increase in the number of women (less-represented sex) in the National Assembly of the Republic of Serbia. This legislative intervention, which was negatively accepted in the public, will definitely contribute to setting conditions for women to participate equally in legislative activities of the highest representative body in Serbia.

# 2.2. Situation in Fulfilling and Protecting Equality

In order to suppress discrimination successfully, we need to have actual information about the prevalence of discrimination and effects of implemented legal instruments for suppression of and protection from discrimination. It is, however, evident that at the national level there is no unique, centralized and standardized system of collecting, registering and analyzing data about discrimination and legal protection from discrimination. Therefore, there is no possibility for having comprehensive insight into the factual situation, as well as for continual monitoring of the prevalence and occurrence of discrimination, knowing the traits and forms of discrimination, the most frequent victims of discrimination, and extent to which the legal instruments for protection from discrimination are used and their effectiveness. In such circumstances, it is very difficult to have objective assessment of factual situation in the equality fulfilment and protection, and it is especially difficult to make conclusions about trends related to discrimination or, more precisely eventual decrease or increase of particular forms and types of discrimination. Therefore, one of the priority tasks is to establish unique and centralized system of collecting, registering and analyzing data about discrimination and legal protection provided to victims of discrimination, including data about processed criminal acts.

This chapter gives short overview of the situation in equality fulfilment and protection by pointing to the most prevalent types of discrimination. The overview is based on all available sources. However, before presenting the data that illustrate the prevalence of discrimination, it is necessary to give several general observations based on previous complaint proceedings.

Firstly, we have to conclude that one third of complaints relates to discrimination inflicted by public administration bodies, local self-government bodies and other public authorities. This data is very disturbing because it relates to bodies that are expected to respect imperative prohibition of discrimination and to show understanding of the equality principle and be role models for non-discriminatory behaviour. It should be taken into account that this form of discrimination is severe form of discrimination (Article 13, paragraph 2 of the Law on prohibition of discrimination) precisely because of the far-reaching consequences of discrimination inflicted by the state authorities. Discriminatory behaviour of the public officers or responsible persons in public authorities is qualified as severe violation of working duties (Article 15, paragraph 2 of LPD).

The analysis of the discrimination cases in which public administration bodies are claimed to be discriminators shows that the violation of the principle of equality on the grounds of personal characteristic is the most prevalent, which is prohibited by Article 8 of the LPD. In majority of cases, the violation of equality principle was occurred by adopting general acts containing discriminatory provisions. The acts have legitimate objectives and purpose, but the content and nature of the measures provisioned by the acts, from the perspective of effects and consequences of the measures are such that there is no needed ratio between measures and set objectives. The statements upon the complaints sent to the Commissioner in the complaint

proceedings show that many public administration bodies are not familiar with legal criteria that are set in each particular case for assessing whether introduction of certain conditions and restrictions is objectively and reasonably justified. Therefore, it is necessary to introduce current antidiscrimination legislation to personnel working in public administration in order for them to be properly trained to assess each draft of the legislation against the equality principle of the legal subjects. It would lessen the possibility of adopting general acts that contain discriminatory provisions.

The encouraging fact is that, after the Commissioner's recommendation, majority of public administration bodies for which the Commissioner established the violation of the equality principle by adoption of a general act showed readiness to start changes of the general acts immediately and offered revision of the drafts of prepared changes and additions to the legislation. However, we have to emphasize that there are also public administration bodies that have ignored the Commissioner's recommendation. On several occasions, public officials interpreted wrongfully or denied the Commissioner's recommendations, which also negatively influence on effectiveness of the public authority to suppress discrimination. In addition, it contributed to making legal duties of legal subjects to respect equality principle relative.

Working on complaints has showed that the discrimination inflicted by individuals is usually the result of the conscious intention to violate the dignity of a person or group of person on the grounds of their personal characteristic by giving certain statements or behaving in a discriminatory manner. Frequently, such behaviour is motivated by hatred towards some minority groups, such as national minorities, religious minorities, LGBT population and other social groups. However, there are also individuals who are not aware of the fact that their behaviour is discriminatory and prohibited. Such cases usually relate to individuals who publicly express certain attitudes and ideas based on prejudices that are usually not condemned by the public or they are even frequently considered as publicly acceptable. Lack of public awareness about prohibition of publicly expressing such attitudes and ideas is especially present in public statements that humiliate persons on the grounds of nationality. These are statements arouse from the prejudices, customs, and other social patterns based on the idea of subordination or dominance of gender or stereotyped gender roles. Therefore, more should be done not only on raising public awareness but also on educating citizens in order to understand the fundamental nature and types of discrimination, such as hate speech, harassment, degrading treatment etc.

Having in mind the prevalence of discrimination against Roma, the number of complaints filed last year by Roma or associations working in Roma issues are relatively small although such complaints make the highest percentage of complaints filed for discrimination on the grounds of nationality. During 2011, the Commissioner also published brochures in Roma language that provide information about authority and

functioning of the Commissioner and the complaint application. They were distributed in Serbia, but the number of complaints has not significantly increased. It is therefore necessary to conduct wide informative public campaign in cooperation with local Roma organizations. In order to achieve this objective, the Office of the Commissioner planned visits to informal Roma settlements in various municipalities and cities to provide to the people living there more detailed information about filing complaints and complaint proceedings, mechanisms for legal protection from discrimination etc.

The public is well aware of the fact that the composition of some public administrative bodies, local self-government and other public authorities does not correspond to the nationality composition at given territory as it has been provisioned by legislation. Such situation influences justified opposition of the national minorities and it has been a cause for filing complaints. It is therefore necessary for the public authorities to start planning and implementing measures that will enable increase in employing members of the national minorities in public authority units, including also their education and professional trainings for working in the public service sector.

The analysis of the complaints has showed that the citizens are not well informed about the discrimination and they sometimes identify discrimination with other forms of illegal behaviour. As an example, more than one third of complaints were filed for the claim of discrimination in work relations, but the discrimination was not established in most of the cases. It was actually about violation of labour rights for which the Commissioner does not have the authority to act. It is therefore necessary to put more attention in the following period to informing citizens about discrimination, indicators for recognizing discrimination and distinction from other illegal or unfair actions.

If we look at some socially vulnerable groups, such as Roma, persons with disabilities, LGBT population, elderly persons, we can conclude that programmes and activities for empowering these groups or suppressing discrimination against them are usually directed only to members of one such group. Such approach decreases opportunities for members of one marginalized group to be informed and aware of the discrimination against other minority groups and understand that the discrimination against any individual or group on the grounds of their personal characteristic is equally illegal and unacceptable.

There is no doubt that the complaint proceedings implemented by the Commissioner for Protection of Equality contributes to suppression of discrimination. However, for successful combat against discrimination in Serbia, it is necessary to work on improving tolerance and decreasing social distance to certain minority groups. It should be taken into account that the part of the causes of such negative trends can be found in firm prejudices towards some social groups, such as women, Roma and other national minorities, persons with disabilities, LGBT population etc. It is therefore necessary to work more on alleviating prejudices and raising public awareness and that

can be achieved only by joint and coordinated activities of all institutions and civil society organizations, including also education institutions and the media as the key actors.

For achieving factual equality of vulnerable and marginalized social groups, it is necessary to implement consistently the equal opportunity policy in order to ensure social, political, economic and other assumptions that would provide that members of these minority groups effectively enjoy all rights and freedoms without any type of direct or indirect discrimination. Furthermore, it is necessary to implement special measures determined by the strategic documents in a more efficient manner, continually monitor their implementation and impacts and, if necessary, introduce new special measures.

### 2.2.1. Discrimination on the Grounds of Gender

Gender discrimination is one of the most prevalent types of discrimination in Serbia notwithstanding the fact that gender equality is guaranteed by the Constitution and there is a state's duty to implement equal opportunity policy (Article 15 of the Constitution). This constitutional provision is regulated in more details in the Law on Prohibition of Discrimination, which provisions that the public administration bodies are obliged to develop active equal opportunity policy in all social areas which also includes equal gender participation in all phases of planning, adoption and implementing decisions important for the position of women and men (Article 3 of LPD).

Is should be said that there is no gender-sensitive statistics in Serbia – collecting and processing data on gender basis. Some significant improvements have been made only by National Employment Service and the Republic Statistics Institute<sup>14</sup>, but they are still insufficient for continual monitoring, research and analysis of data about the position of women and men. Statistics also lack information about the status of women belonging to minority groups, such as Roma, refugees and IDPs, migrant women, women with disabilities, women in rural areas, older women, women in prisons and custody, women with mental illnesses, poor women, single mothers, lesbians, girls etc. During 2011, the Administration for gender equality as part of its project prepared the Matrix of indicators for forming future gender-sensitive database for monitoring position of women and improving gender equality in Serbia<sup>15</sup>. It is a first step in establishing gender-sensitive statistics that will provide continual monitoring of achievements in gender equality.

Gender-based discrimination is usually inflicted against women, and its key causes are firm traditional and patriarchal stereotypes about gender roles in the

<sup>&</sup>lt;sup>14</sup> In the last year, the third publication "Women and Men in the Republic of Serbia" was published and it presents the gender-based statistical data (the first publication was published in 2005 and the second in 2008).

<sup>15</sup> http://www.gendernet.rs/rrpage.php?chapter=36

family and wider community. The available data show that women are in less favourable position to men in all areas of social life and that the negative consequences of structural and indirect discrimination against women are obvious both in public and private sphere<sup>16</sup>. From the perspective of consequences, the most disturbing are discrimination against women in decision-making processes, economic sphere and education, gender based violence towards women, gender inequality in the media etc. It is also necessary to take into account that in terms of equal opportunities and full human rights respect, women from double or multiple discriminated groups are the most threatened, such as Roma, women with disabilities, single mothers, refugees or IDPs, poor women, women from rural areas, women of different sexual orientation etc<sup>17</sup>.

Although the Law on Gender Equality has been implemented since December 2009, and the National Strategy for Improving Position of Women and Improving Gender Equality 2008-2014 is in its third implementation year, there are no indicators concluding the significant improvements in establishing factual equality between women and men in social relations.

In terms of women's participation in political and public life, it is evident that the number of women at decision-making position is still very small although women are 51.4% of population and over 50% of voting population. This trend is also confirmed by the official statistical data. At the beginning of 2011, there were only 18.5% of women in the ministerial positions in the Government of Serbia, 22% of women state secretaries, 42.6% as deputy ministers. After the reconstruction of the Government of Serbia in March 2011, the number of women ministers has decreased, so there were only 15% of women minsters, but the percentage of women-state secretaries has increased (25.4%), as well as women as deputy minsters (46%). The current composition of the National Assembly of the Republic of Serbia shows the following gender perspective: there are 53 female members of the Parliament, the President of the National Assembly and three Vice-presidents of the National Assembly<sup>18</sup>. There is only one female president of the parliamentary group<sup>19</sup>, and there are only three female presidents of the political parties (out of 87 political parties)<sup>20</sup>. Out of 150 municipalities, there are only ten women as presidents of the local self-governments, and one woman out of 23 mayors.21

<sup>16</sup> See data in the National Strategy for Improving Position of Women and Improving Gender Equality 2008-2014 (Official gazette of the Republic of Serbia, number 15/09). Although the data given are from 2009, the situation has not changed significantly.

<sup>&</sup>lt;sup>17</sup> National Strategy for Improving Position of Women and Improving Gender Equality 2008-2014

<sup>18</sup> http://www.parlament.gov.rs/narodna-skupština/sastav/narodni-poslanici/aktuelni-saziv.11.html.

<sup>19</sup> http://www.parlament.gov.rs/narodna-skupština/sastav/poslaničke-grupe.273.html

<sup>&</sup>lt;sup>20</sup> http://www.drzavnauprava.gov.rs/pages/article.php?id=1698

<sup>&</sup>lt;sup>21</sup> Women and Men in the Republic of Serbia, Republic Statistics Institute, Belgrade, 2011.

The gender structure of the international delegations illustrates the fact of not adhering to the legislative provisions about gender equality. Article 38 or the Law on Gender Equality provisions that in selecting and appointing delegations. which will represent the Republic of Serbia, the principle of having at least 30% of less-represented gender in the delegation structure has to be adhered. However, the permanent delegation of the National Assembly of the Republic of Serbia in the Council of Europe Parliamentary Assembly did not include women, which is in contrast with the rules and procedures of this body. At the Council of Europe Parliamentary Assembly session at the end of January, Serbia was given a deadline until the beginning of April's session to appoint at least one woman as a member of the delegation. Regarding the announcement that one woman will be appointed to the delegation, the Commissioner for protection of equality send a recommendation to the National Assembly and reminded it that in accordance with the Article 38 of the Law on Gender Equality, at least two women should be in this delegation. She also sent a recommendation that the National Assembly regulate the procedure for appointing the members of delegations, so that it ensures that at least 30% of lessrepresented gender is a part of all parliamentary delegations active in international cooperation. She also emphasized that the quota is a special measure which should lead to creating equal opportunities for achieving equal participation of women and men in international cooperation.

One of the significant improvements in women participation in public and political life was achieved by adoption of the Law on changes and additions of the Law on elections of the members of the Parliament (2011). This law regulates that there should be at least one member of less-represented gender on every three candidates, but it does not provisions the obligation that in the event of mandate cessation of one less-represented member, it should be replaced by other person of less-represented gender.

In should be noted, however, that the Draft of the law envisaged that every fourth place is ensured for less-represented gender. At the public hearing held on 21 April 2011, the Commissioner advocated for having each third place reserved for less-represented gender. She also advocated for the transitional measure that should be implemented at net elections and ensure that in the process of delegating mandates to candidates from the election list, the proposer is obliged to ensure at least 30% of parliamentary mandates for less-represented gender. In addition, the Commissioner expressed the need for establishing rules ensuring that in the cases of ceasing the mandate of one less-represented gender, the election list submitter is obliged to replace the mandate with another less-represented gender. On this occasion, she issued special release on 11 May 2011, which expressed concerns over the lack of guarantees for fulfilling the standard of at-least-30percentage of less-represented gender and adequate representation of women in the National Assembly.

Discrimination against women in employment and labour is also prevalent, which is also obvious in the ratio of women activity in seeking employment in relation to men, women's bad situation at labour market, fewer opportunities for employment and advancing, lower income etc. These trends are confirmed by the data of the National Employment Service<sup>22</sup> which showed that in the first half of 2011 there were 756.255 persons on unemployment registry and 394.963 (52,2%) were women. Data in the publication Women and Men in the Republic of Serbia<sup>23</sup> published by the Republic Statistics Institute also shows similar trends; women consist 80% of persons voluntarily leaving their jobs because of the family reasons, and they constitute 98% of persons whose only work is housework. 73% of men are socalled household providers, while only 27% of women have this role; a bit over the half of all age retirees were women, while men constitute almost two thirds of disability pensions users; in both cases, women have received lower pension in average in comparison to men (18% lower age pension and 14% lower disability pension). In terms of gender income gap, the publication Women and Men in the Republic of Serbia shows that in 2010 highly educated women received 16.368 RSD less than highly educated men did.

Some of the serious problems facing women include domestic violence, sexual violence, trafficking and other forms of gender-based violence, which are still prevalent to a disturbing extent. Data in *the National Strategy for the Prevention and Suppression of Violence against Women in Families and Partner Relationships*<sup>24</sup> adopted in 2011 show great prevalence of violence against women. In 2010, over 6.000 cases of domestic violence were reported in Serbia. In addition, there were 44 cases in which a woman was killed by a husband, ex-husband, partner or ex-partner<sup>25</sup>. Such data are disturbing. Women from marginalized and multiple discriminated groups are mostly exposed to gender-based violence. According to research data of women Roma organization, the main cause for Roma women – victims of violence not to address public authorities and services is the fear of not having the adequate protection from the perpetrator of violence<sup>26</sup>. Data also shows that Roma women are in less favourable position for using safe-homes because of the rules set to use such social service. In addition, when Roma women report violence, they are sometimes harassed by the police<sup>27</sup>. Women with disabilities and mental illnesses are also victims of domestic and other types

<sup>&</sup>lt;sup>22</sup> Registry of the National Employment Service on 20 June 2011

<sup>&</sup>lt;sup>23</sup> Women and Men in the Republic of Serbia, Republic Statistics Institute, Belgrade, 2011.

<sup>&</sup>lt;sup>24</sup> Official gazette of the Republic of Serbia, number 027/11; see data in the chapter "Situation Analysis"

<sup>&</sup>lt;sup>25</sup> Taken from the release of the State secretary of the Ministry of Labor and Social Policy, Snezana Lakicevic, Radio Television Serbia, Domestic violence in increase, 12 December 2011, available (in Serbia) at http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1007372/Porodi%C4%8Dno+nasilje+u+porastu.html;

<sup>&</sup>lt;sup>26</sup> See: National Strategy for Preventing and Suppressing Violence against Women in Families and Partner Relationships, page 14

<sup>&</sup>lt;sup>27</sup> See: Written comments of the European Centre for Roma Rights, Eureka and Women's space regarding the consideration of the Republic of Serbia before the UN Committee for Eliminating Discrimination against Women, 38th session, http://www.errc.org/cms/upload/media/03/7D/m0000037D.pdf

of gender-based violence<sup>28</sup>. There is no indication of significant improvements in efficacy of legal protection mechanisms for protection from gender-based violence. During court proceedings for protection from violence, women are still exposed to secondary victimization and they are not provided with appropriate psychosocial support and aid.

Another disturbing fact is that gender inequality is further enforced by educational curriculum, which is andro-centric, anachronous and discriminatory and contributes to stereotyping men and women<sup>29</sup>. The Commissioner for protection of equality sent recommendation to the Ministry of education, National Education Council and Institute for improving the quality of education to work continually and systematically and change the existing models in education that further enforce stereotypes about family patterns and gender roles. In 2011, no measures have been taken for integrating gender perspective in the process of primary and secondary education. According to available information, specialized curriculum in gender equality and gender-based violence were prepared only for the Judiciary Academy, Criminal and Police Academy and Service for Staff Management of the Republic of Serbia. These specialized curricula became part of the mandatory education programs of these institutions<sup>30</sup>.

The image of woman in the media is still stereotyped and discriminatory. Reporting is frequently sexist and there are many humiliating and pornographic media products. Acting on a complaint filed for an article published in one daily newspaper, the Commissioner established discriminatory nature of the article content because it degraded women and enforced prejudices and social constructs based on stereotyped gender roles and such practices are prohibited by the Law on Gender Equality and Law on Prohibition of Discrimination.

It is evident that there are many problems in the area of using gender-sensitive language not only in education material but also in official documents and the media. In the last year, the Commissioner sent two recommendations related to procedures regulating methodology for drafting by-laws. She gave opinion that there are discriminatory rules in *the Methodology for drafting by-laws* adopted by the Government of Serbia and in the *Unique Methodology Instructions* adopted by Legislative Board of the National Assembly of the Republic of Serbia. Rules given in these documents provision that the terminology is used in masculine gender unless the nature of the things demands different approach, which is contrary to international standards based on non-discriminatory usage of language.

<sup>&</sup>lt;sup>28</sup> National Strategy for Preventing and Suppressing Violence against Women in Families and Partner Relationships, page 23

<sup>&</sup>lt;sup>29</sup> See: Education for gender equality, http://www.gendernet.rs

<sup>3</sup>º See: Report of the Administration for Gender Equality for period January – December 2011, http://www.gendernet.rs/files/dokumenta/Izvestaji\_Uprave/Izvestaji\_za\_2011\_URR\_finalno.pdf

Encouraging fact, however, is that several important national documents were adopted in 2011 and they are significant for achieving gender equality and improving the position of women.

Besides previously adopted strategic documents – National Strategy for Improving the Position of Women and Improving Gender Equality for 2008-2014 and Action Plan for Strategy Implementation for period 2010-2015<sup>31</sup>, Rulebook on content and way of creating Plan of measures for removing or alleviating unequal gender representation and annual report of its implementation, etc – several documents in the area of protection of women and suppression of gender-based violence were adopted in 2011 – National Strategy for Protection from and Suppression of Violence against Women in Families and Partner Relationships<sup>32</sup>, and Special Protocol on proceeding and cooperation between institutions, bodies and organizations in situations of violence against women in family and partnership relationships<sup>33</sup> and Special Protocol for Health Workers and Treating Women exposed to Violence adopted by the Ministry of Health of the Republic of Serbia<sup>34</sup>.

Important step in achieving gender equality was also the adoption of the *National Action Plan for the Implementation of the Resolution 1324 of the United Nation Security Council – Women, Peace and Security in the Republic of Serbia (2010–2015)*. This document, whose adoption demonstrates understanding the importance of equal participation of men and women in prevention and resolution of conflicts and promotion of culture of permanent and sustainable peace, provides opportunities for achieving gender equality policy in the security sector throughout increasing the number of women and their influence on issues important for the position of women, peace and security.

Important activities implemented in suppressing discrimination in labour included adoption of two model acts that are mandatory for employers to adopt in accordance with their obligation provisioned in the Article 13 of the Law on Gender Equality: Model for Plan of Measures for Removing and Alleviating Unequal Gender Representation<sup>35</sup> and Model for the Reporting on Implementation of the plan of Measures for Removing and Alleviating Unequal Gender Representation<sup>36</sup>.

# 2.2.2. Discrimination on the Grounds of Nationality and Ethnicity

Numerous national minorities live in the Republic of Serbia and their legal position is regulated by the Constitution of the Republic of Serbia and special laws – Law on

<sup>31</sup> http://www.gendernet.rs/files/dokumenta/Domaci/NAP.pdf

<sup>&</sup>lt;sup>32</sup> Official gazette of the Republic of Serbia, number 027/11

<sup>33</sup> http://www.gendernet.rs/files/dokumenta/Domaci/Opsti\_protokol.pdf

<sup>34</sup> http://www.minzdravlja.info/downloads/Zakoni/Ostalo/ProtokolMZRSZaZastituIPostupanje SaZenama-KojeSuIzlozeneNasilju.pdf

<sup>35</sup> http://www.gendernet.rs/rrpage.php?chapter=24

<sup>36</sup> http://www.gendernet.rs/rrpage.php?chapter=24

Protection of Rights and Freedoms of National Minorities<sup>37</sup>, Law on National Councils of the National Minorities<sup>38</sup>, and other laws having provisions related to issues of interest to the national minorities (e.g. the Law on Official Usage of Language and alphabet<sup>39</sup>, Law on Local Self-government<sup>40</sup>, Law on Birth Registry Books<sup>41</sup>, Law on Culture<sup>42</sup> etc). Although results of the Population census in 2011 are still not available, there is no doubt that large number of national minorities lives in the Republic of Serbia taking into account that the 2002 population census showed that there were 1.135.393 members of national minorities on the territory of Serbia (without Kosovo and Metohija).

Besides rights guaranteed by the Constitution to all citizens of the Republic of Serbia, national minorities are guaranteed additional individual and collective rights. Contrary to the individual rights, collective minority rights are realized in the community together with others. For example, national minorities participate indirectly or via their representatives in decision-making processes or decide by themselves about certain issues related to their culture, education, information system and official usage of language and alphabet. Furthermore, with the aim of respect to rights to self-governing in certain areas, members of the national minorities can elect their national councils. So far, members of 20 national minorities used this right and constituted their national councils – Albanian, Ashkali, Bulgarian, Bunjevac, Bosniak, Vlach, Greek, Egyptian, Jews, Hungarian, Macedonian, German, Roma, Romanian, Russinian, Slovak, Slovenian, Ukrainian, Croats and the Czech.

Although the normative framework for rights of national minorities is well developed, members of national minorities face problems while trying to fulfil their rights. According to the research conducted by the Protector of Citizens and Province Ombudsman, national minorities identities enjoy greater legal security in the Autonomous Province of Vojvodina in comparison to other parts of the Republic of Serbia, because series of measures at province and local level have been undertaken to develop effective protection of the national minority rights.

Based on the media reporting about discrimination in Serbia conducted monitored by the Office of the Commissioner in 2011, we can conclude that in terms of reporting on minority issues, more media space was given to reporting about Bosniak, Albanians, Hungarians and Roma. The media also covered numerous critiques of the mufti Muamer Zukorlic, leader of the Muslim community in Serbia, directed to the authorities

<sup>&</sup>lt;sup>37</sup> Official gazette of the Federal Republic of Yugoslavia, number 11/02, Official gazette of Serbia and Montenegro, number 1/03 – Constitutional Declaration and Official gazette of the Republic of Serbia, number 72/09 – other laws Službeni list SRJ", br. 11/02, "Službeni list SCG", br. 1/03 – Ustavna povelja i "Službeni glasnik RS", br. 72/09 – dr. zakon.

<sup>38</sup> Official gazette of the Republic of Serbia, number 72/09

<sup>&</sup>lt;sup>39</sup> Official gazette of the Republic of Serbia, number 45/93, 67/94, 101/05 – other laws and 20/10

<sup>&</sup>lt;sup>40</sup> Official gazette of the Republic of Serbia, number 129/07

<sup>&</sup>lt;sup>41</sup> Official gazette of the Republic of Serbia, number 20/09

<sup>&</sup>lt;sup>42</sup> Official gazette of the Republic of Serbia, number 72/09

in Belgrade about the position of Bosniaks in Serbia. In addition, much attention was given to conflicts between two Muslim communities – Muslim Community of Serbia and Muslim Community in Serbia. The media also covered stories about Albanians from the south of Serbia, who expressed on several occasions their dissatisfaction with the functioning of the state system and thought that their rights were threatened so they organized protests. Hungarian national minority was in the centre of attention of the media in the event of adopting the Law on restitution. Its adoption caused harsh public and official reactions including the threat of the Government of the Republic of Hungary to cancel support to Serbia in achieving the candidacy status for the European Union. However, relevant institution of the EU established that this law does not violate minority rights.

In 2011, there were series of incidents on national and religious grounds: at the beginning of August, the windows at Muslim centre in Novi Sad were broken; in the September the mosque in Borca was attacked; the hate graffiti against Hungarians were found in Zrenjanin and Novi Sad; the premises of the Hungarian cultural centre "Petefi Sandor" in Novi Sad were demolished; at football match of the Serbian Cup between FK Partizan and FK Vojvodina the fans of Partizan cheered song presenting Hungarian and Croatian national names in a pejorative way; in May, fans of the football club Rad set on fire Croatian state flag at the match between FK Rad and FK Red Star; in October, the window at the building of Croatian national council in Subotica was stoned; the premises of the Civil initiatives of Goranci in Borca were set on fire; anti-Semitist statements of public performers Milos Bojanic and Maja Nikolic were broadcasted at TV Pink etc.

The most disturbing, however, is the position of the Roma national minority in Serbia. They are exposed to open and prevalent hate speech and frequent attacks: Roma boy was attacked in front of the Trade school in Belgrade; hate graffiti were written at the house of Roma coordinator in Zrenjanin and the deputy of the public prosecutor in Zrenjanin afterwards refused to accept the criminal charge against anonymous persons for writing hate graffiti; Roma family was attacked in Banatsko Karadjordjevo, three Roma youngsters were attacked by knife at the birthday party in Cacak; hatred graffiti and Swastikas were written in Roma settlement in Pozega; about ten waste bins in Knjazevac were written with hate sentences against Roma; the windows of the hair shop owned by Roma woman were broken in Cacak; young Roma man was beaten in public bus in Belgrade.

The Commissioner for protection of equality informed public in 2011 on several occasions that public attitudes and statements enforcing and causing racial hatred towards Roma national minority are severe form of discrimination. She also invited representatives of the public administration to show publicly that they will not tolerate hatred, intolerance, violence or discrimination on any given ground and she invited citizens to condemn similar practices. However, many ethnically motivated attacks against Roma that were also recorded in previous years were not investigated or sanctioned in a proper way. In addition, many cases of causing national, racial and religious hatred and

intolerance are not adequately handled by the authorities and their processing has been slow and inefficient. Effective measures against neo-Nazi and fascist organizations and associations advocating hatred and intolerance towards national minorities have not been taken in order to stop their work. In this regard and after his visit to Serbia in June 2011, Thomas Hammarberg, the Commissioner for Human Rights greeted in his report the decision of the Constitutional Court of Serbia to prohibit the work of extremist rightwing organization Nacionalni stroj and invited authorities to consider the possibility of prohibiting work of other organizations that promote racisms and hatred<sup>43</sup>.

By considering need for efficient suppression of crimes motivated by hatred based on race, colour, ethnicity or nationally, religious affiliation or other personal characteristic, the Commissioner thinks that the additions to the Criminal Law of the Republic of Serbia should ensure comprehensive incrimination and adequate punishments of hate crimes. The trainings for the police officers and court bodies should be organized in order for them to be trained to adequately react, investigate, collect and exchange information and act proactively in cooperation with other social actors on suppressing hate crimes.

Discrimination against Roma national minority is mostly prevalent in employment, education, health care and housing. The problem of lacking personal documents is still prevalent problem for the Roma displaced from Kosovo and Metohija. This problem hinders fulfilment of their basic human rights. The Commissioner for Human Rights of the Council of Europe expressed concerns over the fact that not all newborn Roma children are registered and that approximately 5% of Roma in Serbia does not have any personal documents<sup>44</sup>. Changes and additions of the Law on personal IDs<sup>45</sup> and Law on temporary and permanent residence of citizens<sup>46</sup> solved the problem partially as they enabled that the citizens who have not had permanent residence, which led to difficulties in issuing personal documents and realization of rights, to register temporal address and get ID for a limited time of two years. Furthermore, the Ministry for human and minority rights, state administration and local self-governance initiated cancelation of administrative and court taxes in the proceedings for registering in the birth registry book, and it also sent the instructions and opinion to the local selfgovernment units responsible for birth registry. The Ministry also started cooperation with the UNCHCR and Protector of Citizens in solving this issue.

The Council of Europe report "Human rights of Roma and travellers in Europe"<sup>47</sup> states that Roma in Serbia are in less-favourable position, which is caused

<sup>&</sup>lt;sup>43</sup> Report of Thomas Hammarberg, Human Rights Commissioner of the Council of Europe after his visit to Serbia (12 to 15 June 2011), https://wcd.coe.int/ViewDoc.jsp?id=1852957

<sup>44</sup> Ibid.

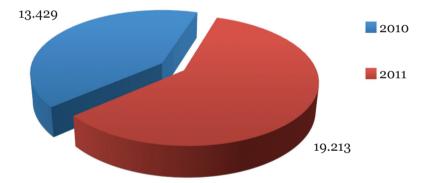
<sup>&</sup>lt;sup>45</sup> Official gazette of the Republic of Serbia, number 62/06 and 36/11

<sup>&</sup>lt;sup>46</sup> Official gazette of the Republic of Serbia, number 87/11

<sup>47</sup> Human rights of Roma and Travellers in Europe, Council of Europe), February 2012, http://www.coe.int/commissioner/source/prems/prems79611\_GBR\_CouvHumanRightsofRoma\_WEB.pdf

by the fact that large number of Roma does not have personal documents and lives in non-formal settlements. Researches show that 72% of Roma settlements are not legalized (out of total number of 593) while the Council of Europe report concluded that there are 137 non-formal settlements in Belgrade only and that there was an increase in forced evictions in 2011<sup>48</sup>. Furthermore, Roma children barely attend preschool institutions and data of the European Commission against racism and intolerance shows that 62% of Roma children has never attended school or has dropped out of school, while only 9.6% continued and finished higher education<sup>49</sup>. There are indications that discrimination against Roma is prevalent making it thus one of the main reasons for exclusion of Roma children from education system, high dropout rates, or finishing school with low achievements<sup>50</sup>.

Furthermore, the position of Roma is further worsened by the fact that without registered residence they cannot register at the National Employment Service, which lessens opportunities of employment and receiving the unemployment financial benefits. In 2011, there were 19.213 Roma<sup>51</sup> in the registry of the National Employment Service which constitutes substantial increase in comparison to 2010 when there were 13.429 Roma persons in registry<sup>52</sup>.



Number of unemployed Roma registered at National Employment Service in 2010 and 2011

In the period from January to November 2011, 1.698 persons of Roma nationality were employed and 1.090 of them were unqualified (64.19 percent). The programmes for additional trainings and education included 298 persons while

<sup>&</sup>lt;sup>48</sup> Ibid.

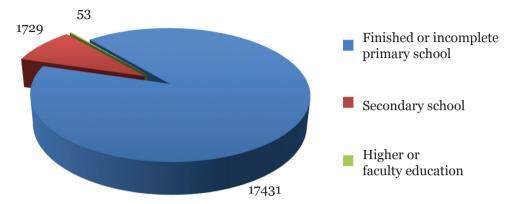
<sup>&</sup>lt;sup>49</sup> Second report on Serbia, European Commission against racism and intolerance, Council of Europe, Strazbur, 2011 (ECRI Second report on Serbia, Council of Europe)

<sup>&</sup>lt;sup>50</sup> Analysis of the situation in education and social inclusion of Roma girls in Serbia, CARE Serbia, March 2011

<sup>&</sup>lt;sup>51</sup> The greatest number is in the south and east Serbia – 51,4%

<sup>52</sup> Internal data of the National Employment Service for January-November 2011 delivered to the Commissioner on request

the measures for developing entrepreneurship and employment programmes included 1.129 persons of Roma nationality<sup>53</sup>.



Educational structure of Roma registered at National Employment Service, 2011

From the total registered number of unemployed Roma, 90.73% have only primary or unfinished primary education, 9% has secondary education and there are 53 persons having higher or high education. The Ministry for human and minority rights, state administration and local self-government in cooperation with the Ministry of Education and National Educational Council introduced special measures for enrolment in school year 2011/12 and the result is that 380 Roma students were enrolled in secondary school and 154 students were enrolled in higher schools and universities.

Although there are certain improvements in the position of Roma national minority, it is necessary to undertake series of measures that would lead to crucial changes. It is necessary, therefore, to pay more attention to raising public awareness, informing and empowering this national minority because that they are still not well informed about their rights. Simultaneously, the public in Serbia should be informed about recognizing and suppressing discrimination. These are also the priorities of the Commissioner for Protection of Equality for 2012.

# 2.2.3. Discrimination on the grounds of Disability

Although in the past several years, normative framework has been improved and social visibility of persons with disabilities was increased, this category of population is in a worse position that the rest of the population. Indirect and direct discrimination against persons with disabilities is prevalent in all aspects of social and

<sup>&</sup>lt;sup>53</sup> Database of the National Employment Service, November 2011, http://www.nsz.gov.rs/page/info/sr/izvestaj\_o\_ radu.html

private life and it is the most emphasized in employment, education, access to buildings and services and independent living. The position of persons with disabilities can be best observed by taking into account their high rate of unemployment, low level of education, poverty, political under-representation, violence to which women with disabilities are mostly exposed, risk of institutionalization, as well as difficult access to objects, surrounding and services.

The positive improvement in education of children with disabilities was the introduction of the inclusive education<sup>54</sup>, which enabled greater enrolment rate in mainstream schools. However, discrimination against children with disabilities is still prevalent concerning respecting their right to education that is in accordance with their educational needs. Problems facing children with disabilities and their families are numerous. For example, majority of school buildings are inaccessible, so the parents are forced to enrol their children in distant schools, which then lead to additional problems with inaccessible transportation. It also means that one parent has to take a child to school and a parent usually spends his/her time in the school because there are no assistants to support a child.

Textbooks and teaching materials are not adjusted or accessible and in some cases, the adjustment of textbooks is connected to the type of school attended by a child. Therefore, the Association of Blind Persons from Belgrade stressed to the Commissioner a problem facing children with vision impairment who need adjusted textbooks. *The Law on textbooks and other teaching material*<sup>55</sup> provisions that for adjusted educational work, the textbook and teaching material can be published in Brail or in electronic format or other accessible formats – text printed with large letters, audio recording or photographic enlargements. However, in this way, accessible textbooks are available to students in special schools while students with vision impairments in mainstream schools do not have free accessible textbooks. In addition, although there are some positive improvements, secondary schools and universities are still mostly physically and/or functionally inaccessible to students with disabilities.

Discrimination against persons with disabilities is still evident in employment. The implementation of *the Law on professional rehabilitation and employment of persons with disabilities*<sup>56</sup> gave certain results, but still much attention should be put to employment. This is also given in the World bank data<sup>57</sup>: only 13% of persons with disabilities in Serbia are employed but more disturbing data is that 10% of them are employed in non-governmental sector (mostly in disabled persons organizations), and only 1% in the commerce and public sector. Total unemployment of the persons with disabilities is therefore three times higher than of the general population.

<sup>&</sup>lt;sup>54</sup> Law on foundations of education system, Official gazette of the Republic of Serbia, number 72/09 and 52/11

<sup>&</sup>lt;sup>55</sup> Official gazette of the Republic of Serbia, number 72/09, Article 3, paragraph 5

<sup>&</sup>lt;sup>56</sup> Official gazette of the Republic of Serbia, number 36/09

<sup>&</sup>lt;sup>57</sup> Draft report on implementation of the Convention on Rights of Persons with Disabilities in Serbia

# Overview of the position of unemployed persons registered at the National Employment Service in relation to level of education<sup>58</sup> and gender

2010

The Republic of Serbia	Total	Women	of secon- dary school	2 <sup>nd</sup> level of secon- dary school	3 <sup>rd</sup> level of secon- dary school	4 <sup>th</sup> level of secon- dary school	5 <sup>th</sup> level of secon- dary school	6 <sup>th</sup> level	7 <sup>th</sup> level
	20.402	6.672	7.224	2.493	6.395	3.229	429	357	275

#### 2011 - data on 30 June 2011

The Republic of Serbia	Total	Women	of secon- dary school	2 <sup>nd</sup> level of secon- dary school	3 <sup>rd</sup> level of secon- dary school	4 <sup>th</sup> level of secon- dary school	5 <sup>th</sup> level of secon- dary school	6 <sup>th</sup> level	7 <sup>th</sup> level
	20.766	6.886	7.150	2.503	6.478	3.496	415	407	317

National Employment Service data show that the level of education of persons with disabilities is very low and that there are only 3.5% persons with disabilities with higher or university education which further narrows the employment opportunities.

Inaccessibility of public buildings and surrounding is still one of the basic problems in achieving equality of persons with disabilities. Current legislation regulates that public buildings and surrounding have to be built in accordance with accessibility standards so to ensure movement and access to persons with disabilities, children and older persons<sup>59</sup>. However, many buildings are inaccessible including also public administration buildings, which all hinders realization of rights of persons with disabilities and their social inclusion.

<sup>&</sup>lt;sup>58</sup> NB: the secondary and higher education system in Serbia is organized to have options and different degrees of education: 1<sup>st</sup> level of secondary education (one year of secondary schooling), 2<sup>nd</sup> level (two years of secondary schooling), 3<sup>rd</sup> level (three years), 4<sup>th</sup> level (finished four years of secondary schooling), 5<sup>th</sup> level (higher education), 6<sup>th</sup> level (university education/undergraduate studies).

<sup>59</sup> Law on planning and construction (Official gazette of the Republic of Serbia, number 72/09, corrections 64/10 – decision of the Constitutional Court and 24/11)

Women with disabilities are victims of multiple forms of discrimination – both on the grounds of gender and disabilities. They are frequently exposed to unequal treatment in having legal protection and other support services in cases of gender-based violence and other rights violations<sup>60</sup>. According to data of the Poverty Reduction Strategy, persons with disabilities are very vulnerable social group that is exposed to high risk of poverty, and women are poorer that man. Women with disabilities are frequently unemployed; they are economically dependent and have fewer opportunities to access new technologies. They are also more frequently victims of violence. It is therefore necessary to undertake special measures to alleviate consequences of unequal position of women with disabilities.

In addition, it should be said that comprehensive statistical data about persons with disabilities is lacking and the 2011 population census for the first time contained several questions related to disability.

#### 2.2.4. Discrimination on the Grounds of Sexual Orientation

Discrimination on the grounds of sexual orientation is still prevalent in Serbia in both public and private sphere. The event that marked 2011 was cancellation of the Pride parade in September that contributed to increased media visibility of LGBT population in Serbia for several months. However, visibility of extremely negative social perception of LGBT population in Serbia, homophobia, intolerance, discrimination and violence against them has also increased. The characteristic of the position of LGBT population is that they are the only group whose right to public gatherings is denied. There are many public debates about this right in spite of the constitutional guarantee of the freedom of gathering.

Important event for improving the position of LGBT population was the decision of the Constitutional Court of Serbia, which adopted the constitutional complaint of the Organizational board of the Pride parade 2009 and established that the decision of the Police Department from 19 September 2009 violates the right of the appellant to the freedom of gathering and legal provisions guaranteed by the Constitution of Serbia<sup>61</sup>. In 2009, the Pride parade was not held because the representatives of the police asked to change the place of the Pride parade just before the event by giving the explanation that the police cannot guarantee the safety of the participants at the previously scheduled place.

In 2011, there were many physical attacks on LGBT population and some persons were hospitalized after knife stabbing, head contusions and beatings<sup>62</sup>. In October, a young gay man was threatened by knife, attacked and robbed in front of one Belgrade club. In July, two young men were attacked in the centre of Rakovica

62 Ibid.

<sup>60</sup> Organization "Iz kruga..." http://www.izkruga.org/node/124

<sup>61</sup> Internet presentation of the Constitutional Court of Serbia, http://www.ustavni.sud.rs/

because of the attacker's assumption that the men were of different sexual orientation. One gay man was beaten in Novi Sad and left on the street unconscious. At the end of the year, in Belgrade, one girl was attacked and stabbed by knife because she wore a T-shirt supporting all persons of different sexual orientation. At the beginning of 2011, one young man was prohibited to donate blood in the Institute for transfusion in Belgrade, because he wrote in the questionnaire that he was homosexual and through answering some other questions, he was disqualified as a blood donor<sup>63</sup> because of his sexual orientation. One woman addressed the civil society organization for help because she asked for a confirmation from the local municipality that she is not married as she needed it for getting married with another woman in Spain, but she was refused the confirmation without any explanation. She got the confirmation afterwards but only after the support of the organization working on LGBT rights<sup>64</sup>.

In spite of certain positive improvements, the cases of discrimination, violence and hatred towards LGBT persons are still prevalent, and still there is no efficient reaction of the authorized bodies or necessary effectiveness in processing such cases. The Commissioner for protection of equality on several occasions in 2011 informed the public about discrimination against LGBT community, hate speech, prevalent homophobia and high level of violence towards them. She also supported the efforts of the Pride parade organizers by appealing to citizens and state authorities to support the Pride. By reacting to the cancellation of the Pride parade, the Commissioner informed that the prohibition of the Pride parade because of the security risks "shows in the most directs way the high level of homophobia in Serbia. The atmosphere of fear, threats, violence and other severe forms of discrimination that are legally prohibited and punishable have reached the culmination and achieved its goal. Inability and unreadiness of the state to protect constitutional right to peaceful gathering and freedom of speech show how little has been done in the previous years on promoting the rule of law and culture of peace and tolerance".

Although discrimination against LGBT population is evident in almost all spheres of social relations, the education is the key area that needs fast and efficient changes. There are no or little talks in schools about persons of different sexual orientation and many textbooks still treat homosexuals as ill. There are no efforts to change or withdraw books containing false or discriminatory texts. One of the recommendations directed to the Ministry of education, National Educational Council and Institute for improving education related to undertaking necessary measures for ensuring introduction of affirmative and true presentations of same-sex orientation, transgender, transsexual and intersexual in all textbooks (natural and social

64 Ibid.

<sup>63 &</sup>quot;Are we equal?" – Cases of violence and discrimination against LGBTIQ persons in 2011, Labris – organization for lesbian human rights, Belgrade, 2012, http://www.labris.org.rs/izdanja/slucajevi-nasilja-i-diskriminacijeprema-lgbtiq-osobama-u-2011-godini.html

sciences), including also examples of LGBT individuals as members of the history and contemporary democratic societies.

Problems facing LGBT community are problems of the whole society. Willingness and responsibility to overcome prejudice and stereotypes should be a public concern, but also concern of the public administration bodies, educational, health and other institutions, which have the key role in building more tolerant society that respects diversity.

#### 2.2.5. Discrimination on Other Grounds

The report specifically gives grounds on which discrimination is most frequent and widespread in Serbia. There are also discrimination on other grounds, such as religion, marital and family status, membership in political, union and other organizations etc.

In the area of religious discrimination, there are still problems with the implementation of the Law on churches and religious communities. This law separates traditional churches and non-traditional religious communities and thus creates framework for unequal position of churches and religious communities and their followers. In order to prevent discrimination, registration of non-traditional religious communities has to be provided with the changes of the legislation and in accordance with the European and international standards on equality of churches and religious communities.

It is also worrisome that human rights defenders working in fulfilment of human rights and providing support to victims of human rights abuses are still faced with resistance, attacks, humiliation and harassment that are inefficiently processed and punished.

# 2.2.6. Discrimination in Work and Employment

Discrimination in work and employment is most prevalent in the process of selecting job candidates, making decisions about promotions at work and professional trainings, as well as in the processes of cancelling employment contract or stopping the work engagement. In accordance with current legislation, protection from discrimination at workplace is guaranteed to not only employees, but also persons seeking job, apprentices, volunteers, interns etc.

Not everybody has equal opportunities in work and employment. Women are in less-favourable position in comparison to men, and there is also discrimination against persons from marginalized groups, persons with disabilities, older persons, Roma etc. Data of the National Employment Service show differences in employment rate of different categories of citizens and some data have been already presented in above parts of this report (the position of Roma national minority and discrimination

on the grounds of nationality, and the position of persons with disabilities in employment is presented in the part about discrimination on the grounds of disability).

In terms of discrimination against women in work and employment, besides data presented in the part about discrimination on the grounds of gender, we also present data of the National Employment Service. The data show that in the families having a child up to 16 years of age, the difference in employment rate between men and women is increased: in the age category from 25 to 49 years the difference ration between women and men is only 6% if they have no children, whereas in situations when they have more than one child, the difference is increased to 25% within persons having three or more children. This clearly shows that causes of women being lees less competitive at the labour market and threatening their economic position are to be found in the family obligations, everyday care about children and household is not in their sex.

In the group of self-employees, the number of men is doubled in comparison to women (28% of men and 14% of women). 13% of all women and 24% of women aged 55 to 64 (in relation to 4%, namely 2% of men) have a status of helping or non-paid member of the household who works in the family shop or in agricultural works. Furthermore, in groups of unemployed and long-term unemployed but capable, there are more women in all age groups.

Complaints submitted to the Commissioner for Protection for Equality also show the prevalence of discrimination against women at work. The complaints show the problems of sexual harassment at workplace, as well as the employer's practice to put women at lower position or lower-paid jobs after they return from the maternity leave. Having in mind the prevalence of such practices and the need to suppress them, in 2011, the Commissioner initiated a lawsuit for the protection from such indirect discrimination inflicted against women employed in one respected bank.

Another worrisome fact is that public job announcements frequently have discriminatory conditions, which undermine equal opportunities for finding a job. For certain jobs, employers seek specific gender or set the age limit for candidates although the job can be done by each work-capable person. Some employers are even not familiar with the fact that setting eligibility criteria related to personal characteristics can be allowed only if the candidate's personal characteristics pose a real and determining condition for conducting specific jobs in specific circumstances and only if the purpose is justifiable (Article 16, paragraph 3 of the Law on Prohibition of Discrimination and Article 18 of the Law on employment).

Regardless of the economic crisis and high unemployment rate in the society in general, special attention in the area of labour and employment should be put on

<sup>65</sup> Workforce Survey, Republic Statistics Institute (2010), http://webrzs.stat.gov.rs/WebSite/Public/PageView. aspx?pKey=

improving the position of women and other discriminated groups. Having in mind that this is the area of existential importance to all citizens, the Commissioner for protection of equality will treat this area as a priority in 2012 and she will put extra effort together with public administration, employers, unions and employees in contributing to raising awareness of all actors and ensuring consistent implementation of antidiscrimination laws. It is of special importance to create and implement training programmes for employers that will equip them with practical knowledge and mechanism for introducing the equality principles, suppressing all forms of direct and indirect discrimination and managing diversity at workplace.

#### 2.2.7. Discrimination in Education

The Law on foundations of education system<sup>66</sup> provisions prohibition<sup>67</sup> of activities which threaten, degrade, discriminate or exclude persons and groups of persons on the grounds of: race, nationality, ethnicity, language, religion, sex, physical and psychological characteristics, disability, health condition, social and cultural background, property, political orientation, as well as on other grounds determined by the legislation prohibiting discrimination. It also provisions prohibition of encouraging or failing to stop such activities.

Innovations in this law ensures that the children from vulnerable groups have easier and better access to education, because individual approach to students should be applied, as well as respect to child's rights and prohibition of discrimination. The provisions relating to the school enrolment have been changed<sup>68</sup>, so that children from socially vulnerable groups can enrol schools without proof of residence and other necessary documentation. This solves the problem of so-called "invisible children" who could not be enrolled in schools because they lacked documents. It is also provisioned that the assessment of a child enrolled in school is conducted on a mother tongue of a child or by translation; while the assessment of children with motor and sensor disabilities is conducted by using testing that can be optimally answered by a child. In the process of assessing a child enrolled in school, the school can determine the need for adopting *individual educational plan* or *additional education support* to a child. If the additional support demands financial means, the assessment of the needs for additional educational, health or social support is determined by the *inter-sector commission*.

Persons who use sign language or special alphabet or other technical aids have a right to education implemented in sign language or assisted by needed aids<sup>69</sup> and

<sup>&</sup>lt;sup>66</sup> Official gazette of the Republic of Serbia, number 72/09 and 52/11

<sup>&</sup>lt;sup>67</sup> Article 44 of the Law on foundations of education system

<sup>&</sup>lt;sup>68</sup> Article 98 of the Law on foundations of education system

<sup>&</sup>lt;sup>69</sup> Article 9 of the Law on foundations of education system

publishing of accessible textbooks.<sup>70</sup> For the first time, pedagogic assistants<sup>71</sup> are introduced in education system and they provide additional support to children and students in accordance with their needs, as well as assistance to teachers and professionals working with children with the aim of improving their work with children needing additional educational support. The law also provisions equal representation of national minorities in the Parents' council<sup>72</sup> (one parent as a representative of each class) in schools attended by children from the national minorities. If there are children with disabilities in the school, a parent representative of parents of children with disabilities is also a member of the Parents' council.

However, although the legislative framework is quite good, discrimination is still prevalent in education system. There are two groups of children who are particularly vulnerable when it comes to access to education – Roma children and children with disabilities – notwithstanding the fact that data of the Ministry of Education and Science show that, the number of Roma children and children with disabilities enrolled in mainstream schools is in increase. According to data for 2010/2011 school year, the number of children with disabilities in schools increased for 6.57% in comparison to previous year, while the number of Roma children increased for 9.8% in comparison to previous year. However, in the last school year, 95% of children of the appropriate age for school enrolled the first grade, while the other 5% are mostly children with disabilities and Roma children.

It is necessary to bring, as soon as possible, by-laws that are in accordance with the Law on foundations of education system, especially the by-law related to criteria of recognizing discrimination in education system. When the law was adopted in 2009, the Article 171, paragraph 1 provisioned that the minister will bring by-laws in the period of two years following the date when the law comes into force. However, the changes of the law in July 2011<sup>74</sup> extended this deadline for another year. The urgency to bring the by-law on recognizing discrimination is also evident in the data of the two researches conducted by civil society organizations in 2011 – Initiative for Inclusion VelikiMali from Pancevo and Helsinki Committee for Human Rights in Serbia. The objective of the research of Initiative for Inclusion VelikiMali<sup>75</sup> conducted in schools in 10 cities in Serbia was to see the reaction of schools in discrimination cases and activities undertaken in preventing discrimination. On the question whether there is a school document, act or procedure regulating rules of procedure in discrimination cases, only one school

 $<sup>^{70}\,</sup>$  Article 102 of the Law on foundations of education system

<sup>71</sup> Article 117 of the Law on foundations of education system

<sup>&</sup>lt;sup>72</sup> Article 58 of the Law on foundations of education system

<sup>&</sup>lt;sup>73</sup> First national report on social inclusion and poverty reduction in the Republic of Serbia, the Government of Serbia (March 2011), http://www.inkluzija.gov.rs/?p=5216

<sup>&</sup>lt;sup>74</sup> Official gazette of the Republic of Serbia, number 52/11

<sup>75</sup> Research – Prevention of and reaction to discrimination in schools in the Republic of Serbia, VelikiMali (2012), http://www.velikimali.org/

answered negatively, while others replied that there is no special procedure but the school apply other school document (*Protocol on prevention of violence, neglect and abuse, Rulebook on discipline and material responsibility of students and schools staff* etc). Several schools answered that there was a special document, but when asked to name it, they again identified the *Protocol on prevention of violence, neglect and abuse, Rulebook on discipline and material responsibility of students and schools staff,* a procedure, or Statutory provision. Only one school stated that in the past two years, one discrimination case was reported and it was student-to-student discrimination, while other schools responded that there had not been any discrimination. Having in mind that there are total 618 employees in sample schools and 5145 students, out of which 137 are children with disabilities, 67 are Roma children, 73 children of other national minorities, 141 child with chronic illness, 356 children from socially and economically deprived families, eight children without parental care and nine children from foster families, the data that there had been only one reported case of discrimination in two years is quite indicative, because it shows lack of recognizing discrimination in schools.

The results of the research conducted by Helsinki Committee for Human Rights in Serbia<sup>76</sup>, in 2011, in secondary schools in six towns in Serbia, with the objective to research the level of homophobia, traditionalism, conservatism and nationalism of secondary schools' students, shows some really disturbing findings: 36.7% of students have extremely racist and chauvinist attitude towards Roma, while 32% have moderate extremist attitudes. Twenty percent of students support the statement that "Roma are mentally less capable of studying", while 27% believes that Roma are by nature dirty. About 5% of secondary school students are aware of the bad living position of Roma, while 8.5% of students state that Roma children in their schools are treated badly. Sixty one percent of students support the statement that Roma should be equal in the society, while 15% of students oppose such statement. Furthermore, almost one third of students are homophobic (28.7%), while 29% are moderately homophobic. From the total number of students expressing homophobic attitudes, 22% think that members of sexual minorities deserve to be beaten, 58% are against beatings, while 20% is indecisive.

Seventy seven percent of students agree with the statement that family and marriage are holy (this attitude is supported by 10% more boys than girls), 10% of young people do not agree and 11% is indecisive. Almost one third of students agree with that the woman is fully achieved only when she becomes mother, and almost 40% of students do not think that woman is oppressed in Serbian family. Sixty percent of students believe that the domestic violence is a problem, while 40% of students believe in the statement: 'Women should give more birth in order for us to survive as a nation". Only 20% of secondary-school students do not support this statement.

Attitudes and values of secondary school students in Serbia, Helsinki Committee for Human Rights in Serbia, http://www.helsinki.org.rs/serbian/doc/sveske31.pdf

# 3. COMMISSIONER'S PROCEEDINGS IN DISCRIMINATION CASES

One of the fundamental authorities of the Commissioner for Protection of Equality is acting in complaint proceedings for discrimination of persons of groups of persons connected with the same personal characteristic. In accordance with the Article 33 of the Law on Prohibition of Discrimination, the Commissioner is authorised to receive and consider complaints for discrimination, gives opinion and recommendations in concrete discrimination cases and undertake legally determined measures. Furthermore, the Commissioner is obliged to provide information to the appellant about his/her right and opportunities for initiating lawsuit or other protection procedure, including mediation.

The Commissioner is authorized to initiate lawsuits for protection from discrimination, and it is authorized to submit misdemeanour charges for discrimination determined by the anti-discrimination legislation, and as a state authority, it can initiate proposal for assessing the constitutionality and legality of acts to the Constitutional court.

## 3.1. The Complaint Proceedings

The proceeding before the Commissioner for Protection of Equality is initiated by submitting the complaint. Every natural and legal body, including also human rights organizations are authorized to submit complaints (Article 35 of the Law on Prohibition of Discrimination).

The complaint should contain the information about the victim of discrimination, how the person has been discriminated against, by whom, as well as the evidence and suggestions for fact-finding methods that can be used for establishing the truth about the act of discrimination. The complaint should be signed. It is submitted in writing, in printed form, and it can be filed by fax, email with scanned file and signature, email with electronic signature and in oral submission on record. The Commissioner does not act on anonymous complaints.

In the complaint proceeding, which is simple and without many formalities, the factual situation is determined by the insight into the documents, taking statement from the applicant, a person against whom the complaint was filed and other persons, as well as by other suitable ways in accordance with the law and the case circumstances (Article 37 of LPD). Comprehensive legal analysis of the case is done and, if necessary, testing is conducted or collection of statistic and other data. The Commissioner tries to finish the proceeding immediately and with as little costs as possible. The proceeding is fully free of charge for the appellants and it should be finished in 90 days (Articles 35 and 39 of LPD).

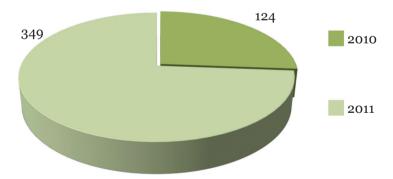
Based on the results of facts finding process, the Commissioner passes a decision in form of the opinion stating whether the discrimination has been performed or not (Article 39, paragraph 1 of the LPD). Besides the opinion about the discrimination, the Commissioner gives recommendation to the person stated as acting discriminatory about the ways of eliminating the right violation (Article 38, paragraph 2 of the LPD) by giving him/her the deadline of 30 days to act on recommendation and redress the right violation.

Person given the recommendation is obliged to act on recommendation and redress the right violation in 30 days from receiving the recommendation and to inform the Commissioner about it. If he/she does not act on it, the Commissioner is authorised to pass decision that gives warning to the discriminator and additional 30 days for redressing the right violation. The decision is final and complaint against it is not allowed. If the discriminator does not eliminate the right violation in additional 30 days, the Commissioner is authorised to inform the public about it (Article 40 of the LPD).

# 3.1.1. The Number of Complaints

In the period from 1 January to 31 December 2011, 335 complaints and 11 information and/or citizens' initiatives were submitted to the Commissioner, which makes 349 new cases.

Total number of cases in 2011 is almost three times bigger than in 2010, which is a result of multiple factors — series of promotional actions and lectures in cities and municipalities in Serbia that increased the visibility of the institution, greater number of employees in the Office that also enabled active partnerships with civil society organisations' projects.



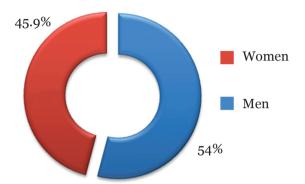
Increase in the number of complaints

However, we should say that the number of complaints is still relatively small. Factors contributing to such trend include also fear of discrimination victims of worsening their situations and exposure to secondary victimization, scepticism of discrimination

victims about the efficiency of the protection, small number of complaints submitted by civil society organizations that are authorized by the law to submit complaints etc.

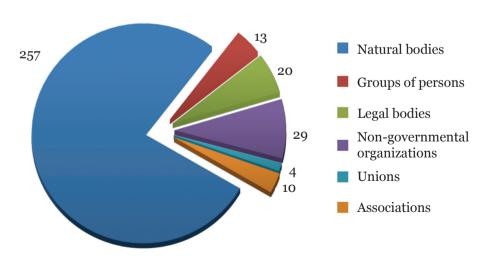
## 3.1.2. Appellants

Majority of complaints was submitted by natural bodies -257 complaints (74%). Women submitted 118 complaints (45.9%) and men 139 complaints (54.1%).



Natural bodies – the gender structure of complaints appellants

Legal bodies submitted 20 complaints (5.7%), groups of persons submitted 13 complaints (3.7%), NGOs 29 complaints (8.3%), unions submitted four complaints (1.2%), various associations 10 (2.9%) and national minorities councils submitted 13 complaints (3.7%).



## 3.1.3. The Grounds of Complaints

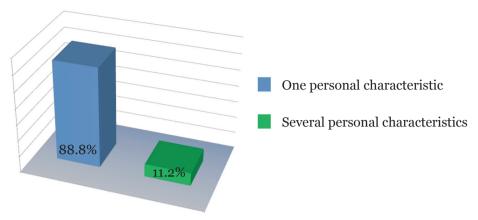
The provisions of the Law on Prohibition of Discrimination (LPD) defines discrimination or discriminatory behaviour as "any unwarranted discrimination or unequal treatment, that is to say, omission (exclusion, limitation or privileged treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it direct or indirect, on the grounds of race, colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, union and other organisations and other real or presumed personal characteristics" (Article 2, paragraph 1, point 1).

Although LPD provisions over twenty personal characteristics as possible grounds for discrimination, it should be taken into account that the list is not definite and that any other personal characteristic can be the ground for discrimination. It should be also said that complaint appellants are frequently not familiar with the term of personal characteristic, namely, what personal characteristics are and what personal identity or traits are.

# Example:

The complaint appellant thinks that her employer is discriminating against her, because she is a wife of a former manager and former president of the Board of the company where she works. As a ground for discrimination, she stated "marital status" and a fact that she is married to this particular man (ex manager of the employer). However, discrimination on the grounds of marital status exists when a person is unequally treated precisely because of his/her marital status, namely because a person is or is not in civil or common-law marriage. For example, discrimination on the grounds of marital status would be if an employee would be denied some labour right just because he/she is not married. In the case submitted by the appellant, unequal treatment is caused by her personal identity and a fact that she is married to a particular man, and not by her personal characteristic – marital status that is to say, situation of being a wife or having a marriage.

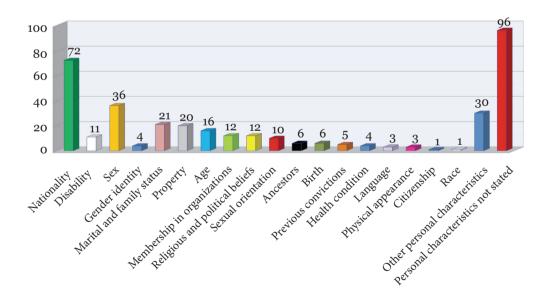
In majority of cases, one personal characteristic is stated as a ground of discrimination (310 or 88%), while 39 complaints give more than one ground.



Complaints on number of grounds for discrimination

Majority of complaints related to discrimination on the grounds of nationality (20.6%), marital and family status (6%), financial status (5.7%), age (4.5%), disability (3.2%), sexual orientation (2.8%) and other grounds (46.9%).

In 2011, there were no complaints for the discrimination on the grounds of colour and generic characteristics.



The grounds for complaints

# 3.1.3.1. Complaints for Discrimination on the Grounds of Nationality or Ethnicity

The majority of submitted complaints were for discrimination on the grounds of nationality or ethnicity – 72 complaints. The majority of such complaints were for discrimination against of Roma nationality (31.9%), and Bosniak national minority (20.8%), while fewer complaints were filed on the grounds of belonging to Albanian nationality (4), Romanian (4), and then Bulgarian (3), Croatian (2) and Macedonian (2).

From the complaints, we can conclude that members of the national minorities feel discriminated against in almost all areas of social relations, especially in proceedings before the public authorities and more specifically when the decision of the public authorities are not positive for them or when decisions are not in accordance with the law. Most disturbing is the position of Roma national minority, who are exposed to discrimination in all areas of social life. Although the majority of complaints were for discrimination on the grounds of Roma national minority, the number of such complaints is still small.

One part of complaints for discrimination on the grounds of nationality referred to work and employment. Complaints were filed against employers and appellants stated that they were treated unequally or that they were not employed at all because they were members of a certain national minority. The situation is similar in cases for discrimination before the authorized courts (7). Members of national minorities feel discriminated against in the cases before authorized courts and frequently when court decisions are not favourable for them, they are treated as discrimination on the grounds of nationality. Majority of cases were finished by giving opinion that the discrimination was not established.

Ten complaints were filed against natural bodies that humiliated and harassed complaint appellants and insulted their dignity on the grounds of nationality.

# Example:

Complaint appellant stated that he was discriminated, because he was exposed at the public swimming pool to insults, harassment and degrading treatment because of his family personal characteristic – Roma nationality. After the proceeding, the Commissioner established that the statements of persons against whom the complaint was filed expressed ideas and attitudes that hurt dignity of the appellant on the grounds of his family personal characteristic – Roma minority, and all that created hostile, degrading and humiliating surrounding which is an act of discrimination.

From total number of complaints submitted on the grounds of belonging to Bosniak national minority, 11 complaints were submitted by the National Council of Bosnika national minority (Bosniak national council) because of the violation of collective minority rights. The complaints were submitted against: the city of Novi

Pazar, the municipalitis of Sjenica, Prijepolje, Tutin and Priboj, Radio-diffusion institution of the Radio and Television Serbia, the Ministry for Human and Minority Rights, Public Administration and Local Self-government, the Ministry of Education and Science, the Ministry of Interior, the President of the Government of the Republic of Serbia and President of the Council of the Republic of Serbia for national minorities – Mirko Cvetkovic, and the Ministry for Culture, Information and Informational Society. The complaints against municipalities were submitted because of the violating the right to use of official language and alphabet of the Bosniak national minority on the territory of all municipalities, but the discrimination was established only in the case against the municipality of Priboj. In this proceeding, the Commissioner established that the local self-government of Priboj failed to take measures to introduce Bosniak language and Latin alphabet in official usage although the results of the last population census on this territory showed that over 15% of Bosniak live there. In all other cases of the National Council of the Bosniak national minority, the Commissioner gave opinion that the discrimination was not established.

Nine complaints referred to discrimination on the grounds of nationality in education, which is quite disturbing fact. In six cases, the complaint was filed against the educational institution, manager or teacher because of the discrimination against students on the grounds of their nationality. One proceeding was finished in 2011, which established that the teacher's behaviour was not motivated by nationality of the student, but two recommendations were sent to the school:

- 1. The manager of the primary school M.l.l. from B. will take all necessary measures in her authority to develop students' tolerance, accepting diversity and non-discriminatory behaviour throughout adequate program, trainings and education.
- 2. The School Board, the school manager and expert service (psychological-pedagogical service) of the primary school M.l.l. from B. will inform the Commissioner for protection of equality about measures planned to implement this recommendation within the 30 days of receiving the opinion with the recommendation.

Three complaints were submitted for segregating Roma children in education.

With the aim of fulfilling the right of the members of national minorities in Serbia to information on their mother-tongue, the Commissioner for protection of equality sent a recommendation to the Radio-diffusion institution of the Radio Television Serbia to take all necessary measures in its authority for the production and broadcasting programs about culture, language, customs, history and other characteristics of national minorities living in Serbia. The content of the recommendation is given in the part of the report presenting the recommendations on measures for fulfilling equality.

In 2011, there were complaints for discrimination on the grounds of belonging to majority Serbian nationality, and in one case, the discrimination was established.

## Example:

The complaint appellant stated that he lived in Bosilearad, the municipality whose population is 99.05% of Bulgarian nationality and that he was a retired worker of the Ministry of Interior and that he was exposed on a daily basis to pressures and threats of those who propagate returning the municipality of Bosilegrad to Bulgaria. He submitted also the copy of the eighth and ninth pages of the newspaper "Bjuletin" from October 2010, which published the complaint of this person submitted to Zarko Obradovic, the minister of the education on 17 May 2010, as well as the text titled "About the state of master Radisa". The appellant stated that the whole text, and especially the term "Serbian Cenge", which was repeated several times in the text referred to the appellant, because he had been employee of the Ministry of Interior and because his father had been a police officer who moved from nearby Uzice to Bosiligrad. After the proceeding, the Commissioner for protection of equality established that the text of Ivan Nikolov "About the state of master Radisa" published in the newspaper "Bjuletin:, number 64-65, in October 2010, expresses ideas and attitudes which insult the dignity of the appellant on grounds of personal characteristics – nationality and ancestors. These all created hostile, degrading and humiliating surrounding that is an act of discrimination – harassment and degrading treatment.

# 3.1.3.2. Complaints for Discrimination on the Grounds of Disability

The next ground for discrimination in terms of number of complaints is the disability – 39 complaints. Eleven complaints were submitted for discrimination in work and employment and 11 complaints in the area of public services. In the majority of cases (26), the complaints were dismissed because either they did not fulfil the formal requirements or the discrimination was not established in accordance with the Law on Prohibition of Discrimination. Acting in three complaint proceedings, the Commissioner for protection of equality gave an opinion that there was no discrimination, while in three cases, the discrimination on the grounds of disability has been established and appropriate recommendations were given.

# **Examples:**

A person who is a wheel-chair user submitted a complaint against the city of Belgrade because of the discrimination on the grounds of disability in the area of public services. The complaint stated that he could not move on the street where he lived, because the sidewalk and the crossroads are not accessible. The Commissioner for protection of equality gave opinion that the discrimination had been established and gave recommendation to the City Secretariat for Traffic to make the sidewalk and crossroad accessible in order to ensure to the appellant and other persons with disabilities using wheel-chairs easy movement and use of public surrounding.

<sup>77</sup> NB by translator: "Cenge" is a pejorative and offensive term for police officer

Mental Disability Rights Initiative of Serbia (MDRI Srbija) filed a complaint against the Secretariat for social protection of the city of Belgrade, because some categories of children and adults with disabilities are discriminated against in terms of rights to privileged parking. In the case, it was established that the Decision about the categories of persons with disabilities who can use public parking places (Official gazette of the city of Belgrade, number 28/2003) and Rulebook on categories of war veterans with disabilities, civil casualties of war and persons with disabilities who can use specially determined public parking places free-of-charge (Official gazette of the city of Belgrade, number 27/2006) violated the equality principle. These documents which regulate the categories of persons who can use parking places for vehicles of persons with disabilities, are discriminating against some categories of citizens of Belgrade: parents of children with disabilities included in mainstream education system or are excluded from education system in relation to parents and guardians of children with disabilities who attend special schools.

There were cases where discrimination on the grounds of disability was not established, but the data acquired in the fact-finding process lead to conclusion that persons with disabilities have obstacles in realizing some rights. The Office of the Commissioner for Protection of Equality will analyse relevant legislation each time when there are indicators that some groups of citizens cannot realize their right under equal conditions and it will take appropriate measures from its authority (e.g. initiative for changes of legislation) in order to ensure the respect to the principle of equality.

# Example:

Complaint appellant is a person with sight impairment, who believes that the business bank discriminated against him in the process of approving the credit, because it was necessary for him to sign the promissory note. Since he was not able to do that by himself, he gave authorization certified in the court to another person who signed promissory note instead of him. The appellant stated that he was treated unequally in relation to other bank clients, who do not have to authorize other person and do not have additional costs for court certification. The proceeding established that the bank did not discriminate against the appellant, because it acted in accordance with the Law on promissory note to which application the business bank is obliged. However, this procedure identified the need for comprehensive analysis of the Law on promissory note, as well as other laws regulating the way of signing the documents by persons who cannot do it for any given reason, especially from the perspective of legislative harmonization with the equality principle. This may lead to initiating changes of the current legislation.

The Commissioner also gave several recommendations to the public authorities, including: recommendation to the Ministry of Education and Science of the Republic of Serbia, National Educational Council and Institute for Improving Education

for removing discriminatory contents, also on the grounds of disability, from curriculum and teaching practice and to promote tolerance, respecting diversity and human rights; recommendation to the Ministry of Labour and Social Policy for changes of the discriminatory provisions given in the Law on preventing discrimination against persons with disabilities and the initiative for the changes of this law was sent to the Government of the Republic of Serbia.

## 3.1.3.3. Complaints for Discrimination on the Grounds of Gender

There were 36 complaints for discrimination on the grounds of gender. The majority of complaints were in the area of work and employment (18) and two were for discrimination in sport. The Commissioner for protection of equality filed a law charge to the authorized court because of the discrimination against female football clubs in relation to men football clubs and on the grounds of gender by assessing it as a strategically important case.

In seven cases related to discrimination on the grounds of gender, discrimination was not established, while in six cases, it was established and appropriate recommendations were given.

## Examples:

The complaint appellant stated that the text of P.B. published in daily news-paper "Politika" expresses ideas and attitudes degrading women and sustaining prejudices and social patterns based on stereotyped gender roles. The proceeding established discrimination on the grounds of gender and the recommendation was issued to the author to give written apology to the appellant and to sustain in future from giving statements that degrade women.

Based on the complaint of the appellants who asked for widening the possibility of entering into procedure of In vitro fertilization on the costs of the Republic fund for health insurance, the Commissioner gave an opinion that one of the eligibility criteria for participating in In Vitro Fertilization Programme which says that "only women who have not had children or do not have alive children" can participate in the program is discriminatory. Such provision discriminates and constitutes unequal treatment of men who do not have their own genetic posterity and whose partners have their own genetic posterity from previous civil or common-law marriage and they are then denied participation in the Programme. On the other hand, men who have their own genetic posterity from earlier partnership, and their partners do not have genetic posterity are thus allowed participation in the Programme.

Based on these complaints, the Commissioner issued five recommendations to the public administration bodies – the Ministry of Education and Science of the

Republic of Serbia, National Educational Council and Institute for Improving Education for removing discriminatory contents from teaching materials and curriculum and to promote tolerance, respect to diversity and human rights; recommendation to the National Assembly of the Republic of Serbia for ensuring participation of women in international delegations; recommendation to the Government of the Republic of Serbia for changes of the Methodology for drafting by-laws and recommendation to the Ministry of Defence and Serbian Army General Office to take all necessary measures for setting conditions for use of gender differentiated language in the official communication in accordance with the principle of gender equality.

There were 16 complaints with more than one ground for discrimination (gender and family status, sex and gender, property, disability).

## Example:

Acting of the complaint of AZC from B. against the City Assembly of the City of Belgrade because of the Decision on changes and additions to the decision on social protection rights of Belgrade, number 5-262/11-S, on 12 April 2011, the Commissioner established that this Decision violates the equality principle and discriminates against certain categories of women. The Decision determines conditions for realizing right to permanent financial aid to women victims of domestic violence and it discriminates against women victims of domestic violence who were not users of safe house or returnees to safe house in relation to women – victims of domestic violence – who were users or returnees to the safe house.

# 3.1.3.4. Complaints for Discrimination on the Grounds of Gender Identity

In 2011, the Commissioner received four complaints referring to discrimination on the grounds of gender identity. It is interesting to mention that all four complaints besides gender identity also stated sex and gender as grounds for discrimination.

# 3.1.3.5. Complaints for Discrimination on the Grounds of Marital and Family Status

Discrimination on the grounds of marital and family status was stated in 21 complaints. In 16 cases, the complaints identified discrimination on more than one ground and family and marital status being one of them.

It is interesting to mention that from the total number of such complaints, 16 referred to the area of work and employment and out of them 14 complaints were submitted by women. This illustrates the less-favourable position of women in the area of work and employment and the fact that women feel discriminated in this social relation area because of their marital and family status.

## Example:

The complaint appellant stated that she was employed at the high position in the bank, but that she was put to a lower (executive) position after she had returned from the maternal leave.

In five cases, we established that there was no discrimination and in one case, the Commissioner issued a recommendation to the public authorities.

## Example:

The complaint appellant thought that she had been discriminated at the public announcement for selection of the kindergarten teacher in a Pre-school institution on the grounds of her marital and family status. She stated that the only reason for not getting the job was the fact that she had four children. After the proceeding, the Commissioner established that there was no discrimination, because the primary selection criterion was the success at the psychology test.

In 50% of the cases, the complaints were dismissed because they lacked all necessary elements, the appellants did not provide additional information in the given deadline or the proceeding was cancelled because it did not established rights violation in accordance with the Law on Prohibition of Discrimination.

# 3.1.3.6. Complaints for Discrimination on the Grounds of Financial Status

There were 20 complaints on the grounds of financial status and 12 of them relate to the area of public services or work of public administration (health protection, social protection, education, justice) while five complaints relate to the area of work and employment. The complaint appellants stated that they had been denied rights because of the bad social status, but they failed to submit evidences to support such statements in the proceedings. In two cases, the Commissioner gave opinion that discrimination was not established.

In accordance with its authorities to initiate adoption or changes of the legislation for improving protection from discrimination and give opinions on draft legislation related to prohibition of discrimination, the Commissioner for protection of equality sent to the President of the Republic of Serbia an opinion about the Law on civil procedure. Furthermore, she sent an opinion on the draft Law on free legal aid to the Government of the Republic of Serbia.

# 3.1.3.7. Complaints for Discrimination on the Grounds of Age

There were 16 complaints stating age as a ground for discrimination. Again, the majority of cases related to the area of work and employment. The Commissioner

for protection of equality issued three opinions that established discrimination and gave appropriate recommendations for redressing the right violation.

## Example:

The complaint appellant stated that she was discriminated on the grounds of her age in the employment procedure, because the announced job had a condition that nurses were not to be older than 35. It was established that the employer violated the principle of equality by announcing such job call in relation to persons older than 35, which means that the indirect discrimination on the grounds of age had been performed.

# 3.1.3.8. Complaints on the Grounds of Membership in Political, Union and Other Organizations

In 12 complaints, the appellants identified discrimination on the grounds of membership in political, union and other organizations. The complaints related to discrimination in the area of work and employment, public services, procedure before the public administration bodies, justice. All cases were dismissed or cancelled because it was obvious that there were no discrimination as regulated by the Law on Prohibition of Discrimination.

# 3.1.3.9. Complaints on the Grounds of Religion and Political Beliefs

There were 12 complaints submitted for discrimination on the grounds of religion or political beliefs (five for religious and seven for political beliefs) in various areas of social life. The Commissioner issued one recommendation to one of the national councils of national minorities, as well as the recommendation to the Higher Court in Belgrade about urgency in solving court proceedings related to discrimination.

# 3.1.3.10. Complaints for Discrimination on the Grounds of Sexual Orientation

There were ten complaints for discrimination on the grounds of sexual orientation. It is interesting that only four complaints were submitted by natural bodies while other complaints were filed by non-governmental organizations. In 2011, the Office of the Commissioner finished eight proceedings in the following manner: in two cases the discrimination was not established, four complaints were dismissed as incomplete, one case had no rights violation connected to the Law on Prohibition of Discrimination, while one recommendation was issued for one case.

## Example:

Complaint appellant stated that he had been discriminated on the grounds of his sexual orientation, because the employer cancelled his job contract for not coming to work for certain period of time although the complaint appellant had informed the employer that he would be absent because of his participation in organizing Pride parade. During the proceeding, the employer submitted proofs that established that job cancellation was not motivated by sexual orientation or any other personal characteristic of the appellant but solely based on violating work obligations and unjustified absence from work for seven days. The Commissioner gave opinion that there was no discrimination.

## 3.1.3.11. Complaints for Discrimination on the Grounds of Ancestors

This ground is state in six complaints and mainly in the area of work and employment. The complaint appellant thought that they had been put in unequal treatment because of their ancestors (for example, personal characteristic of parents – conviction) or their background.

#### 3.1.3.12. Complaints for Discrimination on the Grounds of Birth

There were six complaints submitted for discrimination on the grounds of birth and three in the area of work and employment. In one case, the Commissioner gave recommendation to the city of Jagodina about discriminatory provisions of the Decision on financing married couples; because the financial aid from the city of Jagodina can be received only by married couples and at least one partner have to be born on the territory of the city of Jagodina.

# 3.1.3.13. Complaints for Discrimination on the Grounds of Previous Conviction

There were five complaints for discrimination on the grounds of previous convictions in 2011. The complaint appellants stated that they had been discriminated in the proceedings before the public administration authorities (the Ministry of Interior, Administration for implementation of prison sanctions, justice). It is interesting to mention that two complaints stating the discrimination on the grounds of conviction were submitted by the person still serving the prison sentence. The complaints related to the events in prisons in which they served sentences, so it was needed to explain that conviction in such cases could not be the ground for discrimination, because it should refer to unequal treatment of persons who are convicted or who have the same personal characteristic. In order to establish discrimination in conditions when everyone are convicted and serve prison sentence, unequal treatment should be based on some other personal characteristic (e.g. nationality, disability).

# 3.1.3.14. Complaints for Discrimination on the Grounds of Health Condition

There were four complaints for discrimination on the grounds of health condition. The complaints related to public services, health care, work, and employment.

# 3.1.3.15. Complaints for Discrimination on the Grounds of Language

Language as a ground for discrimination occurred only in three cases which were actually cases of multiple discrimination and the language was one of the grounds (besides nationality).

# **3.1.3.16.** Complaints for Discrimination on the Grounds of Physical Appearance

Physical appearance as a personal characteristic and a ground for discrimination was stated only in three complaints together with other grounds (age, sex, ancestors). Complaint appellants thought that they had been discriminated in the area of work, public services and justice.

## Example:

The complaint appellant stated that he was discriminated on the grounds of physical appearance and sex, because he was not allowed to enter the business building in short trousers, and women are allowed to enter in skirts. The Commissioner gave opinion that discrimination was not established on any given ground or personal characteristic of the complaint appellant.

# **3.1.3.17.** Complaints for Discrimination on the Grounds of Citizenship

Only one complaint stating citizenship as a ground for discrimination was submitted. The complaint related to education and it was submitted against a secondary school, the appellant, who is a citizen of the Republic of Serbia stated that had not been accepted to school, because he could not proved that he was not the citizen of some other state.

# 3.1.3.18. Complaints for discrimination on the Grounds of Race

Race as a ground for discrimination was stated only in one complaints. The proceeding established that there was no rights violation as regulated by the Law on Prohibition of Discrimination.

# 3.1.3.19. Complaints for Discrimination on the Grounds of Other Personal Characteristics

In almost 10 percent of the complaints (30), no particular or explicit ground was stated as regulated by the Law on Prohibition of Discrimination. Some of the examples include the status of military war disability, retired person, the status of flat-renter, clerk or civil servant, student of the Law University, the student of state university, internally displaced person, and residence.

Among all these cases, discrimination was established only in one case and appropriate recommendation was issued.

## Example:

War veterans from the territory of eight municipalities at the south of Serbia received daily fees for the period spent in war, while the war reserve personnel in the same municipalities in Serbia did not receive the fee. In this case, the discrimination was established and the recommendation was sent to the Government of the Republic of Serbia.

## 3.1.3.20. Complaints without Grounds for Discrimination

In almost one third of the complaints (96 complaints – 27.5%), the grounds for discrimination was not stated and it is mostly for two reasons: 1) the grounds for discrimination were not stated, namely the appellants did not state the personal characteristic on which they were discriminated against, and 2) the grounds for discrimination was wrongly stated, which is a result of the fact that appellants do not fully understand the principle of personal characteristic as a ground for discrimination. All complaints stated violations of some other rights, but the appellant experienced and interpreted the situation as discrimination.

# **Examples:**

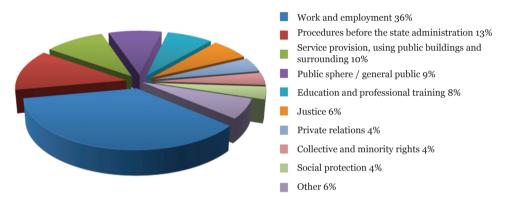
Appellant thinks that the employer discriminates against him and does not allow advancing at the work, because the employer is jealous on the achievements of the appellant.

Appellant believes that the Ministry of Interior Affairs discriminates against him by failing to react to the complaints submitted against his neighbour and the neighbour is related to someone working in the Ministry of Interior;

The complaint appellant is a teacher and she was not accepted at the job after the job announcement. She thinks that the reason for that is her professionalism and achievements, so the school manager decided not to employ her because of jealousy. Large number of complaints without stated personal characteristic or without causal-consequential connection between the personal characteristic and discriminatory act shows us that the discrimination phenomenon is still not clear to the public, and many rights violations and unjustified situations are regarded as discrimination.

# 3.1.4. The Areas of Social Relations in the Complaints

Complaints received in 2011 referred to the areas of work and employment (35.5%), proceedings before the public administration bodies (12%), service provision (9.7%), public sphere (8.5%), education (6.4%), justice (6%), and other areas of social relations (23.9%).



Areas of social relations to which complaints are related

#### 3.1.4.1. The Area of Work and Employment

Majority of submitted complaints referred to the area of work and employment – 122 complaints (35.4%). It is interesting to mention that the complaints in this area were submitted on all given grounds for discrimination and personal characteristics. The situation is the same with the complaints referring to the employment procedures.

The complaints showed that, in the area of work, and especially employment procedure, discrimination is prevalent against persons from marginalized groups, particularly women, persons with disabilities, older persons.

## Example:

The complaint was submitted by a woman stating that she was discriminated on the grounds of disability, because the decision of the National Employment Service denied her the right to work by establishing that the status of a person with disabilities who cannot be employed and sustain employment under general

or special conditions. She has been previously employed and has had working experience for several years. The Commissioner gave opinion that the discrimination was established and gave recommendation to the National Employment Service to redress the consequences of the decision and to conduct future work-capability assessments so to ensure fulfilment of the right to work to persons with disabilities in accordance with the principle of full social inclusion of persons with disabilities.

On the other hand, having in mind that the majority of complaints in the area of work and employment were unjustifiable from the perspective of Law on Prohibition of Discrimination, we can conclude that the citizens are particularly vulnerable to situation and events connected to labour rights, so that every unequal treatment is regarded as discrimination. However, the fact is that employees and persons seeking jobs face numerous problems in the area of work and employment. In majority of cases, the Commissioner did not establish discrimination as regulated by the Law on Prohibition of Discrimination and the appellants were informed about possibilities given in the Law on suppressing mobbing at workplace (Official gazette of the Republic of Serbia, number 36/2010) or they were directed to relevant state authorities.

# 3.1.4.2. Proceedings before the Public Administration Bodies

Twelve percent of complaints (43) were submitted for the proceedings before the public administration bodies. Mostly, it included complaints against the local self-governments and city administration, courts, Government of the Republic of Serbia and the ministries, The Army of Serbia, Tax administration, and centres for social work. In several cases, discrimination was not established, but it was necessary to present the specific position of some groups of citizens in Serbia to the public administration.

# Example:

Human rights organizations stated in the complaint that the Police administration in the city of Nis denied to issue ID card to a young Roma man. The proceeding established that the acting of the Police administration was not motivated by the man' personal characteristic, but also it did not provide reasonable explanation why the ID card was not issued. In the case, the Commissioner gave opinion that the discrimination was not established, but the explanation stressed the need for the state authorities to show greater level of sensibility in proceedings with the persons from socially vulnerable groups.

The chronological overview of the opinions and recommendations to the public administration bodies issued in proceedings in accordance with the Article 33,

paragraph 1, point 1 of the Law on Prohibition of Discrimination is presented in the part of the report titled *Recommendations on measures for achieving equality*.

## 3.1.4.3. Service Provision, Using Public Buildings and Surrounding

There were 34 complaints for discrimination in the area of service provision or using public spaces and surrounding. The complaints referred to using public buildings and surrounding were almost exclusively on the grounds of disability, while there were various personal characteristics stated as ground for discrimination in service provision – age, nationality, sex etc.

# Example:

The appellant was not extended the contract of loan at the account by the bank and the reason stated was that she had been older than 67. Indirect discrimination on the grounds of age was established and the recommendation was sent to the bank. In addition, the recommendation was sent to the National Bank of Serbia to undertake appropriate measures in its authority for eliminating discriminatory condition of upper age limit for using bank services that are provisioned by business banks by their general acts. The National Bank of Serbia informed the Commissioner that it established that large number of banks (19 out of 33) in their General conditions regulates upper age limit for certain bank services and that the National Bank of Serbia sent the letter to the Association of Serbian banks recommending to banks to revise their General conditions and harmonize their acts with relevant provisions of antidiscrimination laws.

# 3.1.4.4. The Public Sphere

There were 30 complaints (8.7%) for the discrimination in the public sphere. The majority of complaints referred to decisions of the local self-governments, the Government of the Republic of Serbia, and other acts (legislation) containing discriminatory provisions. There were also several complaints for statements given on the Internet websites or at press-conferences.

# **Example:**

The complaint against Dragan Bjelogrlic stated that at the press conference for the new film, he gave statement that correlates Roma with murderers and lunatics from Balkan, which put Roma in negative context and uses insulting term "Gypsies". It was established that Dragan Bejlogrlic expressed ideas and attitudes that hurt the dignity of members of Roma national minority and the recommendation was sent to him. He acted upon the recommendation and the public was informed about it.

## 3.1.4.5. Education and Professional Training

There were 26 complaints (6.4%) for discrimination in the area of education and professional training. The complaints showed disturbingly great problems in education, especially for children from marginalized groups (Roma, children with disabilities etc). Several complaints referred to discrimination against Roma children in schools and to segregation of Roma children in primary school and pre-school institution.

Out of five complaints related to discrimination of Roma children in education in 2011, discrimination was established in two cases — in one school and one pre-school institution (both educational institutions are on the territory of the same city), where Roma children are segregated and have classes in separate classes in a separate building. At the moment of writing this report, neither pre-school institution not the school have acting upon the recommendation of the Commissioner for protection of equality.

One complaints referred to the decision of the national council of one national minority which stated that the right to scholarship is allowed only for children whose parents have lower level of education, children who do not live in the same place where the school is, children who are at the state university or are listed in the voting list of that national minority.

#### 3.1.4.6. Justice

There were 22 complaints related to the area of justice. We can conclude from the complaints that the appellants submit complaints if they are not satisfied with the outcome of the court proceeding, because they believe they were discriminated by such decisions.

# <u>Examples:</u>

Complaints appellant is a lawyer and he thinks that the Republic Prosecution Administration discriminated against him by giving statements in the complaint, which expressed the attitude that the lawyer cannot be allowed costs of hiring a lawyer, because he is a lawyer himself. The appellant stated that in 2009 he filed a complaint to the court for discrimination on the grounds of nationality and religion and harassment at workplace. Although there was no ground for acting because the court proceeding was still in progress, the Commissioner gave recommendation to the Higher Court in Belgrade which stressed the urgency of the proceedings related to the Law on Prohibition of Discrimination and the need to take all necessary measures to conduct such proceedings in an urgent manner and in the shortest possible period.

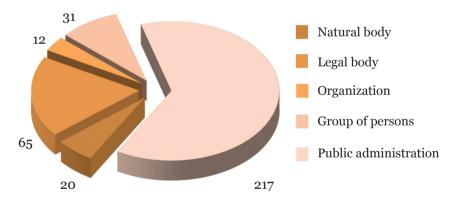
#### 3.1.4.7. Other

One number of complaints related to private relations (15 complaints), fulfilment of collective minority rights (13) and social protection area (13).

The smallest number of complaints (21 complaints) was in the areas of health protection, culture, art and sport, pension and disability insurance, public information and the media, housing, acting in unions, political parties and citizens associations.

# 3.1.5. Against whom the complaints were filed

Majority of complaints were filed against public administration bodies  $^{78}$  – 217 (62.9%). In this category, most complaints were filed against: the Government of the Republic of Serbia and ministries – 24% (6.9% and 17%); local self-governments and their bodies (the municipal and city assemblies, secretariats) – 20.7%; the Republic of Serbia – 5%; various courts – 8.7%. Less than 3% of complaints were filed against Public prosecution office, Pension and Disability Insurance fund, Tax administration, National Employment Service and the National Assembly of the Republic of Serbia. There were 12% of complaints against educational institutions (primary schools, preschool institutions, universities and science institutes). There were only seven complaints against health institutions (hospitals, health centres). It is interesting that the public administration bodies are found only in four complaints as employers.



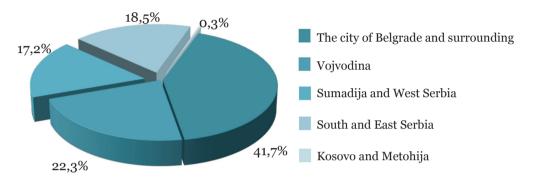
Against whom the complaints were filed

In 5.8% of cases, the complaints were filed against natural bodies, mainly against men, while women were stated as discriminators in only three complaints. Natural body as a discriminator was listed in 18.84% of cases, and out of this percentage, in 41% cases the natural body was in the role of the employer.

<sup>&</sup>lt;sup>78</sup> This term refers to all state authorities, institutions and institutes which are founded by the Republic of Serbia, bodies and organizations conducting public authorities;

## 3.1.6. Regional Distribution of Complaints

Most of the complaints were filed by persons residing in Belgrade or in its surrounding (40%), which shows that the institution of the Commissioner for Protection of Equality is most visible this region. In 2012, the Commissioner the Office staff will have series of activities that will make the institution more accessible, recognizable and visible at the whole territory of Serbia.



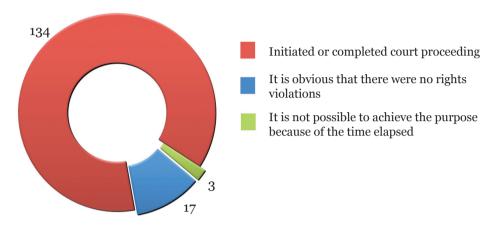
Number of complaints per regions

### 3.1.7. The Outcomes of the Proceedings and Decisions on Complaints

In accordance with the Law on Prohibition of Discrimination and Rules of procedure, which more closely determines the proceeding before the Commissioner for Protection of Equality, after the reception, the complaint is firstly checked for all necessary elements for the proceeding. If the complaint is incomplete, incomprehensible or lacks information that could hinder the proceeding, the request is sent to the appellant to remove the inconsistencies. The request states the inconsistencies and possible ways of removing them. The complaint is dismissed if the appellant does not submit requested changes in given deadline, as well as when the Commissioner for Protection of Equality determines that it is not authorized to proceed in the rights violation stated in the complaint. In such case, the institution is obliged to inform the appellant about the authorized bodies to provide legal protection.

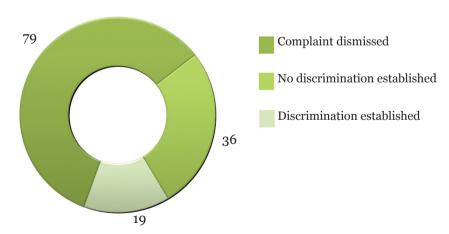
The provisions of the Article 36 of the Law on Prohibition of Discrimination says that the Commissioner will not proceed on the complaint if the court proceeding has been already initiated or the court passed the enforceable decision. The Commissioner also does not proceed on complaint if it is obvious that there are no right violation stated by the appellant, if in the same case had been already acted and no new evidences were offered, as well as if it is impossible to achieve the useful purpose of the proceeding because of the time elapsed since the right violation.

In 2001, there were total 154 complaints on which the Commissioner did not proceed for the following reasons: it was obvious that there was no right violation stated by the appellant (134), the court proceeding has already been initiated or completed (17), and because the useful purpose will not be achieved because of the time elapsed since the right violation.



The complaints upon which the Commissioner did not proceed

The proceeding was initiated in 134 complaints, and out of that number, 79 complaints were dismissed, in 36 cases the discrimination was not established, while in 19 cases the discrimination was established.



Complaints upon which the Commissioner proceeded

In 19 cases that established discrimination, the Commissioner gave opinion and appropriate recommendations for removing the consequences of discrimination

and preventing further discriminatory behaviour. It was acted upon the Commissioner's recommendation in due time in eight cases, and in two cases we were delivered information about the way and deadline to act upon recommendations. In two cases, the deadline for acting has not yet expired, while in seven cases discriminators did not act upon recommendations.

In all cases in which it was not acted upon the Commissioner's recommendation, the public was informed in accordance with the Article 40, paragraph 2 of the Law on Prohibition of Discrimination. The announcements were published in daily newspaper "Blic" and on the Commissioner's website. The following natural and legal bodies have not acted upon the recommendations: Ivan Nikolov from Bosilegrad, Dragan Bjelogrlic, Legislative council of the National Assembly of the Republic of Serbia, Football Federation of Serbia, Jagodina City Assembly, the Municipality Priboj and the Ministry of Labour and Social Policy.

The Commissioner for protection of equality gave ten recommendations on measures for improving equality to the public administration bodies, two of which were given for cases in which discrimination was not established. In eight cases, the authority of the Commissioner for Protection of Equality was not established, so the cases were sent to authorized bodies (to the Commissioner for Protection of Information of Public Importance, relevant ministries etc).

The mediation was conducted in one case and it was successful. The Commissioner also gave two opinions on the laws and draft laws, as well as two legislative initiatives.

In three cases, the appellants withdrew the complaints.

The Commissioner filed three law charges to the relevant courts and two misdemeanour charges. In other cases (50), the proceedings have not been finished in 2011.

# 3.2. Law Suits for Protection from Discrimination

The Article 33 of the Law on Prohibition of Discrimination provisions the authority of the Commissioner for Protection of Equality to file anti-discrimination lawsuits, while assessing independently the needs for initiating them. In the court proceeding, the Commissioner is plaintiff, meaning that the lawsuit is filed on its own duty, but it needs consent of the discriminated person if the victim of discrimination is an individual (Article 46, paragraph 2). If the discrimination occurred against groups of persons with the same personal characteristic, the consent of the discriminated persons is not needed in accordance with the Article 46, paragraph 2 of LPD. In the lawsuit, the Commissioner can state all anti-discrimination lawful demands of

preventive and restitution character which is provisioned by the Article 43 of the LPD except for the demand for reparation of material and non-material damage.

In its charge, the Commissioner can claim that: the court determines that the accused acted in a discriminatory way against the particular person (claim for establishing the discrimination). It can, also, ask for imposing a ban on acts leading to discrimination, a ban on further discrimination and a ban on repeating the discrimination (claim for omission and sustaining from discriminatory treatment). The judgement that adopts the claim for omission is appropriate for compulsory enforcement of temporary measure, and the Commissioner is authorised, as being the litigator in the procedure, to initiate procedure for compulsory enforcement. The Commissioner is authorised to state in the charge the demand for eliminating discrimination by which it asks that the discriminator takes one or more actions for the elimination of discrimination conditions. Finally, the Commissioner can ask that the discriminator publish the court judgement determining the discrimination in his own costs.

It should however be clear that the lawsuit is not a mechanism that ensures respect to the Commissioner's recommendations nor it is a part of the complaint proceedings. In each particular case, the Commissioner assesses whether the case has strategic importance, and after the assessing the importance of having a "strategic litigation", the Commissioner files the law charge to the relevant court.

In 2011, the Commissioner initiated three law charges. The first lawsuit referred to the discrimination on the grounds of Roma national minority. On 3 June 2011, V.K. from S. gave to the journalist of Radio television Serbia a statement regarding the information that J.M. and her five children will move into the building where V.K. lives: "It is not really in our favour to have Roma live in our building. She has many children, five children, she... I don't know. It is a mess. Roma are Roma... You know, they always have separate suburb, separated and such things." This was broadcasted on 6 June 2011 at the Radio and Television Serbia.

Based on the Commissioner's law charge, the court ruled it as a case of severe form of indirect discrimination against persons of Roma nationality – encouraging and enticing inequality, hatred and intolerance on the grounds of nationality. The defendant was prohibited to give further statements and express attitudes that discriminate Roma national minority, and he was ordered to publish apology in newspapers with national coverage on his own cost. This judgement is enforceable.

The second law charge was filed against the Football Federation of Serbia because of the discrimination against women football clubs in relation to men football clubs and on the grounds of gender. The Article 70 of the Rulebook on registration, status and transfer of players of the Football Federation of Serbia (Official gazette "Football", 20 June 2011) provisions that the refund of costs incurred in the training

and professional improvement of football female player is 15% of the total sum paid for the male football player for the transfer. The discussion was concluded, but the final judgement has not yet been passed.

The third law charge was filed against the city of Jagodina for the Decision on financial support to married couples, number 011-92/10-10-1. The Decision was adopted by the Jagodina City Assembly on 23 December 2010. It contains conditions by which the eligibility to receive financial support is unjustifiably denied to some categories of citizens: those who are in common-law marriage, those who were not born in Jagodina, those who have children from previous common-law marriage, and to those who were in common-law marriage before the current marriage. This case has not been finished with final judgment in 2011.

## 3.3. Misdemeanour Charges

In accordance with the Article 33, paragraph 4 of the Law on Prohibition of Discrimination, the Commissioner is authorized to file misdemeanour charges for the violation of the rights given in the LPD. Although it is not explicitly provisioned by the LPD, because of its role, the Commissioner is authorized to file misdemeanour charges also for discriminatory acts that are incriminated as misdemeanour by special anti-discrimination laws: Law on protection of rights and freedoms of national minorities, Law on preventing discrimination against persons with disabilities, Law on gender equality, and other legislation.

In 2011, the Commissioner filed two misdemeanour charges and both were for the segregation of Roma children – one in pre-school institution and one in primary school on the territory of the same municipality.

# 4. WORK ON IMPROVING THE PROTECTION OF EQUALITY

In the previous period, the Commissioner has undertaken various activities for suppressing discrimination, promoting and improving equality. Several general recommendations were sent to the public administration bodies, as well as several admonitions and announcement. In addition, the series of lectures and presentations were held in order to inform public about the discrimination, introduce international standards, provisions given in antidiscrimination legislation, the role, tasks and powers of the Commissioner, and the complaint proceedings. Furthermore, the institution worked on establishing cooperation with the civil society organizations.

#### 4.1. Recommendations to the State Authorities

The Article 33, paragraph 9 of the Law on Prohibition of Discrimination provisions the authority of the Commissioner for Protection of Equality to give recommendations to the public administration and other bodies on the measures for achieving equality. The recommendations on measures can be directed to prevent and remove structural and institutional discrimination by preventive acting and to improve the actions of the institutions for suppressing discrimination. The recommendation identify to the public administration and other subjects to the needs for undertaking special measures (measures of affirmative action) for the purposes of achieving full equality, protection and advancement of persons and groups of persons who are in unequal position in relation to other citizens. In accordance with the Article 21, paragraph 4 of the Constitution of the Republic of Serbia and Article 14 of the Law on Prohibition of Discrimination, the introduction of such measures is not regarded as discrimination.

In the previous period, the majority of recommendations on measures for achieving equality were sent to the public administration bodies after the fact-finding procedure in the complaint proceedings for discrimination. All these recommendations are formulated in the documents/acts adopted in the complaint proceeding, but as a separate paragraph. In addition, a number of recommendations on measures for achieving equality were issued as special written recommendations to the public administration.

Because of the importance and impact of the public administration bodies to the citizens, and because of the numerous complaints submitted against them, we will chronologically present the recommendations issued by the Commissioner for protection of equality in 2011 for which it is authorized in accordance with the Article 33, paragraph 1 of the Law on Prohibition of Discrimination.

### Recommendation to the National Assembly of the Republic of Serbia for ensuring women's participation in international delegations (27 January 2011)

In regard to the event of ratifying the accreditation of the Serbian National Assembly delegation at the meeting of the Council of Europe Parliamentary Assembly and the announcement of the National Assembly of the Republic of Serbia to change the composition of the delegation in accordance with the rules of the Council of Europe Parliamentary Assembly so that one woman is in the delegation, the Commissioner gives the following recommendation: in the process of adopting the decision about the composition of the delegation in the Council of Europe Parliamentary Assembly, it is necessary to apply the provision of the Article 38 of the Law on gender equality<sup>79</sup> which states: "In the process of selecting or appointing the delegations which represent the Republic of Serbia, the composition of the delegation has to include at least 30% of the persons of less-represented gender in accordance with the international standards." Accordingly, and having in mind the total number of members of parliamentary delegation, the delegation compositions has to have at least two women. Furthermore, it is recommended that the National Assembly of the Republic of Serbia without delay regulates the methods for ensuring that the composition of every international delegation includes at least 30% of persons of the less-represented gender, which is in accordance with the Article 38, paragraph 2 of the Law on gender equality.

### Recommendation to the Ministry of Interior of the Republic of Serbia on the increase in the number of employees of the members of national minorities (24 March 2011)

The Commissioner sent to the Ministry of Interior of the Republic of Serbia a recommendation to take all necessary acts and measures immediately to ensure that the composition of the police in organization units corresponds to the national composition of the population in the given territory. This also includes planning and implementing measures for employment of the members of national minorities at police duties, the measure ensuring their training for police office jobs, which will also lead to having equal opportunities for employment after the training etc. The recommendation is based on the constitutional provision saying that in the process of employment in public administration, public services, Province bodies and local self-government bodies, the national composition of the population and appropriate representation of the national minorities should be taken into account.<sup>80</sup> Furthermore,

<sup>79</sup> Official gazette of the Republic of Serbia, number 22/09

<sup>80</sup> Article 77, paragraph 2 of the Republic of Serbia, Official gazette of the Republic of Serbia, number 98/2006

the Law on protection of rights and freedoms of national minorities<sup>81</sup> provisions in the Article 21 that in the process of employment in public services, including police, the national composition of the population should be taken into account, including also appropriate representation and knowledge of language spoken on the territory of the body or service. The recommendation is also based on the provision given in the Article 9 of the Law on public officers82, which states that in the process of employment in the public administration bodies, national composition has to correspond to the population structure to the highest possible extent. The recommendation on undertaking special measures for employment and representation of members of the national minorities in public administration is also based on the Article 21, paragraph 4 of the Constitution of the Republic of Serbia, then Article 14 of the Law on Prohibition of Discrimination, which provision that special measures introduced by the Republic of Serbia with the purpose of achieving full equality of persons or groups of persons is not considered discrimination. In addition, it is based on the Article 4 of the Law on protection of rights and freedoms of national minorities, which provisions that public administration bodies can adopt legislation, special acts and take measures for achieving full and effective equality between members of the national minorities and majority population, in accordance with the Constitution and the law.

# Recommendation to the Jagodina City Assembly about the discrimination in eligibility criteria for receiving one-time aid on the basis of birth and marital and family status (12 April 2011)

In the proceeding upon the complaint of the organization J. from B, the Commissioner for protection of equality gave an opinion that the Decision on financial aid to married couples, number 011-92/10-10-1 of the Jagodina City Assembly, adopted on 23 December 2010, listed eligibility criteria and procedure for realizing right of the married couples to one-time financial aid that violated the principle of equal rights and obligations. It constituted the act of discrimination on the grounds of birth and marital status of some categories of citizens in Jagodina. Therefore, the recommendation was issued to the Jagodina City Assembly to remove the conditions which violate the equality principle and deny the right to financial aid to certain categories of citizen on the grounds of their personal characteristics as follows: those who are in common-law marriage, those who were not born in Jagodina, those who had children from previous common-law marriage and those who had been in common-law marriage before the current civil marriage.

<sup>81</sup> Official gazette of the Federal Republic of Yugoslavia, number 11/2002, Official gazette of Serbia and Montenegro, number 1/2003 – Constitutional declaration and Official gazette of the Republic of Serbia, number 72/2009

<sup>82</sup> Official gazette of the Republic of Serbia, number 79/2005, 81/2005, 64/2007, 116/2008 and 104/2009

# Recommendation to the Legislative Board of the National Assembly of the Republic of Serbian about the discrimination on the grounds of gender (15 April 2011)

In the proceeding upon the complaint filed by M.P, the Commissioner gave a opinion that the provision of the Article 43 of the Unique methodology instructions<sup>83</sup> of the Legislative Board of the National Assembly of the Republic of Serbia is in contrast to the principle of gender equality and respect to equal rights of women and men, so it is a discrimination on the grounds of personal characteristic – gender. The provision says "the terminology in the act is used in masculine gender unless the nature of the things demands differently." The recommendation was sent to the Legislation Board of the National Assembly of the Republic of Serbia to take all necessary measures for changing the provision in the Article 43 of the Unique methodology instructions in a way to change the above-mentioned article and also include feminine gender. In addition, the recommendation was also sent to the Legislative Board to undertake measures for setting conditions for the usage of gender-differentiated language in accordance with the principle of gender equality.

## Recommendation to the Government of the Republic of Serbia for changing the Methodology for drafting by-laws (21 April 2011)

The Resolution o5 of the Government of the Republic of Serbia, number o11-7473/2010 adopted the *Methodology for drafting by-laws*<sup>84</sup>, in which the provision in alinea 47 in the chapter IV Language, style and methods for writing by-laws says "The usage of the gender – the terms in the by-laws are used in masculine gender unless the nature of things demands differently". The formulated rule established an obligation to use masculine gender as a rule in writing by-laws, while the feminine gender is exception and only when the "nature of things" demands so is discriminatory and in contrast with international standards applying to non-discriminatory usage of language. Therefore, the recommendation was sent to the Government of the Republic of Serbia to take all necessary measures to change this provision in alinea 47 of the Methodology for drafting by-laws, so that it also includes feminine gender. Furthermore, the Government shall undertake all measures for setting conditions for usage of gender-differentiated language, in accordance with the principle of gender equality.

Recommendation to the Ministry of Education and Science of the Republic of Serbia, National Educational Council and Institute for improving the quality of education for removing discriminatory contents

<sup>83</sup> Official gazette of the Republic of Serbia, number 21/2010

<sup>84</sup> Official gazette of the Republic of Serbia, number 75/10 and 81/10 - corrections

### from the curriculum and teaching practice and for promoting tolerance, respect to diversity and human rights (10 June 2011)

In December 2010, the Commissioner for protection of equality formed a working group for analysing curriculum, teaching programmes and materials in order to harmonize them with the principles of education for human rights and inclusive society. The working group had to collect, analyse and sum up the results of the researches of the curriculum, textbooks and other teaching materials for primary and secondary school. Based on the findings, the Working group had to create recommendations on incorporating relevant contents about human rights, non-discrimination, tolerance, respect to diversity in the curriculum and textbooks, in accordance with the principles of education for human rights and inclusive society. Based on the analysed data, the Commissioner sent the recommendation to the Ministry of Education and Science of the Republic of Serbia, National Educational Council and the Institute for Improving the Quality of Education to take all necessary measures from their authorities in order to ensure that:

- 1. the content of the teaching materials and teaching practice and methodology develop students' awareness about diversity, promote non-violent values, equality and non-discriminatory practice, and principles of democratic society based on respect to the human rights;
- 2. there is a awareness raising about diversity, inter-cultural and common values by presenting the important individuals from different ethnic and religious groups and cultures;
- 3. the curriculum and teaching materials show to the youth various models of families in the contemporary society (single parents, foster families, families without children, right of the same-sex partners to have family etc);
- 4. the stereotyped gender roles/professions are removed and that the diversity is encouraged; there is a stress on variety and multi-layer characteristics of human identity, on valuing individuality, solidarity and creativity regardless of the gender;
- 5. the plan and programme of the Civic education is improved so to include concrete workshops about suppressing discrimination and alleviating prejudices towards children from vulnerable and marginalized groups (children with disabilities, learning difficulties and disadvantages) in all grades, but in accordance with the principles of inclusive education and applying contemporary and adequate terminology;
- 6. the contents and programmes from the Civic education are included in other subjects also;
- 7. there is a greater visibility of children from marginalized groups in textbooks, plans and programmes (texts, workshops, photographs), in accordance with the principles of inclusive education;

- 8. affirmative and correct information about the same-sex sexual-emotional orientation, transgender, transsexual and inter-sexual orientations are introduces in all textbooks (of social and natural science), including examples of LGBTTIAQ individuals as part of the historic and contemporary democratic societies;
- 9. the terminology which is obsolete and insulting is removed from all textbooks, plans and programmes, especially contents that are filled with medical approach, diagnosis and prejudices towards children's capacities, especially of children with disabilities;
- 10. there is a usage and emphasis on standardization and legal regulation of gender-sensitive language and language of non-discrimination (children and youth with disabilities, and not special needs; person who suffers/inflicts violence, and not victim/abuser; person who is a user of psychoactive substances, and not drugaddict etc):
- 11. there are suitable programmes of professional trainings for teachers to improve their knowledge and skills in the area of child and human rights, equality and non-discrimination, gender equality, non-violence, so that they overcome their own prejudices and stereotypes and raise sensitivity for gender content of teaching materials and teaching practice;

# Recommendation upon the complaint filed by J.C. against the National Employment Service, City of Belgrade Branch for discrimination in determining the status of a person with disabilities (15 June 2011)

In the proceeding upon the complaint filed by J.C, the Commissioner gave an opinion that the Decision of the National Employment Service, the city of Belgrade Branch, number 0100-1002-1081/2010, adopted on 25 January 2011, which determined that J.C. from B. had the third level of disability and difficulties in work and she had been determined a status of person with disability who could not be employed and sustain employment under general or special conditions, presents the discrimination in the area of work on the grounds of disability. The recommendation was sent to the National Employment Service, city of Belgrade Branch to take all necessary measures for removing the consequences of the decision that denied J.C's right to work. Furthermore, the recommendation was sent to the National Employment Service, city of Belgrade Branch to ensure that together with relevant commission of the Republic Pension and Disability Fund, the future assessments of working abilities are conducted in a such a manner to ensure that persons with disabilities can realise their right to work by taking into account their best interests, respect to their needs, wishes and opinions and all in accordance with the principle of complete social inclusion of persons with disabilities. In addition, the recommendation stated that future decisions should promote and develop non-discriminatory practice.

### Recommendation to the Government of the Republic of Serbia about discrimination of war reserve personnel for receiving the financial aid on the grounds of residence (26 July 2011)

In the proceeding upon the complaint of the association R.V.I.M.O. from Novi Sad, the Commissioner gave an opinion that the Resolution o5 of the Government of the Republic of Serbia (number 401-161/2008-1, adopted on 17 January 2008), which ensures the funds for payment of the war reserve personnel who have residence on the territory of seven under-developed municipalities (Kursumlija, Blace, Bojnik, Lebane, Zitoradia, Doljevac and Prokuplje) but under the condition that they had the court proceeding against the Republic of Serbia, which had the enforceable decision and finished by withdrawal. The Commissioner found that this decision violates the principle of equal rights and obligations, which constitutes discrimination on the grounds of residence of war reserve personnel who have residence in all other municipalities not listed in this decision. Therefore, the Commissioner sent the recommendation to the Government of the Republic of Serbia to take all necessary measures to ensure that war reserve personnel who have residence in other municipalities in the Republic of Serbia fulfil the right to financial aid under the same conditions as war reserve personnel with residence on the territory of seven under-developed municipalities listed in the Resolution of the Government 05 br. 401-161/2008 dated on 17 January 2008.

# Recommendation to the Belgrade City Assembly about the discrimination against certain groups of women in receiving financial aid (5 August 2011)

In the proceeding upon the complaint of the association AZC from B, the Commissioner gave an opinion that the Decision on changes and additions of the decision about social welfare rights of the Belgrade City Assembly (number 5-262/11-S, adopted on 12 April 2011), which gives eligibility criteria for fulfilling the rights to permanent financial aid of women-victims of domestic violence, violates the equality principles and thus constitutes discrimination against certain groups of women. This Decision discriminates against women – victims of domestic violence who have not been users of or returnees to the safe house. The Commissioner sent a recommendation to the Belgrade City Assembly to remove the conditions violating the equality rights towards certain groups of women who are victims of domestic violence and that are given in the Decision on changes and additions of the decision about social welfare, 5-262/11-S, adopted on 12 April 2011, in order to ensure right to permanent financial aid to all women – victims of domestic violence under the same conditions.

## Recommendation to the Serbian National Bank for removing the discriminatory conditions for using bank services (24 August 2011)

In the proceeding upon the complaint of citizens related to the services offered by banks to the natural bodies, it was discovered that majority of business banks in Serbia set age limit criteria of clients for various services (loans on bank account, credits etc). The banks frequently condition certain service by age – for example "persons not older than 70" or "persons not older than 67 in the moment of final credit payment". By setting criteria of upper age limit for the services, the banks performed indirect discrimination against citizens on the grounds of their personal characteristic – age. Therefore, they deny the right to one group of people (older than conditioned upper age limit) to use the bank services. The Commissioner for protection of equality sent to the Serbian National Bank a recommendation to take all necessary measures within its authority in order to eliminate discriminatory condition of upper age limit for using bank services provisioned by the banks' general acts.

### Recommendation to the Ministry of Labour and Social Policy to eliminate the provisions of the Law on preventing discrimination against persons with disabilities, which discriminate against children with intellectual disabilities (31 August 2011)

In the proceeding upon the complaint of the association VM from Pancevo, the Commissioner gave an opinion that the provisions of the Article 19, paragraph 1 of the Law on preventing discrimination against persons with disabilities, which says that discrimination is not to be established for "organization of special forms of education for students and children of pre-school age, who as a result of their intellectual disabilities cannot follow the regular educational contents, and it is not considered discrimination if students and children are enrolled in such types of education if the enrolment is done on the basis of the act of the authorized body which determines the need for such type of education of student and pre-school child" make unjustifiable difference between children with intellectual disabilities in relation to other children, which constitutes discrimination against children on the grounds of their personal characteristic – intellectual disability.

The Commissioner for protection of equality gave recommendation to the Ministry of Labour and Social policy to unertake all necessary measures from its authority to eliminate discriminatory provisions of the Article 19, paragraph 1, point 2 of the Law on preventing discrimination against persons with disabilities.

### Recommendation to the city of Belgrade Secretariat for Traffic about the unequal treatment of persons with disabilities (7 September 2011)

In the proceeding upon the complaint of M.S, the Commissioner gave an opinion that the city of Belgrade Secretariat for Traffic had not undertaken measures from its authority to conduct the construction works for making the pavement accessible at the crossroad of Prizrenska Street and Karlovacka Street in Zemun and to make the pavement accessible in Prizrenska Street, by which it discriminated against persons who are wheel-chair users on the grounds of their personal characteristic – disability. The recommendation was sent to the Belgrade Secretariat for Traffic about taking

all necessary measures for conducting the work on making pavements accessible in Prizrenska Street and Karlovacka Street in Zemun in order to ensure that M.S and other persons – wheel-chair users can move on public places. The recommendation was also sent to remove the barriers hindering movement of persons with disabilities at squares, streets, crossings and other public traffic zones.

### Recommendation to the Government of the Republic of Serbia for adopting the National Strategy for Combating Discrimination (6 October 2011)

With the aim of achieving full and effective equality in social relations, the Commissioner sent to the Government of the Republic of Serbia a recommendation to prepare and adopt in due time National strategy for combating discrimination, which will determine comprehensive and coordinated measures and activities for preventing and suppressing discrimination and fulfilling equality. For the purposes of operationalizing the National strategy for combating discrimination, it was recommended to the Government to adopt also Action plan for the implementation of measures and activities, with clear indicators and deadlines for the implementation. Having in mind the prevalence of discrimination, widespread prejudices and stereotypes, public attitudes of the Serbian citizens and other factors influencing fulfilment of equality in social relations, the Commissioner regards that it is necessary to start drafting comprehensive strategic document for combating discrimination. The document will define comprehensive short-term, medium-term and long-term measures and activities of the public administration and other social actors with the aim of preventing and suppressing discrimination. Taking into account the key causes of discrimination and areas where it is most prevalent, it is clear that prevention and suppression of discrimination is only possible with coordinated actions of public administration at national, Province and local level, as well as of institutions working in the area of education, labour, health and social protection, information, consumer protection and other social activities. In the Commissioner's view, the National strategy for combating discrimination as a legal-political document would be a support to the implementation of the anti-discrimination legislation, and its implementation would contribute to removing the causes of discrimination, raising awareness of the public about the social risks of discrimination and individual benefits of respect to diversity, as well as improving tolerance and accepting and respect to diversity. Furthermore, the implementation of the Strategy for combating discrimination would improve the work of courts and other public bodies and make all the mechanism for providing legal protection from discrimination more effective. The process of the drafting the National strategy for combating discrimination should be fully participatory, which means inclusion of all relevant bodies and institutions, representatives of minority groups and non-governmental human rights organizations by taking into account their capacities, expertise and contribution to constituting antidiscrimination law. The Commissioner for protection of equality and the Office express

their readiness to provide full support to the creation of the this national strategic document for combating discrimination and together with other actors and in accordance with its authorities give maximum contribution to combating discrimination in Serbia and building society of equal rights and non-discrimination.

# Recommendation to the Municipality Priboj about the discrimination acted by omission to introduce into the official use also the language and alphabet of the national minority (29 October 2011)

In the proceeding upon the complaint filed by NSBNM, the Commissioner established that the municipality Priboj had not taken all measures in its authority to introduce into the official use also Bosnian language and Latin alphabet equally to the Serbian language and Cyrillic alphabet, although the last population census showed that there is 15% of Bosniak national minority on the territory of Priboj. All of these constitutes discrimination on the grounds of nationality. Accordingly, the Commissioner sent the recommendation to the municipality of Priboj to take all necessary measures to introduce also Bosnian language and Latin alphabet in the official use equally to the Serbian language and Cyrillic alphabet.

### Recommendation to the Radio-diffusion agency of the Radio Television Serbia (1 November 2011)

Although the proceeding upon the complaint filed by NSBNM did not establish that Radio-diffusion agency of the Radio Television Serbia had omitted to take necessary measures from its authority in the area of production and broadcasting programmes on Bosnian language, the Commissioner for protection of equality gave also recommendation that the right to information on mother-tongue and right to nurturing national culture should be raised from the local to national level. The public broadcasting service of Serbia is obliged to pay attention to other national minorities living in Serbia in order to achieve its main purpose as the public broadcasting service of all citizens in Serbia, which is also in accordance with relevant legislation.

Recommendation to the Serbian Army General Office and the Ministry of Defence of the Republic of Serbia on introducing gender-differentiated terms for ranks in the Serbian Army and setting conditions for the use of gender-differentiated language in official communication (2 November 2011)

Based on the knowledge that the Serbian Army is in the process of creating the Rules of procedure of the Army and instructions for regulating the duties incorporated in the rules of procedures, the Commissioner for protection of equality sent recommendation to the Serbian Army General Office and the Serbian Ministry of Defence to take all necessary measures in the process of drafting the documents for

introducing gender-differentiated terms of ranks in the Serbian Army and removing the terminology addressing women differently in official communication in regard to their marital and family status. The recommendation also stated that necessary measures should be taken for the use of gender-differentiated language in the official communication, which is in accordance with the gender equality.

Recommendation to the Ministry of Health and Republic commission for the in vitro fertilization and assistive reproduction of the Ministry of Health for removing discriminatory criteria in the Eligibility Criteria for participation in in-vitro fertilization programme funded by the Republic Health Insurance Fund (20 December 2011)

In the proceeding upon the complaint filed by N.B.D. and S.G.S, the Commissioner determined that the Republic expert commission for in-vitro fertilization and assisted reproduction of the Ministry of Health<sup>85</sup> determined the Eligibility criteria for participation in the in-vitro fertilization and assisted reproduction programme, which is funded by the Republic health insurance fund, and as one of the criteria listed that "only women who have not given birth or who do not have alive children" can participate in the programme. The Commissioner for protection of equality gave an opinion that such criterion is discriminatory, because it puts into unequal position men who do not have their own genetic posterity and whose partners (from common-law or civil marriage) have their own generic posterity from the previous partnerships and who are thus denied participation in the Programme. On the other hand, men who have their own genetic posterity from previous partnerships and their current partners do not have posterity are allowed to participate in the Programme. The Commissioner gave recommendation to the Ministry of Health and the Republic expert commission for in-vitro fertilization and assisted reproduction to take measures in its authority to eliminate this discriminatory provision and thus ensure equal opportunities for men and women to participate in the Programme.

### 4.2. Legislative Initiatives and Opinions about the Acts

As part of the authority to act preventively and contribute to improving the protection from discrimination, the Commissioner for Protection of Equality is authorized to monitor the implementation of the legislation, initiate adoption or changes of legislation with the aim of implementing and improving the protection from discrimination. The Commissioner also has powers to give opinions on draft acts related to prohibition of discrimination. Such powers are explicitly provisioned by the Article 33, paragraph 7 of the Law on Prohibition of Discrimination.

<sup>85</sup> Republic expert commission for in vitro fertilization and assisted reproduction was founded by the Decision no. 119-01-45/2006-02 adopted on 22 February 2006

In 2011, the Commissioner sent four initiatives for changes or additions of legislation to the authorized bodies regarding certain provisions in the general acts. In the following text, we will chronologically give legislative initiatives and opinions.

On 27 September 2011 the Commissioner gave opinion about the Article 85 of the Law on civil procedure which provisioned that the authorized representative, through which the party takes legal actions in the proceedings, has to be a lawyer. This puts in an unequal position the persons who are not able for any given reason to take proceedings in civil court proceeding by themselves, and they do not have financial means to pay the lawyer's fees. It is an unequal position in relation to those persons who can take legal proceedings on their own behalf and have financial means to pay the lawyer's engagement. Therefore, the principle of equality in having access to justice is violated, which is guaranteed by the Constitution of Serbia and European Convention on Protection of Human Rights and Freedoms.

On 3 October 2011 the Commissioner submitted the initiative for changes of the Law on preventing discrimination against persons with disabilities, namely the Article 19, paragraph 1, point 2, which in the area of education makes unjustifiable difference between children with intellectual disabilities in relation to other children, and thus constituting discrimination against this group of children on the grounds of their personal characteristic – intellectual disabilities.

On 11 November 2011, the Commissioner sent recommendation to the Ministry for human and minority rights, public administration and local self-government in order for the new Law on general administrative proceedings to adequately concretise and operationalize the right of the child to freely express opinion in administrative proceedings concerning his/her rights and interests, as well as the right of the child to have an independent representative in the cases of conflicts between the interests of the child and his/her legal representative in the administrative proceedings. Furthermore, the rules for organizing hearings of a child as a party or witness in the procedure should be drafted by taking into account the needs of preventing any type of secondary victimization of a child.

On 19 December 2011, the Commissioner gave opinion on the Draft Act on free legal aid. It was recommended that the new law admit right to free legal aid also in proceedings before the independent state bodies. It was recommended that the category of persons being eligible for free legal aid regardless of their material situation should also include discriminated persons and persons in the proceeding for partial or complete legal capacity deprivation or regaining. The recommendation also stated that in the process of drafting this law, gender-differentiated language should be used in accordance with the use of terms in feminine or masculine gender or by introducing appropriate clausal. The Working group of the Ministry of Justice accepted the suggestion related to usage of gender-differentiated language.

#### 4.3. Public Admonitions and Releases

The provisions of the Law on Prohibition of Discrimination (Article 33, paragraph 6) say that the Commissioner is authorized to warn the public about the most common, typical and grave cases of discrimination. The Commissioner adheres to this based on the complaint proceedings, information gained from the public information means and other sources. In its admonitions, the Commissioner identifies the discrimination perpetrator, ways of discriminating, individual and groups who are most prevalently the victims of common, typical and grave forms of discrimination by taking into account mandatory protection of personal data. It also stressed the consequences or possible consequences of the most common, typical and grave forms of discrimination.

In 2011, the Commissioner issued 29 public admonitions and releases, which were published in the media and on the website www.ravnopravnost.gov.rs.

The Commissioner released eight admonitions in relation to the events and cases of discrimination that had led to the public disturbances (physical assaults, hate speech, threats and other forms of discrimination and violation of equality principle). Twenty-one releases expressed the attitudes of the institution regarding certain discriminatory behaviour. A number of releases were issued on important international dates connected to the human rights and social cohesion.

#### 4.4. Participation at conferences, lectures, presentations

In the last year, the Commissioner for protection of equality and employees in the Office participated at numerous public hearings, expert seminars and events, which were organized by the public administration bodies or civil society organizations. Over 20 lectures and presentations were held in Serbia.

### 4.4.1. Participation at public hearings

- Public hearing about the cooperation of the Board for applications and suggestions of the National Assembly with commissions or working groups of the local self-governments which are authorized for applications and suggestion held on 14 April 2011 and organized by the Board for applications and suggestions of the National Assembly of the Republic of Serbia;
- Public hearing about the draft version of the Draft law on changes and additions of the Law on election of members of the parliament, which was held on 21 April 2011;
- Public hearing about the draft version of the Law on international private law, held on 22 October 2011 and organized by the Ministry of Justice;
- Public hearing on the subject of "Unique methodology for drafting by-laws" organized by the Legislative Board of the National Assembly of the Republic of Serbia on 10 November 2011;

- Expert hearing about the changes and additions of the Law on Protector of Citizens and the Law on free access to information of public importance, which was organized by the Protector of Citizens on 15 November 2011;
- Public hearing about the draft Law on criminal procedure, organized by the Ministry of Justice on 18 November 2011;
- Expert discussion about the Draft Law on Child's Rights, organized by the Protector of Citizens on 22 November 2011;
- Public discussion on the subject: "Five years from adoption of the Law on preventing discrimination against persons with disabilities" organized by the Board for labour, combat and social issues of the National Assembly of the Republic of Serbia on 2 December 2011;

#### 4.4.2. Participation at conferences and round-table discussions

- International conference on forming Observatory for monitoring violence towards women held on 21 April 2011 and organized by Autonomous Women Centre from Belgrade;
- Round-table discussion "Setting conditions for functioning of the National mechanism for prevention of torture in the Republic of Serbia", held on 17 May 2011 and organized by the Ministry for human and minority rights, public administration and local self-government and the Administration for human and minority rights and as part of the IPA 2007 project "Implementation of the priorities in the area of human rights and protection of national minorities";
- Conference "Creating encouraging settings for the development of the civil society" held on 12 May 2011 and organized by the National Assembly of the Republic of Serbia and the Office for cooperation with the civil sector of the Government of the Republic of Serbia;
- Participation at the international academic conference "Justice in Balkans:
   Equality for sexual minorities Challenges and perspectives of the Balkan peoples in the area of rights related to sexual orientation and gender identity" held on 28 and 29 May 2011;
- Presentation of the project "Mapping dimensions and characteristics of gender based discrimination at labour market and societal responses" organized by the Victimology Association of Serbia on 20 June 2011;
- Conference "Rights of the victims of human rights abuses during 1990s to material reparation, held on 22 September 2011 and organized by Fund for humanitarian law and Swedish organization Civil Rights Defenders.
- Event related to the International day of the public to know, held on 28 September 2011 and organized by the Commissioner for the information of public importance and protection of personal data and the UNDP and OSCE Mission to Serbia;

- Round-table discussion "How to encourage inclusion of persons with disabilities throughout public/private partnership" held on 30 September 2011 and organized by the Mental Disability Rights Initiative of Serbia (MDRI);
- Seminar "The role of the Commissioner in suppressing discrimination on the grounds of sex, gender identity and sexual orientation – status, authorities and first results" held on 1 October 2011 and organized by the Province Ombudsman;
- Conference "Human Rights and Parliamentarianism" held on 14 October
   2011 and organized by the National Assembly of the Republic of Serbia and OSCE
   Mission to Serbia;
- Regional conference about the position of LGBT population in Balkans and about successful strategies for lobbying for improving the rights of this group, held on 21 October 2011 and organized by civil society organization LABRIS;
- Round-table discussion "Combating discrimination in Serbia" held in the event of International Tolerance Day and organized by the Protector of Citizens and the Commissioner for Protection of Equality and with the support of the European Commission against Racism and Intolerance-ECRI;
- Even regarding the constitution of the Political council for the implementation of the National Action plan for the implementation of the Resolution 1325 of the UN Security Council: Women, Peace and Security in the Republic of Serbia, held on 22 November 2011 and organized by the Ministry of Defence;
- Round-table discussion "National plan for rare diseases realistic perspectives in 2012" held on 30 November 2011 and organized by the National organization for rare diseases of Serbia (NORBS);
- Round-table discussion "Live until 100 discrimination or privilege" held on 15 December and organized by the Commissioner for protection of Equality with the support of UN WOMEN and UN Fund for Population in the event of the International year of active aging and intergenerational solidarity;
- Conference "Public policies and practice in combating corruption" held on
   December 2011 and organized by the Agency for combating corruption in the event of the International Day of Combating Corruption;
- Conference about mechanisms against discrimination of refugees, internallydisplaced and returnees on the basis of the readmission of Roma, held on 20 December 2011 and organized by JUKOM;

### 4.4.3. Seminars, presentations and lectures

In the last year, the Commissioner conducted public awareness campaign "Trust in the Commissioner" with the objective of making the institution of the Commissioner for Protection of Equality more familiar to the public. As part of the campaign,

we held promotional events in many municipalities and cities in Serbia with the support of the local self-governments and local non-governmental organizations. In addition, we held series of lectures and presentations at events organized by public institutions and non-governmental organizations;

- Training "Together against gender based discrimination" held on 18 and 29 November 2011 and organized by the Commissioner for Protection of Equality in cooperation with UN WOMEN; twenty representatives of the local mechanisms for gender equality and offices for free legal aid participated at the training;
- Seminar "Mobbing and discrimination at workplace" held on 6 December
   2011 and organized by the Office of attaché for labour and social policy of the Republic of Austria and the Commissioner for Protection of Equality;
- Seminar "Social inclusion of Roma in the Republic of Serbia" held on 27 June 2011 and organized by the Government of the Republic of Serbia and the European Commission;
- Public discussion "Domestic violence the factor of insecurity" held on 28
   November 2011 in Leskovac and organized by Women for peace as part of the campaign "16 days of activism against violence towards women"
- Public discussion "Women's road step by step, grab the light and forget the darkness" held on 10 December 2011 in Dimitrovgrad and organized by the Independent women centre from Dimitrovgrad;
- Round-table conference "Strategic plan for employment and self-employment of women in rural areas" held on 2 October 2011 and organized by the Administration for agriculture and rural development of the city of Nis;
- Seminar for young leaders held on 5 December 2011 and organized by Belgrade fund for political excellence;
- Public discussion commemorating 18 years of the war crimes in Srpce and
   Severin, held on 26 February 2011 in Prijepolje;
- Regional training as part of the project "International promotion of rights of persons with disabilities" held on 22 April 2011 in Kanjiza;
- Event presenting the result of the court practice in the proceedings of legal capacity deprivation and regaining, held on 4 November 2011 and organized by the Mental Disability Rights Initiative of Serbia (MDRI);
- Seminar "Gender equality and local self-government where are we and what is next?" held on 23 and 24 October 2011 at Zlatibor and organized by the Judiciary Academy with the support of UN WOMEN;

#### 5. COOPERATION

#### 5.1. International Cooperation

The Commissioner for Protection of Equality has established diversified and important cooperation in a short period with numerous international organizations in Serbia and abroad that assisted in implementing various project activities.

#### 5.1.1. Projects

In 2011, the Commissioner for Protection of Equality implemented in cooperation with UNDP a project "Building mechanisms for alternative conflict resolution in Serbia" and a project "Support to the Commissioner for Protection of Equality for efficient implementation of the anti-discrimination legislation" which will be implemented also in 2012.

At the end of 2011, the Commissioner signed the contract with the European Delegation about the financing of the Progress project "*Behind the legislation*" which will be implemented by the Commissioner and it will be directed at journalists and court officers.

In 2012 and 2013, the Commissioner will participate in the implementation of the IPA project "Implementation of the anti-discrimination policies" whose beneficiary is the Ministry for human and minority rights, public administration and local self-government and it is funded by the European Union.

The Commissioner has also established permanent cooperation with the OSCE Mission to Serbia and the office of UN WOMEN, who support activities on promoting equality and improving the visibility of the Commissioner's institution.

The Commissioner is a partner at the Tempus project "EQUI-ED Equal Access for All: building social dimension for improving European high education" which is currently being implemented.

#### 5.1.2. Study visits

With the support of international organizations, the Commissioner for protection of equality, her assistants and the Office staff visited numerous foreign institutions and bodies working in the area of equality protection. In addition, representative of the institution of the Commissioner participated actively in the working session of the working groups of the European Network of Equality Bodies (EQUINET). Such study visits and contacts enabled also exchange of experiences and contributed to building capacities of the institution of the Commissioner.

#### **EQUINET Working group meeting (24 May 2011, Brussels)**

On 24 May 2011, in Brussels, the EQUINET Working group for creating strategic policies was held and the manager of the Department of systemic normative-legal issues and preparation of reports and publications attended the meeting. At the meeting, the participants discussed the perspectives of EQUINET in promoting the concept of active aging and protection of equality of older persons. Part of the discussion dealt with relationship between institutions working in the area of human rights and protection of equality.

#### Study visit (13-17 June 2011, Brussels)

The visit was organized as part of the project "Combating sexual and gender based violence" implemented by the Ministry of Labour and Social Policy and Administration for Gender Equality and with the objective of learning about the structures and work of institutionalized mechanisms for gender equality in Belgium. The study visit was organized from 13 to 17 June 2011 and it included visit to the Institute for men and women equality and non-governmental organizations "Amazon".

#### Study visit (27 June to 1 July 2011, Copenhagen)

Study visit to Copenhagen was organized by the OSCE Mission to Serbia. The study visit participants included the Commissioner for protection of equality, the Office staff and representatives of OSCE Mission to Serbia. The objective of the study visit was to learn more about the Danish institutions working in the area of human rights and freedoms, equality and suppressing discrimination on various groups, as well as introduction to Danish practice, experiences and working methods. As part of the visit, the participants visited the following equality bodies: Danish Institute for Human Rights, Board of Equal Treatment – state body for protection of equality, Danish Centre for Gender, Equality and Ethnicity, non-governmental organizations Documentation and Advisory centre on Racial Discrimination. The participants also held meetings with the representative of the Danish LGBT organization, Danish national Organisation for Gay Men, Lesbians, Bisexuals and Transgendered Persons, Secretary of the Women's Council in Denmark and legal expert of the Danish Parliamentary Ombudsman.

# Participation at conferences of national institutions for human rights protection in OSCE countries (13-14 July 2011, Vilnius)

The conference gathered representatives of national institutions for human rights protection (institutions of the protector of citizens, commissions for human rights, commissioner and other institutions) from 26 OSCE-member countries. The topic of the conference was the role of the human rights institutions in monitoring the implementation of the human rights legislation, the relationship of such

institutions with representative, executive judiciary authorities and civil society organizations. The participants also discussed the roles and responsibilities of these four pillars of the state in promotion and protection of human rights, promotion of efficient and non-corrupted executive and independent judiciary authorities. Special attention was placed on civil society organizations as mediators between the citizens and public administration. Important role in building political culture, tolerance and promotion of values is seen in the media, but on this occasion, the participant did not discuss this issue. The conference also presented best practice examples and defined challenges in the future development of inter-institutional relations.

#### Study visit (29 August to 2 September 2011, London)

The Memorandum of Understanding between the UN Agency for Gender Equality and Empowerment of Women (UN WOMEN) and the Commissioner for Protection of Equality, which was signed on 4 April 2011, lists activities aimed at building capacities and competencies of the Office of the Commissioner for Protection of Equality, improving the access to services of the Commissioner to the citizens, and improving institution's visibility. The Memorandum also plans organization of study visit in the selected European country for the staff of the Commissioner's Office with the purpose of learning about best practices in promoting equality by other equality institutions. The objective of the study visit to London was learning about anti-discrimination legislation, its implementation and functional regulatory bodies, and introduction to approaches and models of combating discrimination, experiences, practices, challenges in this area and approaches to tackle challenges, various roles of the independent bodies and potential partners (e.g. civil society organizations, academic and research institutions), mechanisms in complaint proceedings etc. The study visit included working meetings with representatives of nine institutions/organizations: London Central Employment Tribunal, Advisory, Conciliation and Arbitration Service - Acas, Discrimination Law Association, London Discrimination Unit, Government Equalities Office, Women's Resource Centre, Equality and Human Rights Commission, Equalities Mediation Service, and AIRE Centre.

### **EQUINET Working group meeting (13 October 2011, Vienna)**

This was the first meeting where the Commissioner for Protection of Equality had its representative. The Working group for communications is one of four EQUINET working groups. The meeting was attended by the representatives of national equality bodies from Austria, Belgium, Croatia, Cyprus, Bulgaria, Greece, Ireland, Lithuania, North Ireland, Spain, Leetonia and Slovenia. The topic of the working group session was communication strategies and practices developed by equality bodies in working with the citizens.

### The Second International Conference on Mediation (20-22 October 2011, Lisbon)

The conference was organized by the Ministry of Justice, Organizations for alternative conflict resolution (GRAL), Centre of Administration and Policies from the schools of social and political sciences of the Technical University in Lisbon. Besides other issues, the participants discussed about the restorative justice and mediation models in discrimination cases.

#### Study visit (7-8 November 2011, Bratislava)

Study visit to the National Human Rights Centre was implemented as part of the technical assistance programme of the Centre for transfer Centre for experience transfer on integration and reforms – CETIR and with the support of the Embassy of the Republic of Slovakia. Technical assistance programme includes experience transfer and information exchange between Slovakian institutions and states in the process of Euro-Atlantic integration. The programme is implemented by the Slovak Ministry of Foreign Affairs and Slovak Agency for International Development.

## Regional training "Minority Rights and Development" (16-19 November 2011, Strasbourg)

The training was organized by UNDP Regional Centre Bratislava and Minority Rights Group International. Over 30 participants from Europe and Central Asia participated at the event. The training was dedicated to the problem of defining minority and minority groups, discrimination against these groups and protection mechanisms. The participants exchanged experiences and presented the challenges facing them in minority rights protection. The training participants also discussed the legal frameworks of national legislation, challenges and best practice examples in working with minority communities.

## Conference "Women, Access to Technology and Health Services" (20-23 November 2011, UNESCO, Paris)

The organizer of the conference was the organization "MILENIA2015" and the donor was UNESCO. The conference was dedicated to women empowerment in 21 century, and it was a part of the project implemented with the aim of analyzing the most important problems facing women around the world and finding potential solutions for future action plan that should be presented at United Nations session in New York in 2015. The conference was organized with the purpose of presenting the networks of organizations, governmental and non-governmental bodies working in the area of research and women's position in the society. The main objectives of the network are gender equality, women empowerment and their full participation in political, economic and social decision-making processes and all with the purpose of

fulfilling equal future for all. The topic of the conference was global empowerment of women with the emphasis on their position in the health system and health services, as well as their access to technology. In interactive discussion, the participants exchanged experiences and ideas about biggest obstacles in women empowerment by taking into account their regional context.

# Regional conference "The role of Ombudsman bodies in suppressing discrimination with the special emphasis on discrimination on the grounds of gender and sexual orientation" (21 December 2011, Zagreb)

The conference was organized by Ombudsman for Gender Equality of the Republic of Croatia, and the participants included representatives of independent equality bodies from Serbia and Montenegro and other independent bodies from Croatia (representative of the Protector of Citizens, Ombudswoman for persons with disabilities, Ombudswoman for Children). In addition, judges from the province court in Zagreb participated at the event.

#### 5.1.3. Meetings with representatives of international organizations

## Meeting with Knut Vollebaek, OSCE High Commissioner (11 May 2011, Belgrade)

The meeting included topics such as authorities and powers of the Commissioner for Protection of Equality, prospective changes of the Law on electing members of the parliament, which should enable the increase in number of women in the National Assembly, and the position of national minorities in Serbia.

# Meeting with Thomas Hammarberg, Council of Europe Commissioner for Human Rights (15 June 2011, Belgrade)

The issues discussed at the meeting included protection of national minority equality with the emphasis on Roma, persons with disabilities and LGBT population, legislation and policy in Serbian protection from discrimination, violence and hate speech, freedom of expression and human rights defenders activities (access to information and protection of human rights defenders), as well as about legal authorities of the Commissioner for Protection of Equality.

# Meeting with the member of the Monitoring Committee of the Council of Europe Parliamentary Assembly (22 September 2011)

The meeting participants included Davit Harutinija, Indrek Sar, Silvi Afholder, Dejan Milivojević, the Chief of the Council of Europe office in Belgrade, Antje Rothemund and her Assistant Nađa Ćuk. The issues discussed included the position of various vulnerable groups in Serbia and coming Pride Parade, which

should have been held on 2 October in Belgrade and problems related to organization of this manifestation.

In the previous period, the Commissioner and her associates met with various international officials: the Ambassador of Australia, the Ambassador of Norway, the Ambassador of the Netherlands etc.

#### 5.2. Cooperation with the Civil Society Organizations

The cooperation between the Commissioner for Protection of Equality and civil society organizations was greatly improved in the last year, because CSOs are important partners in combating discrimination. We established various forms of cooperation with numerous organizations from Serbia: partnerships in projects implementation, participation at events and manifestations, including representatives of civil society organizations in Commissioner's working groups etc.

At the end of 2011, we organized a meeting with representatives of seven non-governmental organizations with the aim of discussing improvement in cooperation and communication. Open mailing list with 66 non-governmental organizations was formed with the purpose of better information access for the Commissioner.

Concrete cooperation has been established in the previous period with numerous organizations: Partners for Democratic Changes, Civic Initiatives, YUCOM, Let's..., Women Space from Nis, Centre for Independent Living of Persons with Disabilities, YU Roma, Regional Minority Centre, Autonomous Women Centre, Victimology Association of Serbia, Gayten-LGBT, Gay-straight Alliance etc.

Invited by the non-governmental organizations, the staff of the Commissioner's Office held series of lectures and presentations about the work of the Commissioner and participated at events and manifestations (the overview is given in the section 2.5 Work on improving equality protection – lectures, presentations and participation at events).

In cooperation with the Centre for Modern Skills, we organized a public awareness campaign "Trust in the Commissioner" and organized events in Sabac, Novi Pazar, Zajecar, Vranje and other towns in Serbia.

There were several meetings with representatives of non-governmental organizations:

On 18 August 2011, the Commissioner and her assistants met with representatives of civil sector and members of the organizational board of the 2011 Pride Parade, Goran Miletic and Boban Stojanovic. In mutual release, the participants expressed also: "... the Pride Parade is not held for expressing sexual orientation and life-style, as it is usually wrongfully interpreted, but its purpose is

to draw attention of the public to widespread discrimination against LGBT population and to promotion of human rights and freedoms. Therefore, the Pride Parade should gather all those who want tolerant and democratic society that respects right to diversity. The Commissioner gives support to holding Pride Parade and invites everybody, and especially public bodies and members of the parliament to contribute by their actions and public appearances to having a safe and secure Pride Parade in this year."

On 21 September 2011, the Commissioner and her Assistant met with the representatives of the Association of the Blind of Serbia and discussed the position of persons with vision impairment in Serbia. The Secretary of the Association of the Blind of Serbia expressed that its members face with problems in almost all areas of life despite the fact that Serbia adopted a series of anti-discrimination laws. He also stressed that the issue of signing documents by blind persons is not adequately solved, that the Constitution of the Republic of Serbia and some laws provision interpreters for persons with vision impairment, and that children included into mainstream schools do not have accessible textbooks. On this occasion, the Commissioner encouraged representatives of the Association to file complaints for discrimination.

On 7 October 2011, the Commissioner held a meeting with the representatives of the Union of organizations of Serbia which deals with the protection of persons living with HIV/AIDS – "Stav" Subotica, "Više od pomoći" Belgrade, "Sunce" Nis, Association "Žena" Belgrade, "Crvena linija" Novi Sad, "As" Beograd, "PaO2" Pančevo, "Nova" Pančevo.

On 18 October 2011, in the premises of the Commissioner, we held a meeting with the representatives of the public administration, independent bodies and civil society organizations as part of the project "Combating discrimination on all grounds in the education system in Serbia" implemented by the Committee of Human Rights Lawyers and Belgrade Centre for Human Rights and with the support of the Delegation of the European Union to Serbia.

In 2011, the Commissioner established contacts with national councils of national minorities, churches and religious communities, both traditional and so-called non-traditional religious communities. They were all invited to cooperation and provide with information about the role, tasks, work and authorities of the Commissioner for Protection of Equality.

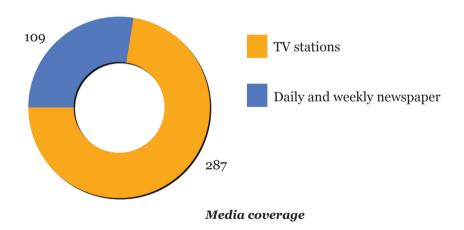
The work of the Commissioner for Protection of Equality drew attention of young people and many of them wanted to volunteer in the institution. In 2011, as part of the project implemented by the Administration for Gender Equality, two persons were at three-month internship in the Commissioner's institution. The staff of

the Office also organized one-week practical training for five students engaged in the work of Legal clinic for protection from discrimination of the Law University Belgrade. Although volunteering would be extremely useful for the promotion of the equality and the institution, the Commissioner cannot meet such demands because of the limited working premises.

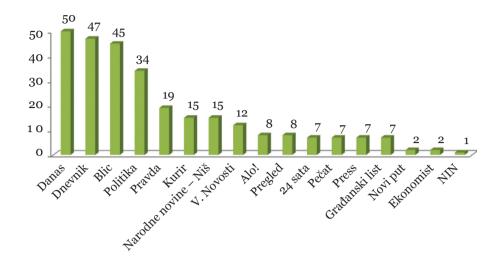
#### 5.3. Cooperation with the Media

The interests of the media for the work and activities of the Commissioner for Protection of Equality have increased in comparison to previous year. This increase of media appearances is due to activities of the Commissioner for protection of equality and the employees of the institution, but also due to awareness of journalists about the importance of this equality body.

Statistics show that there were 287 newspaper articles (statements, reports, announcements, comments), including also texts mentioning the Commissioner for protection of equality. There were 109 statements, releases and thematic TV packages broadcasted at electronic media, which mention or cite the Commissioner for protection of equality.

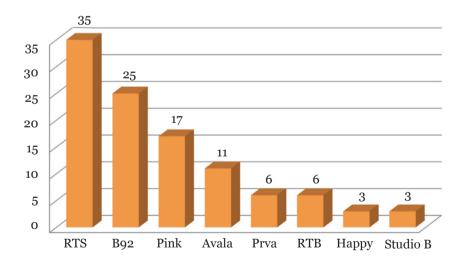


The greatest number of texts about the Commissioner was published in daily newspaper Danas (50), Dnevnik Novi Sad (47), Blic (45), Politika (34), etc.



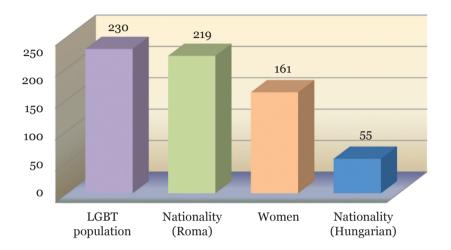
The Commisssioner: printed media coverage

In electronic media, the Commissioner was mostly appeared at Radio and Television Serbia -35 times, Television B92 -25, TV Pink -17, etc.



The Commisssioner: coverage in the electronic media

By analysing texts published in 2011, we concluded that there were 985 articles, reports, comments, appearances and the dominated topics were discrimination against LGBT population, Roma, women inequality in Serbia, and Hungarian national minority.



Media coverage in relation to grounds for discrimination

The media was particularly interested in the Commissioner's opinion on law drafts or social phenomena. Therefore, the daily newspaper Blic published VIP comments about 1) architectural barriers facing persons with disabilities, 2) discrimination against older people, 3) peaceful conflict resolution.

In addition, *Politika* published expert commentary of the Commissioner about the Draft Law on Child's Rights, while *Novi magazine* published comments of three university professors/experts about the Pride Parade: Nevena Petrusic, the Commissioner for protection of equality, Zarko Korac and Ratko Bozovic.

With the support of UNDP, we created a video "o-tolerance to discrimination" and celebrities participated on a voluntary basis in the video. The video was broadcasted free of charge on RTS, RTV and local television stations.

Simultaneously, the website www.ravnopravnost.gov.rs was improved by new texts and contents and it is updated on a daily basis.

#### 6. OTHER ACTIVITIES

#### 6.1. Drafting a model of mediation in discrimination cases

In the last year, the Commissioner intensively worked on drafting special model of mediation in discrimination cases, which would be adjusted to this particular type of conflict and violation. In order to set conditions for mediation, the Commissioner formed an expert working group that drafted special mediation model, and created a programme for specialized training for future mediators and employees in the Sector for complaints, developing indicators for recognizing cases that could be mediated, and creation of standard operating procedures in mediable discrimination cases. It is expected that the activities will be finished soon, and then start specialized trainings for first group of mediators, who will afterwards be on the special List of the Mediators of the Commissioner.

#### 6.2. Publishing

With the purpose of informing public and civil society organizations about the work of the Commissioner and promoting equality, the institution prepared several publications and brochures in 2011.

"2010 Regular Annual Report of the Commissioner for Protection of Equality", Belgrade, 2011 (in Serbian and English), 70 pages;

The publication contains the integral text of the 2010 report submitted to the National Assembly of the Republic of Serbia by the Commissioner.

"Collection of opinions, recommendations and admonitions issued by the Commissioner for Protection of Equality", Belgrade, 2011, 332 pages;

The publication contains 56 opinions and recommendations, 8 recommendations for measures for improving equality, three legislative initiatives and opinions about the acts, and 23 public admonitions issued by the Commissioner for Protection of Equality from 1 July 2010 to 30 November 2010. By publishing this collection, the public was given insight into the first results of the Commissioner's work in the implementation of the anti-discrimination legislation. Published acts are overview of the first steps in building anti-discrimination practice by the Commissioner for Protection of Equality, they indicate the visibility of the institution, but they also represent the readiness of the citizens and non-governmental organizations to recognize, react and use legal mechanisms for protection from discrimination. The role of the Collection is to help in understanding the discrimination and it is an encouragement to all social actors to work more actively and effectively on suppressing discrimination.

"Rights of the Child in International Law", Nevena Vuckovic Sahovic (editor), the Protector of Citizens, the Commissioner for Protection of Equality, Belgrade, 2011, 492 pages;

This publication, jointly published by the Protector of Citizens and the Commissioner for Protection of Equality, with the support of UNICEF, gives holistic overview of contemporary international standards in the child's rights. Besides human rights documents, the publication contains texts of universal documents about child's rights sorted in accordance with the adoption date, texts of documents regulating particular areas of child's rights, and the most important European human and child's rights documents. The publication is intended to all of those contributing to respect, protection and fulfilment of child's rights in Serbia.

In 2011, the Commissioner also published brochures and leaflets, and complaint application, in Serbian and languages of national minorities. They were distributed to civil society organizations and during the public awareness campaign "Trust in the Commissioner".

#### 6.3. Strategic Planning

The process of strategic planning where all employees of the Office participated started at the end of 2011. It defines the common values (Independence, Good relations and cooperation, Respect of Diversity, Professionalism and Transparency; Continual learning, educational role of the institution; Accessibility and Inclusiveness), vision (Serbia is just and open society of equal person with equal opportunities, which respects and nurture diversity) and the mission (Elimination all forms of discrimination and contribution to building tolerant society in which everybody has equal rights and equal opportunities), and strategic priorities (Stable system of protection of equality in all areas of life and work of people; Increasing accessibility of the Commissioner; Raising public awareness about discrimination; Efficient and effective office of the Commissioner).

We expect to finish the Strategic plan in 2012 together with the Action plan for its implementation.

#### 6.4. Electronic database

In 2011, the Office of the Commissioner, in cooperation with the Administration for Common Service worked on preparation of the special programme for the Office of the Commissioner, which will make the work on complaints easier and it will ensure creation of the electronic database. The programme enables collection, selection and statistical processing of data in accordance with different parameters.

## 7. DUTIES IN ACCORDANCE WITH THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC INTEREST

The Commissioner for Protection of Equality provides free access to its acts, information of public information and other information that make citizens more familiar with the work of the Commissioner.

The Commissioner provides free access to information by proceeding upon requests for free access to information of public importance by publishing Information booklet about its work and other information on the Commissioner's website, reporting to the National Assembly, informing public via releases, publications, holding press conference and other appropriate manners.

Information booklet about the work of the Commissioner for Protection of Equality was first published on 29 December 2010 and it has been since regularly updated and improved.

From 1 January to 31 December 2011, the Commissioner for Protection of Equality received five requests for free access to information of public importance and they were all answered in legal timeframe of 15 days from the reception. Three requests related to the information about concrete complaints acted upon by the Commissioner when she was elected for the duty. One request was about the number of submitted complaints for discrimination on the grounds of disability and one request related to number of complaints for discrimination on the grounds of ethnicity or nationality.

Table overview of the requests by categories:

Requests by:	Number of requests	Number of approved requests	Number of dismissed requests	Number of rejected requests	
Citizens	2	2	-	-	
Media	-	-	-	-	
NGOs and civil society organizations	2	2	-	-	
Political parties	-	-	-	-	
Public administration	1	1	-	-	
Other	-	-	-	-	
Total	5	5	-	-	

In providing information, the Office of the Commissioner pays special attention to protection of personal data in accordance with the Law on protection of personal data<sup>86</sup>. A party in the proceeding before the Commissioner for Protection of Equality has a right to confidentiality of all private data found in the case documents or that came to the knowledge of the Office staff working on the case. The principle of confidentiality can be violated only in cases provisioned by the law.

The Chief of the office of the Commissioner for Protection of Equality takes care of the cooperation with the media, in accordance with the Rulebook on internal management and job systematization of the Office of the Commissioner for Protection of Equality.<sup>87</sup> An employee takes care of the information of public importance in accordance with the Decision on appointing responsible person for acting upon requests for free access to information of public importance.

In order to make right to free access to information of public importance more accessible to citizens, they can see and download at the Commissioner's website the application forms with examples for filing a requests or complaint for free access to information. The demand can be submitted in writing also without using such application forms. It is important to state clearly the information asked and to what it refers, namely description of the information as precisely as possibly. The requests can, but does not have to, contain reasons for asking information and other data that make searching for the information easier. The insight into the document containing asked information is free of charge, in accordance with the Law on free access to information of public importance.<sup>88</sup>

Requests for access to information of public importance related to the work of the Commissioner can be submitted to the Commissioner in writing and send to: Poverenik za zaštitu ravnopravnosti, Beogradska br. 70, Beograd, or by email: poverenik@ravnopravnost.gov.rs

<sup>&</sup>lt;sup>86</sup> Official gazette of the Republic of Serbia, number 97/08

<sup>&</sup>lt;sup>87</sup> Rulebook on internal organization and job systematization can be seen at the link http://www.ravnopravnost. gov.rs/files/Pravilnik%200%20sistematizaciji%2021%2006%202010.pdf

<sup>88</sup> Official gazette of the Republic of Serbia, number 120/04, 54/07, 104/09 and 36/10

#### 8. 2012 FINANCIAL REPORT

In previous year, the Commissioner for Protection of Equality was approved with 96.213.000 RSD and 50.452.539,22 RSD were spent. The realization of available budget funds was 80%. Regarding the fact that many employees started working during the year, they have worked less than twelve months, so in October, with the budget rebalance, the budget was reduced to 62.756.000,00 RSD. The Law on 2012 Budget plans funds in amount to 89.471.000 RSD.

The funds were planned and executed in accordance with the authorities, rights and powers of the Commissioner for Protection of Equality and with the aim of legal, efficient and economic execution of the funds by taking into account the experiences of other independent institutions.

### Execution and rebalance of 2011 budget and a 2012 bugdet plan

Economic class.	Description	Funds from the 2011 Budget Official gazette 101/10	2011 Budget rebalance Official gazette 101/10	Structurally corrected rebalance	Извршење буџета у 2011. год.	2011 Budget execution in % 6 : 5	Funds from 2012 Budget Official gazette 101/10
Σ		96.213.000,00	62.756.000,00	62.756.000,00	50.452.539,22	80,39	89.471.000
1	2	3	4	5	6	7	8
411	Salaries, additions, fees for the staff	57.386.000,00	18.913.000,00	17.967.350,00	12.404.381,43	69,04	35.044.000
412	Social benefits for salaries obliged to the employer	10.128.000,00	3.088.450,00	3.088.450,00	2.220.384,37	71,89	6.112.000
413	In-kind contributions	0,00	0,00	0,00	0,00	0,00	50.000
414	Social benefits for the employees	800.000,00	760.000,00	760.000,00	0,00	0,00	800.000
415	Fees for employees	1.000.000,00	950.000,00	950.000,00	721.207,95	75,92	700.000
416	Awards/contribution to employees	1.000,00	1.000,00	1.000,00	0,00	0,00	1.000
421	Fixed costs	4.500.000,00	2.774.000,00	2.774.000,00	1.898.532,06	68,44	3.225.000
422	Travel costs	3.850.000,00	2.750.000.00	2.750.000,00	2.177.053,14	79,17	3.500.000
423	Contractual services	9.048.000,00	19.976.000,00	19.976.000,00	19.832.434,45	99,28	19.048.000
424	Specialized services	0,00	200.000,00	200.000,00	0,00	0,00	300.000
425	Running maintenance and repairs	500.000,00	163.500,00	163.500,00	8.000,04	4,89	400.000
426	Material	2.600.000,00	2.975.000,00	2.975.000,00	2.928.409,52	98,43	2.975.000
462	Donations to international organizations	0,00	0,00	0,00	0,00	0,00	6.206.000
481	Donations to NGOs	0,00	0,00	0,00	0,00	0,00	3.000.000
482	Taxes, mandatory taxes and fines	95.000,00	902.500,00	902.500,00	0,00	0,00	400.000
511	Buildings and construction objects	5.450.000,00	3.758.200,00	3.758.200,00	2.046.205,00	54,45	1.000.000
512	Machines and equipment	0,00	6.190.000,00	6.190.000,00	5.947.676,96	96,09	6.000.000
515	Non-material property	0,00	300.000,00	300.000,00	268.254,30	89,42	750.000

# 9. RECOMMENDATIONS FOR SUPRESSING DISCRIMINATION AND IMPROVING EQUALITY

Based on the data gathered in the complaint proceedings and insights into key problems in fulfilling factual equality, several tasks can be selected as priorities for state authorities and institutions with the aim of fulfilling efficient and effective suppression and prevention of discrimination:

- 1. Create National Strategy for Combating Discrimination comprehensive legal-policy document which will define holistic short-term, medium-term and long-term measures and activities of public administration and other social actors with the aim of preventing and suppressing discrimination. The adoption of this document together with the Action implementation plan would support the implementation of anti-discrimination legislation and special measures and it would contribute to removing the causes of discrimination, raising public awareness about damaging consequences of intolerance and discrimination and individual benefits for everybody throughout the respect of the rights of others and diversity and accepting and respecting diversity.
- 2. Establish and operationalize unique and centralized system of collecting, registering and analysing data about discrimination cases which will enable: continual monitoring of the discrimination prevalence in relation to grounds, form, method and area or place of discrimination, monitoring and analysis of data about discrimination victims, conducted proceedings for protection from discrimination, including also data about content of legal protection, number of processed criminal and misdemeanour acts etc, in accordance with the complete respect to the legislation about protection of personal data.
- 3. Intensify work on implementing measures established in national and local strategic documents and action plans with the aim of removing barriers and circumstances hindering the achievement of full equality of deprived, vulnerable and marginalized social groups: Roma, persons with disabilities, older persons, refugees and internally-displaced persons, the poor and socially underprivileged persons, including children and women belonging to these groups, in order to set conditions for them to effectively enjoy all guaranteed rights without any form of direct or indirect discrimination.
- 4. Ensure integration of gender perspective in all decisions and policies and building capacities of public administration, local self-governments and authorised institutions for the implementation of the measures for improving the position of women and gender equality, determined by national and local strategies and action plans.

- 5. Ensure efficient access to justice for victims of discrimination, including also provision of adequate legal aid, free or by reduced costs, to the victims of discrimination when they are not in the position to pay or when the interests of justice determine so.
- 6. Ensure that all public administration bodies in accordance with their authorities act coordinated on suppression of media promotion of hate speech, violence, intolerance and discriminatory behaviour, especially provide that the public radio-diffusion services and information public services are lead promoters of equality, tolerance and non-discrimination and with their own acting contribute actively to raising public awareness and changing social and cultural patterns and customs founded on stereotypes and prejudices towards minority and marginalized social groups.
- 7. Without any delay, take all necessary measures to integrate in the curriculum, textbooks and other teaching materials topics that will develop students' peace culture, tolerance, solidarity, understanding and respect to diversity, gender equality and non-discrimination and to remove from teaching materials all contents that enforce and sustain gender and other stereotypes and prejudices.
- 8. Create and conduct training programmes for teachers in primary and secondary schools for raising their sensitivity for the discrimination and building their capacities to develop students' spirit of tolerance, solidarity, understanding and accepting diversity and non-discriminatory behaviour and to contribute with their pedagogic practice to creation of friendly surrounding for all students.
- 9. Without delay, prepare by-law which regulates criteria and indicators for recognizing discrimination in schools, determines methods for suppressing discrimination and provisions procedures and activities to be undertaken towards discriminators (teachers, school staff, students and others), in accordance with the Law on foundations of education system.
- 10. Create and conduct training programme for employers, which will provide gaining practical knowledge and developing mechanisms for introducing equal opportunities principle and non-discrimination in the area of work and employment, prevention of all forms of direct and indirect discrimination and diversity management at workplace.
- 11. Plan and implement measures which will ensure that the composition of public administration bodies, local self-governments and other public authorities and their organizational units corresponds to the highest possible extent to the national composition of the population at the given territory, which also includes increasing the number of employees members of the national minorities and their education and professional training for working in public administration.

- 12. Ensure that the public radio-diffusion services produce and broadcast programmes, which enable contents expressing cultural identity of national minorities and ethnical groups, including also setting conditions for following programmes on their mother tongue and alphabet at the territory where they live.
- 13. Plan and implement measures for building capacities of national councils of national minorities in order for them to have the factual opportunity to realise effectively their role in the education, culture, information on the language of national minority and official usage of the language and alphabet.
- 14. Ensure efficient implementation of legislation in education, employment and professional rehabilitation of persons with disabilities, removing barrier that hinder access to buildings transportation, information, communication and other public services.
- 15. Undertake adequate measures to ensure that the process of drafting laws and other general acts of the public administration bodies, local self-governments and other public authorities takes into account careful analysis of harmonization of the provisions with the equality principle in order to eliminate every possibility of adopting legislation containing discriminatory provisions.
- 16. Ensure, with the additions to the Criminal Law of the Republic of Serbia, comprehensive incrimination and adequate punishment of the hate crimes, namely acts motivated by hatred based on race, colour, ethnicity or nationality, religion, political or other beliefs, language, sex, sexual orientation, gender identity, age, health, disability, education, social background, financial status or some other personal characteristic;
- 17. Conduct training of the police officers for suppressing hate crimes in order for them to be capable of adequate reaction, investigation, collection and exchange of information, cooperation with public prosecutors, and in cooperation with other social actors proactively act on suppressing hate crimes.
- 18. Harmonize legislation regulating conditions and procedure of registration of non-traditional religious communities in accordance with domestic, European and international standards on equality of churches and religious communities in order to prevent indirect discrimination of such religious communities and their followers.
- 19. Continue trainings for judges, public prosecutors and lawyers in the area of civil, criminal and misdemeanour protection from discrimination in order to ensure that the judicial officers equally and correctly interpret and apply anti-discrimination provisions, in accordance with international standards and practice of international judiciary institutions by giving thus full contribution to suppressing discrimination and protection of victims of discrimination.

- 20. Develop mechanisms and procedures in public administration bodies ensuring that in the complaint proceedings before the Commissioner for Protection of Equality all asked information and data are provided and the recommendations issued by the Commissioner for removing, preventing and suppressing discrimination are implemented;
- 21. Provide support to the development of the Office of the Commissioner for Protection of Equality to its full capacity by providing bigger working premises.