



REGULAR ANNUAL REPORT FOR 2010

COMMISSIONER

FOR PROTECTION

OF EQUALITY



Belgrade, March 10th 2011

Commissioner for Protection of Equality

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ORIGINAL, Belgrade

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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***

In recently opened offices of the Commissioner for Protection of Equality, there are photographs of discriminated persons followed by the articles of the Universal Declaration on Human Rights, which was adopted by the General Assembly of the United Nations in 1948 in the form of the Resolution. This first international instrument for human rights protection, which today obliges all states, as the source of international common laws, says in its preamble that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. And truly, the principle of equality represents the fundamental principle and without it there is no human rights respect and fulfilment. This is the reason why all contemporary international instruments in the area of human rights protection have the provision proclaiming equality and prohibiting discrimination.

The Republic of Serbia quite hastily ratified numerous international conventions, wanting to demonstrate its orientation to the principle of equality and its determination in human right protection at the international level, but this intent was not followed by adopting legislation that would ensure prohibition of discrimination at national level. The best illustration for this is Serbia’s ratification of the European Convention on Human Rights and Fundamental Freedoms in 2004. This convention prohibits discrimination in the Article 14, but also the Protocol 12 in the Article 1 substantially extends this area. Serbia was one of the first countries of the Council of Europe to ratify it although there were no domestic antidiscrimination laws in that moment. The first law in this

area was adopted in 2006 and it referred to prohibition of discrimination against persons with disabilities, and the following step was adoption of the law prohibiting discrimination on the grounds of gender. Finally, in 2009, the general antidiscrimination law was adopted and it established also an independent institution – the Commissioner for Protection of Equality – the institution that takes care of implementing these above-mentioned laws. But, that is not its only role. The Commissioner has an important role, because it should contribute to prohibition of discrimination, removing the consequences of occurred discrimination and fulfilment and protection of equality in all areas of social life. However, the task of the Commissioner is also to promote the principle of equality by taking various actions that will raise awareness, alleviate stereotypes and prejudices as the most common causes of discrimination which elimination is the most difficult.

The first Commissioner for protection of equality¹ was elected in May 2010. Being the first Commissioner, Professor Nevena Petrusic, PhD has a pioneer role – to make foundations of this institution by bringing all relevant rules and procedures and employing necessary associates, who are difficult to select because there are few lawyers specialised for this specific area. The role of the Commissioner is also to define the work of the Office in those segments that are not or are insufficiently regulated by the Law. This role is not easy, but it is challenging, especially in Serbia, which still has serious forms of violating principle of equality although there have been numerous improvements in the prohibition of discrimination. The proof of that is also the first Regular report of the Commissioner for 2010, which refers to the period between May and December (from the election of the Commissioner to the end of the year) and which gives the overview of the situation in Serbia related to fulfilling the equality principle in a systematic way. This was the period of establishing the institution which was marked with numerous technical problems described in the Report. However, in spite of all the problems, the Commissioner for protection of equality has done her job responsibly by showing that such problems cannot be an obstacle for quality work.

The report describes the authority and competencies of the Commissioner, providing and ensuring working conditions and the overview of the relevant international standards and legislative framework in the area of promoting and protecting equality. It also analyses the conditions in Serbia in relation to the most common grounds for

¹ 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

discrimination by emphasising that it does not mean that discrimination on other ground does not exist in Serbia, but there were no opportunities to see them during this short period of work. In addition, the report gives description of the complaint proceedings and work in the area of equality improvement. Established cooperation with many international and domestic institutions is the best confirmation of quality of implemented activities on promoting the institution. The report also gives overview of other activities, conducting duties in accordance with the Law on free access to information of public importance, financial report and framework working plan for 2011.

Seven general recommendations in priority areas are the most important part of the Report, and the recommendation deal with: necessary formulation of instruments for implementing affirmative measures, training for judges, public prosecutors and lawyers in the area of protection against discrimination, ensuring effective access to justice to victims of discrimination, integrating the topics of tolerance and understanding diversity in the curriculum, textbooks and other educational materials, preventing hate speech in the media and ensuring adequate participation of the Commissioner in draft laws and by-laws by providing the law texts in due time. The last recommendation refers to ensuring working conditions for the institution of the Commissioner, which was achieved by official opening of the office on 14th June 2011 and the office is finally accessible to persons with disabilities. On 14th July 2011, The National Assembly adopted the Conclusions on the Report which support the efforts of the Commissioner for protection of equality to ensuring basic assumptions, but most importantly, the National Assembly bounded itself to respecting the recommendations of the Commissioner and it invited all state bodies to take necessary measures for implementing these recommendations. This support represents important recognition of the Commissioner's work and confirmation of the important issues she is dealing with.

However, the most difficult task of the Commissioner will be to preserve the independence of the institution as the fundamental assumption for its work. Many decisions given by the Commissioner are not obligatory and the implementation and execution of decisions will depend on Commissioner's willingness, energy and authority. Knowing Professor Petrusic personally, I do not doubt that she will manage, with her vision, energy, knowledge and constant persistence for gaining new knowledge, to put firm foundations for this institution, which will make this post easier to the person elected after her. However, the most difficult task will be to fight with deeply-rooted prejudices and with raising general culture and awareness of the citizens about damage of the discriminatory acting. We have to accept the facts that we are all responsible for the bad conditions in

our society and we must not allow to shift responsibility for every problem to the Commissioner for protection of equality. Therefore, I call the professional and general public to read this report carefully, think hard about the findings and recommendations given by the Commissioner and try to identify their own roles in promoting and protecting the principle of equality. And only in this way, by joined efforts and in cooperation with this institution, we can expect good results in creating more tolerant environment for our citizens.

Ivana Krstic, PhD, docent

Belgrade, 24th July 2011

In accordance with the Article 33, paragraph 5 of the Law on Prohibition of Discrimination (Official gazette of the Republic of Serbia, number 22/2009), the Commissioner for Protection of Equality submits to the National Assembly of the Republic of Serbia

REGULAR ANNUAL REPORT FOR 2010

Introductory word by the Commissioner for protection of equality

Respected members of the Assembly,

Respected readers,

You are reading the first annual report prepared by the Commissioner for Protection of Equality of the Republic of Serbia. The report refers to the period from 5th May 2010, when the National Assembly of the Republic of Serbia elected the first Commissioner for protection of equality, to 31st December 2010.

The Commissioner for Protection of Equality was established on the bases of the Law on prohibition of discrimination adopted in 2009. The adoption of the Law, by which the Republic of Serbia rounded off its antidiscrimination legislation is important step in combating discrimination and one of the main pre-requisite for fulfilling equality – the basic principle of Serbia's legal system and principle of firm social and moral values. By adopting this law, the Republic of Serbia expressed its orientation and readiness for establishing comprehensive and effective system for protection against discrimination, thus fulfilling its obligations taken with the ratification of the relevant international treaties and standards for stabilisation and accession to the European Union. The legislative framework for the Commissioner's work is given in the international human rights and antidiscrimination documents, constitutional provisions on prohibition of discrimination, as well as the provisions in domestic antidiscrimination laws and laws regulating particular legal areas.

In this newly-adopted system for protection against discrimination, the Commissioner for Protection of Equality has an important role. This independent, autonomous and specialised state authority is established with the aim of contributing to prevention of all forms of discrimination, removing the consequences of discrimination and fulfilment and protection of equality in all areas of social life. By fulfilling the legal obligations and duties, the Commissioner for Protection of Equality, together with courts and other institutions, should be a pillar in combating discrimination and it should also be one of the main promoters of the idea and principle of equality.

My priority is to preserve the independence of the institution of the Commissioner for Protection of Equality as one of the key pre-conditions for successful achievement of these responsible tasks. Therefore, I will regard every eventual attempt of interference to the work of this institution as violation of its independence whether the interference comes from the public authorities, civil society organisations or the private sector.

Overall, the principle of equality is protected and respected in the Republic of Serbia, but it is not fully realized in practice although legislative and other measures have substantially improved the situation. The annual report of the Commissioner for Protection of Equality should give insight into the key problems in fulfilling and protecting equality of legal bodies, should pinpoint to the social groups which are frequently victims of discrimination and to the social relations in which discrimination is wide-spread. It should also identify the most common, typical and severe discrimination cases, but also indicate to the prospective actions with the aim of preventing discrimination and fulfilling equality. However, this part of the annual report is only partially based on data collected in proceedings for protection against discrimination taken before the Commissioner. In the previous eight months, 124 complaints and 52 notices and initiatives were submitted, which is firstly the result of citizens being poorly informed about the mandate of the Commissioner for Protection of Equality. In such circumstances, it was impossible to properly identify and have valid conclusions on key problems in fulfilment and protection of equality because it would be solely based on data collected during the proceedings taken by the Commissioner. Therefore, other sources and information were used in observing the actual situation, such as reports of the public authorities, institutions and civil society organisation to the extent of being able to manage, collect and analyse the data due to the limited capacities of the institution of the Commissioner. The results of the work on complaints and proceedings are systematised in a separate chapter. The Commissioner believes that the Commissioner's Office that is still being created will, in the following period, be able to develop its own system for monitoring fulfilment of equality and protection against discrimination, so that the next report will give holistic and comprehensive insight into the equality fulfilment.

The report gives overview of the Commissioner's work in the previous eight months. Since this is the first report, it was necessary to give also a short description of the legal framework and rules in the Commissioner's procedures, as well as the overview of the activities implemented with the aim of constituting this institution and ensuring staff, working premises, normative, organisational, material and other resources for institution's further work.

The report has several parts. The first part of the report contains information about the institution of the Commissioner for Protection of Equality and the acting procedures of the Commissioner. The second

part of the report refers to the process of establishing the institution and ensuring working premises, normative, human and other resources for work. The third part of the report addresses the situation in fulfilment and protection of equality and it contains information about international and national legislative framework for protection against discrimination, short description of the situation and key problems in fulfilling equality. This part of the report also contains information about activities implemented for improving protection against discrimination, including information dissemination, raising knowledge and promotion of the institution.

The fourth part of the report refers to activities implemented in the area of establishing and developing cooperation with the authorities, civil society organisations and regional and EU bodies for equality, as well as to media coverage of the institution's work. Other parts of the report give information about fulfilling legal obligations in financial and other areas, and a draft working plan for the next year. The last part of the report contains several general recommendations for improving protection against discrimination and fulfilling equality since the formulation of more concrete recommendation needs comprehensive and systematic insight into the facts that could not be achieved in the past eight months.

It is important to know that regardless of the efforts of the authorised bodies and the Commissioner, the necessary conditions for proper work of the institution of the Commissioner for Protection of Equality have still not being set. On 23rd November 2010, the National Assembly of the Republic of Serbia gave confirmation on *Rulebook on internal organisation and job systematisation in the Office of the Commissioner*, which enabled selection procedure for staff employment. Until the end of the procedure, which is still on-going, the Office of the Commissioner has only one person employed while four persons have continual working engagement on contractual basis.

Premises that were given as a temporary solution in August 2010 were completely devastated and inaccessible to persons with disabilities, so substantial construction and other works needed to be done. The reconstruction is still on-going. I hope that the construction works will be soon finished and that the institution of the Commissioner for Protection of Equality will soon have at least elementary working conditions.

At the end, I would like to stress that establishing normative framework for equality protection and establishment of the Commissioner for Protection of Equality are only first steps in this big and strenuous job ahead of us in building democratic, open and tolerant society that respect human right and diversity, the society of genuine equality in which all the citizens will have equal opportunities to develop their potentials and participate actively in all segments of the social life.

Nevena Petrusic, PhD

Summary

The Commissioner for Protection of Equality is independent, autonomous and specialised state body established in accordance with the Law on Prohibition of Discrimination adopted in 2009. The first Commissioner for protection of equality, Nevena Petrusic PhD, was appointed by the decision of the National Assembly of the Republic of Serbia on 5th May 2010. The normative framework for the work of the Commissioner for Protection of Equality is given in the Constitution of the Republic of Serbia, relevant international documents and general and special antidiscrimination laws of the Republic of Serbia. The competencies of this state body include prevention of all kinds, forms and cases of discrimination, protection of equality of legal and natural bodies in all areas of social relations, monitoring the implementation of the provisions given by the antidiscrimination legislation and improving fulfilment and protection of equality.

After the Commissioner was elected, the institution started ensuring the offices and forming the Office. The premises of 256 m² that was given for temporary use were completely devastated and inaccessible to persons with disabilities, so the reconstruction has begun. The reconstruction is still in the progress. In the meantime, the Commissioner was given two offices for temporary use in the building of the National Parliament, where it still works. *The Rulebook on internal organisation and job systematisation of the Office of the Commissioner for Protection of Equality* was given approval by the National Assembly at the end of November 2010. Therefore, the first public call for employment was announced at the end of 2010.

The Commissioner for Protection of Equality is authorised to conduct complaint proceedings for discrimination, initiate law suits for protection against discrimination, file misdemeanour charges to the court, informs public about discrimination cases and issues recommendation with the aim of improving equality protection. In the period of eight months, the institution of the Commissioner for Protection of Equality received 124 complaints and 52 notices and initiatives. Majority of complaints were related to the discrimination on the basis of sexual orientation while all of them relate to four events. Then, there were complaints on discrimination on the grounds of nationality, and then on political or religious affiliation, and sex. The analysis of the received complaints shows that the majority of citizens are still not well-informed about the discrimination or mandate of the Commissioner for Protection of Equality. Therefore, many complaints received at the beginning of Commissioner's work are not in its authority or mandate and they relate to violation of some other rights.

In the previous period, the Commissioner issued six public admonishments and releases and two recommendations to the state authorities. The principles of equality and antidiscrimination and the institution of the Commissioner were promoted by various lectures, presentation and other public appearances.

The Commissioner established cooperation with other state authorities, similar international institutions and civil society organisations. On 16th November 2010, the Commissioner for Protection of Equality of the Republic of Serbia became the full member of the European Network of Equality (EQUINET) which gathers 33 independent institutions for protection against discrimination from 28 countries.

The media covered the work of the Commissioner in a satisfactory way in the previous period, informed public about its work, and published its releases, attitudes and opinions.

In order to achieve actual equality of citizens and prevent discrimination, the following needs to be done:

- Without delay start formulating instruments for implementation of special (affirmative) measures, which includes their operationalisation, implementation, continual monitoring of the implementation and effects and, if necessary, introduction of new special measures;
- Provide as soon as possible quality training for the judges, public prosecutors and lawyers in the area of protection against discrimination in order for them to be prepared for proper implementation of the antidiscrimination legislation by demonstrating zero tolerance towards any form of discrimination;
- Ensure effective access to justice to the victims of discrimination, which also includes providing legal aid that should be free or with lower costs to those victims who are not able to pay or when the justice reasons apply this principle to them;
- Integrate into curriculum and education programmes, textbooks and other educational materials topics which develop the peace culture, tolerance, understanding diversity and non-discrimination;
- Prevent the promotion of hate speech, violence, intolerance and discriminatory attitudes in the media and ensure that the media is the lead promoter of the equality and non-discrimination;
- Ensure that the texts of the draft laws and legislation and their justification are sent to the Commissioner in due time;
- Provide suitable premises for the proper work of the institution of the Commissioner for Protection of Equality that will be accessible to persons with disabilities and enable adequate working conditions for proper functioning and development of the Commissioner's Office.

Note: the summary of the report is published in the "Official gazette of the Republic of Serbia".

1.1 Legal status and characteristics of the institution

The Commissioner for Protection of Equality is independent, autonomous and specialised state body established in accordance with the Law on Prohibition of Discrimination² and it has wide range of authorities which makes it a central state body for combating all forms of discrimination. The seat of the Commissioner is in Belgrade.

The guarantees of independence of the Commissioner are given in the provisions for electing and dismissal of the Commissioner, its mandate, legal status, authorities and financing³.

The Commissioner for protection of equality is elected by the National Assembly by the majority of MPs' votes and on proposal of the National Assembly's Committee for Constitutional Issues. The Committee determines the proposal by the majority of votes of the total number of the Committee members, and each parliamentary group in the National Assembly has the right to propose a candidate for the Commissioner (Article 28, paragraph 3 of the LPD). In accordance with the Article 28 of the LPD, a citizen of the Republic of Serbia, who has a Bachelor degree in law and at least ten years of experience in legal issues of protecting human rights and who has high moral and professional qualities can be elected as a commissioner. The Commissioner cannot hold any other public or political duty or professional activity as stated in the law. The mandate of the Commissioner is five years and one person can be elected a Commissioner twice.

The guarantees of the independence are given in the provisions saying that the Commissioner has the immunity as a member of the National Assembly and that he/she has the salary equivalent to the salary of the judge of the High Cassation Court and the right to compensation of costs incurred while performing his/her duty (Article 31 of the LPD).

² Official gazette of the Republic of Serbia, number 22/2009 (hereinafter referred to as: LPD)

³ The UN principles on the status of the national institutions that promote and protect human rights (so-called Paris Principles), which were adopted in 1992 by the UN Commission for human rights, state in the section referring to the independence and the role of state independent institutions that "the national institution must have adequate financing, offices and enough staff in order to be independent from the Government in its functioning".

In order to guarantee independence and autonomy of the Commissioner, the law clearly regulates the ways for ceasing the duty and gives reasons and procedure for the Commissioner's dismissal. In accordance with the Article 30 of the LPD, the term of the Commissioner is ceased in the following cases: the end of the mandate, by resignation from duty, by meeting requirements for retirement, by dismissal and in case of death. The Law on prohibition of discrimination gives a list of reasons for the Commissioner's dismissal. The procedure for dismissal can be initiated by one third of the members of the Assembly. The Committee for Constitutional Issues is authorised to determine the reasons for it and to inform the National Assembly about it, which then makes decision about the Commissioner's dismissal by majority of all MPs votes.

Equally important are the provisions of the Article 32 of the LPD, which says that the Commissioner independently decides, in accordance with the law, on employing persons in the Office by considering the need for professional and effective implementation of its authorities. The Commissioner has three assistants appointed by the Commissioner. The financing of the work of the Commissioner, his assistants and the Office of the Commissioner are provided in the budget of the Republic of Serbia and they are allocated on Commissioner's proposal.

1.2. Powers of the Commissioner

The Commissioner's scope of competencies is widely determined and in accordance with international standards⁴ in order to enable efficient

⁴ The Recommendation 2 of the European Commission against racism and intolerance, dated on 13th June 1997, (97)36 Chapter C says that specialised bodies for combating racism, xenophobia, anti-Semitism and intolerance at national level should have "In accordance with the circumstances, law and practice of the particular country, the following functions and authority to the greater possible extent: a) to work on elimination of various forms of discrimination given in the preamble and to improve equal opportunities and good relationships between different groups in the society; b) to monitor the content and effectiveness of the laws and executive by-laws related to their relevance with the aim of combating racism, xenophobia, anti-Semitism and intolerance and to propose, if necessary, eventual changes of the legislation and practice in given areas; c) to advise legislative and executive authorities with the aim of improving legislation and practice in relevant areas; d) to provide support to victims, including legal aid, in order to protect their rights before the institutions and courts; e) in accordance with the legislation in the given country, they should have the opportunity to address the courts or other judicial bodies if and when necessary; f) to listen and consider the complaints and petitions related to particular cases and strive to achieve settlement by using reconciliation, within the legislative framework, by ensuring binding decisions; g) to have appropriate authorisation for acquiring evidence and information in con-

and effective prevention and protection from discrimination and contribute to fulfilling and improving equality.

One of the Commissioner's key powers is acting upon complaints for cases on discrimination against persons or group of persons connected on the similar grounds. In accordance with the Article 33 of the Law on prohibition of discrimination, the Commissioner is authorised to accept and consider complaints on discrimination, give opinions and recommendation in particular discrimination cases and propose measures determined by the law. In addition, the Commissioner is obliged to provide information to the complaint applicant about his/her rights and possibilities of initiating court or other protection proceeding, including mediation. The Commissioner can file court charges for protection against discrimination with the consent of the discriminated person. The Commissioner is also authorised to file misdemeanour charges to the court for discrimination as provisioned in the antidiscrimination legislation.

Set of powers refers to improving equality protection. As part of this duty, the Commissioner has a power to give public admonishment about most common, typical and severe discrimination forms, to monitor implementation of the legislation, to initiate adoption of new or changes to the current legislation with the aim of implementing or improving protection against discrimination, and to give opinion on provisions given in the draft laws related to discrimination, as well as to recommend measures for fulfilling equality to the public administration and other bodies.

One part of the Commissioner's powers refers to monitoring the situation in the area of equality protection about which the Commissioner submits annual reports to the National Assembly. When necessary, the Commissioner submits also special report, by its own initiative or on the request of the National Assembly, especially in cases of repeated multiple forms of discrimination, discrimination done by the public administration or severe forms of discrimination. In its work, the Commissioner is obliged to establish and maintain cooperation with the bodies authorised for equality fulfilment and protection of human rights on the territory of the province and the local self-government.

ducting their duties listed in above-mentioned f line; h) to provide information and consultations to relevant bodies and institutions, including state administration and institutions; i) to give consultations about standards of anti-discrimination practice in particular areas that could have legal power or be voluntary in terms of implementation; to improve and contribute to the training of certain key stakeholders without making harm to the primary role of the professional associations in this training area; k) to raise public awareness about the issues of discrimination and to prepare and publish information and documents in this area; l) to support and strengthen organisations with similar objectives; m) to take into account and express reasons for such organisations' worries, if needed.

1.3. The Commissioner's rules of procedure

The operations of the Commissioner in conducting legally determined rights and duties are regulated by the Law on prohibition of discrimination. The Article 34 of the LPD provisions that the Commissioner brings the by-law which will further regulate the operations and procedures.

1.3.1. Complaint proceedings

The complaint proceedings for discrimination have attributes of special administrative procedure, which is partially determined by the Law on prohibition of discrimination, but the acting procedure is further determined by the Rules of procedure. The provisions of the Law on general administrative proceedings (Article 40, paragraph 4 of the Law on prohibition of discrimination) are applied to the proceedings before the Commissioner. The proceeding is not excessively formal and it is based on ensuring necessary urgency in the procedure. Filing the complaint is free from administrative charges, and the proceeding is fully free of charge regardless of the outcomes.

The following segments are regulated in the complaint proceedings: the ways of initiating the proceeding, who can file the complaint, content and forms of the complaint, examination and fact-finding and the process of the proceeding, decisions made and measures taken in the procedure.

The proceeding before the Commissioner is initiated by filing the complaint. In this procedure, any natural or legal body or group of persons who believe that any kind of action or omission have discriminated them on any given ground can file the complaint. If the case is about violation of the right of the group of persons, any person from the group can file a complaint. In addition, in certain circumstances, human rights organisations can also initiate the proceeding, but if they initiate the proceeding for protection of the particular person, they can do it only with the consent of that person (Article 35 of the LPD).

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 also 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. The service of the Commissioner provides interpreters and translators for oral complaint submission in order to ensure complaint submission to persons with disabilities and persons unfamiliar with the official language. After the complaint is filed, the person in-charge in the Commissioner's Office establishes whether

the complaint has all necessary elements. If the complaint is incomplete, incomprehensible or lacks content that ensures acting in proceeding, the person in-charge in the Commissioner Office sends without delay a request to the applicant to remove the inconsistencies by stating the inconsistencies and the ways to remove them. The Commissioner makes conclusions on complaint discharge in the following cases: 1) if the complaint applicant does not eliminate inconsistencies in due time, unless the Commissioner considers there are grounds for acting on its own duty; 2) when it is determined that the Commissioner is not authorised to decide on the rights violation stated by the applicant, and in this case the Commissioner is obliged to inform the applicant about the authorised body for providing legal protection. In accordance with the Article 36 of the LPD, the Commissioner gives conclusion in which it informs the complaint applicant that it will not process the complaint by providing one of the following reasons: 1. the court proceeding has been already initiated or the court passed the enforceable decision, 2. it is obvious that there is no discrimination in the applicant's complaint, 3. The Commissioner has already acted in the same matter and new evidence has not been provided, and 4. It is impossible to achieve the useful purpose of the proceeding because of the time elapsed since the right violation.

Within the 15 days from the date of filing the complaint, the complaint is sent to the individual stated in the complaint as a discriminator. This person has 15 days from the day receiving the complaint to make statement concerning the claims made in the complaint.

The prospects of mediation are considered in any case. If the discrimination case is seen as open for mediation, the mediation is suggested to the disputed sides in accordance with the legislation determining the mediation procedure. If both parties agree to the mediation, the mediator is jointly determined from the List of certified mediators determined by the Commissioner in accordance with *the Decision on forming the list of certified mediators* provisioned by the law regulating the mediation procedure. The mediation is conducted in the period of 30 days and in exceptional cases, the mediation can last longer but it should be taken into regard that the proceeding before the Commissioner has to be finished in 90 days (Article 39, paragraph 1 of the LPD). If the parties do not agree on mediation, or if the mediation does not result in consensual agreement, the proceeding before the Commissioner is continued.

During the proceeding, the fact-finding is conducted by insight into the documentary evidence, taking statement from the complaint applicant, person against whom the complaint is filed, and other ways regulated by the law (Article 37 of the LPD).

In order to provide efficient and effective protection, the cases are categorised by urgency in three categories based on the Commissioner's decision: "Immediate" – when collected information show that the person

is at high risk because of the discrimination, because of the harmful consequences, possibility of repeated action, continuation or ending the discrimination. The procedure is initiated immediately and the opinion or recommendation is given as soon as possible and the latest in the period of 30 days from filing in the complaint; 2. “Urgent” – when the collected information show that the person is at moderate risk because of the discrimination, the opinion or recommendation is given in 60 days the latest from filing in the complaint; 3. “Regular” – when collected information show that the person is not at risk because of the discrimination, the opinion or recommendation is given in 90 days period from filing in the complaint.

Based on the results of establishing facts, the Commissioner passes a decision in form of the opinion on 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).

Independent experts are involved in working on particular cases, especially in cases of complex legal matters. The experts are determined from the List of experts determined by the Commissioners in accordance with the criteria for forming the List of experts.

1.3.2. Filing law charges for protection against discrimination

In accordance with the provisions given in the Law on prohibition of discrimination, the Commissioner is authorised to initiate antidiscrimination litigation and while doing so, it independently assesses the needs for filing the law charge. In accordance with the Article 33, paragraph 3 of the Law on prohibition of discrimination, the Commissioner is plaintiff in the court procedure. The charge is filed in Commissioner’s own duty, but the Commissioner needs the consent of the person discriminated against, if the victim of discrimination is an individual. In cases of discrimination against groups of individuals connected on the same grounds, the Commissioner does not need the consent of the victims of discrimination, which is regulated by the Article 46, paragraph 2 of the

LPD. In the law suit, the Commissioner can state all anti-discriminatory, lawful demands of preventive and restitution character that are given in the Article 43 of the LPD, except for claims for indemnification of material and non-material damage.

In its charge, the Commissioner can claim that: the court determines in authoritative and indisputable manner 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 elimination of the discrimination conditions. Finally, the Commissioner can ask that the discriminator publish the court judgement determining the discrimination in his own costs.

1.3.3. Filing misdemeanour charges

In accordance with the Article 33, paragraph 4 of the Law on prohibition of discrimination, the Commissioner is authorised to file misdemeanour charges for violation of rights given in the LPD. Although not specifically provisioned by the LPD, but in accordance with its role, the Commissioner is authorised to file misdemeanour charges for acts of discrimination that are not incriminated as misdemeanour in special antidiscrimination laws: *Law on protection of rights and freedoms of national minorities*⁵, *Law on preventing discrimination against persons with disabilities*⁶, *Law on gender equality*⁷, and other legislation.

1.3.4. Informing public about cases of discrimination

In accordance with the Article 33, paragraph 3 of the Law on prohibition of discrimination, the Commissioner is authorised to warn public about most common, typical and severe cases of discrimination. The Commissioner does it on the basis of submitted complaints, information

⁵ Official gazette of the Federal Republic of Yugoslavia, number 11/2002; Official gazette of Serbia and Montenegro, number 1/2003; Official gazette of the Republic of Serbia, number 72/2009;

⁶ Official gazette of the Republic of Serbia, number 33/06;

⁷ Official gazette of the Republic of Serbia, number 104/09;

gathered from the media or other sources. In its public admonishments, the Commissioner indicates the discriminators, the ways of acting discriminatory, individuals and groups who are being mostly, typically and severely discriminated against by taking into account mandatory protection of personal data. The Commissioner also warns about the consequences or possible consequences of the most common, typical and severe cases of discrimination.

1.3.5. Giving recommendation and opinion for improving equality

With the aim of acting preventively, the Commissioner is authorised to recommend to the public administration and other bodies measures for fulfilling equality and improving protection against discrimination. The Commissioner is obliged to monitor the implementation of the legislation in the area of equality protection and discrimination prohibition, to give opinion on draft laws and by-laws, and to initiate adoption of new and changes of the current legislation (Article 33 of the LPD).

1.4. Cooperation

In its work, the Commissioner establishes cooperation with the National Assembly, bodies and institutions working in the similar areas or dealing with protection of human rights and freedoms, that is protection of equality. It also establishes cooperation with state authorities, bodies of the autonomous province and local self-governments and public services, associations, professional and educational institutions in the country and abroad.

1.5. Reporting

The Commissioner is obliged to submit report to the National Assembly once a year about the situation in equality protection, which also contains the assessment of the work of the public administration, service providers and other bodies, mistakes and recommendations for their elimination. The report can also contain information about implementation of the laws and by-laws, namely about the need for adoption of new or changes of the current legislation with the aim of implementing and improving protection against discrimination (Article 48 of the LPD). If there are particularly important reasons, the Commissioner can, on its own initiative or on the request of the National Assembly, submit special report to the National Assembly (Article 49 of the LPD). These reports contain the summary which is published in the “Official gazette of the Republic of Serbia”.

2.1. Election of the Commissioner, normative operations and forming the Office

The Commissioner for protection of equality was elected on 5th May 2010 by the Decision number 10 of the National Assembly of the Republic of Serbia.

After the election, the Commissioner started preparing the *Rulebook on internal organisation and job systematisation in the Office of the Commissioner for the Protection of Equality*, which was sent to the National Assembly for approval on 22nd June 2010. By the Decision number 33 of the Republic of Serbia, the National Assembly approved this act on 23rd November 2010. In addition, the *Decision on establishing and operations of the Office of the Commissioner for Protection of Equality* had been prepared, and on the 2nd of August 2010, it was sent to the National Assembly for approval. The National Assembly gave approval of the act on 23rd November 2010⁸.

By fulfilling the obligations given in the Article 34 of the Law on prohibition of discrimination saying that the Commissioner brings the act that will further determine the operations and procedures, the Commissioner appointed a working group in August 2010, which prepared a draft of the Rules for procedure. The draft of the Rules and explanation of problematic issues occurred in the practice were sent for revision to the legal experts and the final draft of the Rulebook is expected.

The establishment of the Office of the Commissioner for the Protection of Equality could be started only after the approval of the *Rulebook on internal organisation and job systematisation in the Office of the Commissioner for the Protection of Equality* by the National Assembly. Since the approval was given on 23rd November 2010, the Commissioner had to hire associates on contractual basis. During August 2010, two associates were hired on contractual basis in the Sector for common services. One associate worked on administrative-expert duties in the area of financing and the other on duties of ensuring the working premises and later the adaptation of the premises. During 2010, another 15 associates were hired for long or short-term posts, and on 13th December 2010 one person was

⁸ Decision on giving approval of the National Assembly of the Republic of Serbia, number 33

employed by the agreement of consensual transfer of the associate with the Protector of Citizens of the Republic of Serbia. Until the end of 2010, the Office of the Commissioner consisted of one employee and four persons hired on contractual basis. On 30th December 2010, the Commissioner announced a public call for employing eight persons in the Office of the Commissioner.

2.2. Ensuring the working premises and technical conditions for functioning

The conclusion of the Government from 27th August 2010 provisioned the working premises for the Office of the Commissioner in the business and apartment building in the street Beogradska, number 70, on the second floor. The size of the premises is 256 m². The premises were not operational, because there was no central heating and adequate plumbing and electrical installations and the offices were inaccessible to persons with disabilities, so it was necessary to start complete reconstruction and adaptation, which included extensive construction works.

The efforts of the Commissioner to transfer the premises adaptation to the Administration for the Common Services of the Republic Bodies, which is authorised to provide working premises, were not successful. After several meetings with the responsible bodies of the Administration, the Administration sent the official letter on 11th October 2010 saying that it was not able to organise or finance the premises adaptation. Therefore, external associates needed to be hired on contractual basis for these works. The Administration took the responsibility of providing and financing the connection to the city heating system and to reconstruct the lift and lift access, so that the working premises could be accessible to persons with disabilities. The adaptations are still on-going and the end of the construction works is expected in March 2011.

Since the financial plan for 2010 did not incorporate available funds for investments and running costs, but some other appropriations had unspent balances and in order to ensure funds for premises reconstructions, on 20th October 2010, the Commissioner sent the request to the Ministry of Finance of the Republic of Serbia for the rebalance of the budget for 2010. The Law on budget rebalance for 2010 approved 11 million RSD by reallocating the unspent funds. The funds were available on 7th December 2010 when the Law came into force. Because of the insufficient time, until the end of 2010, the Commissioner conducted procurement for investment and running maintenance, procurement of the office furniture and computer and other equipment, and the payment of certain services and material. In addition, the mobile phone network and landline phones were provided⁹.

⁹ See the part of the Report referring to the budget

Until the end of 2010, the Commissioner was given four laptop computers provided by the funds in the project “Support to implementation of the antidiscrimination legislation and mediation in Serbia” that were implemented by the Ministry of Labour and Social Policy with the support of UNDP.

In order to ensure proper working conditions and by involving authorised bodies of the National Assembly of the Republic of Serbia, two offices were provided in December 2010 in the street Kralja Milana, number 14, in the building of the National Parliament. The Commissioner still works in these offices.

The Administration for Common Services of the Republic Bodies provided a car and a driver and it covers the costs of the transportation.

2.3. Organisational structure of the Commissioner's Office

The provisions given in the Article 32 of the Law on prohibition of discrimination says that the Commissioner has the Office which assists in performing the work and three assistants managing the determined areas of work.

The organisational structure of the Office of the Commissioner is set by *the Rulebook on internal organisation and job systematisation of the Office of the Commissioner for Protection of Equality*. This act provisions establishment of three sectors in the Office: Sector for complaint proceedings, Sector for improving equality protection, international cooperation and projects and Sector for common services. The Office is managed by the Commissioner and the sectors are managed by the assistants to the Commissioner.

Sector for complaint proceedings is dealing with the complaints proceedings of natural and legal bodies in discrimination cases, and also with providing expert assistance and information to the applicants about their rights, then with preparation of the opinions, recommendations and measures, filing court and misdemeanour charges, collecting and systematising information about situation in equality protection, initiating legislation changes, monitoring legislation and situation in the area of fulfilling and protecting equality, preparation of particular and special reports etc. This sector has two departments: 1) Department for protection against discrimination on the grounds of race, colour, origin, citizenship, nationality, ethnicity, language, religious beliefs, membership in political, union and other organisations, and 2) Department for protection against discrimination on the grounds of sex, gender, sexual orientation, property, birth, genetic characteristics, health conditions, disability, marital and family status, conviction, age, appearance and other real or assumed personal characteristics and grounds. The planned number of staff in this sector is 25.

The Sector for improving equality protection, international cooperation and projects is dealing with the activities related to

monitoring implementation of the legislation in the area of protection against discrimination, preparation of the acts that will initiate adoption or changes of the legislation for fulfilment or improvement of protection against discrimination and special attention is paid to integration of the international and European standards into the domestic legal system. In addition, this sector prepares recommendation proposals on provisions of the draft laws and by-laws regulating prohibition of discrimination, recommendation proposals for public authorities and other bodies for equality fulfilment, analysis and reports on most common, typical and severe discrimination cases, and it prepares annual and special reports. The duty of this sector is also to prepare suitable educational and informative publications for promotion of the importance of respecting and protecting equality, to point to the prohibition and negative effects of all forms of hatred, discrimination, disrespect of equality etc. This sector also conducts activities regarding the preparation and establishment of all forms of cooperation on national and international level and it prepares independent or partner projects aiming at the improvement of equality protection. For the purpose of effective and successful functioning, this sector has two departments: Department for systematic normative-legal issues and preparation of reports and publications and the Department for international cooperation and projects. The planned number of staff in this sector is 12.

Sector for common services is formed for the purpose of conducting activities of employing staff and fulfilling rights, duties and responsibilities given in the labour relations of the public servants and clerks in the Office. It also deals with producing general and individual acts in the area of employment, valuing the working effects of the public administration clerks, training and other professional development of the staff, running and keeping working records, material-financial and accounting duties, activities on demands for free access to information of public importance, conducting procurement, receive, sending and archiving mail, develop IT basis for working process, maintain IT equipment and the Internet presentation etc. This sector has four internal units: Unit for staff-related issues, Group for financial and material duties, Unit of the reception and archive and IT Group. The planned number of staff in this sector is 17.

The organisational structure of the Office of the Commissioner is annexed to the Report.

2.4. Ensuring finances for the Commissioner's work

In the last quarter of 2010, the financial plan for 2011, 2012 and 2013 is prepared in accordance with the Memorandum on the budget of the Republic of Serbia for the period 2011-2013. The reports in determined reporting formats were submitted to the Ministry of Finance and the Administration for Treasury and the preparation of the final report for 2010 has begun.

3.1. Normative framework

The Republic of Serbia gives great attention to preventing discrimination and equality fulfilment and it strives to respect and implement the highest international and European standards in this area. Accordingly, it rounded-off its antidiscrimination normative framework, adopted and incorporated in its legal system the most important universal and regional treaties in this area and worked on adoption and national implementation of optional protocols to the treaties.

3.1.1 Relevant international documents

For the protection and improvement of the equality, the most important are the international treaties and documents created by the United Nations and the Council of Europe – the most prominent and respectful international organisations in setting international standards of human rights. The Republic of Serbia is member state of these organisations.

3.1.1.1 The United Nations documents

1) *Charter of the United Nations* in the Article 55, paragraph c) obliges all member states to “the respect of human rights and basic freedoms for all without distinction as to race, sex, language or religion”

2) *Universal Declaration on Human Rights* guarantees in the Article 1 and Article 2 to all people freedom and equality in dignity and rights regardless of “any difference such as the race, colour, sex, language, religious, political or other orientation, nationality or social background, property, birth and other status”.

3) *UN Convention on Eliminating all Forms of Racial Discrimination*¹⁰ from 1965 is the fundamental UN document combating racism and discrimination. This Convention also determines that the “member states condemn all kinds of propaganda and organisations promoting ideas or theories based on racial superiority or group of persons of some colour or ethnicity or those wanting to justify or support all forms of racial hatred and discrimination”.

¹⁰ Adopted on the UN General Assembly in 1965, and enforced in 1976 (Official gazette of the Socialistic Federal Republic of Yugoslavia, 31/67)

4) *International Covenant on Civil and Political Rights*¹¹ from 1966 in the Article 20, paragraph 2 proclaims that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. The Article 26 of the Pact says that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

5) *International Covenant on Economic, Social and Cultural Rights*¹² from 1966, in the Article 2, paragraph 2 bears member states responsible for guaranteeing rights proclaimed by the Covenant “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

6) *Convention on the Rights of the Child*¹³ from 1989 in the Article 2 provisions that the member states respect and ensure rights given in the Convention to every child under their jurisdiction without discrimination of any kind as to race, colour, sex, language, religion, political or other orientation, nationality, ethnical or social background, property, disability, birth or any other status of the child or his/her parent or legal guardian.

7) *International Convention on Eliminating all forms of Discrimination against Women*¹⁴ from 1979 which provisions member state responsibility to eliminate all forms of discrimination against women

¹¹ Adopted by the Resolution 2200A (XXI) of the General Assembly on 16th December 1966; came into force on 23rd March 1976, Official gazette of the Socialist Federal Republic of Yugoslavia – International treaties, 7/71

¹² Official gazette of the Socialist Federal Republic of Yugoslavia – International treaties, 7/71

¹³ The convention on the rights of the child was adopted on 20th November 1989 and it came into force on 2nd September 1990. The Convention has been ratified by over 200 countries, including Yugoslavia (Law on ratification of the UN Convention on the Rights of the Child, Official gazette of the Socialist Federal Republic of Yugoslavia – International treaties, number 15/90 ad 7/71)

¹⁴ Adopted on 18th December in New York at the UN General Assembly; SFRY ratified the Convention by the Law on ratifying the Convention on eliminating all forms of discrimination against women (Official gazette of the Socialist Federal Republic of Yugoslavia – International treaties, 11/81). Federal Republic of Yugoslavia is also a member state of the Optional protocol for the Convention, which was adopted on 6th October 1999 in New York at the UN General Assembly and it came into force on 22nd December 2000 (Law on ratifying the Optional protocol to the Convention on eliminating all forms of discrimination against women, Official gazette of the Federal Republic of Yugoslavia – International treaties, 13/2002). It came into effect on 28th December 2002;

in fulfilling civil, political, economical, social and cultural rights, not only in public but also in private life, including the family.

8) *UN Convention on the Rights of Persons with Disabilities*¹⁵ from 2006 in the Article 5 determines the responsibility of member states to guarantee full realisation of all human rights and freedoms for persons under their jurisdiction without discrimination as to disability. Member states are also responsible for ensuring equality of persons with disabilities before the law, equal legal protection without discrimination and they are also responsible for prohibiting any form of discrimination on the grounds of disability and guarantee to all persons with disabilities equal and effective legal protection from discrimination.

Treaty bodies competent for monitoring implementation of member states responsibility related to the above-mentioned international documents and treaties were also established. The Republic of Serbia highly regards recommendation and concluding observations of these bodies to the reports on implementation of the duties and responsibilities¹⁶.

3.1.1.2 The Council of Europe documents

The prohibition of the discrimination is provisioned in the Article 14 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* from 1950, which was strengthened by the Protocol number 12 in 2000 and which enabled comprehensive protection from the discrimination. With the ratification of the European Convention and accompanied protocols, our country overtook the responsibility to fulfil any given right guaranteed by its law without discrimination on any ground.

¹⁵ The Convention was adopted at the UN General Assembly on 13th December 2006 in New York and it was open for signatures and ratification on 30th March 2007, and it came into force on 3rd May 2008. Serbia signed the Convention and the Optional protocol on 17th December 2007 and ratified it by Law on ratifying Convention on the Rights of Persons with Disabilities (Official gazette of the Republic of Serbia, number 42/09)

¹⁶ As a member of the UN, the Republic of Serbia is obliged to respect standards and follow recommendation and conclusions in the acts of specialised UN organisations, their bodies and agencies, such as UN Organisation for Education, Science and Culture (UNESCO) and convention against discrimination in education from 1960, Convention number 159 on professional rehabilitation and employment of persons with disabilities from 1983, Principles of protection of persons with mental illnesses and improvement of mental health from 1991, Convention of the International Labour organisation referring to discrimination on the grounds of employment and occupation (ILO – C – 11) etc.

The Republic of Serbia ratified also *European Convention for the prevention of torture and inhuman or degrading treatment or punishment*, *European Charter for Regional or Minority Languages*, and *Framework Convention of the European Council for the protection of national minorities*, which in Section II, Article 4, paragraph 1 says: “The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited”.

The long practice of the European Court for Human Rights, which has developed standards, criteria and measures for establishing facts on discrimination in the process of realising legal rights, is equally important for the protection from discrimination. In addition, equally important are reports of the European Commission for combating racism and intolerance, special body of the Council of Europe whose main responsibility is to combat racism, xenophobia, anti-Semitism and intolerance that threaten human rights and democratic values in Europe.

3.1.1.3 The European Union documents

Although EU documents are formally not binding to the Republic of Serbia, they are relative to the protection from discrimination regarding the fact that the Republic of Serbia made Stabilisation and Accession Agreement¹⁷ (SAA) with the European Union in 2008 and in 2009, Serbia applied for the EU membership.

By signing and ratifying SAA with the EU, Serbia overtook the responsibility to gradually harmonise legislation with the legal grounds of EU and its consistent implementation. Accordingly, combating discrimination represents one of the fundamental responsibilities of the Republic of Serbia if we take into account political criteria for EU membership defined by the conclusions of the European Council in Copenhagen in 1993, which refer to the standards of the rule of law, human rights and protection of minorities.

Prevention of discrimination is Serbia’s duty given in *the Decision of the Council from 18th February 2008 about principles, priorities and conditions for European partnership with the Republic of Serbia including Kosovo in accordance with the Resolution 1244 of the Security Council of the United Nations from 10th June 1999 about cancelling the Decision 2006/56/EC*¹⁸. The Decision defines as a short-term priority adoption of

¹⁷ The Law on ratifying the Stabilisation and Accession Agreement between the European community and its member states and Republic of Serbia, Official gazette of the Republic of Serbia, number 83/08.

¹⁸ 2008/213/EZ

the comprehensive law on prohibiting discrimination and ensuring proper institutional support to victims. The mid-term priority is implementation of the legislation on prohibiting all forms of discrimination.

Prevention of discrimination and improvement of human and minority rights and Roma rights are determined as a priority in the *Multi-annual Indicative Planning Document 2008-2011 for Serbia*¹⁹, and one of the results expected from Serbia is to “establish good court practice in the area of implementing antidiscrimination legislation”. Equally relevant are recommendations about discrimination given in the Report of the European Commission on Serbia’s progress in the process of European integration: *Progress Report of the European Commission on Serbia for 2008*, *Progress Report of the European Commission for Serbia for 2009* and *Progress Report of the European Commission for Serbia for 2010*.

General prohibition of discrimination in EU legislation is to be found in the provisions of the Article 13 of the Treaty establishing European community (EC Treaty). When the Amsterdam Treaty came into force, and based on the new Article 13, the EU was given special authority in the area of combating discrimination on the grounds of sex, racial and ethnical background, religion and belief, disability, age, sexual orientation. It also includes possibility for EU to bring legal acts for preventing and eliminating discrimination on given grounds. Lisbon Treaty, which was signed on 13th December 2007, says in the Article 2, paragraph 3 that the EU will also combat social exclusion and discrimination, and it will promote social justice and protection, gender equality and solidarity between generations and protection of the child. With this Treaty, the Charter on fundamental rights in EU (from 2000) became mandatory. Article 21 of the Charter also says that discrimination of any form based on sex, gender, race, colour, ethnic or social background, genetic characteristic, language, religion and belief, political or other opinion, national minority is prohibited and the importance of the gender equality principle is highlighted (Article 13).

There are also some other documents important for protection from discrimination – directives of the EU, secondary legal sources and the most important among them are: *Directive of the European Union Council 2000/43/EC for implementing the principle of equal treatment regardless of racial or ethnic origin*, *Directive of the European Union Council 2000/78/EC which established the general framework for equal treatment in employment and profession*; *Directive of the European Union Council 2002/73/EC for implementing principles of equal treatment between women and men regarding employment, professional trainings and advancement and working condition*; *Directive of the European Union Council 2004/113/EC on implementing principle of equal opportunities and equal treatment between men and women in access to and supply of*

¹⁹ http://ec.europa.eu/enlargement/pdf/mipd_serbia_2008_2010_en.pdf.

goods and services; Directive of the European Union Council 2006/54/EC on implementing principle of equal opportunities and equal treatment between men and women in employment and profession; Directive of the European Union Council 2020/41/EU on implementing principle of equal treatment between men and women who are self-employed, etc.

3.1.2 Legislation of the Republic of Serbia

3.1.2.1 The Constitution

The constitutional ground for prohibiting discrimination is to be found in the Article 21 of the Constitution of the Republic of Serbia, which prohibits discrimination and provisions that all are equal before the law and that any form of discrimination, being direct or indirect, is prohibited on any given ground, and especially as to race, sex, national origin, social background, culture, language, age and physical or psychological disability. It is provisioned in the same article that it will not be regarded as discriminative if the Republic of Serbia introduce special measures for achieving full equality of persons or group of persons who are found in unequal position to other citizens. Many other constitutional provisions prohibit discrimination: Article 1 of the Constitution of the Republic of Serbia promotes equality between citizens and prohibits discrimination by determining that the “Republic of Serbia is the country of the Serbs and other citizens living there and it is based on the rule of law and social justice, principles of democracy, human and minority rights and freedoms and orientation to European principles and values”. The Article 15 says that the state guarantees equality between women and men and it develops the equal opportunities policy. The Article 76 of the Serbia’s Constitution relates to the prohibition of discrimination against national minorities and it provisions that “the citizens of the national minorities are guaranteed equality before the law and equal legal protection”, and also that any form of discrimination on grounds of nationality is prohibited while it is not regarded as discriminative if the Republic of Serbia introduce special acts of temporary measures for achieving full equality between national minorities and citizens belonging to majority.

3.1.2.2 Provisions given in the antidiscrimination legislation

The National Assembly of the Republic of Serbia adopted in March 2009 the Law on prohibition of discrimination. Although adoption of the law was marked with significant political polemics and critical discussions in professional circles about particular provisions of the draft law, the adoption alone was significant step in protection of the discriminated and vulnerable groups in Serbia and further democracy development.

This framework and fundamental antidiscrimination law establishes holistic and comprehensive anti-discriminatory protection system in the Republic of Serbia. It regulates general prohibition of the discrimination, forms and cases of discrimination and actions for protection against discrimination. It also establishes the institution of the Commissioner for Protection of Equality. Discrimination is defined 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). The Law also defines different forms and cases of discrimination in accordance with international and European standards. It regulates civic-legal protection from discrimination by provisioning in section VI of the LPD by the title “Judicial protection”, in Articles 41 to 46 the forms of civil legal protection provided in the case of discrimination regardless of the ground for discrimination. Special litigation proceeding is regulated for achieving this civil-legal protection.

The Law on protection of the rights and freedoms of national minorities, adopted in 2002, prohibits any form of discrimination against national minorities on the grounds of national, ethnic, racial and language origin and it regulates the protection of national minorities from any form of discrimination in the process of fulfilling rights and freedoms.

The Law on preventing discrimination against persons with disabilities, adopted in 2006, regulates the general regime of protection from discrimination on the grounds of disability, special cases of discrimination against persons with disabilities, protection procedure for the discriminated and measures that the state can take to encourage equality and social inclusion of persons with disabilities (Article 1). This Law defines discrimination, provisions prohibition of all forms and cases of discrimination and regulates court protection to the discriminated persons.

The Law on gender equality in the Republic of Serbia, adopted in 2009, regulates the conditions for equal opportunity policy for women and men, adoption of by-laws and taking special measures for preventing and eliminating discrimination on the grounds of sex, marital and family status, pregnancy and parenthood (Article 1). This Law prohibits any form of indirect or direct discrimination (Article 4), guarantees gender equality, provisions special measures for achieving gender equality and regulates court protection from discrimination on the grounds of gender.

The prohibition of discrimination is incorporated in many laws regulating particular areas of social relations.

The Law on Labour, adopted in 2005 and changed in 2009²⁰, prohibits discrimination of workers and persons searching for employment on any given ground (Article 18) in the areas of conditions for employment, selecting candidates for certain job, working conditions and all rights incorporated in labour relations; education, training and professional development; promotion at working post and cancellation of the employment contract (Article 20). The Law specifically provisions the annulations of the contract provisions where discrimination on any given ground is established (Article 20, paragraph 2). *The Law on professional rehabilitation and employment of persons with disabilities*²¹, adopted in 2009, provides comprehensive institutionalised support to employment and active participation of persons with disabilities in social life. *The Law on health protection*²², adopted in 2005, regulates in the Article 20 prohibition of discrimination on any ground in providing health services.

*The Law on foundations of the education system*²³, adopted in 2009, provisions the principle of equality in realising the right to education regardless of any given personal characteristics (Article 6). *The Law on churches and religious communities*²⁴, adopted in 2006, guarantees rights to freedom of thought, conscience and manifesting beliefs, and it prohibits religious discrimination by regulating that no one can be harassed, discriminated or privileged because of his/her religious beliefs, orientation or no-affiliation to religious community, participation or non-participation at religious ceremonies and use or non-use of guaranteed religious freedoms and rights (Article 2).

Antidiscrimination provisions can be found also in the *Law on employment and insurance in case of unemployment*²⁵, the *Law on higher education (2005)*²⁶, the *Law on public information*²⁷, the *Law on radio-diffusion*²⁸, the *Law on free access to information of public interest*²⁹, the *Law on preventing violence and inappropriate behaviour at sport*

²⁰ Official gazette of the Republic of Serbia, number 24/05, 61/05 and 54/09

²¹ Official gazette of the Republic of Serbia, number 36/09

²² Official gazette of the Republic of Serbia, number 107/05 and 72/09 and other laws

²³ Official gazette of the Republic of Serbia, number 73/09

²⁴ Official gazette of the Republic of Serbia, number 36/06

²⁵ Official gazette of the Republic of Serbia, number 38/09

²⁶ Official gazette of the Republic of Serbia, number 97/08

²⁷ Official gazette of the Republic of Serbia, number 43/03

²⁸ Official gazette of the Republic of Serbia, number 42/02

²⁹ Official gazette of the Republic of Serbia, number 120/04

events³⁰, the *Law on juvenile criminal offenders and criminal protection of juveniles*³¹ and other laws.

Criminal protection from discrimination is regulated also by the *Criminal law of the Republic of Serbia*³², which regulates three criminal acts related to prohibition of discrimination: the violation of equality (Article 128), violation of the language and script use (Article 129) and racial and other discrimination (Article 387). It regulates a list of criminal acts against human rights and freedoms, such as: the violation of the right to express national or ethnic origin (Article 130), the violation of freedom to manifest religion and conduct religious ceremonies (Article 131), the violation of the freedom of speech and public appearances (148), prohibition of political, union and other association and acting (152) etc. The changes of the Criminal law in 2009 brought changes to the Article 387 which prohibits racial and other discrimination. Two new paragraphs that incriminate promotion and invitation to hatred, violence and discrimination and public threat to conducting criminal acts against an individual or group of individuals on the basis of their personal characteristics were incorporated in the law. The changes of the law are result of recognising the situation in the society and expression of the political will of the state to deal with extreme neo-fascist groups whose operations have been strengthened in the previous period³³.

Some laws established special measures (the measures of affirmative action) for improving equality of particular socially-deprived groups. Such acts are special antidiscrimination laws and other laws, such as Law on employment and insurance in case of unemployment. Special measures are provisioned in some by-laws, such as *the Conclusion of the Government of the Republic of Serbia on increasing participation of national minorities in state administrative bodies*³⁴. The majority of affirmative measures are given in the strategic documents such as: *the Strategy for improving the position of Roma in the Republic of Serbia and Action plan for implementing the Strategy for improving the position of Roma in the Republic of Serbia (2009)*, *National strategy for improving the position of women and improving gender equality (2009)*, *the Strategy for reintegration of the persons in the process of readmission in accordance with the agreement on readmission together with the Action plan for its implementation*

³⁰ Official gazette of the Republic of Serbia, number 68/03

³¹ Official gazette of the Republic of Serbia, number 85/05

³² Official gazette of the Republic of Serbia, number 85/05, 88/05 – corrections 107/05 – correction 72/09 and 111/09

³³ See: Human Rights in Serbia 2009, rights, practice and international standards of human rights, Belgrade centre for human rights, <http://www.bgcentar.org.rs/images/stories/Datoteke/ljudska%20prava%20u%20srbi%202009.pdf>

³⁴ Official gazette of the Republic of Serbia, number 40/06

(2009), the Strategy for improving the position of persons with disabilities (2006), National action plan for children (2004), National strategy for prevention and protection of children from violence (2008), National Youth Strategy (2008), the Strategy of the social protection development (2006), National Strategy for solving the situation of refugees and internally-displaced persons (2002), National strategy for combating HIV/AIDS (2005), National strategy on aging (2006), the Strategy for development of the mental health protection (2007).³⁵

3.2. Situation in fulfilling and protecting equality

The Republic of Serbia established a firm legal framework for fulfilling and protecting equality and in doing so, it respected international standards and relied on experiences in comparative law. By electing the Commissioner for protection of equality in May 2010, the process of establishing this independent and autonomous institution has started. The key role of this institution is prevention of discrimination and improvement of protection from discrimination. This process is still in the initial phase although many activities have been intensively implemented in order to ensure basic human and technical resources necessary for effective and efficient functioning of the institution.

Notwithstanding some positive improvements in preventing discrimination, this negative phenomenon is still widely spread. The evidence can be found in the reports of some state bodies, civil society organisations dealing with this issue which are familiar with citizens' experiences, as well as the results of the public opinion research. Based on the information collected from such references and based on the Commissioner's observations and insights, the following text will briefly present the situation in fulfilling and protecting equality by indicating to the wide-spread forms of discrimination.

3.2.1. Discrimination on the grounds of gender

Discrimination on the grounds of gender is one of the widely-spread forms of discrimination although the rights of men and women are equalised in the normative framework. The key causes of this phenomenon are rooted, traditional and patriarchal stereotypes regarding the roles and duties of women and men in the family and wider community³⁶. Researches show that women are in a less favourable position in comparison to

³⁵ Official gazette of the Republic of Serbia, number 8/2007

³⁶ This observation is found in the Concluding observation of the Committee for eliminating discrimination against women: the Republic of Serbia CEDAW/C/SCG/CO/1

men in all areas of social life. Looking from the aspect of fulfilling equal opportunities for full realisation of human rights, the women belonging to so-called double or multiple discriminated groups are specially threatened, such as women from national and minority groups, Roma women, women with disabilities, single mothers, refugee and internally-displaced women, women from rural areas, women of different sexual orientation etc³⁷. Negative consequences of structural and indirect discrimination against women are evident in all aspects of social life and the most emphasised are: discrimination against women in decision-making, discrimination against women in economical area and education, gender-based violence and gender inequality in the media.

According to available statistical data³⁸, the right to equal participation of women and men in the decision-making processes in public domain has still not been fulfilled and the evidence is that only 21.2% of members of the National Assembly are women, the local parliaments of the local self-government have 21.3% of women, there are 18.5% women in the Government of the Republic of Serbia, in the overall number of General secretaries only 22.7% are women and 42.6% of women who are assistants to the ministers. There are only 4% of women who are presidents of the local self-governments³⁹.

Discrimination against women is evident in the economic field. The unemployment rate of women is one half bigger than the unemployment rate of men. The income gap between men and women is 16% and the

³⁷ See reference: National strategy for improving the position of women and improving gender equality, 2008-2014, Official gazette of the Republic of Serbia, number 15/2009;

³⁸ It should be stated that Serbia still does not have gender-sensitive statistics – collection and processing of data on the basis of gender. Significant improvement has been made only by the National employments service and the Republic institute for statistics in the area of gender sensitive records and statistics, but the improvements are still insufficient for continual monitoring, research and analysis of the position of women. The statistics lack information on status of the women belonging to minority and marginalised groups such as Roma women, refugee and internally-displaced women, immigrant women, women with disabilities, women in rural areas, elderly women, women in jails or custody, women with psychological disorders, poor women, single mothers, lesbians, girls/children etc. The Concluding observation of the Committee for eliminating discrimination against women indicated to this problem also: the Republic of Serbia, CEDAW/C/SCG/CO/1, http://www.womenngo.org.rs/images/CEDAW/zakljucni_komentari_cedaw_komiteta_republika_srbija.pdf

³⁹ See the notes from the Round table “Equal participation of women in public life – challenges and opportunities for gender equality at the local level” organised by the Constant conference of cities and municipalities on 10th November 2009, <http://www.la21serbia.org>

participation of women in owning property of filed buildings is 29.7%. 30.5% of management and executive positions in the society and commerce are held by women, and of that percentage, 20.8% are management positions and 14.3% on managing the boards. The rate of economic inequality is substantially high and it is a result of the multiple forms of discrimination. For example, refugee women are 15% more unemployed, internally-displaced women are 32% and Roma women are 39% more unemployed in comparison to the average percentage of unemployed women.

Gender inequality in education is almost completely eliminated on the lower educational level and within the majority population, but it still exists in some minority groups, especially within Roma children, children in rural areas and children with disabilities. On higher levels of education, the trend of bigger participation of girls is evident, so the percentage of female students is higher than the male students. However, this advantage is lost at post graduate studies (32.6% of women with MA/MSc and only 30.4% of women PhD)⁴⁰. Gender inequality is also seen in segregation of educational profiles because of the still prevalent traditional division between “man” and “woman” professions. There are not many women at technical faculties and that leads to greater technical illiteracy of women which later additionally marginalise them at the market. Discrimination against women is evident in their participation in management structures of educational and scientific institutions. So far, there have only been six women rectors and only 6% of members of the Serbian academy of science are women.

Domestic violence, sexual violence, trafficking of women and other forms of gender-based violence are widely-spread. This is emphasised primarily in the reports of non-governmental organisation since there are no official records of gender-based violence on the state level. The most common gender-based violence is domestic violence and violence in partner relationship, sexual violence and trafficking of women. Women from marginalised and multiple discriminated groups are mostly prone to violence (Roma women, women with disabilities, refugee and internally-displaced women, women living in same-sex communities, women with psychologically different behaviour, women who are addicted to alcohol, drugs and medicaments, women infected with HIV/AIDS, women with chronic illnesses, migrant women, poor, girls, elderly women, women from rural areas and other multiple discrimination against groups)⁴¹. There has been an increase in domestic violence although many cases are still not being reported and authorised institutions frequently do not act properly.

⁴⁰ See reference: National strategy for improving the position of women and improving gender equality

⁴¹ Alternative report to the CEDAW Committee, 2007, http://www.womenngo.org.rs/images/CEDAW/srbija_alternativni_izvestaj-kombinovano.pdf

The existing mechanisms of legal protection from gender-based violence are not efficient and effective in practice, there are no protocols on police conduct, and there are no cooperation and cross-sector connections between authorised institutions⁴². At the court proceedings for protection against violence, women are exposed to secondary victimisation and they are not provided with proper psycho-social support. Roma women are exposed to discrimination in the process of fulfilling the right to protection from gender-based violence, especially in the area of their placement in safe houses and shelters⁴³. Gender-based violence is presented in the media in a sensational manner⁴⁴. The national plan for combating violence against women has not been prepared yet and it would enable systematic actions in eliminating this form of violence and provide adequate legal protection and psycho-social support to victims.

Gender inequality is also enforced by educational contents which are androcentric, anachronous and discriminatory and they contribute to stereotyping men and women⁴⁵. The media portraying of women is still stereotyped and discriminatory. The reporting is frequently sexist, there is a great number of degrading and pornographic media products, there is no balance in representing men and women, and also there is no equal participation of men and women in editorial policy⁴⁶.

3.2.2. Discrimination on the grounds of nationality

Although the fundamental ground of the autonomy of national minorities is defined by the Constitution and special laws – the Law on protection of rights and freedoms of national minorities (2002) and Law on national council of the national minorities (2009), the state and administrative bodies that have an obligation to ensure the fulfilment of these

⁴² Alternative report to the CEDAW Committee, 2007, http://www.womenngo.org.rs/images/CEDAW/srbija_alternativni_izvestaj-kombinovano.pdf

⁴³ The Parallel report of the European centre for Roma rights, Bibija, Eureka and Zenski prostor to the UN CEDAW Committee with comments on the Initial report of the Republic of Serbia, 2007, <http://www.womenngo.org.rs/images/CEDAW/romkinje-srpski.pdf>

⁴⁴ National strategy for improving the position of women and improving gender equality

⁴⁵ See reference: The improvements in implementing Millennium goals in the Republic of Serbia, the Government of the Republic of Serbia, 2009, <http://www.inkluzija.gov.rs/wp-content/uploads/2010/04/Milenijumski-ciljevi.pdf>; Education for gender equality, <http://www.gendernet.rs>

⁴⁶ National strategy for improving the position of women and improving gender equality

rights have not established suitable mechanisms for its implementation in everyday life and in different condition. In many areas, the fulfilment of particular rights of the national minorities is disabled or complicated by the lack of by-laws, guidelines, rulebooks and other acts that administrative bodies should adopt.

The research conducted by the Protector of citizens in 2009 about representation of national minorities in state bodies and public companies states that except for the Ministry of foreign affairs and the Ministry of internal affairs, no other administrative body takes care of ensuring proper representation of national minorities in the process of employing staff. As for the public services and public companies the situation is more favourable, because the data show that the Customs administration, Tax administration, Treasury administration, Telecom and post-office take into account the national structure of the workers. In order to protect the interests of the citizens belonging to national minorities regarding their representation in the work of public services, the Protector of citizens gave Opinion which was sent to the National Assembly. It also supported the amendments of the national minorities' parliamentary group that provisioned taking special care of national minority representation in local services while conducting the rationalisation of the work of local self-governments.

The most common victims of discrimination on the ground of nationality are Roma and the discrimination is most prevalent in employment, education, health and housing. The record says that many ethnically-motivated attacks in which Roma were the victims in the previous years have not been investigated or sanctioned in a proper way. The hate speech towards Roma is frequent and wide-spread and it is rarely and inadequately punished⁴⁷.

The problem of not having personal documents and IDs is still present within Roma population and it disables them to fulfil basic human rights. It is estimated that 2.000 Roma are not enlisted in the birth registry book and majority of them are forcefully displaced from Kosovo and Metohija⁴⁸. The current procedure of enlisting in birth registry book has many obstacles and does not provide fast and efficient enrolment.

Many cases of enforcing national, racial and religious hatred and intolerance are not properly handled by the authorities, and the work on their proceedings is frequently slow and inefficient. The effective measures for seizing the activities of the neo-Nazi and fascist organisations and association, which advocate for hatred and intolerance towards national minorities, have not been taken.

⁴⁷ Human rights in Serbia 2009, law, practice and international standards of human rights, <http://www.bgcentar.org.rs/images/stories/Datoteke/ljudska%20prava%20u%20srbi%202009.pdf>

⁴⁸ Legally invisible persons in Serbia, <http://www.praxis.org.rs>

There are still disagreements about whether Vlachs are separate national minority or part of the Rumanian national minority. The National council of Vlachs, which exists independently from the National council of Rumanians, acts so as to bring confusion and doubts about determining Vlachs as national minority. National council of Vlachs national minority proclaimed standard Rumanian language to be the official language of Vlachs national minority. In addition, at the three-year celebrating event of establishing the National council, in March, Ion Makovej, the Ambassador of Rumania in Serbia and Titus Korcelean, the president of the Commission for foreign affairs of the Senate of Rumania were invited, who stated then that the Vlachs minority in Serbia should have the rights equal to those of Serbian national minority in Rumania, and Korcelean stated that the Vlachs and Rumanian are the same nationality speaking the same Rumanian language. One of the members of the National council, who represents the minority in the council, thinks that the majority in the council is “under the influence of Rumania” and wants to “rechristen” Vlachs population into Rumanian⁴⁹. On the other hand, Zivoslav Lazic, the president of the National council believes that the “statement about *Rumanisation* of Vlachs comes from malevolent people whose actual wish is the assimilation of Vlachs”⁵⁰. The language of Vlachs national minority has been changed from Rumanian to Serbian by the current National council of Vlachs national minority on 6th November 2010 at the meeting in Zagubica.

The most commonly stated violation of rights of Vlachs and Rumanian national minority in East Serbia is the impossibility or disturbance of religious ceremonies in Rumanian language in this part of Serbia. The incidents of preventing orthodox ceremonies in Rumanian language were reported to the Advisory Committee for Framework convention for the protection of national minorities during its visit to Serbia, as well as to Centre for Development of Civil Society in Zrenjanin and to the Committee for human rights in Negotin. The Advisory Committee for Framework convention for the protection of national minorities recommended to state authorities not to get involved, as they have done so far, in discussions about ethnical origin of Vlachs, which is in accordance with the principle of self-determination defined by the Article 3 of the Convention.

3.2.3. Discrimination on the grounds of sexual orientation

Discrimination on the grounds of sexual orientation is widely spread in public and private area, mainly because of the extremely negative social perception of LGBT persons (lesbians, gays, bi-sexual and transgender

⁴⁹ “Vlachs are being rechristen in Rumanians”, newspaper Politika, 9th March, page 16;

⁵⁰ “Vlachs of East Serbia – from assimilation to Rumanisation”, newspaper Politika, 18th May, page 1

persons) and high level of homophobia. The LGBT population is one of the most vulnerable groups, because it is faced with marginalisation, discrimination, harassment, threats, violence and hate speech on a daily basis⁵¹. The characteristics of the position of LGBT population is seen in the fact that they are the only group whose public assembly is denied and about which there are many public debates in the previous years, although there is a constitutional guarantee of the freedom of assembly.

For many years, the cases of violence and discrimination against LGBT persons did not have adequate reaction by the authorised institutions of the system⁵², nor were the measures taken to raise awareness and promote tolerance towards sexual minorities⁵³. The problems of LGBT persons became more visible and talked about during 2009 in the event of cancelling the Pride parade. This event was cancelled because the authorities could not guarantee safety to the participants when there were open threats to organisers and participants by extremist and right-wing groups, but also because of the lynch-like atmosphere which contributed to the feeling of insecurity. The turn was made in 2010 when the Pride parade was organised, but with heavy police security and after the clear support given by the high state officials, celebrities and representatives of the international organisations.

Besides obvious positive improvements, the cases of discrimination, violence and hate speech towards LGBT persons are usually not processed adequately. The police, the prosecution and the courts show extreme slowness and inefficiency in processing cases of violence against LGBT population. LGBT persons are usually exposed to discrimination and harassment at working place, and the employers do not take measures for protection and prevention of discrimination⁵⁴. Discrimination against sexual minorities is present also in the area of using public places for organising assemblies and manifestations.

One of widely spread prejudices towards LGBT persons is that they are ill. However, the Ministry for health and doctors associations do not take steps to alleviate such prejudices and even the persons with professional authority enforce this prejudice by their statements. Non-governmental

⁵¹ See reference: Discrimination in Serbia 2008 and Discrimination in Serbia 2009, reports by the Coalition against Discrimination, Centre for Advancing Legal Studies;

⁵² See reference: the Map of homophobic attacks:
<http://www.gsa.org.rs/izvestaji/Gay-Bashing-Map-GSA.pdf>

⁵³ No retreat, no surrender, the Report on human rights of LGBT persons in Serbia, 2009, <http://www.gsa.org.rs/izvestaji/GSA-izvestaj-2009.pdf>

⁵⁴ Prejudices at display – homophobia in Serbia in 2010, Research and analysis of the public opinion, LGBT population and discrimination at working place, <http://www.mc.rs/predrasude-na-videlo---homofobija-u.4.html?eventId=7578>

organisations record the cases of unprofessional relation of health workers towards LGBT persons⁵⁵.

Some school textbooks and other educational materials contain texts filled with inadequate interpretation of homosexuality and they contribute to developing prejudices, stereotypes and homophobic attitudes that are frequently communicated to students by teachers⁵⁶.

Many media houses spread hate speech, threats and discriminatory attitudes towards LGBT population, which has still been tolerated and inadequately treated by the judicial bodies⁵⁷.

3.2.4. Discrimination on the grounds of disability

Persons with disabilities are still exposed to various forms of indirect and direct discrimination in all aspects of social life. Based on the assessment given by persons with disabilities, the discrimination is mostly present in education, accessibility to public buildings and places and employment⁵⁸.

Although the activities on implementing inclusive education have started, there are still frequent cases of discrimination against children with disabilities, children with physical and intellectual disabilities in realising their right to education that should respect their educational needs. Majority of faculties, primary and secondary school, student dormitories and boarding schools is inaccessible and physically inappropriate to persons with disabilities. Textbooks and education materials are not accessible to the needs of persons with disabilities. As a result of being poorly informed and because of the widespread prejudices, many kindergarten and school teachers do not want to have children with disabilities in their classes⁵⁹. The conditions for enrolling children with disabilities in kindergartens are not

⁵⁵ No retreat, no surrender, the Report on human rights of LGBT persons in Serbia, 2009, <http://www.gsa.org.rs/izvestaji/GSA-izvestaj-2009.pdf>

⁵⁶ No retreat, no surrender, the Report on human rights of LGBT persons in Serbia, 2009, <http://www.gsa.org.rs/izvestaji/GSA-izvestaj-2009.pdf>

⁵⁷ Annual report on position of LGBTIQ population in Serbia, 2009, <http://www.labris.org.rs/images/npublikacije/izvestajSR.pdf>

⁵⁸ Civil society against discrimination, <http://www.forum-osi.org/download/studija/civilno%20drustvo.pdf>

⁵⁹ Different among Peers, Researching the attitudes of kindergarten and school teachers in the city of Pancevo towards including children with disabilities in mainstream groups and classes, <http://www.velikimali.org/doc/DrugacijiMedjuVrsnjacima.pdf>, The position of young people with disabilities in secondary education system, <http://www.adsyu.org/brosure/REFINE.pdf>

set which leads to their segregation and makes their further inclusion into mainstream education system more difficult⁶⁰. In school year 2010/2011 in Serbia, 95% of children of appropriate age were enrolled into first grade of the primary school. Other 5% are children with disabilities and Roma children, which illustrates the special social vulnerability of these two groups of children.

One of the basic problems in fulfilling equality of persons with disabilities is inaccessibility of public buildings and places, and lack of adequate technical conditions for realising rights in the area of health protection. It is estimated that only 5% of dental clinics is equipped for providing services to persons with disabilities, while only three cities in Serbia have mobile dental teams that are able to provide adequate health protection to people unable to walk. Children with disabilities are frequently given dental services with total anaesthetics although it is not necessary and it is known that total anaesthetics can have harmful effects on child's development. The cases of denying providing health service to persons with disabilities are also recorded, as well as harassment, insult and humiliation of persons with disabilities while using some service⁶¹.

Discrimination against persons with disabilities is also present in employment. Although the implementation of Law on professional rehabilitation and employment of persons with disabilities has given some positive results, the satisfactory level of including persons with disabilities in working processes has not been achieved. Since the beginning of the implementing this law, 5.290 persons with disabilities have been employed⁶². However, it is estimated that only 13% of persons with disabilities has employment or working engagement⁶³.

Equality fulfilment in information and culture is very difficult because there is insufficient number of media products adjusted to needs of persons with disabilities, and many cultural institutions are not accessible.

Discrimination against women with disabilities is widely expressed and they are usually inadequately treated in the processes of realising legal protection and other types of support in cases of gender-based violence and other rights violations⁶⁴.

⁶⁰ Inclusive education – perspectives in Serbia and regional experiences, [http://www.adsyu.org/brosure/inkluzivno\(sa%20slikama\).pdf](http://www.adsyu.org/brosure/inkluzivno(sa%20slikama).pdf), Report on discrimination against children with disabilities in Serbia in 2010, <http://www.velikimali.org/doc/izvestajodiskriminaciji2009VelikiMali.pdf>

⁶¹ Civil society against discrimination

⁶² <http://balkanshumanrights.org/2010/12/03/o-polozaju-osoba-sa-invaliditetom/>

⁶³ VelikiMali Newsletter, <http://www.velikimali.org/doc/VelikiMali%20IV.pdf>

⁶⁴ Iz kruga... <http://www.izkruga.org/node/124>

3.2.5. Religious discrimination

The Constitution of Serbia⁶⁵ gives provisions that the churches and religious communities are equal and separated from the state. The position of churches and religious communities is regulated by the Law on churches and religious communities⁶⁶. This law recognises seven “traditional” religious communities – Serbian Orthodox Church, Roman-catholic church, Slovakian evangelistic church, Christian reformed church, Evangelistic Christian church, Islamic community and Jewish community. The Report⁶⁷ on international religious freedoms in the world for 2007 states that many non-governmental organisations, religious communities, Organisation for Security and Co-operation in Europe (OSCE) and Venice commission of the Council of Europe criticised the Law on churches and religious communities. Some of the comments were that the Serbian Orthodox Church had the privileged status, that the Government of the Republic of Serbia raised funds from postal costs for renovation of Serbian orthodox church and gave subventions for the salaries of Serbian orthodox priests in Kosovo and abroad, that if the students chose to take religious subject in school, they have to take one of seven traditional religious communities etc. According to some reports⁶⁸, this situation has become even worse during 2010 as a result of “problematic Law on religious communities and its arbitrary implementation”. It is stated that cases of discrimination against representatives of religious minorities have been recorded, that the cases of vandalism were reported, speech hate, physical assaults, and there are also negative media reports which call such communities “sects” and its representatives are called “Satanists” and “deviant” persons. The authorities have not taken steps to prevent hate speech and vandalism and the investigations on these cases are usually slow and without conclusions⁶⁹.

The Province ombudsman states in its Annual report for 2009⁷⁰ that the religious discrimination in the Province of Vojvodina has

⁶⁵ Article 44, paragraph 1 of the Constitution of the Republic of Serbia (Official gazette of the Republic of Serbia, number 98/2006)

⁶⁶ Official gazette of the Republic of Serbia, number 26/2006

⁶⁷ The Report on international religious freedoms in the world for 2007, the Embassy of USA in Serbia, <http://serbian.serbia.usembassy.gov/sr/verskoj-slobodi-2007-srbija.html>

⁶⁸ The Ministry of foreign affairs of the USA, Annual report on international religious freedoms, 2010, <http://www.state.gov/g/drl/irf/>

⁶⁹ The Ministry of foreign affairs of the USA, Annual report on international religious freedoms, 2010, <http://www.state.gov/g/drl/irf/>

⁷⁰ Annual report of the Province ombudsman for 2009, <http://www.ombudsmanapv.org/dokumenti.html>

been continued and the legislation has not been respected and the recommendation by the Province ombudsman has been ignored. Namely, the Province secretariat for legislation, administration and national communities does not act in accordance with the recommendation of the Province ombudsman, which gave opinion, on the initiative of the Centre for Development of the Civil Society, that “by categorising various religious communities as it was done by separating traditional churches and religious communities and their listing in the Law on churches and religious communities, the formal ground was given for making unequal treatment in the society both of the churches and their followers. The Province ombudsman, starting from the principle of equality of the religious communities, sent Recommendation to the Province secretariat for legislation, administration and national minorities for modifying *the Decision on budget allocation of the Province secretariat for legislation, administration and national minorities, churches and religious communities active on the territory of the Autonomous Province of Vojvodina* (Official gazette of the Autonomous Province of Vojvodina, number 21/2007 and 4/2008) since the Decision allocates budget funds only to traditional churches and religious communities. The Province secretariat did not act in accordance with the Recommendation, but is announced another call for funding churches and religious communities at which only traditional churches and religious communities were allowed to participate.

3.2.6. Discrimination on other grounds

This report emphasised the grounds on which discrimination is widely spread in Serbia. There are also discrimination on other grounds, such as marital and family status, membership in political, union and other organisations, and there are also other groups which are marginalised and do not have equal position in the society – refugees, internally displaced persons, elderly citizens. Our institution has not had many complaints on these grounds and the researches are insufficient or they are done sporadically. Therefore, there is no real insight into the discrimination of some groups of citizens. It is necessary to conduct more detailed researches about the discrimination and its forms in Serbia in order to plan and take efficient measures for eliminating causes and consequences of discrimination.

It is also problematic that the human rights defenders, who monitor realisation of human rights and provide support and help to victims of human rights violations, frequently face resistance, attacks, humiliation and harassments, and these cases have been inefficiently processed.

3.2.7. Public attitudes and level of being informed

Before all, it is evident that the phenomenon of discrimination is known to citizens and majority of them recognises it as a negative behaviour that hurts other persons⁷¹. The percentage of citizens informed about the discrimination has been increased in 2010 to 63%, which is primarily based on outburst of discussions regarding the adoption of Law on prohibition of discrimination that was well covered by the media⁷². Half of the citizens think that the discrimination is prohibited by law, but only 6% thinks that the law is respected⁷³.

In terms of discrimination prevalence, majority of citizens assess that the discrimination is present to high or substantial extend (59%), and more than a half citizens listed the following groups as being the most discriminated against: Roma (50%), persons with disabilities (27%), the poor (26%) and women (20%). However, during 2010, the number of those believing that the Roma are most discriminated against was decreased (from 50% to 45%) while poor citizens were regarded as second most vulnerable group (32%).

According to the research results, more than one fifth of the citizens have had personal experiences with discrimination. They were exposed to discrimination on the grounds of sex (women), age, being poor, or disability, while the discrimination has been present at working place, employment and firing procedures⁷⁴.

The areas in which, according to public opinion in Serbia, discrimination is most present are employment (74%), advancing in the career (61%), health services (52%), justice (48%)⁷⁵. During 2010, the number of citizens believing that the employment and advancing in the career are areas of wide-spread discrimination is increased⁷⁶. In terms of discrimination in the areas of labour and employment, it is indicative that the large number of citizens is not informed about the labour rights

⁷¹ Public opinion on discrimination and inequality in Serbia, Research by the Strategic marketing, 2009, conducted for the needs of the project "Support to implementation of antidiscrimination legislation and mediation in Serbia", 2009-2010, the Ministry of labour and social policy with the support of UNDP;

⁷² Public opinion on discrimination and inequality in Serbia, Research by the Strategic marketing, 2009, conducted for the needs of the project "Support to implementation of antidiscrimination legislation and mediation in Serbia", 2009-2010, the Ministry of labour and social policy with the support of UNDP;

⁷³ Public opinion on discrimination and inequality in Serbia, 2010

⁷⁴ Public opinion on discrimination and inequality in Serbia, 2010

⁷⁵ Public opinion on discrimination and inequality in Serbia, 2010

⁷⁶ Public opinion on discrimination and inequality in Serbia, 2010

and labour relations. For example, according to one research⁷⁷, more than half of women do not know that in the process of employment, the employer does not have the right to ask for information about marital and family status of the candidate. Large percentage of women (81%) think that women are greatly discriminated in the area of labour rights. 90% of women believe that it is easier for the men to find job, and 63% of women think that men earn more for the jobs of same value. The citizens of Serbia have many prejudices and high level of intolerance to national minorities and the illustrative example is that in the assessment of prospective success in doing management jobs (boss), cleaning community workers, the president of the local self-government, the president of the Government etc, the advantage is given to Serbian nationality, except for the jobs of cleaning community workers. Only one third of the citizens assess that the work of the president of the Government could be successfully done by Hungarian, Roma or Croat. In addition, substantial percentage of citizens expressed unwillingness to accept Roma (46%), Muslims (40%) or Croats (31%) as spouses or spouses of family members. This percentage has been increased in 2010. The level of prejudices in comparison to 2009 has mostly been increased towards Albanians, Muslims and Croats, but it has been decreased towards Roma. Even 64% of citizens are unwilling to accept Albanians as spouses of family members, while 52% are unwilling to accept Roma as spouses of family members⁷⁸.

In addition, majority of Serbian citizens show extremely high level of intolerance and hatred towards LGBT population. The prejudices are still intensely expressed. Majority of citizens regards homosexuality as illness which is dangerous for the society. The social distance towards LGBT population is high: even half of the Serbian citizens would have rejected their nearest family members if they had known they are homosexuals. However, majority of people who have negative attitude towards LGBT persons do not support violence towards them and support sentencing violence in the same way as sentencing violence towards any other person⁷⁹.

The citizens of Serbia also express high level of intolerance towards persons infected with HIV/AIDS, which is partly the result of insufficient knowledge about the disease and infection ways. According to the results of the Institute for public health "Dr Milan Jovanovic-Batut", 89% of citizens would never agree to joint life with person infected with HIV/AIDS, and

⁷⁷ Labour rights and discrimination – information and attitudes of women in Serbia, research of the Strategic marketing conducted for the needs of the project of Belgrade centre for human rights, 2009;

⁷⁸ Public opinion on discrimination and inequality in Serbia, 2010

⁷⁹ Prejudices at display – homophobia in Serbia in 2010, research and analysis of the public opinion, LGBT population and discrimination at working place, Gay Straight Alliance, Belgrade;

every third persons believes that the person infected with HIV/AIDS should be fired from the job although he/she does his/her job professionally⁸⁰.

In relation to other social groups, the attitude towards refugees and internally-displaced persons and persons with disabilities is slightly better.

According to the information gathered from the citizens, almost every fourth person in Serbia has been exposed to discrimination. This data should be considered cautiously since it is based on subjective attitude of the persons interviewed, then because many people equalise discrimination with violation of some other rights and the willingness of the people to openly state in the interviewing that they have been the victims of discrimination is uncertain⁸¹.

In terms of assessing the public administration work on eliminating discrimination, 69% of citizens believe that the state deals with discrimination insufficiently, does not inform sufficiently citizens about the problem of discrimination (64%) and activities undertaken to prevent discrimination. However, only 37% of citizens think that the state should put discrimination on the list of priorities⁸².

3.3. Complaint proceedings

3.3.1. Number and characteristics of the complaints

In the period from the Commissioner's election in May 2010 to 31st December 2010, the institution of the Commissioner for Protection of Equality received 124 complaints. In addition, there were 52 notices and/or initiatives by the citizens, which have been processed and finished by sending them to authorised institution, by giving legal advice, or by some other way of the Commissioner's reacting.

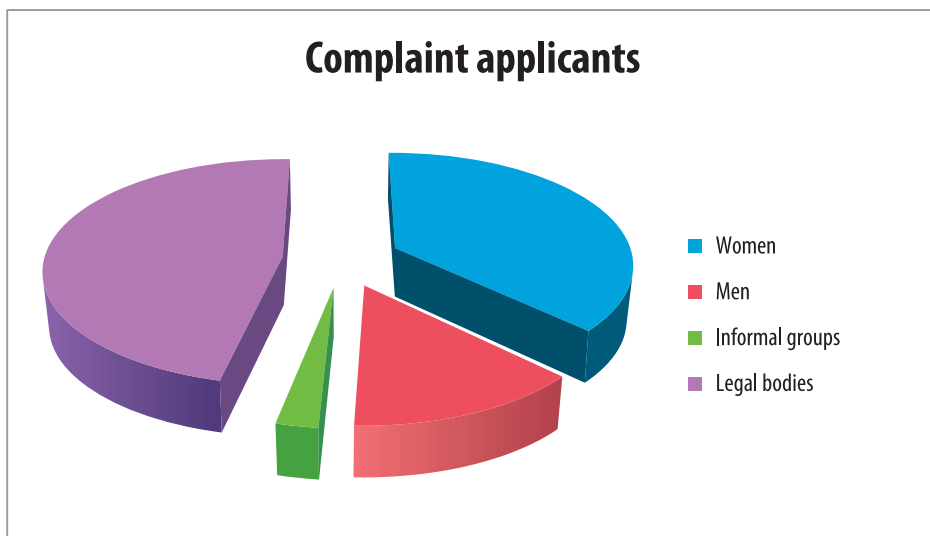
3.3.2. Complaint applicants

The legal bodies that filed the complaints were non-governmental organisations dealing with human rights (8 complaints), traditional associations of citizens (2), commerce organisations/companies (2), unions

⁸⁰ Human rights in Serbia 2009, law, practice and international standards of human rights, <http://www.bgcentar.org.rs/images/stories/Datoteke/ljudska%20prava%20u%20sr%20biji%202009.pdf>

⁸¹ Public opinion on discrimination and inequality in Serbia, 2010;

⁸² Public opinion on discrimination and inequality in Serbia, 2010;



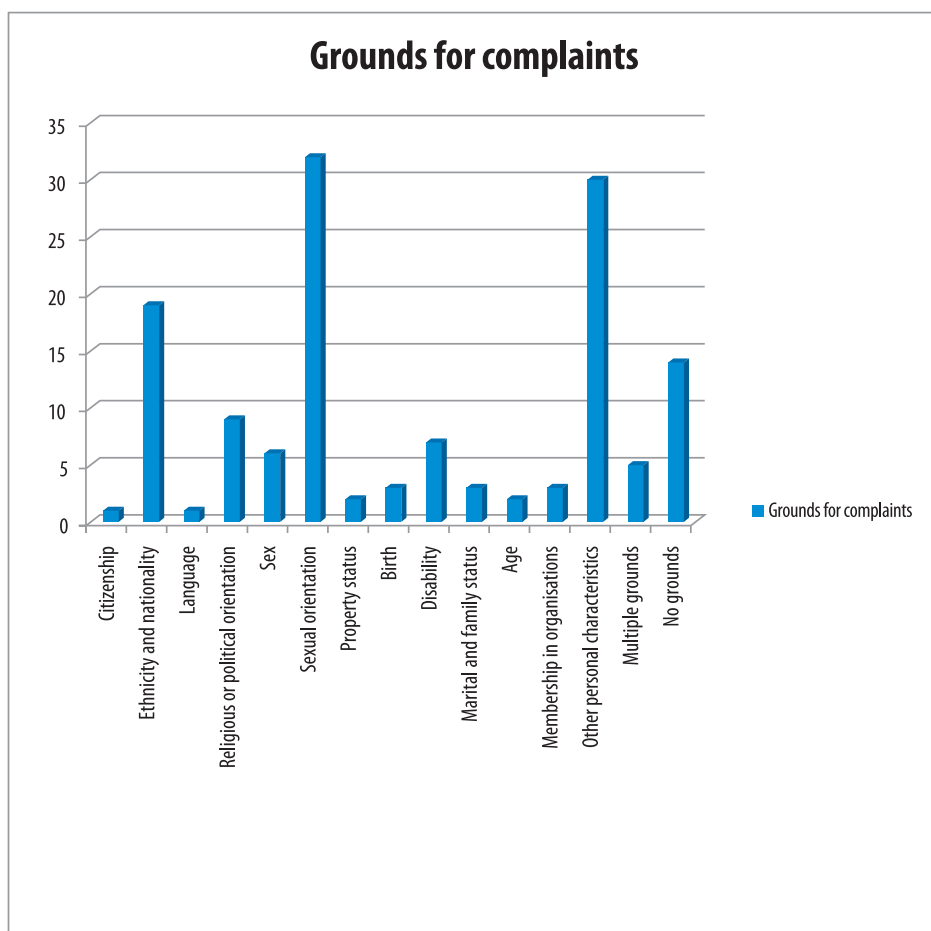
(1), religious communities (1) and other associations (3 complaints). Three complaints were filed by informal groups of citizens – lawyers, teachers of religion/catechism and taxi drivers.

3.3.3. Grounds for complaints

For the purpose of presenting statistics about the complaints on different grounds of discrimination, we will use the legally-determined grounds in the same order as in the Article 2, paragraph 1, point 1 of the Law on prohibition of discrimination. There were no complaints on the grounds of race, colour, origin/ancestors, gender identity, genetic characteristics, health conditions, prior conviction or appearance.

Majority of complaints were on the grounds of sexual orientation. It is, however, important to emphasize that all 32 complaints on the grounds of sexual orientation refer to four events and for one of the events, 28 complaints were filed (one by human rights non-governmental organization and 27 by individuals).

Based on statistics, the next ground for discrimination is national and ethnic origin (19 complaints). In the most cases, the complaints on discrimination on the grounds of nationality were those in which the applicant after describing the event just stated that they had been treated differently only because they are not part of the majority nationality. Majority of proceedings were ended by giving opinion that the discrimination had not been established. It should be taken into consideration that citizens of minority groups feel discriminated against in many areas of social relations and, on the other hand, many decisions made by the state or court



bodies that are not in favour of these citizens are seen as discrimination on the grounds of nationality even when such decisions are completely in accordance with the law.

In 2010, the procedure for adopting new *Rulebook on constitutive assembly of the National council of Bosnian national minority* was conducted on 6th July 2010 by the Ministry for human and minority rights. It is determined that there was unjustifiable difference in regard to conditions for constituting National council of Bosnian national minority in comparison to other national councils of national minorities and thus the principle of equality in fulfilling elective rights in the procedure for election of the national councils of national minorities was violated. The violation occurred by adoption of the new Rulebook on constituting assembly of the National council of Bosnian national minority on 6th July 2010. The Article 3, paragraph 7 of the Rulebook says that the constituting of the national

council needs verification of at least two-thirds of the mandate. This rule is not incorporated in rulebooks regulating the work of constitutive assemblies of other national councils of national minorities from 25th June 2010 by which all other national councils were constituted. By determining special condition only for constituting National council of Bosnian national minority, which gives unjustifiable difference in comparison to conditions for council constitution of other national minorities, the discrimination has been established and it is prohibited by the Article 21 and 76 of the Constitution of the Republic of Serbia (Official gazette of the Republic of Serbia, number 98/2006), Article 4 of Framework convention for the protection of national minorities (the Law on ratifying the Framework convention for the protection of national minorities, Official gazette of the Federal Republic of Yugoslavian – International treaties, number 6/98) and Article 4 of the Law on prohibiting discrimination (Official gazette of the Republic of Serbia, number 22/2009).

Five complaints have more than two grounds for discrimination. They were mostly sex (female – 4, male – 1) in combination with the disability, nationality or age.

Finally, 14 complaints did not have the grounds for discrimination. They were actually about violation of some other rights or cases completely without rights violations, but the applicant experiences the situation as the discrimination.

In determining the grounds for discrimination, it is important to take into consideration that complaint applicants frequently do not state the grounds for discrimination, the personal characteristic on which they were discriminated against, and sometimes applicants do not understand the essence of the grounds determined in the law. For example, there were complaints stating gender as the ground for discrimination while gender discrimination has been seen as the “birth place”⁸³.

It is also frequent that the applicants do not state personal characteristic because they believe that it is sufficient if someone treats them differently to others in some situation. For example, one applicant stated that he could not assume the ground for discrimination and said that the law also recognised and regulated “other real or assumed personal characteristics”.

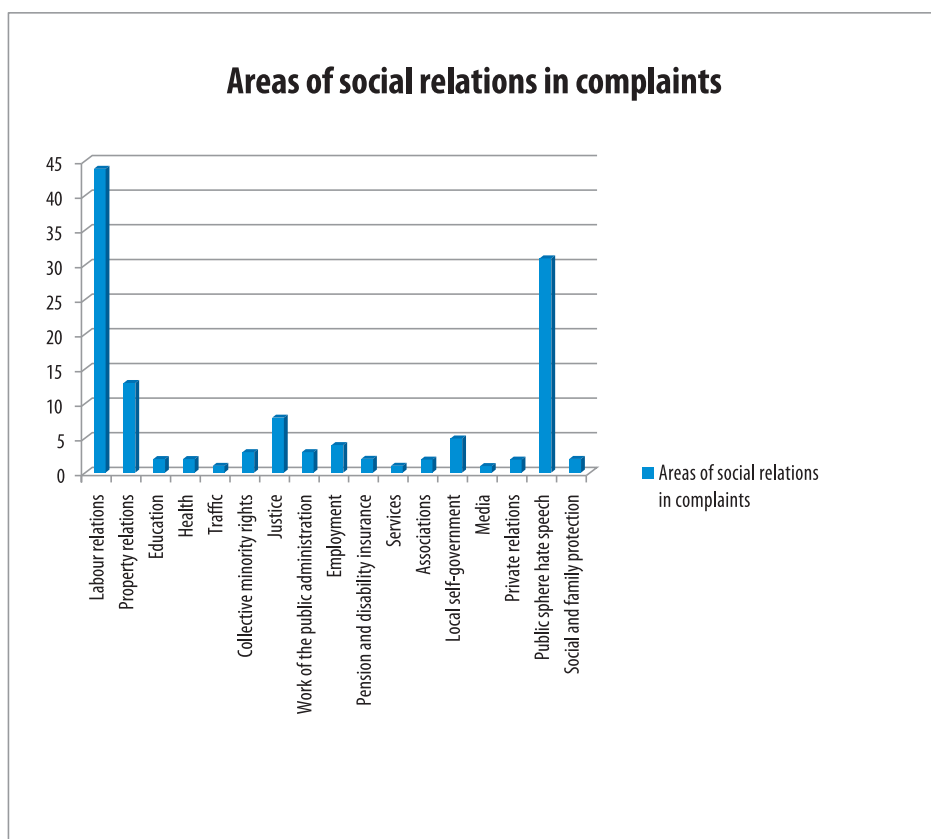
The Commissioner also received three complaints that were classified as discrimination on the ground of “birth” although they actually do not represented birth origin. In fact, all three complaints were filed by persons moved from Kosovo and Metohija and they regard that they were discriminated against in comparison to persons who were born and have lived on the territory of Serbian (without Kosovo and Metohija).

⁸³ NB by the translator: in Serbian language, term gender (**rod**) is a word similar to birth place (**rodno mesto**) and hence part of the confusion;

Although many personal characteristics are given as grounds for discrimination in the law, many complaints were classified as “other personal characteristics”. “Other personal characteristics” occur as grounds for discrimination in several complaints: pensioners who got part of the working experience in Bosnia and Herzegovina, judges for misdemeanour offenses who were not elected or did not get the income compensation, unemployed persons, the group of lawyers, pensioners of one commerce association who did not realised the right to registration of free stocks etc.

3.3.4. Areas of social relations in the complaints

Majority of complaints refer to labour relations (35.5%). If we add to them complaints in the area of employment, the number of complaints can indicate to serious social problems in this area. The number of complaints in this area is not surprising if we consider economic crisis, the unemployment rate, and redundancy from work, rationalisations in public administration, and other measures leading to firing of workers.



There were few complaints filed by unassigned civil clerks who gave different personal characteristics as the grounds for discrimination. In fact, the loss of job creates uncertainty, insecurity and helplessness and the persons who lost their jobs felt discriminated against and tried to find all possible ways for proving the employer's decisions were illegitimate in order to get back to work and continue providing necessary existence means.

One applicant claimed in his complaint that he had been discriminated on the grounds of his educational status – because he was a graduated economist. The job systematisation had been changed in the state administration where he had been employed and the sector he had been working at for many years was cancelled. He found in the old job systematisation a working post that would be appropriate for him, but since the changes had been made in other sectors too, the conditions for selected working post were changed – in the past, graduate economists and lawyers could be employed at the working post, but the new systematisation says that the working post can be done only by graduate lawyers.

The Commissioner also received a complaint filed by a woman civil clerk, who was also unassigned as a result of rationalisation and reducing the number of workers in the state administration. She believes that the reasons for being unassigned are her high competence and diligent work which bothers those who do not have the same competencies.

In the area of property relations, there were 13 complaints and eight of them referred to right to register free stocks. All eight complaints were filed by pensioners of one commerce body, but the proceeding established that there was no discrimination, but the different interpretation of the regulations on right to register free stocks.

Although it was mentioned above that the majority of complaints were for discrimination on the grounds of sexual orientation and that we received 32 complaints that were processed in four joint proceedings, it is important to state that three of those, that is 31 complaints, referred to hate speech in public field – printed and electronic media.

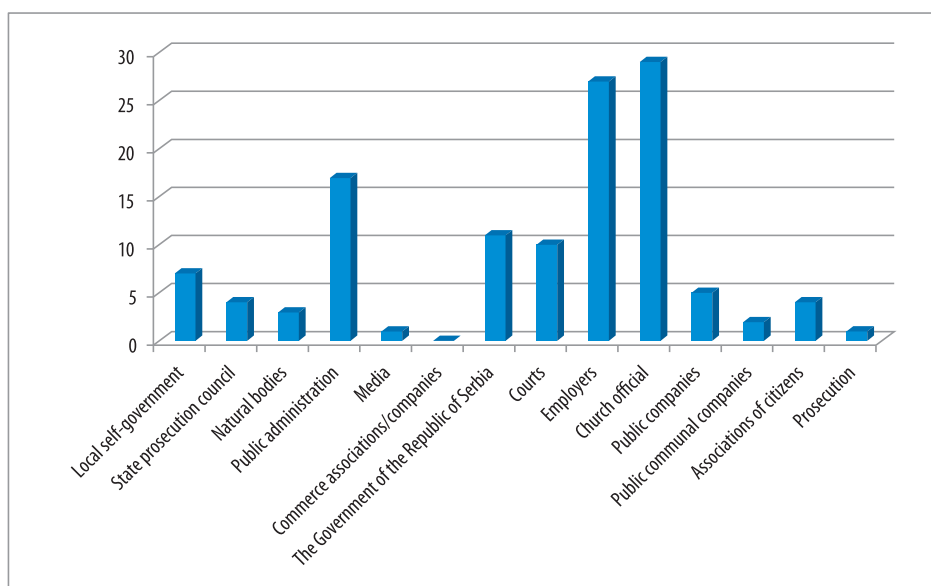
One of the complaints was filed against the text “Doctor for gays” whose author is Miroljub Petrovic PhD and it was published in daily newspaper “Alo”. The other complaint was against the student association “Nomokanon” which gave a release published on the association's website. The discrimination was established in both cases and the suitable recommendations were sent.

The hate speech is defined and prohibited in several laws (“It is forbidden to express ideas, information and thoughts that entice discrimination, hatred or violence against individuals or group of individuals on the basis of their personal characteristics, in public means

and other publications, at assemblies and public places, by writing or presenting messages or symbols and on other ways”, Article 11 of the Law on prohibition of discrimination). However, the impression is that the hate speech is widely tolerated in public and there are no adequate judgements which would gradually lead to raising awareness about intolerance towards and ban on hate speech.

The examples of portraying hate speech as expressing different opinions, that is characterising it as the right to freedom of speech, are frequent. Freedom of speech is undoubtedly one of the fundamental human rights, but it is not the absolute right. But, referring to freedom of speech as an excuse for hate speech is not acceptable, because it threatens rights and freedoms of others and there is no excuse for that. It is therefore important to punish hate speech in an adequate way and to use the media for raising public awareness about holding such behaviour unacceptable.

3.3.5. Against whom the complaints were filed



In the period covered by the report, 27 complaints were filed against employers. In 19 cases, the employers were state administration bodies, and in nine cases, the employers were companies. There were 11 complaints against the Government of the Republic of Serbia, but there were only two proceedings in these cases. Actually, 10 complaints referred to the conclusion of the Government of the Republic of Serbia

which stated that the judges, public prosecutors and deputy public prosecutors, who filed the complaint and constitutional complaint to the Constitutional court on the decision of the High Council of the court, acknowledge the right to extended income compensation until the final decision of the Constitutional court. The complaints were filed by judges for misdemeanour offenses who were not elected because the conclusion of the Government of the Republic of Serbia also referred to them. Beside these complaints, there were also four complaints against decisions brought by the State council of prosecutors.

There were 11 complaints filed against courts and prosecution offices. The common ground in majority of complaints against the courts is that they were filed by persons who lost the court procedure or were not completely successful in procedures and were unsatisfied with the judicial decisions, so they attempted to have more favourable decision by filing the complaint to the Commissioner. Not one of the proceedings established discrimination on any given ground.

Seven complaints were filed against the work of local self-government and they mostly refer to different permits and licences issued by the local self-government.

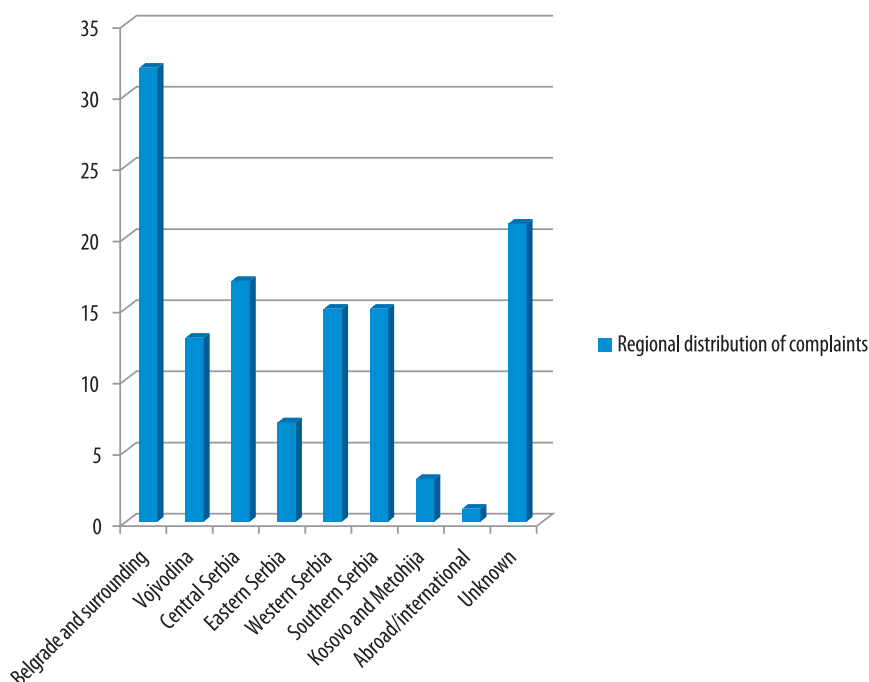
There were 29 complaints against church official, and it is important to state that all complaints referred to one person/church official.

Besides above-mentioned 19 complaints against the state bodies where they were the employers, there were also another 17 complaints. The state bodies are: the Ministry for human and minority rights, the Ministry of labour and social policy, the Ministry of finance, the Ministry of internal affairs, the Ministry of religion, the National employment service, Republic fund for pensions and disability insurance, Republic institution for health protection and Republic office for property.

3.3.6. Regional distribution of complaints

Majority of complaints were filed by persons living/with permanent address in Belgrade, and legal bodies having their main offices in Belgrade or surrounding municipalities (25.8%). This indicates to the fact that the institution of the Commissioner for Protection of Equality is most visible in Belgrade, which was also the situation with other independent bodies at the beginning of their work. The Commissioner and her associates will implement various activities in 2011 to make the institution more accessible, recognisable and visible on the territory of Serbia.

Regional distribution of complaints



3.3.7. Complaint proceedings

The complaint proceedings were difficult in the previous period for several reasons.

Firstly, two main regulations – Decision on establishing the Office of the Commissioner for Protection of Equality and the Rulebook on internal organisation and job systematisation in the Office of the Commissioner for Protection of Equality were given approval by the National Assembly of the Republic of Serbia at the end of November 2010. Therefore, until 13th December 2010, there was no staff employed in the Office of the Commissioner. The lack of personnel caused delay in complaint proceedings and there are several proceedings in which the legal deadline was not respected.

Secondly, the Commissioner for Protection of Equality is still a new institution, which is insufficiently visible to citizens, state bodies, institutions, companies etc. It was frequent that the bodies against which the complaint was filed did not send statement or sent it with a delay as to given deadline. The lack of statements is not a legal obstacle for the

Commissioner for give opinion or recommendation, but the prospects of opinion being objective are higher if both parties give statement about case circumstances. Having such circumstances in mind, on several occasions, we sent urgencies to the state bodies to give statements even after the deadline.

The duration of the proceedings is regulated by Article 39, paragraph 1 of the Law on prohibition of discrimination, which says that “the Commissioner gives opinion on whether there were violation of the law provisions in the 90 days period from lodging the complaint, and the Commissioner informs complaint applicant and person against whom the complaint was filed about it.” Majority of cases initiated before the Commissioner for Protection of Equality were finished in legal timeframe, while small number (10%) were finished with delay.

We hope that the mentioned obstacles will be overcome in 2011 when the institution of the Commissioner for Protection of Equality becomes more visible to the general public, when sufficient number of staff is employed in the Office and when premises and technical conditions for proper work are fulfilled.

3.3.8. Decisions given on complaints

For the purpose of better understanding of the statistics for decisions given on complaints, it is important to emphasise that Serbian citizens are not informed well about authorities of the Commissioner for Protection of Equality. The complaints submitted to the Commissioner related to violation of various rights, but the smallest number of complaints referred to violation of rights given in the Law on prohibition of discrimination. One of the reasons for such situation is that discrimination is still not fully comprehended by people although it is widely mentioned in public and private sphere. Therefore, it is not surprising that many submitted complaints were not in competencies of the Commissioner for Protection of Equality. In addition, there were also quite a few complaints submitted to the Commissioner for Protection of Equality and many other state bodies – authorised and non-authorised ministries, the Protector of Citizens, Commissioner for information of public importance and protection of personal data, Office of the President of the Republic of Serbia etc. It also witnesses about insufficient level of being informed about the role, authority and competencies of different bodies and regulatory bodies in Serbia.

The provision given in the Article 36 of the Law on prohibition of discrimination says: “The Commissioner shall take steps concerning a complaint unless proceedings pertaining to the matter in question have been initiated before a court of law or an enforceable decision has been passed. The Commissioner shall not take any steps concerning a complaint

if it is evident that no violation of rights pointed to by the person having lodged the complaint has actually occurred, if he/she has already taken steps concerning the same matter and no new evidence has been provided, and if he/she establishes that, in view of the time elapsed since the violation of rights in question, no useful purpose will be served by acting upon the complaint.”

The complaints in which the Commissioner did not act:

- Initiated proceeding before the court or enforceable court decision has been passed – 8
- There were no violation of rights – 38
- It is not possible to serve useful purpose because of the time elapsed – 1

These data show that the Commissioner did not act in 30.65% of complaints because the discrimination was not established, while in 6.45% of complaints the Commissioner did not act because the proceeding was initiated before the court.

The complaints in which the Commissioner acted:

- The proceeding was cancelled – 6
- The discrimination was not established – 26
- The discrimination was established – 4

The mediation was recommended in three cases in accordance with the Article 38 of the Law on prohibition of discrimination. In one case, the mediation was not accepted, and in other two cases the parties did not reach agreement by mediation, so the proceedings were continued before the Commissioner for Protection of Equality.

There were two mediation proceedings for expressing hatred, intolerance, threatening safety and expressing violence towards Roma in the village Jabuka, which followed after the tragic murder of a boy of Serbian nationality by Roma boy that occurred on 10th June 2010. With the consent of the Roma community representatives and other communities living in the village, during August, September and October, two mediation proceedings were conducted: one with adults and one with school students living in the village. The mediation with students gave results and contributed to improving their relationship, while the mediation between adult representatives of national communities did not give results so it was cancelled. With the aim of improving dialogue between national communities and setting conditions for mediation, the Commissioner held five meetings with representatives of the national communities and members of the Community council in the village Jabuka.

Article 35, paragraph 2 of the Law on prohibition of discrimination says that the evidence on discrimination act should be also submitted with the complaint. The proceeding was cancelled in six cases, because there were no evidences with the complaint, not even after the expiration of deadline given to the applicant by the Commissioner for Protection of Equality.

From total number of conducted proceedings in 2010 (83 complaints, that is 66.9%), discrimination was established in only four cases. Although we can easily conclude that the discrimination does not exist in Serbia, this data actually confirms previously expressed opinion that citizens are insufficiently informed about discrimination, whom to address in the event of discrimination, authority of the Commissioner for Protection of Equality, but it also proves insufficient visibility of the institution of the Commissioner for Protection of Equality.

Regarding the fact that many relevant researches show the prevalence of discrimination in Serbia, we plan to implement various activities in the next year with the aim of informing public about the institution in order to enable that the discrimination victims fulfil their right to equality protection in the proceedings before the Commissioner for Protection of Equality.

In relation to other complaints (41), the proceedings were initiated, but they were not finished in 2010.

It should be stated that no litigations were initiated in the period of previous eight months, because there were no capacities for initiating and conducting court proceedings. By establishing the Office and employing graduate lawyers, the conditions for the Commissioner to fully exercising its active authority in such litigations will be fulfilled. The litigations for protection against discrimination in strategically important cases will contribute to proper interpretation and consistent implementation of the law by the courts, and it will also lead to informing public about discrimination cases, encouraging victims to pursue judicial protection and to the continual changes in behaviour and eliminating discrimination.

In the previous period, there were no conditions for filing misdemeanour charges for acts incriminated by fine punishments defined in the antidiscrimination laws. This instrument for elimination of discrimination will be used in the next period to the maximum extent.

3.3.9. Recommendations given by the Commissioner

The Commissioner for Protection of Equality, besides giving opinion on established violation of the provisions given in the Law on prohibition of discrimination, also gives recommendation to the persons against whom the complaint is filed for the ways of redressing the rights violation, which

is regulated by the Article 39, paragraph 2 of the Law on prohibition of discrimination.

Discrimination was established in four cases, but five recommendations were given – there were two recommendations in one case, because the discrimination was done by natural body via media.

One recommendation applied to the Ministry for human and minority rights, which acted in accordance with the recommendation. In that way, the public got the clear message about mandatory acting on Commissioner's recommendation, which is very important for further work of the Commissioner, especially if we take into account that there are no enforceable mechanisms for recommendation implementation.

The deadline for acting upon recommendation and redressing the right violation is 30 days from receiving the recommendation. Three recommendations were given in December 2010 and the deadline for acting upon them is still active in the moment of writing this report.

3.4. Work on improving equality protection

Although the Commissioner's Office was not established, various activities were implemented in the previous period with the aim of preventing discrimination and improving equality protection. Accordingly, several general recommendations were issued to the state bodies and several public admonishments and releases, many lectures and presentations were given for raising public awareness about discrimination, informing public about international standards, solutions given in the antidiscrimination legislation, roles, competencies and authorities of the Commissioner and the complaint proceedings. In addition, the institution worked on establishing contacts and cooperation with non-governmental organisations.

3.4.1. Recommendation for equality fulfilment

With the aim of equality fulfilment and preventing discrimination, the Commissioner for protection of equality gave two general recommendations to the state bodies in previous seven months.

Regarding the discriminatory elements in announced public calls for employment, the Commissioner for protection of equality and the Province ombudsman gave joint recommendation to the National employment service on 15th July 2010:

1. In the process of announcing free working posts in the "Poslovi", newsletter of the National Employment Service, the prohibition of discrimination on the grounds of gender should be respected and it should be boldly stated that the working posts are available to men and women

except if the prospective difference, exclusion and giving priority to one sex is allowed because of the nature of the job or the job is done in such a condition that the sex represents real and conclusive condition and that the purpose could be justified in accordance with the Article 22 of the Law on labour.

2. The programmes of the National Employment service should encourage employments of less-employed sex, and all activities and contacts with employers should be educative about respecting legislation in the area of prohibition of discrimination and gender equality.

3. National Employment Service is obliged to submit information to the Province ombudsman and the Commissioner for protection of equality about the ways to implement this recommendation.

Regarding the situation of unequal treatment of persons with disabilities related to tax exemption for usage, holding and bearing goods, the Commissioner issued a recommendation, on the initiative of the Association of persons with dystrophy of the South Banat region, to the Ministry of finance on 9th December 2010:

The Commissioner for protection of equality has received the notice from the Association of persons with dystrophy of the South Banat region, which is annexed to the recommendation, in which the Association asks from the Commissioner for protection of equality support in solving the problem with the implementation of the Law on changes and additions to the Law on taxes for usage, holding and bearing goods (Official gazette of the Republic of Serbia, number 31/2009 from 30th April 2009) in the part of provisions regulating tax exemption for motor vehicle usage.

As you are well aware of, the Article 5 of this Law provisions that, under certain circumstances, certain categories of people with disabilities are exempt from this tax, who are in the law referred to as “military disabled persons, or civilian with disabilities suffered because of the war or workers with disabilities”.

It is evident that persons with disabilities have to use their own cars and adapted vehicles of their organisations, because the public transport is, unfortunately, inaccessible. On the other hand, the overall position of persons with disabilities is very difficult, and paying taxes for usage of the motor vehicles brings them to even more difficult position. Having in mind constitutional and legislative provisions about prohibition of all forms of direct or indirect discrimination (the Law on preventing discrimination against persons with disabilities, Official gazette of the Republic of Serbia, number 33/2006, and the Law on prohibition of discrimination, Official gazette of the Republic of Serbia, number 22/2009), there is a need for changing the tax exemption from paying tax on usage of motor vehicles and to be applied to other persons with physical disability, persons with sight impairment in order for them to have equal position in comparison

to categories of persons with disabilities stated in the law. Accordingly, it is necessary to make suitable changes in the law, so that the persons with disabilities can fulfil their rights under same conditions.

Since the law uses inadequate terminology – “disabled”, it is necessary to be changed and replaced with correct term – “persons with disabilities”.

Regarding both recommendations, the Commissioner received an answer that the above-mentioned institutions will act upon recommendations.

3.4.2 Public admonishments and releases

In the previous eight months, the Commissioner for protection of equality released several public admonishments and releases in the media regarding the current affairs and discrimination cases that led to public anxiety.

On 28th July 2010 in the event of conflict in the village Jabuka, the following public admonishment was issued:

The Commissioner for Protection of Equality, independent institution with the authority to act in the cases of discrimination, directly and intensively follows the events in the village Jabuka. It was established, in the direct communication with all the parties participating in the recent conflict in the village Jabuka that the current situation is stable and that since the ceasing of demonstrations, not one case of violating basic human rights of the inhabitants of Jabuka has been recorded, as well as no cases of violating the provisions of the Law on prohibition of discrimination. All parties in the conflict have been working on establishing constructive dialogue with the aim of preventing similar situations in the future with the special emphasis of situation among youth in this village.

We call non-governmental organisations to direct their acting in the village of Jabuka to supporting the process of building good community relations in the village and to help by constructive dialogue and participation of Jabuka inhabitants to strengthening local institutions in further improvement of life of all inhabitants.

On 12th September 2010 in the event of coming Pride parade, the Commissioner gave the following public admonishment:

In the event of holding the Pride parade, there are more and more statements by the officials in which this manifestation is condemned and open intolerance towards sexual minorities has been expressed. It is worrying that such statements are also given by some members of the National Parliament, who should be respecting the Constitution of the Republic of Serbia and its laws.

The Commissioner for protection of equality gives warning that the homophobic statements encourage and cause inequality, hatred and intolerance towards sexual minorities which represents a case of serious discrimination that is prohibited and punishable by law. After last-year experience, such statements can be extremely dangerous because they can justify and encourage violence towards participants of the Pride parade.

The Commissioner for protection of equality gives full support to the Pride parade in the conviction that it will show that the citizens of Serbia are tolerant and oriented towards building democratic society of genuine equality – a society in which everyone enjoy equal rights regardless of their sexual orientation. It is important for everybody and especially politicians and public officials, as well as authorised state bodies to contribute to holding this-year Pride parade in safe and secure environment.

On 15th September 2010, the Commissioner for protection of equality gave the public admonishment and invitation to employers to fulfil their obligation of employing persons with disabilities:

The provisions of the Law on employment and professional rehabilitation of persons with disabilities related to obligation of the employer to employ certain number of persons with disabilities in relation to overall number of workers were put into effect on 24th May 2010.

The Commissioner for protection of equality favours all activities that some employers took to fulfil their obligation and in the same time, the Commissioner calls every other employer who have not employed given number of persons with disabilities to do so in the following period.

Although new laws and strategies for improving position of persons with disabilities in Serbia were adopted, women and men with disabilities are still one of the mostly discriminated against group in our society, which is the result of long period of unequal treatment, prejudices and marginalisation in all areas of social life. Because of that, it is important for all of us to encourage the changes of attitudes towards persons with disabilities and to contribute to their full social inclusion.

The Commissioner for protection of equality call all employers to employ persons with disabilities because it will, besides fulfilling legal obligation, create important pre-conditions for improving the position of persons with disabilities and contribute to implementation of the constitutional principle of equality of all citizens of Serbia.

On 23rd December 2010, the Commissioner issued the following public admonishment about typical and frequent discrimination against women in the media:

The Commissioner for protection of equality warns public that the portraying of women in the media is frequently very inappropriate

and represents flagrant violation of the media obligation to respect and protect human dignity and gender equality. It is also completely contrary to the media obligation to raise awareness about gender equality in their programmes and take suitable measures to change social and cultural patterns, customs and any other practice that breeds stereotypes, prejudice and discrimination against women.

The Commissioner for protection of equality warns public on unacceptable discriminative portraying of women in the media and calls the media to respect legislation and professional standards and to contribute to general improvement of women's position by promoting the gender equality, equal opportunities and partnership between men and women both in the public policy sphere and private attitudes and behaviour.

On 1st October 2010, the Commissioner for protection of equality issued the following release regarding the International Day of Elders:

The Commissioner for protection of equality congratulates to elderly Serbian citizens the International Day of Elderly, which has been celebrated all around the world on 1st October in the previous twenty years. There are 1.200.000 persons older than 65 in Serbia, which makes one sixth of Serbia's overall population. The position of elderly is very difficult. Many of them live in poverty, at the edge of existence; they are exposed to discrimination, abuse and neglect.

The authorised bodies, institutions and organisations have to do everything in their power to ensure the equality of elderly people in Serbia, so that they live safe and dignified life, to live to an old age in better health and security as completely integrated and active participants in the community.

On 9th December 2010, regarding the International Human Rights Day, the Commissioner issued the following release:

The International human rights day is the reminder to acknowledge human rights defenders in Serbia, whose work has been valuable to all citizens of Serbia. In spite of the resistance, humiliation and harassment, human rights defenders have been consistently and diligently active on protection and improvement of human rights as universal values.

I expect that the state bodies confirm their orientation to human rights by preventing and efficiently process every attack on activists who monitor human rights realisation and provide support to victims of human rights violations. Therefore, I call the Government of Serbia to re-question its attitude about non-participating at this year ceremony of Nobel Peace Award to Liu Xiaobo, human rights and democracy defender in his country.

3.4.3 Lectures, presentations and participation at events

- Participation of the Commissioner at the round-table *Gender equality – the role of institutions*, held in Belgrade, on 20th May 2010 and organised by the Protector of Citizens as part of the TWINNING project;
- Speech of the Commissioner at the event “*LGBT Goes Public*” held on 9th July 2010 as part of the EXIT Festival organised by the Mission of OSCE in Serbia, EXIT Music festival and non-governmental organisation Civil pact for Southeast Europe;
- The lecture “*Commissioner for Protection of Equality and gender equality*” given by the Commissioner as part of the project Regional school for political leadership, on 2nd August 2010, Zlatar, organised by DAMAD from Novi Pazar;
- The speech given by the Commissioner at the opening of the travelling Festival about human rights, held in Nis on 14th September 2010 and organised by Vojvodjanka – Regional women initiative from Novi Sad;
- The speech given by the Commissioner at the public discussion “*Why is it important to walk together?*” which affirmatively presented the Pride parade; the discussion was held on 22nd September 2010 in Nis and it was organised by Alternative cultural centre and Gay Straight Alliance;
- The presentation given by the Commissioner “*The role of the Commissioner for Protection of Equality and relationship with NGOS – the plan for improving cooperation with civil society organisations in implementing the Law on prohibition of discrimination*” at the workshop “Implementation of antidiscrimination legislation in Serbia” held on 14th September 2010 in Belgrade and organised by European centre for Roma rights;
- The lecture “*Law on gender equality and the institution of the Commissioner for Protection of Equality*” given by the Commissioner at the two-day seminar “Building capacities of local institutions for adopting, implementing and promoting gender sensitive policies at local communities” held on Zlatar, on 2nd October 2010 and organised by association DAMAD from Novi Pazar;
- Presentation “*The Role and authority of the Commissioner for Protection of Equality*” given by the Commissioner’s representatives at the Conference of ombudsman about gender equality held from 7th to 9th October 2010 at Fruska gora; jointly organised by the Protector of Citizens and the Province Ombudsman;

- The presentation *“The Commissioner for Protection of Equality: the status, tasks, authority, internal organisation”* held by the Commissioner to the Council for gender equality of the National Parliament on 26th October 2010;
- Participation of the Commissioner at the working group for preparing *the Guideline for delivering training for judges and public prosecutors about the Law on prohibiting discrimination* organised by the Judicial Academy in October 2010;
- The lecture *“Protection of the elders from the discrimination – the role of the Commissioner for Protection of Equality”* given by the Commissioner at the conference “Development as life-long process – needs, problems and support to elderly” held in Niska Banja on 28th October 2010 and organised by the Centre for social work “St Sava” in Nis.
- The lecture *“The Law on prohibition of discrimination and the role of the Commissioner for Protection of Equality”* given by the Commissioner to the group of young future human rights defenders on 5th November 2010, organised by the Youth initiative for human rights;
- Participation of the Commissioner at the event *“Presentation of the Draft national action plan for implementation of the Resolution 1325 of the UN Security Council – Women, peace and security in the Republic of Serbia”* held on 16th November 2010 in the National Parliament of the Republic of Serbia and jointly organised by the Serbian Ministry of defence and the OSCE Mission to Serbia;
- Participation of the Commissioner at the conference *Antidiscrimination in Serbia – current situation and perspectives* held on 18th November 2010 in Belgrade as part of the project “Support to implementation of the antidiscrimination legislation and mediation in Serbia” organised by the Ministry of labour and social policy with the support of the UNDP;
- The presentation *“Commissioner for Protection of Equality status, authority, internal organisation, results, challenges”* given by the Commissioner on 29th October 2010 in Zrenjanin and organised by the Belgrade Fund for Political Excellence;
- Participation of the Commissioner at the event Regional Forum for dialogue and cooperation held on 30th November 2010 in Novi Pazar and organised by the association DAMAD from Novi Pazar;
- Participation of the Commissioner’s representation and the Public hearing *“Fulfilled promises – the implementation of the*

UN Convention on the Rights of Persons with Disabilities in practice” held on 2nd December 2010 and organised by Council for work, veteran and social rights regarding the celebration of 3rd December – International day of rights of persons with disabilities;

- Participation of the Commissioner at the round-table conference *“Needs for gender and ethnic budget allocations in the city of Nis, challenges and political new practices”* held on 2nd December 2010 in Nis and organised by the Roma organisation “Zenski proctor” from Nis;
- Presentation *“The role of the independent monitoring bodies in organising civil society in monitoring the implementation of the Law on gender equality”* given by the Commissioner at the round-table conference *“Implementation of the Law on gender equality in the Republic of Serbia”* held on 12th December 2010 in the Palace of Serbia and organised by the OSCE Mission to Serbia;
- Participation of the Commissioner and her associate at the seminar *“Prohibition of discrimination against Roma and the problem of legally invisible persons”* held on 14th December 2010 and organised by the Centre for Advancing Legal Studies , AIRE Centre from London and PRAXIS;
- Participation of the Commissioner’s representatives at the consultative meeting related to the draft *Report on social inclusion and poverty reduction 2008-2010* on the topic: *Human rights and social participation* held on 27th December 2010 in Belgrade and organised by the Team for social inclusion and poverty reduction;

4 | COOPERATION

In the previous eight months, numerous activities were implemented in establishing cooperation with the independent bodies for equality in the European Union and the region. These activities were financed by the project “Support to implementation of the antidiscrimination legislation and mediation in Serbia” which was implemented by the Ministry of labour and social policy with the support of the UNDP.

In addition, many activities were held on establishing cooperation with state bodies and civil society organisation. The contacts were established and we talked about prospective ways of cooperating with the Protector of the Citizens and the Province Ombudsman.

4.1 International cooperation

In the period from 1st to 3rd September 2010, the Commissioner for protection of equality and associates and other colleagues from other state institutions visited Holland and Belgium body for protection from discrimination. The study-visit was organised by the United National Development Programme (UNDP). Special attention was paid to the complaint proceedings conducted by these bodies, their mandate, authorities and competencies. Regarding the recent establishment of the Commissioner’s Office, such experiences have been valuable because they provide opportunity to learn from similar bodies that have been working for many years. On this occasion, we visited the Secretariat of the EQUINET –European Network for Equality. In addition, we visited the department of the European Commission authorised, besides other duties, for inclusion and antidiscrimination.

On 22nd October 2010, the Commissioner and her associate participated at the Regional meeting of the representatives of human rights protection bodies, which was held in Crikvenica in the Republic of Croatia. The meeting gathered representatives of the ombudspersons and equality bodies from South East Europe. The Commissioner presented newly-formed body for equality protection and emphasised the importance of such meetings which support to independent bodies of the similar mandate to exchange experiences and establish common practice in solving the citizens’ problems regarding the equality fulfilment.

In the period from 7th to 9th October 2010, the Commissioner participated at the first international congress on mediation and restorative justice held in Lisbon and organised by the Portuguese Ministry of justice

and the Centre for administration and public policy. The objective of the congress was to promote contemporary knowledge and exchange of information about mediation and peaceful conflict resolution. The part of the congress addressing the mediation in the cases of discrimination was exceptionally important, because such experiences are necessary for the efficient work of the Commissioner for Protection of Equality and its Service.

In period from 7th to 8th November 2010, the Commissioner for protection of equality and her associates visited the Commission for protection from Discrimination of the Republic of Bulgaria, which works on protection from discrimination. The study-visit was organised by the United National Development Programme (UNDP). The delegation members were introduced to the organisation of the Bulgarian body for equality, the complaint proceedings methodology, database for submitted complaints and the experience of six-year long work of this body which was established when the general antidiscrimination law was adopted in Bulgaria. The delegation members had a chance to directly follow quasi-judicial proceedings conducted by this body, in which both parties in the procedure are being heard and other evidences are given with the aim of establishing facts.

The Commissioner for protection of equality participated in the work of the Assembly of the European Network for Equality (EQUINET), which gathers 33 independent institutions for the protection of discrimination – institutions from 28 European countries. On 16th November 2010, by the unanimous decision of this body, the Commissioner for Protection of Equality of the Republic of Serbia became the full member of this distinguished organisation. On that occasion, the Commissioner stressed out the importance of strengthening cooperation with independent European bodies for protection from discrimination and she expressed confidence that the full membership will provide that the Commissioner for Protection of Equality apply experiences from other independent equality bodies and it will also open new perspectives in combating discrimination in Serbia.

In the period between 28th and 29th November 2010, the Commissioner for protection of equality and her associates visited Swedish body for protection from discrimination, Swedish ombudsperson and the Ministry of labour. The study-visit was organised by the OSCE Mission to Serbia. In addition, there was a meeting with the representatives of non-governmental organisations working on improving the legal and social position of Roma and refugees as highly vulnerable groups. The delegation members were presented the work and acting of the Swedish equality body, which recently became unique by joining four different bodies for protection of equality on various grounds. The work and results of the Swedish ombudsperson, the oldest institution of this kind in the world was also presented.

The representative of the Commissioner participated in the work of non-formal constitutive meeting for preparation of the Common programme of the European Union and the Council of Europe on minority rights at Western Balkans – “Western Balkan network of national bodies for minority protection” – which was held in Becici in Montenegro on 7th December 2010. The meeting was organised by the Secretariat of the Council of Europe – General directorate for human rights and legal issues, democracy and political issues.

In the previous period, the Commissioner met with many international officials: the Ambassador of Australia, the Ambassador of OSCE Mission to Serbia, representative of the European Commission etc.

4.2. Cooperation with the state bodies

In the previous period, the Commissioner for Protection of Equality made contacts with the representatives of the Ministry for human and minority rights and we talked about implementation of the IPA projects that includes also activities for building capacities of the Commissioner.

On 16th September 2010, the Ministry of Justice organised a meeting with the subject of creating and developing database for solving disputes in Serbia in an alternative ways and the Commissioner for protection of equality participated at the meeting. The meeting objective was to determine the principles of forming, improving the system and promoting the methods of alternative disputes solutions and creation of database which should be the key mechanism for collecting data in this area.

The Commissioner established contact with the Ministry of Education regarding the initiative for integrating topics about human rights, non-discrimination, tolerance, non-violence, gender equality, accepting diversities etc in the curriculum and educational materials in accordance with the principles of inclusive education. The Minister of education and his associates, the Commissioner for protection of equality and representatives of non-governmental organisations held a meeting on 21st December 2010 and talked about operationalisation of integrating relevant topics into the curriculum and the ways of eliminating discriminatory practice from the curriculum.

The Commissioner also established contact with the Committee for applications and proposals of the National Assembly of the Republic of Serbia. The meeting was with the representatives of the Committee was held on 19th October 2010 and we talked about prospective models of cooperation and informing Committee members with the work of the Commissioner institution.

On the 1st December 2010, the Commissioner held a meeting with the Manager of the Team for social inclusion and poverty reduction and

his associates when we exchanged information about current activities and plans of both institutions.

4.3. Cooperation with the civil society organisations

The Commissioner for Protection of Equality being the independent body has initiated the cooperation with the representatives of the civil society organisations which have been recognised as partners in protection from discrimination and improving equality.

With the aim of establishing cooperation with the civil society organisations, the Commissioner for protection of equality organised a meeting on 3rd November 2010 with 50 representative of non-governmental organisation working in the area of human rights and prevention of discrimination. The meeting was held in the Club of MPs in Belgrade. The Commissioner presented the ways of acting in the cases of discrimination and achieved results, while the representative of non-governmental organisations stressed the key problems they were faced with in preventing discrimination and protection of rights and equality of vulnerable and marginalised social groups, such as children and youth, elderly, women, Roma, persons with disabilities, refugees and internally-displaced persons and LGBT population. The Commissioner paid respect to civil society organisations for diligent and persistent work on building antidiscrimination legislation and protection of discriminated persons, as well as to activities implemented on improving equality. She also emphasised that further on one of the priorities of the Commissioner would be cooperation with the civil society organisations.

On 17th December 2010, the Commissioner for protection of equality held a meeting with eleven representatives of seven non-governmental organisations joined in the Coalition against Discrimination. On this occasion, the NGO representatives were informed about the progress in establishing the Commissioner's Office and they were invited to contribute with proposals and suggestions to cooperation in the following year, so that the capacities of the Commissioner for Protection of Equality could be used in a best possible way. The representatives of the Coalition stressed the problems particular groups are faced with on a daily basis and emphasised the importance of quick reactions to serious and typical cases of discrimination. As a result of the meeting, we jointly established the platform for future cooperation.

On 12th November 2010, the Commissioner held a meeting with four representatives of non-governmental organisations Gayten LGBT and Gay Straight Alliance, when we talked about initiative for integrating the contents that contribute to adopting cultural models of social behaviour into the curriculum which is necessary for long-term and systematic building of the inclusive education. This initiative was widened, so on

31st December 2010, the Commissioner formed a working group made of representatives of NGOs dealing with rights of vulnerable social groups and inclusive education. The working group task is to collect, analyse and summarise results on the curriculum researches, text books and other educational material for primary and secondary school until the 31st March 2011 and based on that prepare the proposal for recommendation about incorporating relevant topics of human rights, non-discrimination, tolerance, non-violence, equality, accepting diversity etc into the curriculum and text books in accordance with the inclusive education principles.

The Commissioner established contact with various non-governmental organisations, such as DAMAD from Novi Pazar, Zenski prostor from Nis, Centre for independent living of persons with disabilities, Victimology association of Serbia, Gayten-LGBT, Gay Straight Alliance, Youth initiative for human rights etc.

On the invitation of various NGOs, the Commissioner held many lectures and presentations about the work of the Commissioner for Protection of Equality and participated at meetings and event, which are presented in the section *Work on improving equality protection – Lectures, presentations and participation at events*.

The Commissioner participated at the event of the Pride parade and together with representatives of other state bodies and international organisations supported the realisation of right of LGBT persons to peaceful assembly.

In the previous period, the Commissioner established contact with the National council of Roma national minority. At the meeting held on 13th October 2010, the prospective ways of cooperation between the Commissioner and the National council were determined.

4.4 Media coverage

When the first Commissioner for protection of equality was elected in May 2010, the institution of the Commissioner for Protection of Equality was practically unfamiliar to majority of citizens, and the general public did not know its authorities and competencies. Therefore, one of the important tasks was media presentation of the institution.

In the first three months of work, the printed media (daily newspapers “Danas”, “Politika”, “Blic”, “Pres”, “Glas javnosti”, “Gradjanski”, “Magyar so”) printed interviews with the Commissioner and the emphasis was on the role and authority of the newly-established institution, its ways of acting and complaint proceedings. The Commissioner participated at over 15 TV and radio programmes at national and local TV and radio stations, in which she talked about discrimination and the institution of the Commissioner for Protection of Equality. The fact that the media are inevitable cooperates

in combating discrimination is proved by the increase of complaints submitted by citizens every day.

The Commissioner sent printed releases to printed and electronic media and indicated to the cases of discrimination in various areas of social life by reminding the public about importance of respecting diversity and tolerance as the imperatives of our society developments. She also appealed to the authorities to enable realisation of human rights and freedoms to all citizens without any discrimination or limitations.

At the very beginning of the Commissioner's mandate, the media were mostly interested in presenting the role of the Commissioner and concrete discrimination cases, so accordingly, they mostly focused on discrimination in employment by pinpointing that the most vulnerable in our society are Roma, persons with disabilities and LGBT persons.

Several concrete public warning and reactions by the Commissioner got the most media attention and coverage. Situation regarding the constituting of the National council of Bosnian national minority was followed by all printed and electronic media in Serbia. Therefore, all media houses published or broadcasted the Commissioner's opinion in prime times or on front pages. The other case that was very interested to the media were protests, violence and speech hate towards Roma in the village Jabuka nearby Pancevo which happened after the murder of the minor in mid June 2010. The media reported about Commissioner's activities including her visits and conversations with the inhabitants of Jabuka and involvement of mediators for establishing good relations between inhabitants of this village.

Regarding the text published in daily newspaper "Kurir" on 2nd December 2010 under the title "Snezo, you have a good leg", the Commissioner for protection of equality conducted the procedure for establishing how the women are presented in the media. It was determined that the media are led by sensationalism and that they have discriminatory attitude towards women. This was also the reason for several media to deal with this issue in a more analytical way.

Furthermore, the Commissioner was given a space for comments in the columns of the daily newspaper "Blic". Once a month, on the page "VIP comments", the Commissioner's texts about discrimination of particularly vulnerable groups are being published. The first text, published on 3rd December 2010, dealt with the discrimination against persons with disabilities in the employment area.

The Commissioner for protection of equality tried to answer media demands and inform public about authorities of the Commissioner Institution, implemented activities, problems in work etc. The Commissioner for protection of equality will continue to establish good cooperation with the media with the aim of more quality presentation of

its activities to the general public, but also the cases of discrimination since the citizens of Serbia are insufficiently informed about the discrimination or the area where it is most prevalent. In this area, the Commissioner is yet to establish full and active cooperation with all the media and the good communication will be continued.

In the same time, the website www.ravnopravnost.gov.rs is carefully created and functional. In the following period, it will be updated with new information and texts. The journalists and the public have the opportunity to be informed about normative framework for protection against discrimination and all activities implemented by the Commissioner, while the citizens also have the opportunity to file their complaint by emails by downloading the application from the website.

5 | OTHER ACTIVITIES

In the previous period, the Commissioner for Protection of Equality was involved in the preparation of the projects which implementation should provide building capacities of the Office, promotion of the institution, elimination of the discrimination and ensuring necessary normative, staff and other conditions for wider implementation of the mediation. For the purpose of more successful project preparation, the Commissioner held several meetings with the representatives of UNIFEM, OSCE, UNDP, Office for European integration, the Ministry for human and minority rights, Team for social inclusion and poverty reduction and other organisation.

The Commissioner was involved in formulating the answers to the Questionnaire of the EU in the chapter *Political criteria and Judiciary and fundamental rights*.

The website of the Commissioner was prepared in cooperation with the experts in the Administration for Common Services of the Republic Bodies and the creation of the software for making unique database has started. With the financial support from the UNDP, the logo and appropriate promotional material was created.

6 | CONDUCTING DUTIES IN ACCORDANCE WITH THE LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

In accordance with the Law on free access to information of public importance⁸⁴, the Commissioner for protection of equality appointed the persons responsible for acting upon demands by citizens. So far, we have not had any demands for access to information of public importance.

⁸⁴ Official gazette of the Republic of Serbia, number 120/2004, 54/2007, 104/2009, 36/2010;

In accordance with the Guideline for creation and publishing the Information booklet on work of the state body⁸⁵, at the end of 2010, we created the Information booklet on work of the Commissioner for Protection of Equality which gives all relevant data in accordance with the guideline. This document is available at the internet link (in Serbian language):

<http://www.ravnopravnost.gov.rs/cirilica/informatorRada.php?idKat=10>

⁸⁵ Official gazette of the Republic of Serbia, number 68/2010 from 21st September 2010;

REPORT ON THE IMPLEMENTATION OF THE FINANCIAL PLAN FOR THE PERIOD FROM 5th MAY TO 31st DECEMBER 2010

For the period from 5th May to 31st December 2010, the report on incomes and expenditures for the Commissioner for Protection of Equality, part 52, function 160, registration number 17792440, VAT number 106685266, the code 75110:

Incomes:

	Title account	Financial Law on budget (107/2009)	Budget funds Law on budget 2010	Budget funds Rebalance 2010	EXECUTION 2010
0	1	2	3	4	5
1.	791100	Incomes from the budget	39.336.000,00	39.336.000,00	19.154.467,75
		TOTAL INCOMES	39.336.000,00		

The executed expenditures for basic allocations and in accordance with the economic classifications in comparison to planned executions have been realised in the following relations:

Function	Economical class.	Description	Budget funds the Budget law 2010	The budget funds Rebalance 2010	Budget execution in RSD	Budget execution in %
133	1	2	3	4	5	6
1.	411	Salaries, additions, fees of the staff	11.384.000,00	11.384.000,00	0	0

2.	412	Social contributions to salaries obliged to the employer	1.181.000,00	1.181.000,00	0	0
3.	414	Social benefits to the employees	120.000,00	120.000,00	0	0
4.	415	Fees for employees	150.000,00	150.000,00	0	0
5.	416	Awards/ contributions to employees	1.000,00	1.000,00	0	0
6.	421	Fixed costs	3.750.000,00	1.250.000,00	440.446,49	35,24
7.	422	Travel costs	2.250.000,00	750.000,00	288.427,64	38,46
8.	423	Services on contractual basis	7.500.000,00	3.500.000,00	4.637.366,30	132,50
9.	425	Running maintenance and repairs	500.000,00	500.000,00	341.942,00	68,39
10.	426	Material	3.000.000,00	1.000.000,00	1.000.000,00	100,00
11.	482	Taxes, mandatory taxes and fines	1.500.000,00	0	0	0
12.	511	Building and construction objects		11.500.000,00	5.796514,68	50,40
13.	512	Machines and equipment	8.000.000,00	8.000.000,00	6.649.770,64	83,12
		TOTAL EXPENDITURE	39.336.000,00	39.336.000,00	19.154.467,75	48,69

RECEIVED INCOMES..... 39.336.000,00 RSD

EXPENDITURES..... 19.154.467,75 RSD

All funds were planned and spent in accordance with the authorities, rights and obligations of the Commissioner for Protection of Equality and with the aim of legal, efficient and economic spending of the funds by taking into regard previous experiences of other independent institutions.

- Moving into renovated premises in Beogradska Street in Belgrade in March 2011;
- Finishing the public call for employing 25 persons in accordance with the approved funds for 2011;
- Work on complaints submitted by citizens
- Forming electronic database
- Giving public admonishments about most frequent, typical and serious forms of discrimination;
- Giving recommendations for equality fulfilment to the public authorities and other bodies
- Public awareness campaign in the inner part of Serbia and other media appearances which will inform civil society organisations, the media and citizens about the work and acting of the Commissioner for Protection of Equality.
- Monitoring the implementation of the laws and by-laws, initiating adoption of new or changes of the current laws and giving opinion about provisions in the draft laws regarding the prohibition of discrimination with the aim of fulfilling and improving protection against discrimination;
- Establishing cooperation with other independent bodies, state authorities and other policy-makers in Serbia;
- Establishing contacts and developing various types of cooperation with similar bodies in the region and Europe;
- Active participation in the EQUINET – European Network for Equality
- Active participation in the programming of the European Union support via IPA and other funds, and cooperation with international organisations with the aim of improving work of the Commissioner for Protection of Equality;

9 | GENERAL RECOMMENDATION

In this first report, it was not possible to give concrete recommendations for improving protection against discrimination and equality fulfilment, because the initial eight-month working period did not provide opportunities for the Commissioner for Protection of Equality to achieve holistic and systematic insight into the real situation. However, based on collected facts and seeing the key problems in equality fulfilment, it is possible to formulate several general recommendations which will show the priority areas for acting of the authorised bodies and institutions. The following are the general recommendations:

1. Starting without delay the formulation of the instruments for implementing special (affirmative) measures with the aim of achieving actual equality of deprived social groups which are in inadequate position comparing to other citizens. It is also necessary to set condition for effective realisation of rights and freedoms without any form of indirect or direct discrimination, which includes the operationalisation of special measures, their implementation, continual monitoring of the implementation and achieved effects and, if necessary, introduction of new measures.

2. Ensuring as soon as possible quality training of the judges, public prosecutors and lawyers in the area of protection against discrimination and that will enable them to have better understanding of the essence and consequences of direct and indirect discrimination, information about international standards and practice of international judicial institutions in the area of protection against discrimination in order for them to be enabled for proper implementation of antidiscrimination legislation by demonstrating in their work zero tolerance towards any form of discrimination.

3. Take all necessary measures for providing adequate access to justice to victims of discrimination, which also includes providing quality legal aid, free or with reduced costs if the victims of discrimination is unable to pay or of the legal aid provisions are necessary for justice reasons;

4. Integrate into curriculum, textbooks and other educational material topics that will develop the peace culture, tolerance, understanding diversity, gender equality and non-discrimination in order to alleviate stereotypes and prejudices, prevent discriminatory practice and achieve the goals of inclusive education;

5. Being efficient in preventing promotion of hate speech, violence, intolerance and discriminatory attitudes in the media and ensuring that the media are the lead promoters of equality and non-discrimination and to contribute to changes of social and cultural patterns and customs that support stereotypes and prejudices toward particular social groups;

6. In order for the Commissioner for Protection of Equality to successfully fulfil its authorities and legal duty and give opinion on provisions of draft laws and by-laws regarding the discrimination, it is necessary also to be informed with draft laws and by-laws, which means that the authorised bodies send the texts of draft laws and their justifications and comments in due time to the Commissioner;

7. Providing as soon as possible appropriate premises for the work of the institution of the Commissioner for Protection of Equality, which will provide accessible to persons with disabilities also, and adequate conditions for work and development of the Commissioner's Office to the full potential.

Number 208/2011

Belgrade, 10th March 2011

The Commissioner for protection of equality

Nevena Petrusic, PhD

Annex: Organisational structure of the Commissioner's Office

