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FOR PROTECTION
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Abridged Version of the 2018 Regular Annual Report of the Commissioner for the Protection of Equality

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FOREWORD

Esteemed Members of the National Assembly,

Dear readers,

Before you is the ninth regular Report of the Commissioner for the Protection of Equality of the Republic of Serbia, coming after another year of continual and intensive work in accordance with the mandate and powers conferred on us under the Law on the Prohibition of Discrimination. In the period behind us, we have continued providing protection against discrimination to citizens and promoting observance of the principle of equality through a wide range of different activities.

In 2018, the Commissioner acted in 1407 cases, which was an increase relative to the previous year. This increase can be attributed to the complaints filed as a result of application of provisions of the Law on Financial Support to Families with Children, as well as the complaints filed by a civil society organisation regarding accessibility of facilities and services to persons with disabilities. In addition to acting upon complaints, the Commissioner, in accordance with her powers, issued 300 recommended measures for achieving equality and filed four proposals for a review of constitutionality and legality, three criminal charges, one anti-discrimination lawsuit and one misdemeanour charge.

Most of the complaints received this year – more than a quarter of the total number – were filed against discrimination on the grounds of disability. The second most frequent reason for complaints was discrimination on the grounds of age, which accounted for 16.5% of the total number, while one in ten complaints related to gender-based discrimination, which was the third most common reason for discrimination. These were followed by complaints against discrimination on the grounds of birth, health status, national affiliation and ethnic origin, civil and family status and sexual orientation, while complaints against discrimination on other grounds were less common.

As regards areas of discrimination, this year most of the complaints related to provision of public services or use of public facilities and areas, which accounted for nearly a third of all complaints. The area of labour and employment was second, accounting for slightly more than 20%. Other common areas of discrimination include procedures before public authorities, social welfare and public information and the media.

To review the situation regarding protection from discrimination and achievement of equality, in 2018 the Commissioner conducted two surveys: *Treatment of Discrimination by the Media in Serbia* and *Treatment of Discrimination by Representatives of Public Authorities in Serbia*. The data obtained from these surveys are relevant not only for the work of this institution, but also for various social stakeholders involved in the making and implementation of public policies.

In the past year, the Commissioner also published two guides to promote protection of citizens from discrimination in Serbian society: *Guide on Implementation of Anti-Discrimination Legislation* and *Guide for Conducting Situation Testing*.

The award Municipality/City of *Equal Opportunities* has been established to promote good practice examples and encourage local self-governments to develop and implement various affirmative policies in order to improve equality, and thus also the quality of life of their citizens, and create better and more equitable living conditions in local communities. Cooperation with the media, as key partners, has continued and the traditional media tolerance awards were presented for the fourth time at the Commissioner's conference held to mark the International Day for Tolerance. This time, the theme of the event was the role and importance of the media in promoting and improving equality in Serbian society.

During the past year, the Commissioner held various trainings, workshops and lectures on recognising and responding to discrimination, which covered police officers, labour inspectors and representatives of local self-governments, the media and civil society organisations. There were also seminars addressing civil law protection against discrimination for judges of all four courts of appeals.

In summary, we have continued with the proactive approach through the numerous activities in 2018, aiming to provide even more efficient protection against discrimination in the future, and we continually strive to promote equality, firm in the belief that we will contribute to a society based on tolerance, equality and respect for human rights of all our citizens.

Brankica Janković
Commissioner for the Protection of Equality

1. Current Situation Regarding Exercise And Protection Of Equality

The Commissioner for the Protection of Equality is a stand-alone state authority established by the Law on the Prohibition of Discrimination¹, who independently and autonomously performs his/her duties under the law. The Commissioner has a wide mandate, which makes him/her the central national authority specialised in protecting citizens against discrimination and promoting equality. One of the Commissioner's core powers is acting on discrimination complaints. In addition to acting pursuant to complaints, the Commissioner also provides information to complainants about ways to protect their rights; the Commissioner is authorised to promote mediation and files anti-discrimination lawsuits (strategic lawsuits) in the public interest; he/she files misdemeanour and criminal charges, warns the public about the most common, typical and serious cases of discrimination and recommends measures. In addition, the Commissioner monitors compliance with laws and other regulations pertaining to protection against discrimination, issues opinions on draft laws and other regulations and initiates the passing of new legislation or amendments to existing legislation within his/her purview.

The Commissioner submits annual reports on the current state of equality protection to the National Assembly of the Republic of Serbia. The 2018 Regular Annual Report was submitted on 15 March 2019.

In the course of 2018, the Commissioner acted in 1,407 cases. There were 947 complaints filed with the Commissioner this year. In addition to acting pursuant to citizens' complaints, the Commissioner, acting within his powers and based on anti-discrimination legislation, issued 300 recommendations for measures to achieve equality; mediation (reconciliation) procedures were recommended in 88 cases; the Commissioner filed one anti-discrimination lawsuit and four proposals for a review of constitutionality and legality to the Constitutional Court, three criminal charges and one misdemeanour charge. In the course of 2018, the Constitutional Court ruled pursuant to the Commissioner's proposal for a review of constitutionality and legality that the Decision on Coefficients of the public transport utility JKP GSP Beograd was not compliant with the Constitution and laws. In 2018, the Commissioner also issued nine initiatives for amendments to legislation, as well as 37 opinions on draft laws and other general acts. The Commissioner also issued 17 public warnings and 24 public announcements. Opinions were passed in the proceedings pursuant to 115 complaints; of those, the opinions pursuant to 81 complaints found violations of the Law on the Protection from Discrimination and proposed relevant measures; in six cases, no violations of the Law were found, but measures for achieving equality were nevertheless recommended, while in 28 the Commissioner found no violations of the Law on the Protection from Discrimination. The Commissioner's recommendations were implemented

¹ *Official Gazette of the Republic of Serbia* No. 22/09

in 61 cases (78.2%), while in 17 cases (21.8%) they were not implemented and in three cases the final dates for compliance with the recommendations have not yet expired. In 46 cases, the Commissioner issued opinions which found discrimination against a group of persons (persons with disabilities, women, members of the Roma national minority, LGBT persons, refugees, migrants, asylum-seekers and internally displaced persons), while the remaining cases were instances of discrimination against individuals.

The recommended measures for achieving equality issued to public authorities and other entities were implemented in 98.3% of the cases, which, together with the rate of implementation of recommendations in individual cases gives an average of 88.2%. The trend of complying with the Commissioner's recommendations has continued, which could, among other things, point to the conclusion that discriminatory behaviour is rarely intentional, although the existence of intent is irrelevant in the procedure for protection against discrimination. A point of concern, however, is that certain media outlets and public officials have not complied with recommendations to rectify the effects of violations of the Law on the Prohibition of Discrimination pertaining to discrimination on the grounds of sexual orientation, while for example recommendations relating to persons with disabilities have been fully implemented.

Natural persons filed 67.4% of the total number of complaints filed with the Commissioner. In a reversal of the trend seen in recent years, women raised issues with the Commissioner more frequently than men: out of the total number of complaints filed by natural persons, 58.5% were filed by women, while 41.5% were filed by men. In terms of percentages relative to the total number of complainants, the balance sways heavily towards women as complainants. Namely, 556 women filed 104 complaints in connection with the application of certain provisions of the Law on Financial Support to Families with Children. In 2018, civil society organisations filed 293 complaints (30.9%), marking a significant increase from the previous year, when civil society organisations filed 105 complaints. In the course of 2018, the Commissioner received a number of citizens at this authority's head office in Belgrade and at the Novi Pazar Office and the number of citizens who sought information by phone or e-mail was also increased. The reasons for this can be found in the needs of citizens who seek protection against various violations of rights, their greater awareness, in part also greater recognition of discrimination, issues with the implementation of many laws and, finally, activities undertaken by the Commissioner, consistency of her work and efforts to increase visibility.

In 2018, the Commissioner conducted two surveys. The results of the Commissioner's survey *Treatment of Discrimination by the Media in Serbia*, conducted with the support of the Good Governance Fund (GGF) of the UK Government as part of the project *Strengthening the Capacities of Institutions and Organisations in Serbia aimed at Proper Implementation of Human Rights and Anti-Discrimination Legislation*, show that both editors and journalists have observed instances

of hate speech in Serbia; however, there are significant differences in terms of the perceived degree of its manifestation. While journalists perceive hate speech as “very much present”, editors consider it to be “mostly present”. Social groups identified as most commonly discriminated against include persons with intellectual disabilities, persons with physical disabilities, poor persons, Roma, persons living with HIV/AIDS, the elderly, women and members of the LGBT population.

The survey *Treatment of Discrimination by Representatives of Public Authorities in Serbia*, implemented as part of the project *Strengthening Local Anticorruption Capacities and Institutional Capacities of the Commissioner for the Protection of Equality*, which is supported by the Norwegian Embassy in Belgrade, covered representatives of the judiciary, the executive and the legislature. The results of this survey, as well as the results of the one referenced above, have revealed that most representatives of public authorities believe that persons with disabilities face greatest discrimination, followed by persons with intellectual disabilities, poor persons, the elderly, persons of Roma ethnicity and then other social groups. Excluding representatives of the judiciary, two thirds of the respondents believe hate speech is prohibited by law, while representatives of the National Assembly of the Republic of Serbia and ministries are the least aware of the fact that hate speech is prohibited by law. As regards occurrence of hate speech, slightly more than a third of the respondents believe hate speech is present in Serbia, while approximately as many believe it is not. In 81% of the cases, the respondents stated that representatives of public authorities in their public appearances have greater responsibility than citizens. Furthermore, representatives of public authorities have stated that incitement to discrimination comes mainly from the media, followed by political parties and state institutions.

The society still faces numerous challenges in the efforts to improve equality. While the existing anti-discrimination legislation in Serbia lays the foundations for improving equality and combating discrimination, this legal framework needs to be improved and harmonised with *acquis communautaire* and international standards. The Action Plan for Negotiation Chapter 23 envisages, *inter alia*, amendments to the Law on the Prohibition of Discrimination. In this Annual Report, similarly as in the previous ones, the Commissioner has recommended the establishment and operationalisation of a standardised system of collecting and analysing relevant data to monitor the incidence of discrimination and functioning of the system of legal protection against discrimination, in order to improve the situation in this field and enable data-based public policy making and implementation. The final version of the Draft Law adopted by the Government was not presented to the Commissioner for an opinion. We have determined on the basis of the version available on the Government’s official website that the Law imposes a duty on courts to provide the Commissioner with anonymised final and enforceable decisions pertaining to protection against discrimination; however, no additional funding is envisaged for the creation of electronic records and for sufficient staff who would be in charge of these duties at the Commissioner’s office.

The 2018 Serbia Report of the European Commission² states, with regard to Serbia's progress in the European integration process, that consistent and efficient implementation of the legislative and institutional framework throughout the country is urgently needed. The report states *inter alia* that, in the coming years, Serbia needs to strengthen human rights institutions and guarantee their independence, including via the allocation of the necessary financial and human resources, and step up actions to protect the rights of the groups facing discrimination.

In addition, to improve the legislative framework for more efficient protection against discrimination and harmonise it with EU legislation, it will be necessary to enact or improve other legislation which may be relevant for achieving equality and improving the status of certain groups of the population (for example, amendments will have to be made to the Law on Civil Procedure, the Family Law, the Law on Social Welfare, the Law on Financial Support to Families with Children, the Criminal Code, the Law on Prevention of Domestic Violence and the Law on Protection of Persons with Mental Illness, the Law on Gender Equality will have to be enacted etc.).

In 2018, it was observed that the statutory procedure regarding obtaining the opinions of all competent bodies and public participation was not implemented consistently, which could later lead to enactment of pieces of legislation that are not mutually harmonised or are not harmonised with the Constitution. In this context, care must be taken to ensure consistent public policy making and implementation, increase legal certainty and avoid divergent or overlapping legislative provisions, which could potentially result in inequality or unenforceability of certain provisions. This is witnessed by the proposals for a review of constitutionality and legality filed by the Commissioner in 2018, which are presented in detail below.

Regarding anti-discrimination institutions and mechanisms, in addition to the Commissioner as the central state authority in charge of protection against discrimination and promotion of equality, courts play a crucial role. Compliance with the statutory requirement for urgent acting remains a huge challenge in anti-discrimination proceedings before courts. It is therefore necessary to assign special markings to discrimination cases, which would indicate the statutory duty of urgent acting. This would also ensure easier tracking and recording of discrimination cases. As regards judicial protection against discrimination, in addition to civil law proceedings, it should be pointed out that infringement and criminal proceedings are also essential. A number of proceedings initiated by the Commissioner before magistrates' courts were terminated due to expiration of absolute statute of limitations, which reduces the efficiency and defeats the purpose of protection against discrimination. As regards criminal charges, in some cases

² Republic of Serbia – Report for 2018 accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, European Commission – available at: [http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_sr-biji\(1\).pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_sr-biji(1).pdf)

public prosecutors found there was no criminal offence that could be prosecuted *ex officio*, which undermines this form of protection and dissuades citizens from seeking criminal law protection against discrimination. The Commissioner also developed the publication titled *Guidelines for Strategic Lawsuits* and held a workshop for judges at appellate and higher courts to raise their awareness of the existing anti-discrimination legislation and strategic litigation.

This year, the Commissioner held a number of trainings and lectures on recognising and responding to discrimination, as well as application of anti-discrimination legislation for police officers, labour inspectors and representatives of local self-governments, the media and civil society organisations. There were also seminars on civil law protection against discrimination for judges of all four appellate courts. The Commissioner also attended numerous national and international conferences and roundtables intended to promote human rights of marginalised social groups, as well as panels, working meetings and workshops which reviewed the situation in specific areas, including empowerment of women, victimisation, the status of workers and trade unions, development of appropriate community-based services, the status of enterprises for professional rehabilitation and employment of persons with disabilities, the status of persons with disabilities in proceedings before public authorities and many other areas.

In 2018, trade unions at social welfare institutions raised their concerns with the Commissioner, highlighting issues of understaffing, continued weakening of capacities of centres for social work and inability of improving their functioning, primarily due to application of the Law on the Method of Determining the Maximum Number of Employees in the Public Sector. According to the analyses and surveys, this issue also seems to affect other competent authorities. Strengthening of quantitative and qualitative capacities of centres for social work would enable proper mapping of needs, timely activation of all forms of support and assistance to vulnerable citizens, as well as provision of improved support and assistance to those who are at risk of violence or have suffered some form of violence. It is also necessary to provide trainings for all relevant stakeholders responsible for preventing violence and acting in cases of violence.

In the course of 2018, the Commissioner also had meetings with representatives of certain companies that sought the assistance of this institution in connection with the adoption of Equality Codes. The Commissioner issued two manuals: the *Manual on Implementation of Anti-Discrimination Legislation: How to recognise Cases of Discrimination before Public Authorities* and the *Manual on Implementation of Situation Testing*, as well as the *Guidelines for Strategic Lawsuits*. As already mentioned, the Commissioner conducted two surveys this year. The second edition of the *Equality Code: Guidelines for Preparing Codes of Anti-Discrimination Policies for Employers in Serbia*, was issued.

Most of the complaints received this year were filed against discrimination on the grounds of disability, (26.4%), age (16.5%), gender/sex (10.7%), birth (10.6%) and health status (6.1%), followed by discrimination on the grounds of national

affiliation and ethnic origin (6%), marital and family status (4.9%) and sexual orientation (4.2%), while allegations of discrimination on other grounds were less frequent.

As regards areas of social relations where instances of discrimination occurred, this year most of the complaints related to provision of public services or use of public facilities and areas, which accounted for 27.6% of all complaints. The area of labour and employment was second, accounting for 20.8%. Other common areas of discrimination include proceedings before public authorities (17.7%), social welfare (13.1%), public information and the media (6.1%) and education and vocational training (5.3%), while the number of complaints in other areas was lower, accounting for less than 3%.

Just as in the past years, most of the complaints were filed against state and public authorities (50.5%), followed by complaints against legal entities (23.1%) and complaints against natural persons (12.2%). Groups of persons, organisations and institutions make up the remainder, accounting for a far lower share.

Most of the complaints were received from the Belgrade region (52.8%) – a slight increase from last year – followed by the region of Šumadija and Western Serbia (14.4%), the region of Vojvodina (14.1%), the region of Southern and Eastern Serbia (10.9%), the region of Kosovo and Metohija (0.6%) and unknown region (7.2% - region is unknown if a complaint is filed electronically and the complainant does not state the address of his/her residence). The data on the number of filed complaints by regions show there is a huge disproportion in terms of numbers of filed complaints between regions, with the Belgrade region still leading as the region with the highest number of filed complaints, which shows that more effort is needed to inform citizens about the existing protection mechanisms.

Complaints filed with the Commissioner are certainly indicative of prevalence of discrimination and the level of compliance with the principle of equality in the society, but this is far from being the only indicator. To provide comprehensive insight into the state of exercise and protection of equality in the Republic of Serbia, prevalence of discrimination, its characteristics and forms, the most frequent victims and perpetrators and areas where discrimination is most frequent, in addition to the Commissioner's practice and results of surveys conducted by the Commissioner in 2018, the Regular Annual Report is also based on an evaluation of reports of the European Union, international organisations and treaty bodies, reports and surveys by national institutions and organisations, case law of the European Court of Human Rights and other sources and data relevant for reviewing the current state regarding protection of equality. **The list of reviewed reports and surveys is enclosed with this Report.**³ Namely, the situation regarding prevalence of discrimination in the society is also influenced by other factors, including the social and cultural setting, prevailing opinions on discrimination in the society, citizens' awareness of the importance of complying with regulations

³ The list of reviewed reports and surveys is provided in Annex 1 to this Report, while an overview of case law of the European Court of Human Rights is provided in Annex 2.

and willingness to report violations, degree of tolerance of differences, trust in the work of institutions, knowledge of grounds for and forms of discrimination and activities of the civil society aimed at protecting human rights.

As regards the key issues faced by specific social groups in the exercise of equality, notably **persons with disabilities**, as well as other population groups, such as the elderly, children and other persons with limited mobility, a common issue is accessibility of buildings, public spaces, services and information, as a pre-condition for the exercise of equality across all areas. Inability to access buildings or understand various content at the same time prevent persons from exercising their rights and constitutes inequality. Apart from accessibility, there are also challenges in terms of finding and keeping employment by persons with disabilities, reasonable adaptation of worksites and jobs, access to education and vocational training, equal participation in the election process, number and coverage of health care and social welfare services, denied freedom of making own decisions etc. In addition, persons with disabilities also face multiple discrimination, usually in combination with other personal characteristics, such as health status, age, gender, national affiliation etc. The status of women with disabilities is particularly difficult, as the exercise of certain rights is made especially difficult for them; also, insufficient attention is attached to reproductive health, as well as the right to parenthood and family. It is also necessary to amend Article 179 of the Criminal Code, which pertains to the criminal offence of sexual intercourse with a helpless person, both in terms of discriminatory terminology and in terms of the legal definition of the criminal offence. Namely, in 2016 the Commissioner filed an initiative to amend this Article with regard to the amount of the potential fine and its harmonisation with Article 178 of the Criminal Code and with regard to the legal definition of the criminal offence. It should be noted in this context that the Criminal Law has been amended with regard to the amount of the potential fine, but not with regard to terminology and the legal definition of this criminal offence as a serious form of the criminal offence of rape.

Children with disabilities still face problems, especially in the area of education, where accessibility of schools and other education institutions is not satisfactory; they also face prejudice regarding their capacities and face problems in terms of acceptance by the community. It is also necessary to review the effects of application of the Law on Dual Education, especially with regard to vulnerable groups of children, such as children with disabilities. It should be noted that the Commissioner had objected to the wording of certain provisions of this Law in her opinion on the Law before its enactment.

In 2018, the Law on Financial Support to Families with Children failed to achieve the desired effects, especially with regard to families of children with disabilities; quite the opposite, in fact: it has effectively reduced the volume of existing rights, which is why the Commissioner filed a number of initiatives and proposals for a review of constitutionality. Appropriate support for children suffering from rare diseases and their parents is still non-existent.

Furthermore, the regulations pertaining to declaration of legal incompetence restrict human rights and the applicable regulations should therefore be harmonised Article 12 of the Convention on the Rights of Persons with Disabilities. According to surveys, persons with disabilities as a group face increased risk of violence and their protection therefore warrants special attention. It is also necessary to provide an accessible and efficient system of reporting to emergency services such as emergency medical services, the police and the fire department, support services, helplines etc. Institutionalisation of persons with disabilities leads to their stigmatisation and social marginalisation and violates their right to independent living in the community and controls and supervisions of relevant institutions need to be stepped up. There is still no deinstitutionalisation strategy in place, nor is there is a strategy for improving the status of persons with disabilities, developing social welfare, improving mental health care etc.

As election documents remain inaccessible and certain polling stations are either inaccessible or partially accessible, the status of persons disabilities with regard to their right to vote and stand for election needs to be improved further, notwithstanding the certain progress that has been made. The fact that alternative voting arrangements are available, i.e. that it is possible to vote outside of polling stations, does not release the competent authorities from their responsibilities in the process of proposing and determining the buildings which are to be used as polling stations. It is encouraging that the City Electoral Commission of the City of Belgrade, acting pursuant to a recommendation of the Commissioner, adopted a resolution by which it committed itself to undertake all activities within its power to ensure that future elections are held in such a way that blind persons and persons with impaired vision are able to vote on accessible ballots. In addition, the City Electoral Commission ended a case before the Commissioner through mediation and signed a Memorandum of Understanding with an organisation protecting the rights of persons with disabilities and with two city municipalities to make polling stations and election documents accessible.

An analysis of the current situation, survey results and the Commissioner's practice has revealed that discrimination on the grounds of **age** is very much prevalent, especially against children. Specific activities will therefore have to be undertaken to improve all forms of support, in particular for children with physical and intellectual disabilities, to ensure inclusion and equal participation of children in the education process, involving experts and the general public on experiences and rights of children living in the streets, prevention and protection of children against all kinds of violence, including child work, child marriage and other forms of exploitation and social exclusion, as well as prohibition of corporeal punishment.

In particular, efforts will have to be made to implement population policy measures and provide support to the young in order to manage migration flows and retain youth in the country. Special attention must be paid to availability of all levels of education, prevention of early school leaving, support to children and youth in rural areas and employment on appropriate jobs. In this context, in 2018

the Commissioner filed an initiative to supplement the Law on Subsidies in Agriculture and Rural Development, as well as an initiative to supplement the standards for accreditation of higher education institutions.

As regards status of the elderly, numerous physical, social and economic barriers, widespread prejudice and stereotypes, as well as a lack of inclusive public policies which involve representatives of all age groups in town planning and development, make it difficult for the elderly to fully exercise their rights. Although survey results have shown that the elderly face numerous issues, they less frequently raise their grievances with the competent authorities. Longer life expectancy and aging population should be accompanied with major changes in the understanding of the process of aging, the abilities and needs of the elderly and programmes to promote quality of life in later stages of life.

Given that, in recent years, a majority of the complaints filed by citizens pertained to the area of labour and employment, that the second-highest number of complaints filed with the Commissioner in 2018 was received in this area and that surveys have highlighted unequal treatment and issues with employment of certain groups of the population (in particular persons with disabilities, the elderly, women in certain professions and members of national minorities), efforts must be made to promote equality and corporate social responsibility. In an encouraging development, employers have been contacting the Commissioner in increasing numbers to provide assistance in the development of Codes of Non-Discriminatory Action. In this context, in 2018 the Commissioner issued the second edition of the Equality Code.

According to surveys and based on the Commissioner's practice, employees in the 50-65 age group are unjustifiably discriminated against in the area of employment and labour, which is why efforts should be made to develop and make available appropriate training programmes and highlight the need to use the capacities and experience of these persons.

Continuing on the trend observed last year, **gender/sex** has been the leading grounds for discrimination this year. According to surveys and based on the Commissioner's practice, in 2018 women complained again that their workplace status changed after their return from maternity leave and child care leave. Just like in recent years, women filed complaints due to changes in their labour law status after their return from maternity leave and child care leave. Having observed a common practice of discrimination against women with regard to workplace promotion because they were absent from work due to childbirth, maternity and child care leave, the Commissioner submitted recommended measures for exercise of equality to all courts in connection with workplace promotion of female civil servants. Furthermore, application of the Law on the Method of Determining the Maximum Number of Public Sector Employees disproportionately affects women, as there are far more women than men employed in the public sector, especially in public services. Application of this law and the Labour Law, which limits the maximum duration of fixed-term employment, transition from fixed-

term employment to indefinite employment is effectively rendered impossible, which affects in particular women after their return from childbirth or maternity leave, and also creates legal uncertainty and hampers the transfer of knowledge and experiences which are crucial for efficient and continual functioning of public administration.

The issue of gender equality is also a global issue. The Council of Europe adopted the *Gender Equality Strategy 2018 – 2023*⁴, which recognises the important challenge of ensuring that all women benefit from gender equality policies and the protection provided by relevant instruments, including disadvantaged groups of women.

The Law on Gender Equality has not yet been adopted, although Serbia assumed this commitment. Harmonisation with all relevant international documents is needed in this area and, given the vast underrepresentation of women in all areas of decision-making, legislative provisions should impose higher mandatory quotas and a duty to keep gender-sensitive statistics in all areas, in particular statistics relating to violence, with emphasis on vulnerable groups, such as girls, elderly women, Roma women, women with disabilities etc.

The fact that inequality of women is deeply rooted in all spheres of public and private life and discrimination against women is prevalent, socially acceptable and inextricably associated with other factors that influence their lives, including in particular their economic dependence on male family members, has been confirmed by numerous surveys carried out in 2018. The high number of cases of domestic and intimate partner violence is of particular concern.

Based on the data on cases of violence perpetrated since the enactment of the Law on Prevention of Domestic Violence and survey results, the issue of violence remains a serious problem that needs to be addressed. Although the Law has achieved certain effects and although it has improved coordinated action of institutions within the system to provide protection from domestic violence and other forms of gender-based violence, much more has to be done to strengthen the victim support system and to strengthen the institutions in charge of providing such support. The national victim helpline for women who are victims of violence became active in late 2018. This service needs to be provided in compliance with the standards set out in the Council of Europe Convention on preventing and combating violence against women and domestic violence, as well as other international standards. Anonymity must be guaranteed and support should be provided by qualified persons experienced in working with victims of violence.

A key challenge is also ensuring equal representation of women and men across all spheres of political and public decision-making in the exercise of public functions, since gender equality is difficult to achieve in practice without proportionate and direct participation of women in decision-making in all areas of public life and at all levels. Recognising the importance of involving women in social and political

⁴ Council of Europe Gender Equality Strategy 2018-2023, Council of Europe - available at: <https://rm.coe.int/ge-strategy-2018-2023/1680791246>

life, last year the Commissioner issued a recommendation of measures for achieving equality to municipalities/cities in the Republic of Serbia, to ensure the inclusion of women and promote equal representation of women and men across all spheres of political and public decision-making in the exercise of public functions in the bodies of local self-government units. According to the results of surveys, the gender imbalance between women and men in managerial positions has evidently remained high this year. For example, in the election for national councils of national minorities held in 2018, 507,183 members of minority communities were eligible to vote⁵, with only five women elected to chair those national councils; taking into account the total number of established national councils of national minorities, this means that the share of women on the highest positions is just 21.7%.

Some of the key issues that have not yet been addressed include the need to create a balance between work and parenthood, insufficient use of flexible working hours, fostering of paternity and encouraging fathers to use child care leave, the need to open new preschool facilities and match their working hours with the working hours of parents, development of different types of financial support etc. Particular attention should be paid to eliminating stereotypical gender roles.

In addition, a number of surveys have highlighted the fact that information technologies, while bringing numerous advantages, are likely to put women at a disadvantage relative to men, as many professions commonly occupied by women today are set to disappear, and this is an issue that will have to be addressed by companies, as well as by state authorities.

On the other hand, the Commissioner has observed from her practice that, in 2018, men complained about the actions of centres for social work when issuing opinions pursuant to court requests in divorce and custody cases, as women are usually given custody of their children due to stereotypical roles. Men have also filed complaints against actions of medical institutions in connection with hospitalisation of children, as they insisted that only the mother can accompany the child at hospital, which is why the Commissioner issued recommendations of measures to all medical institutions.

In 2018, citizens have also complained against discrimination on the grounds of ***national affiliation or ethnic origin***. Reflecting the trend from last year, one in two complaints against discrimination on the grounds of national affiliation related to discrimination against Roma men and women. Numerous surveys have identified that Roma women are particularly vulnerable, that very few Roma girls finish primary and secondary education, that the number of Roma without identity documents has been significantly reduced, although some of them still have no such documents, and that efforts must be made to employ Roma and to improve their housing conditions and social welfare. In addition, surveys state that affirmative measures have contributed to greater participation of Roma children in the

⁵ *Minority News – Monthly bulletin on the life of minority communities in Serbia*, Migration Policy Centre, number 51, November/December 2018 – available at: http://www.ljudskaprava.gov.rs/sites/default/files/fajlovi/minority_news_51.pdf

education system and that the number of children enrolled in preschool education has increased, although more effort is needed to prevent their segregation.

Significant positive steps forward have been made with regard to the status of national minorities, both in normative and in institutional terms. Amendments and supplements to the legislation governing the protection of rights and freedoms of national minorities and national councils of national minorities were also adopted in 2018, but more work is still needed to improve interdepartmental cooperation and ensure proper application of existing legislation.

In the past year, discrimination on the grounds of **health status** was the sixth commonest grounds for discrimination. In addition, reports by international organisations and human rights organisations have highlighted a need for improvements in this area, especially with regard to stigmatisation of persons living with HIV/AIDS. Surveys state that stigma and discrimination are among the main issues faced by this vulnerable group, not only in Serbia, but also in the world, which is exacerbated by the fact that victims of discrimination are often unwilling to be involved in the process of proving discrimination, in particular because of the risk that their status might become known to the wider community, which would put them at greater risk of victimisation. An analysis of the Commissioner's practice has revealed that discrimination on the grounds of health status usually occurs as part of multiple discrimination, usually combined with age, disability or gender and genetic characteristics. Furthermore, the importance of and the need for palliative care for improving the quality of life of patients and preserving their dignity in the last days of their lives has been recognised, as well as the need for greater awareness of citizens of both preventive examinations and screenings for early detection of diseases and improvement of public health in general. In particular, it is necessary to ensure uniform practice with regard to accompaniment of hospitalised children, in order to allow both mothers and fathers to be with their child at the hospital. The strategic framework in this area was improved in 2018 with the adoption of public health, HIV infection and AIDS prevention and control and occupational safety and health strategies.

In 2018, just as in earlier years, citizens included **sexual orientation** as a personal characteristic as one of the leading six grounds for discriminating. Similarly as in earlier years, most of the complaints related to discrimination of LGBT persons in the area of public information and the media and the complainants in most of the cases were civil society organisations, which underlines their importance and their role in the protection of rights of the LGBT population. The results of the survey *Treatment of Discrimination by the Media in Serbia* conducted by the Commissioner in 2018 have revealed that journalists have a certain degree of social distance from this minority group, although they recognise that the LGBT is heavily discriminated against, and they also recognise the importance of responsible reporting, which must be free from hate speech, sensationalism, discriminatory attitudes and offensive reporting on persons of different sexual orientation and gender identity.

The legal framework allowing for the change of sex designation in the issuing of identity documents to transgender persons was also changed in 2018, enabling them to change their first name in official documents. Furthermore, the Rulebook on the Manner of Issuing and the Form of the Certificate of Gender Reassignment issued by the Competent Medical Institution, which was adopted in late 2018, has significantly improved the status of transgender persons.

However, reports and surveys show that examples of discriminatory incidents and crimes motivated by homophobia and transphobia still occur. Although the first court case for a hate crime pursuant to Article 54a of the Criminal Code was won in 2018, there is still work to be done to train the police, prosecutors and judges to ensure full application of this Article and proper sentencing for hate crimes. The OSCE Mission to Serbia has published *Guidelines for Criminal Prosecution of Hate Crimes in the Republic of Serbia*.

Marital and family status as a personal characteristic is the next grounds for discrimination in terms of the number of complaints filed with the Commissioner in 2018. Most of the complaints on these grounds have been filed in the area of labour and employment in recent years, and there has also been a large number of complaints on these grounds for proceedings before public authorities. The conclusion based on the published surveys is that, just like in the European Union, there is still the issue of balancing parenthood with the obligations arising from work and employment, as already discussed above.

According to surveys, poor citizens are also perceived as one of the three groups that are most frequently discriminated against; however, the number of complaints on the grounds of property status is negligible and most of them are filed by natural persons. Working towards social inclusion of the poor requires sound links between all protection systems, from social security to health care and education, with coordination between the national and local levels and intensified cooperation between state institutions and the civil sector, coupled with better links between support services and development of solidarity and tolerance, in particular from early youth. It is not yet possible to measure the effects of the enacted Law on Free Legal Aid, which will certainly improve access to justice for poor citizens. This Law was not presented to the Commissioner for an opinion in the enactment stage.

While affirmative employment measures have produced certain results, achieving equality of all vulnerable groups of persons will require, in addition to affirmative employment measures and careful evaluation of their effects, also continual inspection, as well as swift and efficient judicial protection in case of violation of rights. To promote tolerance and equality, in 2018 the Commissioner established the award *Municipality/City of Equal Opportunities*.

Below is an overview of the current situation regarding discrimination on different grounds, based on the Commissioner's practice and actions in eliminating discrimination and promoting equality. To raise awareness of the discrimination

issue and substantiate the analysis of the current situation, the overview includes examples of specific opinions, recommended measures, recommendations for eliminating discrimination and promoting equality, proposals for a review of constitutionality, initiatives for amendments to regulations, court cases (non-contentious, infringement, criminal) and other outcomes of the proceedings. Detailed statistics on the Commissioner's work are provided at the end of this report, under the heading *Statistical Review of the Work of the Commissioner in 2018*. The Commissioner's opinions, recommendations, warnings, public announcements and other documents are available on the official website of this authority.

1.1 Discrimination on the Grounds of Disability

Persons with disabilities in the Republic of Serbia, just like in the EU, are one of the most vulnerable groups of the population across all areas of social life. Many reports and publications highlight that persons with disabilities face numerous issues and this has been confirmed in the Commissioner's practice.

In 2018, disability was alleged as the grounds for discrimination in 265 complaints, accounting for 26.4% of all grounds for discrimination alleged in the complaints. Once again, complaints against discrimination on the grounds of disability accounted for the highest share of the total number of complaints received in the past year. Also, discrimination on the grounds of disability has been one of the leading grounds for complaints for years, with a noticeable upward trend from year to year. Just like last year, most of the complaints came from human rights organisations (201), while the remaining complaints (64) were filed by natural persons, 35 of them men and 29 women.

The largest number of complaints against discrimination on the grounds of disability in 2018 were filed for discrimination in the provision of public services or in the use of facilities and spaces - 205 complaints (79.8%), which is indicative of the huge issues faced by persons with disabilities in terms of accessibility of buildings and services, information and communications. One of the reasons for the increased number of complaints on these grounds is the fact that the organisation Centre for Independent Living of Persons with Disabilities of Serbia conducted surveys of accessibility of polling stations in several city municipalities in Belgrade, Kragujevac and Sombor as part of the project *Equal: Persons with Disabilities in Political Life*. On the proposal of the Commissioner, the City Electoral Commission of the City of Belgrade, City Municipalities of Vračar and Savski Venac closed the procedures pursuant to complaints through mediation, i.e. by signing Memorandums of Understanding, while the complaints against the City Municipality of Novi Beograd resulted in the issuing of an opinion with recommendations, which the municipality implemented.

The second most common area in terms of the number of complaints with disability as the grounds for discrimination is the area of procedures before pub-

lic authorities. There were 24 complaints (15.9%) in this area. The third area of complaints was employment or work with 18 complaints (10.3%), followed by education and vocational training with 5 complaints (8.8%), while the areas of social welfare and public information and the media had four complaints each. The remaining five complaints were filed in other areas.

Complaints are also indicative of the issues faced by children with disabilities in the area of education, especially in terms of their inclusion and provision of appropriate support. In addition, we also examined the issues faced by persons with disabilities in the assessment of their capacity or in reassignment to a different post which is not suitable for the person concerned on the basis of his/her remaining capacity etc.

Pursuant to an initiative filed by the Commissioner, the Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction of the National Assembly held a session, at which it was highlighted that the practice of full deprivation of legal capacity is still common and that, in order to allow persons with disabilities to decide on their own lives, it is necessary to amend the regulations which govern this issue, as well as the issue of appointment of a guardian, by harmonising the applicable regulations with Article 12 of the Convention on the Rights of Persons with Disabilities. Furthermore, the issue of institutionalisation of persons with disabilities has not been addressed and much more has to be done towards deinstitutionalisation and exercise of right to independent living of persons with disabilities.

In addition to acting pursuant to citizens' complaint, in 2018 the Commissioner also issued several opinions on draft laws and other legal documents and filed several initiatives for amendments to regulations, including e.g. the Initiative to amend the Rulebook of Medical Technical Aids purchased from Compulsory Health Insurance; the Initiative to amend Standard in the Accreditation Procedure for Higher Education Institutions and the Initiative to Amend the Law on Financial Support to Families with Children, in connection with which the Commissioner also filed petitions for a review of constitutionality and legality of certain provisions of that law. The Commissioner also supported the initiative of several associations to review the constitutionality and legality of the Law on Financial Support to Families with Children in connection with the provision governing the exercise of the entitlement to wage compensation or salary compensation during absence from work on special child care leave in cases where the child already exercises the entitlement to an allowance for assisted living.

In 2018, the Commissioner also filed a petition for initiation of infringement proceedings due to discrimination of a girl who was denied access to a children's play place because of her disability; specifically, there was an additional condition in her case that she could be admitted to the play place only if accompanied by her mother.

The Commissioner also issued recommendations of measures for the exercise of equality by persons with disabilities to: the City of Kragujevac and the City

Library, as well as the Endowment of Ilija M. Kolarac, to eliminate the existing physical barriers which prevent persons with disabilities with limited mobility from using public buildings; the Ministry of Finance to resolve dilemmas in the application of Article 21 of the Law on Personal Income Tax; and the Republic Fund for Pension and Disability Insurance, to ensure coordination between expert assessment bodies in procedures where the capacity of individuals is assessed, which affects their ability to seek or retain employment in proceedings where this authority decides on the entitlement to disability pension due to incapacitation.

Opinions and recommendations

Members of a commission humiliate a person with disability

The complaint was filed by a woman with disability against a commission on assessment of capacity and ability to seek or retain employment of persons with disabilities within the Republic Fund for Pension and Disability Insurance. The complaint alleged that, during the assessment of the complainant's capacity, members of the commission asked her humiliating and offensive questions (for example: "Why did they send her to me, when this should clearly be handled by a Centre for Social Work?", "Why did they not do an IQ test?", "Are your parents alive? Why are you seeking employment when you can inherit their pension?", "Do you know when you need to go to the toilet? When will you pee?", "Which school did you complete? Special education? [...] Oh, it's that expedited course...!", "And what do you imagine you could do and where do you think you can work?"). Also, it was alleged that the chairwoman of the commission talked mostly to the complainant's personal assistant during the capacity assessment procedure, even though the personal assistant insisted she could not reply to questions which concerned the complainant personally. In the proceeding, the Commissioner took a statement from the personal assistant of the complainant, who was present during the capacity assessment procedure, who corroborated the complainant's allegations in her statement. In their replies, the chairwoman and members of the commission denied that their actions in the assessment of the complainant's capacity had been offensive, humiliating and insulting to her dignity. However, these allegations were not corroborated with evidence in any of the replies, nor did they disprove the specific allegation stated in the complaint that the complainant was ignored during most of the capacity assessment procedure. The Commissioner passed the opinion that the chairwoman and members of the commission that assessed the complainant's capacity breached the provisions of the Law on the Prohibition of Discrimination and the Law on Prevention of Discrimination of Persons with Disabilities. It was therefore recommended to the chairwoman and members of the commission to issue a written apology to the complainant for offending her person and dignity in the capacity assessment procedure and to refrain from breaching legislative provisions against discrimination in the course of their regular duties and activities.

The recommendation was implemented and the Commissioner received copies of letters of apology sent by the chairwoman and members of the commission to the complainant.

City Electoral Commission discriminates against blind and visually impaired voters

The complainant alleged she was blind and she had attempted to vote at her polling station in the election for councillors in the City Assembly of Belgrade held on 4 March 2018 by demanding a list of candidates written in the braille alphabet; however, members of the electoral committee informed her they did not have the list written in the braille alphabet and told her she could rely on the person accompanying her, and they tore the ballot from her hand after an argument, which was why she believed she had been discriminated against on the grounds of disability as a personal characteristic. In its reply, the City Electoral Commission stated that, at its meeting held on 21 February 2018, the City Electoral Commission had considered the initiative of the Association of Blind and Visually Impaired Persons to introduce ballot patterns which blind and visually impaired persons could use to vote, that the initiative had been fully accepted and supported, but there were no technical capacities to implement the initiative in practice at that time, as it was not possible to introduce such novelty amidst the election process and to modify the election rules; they further alleged it had been agreed at the same meeting that the City Electoral Commission would submit an initiative to the National Assembly of the Republic of Serbia to amend the set of election laws; that the City Electoral Commission had made efforts in the election for councillors of the City Assembly to ensure, within the available means, that blind and visually impaired persons can exercise their right to vote guaranteed by the law by voting with the assistance of another person; and that ballots used in the election had not been printed in the braille alphabet. Upon investigation, the Commissioner issued the opinion that the City Electoral Commission had put the complainant at a disadvantage relative to other voters on the ground of a personal characteristic of hers, namely her disability, thereby breaching the provisions of the Law on the Prohibition of Discrimination. It was recommended to the City Electoral Commission to undertake all necessary measures and activities within its mandate to ensure that future elections are organised in a way which enables blind and visually impaired voters to vote on accessible ballots, and to regulate in more detail the procedure for the voting of blind and visually impaired persons in their future bylaws in a way which would respect the dignity of persons with disabilities.

The City Electoral Commission informed the Commissioner it had adopted a resolution by which it undertook to implement all necessary measures and activities within the mandate and to hold future elections for councillors of the City Assembly in a way which enables blind and visually impaired voters to vote on accessible ballots; to regulate in more detail the procedure for the voting of blind

and visually impaired persons in future elections for councillors of the City Assembly; and to notify the Republic Electoral Commission of its resolution if a parliamentary election and an election for councillors of the City Assembly of Belgrade are held on the same date.

Recommended measures for achieving equality

Measures recommended to the Republic Fund for Pension and Disability Insurance to achieve equality of persons with disabilities

The Commissioner learned it is possible in practice in cases where an expert assessment body of the Republic Pension and Disability Fund acts in two different procedures initiated pursuant to requests of the same person, one to exercise rights available under the pension and disability insurance system and the other to exercise rights under the Law on Professional Rehabilitation and Employment of Persons with Disabilities, that the same body adopts a finding, assessment and opinion according to which the person is not entitled to disability pension while at the same time determining in a capacity assessment procedure that the person has the 3rd degree of difficulties and incapacity to work, meaning that he/she is not employable either under general or under special conditions. This puts such persons in a situation where they cannot be employed, but at the same time they are also denied the entitlement to a pension due to incapacitation. For this reason, the Commissioner issued a Recommendation to the Republic Pension and Disability Fund to undertake all necessary measures to ensure coordination between its expert assessment bodies in procedures where an individual's capacity is evaluated on the basis of findings, assessments and opinions which affect that person's ability to seek or retain employment and exercise the right to work and in procedures where it is decided on such person's entitlement to a disability pension on the grounds of incapacitation.

The Republic Pension and Disability Fund informed the Commissioner it had established close cooperation with the National Employment Service, which includes exchange of information and additional control of decisions; they noted it was also agreed they would prepare draft amendments to the relevant secondary legislation. They also held an advisory meeting for expert witness physicians in connection with this issue. It was specifically agreed that any previous expert assessments must always be indicated in the applications for such procedures.

Initiative for amendments to regulations

Initiative for amendments to standards in the accreditation procedure for higher education institutions

A deputy at the National Assembly sent a letter to the Commissioner in her capacity as coordinator of Work Package 3 within the framework of the TEMPUS

project *Equal Access for All: Strengthening the Social Dimension for a Stronger European Higher Education Area* – EQUIED, implemented in 2012-2015, which reviewed the accessibility of higher education institutions in the Republic of Serbia. The Law on Higher Education⁶ and secondary legislation still do not incorporate the principles of universal design, which makes it difficult or impossible for students with disabilities and other persons with limited mobility to attend classes, including in higher education.

In view of these facts, the Commissioner conducted an analysis of the existing secondary legislation and filed an initiative with the National Council for Higher Education and the National Body for Accreditation and Quality Assurance in Higher Education to amend the relevant rulebooks, with specific proposals. These proposals include amendments to the standards applicable to premises and equipment, specifically organisational and material assets, of higher education institutions, and incorporation of the statutory accessibility standards in the standards that are necessary for proper teaching of all curricula at higher education institutions. The Commissioner also pointed out that, in order to ensure information and communication accessibility, standards must be prepared for accessible websites, adapted textbooks, teaching materials and teaching aids and appropriate assistive technology aids.

The National Council for Higher Education informed the Commissioner it had considered the initiative to amend the standard and forwarded it to the National Accreditation Body and the Commission for Accreditation and Quality Assurance in Higher Education for consideration and constructive implementation in the existing standards.

1.2 Discrimination on the Grounds of Age

Based on the Commissioner's practice, in 2018, age was alleged as the grounds for discrimination in 166 complaints, which accounts for 16.5% of all complaints, making it the second most frequent grounds for discrimination in this year. The number of complaints filed with the Commissioner against discrimination on the grounds of age in 2018 was higher than in 2017, when 75 complaints against discrimination on these grounds were received, the same as in 2016.

In 2018, the highest share of the complaints (73.5%) concerned discrimination against children, 18.7% of the complaints were filed for discrimination of persons older than 18 and younger than 65, while 7.8% of the complaints related to discrimination of persons over 65 years of age. The increase in the number of complaints filed for discrimination against children was due to the number of complaints filed as a result of application of the Law on Financial Support to Families with Children. In the areas of social welfare and family protection there were 109 complaints which claimed age as a personal characteristic was the grounds

⁶ *Official Gazette of RS* Nos. 88/17, 27/18 – new law and 73/18

for discrimination, accounting for 47.6% of all complaints in this area. The area of labour and employment is next, with 24 complaints on these grounds, accounting for 13.8% of the total number. In the area of education and vocational training there were 12 complaints (21.1%), in the area of procedures before public authorities the number of complaints was 8 (5.3%) and there were also four complaints (1.6%) in the area of provision of public services and/or use of public surfaces and buildings, while the numbers of complaints in other areas were lower.

An analysis of the received complaints reveals that age as the grounds for discrimination is often combined with another personal characteristic, including disability, health status etc., especially in the case of multiple discrimination against children with mental and physical disabilities in the field of education, which is indicative of a need for appropriate support.

Among the complaints filed because of discrimination against persons aged 18-65 (18.9%), the most common complaints are those relating to persons aged 50-65, mainly in the area of labour and employment, which pertain to the exercise of specific employment rights, although this is an area where complainants often state their concerns they might suffer abuse or mobbing if they file a complaint and sometimes they even fear losing their job. Filing a complaint usually results in assignment to a lower post or termination or refusal to sign an employment contract because of the complainant's age.

While the share of complaints filed for discrimination against persons over 65 years of age is the lowest (8.3%), the number of complaints filed by persons older than 65 remained the same as last year. Notwithstanding the numerous issues they face, elderly citizens still less frequently raise their grievances with the Commissioner, and if they do, they usually do it in person and only rarely through a human rights organisation. The main issue highlighted in their complaints is that inaccessibility of public buildings and surfaces, as well as services, is a huge obstacle for equal inclusion in all aspects of the society of persons older than 65 and persons with limited mobility.

In 2018, the Commissioner also filed the initiative to amend and supplement the Law on Social Welfare by introducing less stringent conditions for the exercise of the entitlement of elderly citizens to financial support. Apart from this initiative, other main initiatives were the proposals for review of constitutionality and legality of certain provisions of the Law on Financial Support to Families with Children which pertain to the exercise of rights of parents and children, which are discussed in detail below.

The Commissioner also issued a recommendation of measures to the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Health to improve social welfare and health care services, which are of particular importance for elderly persons and for the quality of their lives, as well as a recommendation for the exercise of equality in connection with the clearing of snow in all streets, especially those streets where persons with impaired mobility, persons with disabilities and the elderly live.

Opinions and recommendations

Nurses and paramedic discriminated on the grounds of age in the area of labour and employment

This opinion was issued in the proceeding pursuant to complains by a number of persons against the acting director of the General Hospital in Prijepolje for discrimination on the grounds of age. The complaints stated that the complainants had been downgraded to lower posts through amendments to their employment contracts, allegedly due to reorganisation; when the head of surgery asked the director about the reason for removal of the complainants, the director replied one of the reasons was their age, namely the fact that they were unable to learn how to use new technologies and use electronic records in the health care sector due to their age. Since all complaints pertained to the same legal matter, they were handled in a single proceeding. It was found during the proceeding that the complainants had been employed as head nurses, responsible nurses and paramedic respectively, and that they had been downgraded to lower posts of nurses and paramedic respectively through amendments to their employment contracts. According to the statement of the head of Surgery Department at the General Hospital in Prijepolje, the acting director of the hospital had told him that the complainants had been “removed” because he believed they would not be able to use new electronic records because of their age. Furthermore, by examining the forms of the complaints, the Commissioner found that the complainants were aged over 50 at the time of signing of the amendments to their employment contracts, while one complainant had turned 42. In accordance with the rule on the burden of proof set forth in Article 45 of the Law on the Prohibition of Discrimination⁷, the Commissioner issued the opinion that the acting director of the General Hospital in Prijepolje had violated provisions of the Law on the Prohibition of Discrimination. It was therefore recommended to him to undertake all necessary measures within his mandate to remedy the discriminatory treatment of the complainants and to refrain from violating anti-discrimination legislation in the future exercise of his duties.

The Commissioner’s recommendation has not been implemented and the public has been duly informed of this fact.

Initiative for amendments to regulations

Initiative for amendments to the Law on Social Welfare to improve the status of the elderly

The Commissioner filed an Initiative with the Ministry of Labour, Employment, Veteran and Social Affairs to amend and supplement the Law on Social

⁷ Official Gazette of RS No. 22/09

Welfare with regard to the required surface area of land which is set as a general condition for the exercise of the entitlement to financial social benefits by individuals or families. The aim of this initiative is to protect the socially vulnerable rural population in elderly households. As a result of this restriction in terms of size of land which is imposed by the law, many citizens are unable to exercise the entitlement to financial social benefits or face difficulties in the exercise of this entitlement. The initiative stated that other factors that must be taken into consideration when deciding on the entitlement to financial social allowance, in addition to the increase in the size of land which is stipulated as a condition, include quality of land, its arability and its potential for lease and sale.

The main reason for this initiative is the fact that elderly family households which own greater tracts of land than the statutory threshold are often on the brink of poverty and are in need of assistance.

Although Serbia has one of the oldest populations, not only in Europe, but also internationally, the number of elderly citizens who receive financial social benefits is almost negligible relative to the total number of beneficiaries of this entitlement at 5%, according to the data provided by the Republic Institute for Social Welfare.

By adopting this initiative, the Republic of Serbia would also meet its commitment under the Employment and Social Policy Reform Programme in the EU accession process, which the Government adopted in May 2016 and which states that, in order to increase coverage and improve adequacy of financial benefits, steps must be taken to make the property-related conditions for the exercise of the entitlement to financial social benefits less stringent, in particular by increasing the land size threshold and making it dependent on soil quality, especially in the case of elderly households.

1.3 Discrimination on the Grounds of Gender/Sex

Gender as the ground of discrimination this year, as in the previous year, was the third most frequent ground by the number of complaints filed, and with 108 complaints accounts for 10.7% of the total number of complaints based on all grounds of discrimination. In the course of 2018, more women than men filed complaints with the Commissioner stating gender as a personal characteristic. Namely, a total of 101 natural persons filed complaints, of which 60 women and 40 men. In 2017, this ratio was 36 women to 22 men, while in 2015 the difference between the number of women and men who filed complaints with the Commissioner was even more noticeable - 108 women and 21 men. Analysing who are the persons who filed complaints in the reporting year, it was found that all persons who filed complaints because of discrimination on the grounds of gender in the field of health care were men.

As regards areas in which these complaints were submitted, it was observed that, as in previous years, the majority of gender-based discrimination complaints

(33) were filed in the area of labour and employment, which accounts for 19% of grounds stated in this area. As in previous years, in 2018 women filed complaints against being assigned to a different position at work after returning from maternity or child care leave. Those were mainly cases of fixed-term employment, which due to the fixed maximum duration under the Labour Law and the inability to change fixed-term employment into employment for an indefinite term because of the ban on employment in the public sector in accordance with the Law on the Method of Determining the Maximum Number of Public Sector Employees, which disproportionately affects women.

Having observed a common practice of discrimination against women with regard to workplace promotion because they were absent from work due to childbirth, maternity and child care leave, the Commissioner submitted recommended measures for achieving equality to all courts in connection with workplace promotion of female civil servants.

The area of labour and employment is followed by complaints filed against discrimination in acting of public authorities (15.2%), which is almost twice more than in the previous year. The Commissioner also received complaints in which fathers expressed dissatisfaction by actions of centres for social work when providing opinions on requests by courts in divorce procedures and giving custody of children, emphasizing they were discriminated on the grounds of gender, because custody of children was given to mothers due to prejudices regarding gender roles. Certain complaints also related to acting of health care institutions during hospitalization of children, which determined that only mothers can accompany children, which is why the Commissioner submitted recommended measures to all health care institutions.

Also, increase of the number of complaints filed in the area of provision of services and/or use of public areas and facilities because of discrimination on the grounds of gender (5.1%) has been observed. Those were, for example, complaints filed against the use of a specific time slot in a fitness club only by women or the fact that women are not allowed to enter a barber shop, the fact that landlords would rather lease their real estate to women than to men, while ticket inspectors in city public transportation more often control whether women have tickets than whether men have tickets etc. This area is followed by public information and the media, where 13 complaints were filed, which accounts for 20.6% of grounds stated in this field, and the areas of health care, public sphere, the general public and other areas.

In the course of 2018, the Commissioner submitted several initiatives, including the Initiative for Amendments to the Law on Subsidies in Agriculture and Rural Development aimed at specifying subsidies for young people, women or other vulnerable population groups in rural areas, as well as the Initiative for Amendments to Provisions of the Decision amending the Code of Conduct for Civil Servants. In addition, the Commissioner supported an initiative of the Autonomous Women's Centre relating to the need to harmonize the text of the Draft

Law on Gender Equality with international documents, primarily the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the Convention on the Elimination of All Forms of Discrimination against Women.

In 2018, the Higher Court passed a judgement by which it fully accepted the Commissioner's lawsuit request in a lawsuit initiated in 2017 due to discrimination against women and LGBT persons. However, the Court of Appeals overturned the judgement in favour of the defendant, and a review on points of law is pending.

Opinions and recommendations

Information website presented disturbing and humiliating ideas and positions which offend a woman's dignity

An opinion was provided pursuant to a complaint filed against an information website, in connection with texts published on this website titled "Why Dragana Rakić Hates and Insults Vršac, Citizens of Vršac, Grožđebal (grape harvest event)...?" and "Disgraceful Attack of a "Yellow" Company on eVršac Website". The complaint states *inter alia* that Dragana Rakić was insulted and discriminated against in these texts on the grounds of several personal characteristics – political affiliation, property status, birth and health status, and that Dragana Rakić saw the comment in the text "Women of Srem, you haven't met the right men yet" as utterly sexist and misogynous. Having analysed messages given in these texts, and starting from the practice of the European Court of Human Rights and anti-discrimination regulations, the Commissioner's opinion is that the information website www.evršac.rs presented ideas and positions which are disturbing and humiliating and which offend the dignity of Dragana Rakić only because she is a woman. This created humiliating and offensive environment, and because of this an opinion was provided that the information website www.evršac.rs violated provisions of Article 12 of the Law on the Prohibition of Discrimination, and it was recommended to the editor-in-chief of the information website to publish an apology to Dragana Rakić on this website within 15 days of the date of receipt of the opinion with the recommendation, as well as to refrain in the future from publishing articles which are disrespectful to women and perpetuate prejudice and social patterns based on stereotypical gender roles, and to contribute with his articles to changing of patterns, traditions and practice which cause stereotypes, prejudices and discrimination against women.

This recommendation has not been implemented.

Recommended measures for achieving equality

Recommended measures submitted to courts regarding promotion of female civil servants

The Commissioner learned that, at certain courts, when deciding on promotion of their employees, the employers ended a string of successive performance evaluation ratings which made female civil servants eligible for promotion in cases when they were not, in accordance with the law, evaluated in a calendar year when they were absent from work for more than six months because of childbirth, maternity or child care leave, resulting in a situation where female civil servants are effectively barred from promotion. In this way, absence from work due to pregnancy, childbirth or child care has negative effects on the labour law status of women after their return from childbirth, maternity or child care leave.

The Commissioner analysed the key international and domestic acts pertaining to this matter, including the Law on Civil Servants and the Law on Salaries of Civil Servants and Employees. Upon the analysis, the Commissioner emphasised that the scores of female civil servants in a set of scores for years when they were evaluated should be taken into account for promotion, excluding the year when they were not evaluated because of childbirth, maternity or child care leave. Successive years are years when a civil servant was evaluated, which can be linked to calendar years in cases when there were no interruptions in evaluation or years directly preceding or following a year when a civil servant was not evaluated. If, for the purposes of deciding on the promotion of female civil servants, a string of successive performance evaluation ratings which made female civil servants eligible for promotion would be ended because they used childbirth, maternity and childcare leave and their performance was not evaluated because of that, such practice would be contrary to the Constitution and the anti-discrimination legislation. In addition, if the ratings that female civil servants received before and after childbirth, maternity and childcare leave were not taken into account as successive scores, this would prevent female civil servants from promotion after they return from leave at least in the following two years.

The Commissioner also emphasised that absence from work because of pregnancy and parenting cannot be an obstacle for selection for a higher-ranked position, promotion and professional advancement. Employers must ensure that absence from work due to pregnancy and parenting does not have negative effects on the labour law status of women, and must pass decisions based on impartial criteria, such as qualifications, knowledge, work ability etc. Otherwise, as the Commissioner stated, the message to employed women who choose to give birth is that, after they return to work, they are at a risk of being degraded somehow, regardless of their achievements at work and their efforts invested in work before childbirth, maternity or child care leave.

In view of the foregoing, the Commissioner recommended to courts that, when they decide on promotion of female civil servants, they take into account

successively those ratings that were received for years when female civil servants were evaluated, excluding the year when they were not evaluated because they used childbirth, maternity and child care leave, i.e. not to end a string of performance evaluation ratings which make them eligible for promotion just because those civil servants did not have their performance evaluated due to childbirth, maternity and child care leave.

Initiatives for amendments to regulations

Initiative to amend Articles 3 and 4 of the Decision amending the Code of Conduct for Civil Servants

The Commissioner submitted to the High Civil Service Council an initiative for amendments to Articles 3 and 4 of the Decision amending the Code of Conduct for Civil Servants⁸. An analysis showed that if a civil servant initiates a procedure for protection against sexual harassment and/or discrimination before a court or the Commissioner, and this procedure fails, such civil servant may be exposed to being held accountable because he/she requested protection, which is not the case with other citizens not subject to the Code. In that regard, the Commissioner emphasised holding someone accountable (victimisation) is explicitly prohibited under the Law on the Prohibition of Discrimination, which sets out that discrimination exists if a person or a group of persons have unjustly worse treatment than others have or would have, exclusively or mainly because *they requested*, or intend to request *protection against discrimination* or because they offered or intend to offer evidence of discriminatory treatment. The Commissioner pointed out that the above definition shows that the Law on the Prohibition of Discrimination does not provide protection only for persons for which the procedure establishes that they suffered discrimination, but also to those for which the procedure determines that they were not exposed to discriminatory treatment. Also, the Law on the Prohibition of Discrimination stipulates that exercise of the rights provided for by this Law contrary to the objective for which they are recognized or with an intention to deny, violate or limit rights and freedoms of others is prohibited, while the Decision amending the Code of Conduct for Civil Servants requires of civil servants to be aware that reasons exist for initiation of the procedure for protection against discrimination, or sexual harassment, and the question arises whether possible lack of knowledge of the concepts of discrimination and sexual harassment, or a possible failure of a civil servant's procedure before competent authorities, should result in a possibility for an employee to be held responsible for abuse of the right to protection against discrimination or sexual harassment.

The Commissioner thus concluded that disputable provisions of the Decision amending the Code of Conduct for Civil Servants providing for prohibition of behaviour which constitutes "abuse of the right to protection against discrimina-

⁸ Official Gazette of RS No. 20/18

tion or sexual harassment” do not contribute to protection of civil servants against discrimination and sexual harassment; instead, they are an obstacle for requesting such protection, which puts civil servants in an unequal position with all other citizens who can request protection against discrimination and sexual harassment. In addition, civil servants who report discrimination or sexual harassment, and the competent authority does not identify discrimination in a specific case, are at risk that they will be held accountable, because they unsuccessfully requested protection against discrimination which could, for example, cause harm to a person against whom a complaint/lawsuit was filed. This provision might result in discouraging civil servants from requesting protection against discrimination or sexual harassment because of fear that a procedure might be unsuccessful and that they might suffer harmful consequences.

The High Civil Service Council notified the Commissioner that it accepted the initiative and that in May 2018 it passed the Decision amending the Code of Conduct for Civil Servants.

Initiative to amend the Law on Subsidies in Agriculture and Rural Development with the aim establishing subsidies for young people, women and other vulnerable population groups in rural areas

The Commissioner submitted to the Ministry of Agriculture, Forestry and Water Management an initiative to amend Article 3 of the Law on Subsidies in Agriculture and Rural Development⁹ or other relevant article of this Law which would provide for subsidies for young people, women and other vulnerable population groups in rural areas. The need to improve the position of young people in rural areas has already been recognised by Article 39 of the Law on Subsidies in Agriculture and Rural Development, but only for one type of subsidies, namely subsidies for programmes for diversification of income and improvement of the quality of life in rural areas, while all other types of subsidies are not covered by special benefits as regards young people. Other vulnerable groups of male and female farmers have not been recognised as special categories who need appropriate subsidies to improve their position in agriculture.

The Commissioner emphasised in the initiative that, in the field of agriculture, where subsidies are available under various conditions and to varying extent in areas with difficult work conditions, it is also necessary to provide subsidies under more favourable conditions and/or to varying extent for members of certain vulnerable population groups, such as young people and women in the labour market, as well as other vulnerable groups, if they are owners or members of farms engaged in farming. The main objective of such regulation is improvement of the financial status of young people, women and other vulnerable population groups in rural areas and ensuring equal opportunities for subsidies beneficiaries in these population categories, which could also have effects in terms of reversing the adverse demographic trends,

⁹ Official gazette of RS Nos. 10/13, 142/14, 103/15 and 101/16

higher population retention and economic activity in rural areas and fostering gender equality and equality of certain vulnerable categories of farmers.

The Ministry of Agriculture, Forestry and Water Management notified the Commissioner that it would consider implementing measures supporting women in rural areas during next amendments to the Law, as well as that it would consider the possibility of introducing subsidies through rural development measures for women and other vulnerable population categories in rural areas, both those engaged in agricultural activities and those engaged in non-agricultural activities.

1.4 Discrimination on the Grounds of Birth

The next most frequent ground of discrimination in 2018 was birth as a personal characteristic. The reason why the number of complaints based on this ground significantly increased in 2018 is the fact that the Law on Financial Support to Families with Children took effect, as well as its amendments, and therefore the majority of these complaints (104) relate to social welfare and family protection. Complaints filed by 556 women stated that several provisions of this Law were discriminatory and are not compliant with the Constitution. The complaints *inter alia* also stated that mothers who gave birth to their children before 25 December 2017 were discriminated compared with mothers who gave birth to their children after this date, because they will receive significantly lower amount of parental allowance. In certain complaints, depending on the fact to which provisions of this Law they relate, this personal characteristic was combined with other personal characteristics (age, property status, gender etc.). In connection with this, the Commissioner submitted initiatives for amendments to the Law to the Ministry of Labour, Employment, Veteran and Social Affairs, and proposals for review of constitutionality and legality to the Constitutional Court.

Proposal for review of constitutionality

Proposal for review of constitutionality and legality of certain provisions of the Law on Financial Support to Families with Children

The Commissioner submitted to the Constitutional Court a proposal for review of constitutionality and legality of certain provisions of the Law on Financial Support to Families with Children. Namely, under Article 13, paragraph 4 of the Law on Financial Support to Families with Children, the monthly base for salary compensation during maternity leave and child care leave cannot exceed three average monthly salaries in the Republic of Serbia, according to the most recent data published by a national authority responsible for statistics on the date of submission of an application. The Commissioner found that this provision disproportionally affects women who earn salaries higher than three times the amount of average monthly salary in the Republic of Serbia, which constitutes discrimina-

tion against women based on personal characteristics – gender and property status. Namely, bearing in mind the legal nature of maternity leave and the fact that due to traditional social behaviour patterns, few men use the entitlement to child care leave, it is clear that the provision pertaining to the maximum amount of the monthly salary base during maternity leave and child care leave disproportionately affects women relative to men, because it is reasonably expected that this right would mainly be used by women. In other words, the said legal provision has negative consequences for women who earn higher salaries, i.e. salaries higher than three average salaries in the Republic of Serbia, because, according to the new provisions, these women would receive lower amounts than those they received before maternity leave. On the other hand, this legal arrangement is also not compliant with the regulations governing the payment of taxes and contributions, given that Article 43 of the Law on Compulsory Social Insurance Contributions provides that the maximum annual contribution base is five times the average monthly salary in Serbia paid in the previous 12 months, starting from November in the year preceding the year for which contributions are determined and paid. It is thus unclear why the legislator on the one hand expects that employed women receiving higher salaries would pay contributions up to the maximum amount of five average salaries in the Republic of Serbia before giving birth, while this fact would actually be neglected after they give birth and women would receive maximum three average salaries in the Republic of Serbia, which would beyond any doubt affect their previous quality of life. This unjustifiably puts women who receive higher salaries in an unequal position with women who received salaries lower than 3 average monthly salaries in the Republic of Serbia when their maternity leave began, based on a personal characteristic, namely property status. Thus, although the objective of introducing the said provision is lawful, the manner of achieving such objective is neither appropriate nor necessary, because it actually puts a group of women in an unequal position, although this group largely contributed to the proceeds, i.e. the amount of budget funds through payment of salary taxes and contributions.

In addition, the petition states that provisions of Article 17, paragraph 2 and Article 18, paragraph 2 of the Law on Financial Support to Families with Children is not compliant with the Serbian Constitution and the Law on the Prohibition of Discrimination, because they put in an unequal position women farmers compared with women insured on other bases under Article 17, paragraph 1, which constitutes discrimination. Namely, Article 17, paragraph 2, in connection with Article 17, paragraph 1 of the Law introduces difference in identifying persons entitled to compensation based on childbirth, child care and special child care, and sets out that entitlement to compensation can be exercised by women who generated income based on activities specified in paragraph 1 (such as employment, self-employment, service contract etc.) during 18 months before childbirth, while women who are insured private farmers must be insured on that basis for 24 months as a requirement for entitlement to compensation. Although it is commendable that the Law now provides for a compensation which did not exist in

previous regulations for insured private farmers, the fact that the same rights are ensured for them as for other insured person does not mean that such right should not be provided to them under equal conditions as for others. Thus, the requirement set by the Law specifying that compensation based on childbirth, child care and special child care is calculated differently and under different conditions for women farmers compared with insured women under Article 17, paragraph 1 is unjustified and results in unequal treatment due to this fact alone. Such requirement for exercise of the entitlement to compensation is directly related to calculation of the base for other compensations, set under Article 18, paragraph 2, meaning that the base for other compensations based on childbirth, child care and special child care is determined proportionally to the sum of monthly bases for which compulsory pension and disability insurance contributions were paid in previous 24 months before the date of childbirth, while the base for persons set under Article 17, paragraph 1 is calculated on the basis of previous 18 months before beginning of sick leave during pregnancy due to pregnancy complications or maternity leave.

As regards the provision of Article 54 of the Law on Financial Support to Families with Children, in conjunction with Article 12, paragraph 1 of the Law amending the Law on Financial Support to Families with Children, complaints stated that mothers who gave birth to their children before 25 December 2017 are discriminated compared to mothers who gave birth to their children after this date, because they will exercise the entitlement to parental allowance according to the previously applicable law, which provides for significantly lower amounts of parental allowance than the new Law on Financial Support to Families with Children. Analysis of the above provisions showed that children born before 25 December 2017, who are still entitled to parental allowance, will receive a lower amount of parental allowance than children born after this date. Justification for such difference is not clear, particularly taking into account that children as end beneficiaries of this measure are in the same situation, regardless of their date of birth, because they all still receive parental allowance, and it is thus irrelevant whether they were born before or after 25 December 2017.

In view of the foregoing, the Commissioner proposed that the Constitutional Court should, upon completing the relevant procedure, pass a decision stating that the provisions of Article 13, paragraph 4, Article 17, paragraph 2, Article 18, paragraph 2 and Article 54, paragraph 2 of the Law on Financial Support to Families with Children and the provision of Article 12, paragraph 1 of the Law amending the Law on Financial Support to Families with Children are not compliant with the Constitution of the Republic of Serbia and the Law on the Prohibition of Discrimination.

The procedure is pending.

1.5 Discrimination on the Grounds of Health Status

The fifth ground of discrimination by the number of complaints filed in 2018 was health status, with 61 complaints filed (6.1%). As regards areas where discrimination on the grounds of health status occurs, the majority of complaints were filed in the field of labour and employment (19), which accounts for 10.9% of grounds stated in this field, unlike 2017, when the majority of complaints based on this ground were submitted in procedures before public authorities. This field is followed by the fields of procedures before public authorities (9.3%), provision of services and use of public spaces and facilities (3.5%), education and vocational training (15.5%), health care (12.1%), public information and the media (6.4%), while few complaints were submitted in other fields.

The Commissioner's practice shows that, as in the previous year, natural persons filed the majority of complaints, including 18 men and 33 women, while organisations engaged in protection of human rights filed nine complaints and one complaint was filed by a group of persons.

Acting on complaints showed that health status, as one of the grounds of discrimination, most frequently occurs in multiple discrimination, combined with disability, age and genetic features.

Complaints based on this ground also referred to the position of persons with melanoma and other diseases which require appropriate medical treatment, i.e. new generation medicines, and also to the position of persons living with HIV/AIDS. Complaints also particularly emphasised stigmatisation and prejudice against people with autism, particularly children with autism. A number of complaints again referred to the position of children with developmental disorders and disabilities. The Commissioner addressed this issue particularly when she emphasised the need to amend certain provisions of the Law on Social Welfare and the Law on Financial Support to Families with Children.

One of the reasons why citizens raised their concerns with this institution in 2018 was also to draw attention to the need to adopt the standards for social welfare and health care services and to improve palliative care. In this context, the Commissioner submitted a recommendation for measures to the Ministry of Labour, Employment, Veteran and Social Affairs and to the Ministry of Health. In addition, the need to improve social welfare and health care services was also emphasised in an opinion on the Draft Law amending the Law on Social Welfare, because this Draft Law included deletion of the provision relating to this type of services. In 2018, the Commissioner provided a number of opinions on draft regulations, including in particular the opinion on the Draft National Strategy for Prevention and Control of HIV Infection and AIDS in the Republic of Serbia (2018-2025) with the Action Plan for implementation and the Draft Law amending the Law on Social Welfare.

A first-instance decision was not passed in 2018 in the lawsuit for protection against discrimination launched by the Commissioner in 2017, which related to discrimination on the grounds of health status in the area of labour and employment.

Opinions and Recommendations

Degrading and offensive treatment of an autistic boy and his family

The opinion was issued following the procedure regarding a complaint filed on behalf of a minor boy by his father against “Nikola Tesla” Airport a.d, Air Serbia Ground Service d.o.o, because of discrimination of the boy based on his health status. The complaint stated that the complainant’s son suffers from autism, that after entering the airport he began to cry in the check-in line and that those are usual crises that affect children with autism. The complainant further stated that an airport worker, who did not introduce herself, approached them and asked why the boy was crying and, after hearing about his diseases, she said he will be “off the flight” and the staff treated them offensively all the time and were trying to find an excuse to ban the boy from travelling, i.e. the boy was prevented from boarding the plane because he suffers from autism. In its reply, the Airport stated its responsibility was to ensure the safe use of infrastructure and did not take part in decisions regarding departure of passengers, while a reply from the Air Serbia a.d. stated that duties regarding departure and arrival of passengers were performed by Air Serbia Ground Service d.o.o, a separate legal entity. In its reply, Air Serbia Ground Service d.o.o stated that persons with autism are not denied the right to use air transport services, but in this case safe transport was not possible due to the health status of the minor boy at the moment of evaluation by an airport physician, and they had to act in accordance with regulations and set procedures. After completion of the procedure and finding of facts, the Commissioner issued the opinion that in the procedure the Airport and Air Serbia a.d. did not violate provisions of the Law on the Prohibition of Discrimination in the procedure pursuant to the complaint. On the other hand, Air Serbia Ground Service d.o.o. violated the provisions of Article 12 of the Law on the Prohibition of Discrimination because it failed to demonstrate that actions of its staff while checking the ability of the minor boy to travel by plane were not degrading and offensive for him and his family, and was therefore recommended to hold a meeting with an association which provides support to persons with autism in order to directly learn about the problems these persons face and situations that may occur for persons with autism when they use air traffic services; to undertake activities to additionally educate employees responsible for arrival and departure of passengers and support to passengers with autism, as well as activities to improve the support system for persons with health difficulties and disabilities.

The Commissioner was informed within the statutory time limit that a meeting was held with representatives of the Alliance of Associations of Serbia for

Provision of Assistance to Persons with Autism, and that the Airport assumed responsibility for the entire handling of arrival and departure of passengers. Also, a proposal for training was adopted, which consists of several topics: introduction and the importance of training from the aspect of persons with autism and their families, specific features and character of persons with autism, possible situations and response – behaviour of persons with autism and strategies to overcome them, with visual support. In addition, it was agreed to prepare an online leaflet which would contain all necessary pieces of information regarding preparation to travel and travel of persons with autism and persons accompanying them. A plan for staff training in 2018 was enclosed to the notification on compliance with the Commissioner's recommendation.

Recommended measures for achieving equality

Measures recommended to achieve equality for persons in need of palliative care due to specific social and health status

The Commissioner submitted to the Ministry of Health and the Ministry of Labour, Employment, Veteran and Social Affairs recommended measures for achieving equality for the purpose of undertaking measures activities within their spheres of competence to ensure conditions for provision of services to users who need both social care and constant health care or supervision due to the specific social and health status, in particular by setting standards for the provision of services in accordance with the provisions of Article 60, paragraph 3 of the Law on Social Welfare¹⁰. In addition, it was recommended that the Ministry of Health also undertake measures and activities within its sphere of competence to further develop and improve the palliative care system for patients and provision of support to their families in the entire territory of the Republic of Serbia, and in particular to comprehensively review the current situation in the Republic of Serbia and undertake measures and activities according to their means to ensure that patients and their families are properly and to the necessary extent included in such type of support.

The Commissioner learned from received complaints that terminally ill patients and their family members every day face challenges caused by their diseases, that they have almost no support from health care institutions where their family members are treated, as well as that the health care and social welfare systems do not recognize the needs of such patients resulting from insufficient capacities of hospitals to provide proper care to patients. It is also stated that the society is not sensitised to this vulnerable group, as well as that in a number of cases patients have no family members to take care of them, while costs of palliative care at home are high, which is why these services should be developed to be available to persons who need them.

¹⁰ Official Gazette of RS no. 24/11

The World Health Organisation¹¹ defines palliative care as an approach that improves the quality of life of patients and their families and provides relief from pain and other distressing symptoms, affirms life and regards dying as a normal process, integrates the psychological and spiritual aspects of patient care, offers a support system to help the family cope during the patient's illness and in their own bereavement. Palliative care should thus be focused on patients with a specific health status, regardless of their age.

In 2016, the Government of the Republic of Serbia passed the Employment and Social Reform Programme (ESRP) in the EU accession process¹², which *inter alia* aims to improve the long-term care system, which requires inter-sectoral cooperation between social welfare and health care, while in specific terms it implies defining the social and health institution network, as provided for by the Law on Social Welfare, with a defined role of institutional care in the palliative care system and establishment of protocols to improve the status of beneficiaries who need both social welfare and health care services. Reforms in the field of health care also include improved availability of health care for persons over 65 years of age and development and strengthening of the work in the field of home treatment and care and palliative care in medical centres of all "old" municipalities of Serbia; formation of special palliative care units within extended treatment and care wards in in-patient health care facilities and improved equipment of multipurpose visiting services to visit and provide assistance to the elderly with chronic noncommunicable diseases.

Under Article 60 of the Law on Social Welfare¹³, social and health institutions can be founded for users who due to their specific social and health status need both social care and constant health care or supervision, special social and health organisational units within social welfare or health care institutions can also be formed for such users and ministers responsible for social welfare and health specify standards for provisions of services in these institutions. These standards, which are necessary for the organisation and application of such specific services, have not been specified, although the time limit for their establishing under Article 229 of the Law on Social Welfare expired a long time ago. Existence of standards would ensure development of these services and founding of new institutions, which would contribute to improvement of the position of persons who need such services.

The Ministry of Labour, Employment, Veteran and Special Affairs notified the Commissioner in February 2018 that it had formed a working group for preparation of the Draft amendments to the Law on Social Welfare, as well as that the issue pointed out by the Commissioner would be analysed as part of the work on amendments to the Law. The Ministry of Health has not notified the Commissioner of any activities it has undertaken. However, the Draft Law amending the Law on Social Welfare, which was submitted to the Commissioner to provide her

¹¹ More information available at: <http://www.who.int/cancer/palliative/definition/en/>

¹² More information available at: <https://minrzs.gov.rs/lat/aktuelno/program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-prist447cd5bb31b5d1565483b1a42.html>

¹³ *Official Gazette of RS* No. 24/11

opinion in the procedure for obtaining opinions, provides for the deletion of the article which governs social and health institutions and the legal basis for adoption of standards for provision of this service, instead of regulating in more detail this crucial issue. In this context, the Commissioner provided an opinion on the Draft Law, in which she once again underscored the need to reconsider the provisions of the Draft Law and stated it was necessary to provide social and health care services and form social and health care institutions.

1.6 Discrimination on the Grounds of National Affiliation and Ethnic Origin

Discrimination on the grounds of national affiliation and ethnic origin is the sixth most frequent ground indicated in complaints filed to the Commissioner, with 59 complaints filed, which accounts for 6% of the total number of complaints based on the various grounds of discrimination. During 2018 the Commissioner received a slightly lower number of complaints stating this ground. The majority of complaints, as in the previous year, were filed against discrimination of members of the Roma national minority (28), which accounts for 47.5% of all complaints filed against discrimination on this ground. Although Serbia has a good legislative and institutional framework for protection of the rights of national minorities, the Commissioner's practice confirms numerous surveys performed by international and domestic organisations which show that in certain fields of social life there are still problems particularly in connection with the Roma national minority. In terms of frequency and the number of filed complaints, complaints stating affiliation to the Hungarian national minority as the ground of discrimination follow (7), and then complaints stating affiliation to Vlach (5), Romanian (2) and Bosniak (2) national minorities as the grounds of discrimination, and one complaint each by members of Czech, Ukrainian, Macedonian, Russian, Montenegrin and Albanian national minorities, while one complaint related to all national minorities and in the remaining cases a national minority was not indicated.

A majority of the total number of complaints on this ground related to procedures before public authorities (14), followed by education and vocational training (12), labour and employment (11), public information and the media (7), provision of services and use of public areas and facilities and other fields with few complaints filed.

In 2018, the number of complaints relating to employment and vocational training noticeably increased, and they mainly included discrimination against Roma children. Measures undertaken on recognizing discrimination in the education system also contributed to this increase.

Complaints filed to the Commissioner show that problems and inadequate living conditions in informal Roma settlements still remain. In that regard, in 2018 the Commissioner visited an informal Roma settlement in Čukarica, where she

talked about problems faced every day by inhabitants of this settlement, such as enrolment of children in certain schools, gender roles justified by tradition and the Roma culture, marriages of minors, unemployment, and often domestic violence.

Also, a civil society organisation addressed the Commissioner in 2018 in connection with the situation in an informal Roma settlement near the landfill in Vinča, where Roma families live in inhumane conditions, without access to electricity and drinking water, in improvised houses built from waste material. The only income these families earn comes from collecting secondary raw materials at the landfill, and a particular problem is cutting off the only access to the settlement by an asphalt road within the landfill. Representatives of the Commissioner came to the location, after which a letter was submitted to the Public Utility Enterprise “Gradska čistoća” (City Waste Disposal), in which it was suggested they should enable access to the asphalt road for inhabitants of this Roma settlement, so they could satisfy their basic needs (access to drinking water, access for ambulance and fire engines etc.) until the anticipated provision of alternative accommodation. The Public Utility Enterprise “Gradska čistoća” notified the Commissioner that all measures set under the law were undertaken, that access was ensured for ambulance to enter the settlement and that the Public Utility Enterprise “Gradska čistoća” provides drinking water in its tank trucks.

In 2018, the Commissioner also filed one criminal charges for the criminal offence of inciting racial, national and religious hatred and intolerance. As of the end of 2018, the lawsuit initiated in 2017 for discrimination against the Roma national minority was still pending. In another lawsuit, initiated in 2012, also because of discrimination against the Roma national minority, in which the Higher Court had ruled that discrimination had occurred, the judgement of the Court of Appeals of 2018 overturned the judgement of the Higher Court and the case was returned for repeated procedure.

A11-Initiative for Economic and Social Rights, a human rights organisation, informed the Commissioner of its intention to perform situation testing in the field of work and employment of members of the Roma national minority in the hospitality industry and the service industry. The first situation testing was performed on 24 October 2018 in Belgrade, in connection with a job announcement for a bakery. The second testing was performed on 26 November 2018 in Belgrade, to check whether there is discrimination against members of youth cooperatives with regard to job referrals, while the third situation testing was performed on 30 November 2018 in Belgrade in connection with the work of animators in a children’s playroom. According to the report of situation testing which this organisation submitted, no cases of discrimination were found. Interestingly, during the testing for discrimination in the area of employment, a tester, who is a Roma woman, was offered employment at the bakery, while another tester (testing controller) who is not of Roma ethnicity and who applied for the job after the first tester, was told that that the post was already staffed.

*Opinions and recommendations**Discrimination against a Roma pupil at primary and secondary school*

The opinion was issued in the proceedings instituted upon the complaint against a primary and secondary school for discrimination against a Roma pupil. According to the complaint, a teacher punished a Roma pupil for allegedly taking a snack from a classmate's schoolbag by ordering her to stand in the hallway during the lunch break and "prop up" a concrete column, while she allowed other children to go out to the schoolyard. Furthermore, another teacher, while passing through the hallway, stopped beside the pupil and addressed her "brutally and with a lot of hatred and anger", so the girl started crying. In addition, the teachers behaved in this way only towards the Roma girl. In the answer to the complaint, the school principal said, *inter alia*, that the teacher "had caught" the pupil taking lunch from her friend's schoolbag and separated the children, for safety reasons, by leaving the pupil to eat her lunch alone in the school hallway, while letting the other children out to the yard. The school qualified the teacher's actions as necessary to ensure children's safety, bearing in mind the "specificity of the school, the children and their disabilities" and that there was no violence at school, which was also corroborated by the competent authorities. In the proceedings, ensuring children's safety was established as a legitimate aim, however the actions taken by the teachers to achieve this aim constitute a violation of the pupil's dignity, and create a sense of humiliation, anxiety and rejection, i.e. a humiliating and insulting environment. In this regard, the Commissioner issued the opinion that the school had violated the Law on the Prohibition of Discrimination. The school was recommended to organise trainings for employees on how to recognize and prevent discrimination in education, as well as to undertake activities to encourage tolerance, raise knowledge and understanding of discrimination, protect pupils and employees from discrimination and prevent discrimination and peer violence.

Within the time limit for acting upon the recommendation, the school notified the Commissioner that, in a meeting of the teacher's council, the principal had informed the employees about the Commissioner's opinion and that a decision was taken on the plan of activities to comply with the Commissioner's recommendation in the school year 2018/19.

1.7 Discrimination on the Grounds of Marital and Family Status

Marital and family status is the seventh most frequently indicated ground of discrimination. Namely, this ground for discrimination is indicated in 49 complaints, i.e. in 4.9% of all grounds. This number is almost identical to the number from the previous year (48). As in the previous year, most complaints were submitted by natural persons (47). It is evident that women (32) filed more complaints than men (15). This year the highest number of complaints based on this ground was submitted due to the procedure before public authorities - 20 com-

plaints (13.2%); followed by complaints submitted in the field of labour and employment - 18 (10.3%); followed by the field of education and vocational training - 4 complaints (6.9%), while a small number of complaints were filed in other areas.

The Commissioner's case law shows that marital and family status rarely appears as the sole ground of discrimination in complaints, but rather, most often, in combination with another personal characteristic such as sex; which is to be expected, particularly as regards women due to the patterns of behaviour and patriarchal roles. Some employers still unjustifiably include questions about family and marital status in applications, job vacancy announcements and interviews to automatically exclude women on the assumption of their inability to achieve a work-life balance.

Opinions and recommendations

Decision stipulating free preschool entitlement for the third and every subsequent child of the same mother and not of the same father

The opinion was issued in the proceedings instituted upon the complaint against the Decision of the Municipal Council of the Municipality of Topola regarding the economic cost of a program of upbringing and education in a preschool institution in that Municipality. The complainant stated, *inter alia*, that he has three children from two marriages, and that all children live in his family household. He is exercising parental rights over the first child under a court decision, and has two more children with his present wife. However, since the Municipal Council of the Municipality of Topola issued the said decision on, *inter alia*, free preschool entitlement for the third and every subsequent child of the same mother, his third child, who is also the second child of his present wife, is not entitled to free of charge preschool. The Municipal Council of the Municipality of Topola submitted a reply to the complaint, the integral part of which is the letter of the preschool institution - proponent of the said decision. According to the letter of the preschool institution, item 4 of the Decision on the economic cost of a program of upbringing and education in a pre-school institution, issued by the Municipal Council of the Municipality of Topola, sets the beneficiaries' individual contribution at the lowest, statutory 20% of the economic cost; item 1 prescribes free preschool, pursuant to the law, for children with developmental disabilities, children from materially deprived families and children without parental care; item 2 establishes a wider scope of entitlements for children from families with an income below RSD 8,000 per family member, in terms of a contribution below the statutory minimum of 20% of the economic cost; item 3 lays down other entitlements in terms of additional cost reduction - additional discount for the second child enrolled in an institution (this entitlement is considered to be the right of the child, i.e. siblings enrolled in an institution are taken into account) and free pre-school for the third and every subsequent child of the same mother (this is a mother's entitlement under incentives to have more kids). According to

the letter of the pre-school institution, free preschool entitlement for the third and every subsequent child of the same mother is a measure that is not prescribed by any special legal norm; however, Article 11(3) of the Law on Financial Support to Families with Children allows municipalities, provided that funds have been ensured, to establish other entitlements, a wider scope of entitlements than the scope established by this Law and more favourable requirements for exercising them. In the proceedings, the Commissioner found no objective and reasonable justification to deny the complainant free preschool entitlement for his third child, which had been granted to mothers and fathers of three children in the same or similar situation as the complainant. Namely, the complainant is the father of three children of different mothers who live with him in the same family household. He independently exercises parental rights over the eldest child, while he has two more children with his present wife. Therefore, at this moment, there are actually three underage children in the complainant's family under direct care of the complainant and his present wife. However, although this is undoubtedly a five-member family, the complainant could not enrol his third child in a pre-school institution free of charge, just because his children have different mothers. In drafting the Decision on the economic cost of a program of upbringing and education in a pre-school institution, the Municipal Council of the Municipality of Topola neglected families with three or more children of the same father and different mothers, i.e. placed the complainant in an unjustifiably unequal position on the basis of two personal characteristics - gender and family status. Therefore, the Commissioner issued the opinion that the Municipal Council of the Municipality of Topola had violated the provisions of the Law on the Prohibition of Discrimination by adopting the Decision on the economic cost of a program of upbringing and education in a pre-school institution which provides for entitlement to free pre-school for the third and every subsequent child of the same mother. The Municipal Council of the Municipality of Topola was recommended to amend item 4 of the Decision on the economic cost of a program of upbringing and education in a pre-school institution in such a way as to prescribe that, in addition to other categories, the free pre-school entitlement shall be exercised by the third and every subsequent child of a family with three or more children, according to the order of birth; and not to violate the legislation prohibiting discrimination while performing their regular duties and activities.

According to the notification on actions taken on the recommendation of the Commissioner, the Municipal Council of the Municipality of Topola issued a Decision on amendments to the decision on the economic cost of a program of upbringing and education in a pre-school institution, which provides for free pre-school entitlement of the third and every subsequent child living in a family of three or more children, according to the order of birth.

1.8 Discrimination on the Grounds of Sexual Orientation

Discrimination on the grounds of sexual orientation is the eighth most frequent ground on which complaints are filed with the Commissioner, with 42 complaints, constituting 4.2% of all lodged complaints. The total number of complaints based on this ground did not change in 2018 as compared to 2017.

For many years now, there is a trend of the majority of complaints against sexual orientation discrimination being submitted in the field of public information and the media and mainly by civil society organisations. According to an analysis of these complaints, hate speech, sensationalism, discriminatory attitudes and offensive reporting, especially about women and members of LGBT community, are still present in the media and public space.

According to an analysis of the Commissioner's case law the greatest share of non-compliance with the Commissioner's recommendations relates to this ground for discrimination, which is particularly worrying as regards persons holding public offices.

In 2018, the Commissioner filed one sexual orientation discrimination lawsuit. In addition, in the sex and sexual orientation complaint filed in 2017, a first instance decision was issued upholding the Commissioner's lawsuit in its entirety, however in the second instance proceedings, the Court of Appeal overturned the first instance verdict and adjudicated in favour of the respondent. Revision is underway. The lawsuits were filed primarily in order to encourage victims of discrimination to institute discrimination lawsuits, and to raise public awareness that discrimination is an issue and an unlawful social phenomenon. In addition, in 2018, one criminal charges was filed for holding members of LGBTI community up to public ridicule.

Opinions and recommendations

An article in the magazine "Tabloid" discriminates against members of LGBT community

The opinion was issued in the proceedings instituted upon the complaint of a civil society organisation against Milovan Brkić, editor-in-chief of "Magazine Tabloid: Truths and Misconceptions", on occasion of the text "Where is this world going?". The complaint states, *inter alia*, that the aforementioned text fosters prejudice against persons with sexual orientation other than heterosexual, representing them as the minority that manages the majority, and that the text reads that "one should provide resistance to the horrific dance macabre, the rise of Sodom and Gomorrah, pederasty, aggressive transsexual propaganda and paedophilia." According to the answer to the complaint, under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of expression. It is highlighted that the freedom

of opinion is a precondition for other freedoms guaranteed by Article 10 of the Convention; this right enjoys almost absolute protection in the sense that it is not possible to subject the exercise of this right to the potential restrictions referred to in Article 10 (2) of the European Convention for the Protection Human Rights and Fundamental Freedoms; the current case law of the European Court of Human Rights makes it clear that any restrictions to the freedom of opinion are inconsistent with the nature of a democratic society. Adjudicating in this case, the Commissioner also took into account Article 48 (3) of the Law on Public Information and Media, which stipulates that the editor responsible for a certain edition, section or program unit is responsible for the edited content, as well as Article 75 of the said Law which prohibits publication of ideas, information and opinions that encourage discrimination, hatred or violence against a person or a group of persons because they do or do not belong to a race, religion, nation, ethnic group, gender, because of their sexual orientation or another personal characteristic, regardless of whether a criminal offense has been committed by publication. The Commissioner issued the opinion that the ideas and attitudes contained in the article “Where is this world going?”, published in the electronic edition of “Magazine Tabloid: Truths and Misconceptions” on 3 May 2018, violate Article 12 of the Anti-Discrimination Law. Therefore, the editor-in-chief of “Magazine Tabloid: Truths and Misconceptions” was recommended to publish an apology to members of LGBT community in this Magazine, within 15 days from the date of receipt of the opinion and recommended not to publish texts that create fear or hostility, degrading or offensive environment for members of LGBT community from now on.

The responsible editor-in-chief of the magazine “Tabloid” failed to act on the recommendation of the Commissioner, and the general public was apprised of the fact.

1.9 Discrimination on the Grounds of Other Personal Characteristics

In 2018, 33 complaints against discrimination based on membership in political, trade union and other organisations were submitted to the Commissioner, which is the same number of complaints filed to the Commissioner on this ground in 2017. There were (14) complaints against religious belief or political opinion discrimination, (14) complaints against property status, (12) against citizenship status discrimination, (9) against previous criminal conviction discrimination, (8) against ancestry discrimination, (7) against appearance discrimination, (6) against gender identity discrimination, (3) against genetic features discrimination, (2) against language discrimination, (1) against race discrimination. In addition, a personal characteristic that is not explicitly stipulated in the law constitutes a ground for discrimination in 39 complaints. This group includes, for example, complaints against discrimination based on the place of residence, i.e. being a member of a group such as asylum seekers/ asylees and others.

Complaints relating to the position of the organisation and exercise of rights by members are also submitted to the Commissioner by trade union organisations. In addition, as regards discrimination based on membership in political, trade union and other organisations in the field of labour and employment, when presenting evidence in certain procedures, it has been noted that certain complainants or witnesses highlight the great problem of nepotism according to political affiliation, i.e. giving priority to members of the ruling political parties in recruitment, stating that they feel apprehensive of the consequences of reporting it, which is why they either do not submit or drop complaints, or the proposed witnesses refuse to testify. This practice has been confirmed through adequate research, as well as by participants in conferences and other events related to employment and the labour market and migration, in particular, of the young people.

In 2018, 12 complaints were submitted to the Commissioner for discrimination against refugees, internally displaced persons, migrants and asylum seekers. As in the previous years, complaints on behalf of migrants, refugees and asylum seekers were submitted by civil society organisations. Due to their difficult situation, language barriers and previous traumatic experiences in the country of origin and other countries that these persons have transited through on their way to Serbia, complaints are mainly submitted to the Commissioner by civil society organisations on behalf of migrants, refugees and asylum seekers.

Opinions and recommendations

Mothers who did not have a place of residence in the territory of the City of Niš for at least six months before the birth of the child are not entitled to financial assistance for a firstborn child

The opinion was issued in the proceedings instituted on the complaint against the Secretariat for Child Protection and Social Welfare and the City of Niš, which issued the Decision on Financial Support to Families with Children in the territory of the City of Niš. Namely, the complaint states that the Secretariat for Child Protection and Social Welfare did not recognize the right to one off financial assistance for the first-born child because the complainant was not resident in the City at least six months before the birth of the child. In the reply of the Secretariat for Children and Social Welfare, it is stated that Article 5 (1) of the Decision on Financial Support to Families with Children in the territory of the City of Niš entitles a mother to a one off financial assistance for her firstborn child if she has had a permanent place of residence in the territory of the City for at least six months before the birth of the child, or a temporary place of residence if she is a refugee or displaced person from the territory of Kosovo and Metohija, provided that she personally cares for the child. In the procedure, it was established that the Secretariat for Child Protection and Social Welfare, adjudicating on the request of the complaint, acted in accordance with the Decision on Financial Support to Families with Children in the territory of the City of Niš, which it is obliged to respect.

On the other hand, and having in mind that the complaint was filed against the City of Niš, which did not submit a reply on the allegations from the complaint, an analysis of the requirements prescribed by the Decision on Financial Support to Families with Children in the territory of the City of Niš was made. The analysis showed that the requirement for exercising the right to a remuneration for a first-born child that relates exclusively to the residence of the mother does not have an objective and reasonable justification, since the prescription of this requirement, without taking into account the place of residence of the father of the child and the child itself, is not justified from the point of view of purpose or effects it produces. Therefore, the Commissioner issued the opinion that the Secretariat for Child Protection and Social Welfare had not violated the provisions of the Law on the Prohibition of Discrimination, while the City of Niš violated the provisions of the Law on the Prohibition of Discrimination by prescribing the requirement for exercising the right to a one off financial assistance for the firstborn child in relation to the duration of being permanently resident. The City was recommended to amend Article 5 of the Decision on Financial Support to Families with Children in the territory of the City of Niš in such a way as to prescribe that, in addition to other requirements, the child's mother will be entitled to a financial compensation for the firstborn child if she or the father of the child have had a permanent place of residence in the territory that City, or a temporary place of residence in case of refugees or displaced persons from the territory of Kosovo and Metohija, for more than six months before the birth of the child, provided that the child has a registered permanent place of residence in the territory of the City.

In the notice on the actions taken upon the recommendation of the Commissioner, it was stated that the Head of the City Administration of Niš issued a Decision on the Financial Plan of the City Administration of the City of Niš for 2019 and allocated additional funds for expanding the beneficiaries' circle, and that the Secretariat for Child Protection and Social Welfare will send the initial enactment amending the Decision on Financial Support to Families with Children in the territory of the City of Niš to the relevant city services in charge of assembly affairs.

1.10 Multiple Discrimination

In 2018, there was an increase in the number of complaints that were submitted to the Commissioner on account of multiple discrimination and, consequently, an increase in the number of opinions that were issued in cases of discrimination on the grounds of several personal characteristics. In 2018, 188 complaints were filed in which several personal characteristics were mentioned. The majority of these complaints contained as one of the grounds of discrimination age, birth, sex, marital and family status, health status and disability. The Commissioner's practice shows that the complaints were mostly filed for multiple discrimination, due to amendments to the Law on Financial Support for Families with Children, based on which the Commissioner made several initiatives, as well as proposals for review

of constitutionality and legality. In addition, as in the previous year, a number of complaints were submitted due to multiple discrimination in the course of the employment procedure or at work, most often on the grounds of gender and marital and family status of women. Many complaints were also filed due to multiple discrimination on various grounds in procedures before state authorities.

Opinions and recommendations

A girl discriminated at school on the grounds of genetic features, health status and disability

Parents of a girl with Down syndrome filed complaints against the primary school “Dositej Obradović” from Požarevac, its principal and former pedagogue, psychologist and teacher, stating that the girl was neglected in the educational sense, insufficiently stimulated for work, and that the specialist service did not respond to the complaints on peer violence that the girl was exposed to. The response to the complaints stated that the girl was warmly welcomed by the pedagogue, psychologist, teacher and the then principal, from the first day of her schooling, that her adaptation was continuously monitored by daily exchange of information with the teacher, by the cooperation between the pedagogical-psychological department and the class that the girl attended, as well as by monitoring the teaching process and realization of individualization, IOP 1 and IOP 2, that the development of peer tolerance through joint games, participation in public appearances, visits, excursions, group work and work in pairs had been fostered from the first grade, while the girl was involved in all activities within and outside the school, and that any complaint to the children’s behaviour was met with direct work with the students. A single procedure was conducted for all complaints and it was established that the Ministry of Education’s pedagogical supervision found failures in the organisation of the girls’ education and proposed appropriate support measures. The Commissioner found that the support provided by the school and the specialist service to the girl was not sufficient and was not directed at the best interests of the girl, and that the school’s specialist service and the teacher did not recognize the need to react in the cases when parents pointed to the suspicion of the existence of peer violence according to the girl, but underestimated the importance of reporting on possible peer violence. Consequently, the Commissioner issued the opinion that the school, the former pedagogue, the psychologist and the teacher, by failing to provide the necessary support to the girl’s education in accordance with her age, development needs and interest, violated the provisions of the Law on the Prohibition of Discrimination. Therefore, the school was recommended to provide, in a timely manner, removal of physical and communication barriers, and to take other necessary measures to plan, in a timely manner, the support to the girl’s education, with the aim of ensuring full intellectual, emotional, social, moral and physical development in accordance with age, developmental needs and interest of the girl, with the involvement of her

parents and other actors who know the child well, in accordance with the law. The school was also recommended to organise trainings and education for its staff on the issue of discrimination in education, especially in relation to the students who need additional support in their education, due to social deprivation, developmental, learning and other disabilities, and other reasons; to undertake measures and activities to encourage tolerance, raise awareness, understand discrimination and protect against discrimination of the school's students and employees, in order to prevent discrimination and peer violence, and to ensure that in the course of its regular activities it does not violate the legal regulations on the prohibition of discrimination. The school informed the Commissioner, within the statutory deadline, about the implementation of certain activities based on the opinion with recommendations.

Based on the submitted evidence, it was established that the school had acted in accordance with the recommendations.

Initiatives for amendments to regulations

Initiative to amend Article 13, paragraph 4 and Article 54, paragraph 2 of the Law on Financial Support to Families with Children

Several hundred citizens of the Republic of Serbia addressed the Commissioner, alleging that there is a lack of conformity of the provisions of Article 13, paragraph 4 and Article 54, paragraph 2 of the Law on Financial Support to Families with Children¹⁴, with Article 12 paragraph 1 of the Law on Amendments to the Law on Financial Support to Families with Children¹⁵, the Constitution of the Republic of Serbia and anti-discrimination legislation, and for that reason requested the Commissioner to undertake measures within her competence. Namely, the provision of Article 13, paragraph 4 of the Law on Financial Support to Families with Children stipulates that the monthly base for salary compensation during maternity and child care leave cannot be higher than three average monthly salaries in the Republic of Serbia, according to the latest published data of the state authority in charge of statistics, on the day of filing the application. The analysis showed that the above provision disproportionately affects women who earn more than three average monthly salaries in the Republic of Serbia, which is discrimination of women on the basis of personal characteristics – gender and property status. Given the legal nature of maternity leave and the fact that due to traditional social patterns of behaviour, very few men use the right to child care leave, it is clear that the provision relating to the maximum amount of monthly salary during maternity and child care leave disproportionately affects women more than men, because it can be reasonably expected that in most cases this right will be used by women. In this way, employed women will, unlike employed men, have additional barriers to reconciling work and private life, since some of them

¹⁴ Official Gazette of RS Nos. 113/17 and 50/18

¹⁵ Official Gazette of RS No. 50/18

will be forced to choose between a very successful career and parenting, which in this case, in addition to gender, also points to the other grounds of discrimination against women, namely the property status. In other words, the said legal provision has negative consequences for women with higher salaries, i.e. salaries higher than three average salaries in the Republic of Serbia, because according to the new legal arrangement, these women will receive lower amounts than the amounts they received before maternity leave. On the other hand, this legal arrangement is not compliant with the regulations governing the payment of taxes and contributions, bearing in mind that the provision of Article 43 of the Law on Compulsory Social Insurance Contributions stipulates that the highest annual contribution base is five times the sum of average monthly salaries in Serbia paid for the previous 12 months, starting from November in the year preceding the year for which the contributions were determined and paid. Therefore, it is unclear why the legislator, on the one hand, expects that employed women with higher salaries will pay contributions of up to the maximum amount of five average salaries in the Republic of Serbia before maternity, while, on the other hand, this fact will be fully neglected when they became mothers, and they would receive maximum three average salaries in the Republic of Serbia, which would undoubtedly affect their previous quality of life.

As regards the provision of Article 54 of the Law on Financial Support to Families with Children, and in relation to Article 12 paragraph 1 of the Law on Amendments to the Law on Financial Support to Families with Children, complaints indicate that mothers who gave birth to children by 25 December 2017, were discriminated compared to mothers who gave birth to children after this date, as they would be entitled to parental allowance under the previously applicable law, which stipulated significantly less amounts of parental allowance than the new Law on Financial Support to Families with Children. By analysing the above provisions, it was established that children born before 25 December 2017, who still receive parental allowance, would receive a lower amount of parental allowance than children born after this date. Justification for this difference is unclear, especially given the fact that children as end beneficiaries of this support measure are in the same position regardless of their date of birth, because they all still receive parental allowance, and therefore it is irrelevant whether they were born before or after 25 December 2017.

In view of the foregoing, the Commissioner proposed to the Ministry of Labour, Employment, Veteran and Social Affairs to accept the initiative and propose to amend the provisions of the Law on Financial Support for Families with Children as the proposer of the law.

The Ministry of Labour, Employment, Veteran and Social Affairs did not inform the Commissioner about the activities undertaken or the activities they intend to take on the Commissioner's initiative.

Initiative to amend Article 17, paragraphs 2 and 6 and Article 18 paragraph 2 of the Law on Financial Support to Families with Children

Complaints were filed with the Commissioner stating that the provisions of Article 17, paragraphs 2 and 6 and Article 18, paragraph 2 of the Law on Financial Support to Families with Children are discriminatory. In the complaints, it was stated that in Article 17, paragraph 2, and in relation to Article 17, paragraph 1 of the Law, a distinction was made in determining the persons entitled to allowance based on child birth and child care and special child care, so that women who earned income based on the activities envisaged in paragraph 1 (such as employment, self-employment, service contract, etc.) in the period of 18 months before childbirth are entitled to allowance, while women who are insured private farmers must be insured for 24 months on this basis to be entitled for the allowance. Also, the provision of Article 17, paragraph 6 of the Law on Financial Support to Families with Children limits the right of the fathers to parental allowance based on childbirth and child care only in the situation when the mother died, left the child or, for objective reasons, is not able to take care of the child.

Although it is commendable that the Law now regulates the allowance that did not exist for insured private farmers in previous regulations, the fact that they were granted same rights as the other insured persons does not mean that these rights should not be granted to them under equal conditions as to the others. Therefore, the condition stipulated by the Law to calculate allowance based on childbirth, child care and special child care for women who are insured private farmers in a different way and under different conditions compared with insured women under Article 17, paragraph 1 is not justified and leads to unequal treatment, on the grounds of that circumstance only. The condition for acquiring the right to parental allowance thus established is directly related to the calculation of the base for other benefits, specified in Article 18, paragraph 2, so that the base for other benefits based on childbirth, child care and special child care is determined proportionally to the sum of the monthly bases for which compulsory pension and disability insurance contributions were paid for the last 24 months preceding the child's birth date, while the base for persons referred to in Article 17, paragraph 1 is calculated taking into account 18 months preceding the first month of the leave due pregnancy complications or maternity leave.

Also, it is not clear why the provisions of Article 17, paragraph 6 of the Law stipulate that the father of the child can only receive parental allowance if the mother is not alive, left the child, or is not able to take care of the child for objective reasons, i.e. whether that means that in the case of child care, the mother is the holder of entitlement and that in these cases only mother is responsible for child care. By analysing the regulations, it can be established that the legislator determined the parent who directly takes care of the child as the holder of entitlement, from which shows that this allowance is not intended to help to mothers in alleviating the socio-economic changes resulting from childbirth, or the aid intended for parent/parents; instead, it is support intend-

ed directly for the child who should have the end benefit of this legal measure. This is supported by the provision of Article 1 of the Law on Financial Support to Families with Children, which stipulates that financial support includes improving the conditions for meeting the basic needs of children and improving the financial situation of families with children, families with children with developmental disabilities and families with children without parental care. In addition, the provision formulated in such way is also in conflict with the provision of Article 94 paragraphs 5 and 6 of the Labour Law¹⁶, according to which the right to child care leave can also be exercised by the father of the child, and it can be exercised even in case when the mother is not employed. Therefore, the Commissioner pointed out that the father was entitled to this kind of paternal leave, but by applying the controversial provisions of the Law in that case, if he were to take the leave, he would not be entitled to parental allowance for leave from work due to care of the child. In view of the foregoing, the Commissioner submitted an initiative to the Ministry to amend the controversial provisions.

The Ministry of Labour, Employment, Veteran and Social Affairs has not informed the Commissioner about the activities undertaken or the activities they intend to take on the Commissioner's initiative.

1.11 Court Proceedings

In addition to the protection against discrimination that is exercised before the Commissioner in proceedings pursuant to complaints, there is also judicial protection against discrimination. Depending on the legal nature of the violation resulting from the act of discrimination, and from the extent of its social danger, we distinguish civil, misdemeanour and criminal legal protection against discrimination.

The Commissioner is authorised to file lawsuits to the court against violations of regulations prohibiting discrimination, on her own behalf and with the consent and for the account of the discriminated person. The Commissioner initiates anti-discrimination litigation in the general interest, and personally assesses when and in which cases to press charges for protection against discrimination, bearing in mind the fact that the aim and the purpose of the litigation initiated exceed the importance it has in terms of the protection of the rights of the discriminated persons themselves or a group of persons. This is the so-called *strategic litigation* initiated and led by the Commissioner in the public interest, with the aim of contributing to the consistent application of regulations and the improvement of legal practice, to further stimulate and encourage victims of discrimination to initiate anti-discrimination litigation, and to legally educate and sensitise the public to the problem of discrimination.

¹⁶ Official Gazette of RS Nos. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 and 113/17

Up to date, the Commissioner has filed 17 lawsuits for the protection against discrimination, out of which seven lawsuits ended in favour of the Commissioner where the court accepted Commissioner's claims in their entirety. In two cases, the Commissioner withdrew the lawsuit since in one case the respondent rescinded the contentious decision, while in the second case the respondent amended its rulebook which was the cause for lawsuit. One lawsuit was dismissed since the respondent had been deleted from the Business Register and two lawsuits ended with Commissioner's claims being rejected. In five cases, a final verdict has not yet been issued (in three cases the court rendered the first-instance verdict in favour of the Commissioner, and in two cases the first-instance verdict has not yet been issued).

In 2018, the Commissioner filed a lawsuit against discrimination based on sexual orientation, expressed in an interview for a magazine as the views against the LGBT population. On 28 June 2018, the High Court in Belgrade issued a verdict for the failure to find that the defendant stated in the interview the views that represent harassment and violation of the dignity of the LGBT population, thereby committing an act of discrimination based on sexual orientation. It was forbidden for the defendant to present attitudes that denigrate the LGBT population and support the prejudices against this social group in the media and other publications, at meetings and places accessible to the public. Also, the defendant was ordered to publish at his own expense the verdict in the magazine in which the interview was published or in the daily newspaper with national coverage. The respondent filed an appeal on a timely basis, which prompted the Commissioner to provide the court with a response to the appeal on 24 July 2018 and on 26 September 2018. The procedure before the Appellate Court in Belgrade is in process, which decides on the defendant's appeal.

The Commissioner is authorized to file criminal charges when she learns in her work about a criminal offense or perpetrator. Thus, the Commissioner submitted to the competent prosecutor's office three criminal charges, for promoting violence against women, for racial hatred and intolerance, and for the discrimination of persons of different sexual orientation.

In 2018, one request for initiation of a misdemeanour procedure was filed for discrimination based on disability, against a playroom that refused to provide service to a girl because of the deformity of her hand, i.e. the disability as her personal characteristic.

1.12 Other Outcomes of proceedings

The Law on the Prohibition of Discrimination stipulates that the Commissioner shall not act upon a complaint when proceedings pertaining to the matter in question have been initiated before a court of law or an enforceable decision has been passed; when it is obvious that there is no discrimination pointed to by the complainant; when steps concerning the same matter have already been taken

and no new evidence has been provided and when due to the passage of time since the violation of rights in question, no useful purpose would be served by acting upon the complaint. In 2018 the Commissioner did not act upon 88 complaints as she had no jurisdiction over those matters. Complaints that were rejected on account of lack of jurisdiction pertain to the violation of rights which fall outside the Commissioner's scope of competence and are within the jurisdiction of other government bodies. In these cases, complainants were informed about reasons for rejection of their complaint and were given information about a government institution with jurisdiction over that particular matter. As for incomplete complaints, which in 2018 accounted to 229, complainants are notified of the reasons as to why their complaints are incomplete and what information they need to provide, and are given time limits to amend their complaints. Should the complainant fail to amend the complaint within the set time limit, the Commissioner does not act further upon that complaint. In 194 complaints it was obvious that no violation of rights alleged by the complainant had occurred, in 44 cases court proceedings were either initiated or finalized regarding the same matter, in 4 cases the passage of time rendered acting upon a complaint useless in serving a useful purpose, in seven cases the complaint had already been acted upon, while in 14 cases complaints were withdrawn.

2. Cooperation By The Commissioner

During 2018, the work on increasing the accessibility and visibility of the institutions and promoting the principles of equality and prohibition of discrimination continued through numerous trainings, lectures, organisations and conference participations and expert meetings, publications released etc. Cooperation with public authorities, civil society organisations, international organisations and other institutions and the media has been improved.

The Commissioner submitted the Regular Annual Report for 2017 to the National Assembly of the Republic of Serbia, presented in detail at the 16th session of the Committee on Human and Minority Rights and Gender Equality, while it has not been considered at a National Assembly session since 2014.

By implementing the “Strengthening of Local Anti-Discrimination Capacities and Institutional Capacities” project realized with the support of the Kingdom of Norway, in 2018, the Commissioner established the annual “Award for Municipality / City of Equal Opportunities”, and the recognitions were awarded to the Municipality of Gadžin Han, the City of Novi Sad and the Municipality of Svrlijig.

Seminars for judges of all four courts of appeals, trainings for representatives of civil society organisations were organised and two manuals were published as part of the project titled “Strengthening the Capacity of Institutions and Organisations in Serbia with a view to proper Application of Legislation in the field of Human Rights and the Fight against Discrimination”, which is implemented with the support of the Good Governance Fund (GGF).

Successful cooperation with the European Network of Equality Bodies EQUINET has continued through the regular participation of representatives of the institutions in working groups, clusters, seminars, conferences and trainings organised by EQUINET. The European Commission adopted a Recommendation on Standards for Equality Bodies setting minimum standards for the work of these bodies, their independence and efficiency, including the need to provide sufficient financial and human resources for the work of these bodies, appropriate powers and competencies.

During the course of 2018, activities in regional cooperation have continued by the Commissioner’s participation in the third regional conference titled “Independence of Equality Bodies”, which was organised by the institution of the Albanian Commissioner for the Protection of Equality in late October in Tirana. Representatives of equality institutions exchanged experiences on the challenges they faced in meeting European standards, especially as regards independence as one of the key standards. One of the conclusions of this conference is that adequate provision of financial means and resources is one of the prerequisites for the independence of equality bodies.

The project “Don’t Judge a Book by Its Cover - Living Library in Serbia”, which the Commissioner has been implementing since 2012, saw the continuation of

many years of cooperation with the Council of Europe. Also, the Commissioner's Office was visited by the European Commissioner for Human Rights Nils Muižnieks in late February.

The Commissioner continued activities on implementation of the "Moot Court in the Field of Protection Against Discrimination" program with the support of the Open Society Foundation Serbia. Cooperation between the Commissioner and the UNICEF Office in Serbia has continued. In 2018, the Commissioner set up a new platform for the organisation of the "Discrimination Busters" Youth Panel in order to ensure greater participation of young people and peer education.

The Commissioner was a sponsor and co-organiser of the Seventh European Congress for Persons with Disabilities called "Living in the Encounter". The Congress was held in Belgrade from May 31 to June 3, 2018 and gathered hundreds of participants from 11 countries - Germany, Switzerland, Austria, Italy, Belgium, the Netherlands, France, Russia, United Kingdom, Slovenia and Serbia.

In a cycle of activities to prevent discrimination in the labour market and promote equality, the Commissioner continued activities on promoting the Code of Equality and cooperation with employers wishing to adopt this Code. Thus, in 2018, with attendance of representatives of renowned companies and members of the American Chamber of Commerce in Serbia, the Equality Code was presented in the American Chamber of Commerce.

The Commissioner was a partner of the Gallery of Matica Srpska in Novi Sad in the realization of the exhibition titled "Perceptions - Women Tailored to Society", which drew attention to the overall contribution of women to culture and art in Serbia.

Within the program of the 10th parade of the Scout Association of Serbia, which gathered 800 children from many countries, the Commissioner held nine workshops for children - scouts from 29 July to 31 July 2018.

To commend 16 November, the International Day for Tolerance, the Commissioner organised a regular annual conference titled "Serbia without Discrimination" in cooperation with the OSCE Mission to Serbia and the UK Government's Good Governance Fund, which awarded media texts and articles on the fight against discrimination and the promotion of equality and tolerance for the fourth time. At the Commissioner's initiative, the first class in all primary and secondary schools in the Republic of Serbia was dedicated to tolerance, mutual respect and understanding.

3. Media Reporting

From year to year, most of the media in Serbia increasingly recognize the importance of reporting on human rights, equality and non-discrimination. Despite the fact that daily events dictate the choice of topics to a large extent, the number of journalists ready to point to the problems of different minority and marginalized social groups is increasing. It is also noticeable that the media at the local level are increasingly bringing these topics in.

On the other hand, 2018 was also marked by an inadmissible reporting of a number of print media and portals publishing sexist, misogynistic and chauvinistic content, insulting the reputation and dignity of individual personalities and violating professional and ethical standards of reporting.

Hate speech as well as various offenses and discriminatory attitudes were present in public this year, and social networks were often the places of mutual insults and threats. The media reported the Commissioner's warnings strongly condemning the statements and attitudes that incited violence, intolerance and discrimination, pointing out that freedom of speech was clearly separated from hate speech and must not be an alibi for the spread of hatred. Journalist associations themselves were drawing attention to the fact that the media continue to present hate speech, sensationalism, discriminatory attitudes and offensive reporting, especially about women and members of the LGBT population.

Last year, media associations pointed to an increased level of violation of the Code of Conduct of Journalists of Serbia, the conditions for doing business without fear for personal security, cases of insulting and degrading journalists and holders of political and public functions, the economic and social position of media employees and problems with competitions for the allocation of funds for financing the media content of public importance.

At the same time, most relevant domestic and international reports pointed to the problem of freedom of expression and safety of journalists in Serbia. The European Commission's Annual Progress Report on Serbia states that no progress has been made in the area of media freedom, and that it is necessary to improve the situation in terms of creating a favourable environment for freedom of expression and media freedom¹⁷. The Non-paper document of the European Commission of November 2018 states that cases of threats, intimidation and violence against journalists are still worrying, and the overall environment is still not conducive to the exercise of the freedom of expression and media freedom. It also emphasizes that hate speech and discriminatory terminology are often tolerated in the media and are rarely dealt with by regulatory authorities or prosecutors.¹⁸

¹⁷ [http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_srbiji\(1\).pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_srbiji(1).pdf)

¹⁸ http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/Non-paper_on_the_state_of_play_regarding_chapters_23_and_24_for_Serbia.pdf

The position of citizens with disabilities and the difficulties they face in their everyday life were topics that the media reported regularly. From features on architectural barriers, inadequate representation in decision-making processes, to difficulties in employment, with poverty as a general problem of this population, it is estimated that the media spoke about persons with disabilities almost every day, but the impression is that there are still fewer topics that searched for solutions.

In addition to reporting on children's rights, the elderly, their marginalization and exclusion were also a frequent topic in the media. Surveys on their position pointed to the problem of their discrimination, as did the International Congress of the Gerontological Society, with one of the organisers being the Commissioner. The media also reported on the exhibition on the occasion of the International Day of Older Persons titled "The Bridge of Understanding", where children from all over Serbia competed with photographs and texts, as well as the "Children are Decoration of Equality" ceremony on the occasion of the International Children's Day. It has also been written about the position of people with autism, especially about the difficulties that children with autism and their parents are facing.

Regarding the problem of achieving gender equality in all areas of social life, the focus was on monitoring the effects of the implementation of the Law on Prevention of Domestic Violence, bearing in mind, unfortunately, a large number of women killed in family and partner violence, and the Commissioner has repeatedly spoken about this in public. In addition, the year 2018 was marked by insults and verbal violence against women, and the media also published warnings of the Commissioner in which she condemned sexist insults and the disgracing of women. Women's entrepreneurship, which was the topic of panels, meetings and conferences attracted the interest of the media.

The second half of the year was marked by media reporting on the adoption of the Law on Financial Support to Families with Children and comments caused by the effects of the application of certain provisions. The proposal for review of constitutionality and legality of this Law submitted by the Commissioner to the Constitutional Court of Serbia resulted in numerous TV appearances, statements and interviews. Numerous texts and comments were triggered by the campaign of the Ministry of Culture and the Council for Population Policy with slogans for encouraging birth rates in Serbia. Negative reactions were also caused by the congratulations of the Minister of Labour on the occasion of March 8 by quoting lines from a poem by Jovan Dučić which insulted women, and the Commissioner reacted with a warning. Throughout the year the Law on Gender Equality, its significance and the "conflict of jurisdiction" of the proposer were prominent subjects.

An affirmative three-month exhibition titled "Perception - Woman Tailored to Society" on the female artistic heritage of Serbia and the United Kingdom, organised by the Gallery of Matica Srpska and the British Council, and co-organised by the Commissioner for the Protection of Equality, had a very positive impact in the public.

As regards reporting on the position of *national minorities*, as in previous years, the media attention was mostly drawn to members of the Roma national minority, and the key topics they reported were difficult everyday life in informal settlements, shorter life expectancy, unemployment and discrimination, inclusion of Roma children in the educational system, as well as the problem of child marriages. The media also accompanied the Commissioner's visit to the Roma settlement in the municipality of Čukarica on the occasion of the International Day for the Elimination of Racial Discrimination and the International Romani Day. The position of the Albanian national minority was also reported. All media reported Commissioner's warnings about the attack on young Albanians that happened in Novi Sad. During the course of the year, conferences were held as part of the presentation of a survey on the relations between Serbs and Albanians, where it was estimated that there were reasons for optimism, as the results of the survey showed that Serbs and Albanians were mostly interested in economic and political stability.

The elections for national councils of national minorities were held in the reporting year and the media dealt with the results, the preceding campaign, as well as some novelties in the amendments to the laws that refer to the position of national minorities in Serbia.

The media paid attention to the International Holocaust Remembrance Day. The Commissioner pointed to the problem of occasional revival of fascist ideas and symbols, and a warning was issued regarding the Nazi greetings at the rally dedicated to Milan Nedić.

The media frequently reported on the rulings of the Higher Court in Novi Sad against the Faculty of Law of the University of Novi Sad, following a complaint by the Union of Hungarian Students of Vojvodina, due to the introduction of additional criteria for enrolment - the knowledge of the Serbian language in which the classes are held.

As regards *health status* as the basis for discrimination, great media attention was attracted by the recommended measures for achieving equality submitted to the Ministry of Health and the National Health Insurance Fund after the Serbian Society of Nephrology addressed the Commissioner in the case of the Special Hospital in Vrnjacka Banja, where dialysis devices have not been put into operation for 10 years. Continuous media appearances, public pressure and good media access have yielded results and the Department of Dialysis has been put into operation, and this shows the importance of partnerships with the media and the need for timely and objective reporting in order to better protect citizens.

Throughout the year, the media also dealt with the position of people living with HIV / AIDS and hepatitis C, pointing to the need to reduce the social distance to this vulnerable social group, as well as the need to provide new generation medications. A large number of the media reported on the opening of the first Belhospis to help citizens in the terminal phase. The media particularly re-

ported on the recommendation of the Commissioner regarding the development of standards for this type of social and health services, as well as on the opinion of the Draft Law on Amendments to the Law on Social Welfare.

Regarding the position of the LGBTI people, the media mostly reported on several instances, namely the discriminatory statements of Minister Nenad Popović and Zvezdan Terzić, the president of the Red Star Football Club. Also, media attention at the beginning of the year was triggered by criminal charges filed by the Commissioner against the singer known as Aca Lukas, for insulting the LGBT population. A series of texts and television features was also made on the occasion of the fact that the professor at the Law Faculty of the University of Novi Sad became a dean of that institution during a strategic lawsuit against him for discrimination against women and LGBT people. One of the topics was also textbooks with discriminatory content that were withdrawn from sale on Commissioner's recommendation. Attention was also drawn to the first conviction in Serbia for hate crimes of a convicted father who committed violence against his son because of his sexual orientation.

The media reported on both Pride Parades with the conclusion that they went peacefully. A certain media interest for the problems that transgender people face was displayed, as well as for the announcements of possible legal regulation of the position of same-sex unions. The Commissioner emphasised that it is necessary that these legal issues be addressed as soon as possible.

The case of Doctor Marco Lens, who won court litigation against Swiss International Air Lines LTD for discriminatory treatment, sparked the interest of all the media, addressing the Commissioner for a reaction; the Commissioner said she believed that an important message was that discrimination was prohibited and that justice could be reached, albeit after a long time.

The media also dealt with the topic of hate speech, especially on social networks, and reported on the organisation of several meetings, as well as the recommendation of the Commissioner in this matter.

The topic of peer violence was constantly present in the media, introduced by various incidents, due to which the public alerts were issued. The media also reported on the rulebook regulating the steps in case of suspected or confirmed discriminatory behaviour in schools.

Two other cases of discrimination the Commissioner acted upon and identified discrimination have attracted special attention of the media, one being the case of unjustifiably unfavourable treatment towards an employee only because of membership in her husband's union organisation and her personal characteristic – her sex, and the other one being unjustified unequal treatment of the Journalists' Association of Serbia by a bank for rejection of loan applications to citizens associations.

The Annual Media Award for Tolerance presented by the Commissioner with the support of the OSCE Mission to Serbia generated great attention this year as

well. The entire conference, as every year, was broadcast live by Radio Television Serbia. The media also paid attention to the annual “*Municipality / City of Equal Opportunities*” award newly established by the Commissioner, as well as the “*Contribution of the Year to Europe*” award presented to the Commissioner by the European Movement in Serbia.

4. 2018 Budget Execution

The Law on Budget of the Republic of Serbia allocated funds to the Commissioner for the “Improvement and Protection of Human and Minority Rights and Freedoms” program in 2018 in the amount of 91,264,000 dinars. By inclusion of unused funds from the previous year, as well as the donation from 2018, the available funds in the budget for this program, i.e. the amount on current appropriations, reached 112,734,320 dinars. Total funds spent at the end of 2018 amounted to 88,889,081 dinars.

5. Recommendations For Combating Discrimination And Improving Equality

A number of recommendations made by the Commissioner in his annual report for 2017 were implemented in 2018, while some recommendations were implemented only partially.

In that sense, the following documents were adopted in the reporting period: *the HIV and AIDS Prevention and Control Strategy, 2018-2025, the Birth Promotion Strategy, the Public Health Strategy of the Republic of Serbia for 2018-2026, the Occupational Safety and Health Strategy of the Republic of Serbia for 2018-2022 with the Action Plan for its implementation, the Action Plan for Implementation of the National Youth Strategy for 2018 - 2020, Law on Free Legal Aid* (the effects of the implementation of this Law will be seen after it takes effect on 1 October 2019), *the Law amending the Law on Planning and Construction, the Law on Textbooks, the Law amending the Law on Protection of Rights and Freedoms of National Minorities, the Law amending the Law on National Councils of National Minorities, Law amending the Law on Official Use of Languages and Scripts, the Law on Unique Personal Identification Number, the Law amending the Law on Registry Books, the Law amending the Law on Higher Education, the Rulebook on Actions that should be taken by Institutions in Case of Alleged or Identified Discriminatory Behaviour and Defamation of Character, Honour or Dignity of a Person; Rulebook on the Criteria and Standards for Providing Additional Support in Education of Children, Students and Adults with Developmental Disorders and Disabilities in the Educational Groups or other School or Family, the Rulebook amending the Rulebook on Scholarships for Exceptionally Talented Students and Pupils, the Rulebook on Publishing of Low-Circulation Textbooks, the Rulebook on Detailed Instructions for Determining the Rights to Individual Education Plan, Its Implementation and Evaluation, the Rulebook on Additional Educational, Health and Social Support to Children, Students and Adults, the Rulebook on Detailed Requirements for, the Procedure and the Manner of Exercising the Right to Paid Leave or Work Part Time for Special Child Care and the Decision amending the Civil Service Code of Conduct.* The National helpline for women who are victims of violence started operating in late 2018.

Based on the insights gained during procedures pursuant to complaints in 2018, and on the basis of other relevant data on problems in achieving equality, the Commissioner makes the following recommendations:

1 To start developing strategic documents and action plans the validity of which expired in the previous period or will expire in 2019. This primarily refers to the adoption of a strategy for prevention of and protection against discrimination, the improvement of the position of persons with disabilities, development of social welfare, mental health, prevention of violence and protection of children against violence, development of adult education, socially responsible business operations and strategies on aging. New strategic documents should be based on

the evaluation of previously applicable strategies and should take into account the current situation and the needs of social groups they refer to. To realistically define objectives and activities, provide sources of funding, and conduct a wide consultation process with all relevant participants in preparation of all strategic documents.

2 Include in programmes and plans the implementation of measures and activities at the national, provincial and local levels in order to reduce poverty, encourage rural development, retain young people, prevent political patronage, and achieving full equality of male and female citizens, especially vulnerable and marginalized social groups including children and women belonging to these groups. When drafting regulations and measures, special attention should be paid to statistical indicators and data from relevant surveys for specific areas, taking into account the long-term effects of their implementation in practice and the real effects on male and female citizens and local communities.

3 To improve the social welfare system and financial support to families with children in order to improve the efficiency and quality of assistance in order to overcome social and life difficulties, create conditions for meeting the basic needs of individuals and families, as well as family protection measures and measures to support childbirth. To pay particular attention to strengthening material support for vulnerable and poor population groups, enhancing the accessibility and diversity of support services (community-based daily services, support services for an independent life, intensive support services for families in crisis, parent counselling and support, support for families rearing a child or taking care of an adult member of a family with disabilities, etc.), as well as other social welfare services. To strengthen control mechanisms and introduce monitoring and assessment of the quality of social welfare services.

4 It is necessary to strengthen all (quantitative and qualitative) capacities of centres for social work in order to be able to respond in a timely manner to all tasks in the field of social welfare and legal family protection and ensure quality mapping of needs, detection of social exclusion and timely activation of all forms of support and assistance.

5 To amend or abolish the Law on the Method of Determining the Maximum Number of Employees in the Public Sector, bearing in mind the consequences for the functioning of public services (in the field of health, education, social welfare, social care of children, science and culture), as well as the consequences on the position of women and on the effective and continuous functioning of state administration.

6 To intensify work on improving architectural and informational accessibility and the application of a universal design in all areas, with the aim of facilitating unhindered access to public facilities and areas, transport, information, communications and services for persons with disabilities, persons with movement difficulties, the elderly and children. To ensure that information on the work of

all public authorities is available in appropriate formats, including the content of internet presentations, to increase the number of the media content that is translated into the sign language, as well as communication through the sign language interpreter. Equal opportunities should be provided for access to emergency services, notification services, helplines and public telephone directories.

7 It is necessary to provide conditions for full exercise of all guaranteed rights to persons with disabilities, which includes taking measures to improve the legal framework in terms of exercising the right to an accessible polling station and electoral material, while respecting the dignity of persons with disabilities.

8 To improve the legal framework by amending the regulations providing for the issue of deprivation of working capacity and guardianship of adult persons while enabling independent decision-making and promotion of the abilities of persons with disabilities, as well as by adoption of regulations related to hiring of persons with disabilities, technical and spatial conditions, qualifications of employees and other work conditions for the operation of the work centre.

9 To continue the process of deinstitutionalisation of users placed at institutions, primarily children, young people and persons with disabilities, while ensuring adequate support and development of services at the local level, as well as continuous development of cooperation between social welfare and health care systems, and education and employment systems. To provide persons with disabilities with support for independent living in the least restrictive environment, unhindered access to health care and preventive examinations, to exclude the possibility of involuntary commitment or commitment without consent to health care and social welfare institutions.

10 To improve the normative framework for the protection of child rights through harmonisation with the Convention on the Rights of the Child, particularly with regard to defining terms and prohibiting corporeal punishment. To adopt a new General Protocol for the Protection of Children from Abuse and Neglect.

11 To enhance the accessibility of primary and secondary education for children from vulnerable social groups by taking affirmative measures specifically directed towards children with disabilities and developmental disorders, Roma children and “street children” in order to better support and promote inclusive education and by taking measures to provide a timely supplying of textbooks in customized formats, increasing the number of enrolled children and reducing dropouts from the education system. To take all necessary actions and measures to ensure hiring of a pedagogical assistant for children and students who need additional support in education and to continue to work on the development of inclusive education, in accordance with the principles of equality and accessibility in education at all levels. In relation to this, the effects of the implementation of the Law on Dual Education should be considered, in particular its potential consequences for vulnerable groups of children.

12 To conduct activities aimed at involving adults from vulnerable social groups into the educational system. To work on ensuring equal opportunities for young people from marginalized social groups in accessing higher education by introducing special measures and additional standards for accreditation of higher education institutions, in particular regarding accessibility of space, providing assistive technologies and appropriate support services for students.

13 To implement programmes for children in order to promote values that promote a culture of tolerance, understanding and respect for diversity, gender equality, intergenerational solidarity and non-discrimination. To introduce health education and reproductive health education into curricula, and to encourage the adoption of values of equality and tolerance by eliminating a number of common stereotypes and prejudices about different social groups and social phenomena through civic education.

14 To continue the implementation of active employment policy measures in relation to the observed effects of the measures and activities undertaken so far. To create new measures and policy mechanisms for active employment that achieve the best effects for employment of less employable persons in the labour market, especially considering the gender, age, health status and social status and other characteristics of unemployed persons, with the improvement of the legal framework in terms of decent work and reduction of participation in non-standard forms of work in order to reduce insecurity and young people leaving the country. To strengthen the institutions of local self-government for creating measures and implementing active employment policies, while respecting the characteristics of the local labour market.

15 To intensify work on improving the position of the elderly, particularly in rural and inaccessible areas. It is necessary to increase the availability of health care and social welfare services for the elderly (home treatment and care, strengthening of visiting and assisting services for the elderly, further development and improvement of the system, telephone counselling etc., as well as the introduction of mobile and innovative services tailored to specific needs of the elderly, such as telesistence, informal carers, occasional and temporary accommodation services, etc.). It is also necessary to better link financial assistance with services, as well as to promote transport services, which is a condition for better access to services and prevention of social exclusion.

16 To take measures and activities to ensure conditions for providing services to users who need social care and constant health care due to their specific social and health status by specifying standards for the provision of these services. To raise awareness of these rights and services, simplify procedures for their exercise, improve the use of information technologies for assistance, improve accessibility and affordability palliative care within the framework of the right to health care without discrimination.

17 For the purpose of economic empowering of women, it is necessary to continuously take measures to foster employment and women entrepreneurship,

to protect women from discrimination in the labour market, with a special focus on achieving equality in access to jobs, equal conditions for promotion and achieving equal wages, as well as improving and promoting measures to allow women to balance family and work obligations, i.e. work and parenting. To take measures to reduce gender disproportion and existing patriarchal patterns in childcare, taking care of other family members and dealing with family responsibilities by promoting an equal share of obligations in relation to health, economic and professional obligations, instead of promoting traditional roles, in order to achieve equal participation of women in labour force and equal participation of men in unpaid caretaking.

18 To prescribe the obligation to integrate gender perspectives into public policies and to prescribe the obligation of all public authorities and employers to develop internal mechanisms for prevention of and protection against discrimination and to guide gender-balanced staffing policies as well as gender-sensitive statistics. To take measures and activities to ensure inclusion and fostering equal representation of women and men in all spheres of political and public decision-making in exercise of public functions, especially at the level of local self-government, as well as the inclusion and promotion of equal representation of women and men from different backgrounds (urban and rural) and marginalized groups. To adopt the Law on Gender Equality that will be harmonized with international standards, as well as the Law on the Prohibition of Discrimination, to amend the Law on Subsidies in Agriculture and Rural Development.

19 To work on improving the coordinated and efficient functioning of all institutions of the system in providing protection against domestic violence and other forms of gender-based violence, with the development of support services for victims of violence and children witnessing violence. To improve the service of the National helpline for women who are victims of violence and harmonise it with the Council of Europe's Convention on the Prevention and Combating Violence against Women and Domestic Violence and all other international standards. To conduct continuous awareness-raising activities on the detecting and reporting violence, especially among employees in the health care system, given that they are potentially the first to come into direct contact with victims. To introduce the obligation to keep gender-sensitive statistics relating to reported violence and processed cases, with emphasis on particularly vulnerable groups such as girls, elderly women, women with disabilities, Roma women, etc.

20 To intensify the process of implementation of the Action Plan for the Implementation of UN Security Council Resolution 1325 - Women, Peace and Security in the Republic of Serbia (2017-2020), with particular emphasis on activities in local communities.

21 To work on provision of more efficient therapies and new generation medications at the expense of the National Health Insurance Fund, especially for persons suffering from rare diseases, hepatitis, melanoma and persons living with HIV / AIDS. To take preventative measures, screenings and pay special attention to aware-

ness raising and information on health risks and reproductive health, especially for children and young people. To ensure greater availability of psychological support.

22 To take all necessary measures to ensure that the composition of state authorities, local self-government bodies and other public authorities reflects the national composition of population in their territories by increasing the number of employees who are members of national minorities and by their education and vocational training for carrying out their tasks and by taking measures to manage national, ethnic, religious, linguistic and other diversity.

23 To actively work on improving the position of Roma, in particular Roma women, in provision of personal documents, access to adequate housing, health care, education and social welfare services, as well as employment, with establishing of inter-sectoral cooperation between all participants in the protection system and exercise of certain rights at all levels. To implement activities and measures planned under the Action Plan for the Implementation of the Strategy for Social Inclusion of Roma Man and Women in the Republic of Serbia for the period from 2016 to 2025, with regular measuring of results.

24 To adopt regulations allowing the registration of same-sex couples and regulating the effects, legal consequences and the manner of termination of registered unions, in accordance with the recommendations of the Council of Europe, as well as to take measures aimed at eliminating discrimination and stigmatisation of LGBT persons.

25 To ensure full implementation of the provision of Article 54a of the Criminal Code in terms of imposing punishment for committed offences based on hatred and to amend Article 179 of this Code.

26 To pay special attention to responsible reporting that must not be characterized by hate speech, sensationalism, sexism, misogyny, discriminatory attitudes and offensive reporting that is most often directed at women and members of the LGBT population. To encourage the integration of topics that develop a culture of tolerance, understanding and respect for diversity, intergenerational solidarity, mutual respect, gender equality and non-discrimination in the media and on social networks.

27 To work on reducing hate speech in public space with the involvement of all social participants, with a particular emphasis on prosecution and adequate sanctioning.

28 To work continuously on the education of employees in the state administration and local self-government, of employees in education, employment, health care and social welfare systems, holders of judicial functions, police officers, employees in inspection services and journalists in the area of anti-discrimination legislature in order to ensure proper and uniform interpretation and application of anti-discrimination regulations in accordance with international standards and practice of international institutions.

29 In order to achieve full compliance with the acquis and overcome the problems identified in the implementation of laws to date, to amend the Law on the Prohibition of Discrimination and stipulate adequate arrangements for the establishing and operationalization of a unified, centralized and standardized system for collecting and analysing relevant data used for monitoring discrimination and the effectiveness of the anti-discrimination system, with projections for the necessary budgetary resources for its implementation.

6. Statistical Review Of The Work Of The Commissioner In 2018

Number of cases in 2018

CASES	2018
Complaints	947
Recommendations of measures for achieving Equality	300
Lawsuits	1
Mediation	88
Opinions on draft acts	37
Proposals for the review of constitutionality and legality	4
Criminal charges	3
Misdemeanour charges	1
Initiatives for amendments to regulations	9
Warnings	17
Public announcements*	24
TOTAL number of cases*	1,407

* Announcements are not included in the total number of cases

Complainants

Natural persons as complainants	number	%
Men	265	41.5
Women	373	58.5
Total	638	100.0
Other complainants	number	%
Natural persons	638	67.4
Organisations	293	30.9
State authorities	7	0.7
Group of persons	5	0.5
Legal entities	3	0.3
Authority/institution	1	0.1
Total number of complainants	947	100.0

Grounds of discrimination (personal characteristic)

Complaints grounded in discrimination	number	%
Complaints stating the personal characteristic	791	83.5
Complaints not stating the personal characteristic	156	16.5
Total number of complaints	947	100.0

Complaints grounded in discrimination	number	%
Complaints stating one personal characteristic	603	76.2
Complaints stating several personal characteristics	188	23.8
Total number of complaints	791	100.0

Complaints stating the personal characteristic	Number	%
Disability	265	26.4
Age	166	16.5
Gender/Sex	108	10.7
Birth	107	10.6
Health status	61	6.1
National affiliation or ethnic origin	59	6.0
Marital and family status	49	4.9
Sexual orientation	42	4.2
Other personal characteristic	39	3.9
Membership in political, trade union and other organisations	33	3.3
Religious and political beliefs	14	1.4
Property status	14	1.4
Nationality	12	1.2
Previous criminal conviction	9	0.9
Ancestors	8	0.8
Appearance	7	0.7
Gender identity	6	0.6
Genetic features	3	0.3
Language	2	0.2
Race	1	0.1
Total number of stated personal characteristics*	1005	100.0

* In 188 complaints, several personal characteristics were stated as grounds of discrimination.

Areas of social relations to which complaints refer

Complaints by area of discrimination	number	%
In providing public services or using facilities and areas	261	27.6
In employment procedure or at work	197	20.8
Procedure before public authorities (courts, municipalities, ministries, commissions ...)	168	17.7
Social welfare	124	13.1
Public information and the media	58	6.1
Education and vocational training	50	5.3
Health care	24	2.5
Public sphere / General public	19	2.0
Other	13	1.4
Culture, art, sport	7	0.7
Private relations	6	0.6
Pension and disability insurance	5	0.5
Housing	4	0.4
Judiciary	4	0.4
Actions/ activities in trade unions, political parties, NGOs and other organisations	3	0.3
Property rights and relations	2	0.2
Exercise of collective minority rights	2	0.2
Total number of complaints	947	100.0

Complaints filed against	number	%
State authorities	647	50.5
Legal entities	296	23.1
Authorities/Institutions	156	12.2
Natural persons	150	11.7
Organisations	17	1.3
Group of persons	15	1.2
Total	1281	100.00
Number of cases with one discriminator	732	
Number of cases with several discriminators	215	
Total	947	

Number of complaints by regions	Number	%
Belgrade region	500	52.8
Region of Šumadija and Western Serbia	136	14.4
Vojvodina region	134	14.1
Region of Southern and Eastern Serbia	103	10.9
Kosovo and Metohija region	6	0.6
Unknown region*	68	7.2
Total number of complaints by regions	947	100.00

* The region is unknown when the complaint has been sent by e-mail and the complainant does not indicate the municipality of residence.

Outcomes of proceedings by complaints	2018
Proposals submitted to the Constitutional Court	4*
Initiated misdemeanour procedure	1
Filed criminal charges	3
Lawsuits submitted to courts	1
Complaints in which the opinion was given	115
- Opinions where violations of rights were identified and recommendations provided	81
- Opinions where no violations of rights were identified and measures recommended to exercise equality	6
- Opinions where no violations of rights were identified	28
Mediation	88**
Lack of jurisdiction	88
Incompleteness (deficiencies)	244
No violation of rights	194
Judicial proceeding in progress or completed	44
Already acted upon but no new evidence was provided	7
Due to the passage of time, it was not possible to achieve the purpose of the action	4
Withdrawn complaint	14
In progress: submitted for opinion and supplement required	56

*4 petitions for the review of constitutionality and legality were filed to the Constitutional Court, which include procedures initiated pursuant to 110 complaints

** Procedures initiated pursuant to 88 complaints were completed by mediation

Acting on recommendations	Number	%
Acted on recommendation	61	78.2
Not acted on recommendation	17	21.8
Total number	78	100.0

*In 3 cases the deadline for acting upon recommendations has not expired

Acting on recommended measures	number	%
Acted on recommendation	295	98.3
Not acted on recommendation	5	1.7
Total number	300	100.0

7. Annexes

Annex 1. List of Reviewed Reports and Researches

1. *Republic of Serbia – Report for 2018 accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy*, European Commission - available at: [http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaji_ek_o_srbiji\(1\).pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaji_ek_o_srbiji(1).pdf)
2. *Non-paper on the state of play regarding chapters 23 and 24 for Serbia*, November 2018 - available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/Non-paper_on_the_state_of_play_regarding_chapters_23_and_24_for_Serbia.pdf
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