

Serbia

National Anti-Discrimination Laws

This document outlines Serbian legislation regarding anti-discrimination issues.

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Title: **Law on Prohibition of Discrimination** (*Zakon o zabrani diskriminacije*)

Date legislation was first published (adopted): **03/26/2009**

External URL: The official text in Serbian:

<http://www.parlament.sr.gov.yu/files/lat/pdf/zakoni/2009/875-09Lat.zip>

Unofficial translation in English:

<http://www.stopdiskriminaciji.org/wp-content/uploads/2007/10/finallaw-on-the-prohibition-of-discriminationeng.doc>

Summary: The above Internet link provides the full text of the "Law on Prohibition of Discrimination" (the "**Anti-Discrimination Law**"), enacted by the Parliament of the Republic of Serbia during the 2009 spring session and published in the Official Journal of the Republic of Serbia, no. 22/09 dated March 26, 2009. The Anti-Discrimination Law entered into force on April 3, 2009, except for the provisions relating to the equality rights ombudsman which shall enter into force on January 1, 2010. It is interesting to mention that the initiative for enacting this law comes from the NGO-sector and dates back to 2004.

The draft was finalized in 2008 in a joint effort by several NGOs (including the Belgrade-based CUPS¹ which was behind the initial draft) gathered around a project called "Coalition against Discrimination" sponsored by the Swedish Helsinki Committee for Human Rights².

Content:

- The overall purpose of the Anti-Discrimination Law was to introduce a systemic law as a basis for integral and general anti-discrimination protection in all areas. The enactment of this law was also a pre-condition for Serbia's inclusion in the "White Schengen List" granting its citizens free movement within the countries of the European Union, which is expected to occur in 2010. Its adoption by the Parliament was heavily debated and a final draft was even withdrawn from the law-enactment procedure, which was followed by intense media and public debate. As a compromise to strong resistance from certain religious communities, the improved draft was reinstated into parliamentary hearing session whereby a reference to transsexuals was intentionally omitted from the final version of Article 21, which provides protection against discrimination due to sexual orientation.
- The Anti-Discrimination Law is relevant in many ways to the reinforcement of democracy, tolerance, equality and equal and fair opportunities for all persons. The most important improvement is that this universal legislation provides enhanced mechanisms for protection against any kind of discrimination (including, without limitation, racial, gender, sexual orientation, genetic, religious, cultural, invalidity, age, membership of political, labor union and other organizations, etc).

The term "discrimination" or "discriminatory behavior" is defined by the Anti-Discrimination Law as any and all unjustified difference in treatment or non-equality (inclusion, limitation or giving advantage) with respect to persons or groups of persons, their families or other related persons, based on race, skin color, ascendants, citizenship, nationality, ethnicity, language, religious or political belief, gender, sexual orientation, financial capacity, birth, genetic predisposition, health condition, invalidity, marital status, history of conviction, appearance, membership in political, labor union or other organizations, as well as any other personal predispositions.

In addition, the Anti-Discrimination Law provides specific provisions for certain types of discrimination, such as discrimination at work, discrimination with respect to use of public services and public premises, and discrimination in the educational system. Other types of discrimination are prohibited by separate legislation, such as religious discrimination, discrimination of national minorities and discrimination of persons with disabilities.

- The Anti-Discrimination Law also establishes an ombudsman's office as an independent body in charge of implementing the provisions of the Anti-Discrimination Law regarding equality rights.

¹ <http://www.cups.org.yu/onama/en>

² <http://www.stopdiskriminaciji.org/>

The ombudsman's role will be to examine a citizen's complaints regarding alleged discriminatory behavior, and where such behavior appears genuine, to apply a number of measures such as filing a complaint with the relevant court or prosecutor's office, and making public statements disclosing to the public aggravated cases of discrimination. It should be noted that the ombudsman cannot examine a complaint which is subject to an ongoing court proceeding or final court judgment. The ombudsman will issue an opinion for each case it examines as to the existence of discrimination within 90 days of the date of the complaint. This opinion is binding on the person who was found to have discriminated against a complainant. Any recommendation issued by the ombudsman in its opinion must be implemented by the discriminating person within 30 days of the date of receipt of the ombudsman's recommendation; otherwise the ombudsman can issue a notice of warning which becomes public if the discriminating person does not remedy its default within 30 days.

- Another important improvement introduced by the Anti-Discrimination Law concerns the enhancement of protection against discrimination, combined with monetary fines and criminal offences for individuals and entities for violation of the Anti-Discrimination Law. These vary from 5,000 RSD (approx. 77 USD) to 100,000 RSD (approx. 1,545 USD). The Anti-Discrimination Law specifically provides that all persons are entitled to efficient protection by the courts and other public authorities against all types of direct or indirect discrimination. It should be noted that the "efficient protection" right is granted on equal terms to foreign nationals, except for the constitutional rights reserved to Serbian nationals.

The court procedure is expedited and available to all persons who have suffered from discrimination. Some specific procedural provisions add to the general civil law procedure applicable to court actions involving discrimination, such as the provisions regarding the court's jurisdiction (the domicile of the discriminated person) and special appellate review for questions of law and serious breaches of procedure (*revizija*), which is always available in cases of discrimination.

In addition, there are special provisions applicable to the burden of proof rules. Namely, the burden of proof is reversed as it is the defendant's responsibility to present evidence of non-violation of the equality principle. If the court determines the existence of discriminatory impact/effect³, then the defendant cannot raise a defense alleging that no discrimination occurred and such defendant has to bear the full costs of the court procedure.

³ The Anti-Discrimination Law recognizes two types of discrimination both of which are prohibited, namely: (i) direct discrimination occurring where an individual or a group of persons is put in less favorable position or is being treated less favorably on the grounds of personal characteristics and (ii) discriminatory impact/effect occurring where such less favorable position or treatment is based on an act, action or omission that is only apparently based on the principle of equality but actually has a discriminatory impact/effect (i.e. not justified by a lawful objective and/or deploying inappropriate and unnecessary means of achieving such an objective).

Title: **Law on Prevention of Discrimination against Persons with Disabilities** (*Zakon o sprečavanju diskriminacije osoba sa invaliditetom*)

Date legislation was first published (adopted): **04/17/2006**

External URL: The official text in Serbian:

<http://www.parlament.sr.gov.yu/files/lat/pdf/zakoni/2006/2246-05-lat.zip>

Summary review in English:

http://www.share-see.org/docs/IN%20FOCUS/may06/review_antidiscrimination_serbia.doc

Summary: The above Internet link provides the full text of the “Law on Prevention of Discrimination against Persons with Disabilities” (the “**Disabilities Anti-Discrimination Law**”), enacted by the Parliament of the Republic of Serbia during the 2nd ordinary spring session of 2006 and published in the Official Journal of the Republic of Serbia, no. 33/06 dated April 17, 2006. The Disabilities Anti-Discrimination Law entered into force on January 1, 2007. It is interesting to note that the Disabilities Anti-Discrimination Law was drafted by a Belgrade-based NGO called CUPS⁴ and introduced publicly in 2002 to be finalized in 2004 as a result of cooperation with a group of experts from several institutions and NGOs.

Content:

- The overall purpose of the Disabilities Anti-Discrimination Law is to reinstate and promote fundamental anti-discriminatory principles such as the prohibition of discrimination against persons with disabilities and their inclusion in all spheres of society, equal opportunities and rights.
- The Disabilities Anti-Discrimination Law is relevant in many ways to the right to non-discrimination and equality of persons with disabilities. Importantly this single piece of legislation addresses various forms of discrimination against persons with disabilities, which were previously included piecemeal in a number of different laws (such as social security, employment and labor laws, family law, public health care laws, public education laws, pension and invalidity fund laws, etc.).

In addition, specific types of discrimination are now defined in greater detail, including among others (i) discrimination in the proceedings before a government body or other official authority, (ii) discrimination against persons with disabilities when joining associations, (iii)

⁴ <http://www.cups.org.yu/onama/en>

discrimination against persons with disabilities with respect to the use of public services and public premises, (iv) discrimination against persons with disabilities with respect to the use of the public health care services, (v) discrimination against persons with disabilities with respect to access to education and the public school system, (vi) discrimination against persons with disabilities with respect to access to employment and (vii) discrimination against persons with disabilities with respect to the use of public transport.

- The "disabled person" (a person with an inherited or acquired physical, sensory, intellectual or emotional disability who is prevented or restricted from social integration on terms of equal opportunities, due to social or other circumstances) and "discrimination" (unequal treatment or different treatment of certain persons or groups of persons, their family members or other related persons, either directly or indirectly, which is based on invalidity or is otherwise related to it) are broadly defined, thus allowing for very broad protection against discrimination.

In addition, the Disabilities Anti-Discrimination Law introduces a presumption of violation of this law in cases where certain elements are present, namely: (i) a person's rights are unlawfully restricted or has certain obligations imposed only because of such person's disabilities, (ii) the objective and consequences of such restrictions or obligations are not justified, and (iii) such restrictions or obligations are disproportionate with regard to the objectives at which they are aimed.

- Prior to the introduction of the Disabilities Anti-Discrimination Law, many persons with disabilities were in practice prevented from entering public buildings (including the courts of law) due to a lack of adapted infrastructure enabling access of individuals with disabilities. For this reason, the Disabilities Anti-Discrimination Law specifically and directly empowers and obligates local municipalities and public authorities to implement and enforce measures to improve access to public buildings and public premises by persons with disabilities, as well as to provide all relevant information regarding their rights to such individuals.
- In order to enhance the court procedure in cases of discrimination against persons with disabilities, the Disabilities Anti-Discrimination Law provides specific procedural provisions which add to the general civil law procedure that applies to court actions related to protection against discrimination against persons with disabilities, such as provisions regarding the court's jurisdiction (the domicile of the discriminated person) and special appellate review for questions of law and serious breaches of procedure (*revizija*), which is always available in cases of discrimination.

The plaintiff can request (i) court prohibition of further discriminatory behavior, (ii) remedy actions to remove the consequences of discriminatory behavior, (iii) the court's confirmation that an action or behavior is discriminatory, and (iv) compensation for material and emotional/psychological damages occurred due to discriminatory behavior. In addition,

monetary fines and criminal offences apply to individuals and entities for the violation of provisions against discrimination of persons with disabilities, which vary from 5,000 RSD (approx. 77 USD) to 500,000 RSD (approx. 7,727 USD).

Title: **Labor Law** (*Zakon o radu*)

Date legislation was first published (adopted): **03/15/2005**

External URL: Integral official text in Serbian:

<http://www.vrhovni.sud.srbija.yu/upload/documents/Zakoni/Zakon%20o%20radu%20RS.pdf>

Summary: The above Internet link provides the integral text of the "Labor Law" (the "**Labor Law**"), enacted by the Parliament of the Republic of Serbia during the 2005 spring session and published in the Official Journal of the Republic of Serbia, no. 24/05 dated March 15, 2005. The Labor Law entered into force on March 23, 2005. It was further amended on July 15, 2005 (Official Journal, no. 61/05) and on July 16, 2009 (not yet published). It annuls and replaces the previous Labor Law of 2001.

Content:

- The Labor Law provides specific provisions against discrimination at work and related to employment, which is one of the basic principles that employers must observe. Compared to the general anti-discrimination laws enforced in Serbia, this law provides for more specific provisions related to discrimination at work. In particular, it entitles an employee who has suffered from discriminatory behavior relating to his employment to lodge a court action and claim damages based on the anti-discriminatory provisions of the Labor Law.
- General prohibition of discrimination at work is defined in the Labor Law as any direct or indirect discrimination against persons seeking employment or against employees, based on gender, birth, language, race, skin color, age, pregnancy, health condition, invalidity, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial capacity, membership in political, labor union or other organisations, or based on other personal predispositions.

In particular, the Labor Law prohibits discrimination with respect to (i) employment conditions and the choice of candidates for an employment position, (ii) working conditions and rights, (iii) professional improvement and training, (iv) career development and (v) termination of employment by the employer.

It is interesting to note that the Labor Law provides that any terms of an employment contract which can be considered discriminatory on any of the foregoing bases are automatically considered legally null and void.

- A person seeking employment or an employee can claim damages for discrimination related to employment in accordance with the civil procedure law (a specific expedited procedure is provided for employment-related matters, including, but not limited to, a period of 6 months for

the court to render a binding decision and specific rules related to reinstatement to work as a judicial execution measure).

- In addition to the general procedural laws, the Labor Law provides for an arbitration procedure between an employer and employee. However, in order for it to apply, such procedure must be specifically provided for either in a collective agreement or in an employment contract. An employee may initiate arbitration within 3 days of receipt of the decision by its employer that is being challenged. The arbitrator's decision is rendered within 10 days of the start of arbitration and is final and binding over all parties. During the arbitration procedure, the employer's decision to terminate employment is stayed; it may become executory if the arbitrator does not reach its decision within the said 10-day period. In that case, an employee can challenge the termination of employment before the court under the civil law procedure.
- Finally, the Labor Law provides for much heavier monetary fines for employment discrimination as compared to the general anti-discrimination laws. Namely, discriminatory behavior of an employer is subject to monetary fines from 800,000 RSD (approx. 12,372 USD) to 1,000,000 RSD (approx. 15,465 USD).