

SERBIA

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☐ Adequate ☐ Insufficient ☒ Absent ☐

Please explain your reply.

The issue of preventing discrimination against persons on grounds of their sexual orientation and gender identity (LGBT – lesbian, gay, bisexual and transgender persons) is still a sensitive topic for Serbian public opinion. Various forms of discrimination, violence and threats against LGBT persons are present even today. Research of LGBT rights organizations indicates that there is widespread discrimination against that population.

Publicly and privately expressed homophobia and hate speech in public, as well as open forms of violence motivated by intolerance of non-heterosexual orientation, are the main forms of discrimination and human rights violation of LGBT people. LGBT activists and human rights reports produced by domestic and foreign organizations have been pointing to all this in Serbia for years. LGBT persons are faced with a high level of homophobia in society and social distance, as indicated in reports of the Belgrade Centre for Human Rights for many years, Gay-Straight Alliance in 2010 and 2011, Labris in 2009, 2010 and 2011. The data from the Commissioner for Protection of Equality of the 2012 points to the fact that LGBT population is badly perceived in Serbia, 80% of the respondents would not like to have them in their families, half of them would not like to have them as companions, and one-third do not want them as neighbours or colleagues.

The attitude of citizens towards this minority group has slightly improved in 2010, after the President and other senior government officials had expressed their clear support for the 2010 Pride Parade. The reports by organizations for the protection of rights of persons with different sexual orientation contain data on a number of incidents and attacks against people of different sexual orientation.

However, the adoption of the Law on the Prohibition of Discrimination represents a significant qualitative shift in the successful prevention of discrimination against this group of persons.

The Law on the Prohibition of Discrimination (2009), defining the term of discrimination, explicitly determines sexual orientation as one of the personal characteristics, what makes significant progress in protecting LGBT persons not only in terms of terminology but also practically (Article 2). The Law on the Prohibition of Discrimination recognises also, as a special form of discrimination, discrimination on grounds of sexual orientation. Nowadays, there is better legal framework to combat discrimination in Serbia, but the elimination of discrimination and homophobia is still an unachieved goal.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

The Commissioner for Protection of Equality, within his/her competence, is constantly working on the analysis of laws and other regulations.

The Ombudsman, as part of his/her regular activities, analyzes the existing legal framework. Having in mind a large number of laws and fields, the position of the transgender people in the Republic of Serbia is currently in the focus of the Ombudsman. The Expert Working Group, which was formed by Ombudsman together with the institution of the Commissioner for Protection of Equality, has just completed its work. The proposal of the working group was that, in order to achieve real equality of the transgender people, the best solution is to bring a brand new, comprehensive law to fully regulate the rights of transgender persons.

In principle, the Law on State Administration ("Official Gazette of RS" No. 79/05, 101/07 and 95/10 thereof), and the Rules of Procedure of the Government ("Official Gazette of the RS", No.61/06 – consolidated version, 69/08, 88/09, 33/10, 69/10, 20/11 and 37/11), stipulate that executive bodies of state administration are mandated to continuously monitor, within the area of their competence, all domestic and EU regulations and international agreements which were ratified by the Republic of Serbia, and to work on both their implementation and their improvement i.e. their progressive development.

Accordingly, for example, the Gender Equality Directorate, or the Ministry of Labour, Employment and Social Policy checks in practice and, consequently, proposes amendments to certain solutions of the Gender Equality Law ("Official Gazette of RS" 104/09) which is one of the activities provided in the 2013 Plan of the Government of the Republic of Serbia. In terms of terminology, the Law defines the following: 1) sex refers to the biological characteristics of persons, and 2) gender is a term that denotes socially established roles, position and status of women and men in public and private life, which, due to social, cultural and historical differences, lead to discrimination based on belonging to a biological sex. This Law regulates the following areas: 1) employment, social and health protection (among other things: equal opportunities and access to jobs and positions, appointments and promotions, equal pay for equal work or work of equal value), 2) family relationships (for example: giving birth, domestic violence), 3) education, culture and sports (includes: equal gender representation, gender equality as an integral part of education), 4) political and public life (equal opportunities of political and other engagement, obligations of the local government units, statistical records) and 5) judicial protection.

Are there measures in place to redress any such discrimination?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Serbian Constitution contains a number of provisions relating to the prohibition of discrimination. According to Article 21 Constitution prohibits any discrimination, direct or indirect, on any grounds, particularly on race, sex, national or social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.

The Law on Prohibition of Discrimination (published in the "Official Gazette of RS", No. 22/09), as a general law, provides general definition of discrimination and affirmative action; establishes

definitions of discrimination against certain categories of persons and in certain cases; provides forms of discrimination; provides a special organ or body to coordinate actions relating to the prohibition of discrimination and that would have different possibilities against bodies and individuals who violate the law; provides special civil proceedings for the protection from discrimination, establishes infringement liability and provides for discriminatory behaviour, and resolves also other issues which, as a general framework, should provide sufficient institutional guarantees against discrimination.

This law provides full guarantee and protection from discrimination on grounds of sexual orientation, both to nationals and foreigners.

The Law contains a number of provisions devoted to the protection against discrimination on grounds of sexual orientation. It precisely specifies what constitutes discriminatory treatment, and Article 21 stipulates that sexual orientation is a private matter and that no one may be called to publicly declare their sexual orientation, that everyone has the right to declare their sexual orientation, and discriminatory treatment on account of such a declaration is forbidden.

In order to ensure effective implementation of the law and protection against discrimination of vulnerable groups, including those on grounds of their sexual orientation, the Law on the Prohibition of Discrimination provides for judicial protection and establishes the Commissioner for the Protection of Equality as an independent state organ. The establishment of an independent and impartial body for the Protection of Equality has a particular significance in this law, as only this is what should encourage and ensure the future development of legislation in this area.

The Commissioner for Protection of Equality has the following powers: to receive and review complaints pertaining to violations of provisions of the Law on the Prohibition of Discrimination, provide opinions and recommendations in specific cases, and pass the measures; provide information to the person lodging a complaint concerning their rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection. The Commissioner has *locus standi*, that is, the right to file charges with the consent of the person who has suffered discrimination. With the consent of the parties, they recommend reconciliation, submit an annual report to the National Assembly on the violations of the provisions of this law and inform the public about it; warn the public of the most frequent, typical and severe cases of discrimination through media or otherwise; monitor the implementation of laws and other regulations, initiate the passing or amending of regulations for the purpose of implementing and developing protection against discrimination and provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination; establish and maintain cooperation with independent bodies authorised to ensure achieving equality and the protection of human rights at the level of local government and territorial autonomy; recommend measures to public authorities and other persons aimed at ensuring equality.

Other laws also contain anti-discrimination provisions with explicit reference to sexual orientation as a basis for anti-discrimination protection or (insufficiently explicit) reference to "other personal characteristics". Provisions of Article 38 of the Law on Public Information prohibit hate speech as the publication of ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their sexual orientation. Provisions of Article 21 of the Law on Broadcasting provides that the National Broadcasting Agency shall ensure that broadcasters' programmes do not contain information inciting discrimination, hatred or violence

against an individual or a group of individuals on grounds of their different sexual orientation. Furthermore, the provisions of Article 79 thereof instruct public service broadcasters, in their news programme production and broadcasting to abide by the principles of impartiality and fairness in treating different political interests and different persons, uphold the freedom and pluralism of the public expression of opinions, and prevent any form of racial, religious, national, ethnic or other intolerance or hatred, or intolerance on the grounds of sexual orientation. Article 8 of the Law on Higher Education provides that all persons who have completed their secondary education have the right to higher education, regardless of (among other things) their sexual orientation. Provisions of Article 18 of the Law on Labour prohibit direct and indirect discrimination against job seekers and employees also with respect to their sexual orientation. Article 5 of the Law on Youth stipulates that all young people shall be equal and that it shall be prohibited to differentiate or unequally treat young people, whether directly or indirectly, on any grounds, particularly on grounds of their sexual orientation and gender identity. The Law on Social Protection prescribes the principle of non-discrimination of social protection users on grounds of their sexual orientation (Article 25). Provisions of Article 7 of the Law on Advertising stipulate that advertising may not, directly or indirectly, incite to discrimination on any grounds, without mentioning explicitly sexual orientation and gender identity. Article 10 of the Law on Sports forbids any direct or indirect discrimination against athletes in their performance of sports activities, without any reference to sexual orientation and gender identity, only with regard to a personal characteristic.

In accordance with the Law on the Serbian Armed Forces ("RS Official Gazette", no. 116/07, 88/09 and 101/10, and according to Article 11 thereof, the provisions of this Law pertaining to the composition of the Serbian Armed Forces shall equally refer to both women and men. According to Article 13, paragraph 3 it is forbidden to favour or deprive a Serbian Armed Forces member of their rights and duties, especially for their race, religion, gender or nationality, background or another personal feature. According to Article 29, paragraphs 3 and 4, democratic and civil control of the Serbian Armed Forces shall be exercised by the National Assembly, the Ombudsman and other government bodies in accordance with their competences, citizens and the public. Regulations on the Ombudsman pertaining to the protection and fulfilment of citizens' rights shall also apply to the professional members of the Serbian Armed Forces

On 24 March 2011, the Republic of Serbia signed a Joint Statement on Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity, submitted to the United Nations Human Rights Council by Colombia on behalf of 85 United Nations member states.

The Provincial Institute for Gender Equality has translated the Report of the High Commissioner for Human Rights of the Council of Europe on discrimination based on sexual orientation of June 2011.

When it comes to the institution of the Commissioner for the Protection of Equality, it was pointed out that most of the complaints of discrimination against LGBT people arrived exactly from the NGO sector which indicates a well established cooperation. Method of data collection by that institution about discrimination against LGBT people is distinguished for its timeliness and accuracy, and represents an institutional example.

Office for Human and Minority Rights highlights its activities in sharing of experiences and cooperation with all partners in this area. The Office conducts activities aimed at promoting the rights of certain vulnerable groups, enhancing tolerance, promoting culture of human rights, support to civil society organizations dealing with the protection and promotion of human rights.

Most prominent is the support for the best projects of organizations that have been selected by open competition, which improve and promote the rights of LGBT people, for example. Labris, Gay Straight Alliance, Gay-Lesbian Regional Info Centre. Street actions, debates, films and other forms of promotion of LGBT culture and creativity, discussions on the rights of LGBT persons throughout Serbia were supported. These organizations and their partners supported the marking of Pride Day, on 24 June within "2012 Calendar of Human Rights". Pride Day, among other things, was marked by lowering the fabric in the colours of the rainbow from the windows of state institutions in Serbia. Gay-Lesbian Regional Info Centre, with support from the Office for Human and Minority Rights, organized activities for the celebration of 1st December, the International HIV/AIDS Day. Support was also given to the project of the Duga Association from Sabac dedicated to the celebration of 10th December, the International Human Rights Day, among other things, by organising the Living Library concept dedicated to fighting prejudice and discrimination against young people, LGBT people, people who are infected with HIV, the Roma, people with disabilities.

During the first half of 2013, the Office for Human and Minority Rights is planning, within the LGBT Project of the Council of Europe, to organise the training for personnel employed in social care centres for working with LGBT people and their families, on the basis of a training program accredited by the Ministry of Labour and Social Policy, i.e. the National Centre for Social Work, as a result of the pilot project implemented by Duga Association with the support of the former Department of Human and Minority Rights. This is to ensure that all the employees in the centres for social work throughout Serbia are adequately trained and able to provide better quality services to LGBT people and their families.

The Office for Human and Minority Rights, in cooperation with the service of the Commissioner for the Protection of Equality, coordinates the process of preparing the National Strategy for Combating Discrimination in the Republic of Serbia. It has been planned that the strategy be adopted in the second quarter of 2013, followed by developing an Action Plan for its implementation. Civil society organizations, which have been selected through a public call, based on their capacity and experience in the specific area, work on the main segment of the strategy aimed at improving the position of nine vulnerable social groups that are most likely to be discriminated against (members of national minorities, religious communities and religious groups, women, LGBT people, people with disabilities, the elderly, children, refugees, internally displaced persons and members of other vulnerable migrant groups, as well as people whose health condition can be the basis of discrimination). These organizations will be involved in the preparation of the accompanying Action Plan.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

The Law on the Prohibition of Discrimination ("Official Gazette of RS ", No. 22/09) was adopted by the National Assembly of the Republic of Serbia on 26 March 2009. This law prohibits discrimination on grounds of sexual orientation.

On 5 July 2011, the National Assembly of the Republic of Serbia adopted the Law on Youth ("Official Gazette of RS ", No. 50/11) which came into force on 16th January 2012. This law clearly promotes the principle of equality and non-discrimination (Article 5 of the Law) which states that all young people (population aged 15-30) shall be equal, or which prohibits any discrimination or unequal treatment of young people, directly or indirectly on any grounds, particularly on grounds of actual or perceived personal characteristics which include sexual orientation and gender identity. Also, in the period before the adoption of the Recommendation, the Government of the Republic of Serbia adopted the Strategy of career guidance and counselling in the Republic of Serbia with the Action Plan for its implementation in the period from 2010-2014 ("Official Gazette of RS" No. 16/10) on 4 March 2010. This document promotes social equality and inclusion as one of the strategic objectives. On 9 May 2008, the Government of the Republic of Serbia adopted the National Youth Strategy ("Official Gazette of RS ", No. 55/08), which, among other things, provides that all young people have equal rights regardless of their personal characteristics including sexual orientation. Action plan for the implementation of the National Youth Strategy 2009-2014 ("Official Gazette of RS", No. 7/09) was adopted by the Government on 22nd January 2009. This document provides for the development of tolerance of diversity and recognizing capacities of young people from vulnerable social groups.

The drafting of the National strategy for Combating Discrimination is in its final stage and it is the first national strategic document that, among other things, deals with the problems of LGBT people and that will include measures to improve their position and reduce the level of discrimination to which this vulnerable group is exposed.

The contents of the Recommendation form an integral part of this document, and will be taken into account when drafting the Action Plan for the implementation of the said document. It has been planned that the final version of this document be adopted by the Government of the Republic of Serbia in the second quarter of 2013, and prior to its adoption, eleven round tables are to be held throughout Serbia to introduce as many stakeholders as possible to this process, the working version of this document, to be able to send their comments and suggestions. The adoption of the strategy will be preceded by holding a conference in Belgrade.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

These data are included in the 2011 Regular Annual Report of the Commissioner for Protection of Equality. According to these data, out of the 335 complaints received, there were 10 complaints for discrimination on grounds of sexual orientation.

For the purpose of monitoring the implementation of the Law on the Prohibition of Discrimination, the then Ministry of Human and Minority Rights received within the EC IPA 2007 Project entitled Implementation of Priorities in the Area of Human Rights and Protection of National Minority Groups, expert help in creating a database to track cases of discrimination. Data on indicators for monitoring the implementation of the Law on the Prohibition of Discrimination have been collected from various sources, which include government bodies and institutions as well as independent bodies, such as the Commissioner for Protection of Equality and civil society organizations. For each data source, due to the nature of the data originating from a given source, a specific set of indicators

was defined. Also the database was designed as well as all physical characteristics of the base and the way of their implementation. The database on cases of violation of the Law on the Prohibition of Discrimination was installed and the training of database users was conducted. At present, this database is not operational but it is planned that a copy of it be installed at the service of the Commissioner for the Protection of Equality and technical conditions for its operation to be provided within the EC IPA 2011 Project entitled Implementation of Anti-Discrimination Policies.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. ☐ b. ☐ c. ☐ d. ☐ e. ☒

Please indicate the measures and, if appropriate, provide examples of good practices:

The statistical reports of prosecutors' offices keep records of offenses of inciting national, racial and religious hatred and intolerance as referred to in Article 317 CC, racial and other discrimination in Article 387 CC, as well as other criminal offenses under the Criminal Code, which may be done from motives of hatred. In doing so, the statistical sheets of prosecutors' offices there is no special heading under which the motive for the commission of any criminal offense could be recorded, which can be identified by examining the particular case.

The Law on Organisation of Courts ("Official Gazette of RS", No. 116/08 and 104/09) in Article 70, paragraph 4, provides for the tasks carried out by the Ministry of Justice and Public Administration in connection with monitoring of the work of courts and collecting statistical data on the work of the courts.

Division for Personnel and Research and Analytical Affairs performs among other things research and analytical, statistical and record-keeping activities related to the collection and processing of periodic reports on the work of courts on the basis of data obtained from the automated case management programme and preparation of annual statistical reports on the work of courts (data on number of cases - influx of cases, number of disposed cases, number of pending cases, year and the quality of trial - the number of confirmed, the number of altered and overturned court decisions).

The Criminal Code of the Republic of Serbia, under Chapter Fourteen lists a group of criminal offenses pertaining to discrimination. These are the following offenses: violation of equality in Article 128 CC, violation of the right to use a language and alphabet in Article 129 CC, violation of the right to expression of national or ethnic affiliation in Article 130 CC, violation of the freedom of religion and performing religious service under Article 131 CC.

Violation of Equality

Article 128

(1) Whoever denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties on grounds of nationality or

ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants another privileges or benefits, shall be punished with imprisonment up to three years.

(2) If the act specified in paragraph 1 of this Article is committed by an official in discharge of duty, such person shall be punished with imprisonment of three months to five years.

Possible sentence – for paragraph 1 up to three years of imprisonment

- for paragraph 2- three months to five years of imprisonment.

In 2011, for this criminal offense, superior courts have imposed three convictions of which 2 persons for up to 6 months, 1 person from 1 to 3 years of imprisonment.

There were 6 ongoing proceedings before basic courts.

The Criminal Code of the Republic of Serbia, in Chapter Seventeen lists criminal offenses against honour and reputation. Among the others, there is criminal offence of ruining the reputation for racial, religious, ethnic or other affiliation under Article 174 CC.

Ruining the Reputation for Racial, Religious, Ethnic or Other Affiliation

Article 174

Whoever publicly ridicules a person or group because of a particular race, color, religion, nationality, ethnic origin or other personal characteristics, shall be punished with a fine or imprisonment up to one year.

Possible sentence - for paragraph 1 up to one year of imprisonment

In 2011, for this criminal offense, basic courts imposed two convictions up to 1 year of imprisonment. There are 5 more ongoing proceedings before the courts.

The Law on Amendments to the Criminal Code of December 2012, in Article 54a stipulates the special circumstance for sentencing for an offense committed out of hatred.

According to the aforementioned legal provision, if the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article 21 of the Law on the Prohibition of Discrimination (Discrimination on grounds of sexual orientation) provides that sexual orientation is a private matter and that no one may be called to publicly declare their sexual orientation, and that everyone has the right to declare their sexual orientation, and discriminatory treatment on account of such a declaration shall be forbidden.

In accordance with Article 35 the Law on the Prohibition of Discrimination, persons who consider themselves discriminated against on grounds of sexual orientation or gender identity, have the option of filing a complaint with the Commissioner for Protection of Equality without any obligation to pay a fee or other charges, and the Commissioner shall forward the complaint to the person against whom it was filed, within 15 days of receipt of the complaint.

Also, these persons have the possibility to exercise the right to judicial protection, filing a lawsuit to court.

Accordingly, the Court of Appeals in Novi Sad confirmed, in its final verdict of 14 November 2012 Gž.3144/12, discriminatory behaviour and the severe discrimination against a 25-year-old boy from the city of Vrsac by his colleague from Vlajkovac (age 26). The discrimination was performed during several consecutive months at the workplace in a private company in Vrsac, where they were both employed. The Court of Appeals decided in this case that the defendant was discriminatory towards the plaintiff because of his same-sex sexual orientation and that he repeated it during a six-month period, thereby committing the severe form of discrimination. This verdict was made pursuant to Articles 12, 13 and 21 of the Law on the Prohibition of Discrimination, and the Court of Appeals in its explanation made reference to a breach of Articles 21, 23 and 25 of the Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/06), which prohibits discrimination on any grounds and guarantees the right to human dignity and mental integrity. The final verdict ordered that the victim be paid 180 thousand dinars for mental anguish on account of the violations of personal rights, honour and dignity, as well as to reimburse the court costs of Gay Straight Alliance Litigation Service (civil society organizations from Belgrade), which held a hearing in court, in the amount of 99 thousand.

In addition, on 25 April 2012, the First Basic Court in Belgrade adopted the claim of the Gay Straight Alliance and established discriminatory behaviour and severe form of discrimination against LGBT people by the defendant Nebojsa Bakarec, alderman in the Belgrade City Hall. Tatjana Lemajić, the judge, made final verdict 29 P No.20182/11 pursuant to Articles 11, 12, 13 and 21 of the Law on the Prohibition of Discrimination. With this verdict the defendant is prohibited from repeating the discriminatory behaviour, and was ordered to pay legal fees to the plaintiff (Gay Straight Alliance) The verdict became final on 3 August 2012, after the defendant did not appeal in the legal time limit.

Before that, on 10 November 2011, the Court of Appeals in Belgrade passed a second instance verdict in the Gay Straight Alliance case Gž.br.5115/11 against the daily newspapers Press doo, dismissing the appeal as unfounded and upheld the defendants first instance judgment of the High Court in Belgrade, which established that the text -readers' comments published on 2 July 2009 on

the website of Press Online are hate speech against the LGBT population and that Press by permitting and facilitating these comments to be placed on the website was discriminatory towards this population on the basis of the Law on the Prohibition of Discrimination and the Law on Public Information ("Official Gazette of RS" Nos. 43/03, 61/05, 71/09 and 89/10-amended by the Decision of the Constitutional Court and 41/11- amended by the Decision of the Constitutional Court). The verdict prohibited Press-to publish the said texts on the website again and was ordered to publish the final verdict in its entirety in the printed edition, without any comments and without delay, and to pay GSA the court costs.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Despite the existence of a mechanism to establish independent bodies, one of the challenges is the establishment of an adequate system of support and assistance to victims of human rights violations, including compensation. In this respect, it is necessary to further support the improvement of the work of independent bodies and ensuring the execution of their decisions and recommendations.

In November 2012, the Office for Human and Minority Rights and the Commissioner for Protection of Equality started the implementation of the EC IPA 2011 project "Implementation of anti-discrimination policies". The purpose of the project is to effectively and efficiently implement anti-discrimination policies in line with the EU standards and best practices. IPA 2011 project should enable the empowerment of different mechanisms for effective enforcement of anti-discrimination legislation and training of representatives of relevant government institutions in order to improve respect for tolerance, equality and diversity. It has been planned, among other things, training for the police, the judiciary and prosecutors in the basic anti-discrimination standards, with special emphasis on the promotion and protection of the rights of LGBT people.

In order to further support the work of independent bodies, the project, among other things, provides for the activities aimed at strengthening the capacity of the service of the Commissioner for Protection of Equality, as an independent government body, independent in exercising its jurisdiction, as well as activities aimed at raising public awareness about the importance of tolerance and combating discrimination.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

In the Republic of Serbia, the Serbian language and the Cyrillic script are in official use. The Recommendation of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity has been translated into Serbian and is available to the public on the website of the Office for Human and Minority Rights.

The Constitution of the Republic of Serbia stipulates that official use of other languages and scripts shall be regulated by law based on the Constitution. The law stipulates that the territory of the units of local government traditionally inhabited by national minorities, their language and script can be in equal official use. The local government unit will be required to introduce in official use by its statute the language and the script of a national minority, and if the percentage of that ethnic minority in the total population on its territory reaches 15% according to the latest census.

Based on the presented provisions of the law, 11 minority languages - Albanian, Bosnian, Bulgarian, Hungarian, Macedonian, Romanian, Ruthenian, Slovak, Croatian, Montenegrin and the Czech language - are in official use in the territory of 42 local government units.

Considering the importance of the recommendations of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity, we think that it should be translated into the following minority languages: Albanian, Bulgarian, Hungarian, Macedonian, Roma, Romanian, Ruthenian, Slovak and the Czech language.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

The Republic of Serbia is one of the partner countries in the project of the Council of Europe entitled "Combating discrimination on grounds of sexual orientation and gender identity", along with Albania, Italy, Latvia, Montenegro and Poland. Within this project, among other things, the following activities were undertaken:

- On 13 December 2012, the seminar "Combating discrimination on grounds of sexual orientation and gender identity" was held, organised by the Office for Human and Minority Rights, Belgrade. This is the first seminar dedicated to promoting LGBT rights organized by a government institution in the Republic of Serbia, and during it the participants were presented and distributed the Recommendations of the Committee of Ministers of the Council of Europe, as well as the Report by Thomas Hammarberg, Commissioner for Human Rights on discrimination against LGBT people, of June 2011.

- Representatives of the Office for Human and Minority Rights, Ministry of Interior, Criminal Police Academy and the Gay-Straight Alliance attended the seminar devoted to best practices in training police for working with LGBT people, in Budva, Montenegro, on 14 and 15 December 2012. The seminar was organized within the LGBT Project of the Council of Europe.

- In the framework of this project, a multilateral a meeting of all partner countries in the project on the topic of "Best practices in training of health workers and social workers to work with LGBT people" will be organised in Belgrade, in March 2013, in order to present examples of good practice and exchange the experiences in this field.

The Recommendation and Appendix to Recommendation, in Serbian and English, are published on the website of the Office for Human and Minority Rights.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of the Interior takes measures providing greater protection for persons of different sexual orientation through direct protection and through intensive operational work for the prevention and suppression of crimes and offenses motivated by sexual orientation or gender identity bias.

With the support of the OSCE Mission, organized activities in the framework of the initiative "Work of the police with marginalized, minority and socially vulnerable groups" are undertaken in order to improve police training, communication and cooperation between the police and members of these communities.

The Ministry of the Interior of the Republic of Serbia, through regular annual in-service training and other forms of education of police officers, pays special attention to the areas of human and minority rights, respect for diversity and the development of communication with citizens.

For example, in-service training of police officers in 2012, among other things, provided for the following topics: Protection of human and minority rights; Work of the police with minority, marginalized and socially vulnerable groups, Treatment of children and minors, and more.

In order to create the conditions for a unified and continuous training of police officers on the work of police with minority, marginalized and vulnerable social groups, appropriate teaching materials (manuals, curricula, etc.) were developed on various aspects of police work with these groups, based on which, through an annual in-service training program, instructional topics in this area are implemented for all police officers in Serbia. In this way, a convergence in police work and adjusting it to the security needs of citizens is provided thereby ensuring the more effective security protection.

The Code of Criminal Procedure prescribes the competences of the public prosecutor whose basic right and basic duty is to prosecute perpetrators of the criminal offenses, and in discharging this function the prosecutor is bound by the principle of legality, according to which he is required to conduct criminal prosecution if there are grounds for suspicion that the criminal offense that has been committed is prosecutable *ex officio*.

The public prosecutor conducts effective, prompt and impartial investigation into all cases of crimes which are prosecutable *ex officio*, including crimes where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator, through exercising his powers prescribed in the Code of Criminal Procedure and the Law on the Public Prosecution.

The Ombudsman, acting in several cases of domestic or partner violence, with the aim of improving the protection and prevention of victims of gender-based violence, sent his opinion to the ministries responsible for social protection, internal affairs and justice with recommendations in order to organise this important issue, which is not a private but public issue.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The Amendments to the Criminal Procedure Code ("Official Gazette of RS", br.121/12) inserted a new Article 54a providing "special circumstance for sentencing for an offense committed out of hatred," which reads: "If the offense was committed out of hatred because of race and religion,

national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense."

Also, the Law on the Prohibition of Discrimination in Article 13(1) stipulates the severe forms of discrimination, and discrimination on grounds of gender identity and sexual orientation is defined as a severe form of discrimination.

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the court practice, the motive for the commission of an offense is considered within the general rules for determining penalties, in which sense it could be considered as an aggravating circumstance. The Law on Amendments to the Criminal Code of 24th December 2012, in Article 54a stipulates the special circumstance for sentencing for an offense committed out of hatred. According to the aforementioned legal provision, if the offense was committed out of hatred because of race and religion, national or ethnic origin, gender, sexual orientation or gender identity of another person, the court will consider this circumstance as an aggravating circumstance, unless it is prescribed as an element of a criminal offense.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In cooperation with the OSCE Mission, there has been organised training for police trainers who can train police officers from police departments on improving communication and cooperation and overcoming the prejudices that may contribute to discrimination against people of different sexual orientation and increasing the sensitizing of police officers to the problems faced by people of different sexual orientation. As part of it, the police officers are trained in terms of encouraging crime victims to report crime.

Measures to protect victims and witnesses of crime are prescribed by the Criminal Procedure Code and the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (procedural protection measures), as well as the Law on the Protection Programme for Participants in Criminal Proceedings (extra-procedural protection).

Article 8 of the Gender Equality Act provides that no one shall suffer any harm from giving a statement in front of the competent body in the capacity of a witness or victim of sexual discrimination or from alerting the public about a case of sexual discrimination. As for the violence, particularly within the family, the Republic of Serbia signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (CAHVIO) on 4 April 2012. At the moment, the Convention, which, *inter alia*, in Article 27 (Reporting) and 28 (Reporting by professionals) obliges States Parties to intensify their activities to protect witnesses of domestic

violence and persons who reported them, is in the process of ratification. Serbian Constitution provides, in Article 16, that ratified international treaties are an integral part of the legal system of the Republic of Serbia and applied directly, so, accordingly, this should to apply to the said Convention and its parts, which encourage the adoption of measures for victims and witnesses of criminal offenses and incidents from the scope of this regional legal instrument

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

The Ministry of the Interior is responsible for the education of police officers and realises it through two centres: the Basic Police Training Centre (COPO) in Sremska Kamenica and Specialized Police Training and Advancement Centre.

Basic Police Training Centre (COPO) in Sremska Kamenica is responsible for basic police training and it is the only such institution in Serbia enabling students - future police officers, to acquire knowledge and skills necessary for performing a variety of law enforcement activities. In addition to basic training, which lasts for 12 months, the Basic Police Training Centre in Sremska Kamenica organizes seminars and workshops aimed at in-training of trainers, co- trainers and police mentors in the field of human rights.

Specialized Police Training and Advancement Centre operates in the Headquarters of the Ministry of the Interior and is responsible for organizing and conducting training for active police officers, where the application of different educational methods enables police officers to refresh their knowledge from several areas of policing, advancement, and acquisition of knowledge and skills for implementing new legislation.

Activities of the Basic Police Training Centre in Sremska Kamenica (COPO)

In accordance with the Curriculum for training students in vocational basic police training, in the period from 2007 to date, eight generations with a total of 1085 students successfully completed the training. Arguing that a well-trained police force is the best possible guarantee against ill-treatment, all trainees in the course of their education, through mandatory subjects, had the opportunity to acquire the necessary knowledge and develop the necessary attitudes regarding the observance of human rights and freedoms and the prevention of torture and misconduct of the police, as well as respect for the diversity of people of different sexual orientation and gender identity.

The curriculum provided continuing education and training of students - future police officers, related to legal regulations, including an important segment of protection of human rights and freedoms, and the prevention of torture and inadequate treatment. The starting point for making this part of the curriculum is the national and international legal framework where the most important is the following: the Constitution of the Republic of Serbia, the Law on Police, Criminal Procedure Code, the Criminal Code, the Law on Personal Data Protection, the Law on Ombudsman, Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Code of Police Ethics, Recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity, and other national and international legal instruments relating to the conduct of the police.

The area of human rights is addressed through a number of courses and expert modules, among which special place belongs to the course of "Human Rights and Police Ethics". This course deals with the following topics: "Human rights and fundamental freedoms of man", "Morals and Ethics"; "Deontology" and "Code of Police Ethics". The thematic area of "Human rights and fundamental freedoms of people" includes separate teaching units such as "The right to life and the inviolability of physical and mental integrity" which discusses the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Code of Police Ethics, then the provisions of the Constitution of the Republic of Serbia that guarantee the inviolability of the physical and mental integrity and other legal norms, as well as "Gender equality" with specifically implemented excerpts from the Recommendations of the Committee of Ministers of the Council of Europe on measures to combat discrimination on grounds of sexual orientation or gender identity. Thematic area of the "Code of Police Ethics" includes two teaching units: "Codes of Police Ethics" and "Fundamentals of the Code of Police Ethics of the Republic of Serbia and the European Code of Police Ethics". The students are introduced to the Code of Police Ethics through case studies, practicing and situational role-playing. Special emphasis is put on understanding the relations between the Code of Ethics, police powers and human rights.

The topics related to the protection of human rights and freedoms are addressed within the following teaching subjects: Criminal and Criminal Procedural Law, Police Officers: rights, responsibilities and duties, as well as professional modules: Crime Prevention, Use of Police Powers and the Use of Force in Local Community Policing. Within the modular units "Arrest of Suspect" and "Searching for Information", the students gain knowledge of the rights of persons deprived of their liberty and adopt the views of the necessity of respecting the rights of the arrested person, respect for "the presumption of innocence," respect for human dignity, reputation and honour of the arrested, observance of the principle of proportionate use of force during an arrest, to show concern for the health and security needs of the arrested, oppose all forms of torture, inhuman and degrading treatment, and so on.

Teaching and modular units from these courses and expert modules, which are also related to this area are: "Criminal acts against the rights and freedoms of man and citizen" (the terms such as violation of gender equality, violation of the right to use language and script, illegal detention, extorting of statements etc.), then "Legal instruments available to citizens against acts of the members of the Ministry of the Interior in pre-trial proceedings", "Rights of persons deprived of their liberty", "The treatment of persons deprived of their liberty," "Duties of police officers with regard to respect for human dignity, reputation, honour and rights person to refuse to give evidence", "General requirements for the application of police powers, "" National and international standards of police conduct", "Police officers, their rights and duties", "Disciplinary accountability of police officers ", "Respecting the Equality"," Work of police with minority and socially vulnerable groups", "General requirements and principles for the use of police powers", "Support, protection and assistance to victims (vulnerable groups in law enforcement, etc.).

During the practical training, students can master the practical skills of police conduct in the use of their powers.

Within the course for police mentors, students are introduced to the curriculum of the Basic Police Training Centre in Sremska Kamenica, including the course of "Human Rights and Code of Police Ethics", and to the correlation of this topic with other courses and expert modules. This course has been organised in COPO since 2007, and it is organized according to the needs of local police departments for training of mentors coordinators and police mentors. The course participants are police officers from all over Serbia.

In 2006, in the Basic Police Training Centre, Council of Europe Police and the Human Rights Programme and the Ministry of the Interior of the Republic of Serbia organised a seminar on "Human Rights in the Curricula". The Speakers were Martin Zema), Programme Advisor and Louise Larkin, Council of Europe expert. The seminar was attended by nine employees of the Basic Police Training Centre dealing with developing curriculum for vocational training of the students in basic police training.

Also, as a form of professional development of trainers, in October 2011, in the Centre, a workshop was held on the theme: "The safer detention and handling of persons in police custody", organized by the Organization for Security and Cooperation in Europe (OSCE), in cooperation with the Commission for monitoring the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the RS Mol. The trainers in charge for conducting the training were trainers Christopher Tompkins and Robert Foreman, members of the Kent police, UK. Apart from 18 members of various organizational units of the Mol, the participants were also three employees of the Centre. It was noted that the laws and bylaws in the Republic of Serbia, related to the protection of human rights and freedoms, prevention of torture and other inhuman or degrading treatment, fully comply with the legal and sub-legal solutions in UK.

In October 2007, in Novi Sad, the Ministry of Interior of the Republic of Serbia and the British Council organized a round table discussion on "Work of Police with minority and socially vulnerable groups." The Ministry of Interior of the Republic of Serbia, the OSCE Mission to Serbia and the British Council organised a training course on "Work of Police with minority and socially vulnerable groups." Lecturers on the course were Chris Collins and David Butterworth, police officers from Kent, United Kingdom. Theme of the course was combating all forms of discrimination, prejudice and stereotypes that are manifested in the local communities, but also in the work and conduct of police officers. A participant in this course was also a trainer from the Basic Police Training Centre.

In cooperation with the Hanns Seidel Foundation, our coaches had the opportunity to participate in seminars: "Police in Local Community" in June 2009, "Crime among youth" in October 2009, "Police and Democracy", in November 2009.

In September 2012, the Women Police Officers Network in South Eastern Europe organized presentation of Guidelines for Gender-Sensitive Police Practice. Within the project of Gender Mainstreaming in Security Sector Reform, the OSCE Mission, in cooperation with the Belgrade Fund for Political Excellence, organized three seminars in total (one in 2010 and two in 2011) in which one female employee of the Centre took part.

Activities of the Specialized Police Training and Advancement Centre

Training courses for active police officers with experience, that are prepared, organized and carried out by Specialized Police Training Centre CSOUP, include also topics dealing with discrimination on any grounds, including on grounds of sexual orientation and gender identity, in the following ways:

1. Police officers of CSOUP organize and conduct specialized courses and seminars relating to the conduct of police officers and policing, which according to Article 12 of the Law on Police include: duty to serve the public, to follow the law and combat unlawful activities; to actively respect human rights; to proceed without discrimination in the performance of police functions; to practice restraint in the means of enforcement; to prohibit torture and inhuman or degrading treatment; to assist victims; to safeguard confidential information; to disobey unlawful orders, and to resist bribery and corruption. This article also says "The police shall ensure that the conduct of law enforcement officers does not violate or fall short of European standards of police procedure." Article 35 of the Law on Police says "In exercising the police powers, authorised officers shall act impartially, extending the same protection under the law to all, without bias or discrimination on any grounds." Also, the same article says, " In exercising the police powers, authorised officers shall proceed humanely and with respect for the dignity, honour and good name of all, and other fundamental human rights and freedoms favouring the rights of the endangered person over those of the person violating such rights, and mindful of the rights of third parties."

2. In accordance with the programs of in-service training for police officers, aimed at permanent refreshment of knowledge, especially on topic of the use of powers and conduct of police officers, in 2011 and 2012, CSOUP held several seminars of which we wish to highlight the following topics:

- Constitutional protection of human and minority rights (9 seminars)
- Police work with marginalized, minority and socially vulnerable groups (9 seminars)
- Torture in police (11 seminars)
- Law on the Prevention of Harassment at Work - a new challenge in the protection of dignity (11 seminars) etc.

These in-service training programmes include also seminars on the topic of Gender Equality.

Since November 2012, the Ministry of the Interior has been included in the Council of Europe regional project on "Combating discrimination on grounds of sexual orientation or gender identity." Police officer from the MoI was a speaker at the seminar that was held in Belgrade in December 2012, in which he spoke about the importance of normative documents, procedures, and training when it comes to work and conduct of the police in cases with an element of discrimination on these grounds. Police officer of the Police Department participated in a police training seminar on LGBT issues, which was held in Montenegro, in December 2012. MoI was invited to submit its proposals for training courses for police officers in the field of human rights, with a special review of the rights of LGBT people.

3. The Specialized Police Training and Advancement Centre of the Ministry of the Interior of the Republic of Serbia is engaged in the production of various manuals for police officers. The Manual on Police Ethics, which deals with the topics related to ethical conduct also in situations relating to respect for sexual orientation and gender identity, is under preparation.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

There is a training program for judges and prosecutors from the Judicial Academy regarding the promotion and protection of human and minority rights, and international and regional standards in this area.

The Administration for the Execution of Criminal Sanctions provides continuous training of employees in all services, with special emphasis on the training of Security Service, according to the established programmes at the Centre for In-Service Training. The training programme includes, as an integral part, a part relating to the prevention of discrimination on any grounds, and respect for all statutory rights and human rights of persons deprived of their liberty. This includes raising awareness of employees about the need to respect the persons deprived of their liberty regardless of their religious, ethnic, political or sexual orientation.

By the end of 2012, the Administration for Gender Equality, completed in-service training for more than 300 male/female police officers (15 seminars at the Judicial/Police Academy) and more than 300 male/female judges and prosecutors (15 seminars at the Judicial Academy) within the specialized teaching programmes on the contents close on gender equality and held 3 training courses for civil servants in the Human Resources Management Service of the Government of the Republic of Serbia. Furthermore, by September 2012, the Administration for Gender Equality completed the process of creating a database intended for domestic violence protection providers in local communities in the territory of the Republic of Serbia. A study of best practices and international experience in developing and implementing programmes for the rehabilitation of male/female perpetrators of sexual and gender-based violence was published with starting a pilot programme for working with perpetrators of domestic violence and intimate partner violence. In this regard, in September 2011, a conference Introduction of Domestic Violence Perpetrator Programme was held (where, with the support of the Kingdom of Norway, more than 100 male/female participants and representatives of the academia were introduced to the basics of work with male/female perpetrators). In the period from June 2009 to December 2011, 32 male/female students conducted the three-month internship at selected institutions dealing with combating sexual and gender-based violence (Administration for Gender Equality, National Institute for Social Protection, Ministry of Labour and Social Affairs, Provincial Secretariat for Labour, Employment and Gender Equality, Centre for Social Work Pancevo, civil society organizations dealing with combating domestic violence).

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Institutions for enforcement of penal sanctions against persons belonging to especially vulnerable categories (including the people of different sexual orientation or gender identity) apply measures that enable safe enforcement of penal sanctions which is primarily reflected in a separate housing. Along with this measure, all the other conditions envisaged for the majority of prisoners in terms of access to health care, information, culture, visits, etc. are provided.

Law on Enforcement of Penal Sanctions prohibits any form of discrimination on any grounds. For employees, disciplinary and criminal liability is anticipated in case of misconduct. Until now, there

were no cases of discrimination or abuse of persons deprived of liberty, on grounds of sexual orientation or gender identity.

Law on Enforcement of Penal Sanctions stipulates that any form of hate speech of any grounds by persons deprived of liberty to other persons be treated as a disciplinary offense and punished. Any attack or injury is a serious disciplinary offense and the procedure will be initiated, informing the territorially competent police department at the same time.

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Criminal Code of the Republic of Serbia, in Chapter Seventeen provides for a group of criminal offenses against honour and reputation. Among the others, there is a criminal offence of ruining the reputation for racial, religious, ethnic or other affiliation under Article 174 CC.

Ruining the Reputation for Racial, Religious, Ethnic or other Affiliation

Article 174

Whoever publicly ridicules a person or group because of a particular race, color, religion, nationality, ethnic origin or other personal characteristics, shall be punished with a fine or imprisonment up to one year.

The Criminal Code of the Republic of Serbia, in Chapter Seventeen provides for a group of criminal offenses against humanity and other goods protected by international law. Among the others, there is a criminal offence of racial and other discrimination under Article 387 CC.

Racial and Other Discrimination

Article 387

(1) Whoever on grounds of race, colour, religion, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by the universally accepted rules of international law and international treaties ratified by Serbia, shall be punished by imprisonment of six months to five years.

(2) The penalty specified in paragraph 1 of this Article shall be imposed on whoever persecutes organizations or individuals due to their commitment for equality of people.

(3) Whoever propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination, shall be punished by imprisonment of three months to three years.

(4) Who spread or otherwise make publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, color, religious affiliation, nationality, ethnic origin or other personal property, shall be punished by imprisonment from three months to three years.

(5) Whoever publicly threatened that, against a person or group of persons because of a particular race, color, religion, nationality, ethnic origin or because of other personal property, committed a criminal offense punishable by imprisonment of four and more years, shall be punished by imprisonment from three months to three years.

In accordance with its responsibilities in the field of public information, the Ministry of Culture and Media supervises the enforcement of the Law on Public Information ("Official Gazette of RS" Nos. 43/03, 61/05, 71/09 and 89/10-amended by the Decision of the Constitutional Court and 41/11-amended by the Decision of the Constitutional Court). According to Article 38 hereof ("The prohibition of hate speech"), "it is forbidden to publish ideas, information and opinions that incite discrimination, hatred or violence against a person or group of persons because of their belonging to a race, religion, nation, ethnic group, gender or on grounds of their sexual orientation, regardless of whether the publication at stake constitutes a criminal offence or not."

Another law governing the field of public information is the Law on Broadcasting ("Official Gazette of RS" No.42/2002, 97/2004, 76/2005, 79/2005 – as amended, 62/2006, 85/2006, 86 / 2006 - corr., and 41/2009), and the National Broadcasting Agency is in charge of supervising its enforcement. In accordance with Article 8, paragraph 3 of this Law, the Agency has the authority to "prevent the broadcast of programmes that contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of their belonging or not belonging to a particular race, religion, nationality, ethnic group or gender", and in accordance with Article 21 of the same law, "The Agency shall ensure that the broadcasters' programmes do not contain information inciting discrimination, hatred or violence against an individual or a group of individuals on grounds of their different political affiliation or belonging or not belonging to a particular race, religion, nationality, ethnicity, gender or sexual orientation ". In the part regulating the broadcasting sector, Article 79 of the Law stipulates that "Public broadcasting service carriers shall in their news programme production and broadcasting abide by the principles of impartiality and fairness in treating different political interests and different persons, uphold the freedom and pluralism of the public expression of opinions, and prevent any form of racial, religious, national, ethnic or other intolerance or hatred, or intolerance on the grounds of sexual affiliation. "

The Law on the Prohibition of Discrimination, among others, stipulates that hate speech is also a form of discrimination. Article 11 of the Law on the Prohibition of Discrimination stipulates that it is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways. The Commissioner for Protection of Equality, within the scope of their competence, trains civil servants, through Human Resources Management Service, about the prohibition of-discrimination and responsibilities of the

Commissioner for Protection of Equality. An important part of the training courses is devoted to prohibition of discrimination on grounds of sexual orientation.

The Ombudsman has consistently supported the right of LGBT people to gather and express their identity and opinions. During 2012, on the occasion of the International Day Against Homophobia and International Day of Pride, the Ombudsman in his statements emphasized the need for respecting diversity and protecting the rights of LGBT people and on the occasion of marking these international human rights feasts along with the representatives of LGBT NGOs he put up a flag in colours of rainbow on the building of the seat of the Ombudsman in Belgrade. In 2011, for the same activity, the windows were broken down on the building where the office of the Ombudsman is seated, but that did not discourage the Ombudsman to give his support also in the subsequent years and on two occasions, as stated above.

To mark the International Day of Pride in June 2011, the fabric in the colours of the rainbow was also lowered from the Ministry for Human and Minority Rights, Public Administration and Local Government, in the presence of LGBT civil society organizations.

Deputy Ombudsman in charge of gender equality and the rights of LGBT people in her public appearances (author articles, interviews), especially speaks about the importance of education system that would alleviate the existing highly expressed hostility among children and adolescents against LGBT people, pointing to the need for adequate addressing of that topic through teaching programmes and textbooks.

Over the last years, the Ombudsman took all available measures and actions aimed at raising awareness of the importance and responsibilities of this body, and in order to approach citizens (accessibility). Although media regularly monitor activities, results but also problems in the work, the Ombudsman has established as a regular practice visits to local government authorities (Days of the Ombudsman). On this occasion, besides the talks with representatives of local authorities, the talks with non-governmental organizations and other institutions in the field of human and minority rights are also organized. In accordance with their main competencies, the personnel employed in the Expert Service in the field receive complaints from the citizens. In public libraries in 10 cities and towns across the country, citizens can contact the reception service of the Ombudsman through an audio-visual internet connection. In the next two years the number of such libraries (the Ombudsman calls them virtual offices) will increase to 25.

In 2010, the Provincial Ombudsman and the Parliament of the Autonomous Province of Vojvodina implemented the project "Together against discrimination" in which the President, Vice-Presidents and Members of Parliament, as well as deputies of the Provincial Ombudsman took part. In panel discussions in several municipalities, they spoke about the prohibition of discrimination, including on grounds of sex, gender, examples of discrimination and accountability of state institutions to refrain from making statements that could be interpreted as a legitimization of hate or discrimination against LGBT people. Participants in the panel were representatives of local authorities (councillors, administrative bodies, civil society organizations and citizens).

Institution of the Provincial Ombudsman, with the help of Labris organization, realized education for the Provincial Ombudsman, the Deputy Ombudsman and all the employees in 2007.

Provincial Ombudsman and Minority Rights Centre organisation, supported by the Helsinki Committee for Human Rights, organized and conducted the training of local ombudsmen in 2007.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

There are no restrictions or exclusions of warranties contained in the Appendix to the Recommendation.

Measures to ensure freedom of association are:

Constitution of the Republic of Serbia ("Official Gazette of RS ", No. 98/06) as one of the human rights and freedoms guarantees the freedom of association. Specifically, Article 55 of the Constitution, among other things, guarantees freedom of political, union or any other form of association and the right to stay out of any association, and the association formed without prior approval and entered in the register kept by a state body in accordance with the law.

Establishment and legal status of associations, registration and removal from the register, membership and organs, status changes and termination of the association, as well as other issues relevant to the work of the association are governed by the Law on Associations ("RS Official Gazette", No. 51/09). This law regulates the status and activities of foreign organizations in the Republic of Serbia.

The association, in terms of this Act, is a voluntary and non-governmental non-profit organization based on the freedom of association of several natural or legal persons, established in order to pursue and promote a particular shared or general goal and interest, which are not prohibited by the Constitution or the law.

Law on Associations stipulates that associations are established prior to entry into the register, but only with their entry into the register they acquire status of a legal entity. Practically, it is possible that the associations themselves decide whether to enrol in the registry or not. To the associations that are not entered in the Register, in which case do not have status of a legal entity, legal rules on civil partnership shall apply. However, it is important to point out that this Law provides a number of benefits to associations that are registered in the Register of Associations (to act independently in the legal system, to carry out economic and other activities in accordance with the law, to apply for funds from the budget of the Republic of Serbia, autonomous region or a unit of local government provided for funding certain projects of public interest, etc.).

In addition to this, the Law on Associations stipulates that the goals and operations of the association may not be aimed at violent overthrow of the constitutional order, breach of the

territorial integrity of the Republic of Serbia, violation of the guaranteed human and minority rights or incitement and instigation of inequality, hatred and intolerance based on racial, ethnic, religious or other affiliation or commitment, as well as on gender, race, physical, mental or other characteristics and abilities. Also, secret and paramilitary associations are prohibited.

In this regard, it should be pointed out that the banning of associations whose goals or operations are contrary to the mentioned prohibition is to be decided by the Constitutional Court. The procedure to ban the work of an association is initiated upon the proposal of the Government, the Republic Public Prosecutor, the ministry in charge of administration, and the ministry responsible for the area in which the association achieves its goals or the Registrar for the associations.

The Government or the ministry responsible for the area in which the association achieves its basic goals assigns the funds for promoting programs or the missing share of the (financial) means for funding programs that the associations are carrying out and are of public interest, on the basis of the completed open competition and shall conclude contracts for the implementation of the approved programs.

The programme of public interest in accordance with this law particularly refers to programmes in the following fields: social security; disabled war veterans' security, security of internally displaced persons from Kosovo-Metohija and refugees; promotion of birth-rate; assistance to senior citizens; health care, protection and promotion of human and minority rights, education, science, culture, information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programs and other programs whereby the association pursues public needs exclusively and directly.

Pursuant to the authority given, the Regulation on the means for promoting programmes or the missing share of the funds for financing programmes of public interest implemented by associations ("Official Gazette of RS ", No. 8/12). This Regulation prescribes transparent relations and clear rules in financing the associations' programmes of public interest from the budget. Among other things, it specifies the criteria by which to make a selection of programmes to be financed from the budget of the Republic of Serbia (reference programme, goals that are achieved, co-financing of the programmes from other sources, and the legality and efficiency of use of resources and the sustainability of past programs), with giving possibility to the public administration body whose scope of competence covers the area in which the public interest is achieved to determine closer criteria for the selection of the programme, as well as additional criteria that are specific to a particular area. Then it regulates the methods and procedures for assigning the funds for promoting programmes or the missing share of the funds for financing the programmes (mandatory contents of the public announcement, the way to invite to open competition, applications for the competition, competition commission, the decision on the selection of the programme, the legal instruments that may be used by the association - participant in the competition). As for the using of the funds approved for the programme, it is stipulated that these funds are earmarked for specific purpose and that they can only be used for the implementation of the specific program and in accordance with the contract concluded between the competent authorities and the association. Monitoring of the programme implementation and control of its implementation, as well as the manner and process of returning funds to promote programmes or the missing share of the funds for financing the programme in the event of improper use of funds is also governed by this regulation. Regulation introduces transparency and the public in the process of allocating funds for financing of these programmes, including by prescribing that the competent authority shall on its

official website publish the public tender, evaluation and ranking list of the filed programmes, the decision on the selection of the programme, as well as other data and documents that are published in accordance with this regulation.

The Criminal Code of the Republic of Serbia, under Chapter Fourteen lists a group of criminal offences against freedoms and rights of man and citizen. Among others, there is a criminal offence of prevention of political, trade union or other organising and activity by which all citizens, including the advocates of human rights of lesbian, gay, bisexual and transgender people are effectively protected from hostility and aggression. It is particularly significant that the more severe form of this offence is if this criminal offence is committed by an official in discharge of duty.

In August 2011, Ministry for Human and Minority Rights, Public Administration and Local Government, Department of Human and Minority Rights, based on an open competition for the allocation of funds to the associations for projects aimed at the promotion and protection of human rights in the Republic of Serbia or encouraging positive behaviour and actions of a wider social community towards vulnerable groups of citizens (persons with disabilities, children and youth, vulnerable groups on grounds of gender, gender identity and sexual orientation, and other vulnerable groups of citizens) allocated funds for projects of 11 civil society organizations, in the amount of EUR 50,000. One of the projects for which realisation the funds were allocated then is the project "Tolerance, the foundation of a stable family", aimed at introducing the officers of the Centre for Social Work to characteristics of LGBT population, the development of tolerance within the family towards the members of the LGBT population, in the territory of the five districts in the Republic of Serbia. Within this project, the guidelines for working with lesbian, gay, bisexual, and transgender people and members/ members of their families, and are intended for personnel of the centres for social work.

Department of Human and Minority Rights conducted a public tender for the projects of the Association in order to promote and protect human rights in the Republic of Serbia, for the "Calendar of Human Rights 2012". The basic concept of the Calendar means that every month of the year is devoted to, or marked by, a series of activities realised by civil society organizations, whose projects were selected as the best ones through open competition. The aforementioned activities will contribute to improving the status and rights of certain groups or minorities, promotion of desirable models of behaviour and values, as well as combating discrimination. Selection of the field/topics follows UN international holidays as well as other holidays that are marked at the international level. In the "Calendar of Human Rights," June is dedicated to the rights of the LGBT people and marking the Pride Day on 27 June. On the basis of open competition, projects of the following associations were selected as the best for the month of June:

LABRIS - organization for Lesbian Human Rights - "LGBT youth." Project activities included the development of promotional materials and training for young activists on the topic of "LGBT youth", projections of films in 5 cities in Serbia. The Pride Day, among other things, was marked by lowering the fabric in the colours of rainbow from the windows of the government institutions in Serbia.

Gay-Straight Alliance - "Together for LGBT equality". Within the project the following activities were conducted: demonstration of LGBT cardboard dolls and other street performances in order to reduce prejudice against LGBT people, promotion of LGBT culture and creativity at the Exit music festival, showing LGBT films, conducting sweepstake about the Pride Day throughout Serbia, as well as marking the Pride Day.

Through an open competition conducted by the Office for Human and Minority Rights, the following projects of civil society organisations were selected within the "Calendar of Human Rights 2012" as the best ones for the month of December, which is dedicated to the celebration of Human Rights Day:

Regional Info Centre – "The right to love". It was planned within this project to organize throughout Serbia projections of films, distribution of brochures, magazines, organizing panel discussions and presentations to encourage positive action of the broader society towards LGBT people, promotion of LGBT rights and LGBT culture and creativity, as well as marking 1st December, the International HIV/AIDS Day.

Duga Sabac Association – "10 December - Day for all of us". The project envisages holding of a series of interactive workshops, organizations, "Live libraries" as separate methods to combat discrimination against vulnerable social groups, street events in 9 cities in Serbia with young people from the LGBT and Roma populations, populations of people living with HIV and people with disabilities.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In November 2011, in Belgrade, the UN and the OSCE Mission, under the auspices of the Human and Minority Rights, the Conference "Towards the national policy of male/female defenders of human rights" was organised. The aim of this paper was to analyze the position of male/female defenders of human rights in the Republic of Serbia, as well as improving the implementation of the standards contained in the UN Declaration on the male/female defenders of human rights.

17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

This issue is most addressed by independent institutions, and the Provincial Ombudsman provides information in direct communication with the activists of civil society organisations, active participation in panel discussions and round tables which he organized alone or in cooperation with civil society organizations, as well as seminars intended for the local and provincial administration bodies, participants and students, as well as in communication with citizens who file complaints to the Provincial Ombudsman.

In November 2011, in Belgrade, the Conference "Towards the national policy of male/female defenders of human rights" was held. The aim of the gathering was to analyze the position of

male/female defenders of human rights in the Republic of Serbia, as well as improving the implementation of the standards contained in the UN Declaration on male/female defenders of human rights.

in November 2012, in the Office for Human and Minority Rights and the Commissioner for Protection of Equality, the implementation of the European Commission IPA 2011 project "Implementation of anti-discrimination policies" started. In order to improve the capacity of civil society organizations to provide support to victims of discrimination, the following activities will be undertaken:

Development of mechanism for providing information to civil society organizations and feedback to support the victims of discrimination. Preparation of an information package and holding information sessions/meetings with representatives of civil society organisations. Preparation of the evaluation report with appropriate recommendations on the involvement of civil society in the monitoring of the implementation of the Law on Prohibition of Discrimination.

Production, within the consultative process, of the training manual for civil society organizations to provide training for rendering support to vulnerable groups and legal assistance in cases of discrimination, including the manual for TOT (Training of Trainers) and manual for training courses. The design and implementation of training courses based on the ToT (training of trainers) manual and training manual. The design and implementation of training courses based on ToT manuals.

Support to civil society organizations that have completed ToT to organize the next training courses with other civil society organizations working at the local level. Providing adequate evaluation of the training results.

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

The applicable Law on a Free Access to Information of Public Importance was passed in 2004 (Official Gazette of the Republic of Serbia, Nos 120/2004, 54/2007, 104/2009 and 36/2010). The rights in this law belong to everybody under equal conditions, notwithstanding their citizenship, temporary or permanent residence, i.e. sex, or personal attribute such as race, confession, nationality, ethnicity, gender, et al. (Article 6 the Law on a Free Access to Information of Public Importance). That also refers to sexual or gender identity minorities, as well as organisations dealing with the protection of the human rights, related activities and the like. Information of public importance, within the meaning of this Law, is information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know. This also implies issues related to sexual orientation or gender identity. As for the provision of Information of public importance, Article 14 of the Law on a Free Access to Information of Public Importance stipulates the possibility of limiting the exercise of the right of free access to information of public importance for the purpose of protecting a prevailing interest, i.e. the right to privacy implying also the information on a person's sexual orientation or gender identity.

Ministry of Culture and Media invites for tenders in the area of public information on an annual basis. The right to participate in a competition is given to media and production companies, and one of the assessment criteria is informing and the improvement of the status and equality of all society segments. In this manner, the Ministry of Culture and Media supports the projects that contribute to better informing of marginalised and vulnerable society groups as well as to raising public awareness with a view to overcoming prejudices and stereotypes related to the members of these groups.

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

The freedom of assembly is not an absolute right, but may be limited in certain cases as stipulated by Article 54 of the Constitution.

The provision of Article 54, paragraph 4, of the Constitution sets forth that the freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.

The first restriction on the freedom of assembly refers to the requirement that a gathering should be peaceful implying the way of organising an assembly where certain view, ideas and positions are expressed. A peaceful assembly does not imply the contents of the opinion stated. If during a gathering, an opinion representing hate speech or calling for war or discrimination, a clear distinctive line should be drawn between the right to freedom of assembly and the right of freedom of expression.

Other restrictions to the freedom of assembly refer to the need to protect public health, morals, rights of others or the security of the Republic of Serbia.

The provision of Article 11 of the Law on the Public Assembly of Citizens stipulates that the authorized body may ban the holding of the public assembly on the grounds of preventing obstruction of public transport, threat to health, public moral or safety of persons and property.

Article 9 of the Law on the Public Assembly of Citizens provides that the authorised body shall temporarily ban the organisation of a public assembly that is directed toward violent changes of the constitutional order, violation of territorial integrity and autonomy of the Republic of Serbia, breach of human and civil rights and freedoms guaranteed by the Constitution, provoking and inciting national, racial and religious animosity and hatred.

Pursuant to the Law on the Public Assembly of Citizens, activities to ensure protection of safety of person and property of participants of the public assembly and other citizens, maintaining public order and peace, safety of traffic and other activities related to securing the public assembly, are to be conducted by the Ministry of Interior.

Guided by the principle of impartiality, in discharging their duties, police officers serve to the community and protect all persons against unlawful actions, and they are obliged to always act professionally, responsibly and humanely, and to respect human dignity, the honour and reputation of each person and his/her other rights and freedoms.

Having in mind the provisions of the Law on Police, the police perform their activities so as to protect the safety, rights and freedoms of all, to enforce the law and uphold the rule of law.

Within the activities of the security protection of citizens and property, in accordance with security assessments, the police also take measures to protect the members of the LGBT population, visit them directly and establish communication with them. For example, during the 2008 *Eurosong* event, appropriate steps were taken in order to ensure the security protection of LGBT persons, particularly in the places where they assembled.

On 10th October 2012, the public gathering *Pride 2010* was held in Belgrade, with an attendance of about 1000 citizens, mostly the members of LGBT organisations, during which efficient security protection for all the participants in the said gathering was ensured. Prior to and during this public gathering, the Ministry of the Interior established active cooperation with the members of the Organising Committee of the public gathering and representatives of LGBT organisations with a view to providing efficient security for the participants therein, improving communication and establishing cooperation.

By way of its Ruling UŽ-1918/2009 dated 21st December 2011, the Constitutional Court established a violation of the right to freedom of assembly and violation of the right to legal remedy and *inter alia* underlined the following: *The Pride* was scheduled for September 2009, but one day prior to its commencement, the Organising Committee was delivered the Decision by the Police Directorate of the Ministry of the Interior of the Republic of Serbia 03 N° 8988/09-20 dated 19th September 2009 on changing the venue of the gathering, but the organisers thereof did not agree to this, and the gathering did not take place. Thus the disputed Decision by the Ministry of the Interior changed the location of *the Pride Parade*, which did not explicitly render the holding of the peaceful gathering of the LGBT population impossible. However, the Constitutional Court assessed that the disputed Decision, which was made only one day prior to the scheduled gathering, actually limited the right to peaceful assembly of the participants in the registered gathering. By making the disputed Decision on relocating the gathering, which had no legal foundation in the positive legislation, the Ministry of the Interior actually made it impossible for the participants in the event to gather in the place where they wanted to do that and which is envisaged and allowed in compliance with the Decision on determining the space for public assembly of citizens in Belgrade. In spite of the fact that a violation of the discrimination prohibition principle was not established in this particular case, the Constitutional Court points out that all competent governmental authorities, primarily the Ministry of the Interior, the Government and the judicial bodies, are obliged to prevent discrimination on grounds of sexual orientation demonstrated by third parties and to take all necessary measures within their areas of competence to avoid the occurrence of this form of discrimination thus defending and promoting the democratic society values, such as pluralism, tolerance and the right to diversity

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

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19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

On 10th October 2012, the public gathering *Pride 2010* was held in Belgrade, with an attendance of about 1000 citizens, mostly the members of LGBT organisations, during which efficient security protection for all the participants in the said gathering was ensured. Prior to and during this public gathering, the Ministry of the Interior established active cooperation with the members of the Organising Committee of the public gathering and representatives of LGBT organisations with a view to providing efficient security for the participants therein, improving communication and establishing cooperation.

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

In the Criminal Code of the Republic of Serbia, in Chapter Fourteen, there is a group of criminal offences against the freedoms and rights of man and a citizen. There is, *inter alia*, unauthorised collection of personal data. What is particularly important is the fact that a more serious form of this criminal offence occurs if such an offence is committed by an official in discharge of duty.

The Law on Personal Data Protection ("The Official Gazette of the Republic of Serbia, issues N° 97/08 and 104/09 –as amended, 68/2012 – the Constitutional Court's Decision and 107/2012) was passed in 2008, and started to take effect on 1st January 2009. Personal data protection in the Republic of Serbia is provided for each natural person, regardless of his/her nationality, residence, race, age, sex, language, religious, political and other belief, national or social origin, property, birth, education, social status and other personal characteristics (Article 1, paragraph 2, The Law on Personal Data Protection). This means that personal data protection has to be provided for the sexual and gender minorities as well without discrimination.

Pursuant to Article 16 of the Law on Personal Data Protection, the data related to gender and sexual life *inter alia* are considered as particularly sensitive. What arises from this provision is that the data on sexual orientation (since they speak of a person's sexual life) and the transgender data shall be considered and treated as particularly sensitive data (which implies that the processing of such data is subject to stricter conditions and taking higher-level measures for the protection of such data). The particularly sensitive personal data may be processed only upon a freely given consent of the

person concerned, in writing, except in case the processing of such data is forbidden by the law even if the consent is given.

The Commissioner has not in his practice hitherto encountered the case of a data handler having collected and processed the data on a person's sexual orientation or gender identity without any basis in law and contrary to the Law on Personal Data Protection. Of course, should the personal data on sexual orientation and gender identity be collected, safeguarded or otherwise used (except when it is necessary for certain legal and legitimate purposes such as the replacement of the documents of transgender persons), the Commissioner would exert all his authority arising from the law to prevent the unlawful processing of such data and protect the rights of the sexual and gender minorities.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By its Decision UŽ-3238/2011 dated 8th March 2012 (the Official Gazette of the Republic of Serbia, issue N° 25/2012), the Constitutional Court accepted the constitutional appeal and established that the Local Government of a Serbian municipality, by means of passing a resolution on not being actually responsible, failed to decide on the request of the constitutional appeal submitter for changing the gender-related data in the registry books, thus violating this person's right to dignity and free development of personality guaranteed by Article 23 of the Constitution of the Republic of Serbia as well as the right to respect for private life guaranteed by Article 8 of the European Convention on the protection of human rights and fundamental freedoms. The Court ascertained that the authorities referred to in Article 6, paragraphs 2 and 4, of the Law on Registry Books are actually responsible for deciding on a request for entering altered gender-related data in registry books and therefore instructed the Local Government of this municipality to make a decision on the request of the constitutional appeal submitter for changing the gender-related data in the registry of births within 30 days as of the delivery of the Constitutional Court's ruling.

In dealing with complaints, the Office of the Provincial Ombudsman of the Autonomous Province of Vojvodina has found out that the Law on Registry Books has been arbitrarily interpreted in the part related to the Registrar's Service procedures for issuing the certificate on free marital status.

Acting within his mandate, the Commissioner for the Protection of Equality has recommended all the universities in Serbia that they should without delay take all necessary measures in order that the faculties within the University could issue the persons, who after graduation have changed their names due to sex change (transgender persons), at their request, with new diplomas and other public documents whose issuance the faculties are responsible for, stating their new names, in an efficient, transparent and easy way, by complying with national and international standards in the area of the protection of transgender persons against all forms of discrimination

In May 2012, the Ombudsman and the Commissioner for the Protection of Equality set up a joint working group tasked with producing draft amendments to the regulations related to the legal recognition of the consequences of sex change. During the previous 8 months, the working group was working on the identification and analysis of the relevant national, regional and international regulations and standards that govern this area, and on collecting and analysing good practice examples from the countries in the region, and on the social and cultural contextualisation of the status of the transgender persons in Serbia.

This WG has proposed that with a view to achieving real transgender equality, the best solution would be to enact a brand new, comprehensive law to govern the rights of transgender persons in whole, instead of the amendments to a larger number of applicable regulations in all the areas of their personal, professional and public life.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

The national legislation of the Republic of Serbia does not recognise registered partnership.

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In the national legislation, i.e. the Family Law of the Republic of Serbia, there are mechanisms established to guarantee that decisions related to the protection of all the rights of underage children and the adoption of children are to be made in their best interest.

However, the national legislation does not provide for the adoption of underage children by same-sex partners, and as for the protection of the rights of underage children, the Family Law does not contain provisions that would discriminate parents on grounds of sexual orientation or gender identity (Family Law, Articles 59 through 78 and 88 through 109).

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on the Prohibition of Discrimination (The Official Gazette of the Republic of Serbia, No 22/09) forbids any kind of discrimination in the sphere of labour (the violation of the principle of equal opportunity for gaining employment or equal conditions for enjoying all the rights pertaining to the sphere of labour, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, education, joining a trade union and protection from unemployment).

The right to protection from discrimination referred to in paragraph 1 of this Article shall be enjoyed by a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever.

Article 18 of the Labour Law (The Official Gazette of the Republic of Serbia, issues N° 24/05, 61/05 and 54/09), which in accordance with Article 4, paragraphs 1 and 3, of the Law on Civil Servants applies to the rights and obligations of civil servants and government employees that are not covered by this one or any separate law or regulation stipulates that both direct and indirect discriminations are

prohibited against persons seeking employment and employees in respect to their sex, origin, language, race, colour of skin, age, pregnancy, health status or disability, nationality, religion, marital status, familial commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality.

The Law on Civil Servants (The Official Gazette of the Republic of Serbia, Nos 79 of 16th September 2005, 81 of 23rd September 2005 - correction, 83 of 30th September 2005 - correction, 64 of 13th July 2007, 67 of 20th July 2007 - correction, 116 of 22nd December 2008, 104 of 16th December 2009) in Article 9, provides for equal access to job positions for all persons, i.e. that during the employment of civil servants in state authorities, all job positions shall be accessible under equal conditions to candidates, whereas a choice between candidates shall be made according to the professional qualifications of the candidates' knowledge and skills. The factors that are taken into consideration when employing people in state authorities are ethnic composition, gender representation and the number of disabled persons in terms that they mirror the structure of the population to the greatest possible extent.

The penal provisions of the Labour Law determine the penal liability of an employer for violating the provisions pertaining to the prohibition of discrimination. In addition, there is another form of protection prescribed - in cases of discrimination, a person seeking employment or an employee may file for compensation of damage before the competent court, pursuant to the law.

In addition to the Labour Law, the Law on Gender Equality (The Official Gazette of the Republic of Serbia, issue N°104/09) also covers the issues pertaining to the exercise of rights and obligations of both employers and employees on grounds of gender equality referring to employment.

The Law on Employment and Unemployment Insurance (The Official Gazette of the Republic of Serbia, Nos 36/09 and 88/10) rests on the principle of the prohibition of discrimination in compliance with the Law on the Prohibition of Discrimination (The Official Gazette of the Republic of Serbia, No 22/09). Following the provisions of the Law on Employment and Unemployment Insurance, each person between 15 years of age and the age eligible for retirement, or 65 years of age at the most, capable and ready to start working, who has not entered into a contract of employment or exercised the right to work in any other way, and who is on the unemployment register and is looking for employment actively is entitled to be included into the active employment policy measures on an equal footing. The Law on the Prevention of Abuse at Work (The Official Gazette of the Republic of Serbia, issue N°36/10) regulates the prohibition of abuse at work and in connection with work, the measures for preventing abuse and improvement of relations at work, the procedure for protecting the persons affected by abuse at work or in connection with work, and other issues relevant for the prevention and protection against abuse at work and in connection with work.

The Labour Inspectorate, *inter alia*, performs oversight of the implementation of the Labour Law, the Law on Gender Equality and the Law on the Prevention of Abuse at Work.

In compliance with the aforementioned, the Labour Inspectorate pays special attention to the provisions of the said laws pertaining to the prohibition of discrimination on any grounds.

In exercising its mandate, the Labour Inspectorate performs oversight at the employers' in all lines of activity.

The Labour Inspectorate supervises the implementation of the abovementioned laws by means of oversight procedures conducted *ex officio* through regular inspections in the area of health and safety at work, full inspections in the area of work relations, and by means of the procedures of integrated oversight inspections.

It is important to point out that the Labour Inspectorate is not responsible for performing oversight of the implementation of the Law on the Prohibition of Discrimination.

Discrimination at work, which particularly exists in the case of women, elderly employees, disabled persons, members of national minorities, persons having a different sexual orientation, is demonstrated though making it more difficult for such persons to get a job, unequal pay for the same work done, inappropriate maternity protection, slower promotion at work, making employees redundant, unequal opportunities for professional development, and the like.

The Labour Inspectorate has been receiving requests related to employment discrimination on grounds of the age of applicants (up to 30 years of age), the language of vacancy announcements (written in the English language), and in connection with employing exclusively a female person, which represents discrimination on grounds of gender and is furthermore in conflict with the provisions of the Law on Gender Equality.

Complaints pertaining to discrimination submitted to the Labour Inspectorate so far are rather few; however, if a labour inspector unequivocally establishes the existence of discrimination, the only available legal remedy implies filing a legal action.

Pursuant to Article 273, paragraph 1, of the Labour Law, an employer in the capacity of legal entity shall be fined in the amount of CSD 800,000 to 1,000,000, if he/she violates the prohibition of discrimination, and an entrepreneur shall be fined in the amount of CSD 400,000 to 500,000 for an offence referred to in paragraph 1 of this Article.

The cases of employees complaining to the Labour Inspectorate about discrimination they are experiencing are very rare, particularly of those in the private sector.

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

- ii) Information, protection and support for pupils and students

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

iii) Objective information on sexual orientation and gender identity in school curricula ?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

iv) School equality and safety policies and action plans

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to the Article 81 of the Constitution of the Republic of Serbia, developing the spirit of tolerance represents a basic substance of anti-discriminatory behaviour in public life:

- In the field of education, culture and information Serbia shall give impetus to the spirit of tolerance and intercultural dialogue and undertakes efficient measures for enhancement of mutual respect, understanding and cooperation among all people living in its territory regardless of their ethnic, sexual and cultural, linguistic or religious identity.

Laws and by-laws and strategic documents which directly or indirectly deal with education and upbringing completely integrate and, in accordance with the purpose, elaborate the contents of aforementioned constitutional regulations from different aspects.

Since the Republic of Serbia adopted the Law on the Prohibition of Discrimination on 26 March 2009 a key legal framework for improving the protection of the rights of minority groups was established. Article 19 of the Law on the Prohibition of Discrimination, regulates a special case of discrimination, the discrimination in the sphere of education and professional training.

In the Law on Textbooks and Other Teaching Aids (Official Gazette of the Republic of Serbia No. 72/09) and the Regulations on Low-Circulation Textbooks forbids discrimination regarding the textbooks contents on grounds of racial, national, ethnical, language, religious or sexual affiliation, developmental disorders, disability, physical and mental characteristics, health condition, age, social and cultural background, economic status, political affiliation, as well as on some other grounds.

The education on human rights is incorporated through compulsory or optional school subjects as well. A compulsory elective subject is Civics which is taught in all classes in primary and secondary schools. This subject offers wide possibilities for intercultural upbringing and education through the processes of building, respect and strengthening of cultural pluralism and tolerance. The contents of the Civics, as well as the reference books for teachers and pupils are being prepared in cooperation with the experts from the European Council responsible for education, but also with the most successful teachers in the region, and they are available to all the teachers on the site of the Ministry of Education, Science and Technological Development. Previous experiences in the realization of teaching this subject have shown that during the educational process pupils acquire knowledge and crucial competencies necessary for living together with different individuals, with a complete self-respect. They are: ability to communicate constructively in different social situations, awareness and understanding of national and cultural identity in the interaction with cultural identity of Europe and the rest of the world as well as the ability to realize and understand different points of view caused by differences.

Education in the field of human rights is conducted in authorized republic and provincial government agencies and independent state bodies for the protection of human rights within the scope of their regular activities. For example, at the Faculty of Political Sciences of the University of Belgrade, the Specialist Studies on Humanitarian Law and Human Rights are being organized. Specialist studies are intended for the employees in state and judiciary organs, as well as for journalists, employees in civil

sector and international organizations. The training is conducted through seminars, conferences and lectures as well.

Provincial Secretariat for Education, Administration and National Communities is responsible for implementation of the project called Promotion of Multiculturalism and Tolerance in Vojvodina. The Project is conceptualized as a complex multidisciplinary and multicultural programme, directed towards the idea of strengthening multinational confidence in the young in the Autonomous Province of Vojvodina. It involves a number of sub-projects while through the activities realized in the territory of a whole Autonomous Province of Vojvodina it includes several thousand young people, the pupils attending primary and secondary schools in Vojvodina. A principal goal of this project is a long-term development of the spirit of tolerance, mutual respect and confidence in citizens.

Besides that, the Ministry of Education, Science and Technological Development is also conducting some other international and national projects and programmes concerning combating racism and discrimination intended for pupils, teachers, local communities, and/or other line ministries, in order to create safer and more encouraging environment for all the children and to inform the majority of population with the problems they face. Some of the projects are:

- The Application of General and Special Protocol for the Protection of children and pupils against violence, mistreating and neglect, concerning preventive activities and defining the procedures to protect children against violence
- The School Without Violence Programme which is related to the realization of systemic action plan for the prevention of violence in educational institutions and creating safe and stimulating environment for children
- The indicators of the forms of discrimination in educational institutions that are related to the implementation of measures for addressing and monitoring the forms of discrimination in the life and work of school
- The School Without Violence Programme which is at present being conducted in 196 primary and 9 secondary schools throughout Serbia. It encompasses more than 135.600 pupils and more than 12.500 adults from 64 places in Serbia. Public announcement for schools which would like to join the programme is constantly open while the joining of new schools takes place in each term depending on their financial means
- Programme Safe childhood – development of safety culture of the young has been realized for three successive years in cooperation with the Ministry of the Interior. It includes all primary schools. It is conducted during the lessons held by a headmaster (3 lessons) in all classes of the fifth grade. Police officers perform the programme in cooperation with educational advisers in school boards, homeroom teachers and school expert associates. The topics regard the children traffic safety, children and family violence and other. A developing of the filed of action in the third and sixth form is being prepared along with the developing of subjects (cyber violence).
- SOS phone line was opened (2012) at the Ministry and it has been operating for a year. The volunteers, associates from schools and advisers from school boards have been trained.
- In cooperation with UNICEF an organizational Unit for violence prevention was formed (2011). The trainings for crisis situation dealing are underway for those employed in schools and school boards. By

the National Strategy for Improving the Position of Women and Promotion of Gender Equality of 2009 and the Action Plan (2010-2015) along with this Strategy of 2010 ("Official Gazette of RS" No.67/10), within the Chapter the Realization of gender equality in education – it was planned: 1) establishing of gender equality and integrating of gender perspective into education (especially young girls, multiple discriminated groups, Roma women, the poor in relation to: eliminating the stereotypes and prejudices), 2) developing of gender sensitive, anti-discriminatory and secular programme contents and gender sensitive language at all levels of education including the gender studies, 3) programmes of continual training of educational staff for implementing gender perspective into education, 4) building and introduction of standards of anti-discriminatory and gender sensitive procedures in educational process and prevention and control of sexual behaviour in educational institutions. (National strategy and Action plan are available at the Internet presentation of the Department for gender equality – www.gendernet.rs)

Deputy Ombudsman in charge of gender equality and the rights of LGBT people in her public appearances (author articles, interviews), especially speaks about the importance of education system that would alleviate the existing highly expressed hostility among children and adolescents against LGBT people, pointing to the need for adequate addressing of that topic through teaching programmes and textbooks. As an example of good practice (although only at the beginning), Croatia has been pointed out as introducing into curricula, from the first to the last class of secondary school, into various subjects, topics which in accordance with the age give the children timely and understandable information about LGBT persons in order to control the existing discrimination and violence towards them.

The Ombudsman deems it also necessary in Serbia to address systematically and continually the topic of LGBT people across all levels of education.

The Ombudsman is currently conducting a procedure against a secondary school, on grounds of the complaint of a young man who publicly declared himself as gay, thereafter suffering violence, insults and humiliations not only from children but from educational staff as well. The procedure is under way and a detailed explanation of the principal about all measures and actions taken for the protection of a pupil has been demanded.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

By the Article 25 of the **Law on Health Insurance** regarding human rights and values in the health care system prescribes that: Every citizen has the right to health care with respecting the highest possible standard of human rights and values, that is, he has the right on physical and psychical integrity and on the safety of his person, as well as on respecting his moral, cultural, religious and philosophical convictions.

The Law on the Prohibition of Discrimination, in the Article 17 sets forth discrimination in the provision of public services and using of objects and public spaces as a special case of discrimination, while paragraph 2 of the same Article prescribes that everyone shall have the right to equal access to objects in public use (objects where the head offices of public administration organs are located, objects used in the sphere of education, health care, social welfare, culture, sports, tourism and the like), as well as public spaces, in accordance with the Law.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

By the Law on Health Insurance and amendments thereof having been passed on 1 January 2012, regarding the realization of the right to health protection out of the obligatory health insurance, insured persons are provided with: at least 65% cost covered by health service out of the means of obligatory health insurance for gender reassignment for medical reasons. Procedure of gender reassignment for medical reasons has been defined by the Regulation on amendments to the Regulation on the way and procedure of exercising the right out of obligatory health insurance that entered into effect on 12. 01.2013

The Regulation sets down that criteria and standards for gender reassignment for medical reasons are established by republic expert board while expert opinion on the fulfilling those criteria as a condition for including the insured person into the process of gender reassignment for medical reasons is given by the Commission for treatment of transgender disorders founded by the Republic fund. The Commission for treatment of transgender disorders gives its opinion at the demand of insured person on the grounds of medical documentation of the person, and on the grounds of this opinion thereafter a chosen physician sends the insured person to chosen tertiary level institution for the gender reassignment service for medical reasons.

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

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32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The services of social protection regulated by the Law on Social Protection are available for all citizens under the same conditions and in the same volume and content regardless the race, sex, age, national belonging, social origin, sexual orientation, religion, political or other choice, culture, language, disability or some other personal feature (article 25 of the Law on Social Protection).

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

- a. ☐ b. ☐ c. ☒ d. ☐ e. ☐

Article 344-a of the Criminal Law provides for a criminal offense of "Violent behaviour during sports event or public assembling". The legislator defined one of the ways of doing this as follows: "whoever by their behaviour or slogans on sports events or public assembly causing national, religious or any other hatred or intolerance based on some discriminatory grounds causing thereof violence or physical fight".

The Law on Prevention of Violence and Misbehaviour at sports events in Article 4 paragraph 1 point 3 states that by the violence and unbecoming behaviour at sports manifestation it is especially meant bringing into a sports object insignia which insult national, race, religious or other feelings or in some other way instigate hatred or intolerance what can lead to physical conflicts.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Ministry of the Young and Sport will in 2013 commence the implementation of the project „Fair play is victory“ whose aim is to raise the awareness of public about the importance of fair play and tolerance both in sport and life. The organization of public lessons in coordination with local community intended primarily for children and the young, based on the document of UNESCO and on the Declaration of International Committee of fair play, workshops, research and fair play caravans has been planned

The involving of wider social community and the state, national sports associations, sports clubs, sports workers, sportsmen and media has been envisaged.

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

- a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Asylum in the article 2 paragraph 7, sets down that the "refugee is a person who, on account of well founded fear of persecution on grounds of race, sex, language, religion, nationality

membership of a particular social group or political beliefs is not in the country of his/her origin and is unable or unwilling, owing to such fear, to avail him/herself to the protection of that country, as well as a stateless person who is outside the country of his/her previous habitual residence, and who is unable or unwilling, owing to such fear, to return to that country". If the foreigner should come to the Republic of Serbia, and then and there submit a request for asylum saying that in the country of origin he was persecuted on the grounds of his sexual orientation or gender identity, and in the procedure of investigation of justifying the request for asylum he succeeded to prove the existence of persecution, that foreigner's request for asylum shall be accepted, i.e. he shall be granted refuge on the grounds of belonging to special social group exposed to persecution (the concept which the Law on Asylum took over from the Convention on the refugees status in 1951). Since now the request with such an explanation has not been submitted.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

The Law on Asylum by the article 6 regulates the prohibition to expel or return, that is the principle of non-refoulement, which is practically taken over from the article 33 of the Convention on the refugees' status from 1951. Article 6 says that "(1) No person shall be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on grounds of his/her race, sex, language, religion, nationality, membership of a particular social group or political opinions. (2) The provisions of paragraph 1 of this Article shall not apply to a person with respect to whom there are reasonable grounds to believe that he/she constitutes a threat to national security or who has been convicted of a serious crime by a final court judgment, for which reason he/she constitutes a danger to public order. (3) Notwithstanding the provisions of paragraph 2 of this Article, no person shall be expelled or returned against his/her will to a territory where there is a risk of his/her being subjected to torture, inhumane or degrading treatment or punishment". In this way the law of the Republic of Serbia protects the persecuted persons by a general norm which encompasses all cases of persecution.

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Commissioner for Protection of Equality is an independent state authority, autonomous in performing duties established by the Law on the Prohibition of Discrimination.

On the grounds of the Law on the Prohibition of Discrimination, a complaint for discrimination could be lodged to this body, upon which the Commissioner conducts the procedure regulated by the Law and gives an opinion confirming whether discrimination occurred in the actual case. If he confirms the existence of discrimination the Commissioner advises the person against whom the complaint has been submitted of the way to remove the violation of the right. Also, the victim of discrimination and the Commissioner for the equality protection, with the victim's agreement, can submit the complaint to the court. Procedure based on such complaints is urgent, whereby the procedure in front of the Commissioner and at court does not exclude one another.

The Ombudsman, on the grounds of the Constitution and the Law on the Ombudsman, acts after all legal means have been exhausted or exceptionally, before they have been exhausted according to the judgment of the Ombudsman about the justification and need (opportunism) of such an exception. The is obliged to regard the complaint to the Commissioner for Protection of Equality as an available legal means which citizen should use before he turns to the Ombudsman.

Exceptionally, the Ombudsman might decide to act upon the complaint even before the procedure has been completed or brought in front of the Commissioner (or any other legal medicine been spent), if he finds it necessary due to the danger of unavoidable harmful consequences, especially improper behaviour of authorities towards complainer, violating of the principles of proper administration, non-ethical or untimely procedure. Upon the choice of the Commissioner for the Equality Protection, the Ombudsman, as a rule, does not bring the procedures based on the citizens complaints about a discriminatory relation of the organs of public administration if previously, in accordance with the Law on the Prohibition of Discrimination they have not used an available legal means and turned to the Commissioner for the equality protection. Due to the reasons envisaged by the Law on Ombudsman, the Ombudsman might decide to start procedure for the complaints for the discrimination by the organs of public administration even before available legal means have been used. About such exceptional cases the Ombudsman, in general spirit of cooperation among state organs, informs the Commissioner for Protection of Equality.

The Ombudsman brings no decision about the right of the complainer but gives its legally non-compulsory opinion about the existing of omission in legality and regularity in the work of the government organs to the detriment of these rights.

By the Law on Ministries, passed on 26 July 2012 („Official Gazette of RS” No. 72/12), which preceded the forming of the new Government of Serbia – for the central executive organ of the Republic of Serbia responsible for the activities related to gender equality the Department for Gender Equality of the Ministry of Labor, Employment and Social Policy was appointed with identically regulated legal competence as in previous Law on Ministries („Official Regulation of RS” no 16/11). In this way the Department for Gender Equality of the aforementioned Ministry has kept the continuity in activities related to: the analysis of the situation suggesting of measures in the field of improving gender equality; drafting and implementing the National Strategy for improving the women position and improving gender equality; coordinating activities and providing expert and administrative-technical support to the Council for gender equality; improving the women position and promotion of gender equality and politics of equal opportunities; integrating the principles of gender equality into the all operating fields of the system institutions; implementing the recommendations of the Committee of the United Nations for the eliminating the women discrimination, as well as other activities envisaged by the law

Besides that, on the grounds of the article 39 of the Law on Gender Equality, in the organs of the units of local self-management permanent working bodies are organized or the employees for gender equality appointed along with the realization of attaining equal possibilities. In the Republic of Serbia today there are more than hundreds of local bodies for gender equality (councils, commissions and so on), as well as 20 persons employed for gender equality. In some local self-managements there are parallel bodies for gender equality and the person responsible for the issues of gender equality. Department for gender equality regularly updates and publishes data about local mechanisms on its Web site www.gendernet.rs in the section „Mechanisms-Local mechanisms”. In order to support its work the Department for gender equality organized in April 2011 a Round table Local bodies for gender equality with the aim to inform the representatives of local self-management with their obligations in forming the bodies for gender equality in their environments (towns and municipalities). In December 2011 the national conference Equality starts in local environment was held, and a network of he-trainers and she-trainers for gender equality coming from the units of local self-management, that is, local mechanisms was established.

The Office for Human and Minority Rights in accordance with the article 37 of the Law on Ministries (“Official Register of RS”, no 72/2012) and the Decree on the Office for human and minority rights (“Official Register of RS”, no. 75/2012), provides expertise for the needs of Government and competent ministries related to: protection and improvement of human and minority rights, supervising the conformity of domestic circumstances with international agreements and other international-legal records on human and minority rights and initiating the amendments of domestic regulations, general issues regarding the position of the members of national minorities, supervising the position of the members of national minorities living in the territory of the Republic of Serbia and realization of minority rights, as well as realization of the connections of national minorities with home countries.

The Council for Gender Equality is an expert and advisory body of the Republic of Serbia whose tasks are: inspect and suggest the measures for improving the politics of the realization of gender equality from the aspect of inter-resources cooperation, initiate the undertaking of short-term measures contributing to the realization of gender equality and making the programmes for collecting, processing and publishing statistical data on the basis of which equal way of treating genders would be further provided and encourage the women qualifying for the participation in public and political life. The Council, also, examines the suggestions for improving the politics of gender equality, whilst expert and administrative-technical support for it is provided by the Department for gender equality of the Ministry for Labor, Employment and Social Policy. The Council has been in continual operation since 2003 and regularly holds meetings, operating in the terrain as well, such as participation in conducting the project Combating sexual and gender based violence which has been implemented since 2009 with the support of the Kingdom of Norway. Male and female-members of the Council come from relevant ministries and other institutions, civil sector and academical circles.

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

It is necessary to formulate the indicators for sensitive groups, further work on improving the gender sensitive statistics and generally increase capacities of the Republic Statistical Institute for supervising of the same, and of the budget means allotted for these purposes.

It is necessary to further improve the position of sensitive groups of population:

- establishing the programmes of beneficial and functional system of free of charge legal assistance,
- through the programmes of improving the position of sensitive groups,
- solving the status and further integration of refugees and internally displaced persons,
- solving the status of asylum claimers and returnees as on the grounds of the agreement on readmission,
- integrating the concept of gender equality in all politics and all fields of activities,
- system of collecting and controlling the data in relation to sensitive groups of population.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Encouraging the victims to report criminal offences and incidents

Training of competent institutions and Judiciary

Collecting and analysis of relevant data on dissemination and nature of discrimination and intolerance

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

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