

Model

EQUAL TREATMENT ACT

On the basis of Article 72. parag.1. subpara.2. of the Constitution of the Republic of Serbia, the National Assembly hereby passes

EQUAL TREATMENT ACT

Heading I: GENERAL PROVISIONS

Scope Article 1.

This Act governs the protection of the principle of equality of all, prohibition of discrimination and establishes the forms of special remedies regarding discrimination of persons determined by this Act.

Definition of Notions Article 2.

(1) In this Act:

1. expression “*discrimination*” and “*discriminatory conduct*” shall designate any distinction or unequal treatment, or omittance (exclusion, limitation or preference) in relation to other persons or groups, and members of their families, in an open or covert manner, which is based on race, skin colour, ancestors, national or ethnic origin, language, religious or political beelif, sex, gender indentity, sexual orientation, property, birth, genetic particularities, health condition, disability, marital status and other personal characteristics (hereinafter: “personal characteristics”);

2. expression “*person*” or “*everyone*” shall designate persons residing on the territory of the Republic of Serbia or on territory under its jurisdiction, irrespective of whether they are citizens of the Republic of Serbia, some other state or stateless persons;

3. expression “*citizen*” designates a national of the Republic of Serbia;

4. expression “*state authorities*” shall designate an organ of legislative, executive or judicial power; territorial autonomy or local self –government organ; governing organ of public institutions, foundations or other bodies founded by the Republic, territorial autonomy or local self-government, as well as a governing organ of public companies or

companies where majority capital is owned by the Republic, territorial autonomy or local self-government.

5. expression “*international agreement*” shall designate international treaty and any other international act binding on the Republic of Serbia.

6. expression “*voluntary tester of discrimination*” shall designate a person who, alone or with other persons, consciously takes up personal and direct testing of implementation of the rules on prohibition of discrimination in specific cases, by applying to a published notice, visiting venues providing public services or in other manner.

(2) All notions used in this Act in the male gender include the same notions in the female gender.

Protected Rights and Persons

Article 3.

(1) In accordance with the Constitution, law and international agreement, provisions of this Act relate to a person residing on the territory of the Republic of Serbia or under the jurisdiction of the Republic of Serbia, irrespective of whether he is a citizen of the Republic of Serbia or some other state or is stateless.

(2) An alien in the Republic of Serbia, within the limits established by the Constitution, law and international agreement, enjoys equality and has the same freedoms, rights and duties as a citizen of the Republic of Serbia, except for those freedoms, rights and duties directly stemming from the citizenship of the Republic of Serbia.

(3) Prohibitions of discrimination prescribed by Constitution, law and international agreement may exceptionally be departed from, in cases expressly provided for by the Constitution, law and international agreement, to the extent necessary in a democratic society, in order to protect sovereignty, territorial integrity, public security, order, health or moral, or respect and protect rights and freedoms of others..

(4) Everyone is entitled to be efficiently protected from all forms of discrimination by the courts and other state organs of the Republic of Serbia.

Heading II: GENERAL PROHIBITION OF DISCRIMINATION

Equality Principle

Article 4.

All people are equal and enjoy equal position and equal legal protection irrespective of their personal characteristics.

Forms of Discrimination

Article 5.

(1) Discrimination is prohibited.

(2) Forms of discrimination are direct and indirect discrimination, calling for and inciting to discrimination, aiding in discriminatory conduct and violation of the principle of equal rights and obligations. .

(3) Indirect discrimination shall be taken to occur where one person or group (hereinafter: the discriminated) are, have been or could be treated less favourably than other person or group in a comparable or same situation, on the grounds of their personal characteristics.

(4) Indirect discrimination shall be taken to occur where one person or group are put in a less favourable position, on the grounds of their personal characteristics, by the adoption of an act or taking of action, which is seemingly based on principle of equality and non-discrimination, unless that act or action are justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

- (5) Discrimination shall also be taken to occur in the following cases:
- if the treatment of the discriminated is unjustifiably worse than it would be or is towards another person, exclusively or mainly because the discriminated has sought, or intends to seek legal remedy from discrimination or because he has offered or intends to offer evidence of discriminatory conduct;
 - associating for performing discrimination, that is, activity of political, trade-unionist or other organisations directed towards violation of rights and freedoms guaranteed by Constitution, law and international agreement, or inciting national, racial, religious or other hatred, dissent or bigotry;
 - if the treatment towards the discriminated is manifestly humiliating, exclusively or mainly due to their personal characteristics.

Equal Rights and Duties' Principle

Article 6.

(1) All citizens have equal rights and duties.

(2) The following shall not be deemed as violation of the equal rights and duties' principle:

1. provisions of laws, regulations, or decisions or special measures, passed in the aim of improving the position of ethnic, religious, language and other minorities awarding them special protection, necessary for enjoyment and realisation of their rights under the same terms as they are enjoyed and realised by others;

2. adopting or maintaining in force existing acts and measures aiming at eliminating or improving less favourable position of ethnic, religious, language or other minorities or other groups or persons to whom special protection is given.

3. conditions established by law or other legal regulations, or individual legal acts adopted on the grounds of such regulations, regarding a job where there must be a close relation or relation of trust or similarity in regard to political or religious beliefs between the employer and the worker, or where it is necessary that a worker has a particular personal characteristic in order to perform his occupation successfully, provided that the aim of such employment is legal and that the need for particular personal characteristic is justified;

4. depriving an alien, within the limits of Constitution, law and international agreement, of those freedoms and rights stemming directly from citizenship.

Violation of the Equal Rights and Duties' Principle
Article 7.

Violation of the equal rights and duties' principle shall exist:

1. if rights and freedoms are unjustifiably deprived from the discriminated or obligations are imposed to him, which are not deprived from or imposed on other other person in same or comparable situation, exclusively or mainly on the grounds of his personal characteristics;
2. if the aim or consequence of the measures taken are unjustified, and
3. if the measures taken and the aim achieved by this measure are in disproportion.

Grave Forms of Discrimination
Article 8.

The following is particularly prohibited and punishable:

- provoking, inciting and encouraging national, racial, religious or other inequality, hatred, dissent or bigotry;
- advocating for or conducting of premeditated discrimination by state organs, in procedures before state organs, by public outlets, in political life, when providing public services, in the field of labour relations, education, culture, sport, and the like.;
- advocating for racial, national or ethnic superiority;
- slavery, trafficking in human beings, apartheid, genocide, ethnic cleansing and advocating for them.

Prohibition to Write and Exhibit Discriminatory Messages and Symbols
Article 9.

It shall be prohibited to write and exhibit in public places or to otherwise disseminate messages or symbols calling for discriminatory conduct against other persons.

Duties of the State
Article 10.

State shall be under the obligation to:

- provide everyone enjoyment of rights and freedoms without discrimination on the grounds of personal characteristics, and to serve the justified interests of the discriminated;
- take all necessary measures in order to prevent and restrain discrimination in public life;
- provide free legal advice and legislative conditions for the realisation of rights to citizens who do not enjoy legal equality due to poverty;
- inform the public on the contents and consequences of rules and measures adopted or taken against discrimination;

-organise training on rules and measures against discrimination for employees in all state organs.

General Prohibition of Abuse of Rights
Article 11.

It shall be prohibited to realise the rights established by this Act contrary to the aim in which they were recognised or with the intent to violate or limit the rights of others or to cause grave consequences for the security of the country, public policy and moral.

Heading III: SPECIAL CASES OF DISCRIMINATION

Discrimination in Procedures Before State Organs
Article 12.

(1) Everyone is entitled to equal access and equal protection of his rights before courts and other state organs.

(2) Discriminatory conduct towards persons participating in proceedings before court or other state organ shall be established as a reason for legal remedy or recourse in the law governing such proceedings. .

(3) Discriminatory conduct of a judge or lay judge shall be deemed as unconscientious performance of judicial office, and repeated discriminatory behaviour of a public servant shall be deemed as a grave violation of working duty.

(4) Discriminatory conduct of public prosecutor, particularly discriminatory choice of the accused when indicting, shall be deemed as unconscientious performance of prosecutor's office.

Discrimination in Labour Relations
Article 13.

(1) The following shall particularly be deemed as discrimination in labour relations:

-any distinction, hiding or incorrect representation of data significant for employment, exclusion or preference on the grounds of personal characteristics, which violates or aims at violating equal opportunities or actions regarding employment, occupation or termination of work;

-violation of equal opportunities for employment or enjoyment under equal terms of all rights deriving from employment or in regard to employment, such as the right to work, to free choice of employment, to promotion, to professional education, to equal pay, to just and satisfactory working conditions, to rest and recreation, education and participation in trade unions, to protection from unemployment, and the like.

(2) Distinction, exclusion or preference for reason of objective particularities of the occupation concerned, or the special social protection of particularly endangered

categories of workers (mothers, pregnant women, minors, persons with disabilities, and the like) shall not be deemed as discrimination.

Discrimination in Providing Public Services
Article 14.

(1) It shall be deemed that there is discriminatory conduct in providing public services particularly if a person or group, exclusively or mainly on the grounds of their personal characteristics are:

- denied a provision of service;
- are required to meet conditions for provision of service which are not required from other persons or groups;
- service is given later even though they asked for it and met conditions for it before other persons or groups..

(2) The person for whom it is established that he acted in a discriminatory manner in providing public services, shall be punished for a misdemeanor, and if the discriminatory conduct was taken during work or in relation to work in the working post, he shall also be disciplinary liable for grave violation of working duty.

Discrimination in the Field of Religious Rights
Article 15.

Discrimination in the field of religious rights shall be any form of discrimination of person or group belonging to a religion or of non-believers, the following in particular:

- violation of the non-establishment principle and acting contrary to the duty of the state to be impartial towards religious communities, such as providing special rights and freedoms to members of certain religions, unjustified refusal to recognise certain religious communities, and the like.;
- violation of the free-exercise principle, such as deprivation of right to have, maintain and change religious beliefs, deprivation of the right to express religious beliefs, imposing of unjustified demands to a member of a religion to act against his religious beliefs, and the like.

Sex Discrimination
Article 16.

(1) The following shall particularly be deemed as sex discrimination:

- depreciation and harassment on the grounds of sex;
- deprivation of rights or public or covert favouring, upon employment or in employment, on the grounds of sex;
- unjustified separation of children, in any form of education, on the grounds of sex;
- public calling for favouring children of one sex in regards to children of other sex, in the educational process, as well as as
- any other conduct violating the principle of equality of man and woman.

(2) Legislative and other measures prescribed in order to provide special legal,

economic or social protection of women, as well as those aiming at encouraging women to participate in political and public life, shall not be deemed as discrimination.

Discrimination on the Grounds of Gender Identity and Sexual Orientation
Article 17.

(1) Gender identity and sexual orientation are private and no one can be called to publicly declare his gender identity and sexual orientation.

(2) Everyone is entitled to publicly express his gender identity and sexual orientation.

(3) Discriminatory conduct on the grounds of supposed or publicly expressed gender identity or sexual orientation shall be prohibited.

(4) Rights recognised in paragraphs 1 and 2 of this Article also relate to cases of transsexuality.

Discrimination of Children
Article 18.

(1) Every child has the right to be given equal protection as required by his status as a minor by the family, society and the state.

(2) Discrimination of children on the grounds of marital birth or being born out of wedlock, property and social status of parents or guardians and other personal characteristics..

Discrimination in the Field of Education and Vocational Training
Article 19.

(1) Discrimination in the field of pre-school and school education and vocational training shall be taken to occur where there is any distinction, exclusion, limitation or preference, based on personal characteristics, aiming at or resulting in violation of equality in educational process and vocational training, in particular:

- preventing access to various types or levels of education;
- limiting education to a lower level;
- introducing or maintaining special school systems or schools for certain persons or groups, except in cases provided in paragraph 2 of this Article, or
- placing a certain person or group in a position that is not in accordance with human dignity.

(2) The following shall not be deemed as discrimination:

- introducing or maintaining special school systems or schools for pupils of different sex, if such systems or schools provide equal access to education, if their teaching staff has adequate qualifications, if they have school buildings and equipment of adequate quality and if they provide for conducting of courses according to adequate curricula;

- introducing or maintaining, for religious or language reasons, special school systems or schools with courses corresponding to the choice of pupil's parents or guardians, if participation in those systems or going to such schools is voluntary and if the courses conducted and the teaching staff employed in those schools, school building and necessary equipment are in accordance with regulations passed or approved by the competent organs;

- introducing or maintaining private schools, if they do not aim at excluding any group, and if the courses conducted in them are in accordance with regulations passed or approved by the competent authority.

Discrimination of Minorities

Article 20.

(1) Any form of discrimination on racial, national, ethnic and language grounds against minorities and their members shall be prohibited.

(2) Special rights aiming at preservation of identity may not be abolished or limited for minorities or their members, the following rights in particular:

-freedom of choice and use of personal name and names of their children and entry of those names in all public documents according to the language and orthography of the minority member;

-freedom of private and public use of mother tongue;

-official use of language of ethnic minorities;

-right to nourish tradition and develop culture;

-right to education in mother tongue and to study of that language;

-right to use of national symbols;

-right to issuing and distribution of public outlets and to founding of and activity of cultural institutions in mother tongue;

-right to co-operate and associate with their co-nationals in the country and abroad.

(3) Laws, decisions and measures adopted in order to improve the position of minorities and their members shall not be deemed as discrimination in terms of this Act.

Discrimination on the Grounds of Political Beliefs

Article 21.

(1) Any discrimination on the grounds of political belief shall be prohibited.

(2) Legislative limitations introduced in order to prevent propaganda and practice of fascism, nazism, racism and class discrimination, as the gravest forms of discrimination..

Discrimination of Persons with Disabilities

Article 22.

(1) The following shall particularly be considered as discrimination of persons with disabilities:

-preventing or complicating access to health care system;

- deprivation of right to health care, regular medical treatment and medications, rehabilitation means and measures, according to the special needs of these persons;

- deprivation of right to marriage, right to forming a family and other rights in the field of marital and family relations;

- deprivation of right to regular, high and higher education;

- deprivation of right to work and rights from employment and the like.

(2) Discrimination of persons from paragraph 1 of this Article if measures are not taken to satisfy their legitimate interests, such as:

- measures for ensuring access to public and state services, as well as measures for ensuring undisturbed communication with employees in these services;

- measures for ensuring access to buildings, apartments, streets, pedestrian crossings, public transport, museums, libraries and other venues;

- financial and fiscal policy measures aimed at helping in procurement of special aids and equipment;

- measures for ensuring access to public information and broadcasting systems;

- measures for providing special conditions for work and in the course of work;

- guarantees of right to amplified duration of years of service;

- measures for enabling the following of school courses and learning;

- measures and rights from social protection;

- measures for enabling sport activities, recreation, artistic and other cultural activities and the like.

Discrimination on the Grounds of Health Condition

Article 23.

(1) Any discrimination of person on the grounds of his health condition shall be prohibited.

(2) It shall be prohibited to forcefully detain in a health care institution, put into asylum or undertake any other medical measure, except in cases and in the manner expressly provided by law.

(3) Forcefull medical treatment and putting into asylum of persons infected with HIV shall be prohibited.

Heading IV: PROTECTION MECHANISMS

Protection before the Constitutional Court of Serbia

Article 24.

A procedure may be initited before the Constitutional Court of the Republic of Serbia, for the purpose of protection against discrimination, by filing a constitutional appeal.

Protection in Administrative Procedure and Administrative Dispute
Article 25.

(1) Appeal or other legal remedy because of discrimination shall be allowed in administrative procedure.

(2) It shall be allowed to initiate administrative dispute, according to rules established by law, against a final administrative act which constitutes discrimination.

Direct Application to International Organisation and Bodies
Article 26.

For the purpose of protection against discrimination, citizens and other persons, that is, groups, may file a direct application to international bodies in the manner prescribed by international agreement.

Heading V: CIVIL LIABILITY

Court Jurisdiction and Procedure
Article 27.

(1) Anyone wronged by discriminatory conduct shall have the right to file an action before the district court.

(2) Action and motion for interim measure shall be filed to the court from paragraph 1 of this Article on the territory of which the plaintiff has residence, that is, seat, and if the plaintiff does not have residence or seat in the Republic, to the court on the territory of which the plaintiff has residence, that is, seat.

(3) In the procedure, provisions of the Litigation Procedure Act shall apply accordingly.

(4) Procedure shall be urgent.

(5) Time limit for appeal shall be eight days.

(6) Court of second instance shall decide on appeal within thirty days from the filing of appeal.

(7) Review shall always be allowed.

Actions
Article 28.

The following may be requested by the action from Article 27. of this Act:

1. prohibition to enforce action from which there is a threat of violation, prohibition of further enforcement of violating action, or prohibition of repetition of violating action (action for refrainment);

2. execution of an action for removal of the state of violation (action for removal);

3. establishment that the defendant's conduct towards the plaintiff was discriminatory (action for establishment);

4. material and immaterial damages (action for damages); and

5. publishing of judgment passed in regard to some of actions from subparagraphs 1-4 of this Article.

Interim measure
Article 29.

(1) A person whose right or interest could be violated by discriminatory conduct may request that the court prohibit discriminatory conduct by interim measure until a finally binding termination of proceedings, and to threaten that in case of discriminatory conduct contrary to prohibition an appropriate sum of money shall be paid to the person who filed the motion.

(2) Person who filed the motion must satisfy the court that there is concrete danger of violation of right due to discriminatory conduct and that considerable material or immaterial damage would occur should the interim measure not be pronounced.

(3) The court shall decide on the motion within 48 hours from receiving it.

(4) Objection against decision on pronouncing interim measure may be filed within 48 hours from being served the decision, and the court shall decide on the objection within the following 48 hours.

Presumption of Guilt and Burden of Proof
Article 30.

(1) It can not be proved that direct discrimination was done without guilt, if it is not disputable between the parties or if the court has established that an action of direct discrimination has taken place.

(2) If the discriminated satisfies the court that he has sustained an act of discrimination, the burden of proof that such act did not result in violation of the equality principle, that is, the principle of equal rights and obligations, shall be borne by the other party.

Actions of Other Persons
Article 31.

(1) Right to file action from Article 28. subpara. 1., 2., 3. and 5. of this Act, right to file motion from Article 29. of this Act, as well as the right to initiate enforcement procedure shall pertain to:

- domestic and foreign organisation for protection of discriminated groups, that is, the protection of human rights;
- voluntary testers of discrimination from Article 2. para. 1. subpara. 6. of this Act;

(2) If discriminatory conduct concerns a certain person exclusively, organisation or voluntary tester from paragraph 1 of this Article may file action or motion only with such person's consent.

(3) If voluntary tester did not file action, the court may hear such tester in the capacity of witness, and if he filed action, he may be heard in the capacity of a party.

Heading VI: DISCIPLINARY AND PENAL LIABILITY

Disciplinary Liability for Discriminatory Conduct in Employment Relations
Article 32.

(1) Worker personally guilty of discriminatory conduct shall be taken to have committed a grave violation of working duty for which a fine or temporary suspension may be pronounced according to the provisions of the law regulating work and employment.

(2) Worker who repeats discriminatory conduct despite employer's written notice on prior discriminatory conduct may be punished by a disciplinary measure of termination of employment.

(3) Penal liability does not exclude disciplinary liability from paragraphs 1 and 2 of this Article.

Fines for Misdemeanor
Article 32.

A fine of from 15.000 to 150.000 dinars may be pronounced for a misdemeanour for anyone who:

1. writes or exhibits in a public place or otherwise disseminates messages and symbols calling for discriminatory conduct towards other persons (Art.9. para.1.);

2. violates or aims at violating equal opportunities or conduct in regard to employment, occupation or termination of employment, as well as a person who violates equal opportunities for employment or enjoyment, under equal terms, of all rights from employment or related to it (Art.13. para.1.);

3. refuses to provide a public service, or requests, for the providing of service, fulfillment of conditions not required from other persons or groups, or person who provides a service later, even though it was requested before and conditions for it met before other persons or groups (Art.14. para.1.);

4. violates the principle of separation of state and religious communities, that is, acts contrary to obligation of impartiality towards religious communities, as well anyone as who violates the principle of free profession of faith (Art.15.);

5. violates the principle of equality of man and woman (Art.16. para.1.);

6. violates the freedom of choice and expression of gender identity and sexual orientation (Art.17. para.1. i 2.);

7. violates the principle of equal protection of minors (Art.18. para.1.);

8. violates equality in educational process or vocational training (Art.19 para.1.);

9. abolishes or limits special rights to minorities or their members, to which they are entitled in order to preserve their identity (Art.20. para.2.);

10. violates prohibition of discrimination on the grounds of expressing political beliefs (Art.21. para.1.);

11. acts contrary to prohibition of discrimination of persons with disabilities (Art.22. para.1. i 2.);

12. undertakes forceful medical measures (Art.23. para.2. and 3.).

Other Sanctions for Misdemeanour
Article 33.

(1) If discriminatory conduct has resulted in particularly grave consequences, such as discrimination of a larger number of persons or considerable material damage, together with fine from Article 32. of this Act, prohibition of certain occupation may also be pronounced to responsible person for the duration of from 3 months to 1 year or prohibition to employer or other natural person engaging in commercial or other activity or service to perform such activity or provide such service for the duration of from 3 months to 1 year. (2) When pronouncing a fine, the magistrate will, for misdemeanor:

- from Art.32. subpara.1. of this Act, oblige the perpetrator to pay the costs of restitution to previous state of the object on which the message or symbol have been written or exhibited; the decision on such compensation of costs shall be an executive title

- . from Art.32. subpara.2. of this Act, may pronounce a measure of prohibition of participation in organs deciding on employment for the duration of from 3 months to 1 year;

- from Art.32. subpara.5. of this Act, may pronounce to the perpetrator a restraining order regarding the discriminated in working or other public place for the duration of from 3 months to 1 year;

- from Art.32. subpara.12. of this Act, may pronounce to perpetrator a restraining order from the discriminated in a place where medical care is given or other public place for the duration of from 3 months to 1 year.

(3) If the perpetrator fails to comply with the prohibitions order from para.2, lines 2.-4. of this Article, the prohibition shall be enforced by applying accordingly the provisions of the Enforcement Procedure Act regulating the obligation that can only be performed by the debtor.

Heading VII: TRANSITIONAL AND FINAL PROVISIONS

Entry into Force

Article 34.

This Act shall enter into force on the eighth day after its publication.

Monitoring the Implementation of the Act

Article 34.

Monitoring of the implementation of the Act shall be conducted by the ministry competent for judicial affairs.