

Model

ACT AGAINST DISCRIMINATION OF PERSONS WITH DISABILITIES

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

ACT AGAINST DISCRIMINATION OF PERSONS WITH DISABILITIES

Heading I: GENERAL PROVISIONS

Scope Article 1.

This Act governs the general regime of prohibition of discrimination on the grounds of disability, special cases of discrimination of persons with disabilities, procedure of protection of persons subjected to discrimination, organs competent for preventing discrimination and taking measures for promoting equality of persons with disabilities and measures undertaken by the state in order to promote equality and social participation of persons with disabilities.

Principles of the Act Article 2.

This Act is based on the following principles:

- prohibition of discrimination of persons with disabilities;
- respect of human rights and dignity of persons with disabilities;
- promoting participation of persons with disabilities in all spheres of social life on equal grounds;
- participation of persons with disabilities in all processes in which decisions are made on their rights and obligations.

Definitions of Notions Article 3.

In this Act:

1. the term «*persons with disabilities*» designates persons with congenital or acquired physical, sensory, intellectual or emotional disability who, on the grounds of social or other impediments do not have or have limited possibilities of participating in social activities on the same level as others, irrespective of whether they realise the mentioned activities with the use of technical aids or support services; all persons from line 1. of this Article are considered as persons with disabilities irrespective of whether

the cause of disability already exists or is to occur, that is, whether disability existed but has ceased;

2. the term “*discrimination*” and “*discriminatory conduct*” signify any differentiation or unequal treatment, that is, omission (excluding, limiting or prioritising) in relation persons or groups, and members of their families, or persons close to them, in an open or covert manner, which is based on disability or related reasons;

3. the term “*state organ*” designates an organ of legislative, executive and judicial power; territorial autonomy and local self-government organ; governing organ of public institutions, foundations and other bodies founded by the Republic, territorial autonomy or local self-government, as well as governing organ of public companies or companies where majority capital is owned by the State, territorial autonomy or local self-government.

Heading II: GENERAL PROHIBITION OF DISCRIMINATION

Forms of Discrimination

Article 4.

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

(2) 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 disability

(3) Indirect discrimination shall be taken to occur where one person or group are put in a less favourable position, on the grounds of their disability or related reasons, 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.

(4) 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 on the grounds of their disability or related reasons.

Violation of Equal Rights and Duties' Principle
Article 5.

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 or imposed on other person in same or comparable situation, exclusively or mainly on the grounds of his disability or related reasons;
2. if the aim or consequence of the measures taken are unjustified, and
3. if the measures taken and the aim realised by this measure are in disproportion.

Article 6.

The following shall not be deemed as violation of the equal rights and duties' principle or discrimination:

1. provisions of laws, regulations, or decisions or special measures, passed in the aim of improving the position of persons with disabilities, members of their families and organisations of persons with disabilities 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 removing or improving less favourable position of persons with disabilities, members of their families and organisations of persons with disabilities to whom special support is given.

Grave Forms of Discrimination
Article 7.

The following is particularly prohibited and punishable:

- provoking and inciting inequality or intolerance towards persons with disabilities;
- advocating for or 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.

Prohibition to Write and Expose Discriminatory Messages and Symbols
Article 8

It shall be prohibited to write and expose in public places or to disseminate in other manner messages or symbols calling for discriminatory conduct against persons with disabilities.

Duties of the State
Article 9.

State shall be under the obligation to provide persons with disabilities the enjoyment of rights and freedoms without discrimination and to serve their justified interests.

General Prohibition of Abuse of Rights
Article 10.

It shall be prohibited to exercise 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 OF PERSONS WITH
DISABILITIES***

Discrimination in Procedures Before State Organs
Article 11.

(1) State organ must not, by its action or omitting to take action, discriminate against a person with disability on the grounds of his/her disability or related reasons.

(2) Discrimination of persons with disability by a state organ includes:

1. depriving a right to a person with disability by a general or individual legal act, if such right is granted to persons without disability under the same circumstances;

2. imposing special conditions for the realisation of right to person with disability, unless such conditions are justified by reasons of general, personal or property-related safety, which must be specially indicated by the state organ;

3. depriving a right within discretionary authority, if the deprivation is a result of disability of the applicant or of related reasons

4. conducting administrative or judicial procedure or other procedure of realisation of the right of person with disability in a manner that in fact prevents or considerably complicates the realisation of right.

(3) Particularly grave form of discrimination on the grounds of disability is harassment, insulting or disparaging of persons with disability by holders of public authority and civil servants in procedures for realisation of rights of persons with disabilities, on the grounds of disability or related reasons.

Discrimination in Relation to Organisations
Article 12.

(1) Discrimination on the grounds of disability is prohibited in non-governmental organisations and associations of citizens which have the capacity of legal person (hereinafter: organisations).

(2) Discrimination on the grounds of disability in organisations includes:

1. Refusing an application for membership in organisation to a person with disability on the grounds of his/her disability or related reasons;
2. imposing special conditions for membership of persons with disabilities in the organisation;
3. depriving a person with disability of the right to vote for and to be elected as a member of the organisation's managing organs;
4. imposing special conditions for electing persons with disabilities as members of organisation's managing organs.

(3) Founding and activity of organisations of persons with disabilities and other forms of their self-organisations shall not be deemed as discrimination.

Discrimination in Relation to Providing of Services and Use of Objects and Surfaces
Article 13.

(1) Discrimination on the grounds of disability or related reasons in regards to availability of services and access to objects in public use and public surfaces shall be prohibited.

(2) Service shall be any service provided, with or without compensation, by a natural or legal person within the framework of its legally defined scope of work or permanent profession.

(3) Objects in public use shall particularly be objects in the field of education, health care, social protection, culture, sport, tourism, environment protection, protection from natural catastrophes, and the like, and public surfaces shall particularly be parks, green areas, squares, streets, pedestrian crossings and other public roads and the like.

(4) Discrimination on the grounds of disability in regard to accessibility of services particularly includes:

1. refusing to provide services to person with disability, unless provision of service would endanger the life and health of the person with disability or third person, where the existence of danger may be assessed only by the organ competent for general safety in a procedure regulated by law;

2. providing a service to person with disability under different and less favourable conditions than those under which the service is provided to other users, unless the providing of service under regular conditions would endanger the life and health of the person with disability or third person, where the special conditions for providing services to persons with disability are prescribed by the competent state organ in a procedure regulated by law;

3. refusing to make a technical adaptation necessary for providing services to persons with disability, unless such adaptation requires considerable investment or the user with disability agrees to bear the costs of adaptation.

Article 14.

The following shall not be deemed as discrimination in terms of Article 13. of this Act:

1. increasing the price of service in proportion to the costs directly deriving from an individual act of providing a service to user with disability,
2. providing services related to specific needs of some users with disability, or to a specific manner of meeting their general needs;
3. activities related to elimination and prevention of new forms of discrimination on the grounds of disability.

Article 15.

Particularly grave form of discrimination on the grounds of disability shall be permanent or frequent harassment, insulting or disparaging of persons with disability – users of service on the grounds of disability or related reasons, when such actions are taken by the person directly providing the service or his/her superior.

Article 16.

(1) Owner of the object in public use and the state organ competent for maintenance of public surfaces, shall be under the obligation to provide access to object in public use, that is, to public surface to all persons with disabilities, irrespective of the type and degree of their disability.

(2) Third person to whom the right of use has been transferred shall also be under the obligation from para. 1. of this Article, unless otherwise contracted with the owner or state organ.

(3) State organ competent for issuing a use permission shall not issue such permission if the condition from para. 1. of this Article is not met, and should the state organ act contrary to this prohibition, the issued use permission shall be null and void.

(4) Owner of the object in public use may not refuse to adapt the object in order to meet the conditions for fulfilling the obligation from para. 1. of this Article if other natural or legal persons have provided two thirds of the assets necessary for adaptation.

(5) State organ from para. 1. of this Article shall bear the full costs of adaptation.

Discrimination in Relation to Health Care Services

Article 17.

(1) Particularly grave form of discrimination on the grounds of disability shall be any form of discrimination of person with disability in providing health care services.

(2) The following shall be deemed as an act of discrimination of persons with disability upon providing health care services:

1. refusing to provide a health care service to a person with disability due to his/her disability or related reasons;

2. imposing special conditions for providing health care services to persons with disability if such conditions are not justified by medical reasons, prescribed by the Ministry of Health, or considerable increase in costs of providing health care services, recognised by the competent organ of mandatory health care insurance;

3. depriving a person with disability from adequate information on current state of health, taken or intended measures of treatment and rehabilitation, on the grounds of his/her disability or related reasons;

4. any harassment, insulting or disparaging of person with disability during stay in health care institution on the grounds of disability or related reasons.

Discrimination in Relation to Education

Article 18.

(1) Discrimination on the grounds of disability on levels of education, both public and private, shall be prohibited.

(2) Discrimination from para. 1. of this Article includes:

1. denying enrolment of child of pre-school age, pupil or student with disability to an educational institution that corresponds to his/her previous knowledge or educational capacities;

2. excluding from an educational institution already attended by a child of pre-school age, pupil or student with disability for reasons directly or indirectly related to his/her disability;

3. imposing non-disability as a special condition for enrolment into educational institution, including the submission of certificate on health condition and previous check of psycho-physical abilities, except in cases of education for dangerous professions or professions with special health risks, expressly prescribed by law or Government ordinance, or competent Ministry's act, or where the nature of the educational process is such that a person with disability could not participate in it.

Article 19.

The following shall not be deemed as discrimination in education on the grounds of disability:

1. checking of special predispositions of children of pre-school age, pupils and students, that is, of candidates for enrolment to educational institution, towards a given subject or group of subjects, their artistic predispositions or forms of special talents;

2. organisation of special forms of teaching for pupils or children of pre-school age, who, due to insufficient intellectual capacities, are not able to follow regular courses, and referring pupils or children of pre-school age to such forms of teaching, if enrolment is made on the grounds of ruling on categorization of pupils or children of pre-school age;

3. organisations of special forms of teaching for pupils and children of pre-school age who, due to physical or sensory disability, are not able to follow regular teaching in a regular manner, as well as referring pupils and children of pre-school age to such forms of teaching, if enrolment is made on the grounds of ruling on categorization of pupils or children of pre-school age;

Article 20.

Particularly grave form of discrimination on the grounds of disability shall be permanent or frequent harassment, insulting or disparaging of disabled pupil, student or child of pre-school age on the grounds of disability or related reasons, when done by teacher, pedagogue or third person employed in educational institution.

Discrimination in Relation to Employment and Labour Relations

Article 21.

(1) It shall be prohibited to discriminate on the grounds of disability or related reasons in employment and realisation of rights from employment towards:

1. person with disability seeking employment;
2. guardian of person with disability seeking employment;
3. employed person with disability;
4. employed guardian of person with disability.

(2) Person seeking employment is a person duly registered in the institution competent for employment in terms of law governing employment.

(3) Guardian of person with disability shall be any person, irrespective of kinship, who lives in the same household with a person with disability and permanently helps him/her in meeting everyday needs without pecuniary or other material compensation.

Article 22.

The following shall be deemed as discrimination on the grounds of disability or related reasons in employment:

1. failure to employ a person with disability or guardian of person with disability on the grounds of disability or related reasons, that is, on the grounds of being a guardian of a person with disability;
2. imposing special health conditions for employment of person with disability to a job that is not on the list of dangerous jobs, passed by the ministry competent for labour and employment affairs;
3. previous check of psycho-physical abilities which are not directly related to the job and working tasks;
4. refusing to make technical adaptations of the workplace so as to enable efficient work of person with disability, if the costs of adaptation are not borne by the employer and are not in disproportion to the profit realised by the employer by employing a person with disability.

Article 23.

The following shall not be deemed as discrimination on the grounds of disability in employment:

1. electing a candidate without disability who has obtained the best result on previous check of psycho-physical ability directly related to the job requirements;

2. taking incentive measures for faster employment of persons with disabilities in accordance with the law governing employment of persons with disabilities.

Article 24.

The following shall be deemed as discrimination on the grounds of disability or related reasons in realisation of rights from employment:

1. determining smaller salary on the grounds of worker's disability, irrespective of the working performance;
2. imposing special working conditions to worker with disability, if such conditions do not directly derive from the job requirements;
3. imposing special conditions to worker with disability for use of other rights from employment that every worker has.

Article 25.

Rewarding workers according to working performance shall not be deemed as discrimination on the grounds of disability in realisation of rights from employment.

Article 26.

Particularly grave form of discrimination on the grounds of disability shall be permanent or frequent harassment, insulting or disparaging of worker with disability by the employer, directly superior in the working process or other workers, on the grounds of disability or related reasons.

Discrimination in Relation to Transport

Article 27.

(1) It shall be prohibited to discriminate on the grounds of disability or related reasons in public passenger transport.

(2) Discrimination from para. 1. of this Article shall be:

1. refusing to transport a passenger with disability;
2. refusal of the transport personnel to provide physical assistance to the passenger with disability if without such assistance the passenger with disability can not use the transporters service and if providing of such assistance does not endanger the safety of transport;
3. determining less favourable conditions of transport for passengers with disability, particularly conditions of payment, save to the extent such conditions are justified by technical requirements or necessary increase in costs of transport of passengers with disability.

Article 28.

The following shall not be deemed as discrimination on the grounds of disability or related reasons in public passenger transport:

1. organising special public transport of persons with disability who can not use regular transport services or can not use them without considerably increased risk of injury;

2. transport, at a privileged price, of passengers with disability who can not use regular transport services without a companion or can not use them without considerably increased risk of injury.

Article 29.

Particularly grave form of discrimination on the grounds of disability shall be permanent or frequent harassment, insulting or disparaging of passenger with disability during transport by the transport personnel, on the grounds of disability or related reasons. .

Discrimination in Relation to Use of Electoral Right

Article 30.

(1) Any obstructing of person with disability in effecting his/her electoral rights on the grounds of disability or related reasons shall be prohibited.

(2) Obstructing from para. 1. of this Article shall be:

1. direct deprivation of active and passive electoral right from person with disability;

2. depriving access to polls to persons who move with difficulty;

3. inaccessibility of election material to the blind and vision-impaired persons;

4. other actions or omission, which result in preventing or complicating the effecting of the electoral right to a person with disability.

(3) Organ competent for conducting elections shall be obliged to provide access to polls to persons who move with difficulty and to provide accessibility of electoral material to the blind and vision-impaired persons.

Discrimination in Relation to Marital and Family Relations

Article 31.

(1) Any discrimination in realisation of rights from marital and family relations on the grounds or disability or related reasons shall be prohibited.

(2) Discrimination from para. 1. of this Article shall be:

1. depriving the right to marriage to persons with disability;

2. imposing special conditions for concluding marriage for persons with disability;

3. imposing special conditions for realisation of parental rights to persons with disability;

4. imposing special conditions for realisation of the right to adoption to persons with disability.

Discrimination of Organisations of Persons with Disability
Article 32.

(1) Any form of discrimination of organisations of persons with disability shall be prohibited.

(2) All organisations of persons with disability shall have the right to apply to the state organs, under equal conditions, irrespective of their social importance, for funds and other forms of assistance.

(3) Decision of the state organ on the granting of funds and other forms of assistance to an organisations of persons with disabilities passed without a prior public announcement, or bypassing the results of the public announcement, shall be null and void.

(4) State organ shall be under the obligation to publish the results of public announcements for granting funds and other forms of assistance to organisations of persons with disability at least once a year.

***Heading IV: COMMISARY FOR HUMAN RIGHTS OF PERSONS WITH
DISABILTY***

Commissariat and Commisary
Article 33.

(1) Commissariat for Human Rights of Persons with Disability (hereinafter: Commissariat) shall be established.

(2) Commissariat comprises the Commissary for Human Rights of Persons with Disabilities (hereinafter: Commissary), and three assistants appointed by the Commissary.

(3) Graduate lawyer with exceptional moral integrity may be the Commissary.

(4) Commissary may not hold other public or political office, not be employed by other employer.

(5) Commissary shall be responsible for Commissariat's work

(6) Commissariat shall have a seat in Belgrade.

Election of Commissary
Article 34.

(1) Commissary shall be elected by the National Assembly of the Republic of Serbia by a two-third majority of the total number of members of parliament.

(2) Commissary may be nominated by the Government of the Republic of Serbia, MP groups of the National Assembly of the Republic of Serbia, organisations of persons with disability, as well as those predominantly involved in protection of rights of persons with disability.

Term
Article 35.

- (1) Commissary's term shall be five years.
- (2) Same person may not be elected Commissary more than two times.

Article 36.

- (1) Office of Commissary shall be terminated before the expiry of the term:
 1. by submitting a written resignation to the National Assembly of the Republic of Serbia;
 2. release by the National Assembly of the Republic of Serbia due to incompetent and unconscientious work;
 3. release by the National Assembly of the Republic of Serbia when it is established that Commissary has committed an offence indicted for ex officio in regard to the office;
 4. by death;
 5. by loss of citizenship;
 6. by loss of residence on the territory of the Republic of Serbia;
 7. by loss of ability to perform the tasks of Commissary.
- (2) National Assembly of the Republic of Serbia may release the Commissary at the proposal of MP group in the Assembly.
- (3) Decision on release shall be passed by majority of the total number of members of parliament in the National Assembly of the Republic of Serbia.
- (4) Before deciding on the proposal for release, National Assembly of the Republic of Serbia shall call the Commissary to state his/her opinion on the proposal.
- (5) National Assembly of the Republic of Serbia shall elect a new Commissary within three months from the termination of term of office.
- (6) Until new Commissary is elected, this office shall be performed by one of the assistants, on the basis of decision of the National Assembly of the Republic of Serbia.

Commissary's Position

Article 37.

- (1) Commissary shall be independent and autonomous in performing his office.
- (2) Commissary shall be entitled to a salary equal to that of a justice of the Supreme Court, and the right to compensation of costs incurred in relation to the performance of his office.
- (3) Commissary shall have the immunity enjoyed by the holders of judicial offices.

Article 38.

The amount of funds necessary for the work of Commissariat shall be established in the Budget of the Republic of Serbia Act, at the Commissary's proposal.

Commissary's Competence

Article 39.

In the performance of his office, Commissary shall have the following competences:

1. monitoring the implementation this Act ;
2. filing criminal and misdemeanour reports for violations of rights from this Act ;
3. filing actions from Art. 77. subpara. 1.,2.,3. and 5. of this Act for violations of rights from Act;
4. filing three-monthly reports to the National Assembly of the Republic of Serbia on enjoyment and protection of rights of persons with disability ;
5. filing, on behalf of and at the request of party to a proceedings – person with disability, extraordinary legal remedies in cases where such party's procedural rights have been violated;
6. recommending to competent state organs measures for realisation of equality of persons with disability ;
7. proposes to the Government of the Republic of Serbia to submit legislative initiatives to the National Assembly of the Republic of Serbia in order to incite equality of persons with disability; if the Government of the Republic of Serbia fails to accept such proposal within six months, the Commissary shall individually submit the initiative to the National Assembly of the Republic of Serbia.

Rules of Procedure

Article 40.

Commissary shall pass rules of procedure, which will govern in more detail the manner of his work and action.

Commisary's Action

Article 41.

- (1) Person with disability and any third person who finds that one of the rights protected by this Act has been violated may address the Commissary. .
- (2) Application shall be submitted in writing and shall be free of stamp duty.
- (3) Corresponding evidence shall be submitted with the application.
- (4) On behalf of and with consent of the person whose right has been violated, third party, organisation of persons with disability, non-governmental organisation or other organisation may address the Commissary.

Article 43.

- Commissary shall act on the application in the following cases:
1. when regular legal remedy for removing the violation of right to which the applicant indicates has been used;
 2. when legal remedy for removing the violation of right to which the applicant indicates is inefficient;
 3. when legal remedy for removing the violation of rights has not been used due to ignorance or lack of funds.

Article 44.

Commissary shall not act upon the application in the following situations:

1. if the application does not relate to the work of state organ;
2. if it is apparent that there is no violation of rights prescribed in this Act;
3. if he had already considered that matter;
4. if it established that state organ to the work of which the application relates has removed the violation of right.

Article 45.

(1) Upon receiving the application, the Commissary shall initiate a procedure for establishing the state of facts and inform thereof the applicant and the state organ to the work of which the application relates.

(2) Commissary shall forward the application to the state organ to the work of which the application relates.

(3) State organ may give its opinion on the application within 30 days from the day of being served the application.

Article 46.

(1) For the purpose of establishing the state of facts, the Commissary may interview and take statements from the applicant, persons employed in the state organ, witnesses and third parties who have information about the circumstances of the case.

(2) Commissary is entitled to have insight into documents containing public information, including those containing official, business or professional secret.

Article 47.

When the Commissary finds that there is no violation of provisions of this Act, or that violation took place, he shall inform thereof the applicant, state organ to the work of which the application relates, as well as the directly superior organ.

Heading V: VOLUNTARY TESTER OF DISCRIMINATION

Voluntary Tester of Discrimination

Article 48.

Term “*voluntary tester of discrimination*” designates a person who individually or together with third 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.

Obligation of Voluntary Tester of Discrimination
Article 49.

Voluntary tester of discrimination is under the obligation to inform, if the circumstances so provide, the Commissary of the intended action from Art. 48. of this Act, and to inform the Commissary of the action taken in writing.

Heading VI: COUNCIL FOR PROMOTION OF POSITION OF PERSONS WITH DISABILITY

Council
Article 50.

(1) Council for Promotion of Position of Persons with Disability (hereinafter: Council) shall be established.

(2) The Council shall have its seat in Belgrade.

Composition of the Council
Article 51.

Council shall comprise a person with disability, representative of organisation involved in protection and promotion of human rights and a legal expert.

Article 52.

Members of the Council shall be appointed by the Government of the Republic of Serbia, at the proposal of the following authorised proposer:

- person with disability shall be nominated by organisation of persons with disability, that is, organisation predominantly involved in protection of persons with disability;
- representative of organisation involved in protection of human rights shall be nominated by the organisation involved in protection of human rights;
- legal expert shall be nominated by expert association or institution

Term
Article 53.

Term of members of the Council shall be four years.

Article 54.

Office of member of Council shall be terminated before the expiry of term:

1. by submitting a written resignation to the Government of the Republic of Serbia;

2. by release by the Government of the Republic of Serbia due to incompetent and unconscientious work;
3. release by the Government of the Republic of Serbia when it is established that he/she has committed an offence indicted for ex officio in regard to the office;
4. by death;
5. by loss of citizenship;
6. by loss of residence on the territory of the Republic of Serbia;
7. by loss of ability to perform the tasks of Council member.

Work of the Council
Article 55.

(1) Council is convened by the president or vice-president of the Government of the Republic of Serbia, departmental ministers, or one of Council's members .

(2) Councils' session is presided by the Government member at whose initiative the Council is convened.

(3) In its work the Council uses the services of expert services of the Government and corresponding ministries.

Competence of the Council
Article 56.

In performing its tasks, the Council shall have the following competences:

1. giving opinions on all laws and secondary legislation proposed by the Government and corresponding ministries that are of interest to persons with disability;
2. proposes measures for promoting the status of persons with disability.

Article 57.

(1) Government shall be obliged to forward the Council's opinion to the National Assembly of the Republic of Serbia together with a Bill relating to the rights of persons with disability.

(2) In the procedure of passing secondary legislation relating to rights of persons with disability, the Government or the ministry shall be under the obligation to consider Council's opinion.

Article 58.

Council member may have a dissenting opinion and forward it to the Government or the ministry.

Heading VII: MEASURES FOR PROMOTING EQUALITY OF PERSONS WITH DISABILITY

Measures for Creating Accessible Environment

Article 59.

State organs are under the obligation to adopt and implement programmes and measures that will make the physical environment, buildings, public surfaces and public transport accessible to persons with disability.

Measures for Providing Equality before State Organs
Article 60.

State organs are under the obligation to undertake measures for providing equality of persons with disability in procedures before state organs, including the recognition of right to use of sign language in procedures before state organs, and the printing of official journals in Braille.

Measures for Providing Access to Information
Article 61.

State organs are under the obligation to undertake measures in order to make information and communication accessible to persons with disability, including the subtitling of television programmes.

Measures for Providing Equality in Education
Article 62.

State organs are under the obligation to adopt and implement programmes and measures that will provide that education of persons with disability becomes an integral part of the general system of education, including the planning of education, development of school and pre-school programmes and organisation of educational institutions.

Measures for Encouraging Employment
Article 63.

State organs are under the obligation to adopt and implement programmes and measures that will encourage employment of persons with disability in the labour market, including incentives for employers who employ persons with disability.

Measures for Providing Social Security and Income
Article 64.

State organs are under the obligation to adopt and implement programmes and measures aimed at preserving regular incomes and social security of persons with disability and their families, including re-qualification and additional qualification programmes for persons with disability.

Measures for Realisation of Rights in Marital and Family Relations
Article 65.

State organs are under the obligation to adopt and implement programmes and measures for realisation of rights of persons with disability from marital and family

relations, including measures of financial support to households of persons with disability and founding support services for such households.

Measures for Providing Participation in Cultural, Sport and Religious Life of the Community
Article 66.

State organs are under the obligation to adopt and implement programmes and measures in order to provide for equal participation of persons with disability in cultural, sport and religious life of the community.

Collecting and Disseminating Information and Research on Status of Persons with Disability
Article 67.

State organs are under the obligation to encourage collecting and disseminating of information on living conditions of persons with disability and promote research on all aspects of their lives.

Policy-making and Planning in Regard to Disability Issues
Article 68.

State organs are under the obligation to include disability issues in any policy making and national or local planning and therein consult persons with disability, their organisations and Council.

Financing of Programmes and Measures Aimed at Creating Equal Opportunities
Article 69.

State organs are financially liable for carrying out their programmes and measures aiming at creating equal opportunities for persons with disability.

Training of Personnel Engaged in Realisation of Programmes and Services
Article 70.

State organs are under the obligation to provide adequate training for all persons engaged in planning and realisation of programmes and services intended for persons with disability, with the obligation to consult persons with disability, their organisation and Council.

Monitoring and Evaluation of Implementation of Programmes and Measures
Article 71.

State organs are obliged to continuously monitor and evaluate the implementation of programmes and measures aiming at providing equal opportunities to persons with disability.

Participation in International Co-operation
Article 72.

State organs are under the obligation to actively participate in international co-operation related to policy of equal opportunity for persons with disability.

Heading VIII: PROTECTION MECHANISMS

Protection before the Constitutional Court of Serbia
Article 73.

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

Protection in Administrative Procedure and Administrative Dispute
Article 74.

(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 Appeal to International Organisation and Bodies
Article 75.

For the purpose of protection against discrimination, persons with disability or organisations of persons with disability, can appeal directly to international bodies in the manner prescribed by international agreement.

Heading IX: CIVIL LIABILITY

Court Jurisdiction and Procedure
Article 76.

(1) Person with disability and member of his/her family harmed 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 77.

The following may be requested by the action from Art.76. 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 forbearing/to forbear);

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 78.

(1) Person with disability or member of his/her family whose right or interest could be violated by discriminatory conduct may request that the court prohibit discriminatory conduct by interim measure until the 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 if the interim measure is not 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 serving of the decision, and the court shall decide on the objection within the following 48 hours.

Presumption of Guilt and Burden of Proof

Article 79.

(1) It may 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 principle of equality, that is, the principle of equal rights and obligations, shall be borne by the other party.

Actions of Third persons
Article 80.

(1) Right to file action from Article Art.77 subpara. 1., 2., 3. and 5. of this Act, right to file motion from Article 78. of this Act, as well as the right to initiate enforcement procedure shall pertain to:

- Commissary;
- domestic and foreign organisations of persons with disability, as well as to organisations for protection of discriminated groups, that is, the protection of human rights;
- voluntary testers of discrimination from Article.48. of this Act;

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 X: PENAL AND DISCIPLINARY LIABILITY

Criminal Offences of Discrimination of Persons with Disability in Procedures Before State Organs
Article 81.

Person vested with public authority, or person employed in state organ who by individual act, without legal grounds, deprives a person with disability of a right which he granted to person without disability in the same circumstances (Art.11., para.2., subpara.1.) shall be punished by imprisonment of up to 2 years.

Article 82.

Person vested with public authority, or person employed in state organ who harasses, insults or disparages a person with disability in the course of procedure or realisation of rights of such person, on the grounds of his/her disability or related reasons (Art.11., para.3.), shall be punished by imprisonment of up to 3 years .

Criminal Offence of Discrimination of Persons with Disability when Providing Health Care Services
Article 83.

Person who refuses to provide a health care service to person with disability, on the grounds of disability or related reasons (Art.17., para.2., subpara.1.), shall be punished by imprisonment of up to 2 years.

Article 84.

Person who harasses, insults or disparages a person with disability during such person's stay in health care institution, on the grounds of his/her disability or related reasons (Art.17., para.2., subpara.4.) shall be punished by imprisonment of up to 3 years.

Fines for Misdemeanour

Article 85.

Anyone who writes or publicly exposes or otherwise disseminates messages and symbols that call for discriminatory conduct towards persons with disability (Art.8.) shall be punished by a fine of from 15.000 to 150.000 dinars.

Article 86.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to a person vested with public authority or person employed in state organ who:

1. imposes special conditions for realisation of rights to persons with disability, unless such conditions are justified by reasons of general, personal and property-related safety, which must be specially indicated by the state organ (Art.11., para.2., subpara.2.);
2. deprive a person with disability of a right within discretionary authority, if the deprivation is due to disability of the applicant or related reasons (Art.11., para.2., subpara.3.);
3. conducts administrative, judicial or other procedure for realisation of right of person with disability in a manner that in fact prevents or considerably complicates the realisation of such right (Art.11., para.2., subpara.4.).

Article 87.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to responsible person in organisation who:

1. refuses an application for membership in organisation to a person with disability on the grounds of his/her disability or related reasons (Art.12., para.2., subpara.1.);
2. imposes special conditions for membership of persons with disabilities in the organisation; (Art.12., para.2., subpara.2.);
3. deprives a person with disability of the right to vote for and to be elected as a member of the organisation's managing organs or imposes special conditions for electing persons with disabilities as members of organisation's managing organs (Art.12., para.2., subpara.3. and 4.).

Article 88.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to person who:

1. refuses to provide services to person with disability, unless provision of service would endanger the life and health of the person with disability or third persons (Art.13., para.4., subpara.1.);

2. provide a service to person with disability under different and less favourable conditions than those under which the service is provided to other uses, unless the providing of service under regular conditions would endanger the life and health of the person with disability or third person (Art.13., para.4., subpara.2.).

Article 89.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to person directly providing the service or his/her superior who permanently or frequently harasses, insults or disparages persons with disability – users of service on the grounds of disability or related reasons (Art.15.).

Article 90.

A fine of from 25.000 to 100.000 dinars shall be pronounced to owner of object in public use or responsible person in state organ competent for maintenance of public surfaces or person to whom the right of use has been transferred who fails to provide access to public object, or public surface, to person with disability (Art.16., para.1. and 2.).

Article 91.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to a person who:

1. imposes special conditions for providing health care services to persons with disability if such conditions are not justified by medical reasons (Art.17., para.2., subpara.2.);

2. deprives a person with disability from adequate information on current state of health, taken or intended measures of treatment and rehabilitation, on the grounds of his/her disability or related reasons (Art.17., para.2., subpara.3.).

Article 92.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to person who:

1. denies enrolment to child of pre-school age, pupil or student with disability to an educational institution that corresponds to his/her previous knowledge or educational capacities (Art.18., para.2., subpara.1.);

2. excludes from an educational institution already attended by a child of pre-school age, pupil or student with disability for reasons directly or indirectly related to his/her disability (Art.18., para.2., subpara.2.);

3. imposes non-disability as a special condition for enrolment into educational institution, including the submission of certificate on health condition and previous check of psycho-physical abilities, except in cases of education for dangerous professions or professions with special health risks, prescribed by corresponding laws or ordinances (Art.18., para.2., subpara.3.).

Article 93.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to teacher, pedagogue or third person employed in educational institution who frequently harasses, insults or disparages disabled pupil, student or child or pre-school age on the grounds of disability or related reasons (Article 20).

Article 94.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to person who:

1. fails to employ a person with disability or guardian of person with disability on the grounds of disability or related reasons, that is, on the grounds of being a guardian of a person with disability (Art.22., subpara.1.);

2. imposes special health conditions for employment of person with disability to a job that is not on the list of dangerous jobs, passed by the ministry competent for labour and employment affairs (Art.22., subpara.2.);

3. requires previous check of psycho-physical abilities which are not directly related to the job and working tasks (Art.22., subpara.3.);

4. refuses to make technical adaptations of the workplace so as to enable efficient work of person with disability, if the costs of adaptation are not borne by the employer and are not disproportionate (Art.22., subpara.4.).

Article 95.

A fine of from 25.000 to 100.000 shall be pronounced for misdemeanour to person who:

1. determines salary on the grounds of worker's disability, irrespective of the working performance (Art.24., subpara.1.);

2. imposes special working conditions to worker with disability, if such conditions do not directly derive from the job requirements (Art.24., subpara.2.);

3. imposes special conditions to worker with disability for use of other rights from employment that every worker has (Art.24., subpara.3.).

Article 96.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to employer, directly superior in the working process or other workers, who permanently or frequently harasses, insults or disparages a worker with disability by the, on the grounds of disability or related reasons (Art.26.).

Article 97.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to transporter or transport personnel who refuse to transport a person with disability on the grounds of his/her disability or related reasons, or refuse to provide physical assistance to the passenger with disability if without such assistance the passenger with disability can not use the transporters service and if providing of such assistance does not endanger the safety of transport (Art.27., para.2., subpara.1. and 2.).

Article 98.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to transport personnel who permanently or frequently harass, insults or disparages a passenger with disability, during transport, on the grounds of disability or related reasons (Art.29.).

Article 99.

A fine of from 50.000 to 500.000 dinars shall be pronounced for misdemeanour to person who:

1. deprives access to polls to persons who move with difficulty, on the grounds of disability or related reasons (Art.30., para.2., subpara.2.);
2. fails to provide accessibility of election material to the blind and vision-impaired persons (Art.30., para.2., subpara.3.).

Article 100.

A fine of from 25.000 to 100.000 dinars shall be pronounced for misdemeanour to person who:

1. deprives the right to marriage to persons with disability, on the grounds of disability or related reasons (Art.31., para.2., subpara.1.);
2. imposes special conditions for concluding marriage for persons with disability (Art.31., para.2., subpara.2.);

3. imposes special conditions for exercise of parental rights to persons with disability (Art.31., para.2., subpara.3.);

4. imposes special conditions for exercise of the right to adoption to persons with disability (Art.31., para.2., subpara.4.).

Article 101.

A fine of from 50.000 to 500.000 dinars shall be pronounced to responsible person in state organ who fails to provide the possibility to organisation of persons with disability to apply under equal conditions for granting funds and other forms of assistance (Art.32., para.2.).

Other Fines for Misdemeanour

Article 102.

(1) If discriminatory conduct resulted in particularly grave consequences, such as discrimination of a large number of persons with disability or causing considerable material damage, together with fine from Art.86.-101. of this Act, a measure of prohibition to work on certain jobs may be pronounced to responsible person in the duration of from 3 months to 1 year, or a prohibition to employer or other natural person performing commercial or other activity or providing a service to perform such activity in the duration of from 3 months to 1 year.

(2) Together with pronouncing fine, misdemeanour organ, for misdemeanour :

- from Art.85. of this Act, shall oblige the perpetrator to pay the costs of restitution of object on which the message or symbol are written or exposed; decision on payment of costs shall have the capacity of executive title;

- from Art.93. of this Act, may pronounce to the perpetrator a restraining order in educational institution or other public place from the discriminated person in the duration of from 3 months to 1 year;

- from Art.94. of this Act, may pronounce a measure of prohibition of participation in organs deciding on employment in the duration of from 3 months to 1 year;

- from Art.96. of this Act, may pronounce to perpetrator a restraining order in working or other public place regarding the discriminated person in the duration of from 3 months to 1 year;

- from Art.99. of this Act, may pronounce to perpetrator a measure of prohibition of participation in the work of electoral commission in the duration of from 3 months to 1 year.

(3) A restraining order from the discriminated person in a place where medical treatment is provided or other public place in the duration of from 3 months to 1 year shall be pronounced to person who harasses, insults or disparages a person with disability during stay in health care institution on the grounds of disability or related reasons (Art.17., para.2., subpara.4.).

(4) If the perpetrator fails to honour prohibitions from 2., lines 2.-4. and para.3. of this Article, prohibition shall be enforced by applying accordingly the Enforcement Procedure Act regarding the obligation only the debtor may perform.

Disciplinary Liability for Discriminatory Conduct in Labour Relations

Article 103.

(1) Employee 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) Employee who repeats discriminatory conduct despite employer's written notice for 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.

Heading XI: TRANSITIONAL AND FINAL PROVISIONS

Entry into Force

Article 104.

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

(2) Provisions of Art.16. para. 1., 2., 4. i 5. of this Act shall enter into force on January 1. 2005.

Inspection over the Implementation of the Act

Article 105.

Inspection over the implementation of the Act shall be conducted by the ministry competent for judicial affairs and Commissary