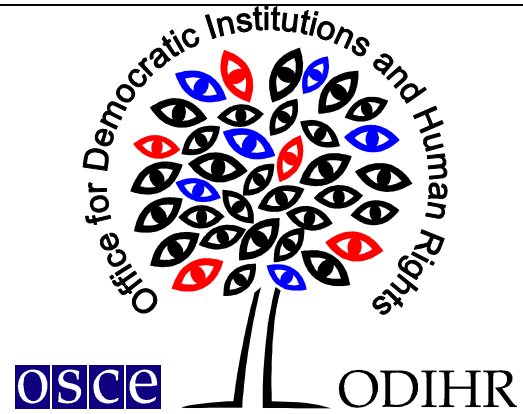


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## **OVERVIEW OF ANTI-DISCRIMINATION LEGISLATION IN THE WESTERN BALKANS**

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## **LIST OF ABBREVIATIONS**

BiH – Bosnia and Herzegovina

BPRI - Best Practices for Roma Integration

CERD - UN Convention on the Elimination of All Forms of Racial Discrimination

CRPD - UN Convention on the Rights of Persons with Disabilities

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

ECRI - Council of Europe's European Commission against Racism and Intolerance

EU - European Union

fYRoM - former Yugoslav Republic of Macedonia

ICCPR - International Covenant on Civil and Political Rights

ICJ - International Court of Justice

ILO - International Labour Organization

ODIHR - Office for Democratic Institutions and Human Rights

OSCE - Organization for Security and Co-operation in Europe

UNSCR - United Nations Security Council resolution

## **I. INTRODUCTION**

1. The “Best Practices for Roma Integration (BPRI) Project” (information on the project: <http://bpri-odihhr.org/>) is a regional OSCE/ODIHR project in the Western Balkans that was initiated in January 2012. Its aim is to contribute to the integration of Roma in the region, namely in Albania, Bosnia and Herzegovina (hereinafter “BiH”), the Republic of Croatia, the former Yugoslav Republic of Macedonia (hereinafter “fYRoM”), Montenegro and Serbia. The project also focuses on the Roma integration in Kosovo\*.
2. As part of the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area<sup>1</sup>, the commitment of numerous governments to join the initiative “Decade of Roma Inclusion”<sup>2</sup> and national government strategies for Roma integration, governments, non-governmental organizations and Roma civil society in the Western Balkans are working together to combat discrimination and promote social inclusion of Roma. The BPRI project supports this process by promoting innovative programmes and facilitating co-operation between local and national governments, independent institutions and civil society.
3. One of the components of the project is to raise awareness among the general public on Roma issues and promote participation and visibility of Roma communities in public life (Activity Set 3), namely by conducting legal reviews, accompanied by regional comparisons, of relevant anti-discrimination legislation (Activity 3.1 of the project).
4. This Overview was prepared to implement the above Activity 3.1. It provides for an analysis of selected main components and provisions of the laws in question and indicates key areas of concern in each of these laws. In the interest of concision, it tends to focus more on the most problematic areas of the laws.
5. The scope of the Overview covers specific aspects of anti-discrimination laws of the target region<sup>3</sup>, seen from a comparative point of view. Thus limited, it does not constitute a full and comprehensive review of the individual laws

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\* This designation is without prejudice to positions on Kosovo’s status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>1</sup> See Ministerial Council Decision No. 3/03 on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area and the annexed Action Plan, Permanent Council Decision No. 566 of 27 November 2003, par 8.

<sup>2</sup> The Decade of Roma Inclusion 2005–2015 involves a political commitment by European governments to improve the socio-economic status and social inclusion of Roma. The Decade is an international initiative that brings together governments, intergovernmental and nongovernmental organizations, as well as Romani civil society, to accelerate progress toward improving the welfare of Roma and to review such progress in a transparent and quantifiable way. The Decade focuses on the priority areas of education, employment, health, and housing, and commits governments to take into account the other core issues of poverty, discrimination, and gender mainstreaming. For more information, see <http://www.romadecade.org/home>.

<sup>3</sup> It should be noted that all jurisdictions in question chose to adopt separate anti-discrimination laws. The analysed laws are the following: the 2010 Albanian Law No. 10 221 on Protection from Discrimination; the 2009 BiH Law on Prohibition of Discrimination; the 2009 Anti-discrimination Act of Croatia; the 2010 Law of on Prevention and Protection Against Discrimination the former Yugoslav Republic of Macedonia; the 2010 Law on Prohibition of Discrimination of Montenegro; and the 2010 Law on the Prohibition of Discrimination of Serbia. The 2004 Anti-Discrimination Law of Kosovo was also analysed in this context.

- under consideration, nor of all available framework legislation on anti-discrimination in the target region.
6. The Overview was finalized on 30 April 2013, and presented at a regional conference on „Particular Challenges in Dealing with Complaints of Discrimination on Grounds of Ethnicity – A Regional Practitioners’ Exchange“, held in Ohrid, former Yugoslav Republic of Macedonia, on 26-27 September 2013. This conference was attended by ombuds institutions and anti-discrimination bodies from the Western Balkans. In the weeks and months following the conference, input on the overview was received from participants from Albania, Bosnia and Herzegovina, Croatia, former Yugoslav Republic of Macedonia, and Serbia. OSCE/ODIHR has reviewed these comments, and incorporated a number of them into this new version of the Overview.
  7. The ensuing recommendations for amendments are based on relevant international standards and OSCE commitments. Additionally, the Overview bears extensive reference to relevant EU legislation; even though most of the jurisdictions in question are not EU Member States at this specific time, all have applied for, and are at different stages of achieving EU membership<sup>4</sup>. While the Republic of Croatia became a full member of the European Union as of 1 July 2013, Montenegro, Serbia and the former Yugoslav Republic of Macedonia are candidate countries. Albania and BiH are potential candidates. According to the EU, Kosovo has a clear European perspective in line with the European perspective of the Western Balkans region.
  8. This Overview is based on unofficial translations of the laws. Errors from translation may result.
  9. In view of the above, OSCE/ODIHR would like to make mention that this Overview is without prejudice to any written or oral recommendations and comments to the laws or related legislation that OSCE/ODIHR may make in the future.

## **II. ANALYSIS AND RECOMMENDATIONS**

### **1. International Definitions and Standards Related to Anti-Discrimination Legislation**

10. General international anti-discrimination standards can be found in human rights instruments such as the International Covenant on Civil and Political Rights<sup>5</sup> (hereinafter “the ICCPR”) (Article 26) and the European Convention on Human Rights<sup>6</sup> (hereinafter “the ECHR” or “the Convention”) (Article 14,

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<sup>4</sup> For more information, please see: <http://europa.eu/about-eu/countries/>

<sup>5</sup> The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have all ratified this Covenant. In Kosovo, it is directly applicable following Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>6</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have all ratified

in combination with other articles of the Convention protecting individual rights and freedoms and Protocol No.12<sup>7</sup>). Other conventions combating more specific aspects of discrimination, such as the UN Convention on the Elimination of All Forms of Racial Discrimination<sup>8</sup> (hereinafter “the CERD”), the UN Convention on the Elimination of All Forms of Discrimination Against Women<sup>9</sup>, the UN Convention on the Rights of Persons with Disabilities (hereinafter “the CRPD”)<sup>10</sup> and Convention No. 111 of the International Labour Organisation (ILO) prohibiting discrimination in the field of employment and occupation,<sup>11</sup> are all relevant in this context.

11. Both Article 26 of the ICCPR and Article 14 of the ECHR protect individuals from discrimination based on an extensive and non-exhaustive range of grounds.<sup>12</sup> The overall concept behind the anti-discrimination provisions in the ICCPR and the ECHR is to prevent any difference in treatment of persons in a relevantly similar or analogous situation that is not based on “objective and

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the Convention. In Kosovo, it is directly applicable following Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>7</sup> Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) adopted on November 4, 2000, in Rome and entered into force on April 1, 2005. Unlike Article 14 of the Convention itself, the prohibition of discrimination in Protocol 12 is not limited to enjoying other rights in the Convention. The first judgment of the ECtHR finding a violation of Article 1 of Protocol No. 12 was in the case of *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. [27996/06](#) and [34836/06](#). Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have all ratified Protocol No. 12. In Kosovo, it is directly applicable following Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo, which cover both the Convention and its Protocols.

<sup>8</sup> The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in resolution 2106 (XX) of 21 December 1965 and signed on 7 March 1966. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have all ratified the Convention. In Kosovo, it is directly applicable following Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>9</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted by resolution 34/180 of the General Assembly at its thirty-fourth session, 18 December 1979. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have all ratified the Convention. In Kosovo, it is directly applicable following Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>10</sup> Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, and Montenegro have ratified the Convention. This Convention is not mentioned as applicable in Kosovo under Article 22 of the constitution and Article 3.2 of the Constitutional Framework for Provisional Self-Government in Kosovo.

<sup>11</sup> Discrimination (Employment and Occupation) Convention, 1958 (No. 111), adopted on 25 June 1958 by the General Conference of the International Labour Organisation at its forty-second session. Entry into force: 15 June 1960, in accordance with article 8; available at: <http://www.un.org/disabilities/default.asp?id=259>. Albania, Bosnia and Herzegovina, Croatia, Montenegro and Serbia have ratified the Convention.

<sup>12</sup> Article 26 states that “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status”. Similarly, Article 14 foresees that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

reasonable” grounds.<sup>13</sup> This means that situations will not constitute discrimination where the distinction at issue pursues a “legitimate aim” and where there is a “reasonable relationship of proportionality between the means employed and the aim sought to be realized”.<sup>14</sup>

12. Under European Union law, numerous directives have reflected EU countries’ commitment to protecting equal treatment of all persons, in particular the “Racial Equality Directive”<sup>15</sup> (Council Directive 2000/43/EC) and the “Employment Equality Directive” (Council Directive 2000/78/EC)<sup>16</sup> (hereinafter “the EU Equality Directives”). The EU directives include clear and specific definitions of direct and indirect discrimination, as well as remedy and enforcement provisions and requirements for anti-discrimination/equality bodies. These bodies focus on the promotion of equal treatment and on protection from discrimination.
13. Of the various OSCE Commitments focusing on equal treatment, the Vienna Document is among the most specific. It stresses that all OSCE participating States commit to ensuring human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>17</sup>
14. More specifically, the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area calls on States to adopt and implement effective legislation to combat racial and ethnic discrimination on all fields. Such anti-discrimination should, according to the Action Plan, ensure, among others, prohibition of direct and indirect racial discrimination, effective, proportionate and dissuasive sanctions, and equal access to effective remedies.<sup>18</sup>

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<sup>13</sup> See the UN Human Rights Committee’s General Comment No. 18, par. 13, and its admissibility decision in the case of *Balani v. Spain*, Communication No. 1021/2001, of 28 March 2003, par 4.3. See also, among others, the recent ECtHR judgment in the case of *Carson and Others v. the United Kingdom*, no. 42184/05, of 16 March 2010, par 61.

<sup>14</sup> *Andrejeva v. Latvia* [GC], no. 55707/00, judgment of 18 February 2009, par 81.

<sup>15</sup> See Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

<sup>16</sup> See the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, hereinafter “the Employment Equality Directive” or “Council Directive 2000/78/EC”.

<sup>17</sup> The OSCE Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, pars 13.7 - 13.8. The Ministerial Council Decision 4/03 on Tolerance and Non-Discrimination of 2 December 2003 reaffirmed the Ministerial Council’s concern about discrimination in all participating States and the Permanent Council Decision no. 621 of 29 July 2004 on Tolerance and the Fights against Racism, Xenophobia and Discrimination committed participating States to consider enacting, or strengthening, as appropriate, legislation prohibiting discrimination.

<sup>18</sup> *Op. cit.*, footnote 3, par 9.

## **2. Protected Characteristics**

### **2.1 General Characteristics**

15. While one element of discrimination entails a difference in treatment, not all differences in treatment are considered to be discrimination. Rather, this applies only to such actions or omissions which are based on certain grounds, or “protected characteristics”. Habitually, these are grounds that are not so much linked to a person’s character or actions, but instead to his/her background or appearance.
16. Article 26 of the ICCPR prohibits discrimination based on the following grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The same grounds are reflected in relevant OSCE commitments, such as the Vienna Document (see par 13 *supra*). Article 14 and Article 1 of Protocol No. 12 of the ECHR enumerate the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The EU Equality Directives provide a framework for combating discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.
17. All laws examined contain quite extensive lists of prohibited grounds, reflecting, in large parts, the wider lists of the ICCPR and the ECHR.<sup>19</sup> The laws of Albania, Croatia and Montenegro comprise all of the grounds found in the EU Directives, while supplementing them with additional characteristics. The same holds true for the Anti-Discrimination Law of Kosovo (hereinafter the “Law of Kosovo”).
18. It is noted that the Law on Prohibition of Discrimination of Bosnia and Herzegovina (hereinafter “the BiH Law”)<sup>20</sup> does not include age or disability in the list of protected characteristics, while the Law on Prevention and Protection against Discrimination of the Former Yugoslav Republic of Macedonia (hereinafter the “Law of fYRoM”)<sup>21</sup> does not cover sexual orientation. The Law on the Prohibition of Discrimination of Serbia (hereinafter the “Serbian Law”)<sup>22</sup> leaves non-religious belief outside of the protected scope. It is recommended to include the missing grounds in the respective laws in order to bring them in line with international standards, namely the ICCPR and the ECHR (fYRoM and Serbia), and, in the case of Bosnia and Herzegovina, with the CRPD and the EU Equality Directives.
19. Moreover, certain laws in question list grounds which would benefit from further clarification. For example, the Albanian Law on Protection from Discrimination (hereinafter the “Albanian Law”)<sup>23</sup> refers to “genetic predispositions”, the Croatian Anti-Discrimination Law (hereinafter the “Croatian Law”)<sup>24</sup> covers “genetic heritage”<sup>25</sup>, the Law of fYRoM<sup>26</sup> refers to

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<sup>19</sup> See Annex 1.

<sup>20</sup> Article 2 of the BiH Law

<sup>21</sup> Article 3 of the Law of fYRoM

<sup>22</sup> Article 2 of the Serbian Law

<sup>23</sup> Article 1 of the Albanian Law

<sup>24</sup> Article 1(1) of the Croatian Law



“belonging to a marginalized group” and the Serbian Law<sup>27</sup> includes “appearance” in the list. The above grounds would benefit from some clarification, to ensure proper applicability of the above legislation.

## ***2.2. Discrimination Based on Assumed Characteristics or Based on Association***

20. It is worth stressing that it may be helpful to also reflect cases of discrimination based on assumed characteristics, or based on association with a characteristic, in relevant legislation combating discrimination. In the first case, the assumption leads to discrimination, regardless of whether such an assumption is factually correct or not (e.g. a dark-skinned person is discriminated for being a Roma, whereas he/she is in fact not Roma).
21. In the second case, a person is discriminated against because of a relationship with a person or persons from a protected group, e.g., a heterosexual man may suffer discrimination because he is with friends who are homosexual. Another example would be if an individual is discriminated against because of the race of his/her partner.
22. The examined laws have addressed the issues of assumed and associated discrimination in different ways. The Albanian Law<sup>28</sup>, for example, states that discrimination occurs when there is a distinction, limitation or preference because of association with persons who belong to a protected group or because of the supposition of such an association. Therefore, discrimination by association and discrimination based on supposed/assumed association are barred. However, discrimination on the basis of assumed membership of a group is not specifically prohibited. It is, therefore, recommended to clarify this and include the prohibition of discrimination based on presumed characteristics or criteria in the Albanian Law.
23. The BiH Law<sup>29</sup> affords protection from discrimination based on “real or assumed features”, as well as on the ground of “connection to a national minority”. However, discrimination on the basis of association with any other group is not prohibited, and it is thus recommended to expand the protection from discrimination by association accordingly.
24. The Croatian Law<sup>30</sup> affords protection against discrimination on the basis of assumed characteristics. It also stipulates that discrimination of a person related to the discriminated person by “kinship or other relationship” is prohibited. Such “other relationship” is not, however, defined in the Law. The prohibition of discrimination on the basis of association with a group also

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<sup>25</sup> It is noted that discrimination based on a person’s “genetic heritage” is forbidden based on Article 11 of the Council of Europe’s Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, adopted on 4 April 1997), but that the Convention also does not define this term. The Convention was ratified by the Republic of Croatia on 28 November 2003.

<sup>26</sup> *Op. cit.*, footnote 23

<sup>27</sup> *Op. cit.*, footnote 24

<sup>28</sup> Article 3(4) of the Albanian law

<sup>29</sup> Article 2(1) of the BiH Law

<sup>30</sup> Article 1(1) of the Croatian Law

appears to be lacking, as only individual relationship is regulated. It would be advisable to revise the Law accordingly.

25. In the Law on Prohibition of Discrimination of Montenegro<sup>31</sup> (hereinafter the “Law of Montenegro”), “assumed membership in a group” is protected, which presumably reflects discrimination based on assumption. At the same time, the protection from discrimination on the basis of association with a group other than a national minority likewise seems to be lacking. It would be advisable to amend this provision accordingly.
26. The Law of fYRoM does not address these two forms of discrimination at all. Both forms of discrimination are likewise not mentioned in the Law of Kosovo. It is recommended to include the prohibition of both forms of discrimination in the respective laws.
27. Finally, the Serbian Law<sup>32</sup> protects against discrimination on real or presumed grounds. However, in terms of protecting against association with a specific identifiable group of persons, it only protects “members of families” and persons close to those being discriminated. It is recommended to amend the Law accordingly to include other forms of discrimination based on association.

### **3. Personal Scope**

28. Generally, international anti-discrimination instruments apply the equality principle to all persons (see Article 26 ICCPR). This implies that protection against discrimination should not be conditional on nationality, citizenship or residence status. Furthermore, protection from discrimination should also be provided for legal persons (as provided for in par 16 of the Preamble to the EU Racial Equality Directive). The laws of Albania, BiH, Croatia and Serbia appear to satisfy these requirements.
29. While Article 4 of the Law of Kosovo stipulates that it shall apply to all natural and legal persons, Article 1 sets out that the purpose of the Law is to prevent and combat discrimination, promote effective equality and put into effect “the principle of equal treatment” of persons referred to in the Law as “the citizens of Kosovo”. This formulation seems to be too restrictive as the principle of equal treatment should be applied to all persons. In this context, it is noted that UNMIK Regulation No. 2004/32, which promulgated the Law in 2004, stated that the word “citizens” shall be replaced by the term “persons in Kosovo”. As stated in the UNMIK Regulation, this should be reflected in the text of the Law.
30. Despite the fact that general protection from discrimination should not be conditional on nationality, citizenship or residence status, both EU Equality Directives provide that they do not cover “difference of treatment based on nationality.” The Laws of BiH<sup>33</sup>, Croatia<sup>34</sup>, fYRoM<sup>35</sup> and Serbia<sup>36</sup> all contain

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<sup>31</sup> Article 2 of the Law of Montenegro

<sup>32</sup> Article 2(1) of the Serbian Law

<sup>33</sup> Article 5(e) of the BiH Law

<sup>34</sup> Article 9(9) of the Croatian Law

<sup>35</sup> Article 14(1) of the Law of fYRoM

provisions which specify that such difference of treatment is permitted in accordance with the law.

#### **4. Material Scope**

31. The principle of equality and non-discrimination shall apply in all relevant fields of public and private life. Thus, Article 26 of the ICCPR does not differentiate in this respect but, in a general manner, speaks of equality before the law, and protection from discrimination for all persons.
32. Under the ECHR, when applying Article 14, the ECtHR has made it clear that it may examine claims under Article 14 taken in conjunction with a substantive right, even if there has been no violation of the substantive right itself. Protocol 12 to the ECHR prohibits discrimination in relation to “enjoyment of any right set forth by law” and is thus greater in scope than Article 14, which relates only to discrimination in the exercise of the rights guaranteed by the ECHR. The relevant Commentary provided in the Explanatory Report of the Council of Europe states that Protocol 12 also relates to those relations between private persons, which the State is normally expected to regulate, “for example, arbitrary denial of access to work, access to restaurants, or to services which private persons may make available to the public such as medical care or utilities such as water and electricity”<sup>37</sup>.
33. In this context, it is noted that the Law of FYRoM<sup>38</sup> states that “the prevention and protection against discrimination shall be applicable for all natural and legal persons in the process of exercise of the rights and freedoms guaranteed with the Constitution and the legislation of the Republic of Macedonia”. Linking the application of the Law to the exercise of rights and freedoms may be too limiting given that, as recognized in Protocol 12 to the ECHR, not all cases of discrimination will involve the infringement of rights.<sup>39</sup> For example, a person who will be barred from entering a club due to his/her ethnicity will not have other rights violated, as no separate right to enter night clubs is enshrined in law. It is recommended to revise this definition accordingly.
34. The Law of Kosovo<sup>40</sup> limits the scope to “any action or inaction which violates the right or rights” of any natural or legal person to the enumerated instances. This reference should likewise be removed, as also here, not all instances of discrimination will necessarily involve the violation of rights.
35. The EU Equality Directives list specific areas in which the principle of equal treatment should be maintained. Four sections are common to both Directives and include: conditions of access to employment, self-employment or an occupation, including selection criteria and recruitment; access to all types of

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<sup>36</sup> Article 3 of the Serbian Law

<sup>37</sup> Protocol no. 12 to the Convention for the protection of Human Rights and Fundamental Freedoms (ETS no. 177) Explanatory Report, par 28

<sup>38</sup> Article 2 of the Law of FYRoM

<sup>39</sup> This definition also appears to be more limiting than the principle of non-discrimination outlined in Article 9 of the Constitution, which merely states that all citizens are equal, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status, Article 29 specifies that foreign subjects shall, as a rule, enjoy the same rights and freedom as citizens.

<sup>40</sup> Article 4 of the Law of Kosovo

- vocational training and guidance, including practical work experience; employment and working conditions, including dismissals and pay; and membership or involvement in workers' organizations, employers' organizations and professional organizations.
36. The Racial Equality Directive extends the scope of protection against discrimination on the grounds of racial or ethnic origin to social protection, including social security and healthcare, social advantages, education, and access to and the supply of goods and services that are available to the public, including housing.
  37. The 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area goes even further by stating that legislation combating racial and ethnic discrimination shall relate to all fields, including, *inter alia*, housing, citizenship and residence, education, employment, and health and social services.<sup>41</sup>
  38. While the scope of most of the laws reviewed are quite broad, it is noted that in the case of certain laws, it may be worthwhile to specify explicitly that all of the above areas are included therein, to ensure full compliance with the above instruments and commitments. The Albanian Law<sup>42</sup>, e.g., while including membership in trade unions in its scope, appears not to include membership in employers' organizations and professional organizations. In the area of housing, it refers to "systemization in a place where housing is offered". Such formulation is not clear and would benefit from clarification; also, the scope should be expanded as set out above.
  39. At the same time, the Croatian Law<sup>43</sup>, while covering work and working conditions (usually focusing on work premises, health and safety issues), does not specifically include conditions of access to employment, dismissal and pay, and employment conditions in the material scope. To enhance clarity of the Law, it may be beneficial to explicitly reflect the scope set out by the EU Equality Directive in the text. Such formulation could be included directly in the Law, or by reference to other legislation where it may be outlined in greater detail, e.g. in labour laws.
  40. It is noted that the Law of fYRoM<sup>44</sup> refers only to "work and labour relations", without referring to the more detailed spheres enumerated in the EU Equality Directives. In order to enhance clarity and foreseeability of the Law, it may be beneficial to be more specific about the spheres covered by the law, which should, in relation to employment, cover areas such as access to employment, self-employment/occupation, including selection criteria and recruitment, and access to vocational training and guidance.
  41. The Montenegrin Law<sup>45</sup>, while prohibiting any form of discrimination, on any ground, at the same time specifies the material scope in certain areas, namely the "use of facilities, buildings, areas in public use", "public service delivery", "health", "education and vocational training", and the field of labour which

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<sup>41</sup> *Op cit.* footnote 3, par 8.

<sup>42</sup> Article 20(2)(d) of the Albanian Law

<sup>43</sup> Article 8 of the Croatian Law

<sup>44</sup> Article 4 of the Law of fYRoM

<sup>45</sup> Articles 10-18 of the Montenegrin Law

encompasses “equal pay for work of equal value”. While the added value of specifically listing certain forms of discrimination in separate provisions is doubtful, it is stressed that this should not be interpreted as limiting the scope of the Law. Thus, the Law could be understood as restricting the protection against discrimination in access to employment, work and education to the ground of health condition. Furthermore, the protection against discrimination in access to healthcare, “the right to work and the rights related to employment relations”, “the right to marry, form a family and other rights from the field of marriage and family relations” may be seen as restricting this field to the ground of disability. The scope and wording of the Law should be revisited to reflect a wide scope of applicability, as required by international and EU law.

42. In Serbia, the material scope of the Law<sup>46</sup> appears not to include the following: access to self-employment or an occupation; membership in employers’ organizations and professional organizations, as well as social advantages and housing. These missing spheres should be included in the Law.

## **5. Key Definitions and Concepts**

### **5.1. Direct Discrimination**

43. Direct discrimination is defined similarly under both the ECHR and EU law. Direct discrimination, as laid down in the Directives, occurs when one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of protected characteristics. The ECtHR states that there must be a “difference in the treatment of persons in analogous, or relevantly similar, situations”, which is ‘based on an identifiable characteristic’<sup>47</sup>. The ECtHR further specifies that discrimination will be found to have occurred if this difference in treatment is not based on an objective and reasonable justification. The EU Equality Directives, while not containing such a caveat in their definition of direct discrimination, do permit an exception to both direct and indirect discrimination in cases where, by nature of particular occupational activities, or due to the context in which they are carried out, a genuine occupational requirement justifies a difference in treatment, provided that the objective is legitimate, and the requirement proportionate.<sup>48</sup>
44. All seven laws in question contain definitions of direct discrimination. The laws in Albania<sup>49</sup>, BiH<sup>50</sup>, Croatia<sup>51</sup> approximate their definitions of direct discrimination to the definition found in the EU Equality Directives. The definitions found in legislation from fYRoM, Montenegro and Serbia, however, would benefit from some revision.

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<sup>46</sup> Article 16 of the Serbian Law

<sup>47</sup> Carson and Others v. the United Kingdom [GC], no. [42184/05](#), §§ 61 and 70, D.H. and Others v. the Czech Republic [GC], no. [57325/00](#), § 175, Burden v. the United Kingdom [GC], no. [13378/05](#), § 60

<sup>48</sup> Article 4 in both EU Equality Directives.

<sup>49</sup> Article 3(2) of the Albanian Law

<sup>50</sup> Article 3(1) of the BiH Law

<sup>51</sup> Article 2(1) of the Croatian Law

45. The definition contained in the Law of Kosovo<sup>52</sup> is also in line with the EU Equality Directives.
46. According to the Law of fYRoM<sup>53</sup>, direct discrimination “on the discriminatory basis is any unpleasant acting, differencing, excluding or limitation which has or shall have a consequence of suspension, violation or limitation of the equal recognition or enjoyment in the human rights and basic freedoms”.
47. This definition does not appear congruous with international anti-discrimination standards. The definition links discrimination to a consequence of suspension, violation or limitation of equal recognition or enjoyment of rights and freedoms, which may limit the scope of applicability of the Law (see pars 32-34 *supra*). The wording of this definition should be clarified.
48. In the Law of Montenegro<sup>54</sup>, the definition of direct discrimination provides for an exception where the difference in treatment is based on a reasonable and objective justification. Given Montenegro’s status as an accession State, it may well be considered worthwhile to revise the wording to reflect EU legislation by outlining that direct discrimination is prohibited in all cases except in cases involving a genuine occupational requirement (see also par 85 *infra*).<sup>55</sup>
49. Finally, the Serbian Law<sup>56</sup> stipulates that direct discrimination shall occur on the grounds of “personal characteristics”. Unless the wording in the Serbian language version is clearly referring to the provision on protected grounds, it is recommended that this part of the Law contain a specific reference to protected grounds under the Law.

## ***5.2. Indirect Discrimination***

50. Another definition of crucial importance is that of indirect discrimination. Both EU Equality Directives state that such discrimination shall occur when an apparently neutral provision, criterion or practice would put persons of a protected characteristic at a particular disadvantage compared with other persons, unless the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The ECtHR has drawn on this definition of indirect discrimination in its judgments, stating that “a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group”<sup>57</sup>.
51. Croatia<sup>58</sup> and Montenegro<sup>59</sup> have introduced definitions of indirect discrimination in their legislation, which generally reflect the formulation

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<sup>52</sup> Article 3(a) of the Law of Kosovo

<sup>53</sup> Article 6(1) of the Law of fYRoM

<sup>54</sup> Article 2 of the Montenegrin Law

<sup>55</sup> The 2012 EU Progress Report on Montenegro also specified that in relation to definitions, legislation on discrimination is not in line with the EU *acquis* (p. 41).

<sup>56</sup> Article 6 of the Serbian Law

<sup>57</sup> *D.H. and Others v. the Czech Republic* [GC], no. [57325/00](#), § 184 ,

<sup>58</sup> Article 2(1) of the Croatian Law

<sup>59</sup> Article 2 of the Law of Montenegro

- found in the EU Equality Directives. The Law of Kosovo<sup>60</sup> also reflects this formulation.
52. However, the definition contained in the Law of BiH<sup>61</sup> does not include the exception of an objective justification.
53. The Serbian Law<sup>62</sup> stipulates that “indirect discrimination shall occur if an individual or a group of individuals, on account of his/her or their personal characteristics, is placed in a less favourable position through an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination, unless it is justified by a lawful objective and the means of achieving that objective are appropriate and necessary”. Again, the reference to personal characteristics is insufficiently precise (see par 49 *supra*).
54. Moreover, the stipulation that the act shall be based on the principle of equality and prohibition of discrimination should be removed. For indirect discrimination to occur, a provision, criterion or practice does not have to be based on the principle of equality and prohibition of discrimination – it is sufficient if it is “apparently neutral”. For example, a store may require customers to produce photographic identification in the form of a driver’s license before collecting an order. This may disadvantage a person with vision impairment who is not eligible to hold a driver’s license. Such a provision may, *prima facie*, appear to be neutral but have a discriminatory impact. It would, therefore, be advisable to revise this provision accordingly.

### **5.3. Harassment**

55. The EU Equality Directives deem harassment to be discrimination, which is when an unwanted conduct related to prohibited grounds takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The ICCPR and the ECHR do not specifically mention harassment, but in the CRPD, it is mentioned in relation to employment rights of disabled persons (Article 27 par 1 b) of the CRPD).
56. The Law of BiH<sup>63</sup> contains a definition of harassment which is in line with the wording in the EU Equality Directives. The Law of Kosovo<sup>64</sup> also contains a definition aligned with the EU Equality Directives.
57. At the same time, the definition contained in the Albanian Law<sup>65</sup> adds that harassment shall “in the case of a less favourable treatment [be] performed as a result of an objection or failure to submit by the person affected by such a behavior”. This could potentially be too narrow, as harassment could also occur without any reason. The definition in the Croatian Law lacks the word “humiliating” (though perhaps degrading behavior could also be classified as inherently humiliating).

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<sup>60</sup> Article 3 (b) of the Law of Kosovo

<sup>61</sup> Article 3(2) of the BiH Law

<sup>62</sup> Article 7 of the Serbian Law

<sup>63</sup> Article 4(1) of the BiH Law

<sup>64</sup> Article 3(c) of the Law of Kosovo

<sup>65</sup> Article 3(5) of the Albanian Law

58. In the Law of Montenegro<sup>66</sup>, the possible results of harassment generally reflect the EU standards, except that “inconvenience” is also cited as a possible result of harassment. This would appear to set the threshold for harassment quite low, as numerous less serious adverse effects could fall under this term. The definition of harassment should thus be amended to reflect EU terminology.

#### ***5.4. Instruction to Discriminate***

59. The EU Equality Directives stipulate that an instruction to discriminate shall be deemed discrimination. All of the examined laws, with the exception of Serbia, contain a provision regulating such instruction. However, the Albanian Law<sup>67</sup> states that the instruction to discriminate is “based on hierarchical relations”. First, this definition does not state that such instruction shall be deemed discrimination. Secondly, the reference to hierarchical relations seems to be unnecessary, as it is limiting in scope, excluding any instruction based on relations of other nature.
60. The Law of Montenegro<sup>68</sup>, on the other hand, mentions both incitement and instruction to discriminate as examples of discrimination. As sanctioning the incitement to discriminate could raise issues with regard to the freedom of expression, it is advised to limit the respective provision to instruction to discriminate.

#### ***5.5. Victimization***

61. Article 9 of the Racial Equality Directive and Article 11 of the Employment Equality Directive refer to victimization. Even though it is not considered a form of discrimination, the EU Equality Directives stipulate that individuals should be protected from any adverse treatment or adverse consequences as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.
62. Generally all laws in question attempt to provide for such protection. The Law of Albania properly reflects the wording of the EU Equality Directives.
63. The Law of Kosovo also contains wording that is compliant with the EU Directives.
64. Definitions contained in the other laws in question, however, are unnecessarily restrictive. For example, the Law of Montenegro<sup>69</sup> appears to be unnecessarily narrow in scope, by only protecting people from victimization in very specific circumstances, namely when they report discrimination, give depositions or offer evidence in proceedings. The scope of the respective provision should be widened, to ensure that all forms of victimization are covered.

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<sup>66</sup> Article 7 of the Law of Montenegro

<sup>67</sup> Article 3(6) of the Albanian Law

<sup>68</sup> Article 2 of the Law of Montenegro

<sup>69</sup> Article 4 of the Law of Montenegro



65. Likewise, the BiH Law<sup>70</sup> protects “persons who reported discrimination or participated in legal proceedings for protection from discrimination”. This type of protection appears to be similarly restrictive, and should be expanded to cover all types of adverse treatment or consequences emanating from such procedures, as stated in the EU Equality Directives.
66. While the Croatian Law<sup>71</sup> enumerates a greater number of cases in which a person will be protected (reporting or witnessing discrimination, refusing to participate, or participating in proceedings), there may still be other instances of adverse treatment or consequences. Furthermore, the respective provision of the Law protects from being placed in a “less favourable position”, which appears to relate more to discrimination, than to the negative or adverse consequences of victimization. It is thus recommended to amend these parts of the Law so that they more aptly reflect the principle of victimization under EU law.
67. In the Serbian Law<sup>72</sup>, treating a person or group of persons “worse than others” shall constitute discrimination if this is based on a request or intention to request “protection from discrimination”, or due to having offered or intending to offer evidence of discriminatory treatment. This provision clearly mixes the concept of discrimination with the concept of victimization, which is protection against adverse treatment or consequences due to anti-discrimination procedures. It would be advisable to amend this provision to make it more consistent with the victimization principle stipulated in the EU Equality Directives.
68. The Law of fYRoM<sup>73</sup> also states that victimization shall be “included in discrimination”, and that persons are protected from unfavourable behavior bearing negative consequences as a result of undertaking activities for protection against discrimination (reporting discrimination, initiating pertinent procedures, or acting as witness during the procedure). Also in this Law, it is recommended to differentiate between discrimination, and victimization, and to protect individuals in all cases where anti-discrimination proceedings may lead to adverse treatment or consequences.

### ***5.6. Reasonable Accommodation***

69. Article 5 of the CRPD states that States shall take all necessary steps to ensure that “reasonable accommodation” is provided. Under Article 2 of the same Convention, this is defined as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.
70. The EU Employment Equality Directive imposes the same obligation on employers in relation to disabled employees, to enable them, where needed, “to have access to, participate in, or advance in employment, or to undergo

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<sup>70</sup> Article 18 of the BiH Law

<sup>71</sup> Article 7 of the Croatian Law

<sup>72</sup> Article 9 of the Serbian Law

<sup>73</sup> Article 10 of the Law of fYRoM

training, unless such measures would impose a disproportionate burden on the employer”. The above measures include modifications or adjustments to the job application process, the physical environment, and policies and practices at work to facilitate qualified disabled candidates.

71. A number of laws in question reflect the main parameters of the CRPD, aside from the Law of Serbia, which does not include the reasonable accommodation requirement. It is recommended to include it in this Law as well, to ensure consistency with the CRPD and the EU Employment Directive. The Law of Kosovo would benefit from the inclusion of such provision in relation to the employment sector as well, to ensure compliance with EU standards.
72. The Croatian Law<sup>74</sup> deems the failure to “adapt the infrastructure and premises” thus removing obstacles that restrict disabled access to publicly available resources, participation in public and social life and access to work and adequate working conditions, to be discrimination. The Law also includes an exception in cases where this poses a disproportionate burden on the responsible person. However, as noted above, adjustments to the job application process and policies and practices at work are also required; the Croatian Law should be adjusted accordingly.
73. The Albanian Law refers to reasonable accommodation in three provisions<sup>75</sup>, and largely reflects what is set out in the CRPD. However, it is noted that while the reasonable accommodation requirement is included under the provision of goods and services, it is not included in parts of the Law describing non-discrimination in employment. It would be beneficial to include it explicitly in relevant provisions, to ensure compliance with the EU Employment Equality Directive.
74. The definition contained in the Law of BiH<sup>76</sup> closely mirrors the reasonable accommodation duty found in the EU Directive. It also states that employers shall take “appropriate measures in order to enable a person with disability to access, participate or to be promoted”. Perhaps this provision could clarify whether it relates to all spheres of life, or only to employment cases.
75. The adjustment of infrastructure for disabled persons is also defined in the Law of fYRoM<sup>77</sup>. It is not clear, however, whether only the failure to adopt measures which would facilitate access to public spaces shall be considered discrimination or whether this also pertains to privately owned work spaces. Furthermore, to adequately reflect the wide scope of the CRPD, it is recommended to include a general reasonable accommodation requirement in the law, relating not only to infrastructure, but to all possible aspects of life covered by the CRPD.
76. The Law of Montenegro<sup>78</sup> describes that the denial of the right to work, making the use of public facilities impossible, restrictive or difficult, and the failure to take special measures to “remedy limitations or unequal position” of

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<sup>74</sup> Article 4(2) of the Croatian Law

<sup>75</sup> Articles 3(7), 5(2) and 20(3) of the Albanian Law

<sup>76</sup> Article 5(f) of the Law of BiH

<sup>77</sup> Article 5(12) of the Law of fYRoM

<sup>78</sup> Article 18 of the Law of Montenegro

the disabled, constitute discrimination. As stated above, such provisions may go too far in that they do not provide for reasonable exceptions, namely where such measures would impose a disproportionate burden on public administration, employers or other stakeholders.

77. Furthermore, other aspects of this definition also fall short in bringing the Law in line with the EU *acquis*. To further enhance protection for disabled persons, it is recommended to extend the Law so that it also includes other aspects of reasonable accommodation, including access to, participation in, or advancement in employment, or training activities, but also other areas of relevance to disabled persons.
78. As it stands, all of the laws examined would benefit from varying degrees of revision to ensure that provisions regulating the reasonable accommodation requirement are in line with relevant parts of the CRPD and the EU Employment Equality Directive. This particularly applies to the Law of Serbia, where it is recommended to include the duty of reasonable accommodation. The Law of Kosovo should also include such a provision.

### **5.7. Segregation**

79. Another important aspect of discrimination with potential implications for the Roma community is that of segregation. Article 3 of the CERD specifically condemns racial segregation, and obliges States to prevent, prohibit and eradicate all forms of racial segregation. This means that racial segregation may never, under no conditions be justified.
80. The issue of segregation is regulated by the laws of BiH<sup>79</sup>, Croatia<sup>80</sup> and Montenegro<sup>81</sup>. The Law of Kosovo<sup>82</sup> likewise regulates this matter.
81. It is noted that none of the above laws specify which type of segregation they are addressing. Moreover, under the definition contained in the law of Montenegro, segregation is permitted where it is objectively justified by a legitimate aim and the means of achieving that aim are proportionate and necessary. The same holds true for the Law of Kosovo. While in certain circumstances, it may indeed be justifiable to separate persons based on their gender, health condition, or age, any kind of racial segregation can never be justified. It is noted that the Albanian Law, the Serbian Law, and the Law of FYRoM do not regulate segregation at all.
82. The respective laws should be amended accordingly, and all laws should specify the absolute ban on racial segregation.<sup>83</sup>

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<sup>79</sup> Article 4(4) of the BiH Law

<sup>80</sup> Article 5 of the Croatian Law

<sup>81</sup> Article 9 of the Law of Montenegro

<sup>82</sup> Article 3(f) of the Law of Kosovo

<sup>83</sup> As the issue only arose in the case of these two laws, segregation is not included in the comparative table under Annex 1.

## **6. Exceptions to the Prohibition of Discrimination**

### ***6.1. Genuine and Determining Occupational Requirement***

83. According to Article 4 of the EU Racial Equality Directive and Article 4 par 1 of the EU Employment Equality Directive, a difference in treatment which is based on a protected characteristic shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.
84. All seven laws under consideration have chosen to include such an exception. Albania<sup>84</sup>, BiH<sup>85</sup>, Croatia<sup>86</sup> and fYRoM<sup>87</sup> appear to have approximated their definitions with the definition of the genuine and determining occupational requirement found in the EU Directives. The definition contained in the Law of Kosovo<sup>88</sup> is also approximated.
85. In the Laws of Montenegro<sup>89</sup> and Serbia<sup>90</sup>, on the other hand, the definitions do not explicitly state that such a requirement should adhere to the proportionality principle. It is advised to revise the relevant provisions accordingly.

### ***6.2. Religious Organizations***

86. Under the EU Employment Equality Directive, national legislation or practices may allow churches and other public or private organizations, whose ethos is based on religion or belief, to treat persons differently on the basis of their religion or belief. Such different treatment shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos. This exception only allows for different treatment on the grounds of religion or belief, and cannot be used to justify discrimination on any other ground.
87. BiH<sup>91</sup>, Croatia<sup>92</sup> and fYRoM<sup>93</sup> included such an exception in their respective laws. However, the definition in the legislation of BiH may be too wide in scope, as it speaks of "doctrines, basic presumptions, dogmas, beliefs or learning of actual confession or religion", which does not necessarily specify that such difference in treatment will be based on persons' religion or belief, as a genuine occupational requirement. The definition in fYRoM's Law applies

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<sup>84</sup> Article 6(2) of the Albanian Law

<sup>85</sup> Article 5(b) of the BiH Law

<sup>86</sup> Article 9(2), item 4 of the Croatian Law

<sup>87</sup> Article 14(2) of the Law of fYRoM

<sup>88</sup> Article 5 of the Law of Kosovo

<sup>89</sup> Article 16 of the Law of Montenegro

<sup>90</sup> Article 16 of the Law of Serbia

<sup>91</sup> Article 5 (c) of the BiH Law

<sup>92</sup> Article 9(2), item 5 of the Croatian Law

<sup>93</sup> Article 14(3) of the Law of fYRoM

to the grounds of “religion, belief, sex or other characteristics”. Such exceptions may well go beyond the parameters of the EU Employment Directive, and should be revisited.

88. The Serbian Law<sup>94</sup> provides for a somewhat different exception by stipulating that “the conduct of priests, that is to say, religious officials, which is in keeping with a religious doctrine, beliefs or the objectives of churches and religious communities” shall not be considered to constitute discrimination. This provision is unclear as it is not entirely certain what type of conduct this would pertain to; therefore, it would benefit from some clarification.

### ***6.3. Other Exceptions***

89. There exist a number of other exceptions in the laws in question. For example, the Albanian Law<sup>95</sup> states that “distinctions in compensation and benefits” established on the basis of protected grounds do not constitute discrimination when “the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk”. The meaning and scope of this provision are not clear and it should thus be revised.

## **7. Equality Bodies**

90. While the ICCPR and the ECHR do not specifically mention the establishment of equality bodies, such bodies are required under the EU Racial Equality Directive. The minimum requirement regarding equality bodies, as stipulated therein, is to have one or more bodies for the promotion of racial and ethnic origin equality which should provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct independent surveys concerning discrimination and publish independent reports and recommendations on any issue relating to such discrimination.
91. The necessity for the independence of such a body is also set out in General Policy Recommendation No. 7 of the Council of Europe’s European Commission against Racism and Intolerance (hereinafter “ECRI”), as are some of its tasks, which should include the right to initiate and participate in court proceedings, and monitoring legislation.<sup>96</sup>
92. Such bodies exist in all target jurisdictions, but in different forms. Next to general human rights institutions, Albania, fYRoM and Serbia also have separate specialized bodies dedicated solely to the protection against discrimination. In BiH, Croatia and Montenegro, the competences with respect to protection from discrimination are vested with the general human rights Ombudsperson. The Ombudsperson is also the responsible anti-discrimination body in Kosovo.

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<sup>94</sup> Article 18 of the Serbian Law

<sup>95</sup> Article 20(5) of the Albanian law

<sup>96</sup> ECRI General Policy Recommendation No. 7, Recommendation 24, as well as pars 51 and 52 of the Explanatory Memorandum.

93. The specialized bodies set up by the laws of Albania, fYRoM, and Serbia are independent; they are appointed by the respective parliaments for five years, and are only accountable to parliament.
94. The more general ombuds offices set up in BiH, Croatia and Montenegro are likewise considered to be independent, as set out in relevant legislation establishing these bodies (though in Croatia the Ombudsman is a Parliamentary Ombudsman).<sup>97</sup> They are all appointed by parliament, for a set tenure, and are only accountable to the parliament. The same holds true for Kosovo where the Ombudsperson is accountable to the Assembly of Kosovo.
95. It should be noted, however, that the Human Rights Protector of Montenegro is appointed by parliament based on the proposal of the President. This procedure has raised some concerns with regard to the independence of the Human Rights Protector in the past.<sup>98</sup>
96. The competences of these bodies in protecting from discrimination found in the reviewed anti-discrimination laws all include assisting victims of discrimination and dealing with their complaints, as well as the publication of reports. While almost all laws foresee the conduct of surveys by these bodies, the Serbian Law does not; it may be advisable to include this task specifically, to make this law fully compliant with the EU Racial Equality Directive.
97. Likewise, most laws foresee the monitoring of the situation and of legislation. While the Law of Kosovo does not specifically mention this, this could perhaps be implied from the general mandate of the Ombudsperson to raise awareness on human rights issues, propose new legislation, and prepare annual reports on the human rights situation. Monitoring is also not explicitly mentioned in the Law of Montenegro, but may be also implied by the Human Rights Protector's mandate to inform the public about discrimination/raise awareness, and collect and analyze statistical data.
98. Certain institutions have even wider mandates that would allow for the participation in proceedings (BiH), the right to file criminal cases with prosecutors (Croatia), the right to initiate proceedings before competent bodies (fYRoM), and the right to submit misdemeanor notices (Serbia). In Kosovo the Ombudsperson can initiate cases before the constitutional court.
99. The Albanian Commissioner for Protection from Discrimination also has quite extensive powers. Next to imposing administrative sanctions, including fines for violating the law, he/she may order regulations or measures, and fine natural or legal persons if they do not inform the Commissioner or implement the decision. Should the person still not implement the decision or pay the fine, then the Commissioner may ask competent authorities to remove or suspend the license or authorization of a person/legal entity required to conduct his/her/its activity.

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<sup>97</sup> Article 13 of the Croatian Law also foresees that certain ombuds tasks may be undertaken by special ombuds bodies, if this is laid down in a special law.

<sup>98</sup> See the OSCE/ODIHR-Venice Commission Joint Opinion on the Law on the Protector of Human Rights and Freedoms of Montenegro, CDL-AD(2011)034, of 19 October 2011, adopted by the Venice Commission at its 88th Plenary Session (14-15 October 2011), pars 17-18. The matter of the Human Rights Protector's independence was also raised in the 2012 EU Progress Report on Montenegro, p. 9: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mn\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf)

100. At the same time, in certain jurisdictions, there appear to be discrepancies between the general scope of the work of ombuds institutions, and the mandate required for adequate and comprehensive protection against discrimination. More specifically, ombuds institutions habitually deal with complaints against public authorities and institutions, and not with complaints against private persons. At the same time, the protection against discrimination should extend to the private sector as well, in particular in the area of employment. Thus, if ombuds institutions should be effective anti-discrimination bodies within the meaning of the EU Racial Equality Directive, their competences need to be expanded in this field.
101. While this is usually reflected in anti-discrimination legislation, the respective basic legislation for establishing ombuds institutions still refers only to complaints against public bodies and institutions, thereby creating a situation where, in terms of scope, the two laws conflict. It looks like this may be the case in Bosnia and Herzegovina and Montenegro. In Croatia, this issue was resolved by a specific reference to competences imposed by other legislation contained in the 2012 Ombudsman's Act.
102. In the Law of Kosovo, there also appears to be a conflict with the relevant legislation on the Ombudsperson.
103. The above discrepancies in legislation should be removed, to ensure that ombuds institutions may be effective anti-discrimination mechanisms in all fields where discrimination may potentially appear.

## **8. Remedies and Sanctions**

104. The right to legal remedy is contained in both Article 2 par 3 of the ICCPR, and Article 13 of the ECHR. Likewise, Article 6 of the CERD, and Article 5 of the CRPD require effective protection and remedies in cases of discrimination on racial/ethnic or disability grounds.
105. According to the EU Equality Directives, infringements of anti-discrimination laws must be met with effective, proportionate and dissuasive sanctions, which may include compensation being paid to the victim.
106. The European Court of Justice has held that any sanction provided by the national legal system must be such as to "guarantee real and effective judicial protection" and must "have a real deterrent effect" on the discriminating entity.<sup>99</sup>
107. The meaning of that concept must be determined in each concrete case in the light of the individual circumstances. A wide range of possible remedies and sanctions exist in the laws in question<sup>100</sup>.

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<sup>99</sup>Marshall (1993), Case C-271/91, par 24; Dekker (1990), Case C-177/88; Von Colson (1984), Case 14/83.

<sup>100</sup>For a detailed description of the remedies and sanctions see Annex 1.

### **8.1 Judicial Procedures**

108. According to the above principles, and the EU Equality Directives, states shall ensure that judicial and/or administrative procedures, including, where they deem it appropriate, conciliation procedures, are available to all persons who consider themselves wronged by the failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.
109. Judicial remedies are envisaged in all laws under examination<sup>101</sup>. Special civil proceedings requiring urgent action of courts are envisaged in BiH, Croatia, fYRoM, Montenegro and the Serbia, while the Albanian Law refers to civil procedure legislation for compensation, and to criminal procedure legislation for “criminal denunciations”. The only types of legal remedies specifically mentioned in the Albanian Law are compensation, and, depending on the case, criminal sanctions (though criminal liability for acts of discrimination should be avoided). This complements the extensive competences of the Albanian Commissioner for Protection from Discrimination, who may impose sanctions for violations and for the failure to comply with his/her decisions (par 99 *supra*).
110. The specific types of lawsuits mentioned in the Laws of BiH, Croatia, fYRoM, Montenegro and Serbia focus on four main remedial actions, determination of the violation, prohibition of the discriminatory act, compensation or publication in the media. All of the above laws also foresee the imposition of fines for different forms of discriminatory behavior, in a more or less specific manner. It would be important to assess, for each individual law, how effective this system of remedies and sanctions is, and whether the requirements of the laws are sufficiently clear and foreseeable.
111. In relation to the Law of Montenegro, it is noted that the imposition of fines is only possible in very specific cases, but not for general acts of anti-discrimination; this should be amended.
112. The deadline for filing anti-discrimination lawsuits is 90 days according to the Law of Montenegro<sup>102</sup>. It is noted that the Law of Croatia, does not specify a time limit and does not, as do other laws, e.g. those of fYRoM or Serbia, specifically refer to other procedural law in relation to the submission of the claim; it is recommended to remedy this, either directly in the Law or by reference to other relevant legislation where this may be outlined in greater detail. Generally, it should be noted that a time limit for bringing a case should not be too short as this may constitute a potential barrier to litigation.
113. In Kosovo, the legal mechanisms for enforcing rights are generally unclear and insufficiently detailed. The legal mechanisms as set out in Article 7 of the Law would perhaps benefit from some clarifications, as it is not apparent which courts have jurisdiction. It would be helpful to include in the Law an indication of the role of courts and types of proceedings related to discrimination complaints before courts, along with references to the

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<sup>101</sup> For judicial procedures see the following: Articles 34-38 of the Albanian Law; Articles 11-19 of the BiH Law; Articles 16-24 of the Croatian Law; Articles 24-31 of the Law of Montenegro; Articles 34-41 of the Law of fYRoM; Article 7 of the Law of Kosovo; Articles 41-46 of the Serbian Law;

<sup>102</sup> Article 27 of the Law of Montenegro



appropriate courts and procedures. This information could be included directly in the Law or by reference to relevant procedural legislation.

114. In particular with regard to liability, it would be beneficial to include in the Law a list of possible claims that could be taken to court aimed at e.g. the cessation of a discriminatory act, the declaration that such an act has taken place, and compensation/damages for such acts. The Law should also specify which types of courts would be competent to hear such cases.

### **8.2 Third-Party Intervention**

115. Article 7 par 2 of the EU Racial Equality Directive and Article 9 par 2 of the EU Employment Equality Directive provide that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the principle of equal treatment is complied with, should be able to engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure. A similar principle is outlined in ECRI General Policy Recommendation No. 7, Recommendation 25.
116. All laws in question contain similar provisions that satisfy part of this requirement, but it is noted that the laws of Albania<sup>103</sup>, Montenegro<sup>104</sup> and Serbia<sup>105</sup> appear to only allow third-party intervention on behalf of complainants, but not in support of them. Furthermore, the Montenegrin<sup>106</sup> and Serbian<sup>107</sup> Laws do not permit third-party intervention in the case of compensation lawsuits.
117. As for the Law of Kosovo, it permits third-party intervention, but apparently also only on behalf of complainants, not in support of them.<sup>108</sup>
118. It is recommended to revise the wording in the above laws to reflect more adequately the principle of third-party intervention outlined in the above international instruments.

### **8.3 Burden of Proof**

119. According to international anti-discrimination standards, and the EU Equality Directives, persons alleging discrimination against them must establish, before a court<sup>109</sup> or other competent authority, facts from which it may be presumed that there has been discrimination. The burden of proving the violation will then shift to the respondent, who must prove that there has been no breach of the principle of equal treatment. This does not, however, apply to criminal procedures, or other procedures where courts have an investigative role.

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<sup>103</sup> Article 34 of the Albanian Law

<sup>104</sup> Article 22 of the Law of Montenegro

<sup>105</sup> Article 35 of the Serbian Law

<sup>106</sup> Article 30 of the Law of Montenegro

<sup>107</sup> Article 46 of the Serbian Law

<sup>108</sup> Article 7.6 of the Law of Kosovo

<sup>109</sup> See *Nachova and Others v. Bulgaria* [GC], nos. [43577/98](#) and [43579/98](#), § 147, as well as *Mukong v. Cameroon*, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994). See also *Bleir v. Uruguay*, Doc. A/37/40, p. 130 (1982)

120. All laws under examination have included provisions which shift the burden of proof to the respondent. However, not all have transposed the requirement in line with international standards, and the EU Equality Directives. It would appear that the relevant provisions contained in the Laws of BiH<sup>110</sup> and Croatia<sup>111</sup> are compatible with the above instruments. The provision contained in the Law of Kosovo<sup>112</sup> also appears to be compatible with international standards<sup>113</sup>.
121. The Albanian Law<sup>114</sup> shifts the burden of proof to the respondent, however, “the plaintiff has the obligation to bring evidence in support of the lawsuit, using every kind of lawful evidence that may show discriminating behaviour”. Such obligation may go beyond that of simply establishing the facts.
122. The Law of fYRoM<sup>115</sup> states that “if the party in a court proceeding shall claim that in accordance with the provisions of this Law his/her right to equal treatment has been violated, he/she is obliged to state all the facts and evidence justifying his/her claim.” Here, as in the case of Albania, the reference to evidence appears problematic.

*[END OF TEXT]*

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<sup>110</sup> Article 15 of the BiH Law

<sup>111</sup> Article 20 of the Croatian Law

<sup>112</sup> Article 8 of the Law of Kosovo

<sup>113</sup> However, it is noted that in UNMIK Regulation No. 2004/32 promulgating the Law, the Special Representative of the UN Secretary-General had stated that Article 8 par 3 should be deleted; this article had initially stipulated that the shift of the burden of proof should not apply to criminal and minor offences proceedings. According to Article 8 of the EU Racial Equality Directive, and Article 10 of the EU Employment Equality Directive, the shift of the burden of proof shall not apply in criminal procedures – in the course of attempting to make the Law compliant with EU Law, this should be borne in mind.

<sup>114</sup> Article 36(6) of the Albanian Law

<sup>115</sup> Article 38(1) of the Law of fYRoM

## Annex 1: Table of Anti-Discrimination Laws (Western Balkans)

### General Information/Scope of Law

Jurisdiction	Name of Law	Date of Adoption	Protected Characteristics	Personal Scope	Material Scope	Recommendations
Albania	<b>Law on Protection from Discrimination</b>	4 February 2010	Gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious or philosophical beliefs, economic, educational or social situation, pregnancy, parentage, parental responsibility, age, family or marital condition, civil status, residence, health status, genetic predispositions, disability, affiliation with a particular group or any other reason	All persons who live and stay in the territory of the Republic of Albania	(Public and private sphere); Employment (the announcement of free places of work; the recruitment and selection of employees; the treatment of employees in the work place, including their treatment during the establishing or changing of working conditions, compensation, benefits and the work environment, treatment related to professional training or during the disciplinary process or related to dismissal from work or the dissolution of a labour contract; membership in labour unions and the possibility of benefiting from the facilities that this membership secures); education, goods and services (the ability to enter into a place where the public is permitted to enter or to use a place that is permitted to be used by the public; the ability to receive or to benefit from goods or services that have to do with health; the contribution and possibility to benefit from goods from social protection schemes, including social assistance, social insurance, protection of children, disability benefits or any another scheme of social protection or other advantage offered to the public; the opportunity to use or enter into an educational institution; systemisation in a place where housing is offered; the sale or renting of residences and other premises; banking services and the opportunity to obtain grants, loans, bank deposits or financing; facilities for entertainment, relaxation and refreshment; facilities for transport or travel; services of the free professions)	<p>To specify that the Law prohibits discrimination based on real or assumed characteristics or criteria;</p> <p>To include membership in employers' organisations and professional organizations in the material scope;</p> <p>To clarify the meaning of "genetic predispositions", as enumerated in the list of protected characteristics;</p> <p>To clarify the meaning of the following part of Article 20(2)(d) pertaining to goods and services: "systemisation in a place where housing is offered"</p>

Bosnia & Herzegovina	<b>Law on Prohibition of Discrimination</b>	28 July 2009	Race, skin colour, language, religion, ethnic affiliation, national or social origin, connection to a national minority, political or any other persuasion, property, membership in trade union or any other association, education, social status and sex, sexual expression or sexual orientation, and every other circumstance  <b>Missing:</b> disability, age	All public bodies at the level of the state, entity, canton and Brcko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as all legal and natural persons, in all spheres of life	(Public and private sphere); Employment, education, science and sports, social protection, health protection, trainings, judiciary and administration, housing, public information and the media; membership in professional organizations, goods and services designated to public and public places, performing entrepreneurship, participation in cultural and art creations, equal participation of all citizens in public life, family, rights of a child	To include disability and age in the list of protected characteristics;  To prohibit discrimination on the basis of association with any group and not only national minorities;
Croatia	<b>The Anti-Discrimination Act</b>	15 July 2008	Race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation	All state bodies, bodies of local and regional self government units, legal persons vested with public authority, all legal and natural persons	(Public and private sphere); Work and working conditions; access to self-employment and occupation, including selection criteria, recruiting and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement and retraining; education, science and sports; social security, including social welfare, pension and health insurance and unemployment insurance; health protection; judiciary and administration; housing; public informing and the media; access to goods and services and their providing; membership and activities in trade unions, civil society organisations, political parties or any other organisations; Access to participation in the cultural and artistic creation.	To prohibit discrimination on the basis of association with a group;  To specifically include: conditions of access to employment, dismissal and pay and employment conditions in the material scope, either directly in the Law, or by referring to other legislation;  To define “genetic heritage” in the Law, or refer to other legislation where it may be found.
Former Yugoslav Republic of Macedonia	<b>Law on Prevention and Protection against Discrimination</b>	8 April 2010	Sex, race, skin color, gender, belonging to a marginalised group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, education, political belonging, personal or social status, mental and physical disability, age, family or marital status, property status, health condition or on any other grounds established by the law or by ratified international agreements  <b>Missing:</b> sexual orientation	All natural and legal persons in the process of exercise of the rights and freedoms guaranteed by the Constitution and the legislation of the former Yugoslav Republic of Macedonia.	(Public and private sphere); Work and labour relations; education, science and sport; social security, including the field of social protection, pension and disability insurance, health insurance and health protection; judiciary and administration; housing; public informing and media; access to goods and services; participating and acting in syndicate, political parties, associations of citizens and foundations or any other organizations based upon participation; culture and	To include sexual orientation in the list of protected characteristics;  To specify that the Law prohibits discrimination based on real or assumed characteristics or criteria;  To prohibit discrimination on the basis of association;  To define “belonging to a marginalized group” as enumerated in the list of protected characteristics;

					other areas determined by law.	<p>To delete the following reference from Article 2: “in the process of exercise of the rights and freedoms guaranteed with the Constitution and the legislation of the Republic of Macedonia”;</p> <p>To broaden the material scope in respect of employment in line with relevant EU Equality Directives;</p>
Montenegro	<b>Law on Prohibition against Discrimination</b>	27 July 2010	Race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender identity, sexual orientation, health conditions, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation as well as other personal characteristics	All natural and legal persons to which the Montenegrin legislation is applicable	Use of facilities/buildings, public service delivery, education and vocational training, labour; access to employment, work and education (restricted to the ground of health condition); access to healthcare, the right to work and the rights related to employment relations, the right to marry, form a family and other rights from the field of marriage and family relations (restricted to the ground of disability)	<p>To include protection from discrimination on the basis of association with any group (not only national minority);</p> <p>To amend the provisions pertaining to the material scope in line with relevant EU Equality Directives;</p>
Serbia	<b>Law on the Prohibition of Discrimination</b>	26 March 2009	Race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, political convictions, age, appearance, membership in political, trade union and other organisations and other real or presumed personal characteristics  <b>Missing:</b> non-religious belief	Everyone	(Public and private sphere); Proceedings conducted before public administration organs, labour, right to employment, free choice of employment, promotion, professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from unemployment, provision of public services and in the use of premises and spaces, education and professional training	<p>To include non-religious belief in the list of protected characteristics;</p> <p>To define “appearance” as enumerated in the list of protected characteristics;</p> <p>To prohibit discrimination on the basis of association;</p> <p>To include the following in the material scope: access to self-employment or an occupation; membership in employers organizations and professional organizations, as well as social advantages and housing.</p>

Kosovo <sup>1</sup>	<b>The Anti-Discrimination Law</b>	19 February 2004	Sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status	While Article 1 refers to “citizens of Kosovo”, Article 4 speaks of “all natural and legal persons” as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates the right or rights of any natural or legal person or persons	(Public and private sphere); Conditions for access to employment, self-employment and to occupation, including selection criteria and recruitment conditions,; access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissals and pay; membership of, and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; social protection, including the Social Assistance Schemes, social security and healthcare; social advantages, including but not limited to humanitarian assistance; education; access to housing, and to all other forms of property (both movable and immovable); access to and supply of goods and services which are available to the public; fair treatment before tribunals and all other organs administering justice; personal security; participation in public affairs, including the right to vote and be voted for; access to public places; and any other right set forth by applicable laws	To specify that the Law prohibits discrimination based on real or assumed characteristics or criteria;  To prohibit discrimination on the basis of association;  To revise Article 1 regarding the “the principle of equal treatment” of the persons referred to in this Article as “citizens of Kosovo” <sup>2</sup> ;  To delete the following reference from Article 4: “any action or inaction which violates the right or rights”.
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<sup>1</sup> This designation is without prejudice to positions on Kosovo’s status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

<sup>2</sup> In UNMIK Regulation No. 2004/32, the then Special Representative of the UN Secretary-General in Kosovo, when promulgating the Law, noted that the word “citizens” should be replaced with “persons in Kosovo”, and that this should be reflected in the Law.

## Definitions

Jurisdiction	Direct Discrimination	Indirect Discrimination	Harassment	Victimization	Instruction to discriminate	Reasonable accommodation	Recommendations
Albania	<b>Direct discrimination</b> is “that form of discrimination that occurs when a person or group of persons is treated in a less favourable manner than another person or another group of persons in a situation that is the same or similar, based on any [protected characteristic]”	<b>Indirect discrimination</b> is “that form of discrimination that occurs when a provision, criterion or practice, apparently neutral, would put a person or group of persons in unfavourable conditions, in connection with the [protected characteristics], in relation to a person or another group of persons, and also when that measure, criterion or practice is not objectively justified by a legitimate aim, or when the means of achieving that aim either are not appropriate or are not essential and in fair proportion with the condition that has caused it”	<b>Annoyance</b> is “that form of discrimination that occurs in the case of an undesirable conduct, when it is related to any of the [protected characteristics], which has the purpose or effect of violating the dignity of a person and the creation of an intimidating, hostile, degrading, humiliating or offensive environment for that person, as well as in the case of a less favourable treatment performed as a result of an objection or failure to submit by the person affected by such a behaviour”	<b>Victimization</b> is “an unfavourable treatment or adverse consequence that comes as a reaction to a complaint or to a proceeding that aims at implementation of the principle of equality”	<b>Instruction to discriminate</b> is “an instruction or a request based on hierarchical relations to discriminate against one or more persons on the basis of the causes mentioned in article 1 of this law”	“Denial of a <b>reasonable accommodation</b> is that form of discrimination that happens whenever there is a denial of or objection to making essential and appropriate regulations or changes that are necessary in a particular case and do not impose an excessive burden, for the purpose of assuring the enjoyment and exercise, on an equal basis, of the fundamental rights and freedoms for persons with a disability or which occurred under other conditions mentioned in article 1 of this law”	<p>To remove the following reference: “based on hierarchical relations” from the definition of instruction to discriminate;</p> <p>To explicitly forbid racial segregation;</p> <p>To remove the following reference in Article 3(5) pertaining to harassment: “an objection or failure to submit by the person affected by such a behavior”;</p> <p>To specifically state that instruction to discriminate shall be deemed to be discrimination;</p> <p>To align the definition of reasonable accommodation with the EU Equality Directives;</p>
Bosnia & Herzegovina	<b>Direct discrimination</b> is “every different treatment on [protected] grounds, i.e. every action or failure to act when a person or a group of persons is put, has been or could be put into a less favourable position unlike some other person or group of persons in similar situations ”	<b>Indirect discrimination</b> is “every situation, in which, an apparently neutral provision, criteria or practice has or would have the effect of putting a person or group of persons into an unfavourable or less favourable position comparing to other persons”	<b>Harassment</b> “shall be considered discrimination in every situation when behaviour is related to one of mentioned [protected] grounds that aims for or has an effect of harming person’s dignity and creating intimidating, hostile, degrading, humiliating or offensive atmosphere”	“A person who reported discrimination or participated in legal proceedings for protection from discrimination shall suffer the consequences of such report or participation”	“Discrimination shall also be considered <b>instruction to discriminate</b> and assistance to others in discrimination”	“Employers shall, based on needs in a concrete case, take appropriate measures, in order to enable a person with disability to access, participate or to be promoted, i.e. to participate in training, if such measure do not represent	<p>To specify that racial segregation shall be banned at all times.</p> <p>To enhance the definition of indirect discrimination by specifying that in case of objective justification, there is no discrimination.</p> <p>To amend the definition of victimization to bring it in line with EU Equality Directives;</p>

						an unreasonable burden for the employer”	
Croatia	<b>Direct discrimination</b> is “treatment based on any of the [protected] grounds whereby a person is, has been, or could be placed in a less favourable position than other persons in a comparable situation”	<b>Indirect discrimination</b> “shall be taken to occur when an apparently neutral provision, criterion or practice places or could place a person in a less favourable position on the [protected] grounds, in relation to other persons in a comparable situation, unless such a provision, criterion or practice may be objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”	<b>Harassment</b> is any unwanted conduct caused by any of the [protected] grounds with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading or offensive environment.	“No person shall be placed in a less favourable position because he/she has reported, in good faith, discrimination, witnessed discrimination, refused an instruction to discriminate or participated in any manner in proceedings based on discrimination in line with provisions of this Act”	“Encouragement to discrimination, if conducted intentionally, shall be deemed to be discrimination”	A failure to enable disabled persons the following, in line with their specific needs, shall also be deemed to be discrimination: - use of publicly available resources, - participation in the public and social life, - access to the workplace and appropriate working conditions, by adapting the infrastructure and premises, by using equipment and in another manner which does not present an unreasonable burden for the person that is obliged to provide for it.	To include the adjective “humiliating” in the definition of harassment (though perhaps degrading behavior could also be classified as inherently humiliating);  To align the provision on “adapting the infrastructure and premises” with the wording used in the EU Equality Directives on reasonable accommodation;  To specify that racial segregation shall be banned at all times.  To amend the definition of victimization to bring it in line with EU Equality Directives;
Former Yugoslav Republic of Macedonia	<b>Direct discrimination</b> “on the discriminatory basis is any unpleasant acting, differencing, excluding or limiting which has or shall have a consequence of suspension, violation or limitation of the equal recognition or enjoyment in the human rights and basic freedoms, compared to the treatment which has or shall have other person in same or similar conditions”	<b>Indirect discrimination</b> “on discriminatory basis is each putting of any person or group in unpleasant position in comparison to other persons, by adopting provisions or criteria or by undertaking certain activities or practices that are neutral by contents, except when those provisions, criteria or practices result from justified aim, and the contents for achieving that aim are adequate and necessary”	“ <b>Harassment</b> and degradatory behaviour is violation of the dignity of any person or group of persons, which arouse out of discriminatory basis and which aims to and results in violation of the dignity of certain person or creation of threatening, hostile, derogatory or fearful surrounding, approach or practice”	“Unfavourable behavior towards any person, bearing negative consequences as a result to the undertaking certain activities for protection against discrimination (has reported discrimination, initiated a procedure for discrimination and witnessed during the procedure)”	“Discrimination shall be deemed any activity, with which any person directly or indirectly invokes, <b>encourages</b> , gives directions and stimulates other person to perform discrimination”	“Adjustment of the infrastructure and of the services is adopting appropriate measures required in some particular case, in order to provide to the person with intellectual and body disability, the access, the participation and advancing in the labour process, unless these measures impose disproportionate	To amend the definition of direct and indirect discrimination so that they are in congruity with international standards;  To widen the scope of the relevant provision on adjustment of infrastructure to bring it in line with the CRPD;  To explicitly forbid racial segregation;  To amend the definition of victimization to bring it in line with EU Equality Directives;



						encumbrance to the employers”	
Montenegro	<b>Direct discrimination</b> “exists if a person or a group of persons, in the same or similar situation in respect to other person or group of persons, is brought or were brought, or may be brought in an unequal position by an act, action or failure to act, on any [protected] ground, unless the act, action or failure to act are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved”	<b>Indirect discrimination</b> “exists if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into unequal position in respect to other person or group of persons, on any [protected] ground, unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved”	<b>Harassment</b> , “on any [protected] ground, represents certain behaviour toward or treatment of a person who such behaviour or treatment does not want, and which has the purpose or represents violation of the personal dignity, and causes state of intimidation, inconvenience, hostility, humiliation or offensiveness”	“No one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination”	“The <b>incitement or giving instruction</b> to discriminate against certain person or a group of persons on any [protected] ground shall be deemed to be discrimination”	“Discrimination against person with disability exists also in the case when special measures to remedy limitations or unequal position this person is facing are not taken”	<p>To adapt the definition of direct discrimination to EU legislation</p> <p>To delete “inconvenience” as a possible result in the definition of harassment.</p> <p>To delete the reference to “incitement” to discriminate.</p> <p>To amend the definition of reasonable accommodation to bring it in line with international standards;</p> <p>To specify that racial segregation shall be banned at all times;</p> <p>To amend the definition of victimization to bring it in line with EU Equality Directives.</p>
Serbia	<b>Direct discrimination</b> “shall occur if an individual or a group of persons, on the grounds of his/her or their personal characteristics, in the same or a similar situation, are placed or have been placed or might be placed in a less favourable position through any act, action or omission”	<b>Indirect discrimination</b> “shall occur if an individual or a group of individuals, on account of his/her or their personal characteristics, is placed in a less favourable position through an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination, unless it is justified by a lawful objective and the means of achieving that objective are appropriate and necessary”	“It is forbidden to expose an individual or a group of persons, on the basis of his/her or their personal characteristics, to <b>harassment</b> and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, humiliating or offensive environment”	“Discrimination shall exist if an individual or a group of persons is unwarrantedly treated worse than others are treated or would be treated, solely or predominantly on account of requesting or intending to request protection from discrimination, or due to having offered or intending to offer evidence of discriminatory treatment”	-	-	<p>Insofar as this is not already the case, to amend the definitions of direct and indirect discrimination so that they explicitly refer to the protected grounds under the Law;</p> <p>To amend the definition of indirect discrimination so that the stipulation that the act shall be based on the principle of equality and prohibition of discrimination is removed;</p> <p>To amend the provision on victimization to reflect EU legislation.</p> <p>To explicitly forbid racial segregation;</p>

							<p>To include a provision concerning the duty of reasonable accommodation;</p> <p>To include a definition for the instruction to discriminate in the Law and specify that such instruction shall be deemed to be discrimination as well;</p>
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Kosovo <sup>3</sup>	<p><b>Direct discrimination</b> “shall be taken to have occurred where one person is treated less favourably than another is, has been or would be treated in a comparable situation based on one or more [protected] grounds”</p>	<p><b>Indirect discrimination</b> “shall be taken to have occurred where an apparently neutral provision, criterion or practice would put persons, on the basis of one or more [protected] grounds at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”</p>	<p><b>Harassment</b> shall be deemed to be discrimination “when an unwanted conduct takes place (including but not limited to unwanted conduct of a sexual and/or psychological nature) based on [protected] grounds which has the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment, as determined by that person”</p>	<p><b>Victimisation</b> shall be deemed to be discrimination and “shall be taken to have occurred when any person suffers any adverse treatment or adverse consequence as a reaction to a complaint, or to proceedings, which are aimed at enforcing compliance with the principle of equal treatment as defined in Article 2(a), and/or to the provision by such person of information, evidence or assistance in connection with such complaint or proceedings”</p>	<p>“An instruction to discriminate against persons based on [protected] grounds shall be deemed to be discrimination”</p>	-	<p>To specifically mention reasonable accommodation for the disabled in the Law and include it in the list of definitions under Article 3;</p> <p>To explicitly forbid racial segregation;</p>
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<sup>3</sup> This designation is without prejudice to positions on Kosovo’s status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

### Exceptions from the Principle of Anti-Discrimination

Jurisdiction	Exceptions	Positive Action	Genuine and Determining Occupational Requirement	Ethos Based on Religion or Belief	Nationality	Recommendations
Albania	<p>The prohibition of discrimination “is not applicable in cases when there is an objectively justifiable purpose supported on the basis of the Constitution, international acts or agreements ratified by the Republic of Albania and the legislation in force”</p> <p>“distinctions in compensation and benefits” established on the basis of protected grounds do not constitute discrimination when “the distinctions are reasonable and in proportion to a risk that is assessed on the basis of current and statistical data that can be verified and are closely linked to the risk”</p> <p>“the prohibition of discrimination is not applicable to the setting of a particular age for the possibility of social benefits, goods, facilities and services”</p> <p>The prohibition of discrimination is not applicable to the setting of a particular age for the possibility of social benefits, goods, facilities and services</p>	<p>“The elimination of all privileges and of unfair discrimination is guaranteed for everyone, on the basis of the personal, political, economic, social and cultural rights assured by the Constitution of the Republic of Albania and international acts ratified by the Republic of Albania as well as by the laws in force”</p> <p>“A particular temporary measure that aims at speeding up the real establishment of equality, when the absence of equality has been caused by discrimination for any [prohibited] ground is considered a positive action and does not constitute discrimination according to this law. This measure is interrupted as soon as the objectives of the treatment and offering of equal opportunities have been achieved”</p> <p>“The implementation of special and temporary measures, based on the [prohibited] causes, for the purpose of speeding up equality in the field of employment” and “in education is not considered discrimination. The implementation of such measures can in no case mean maintaining unequal or different standards in a permanent manner, and the special measures are interrupted when the objective of the offering of equal opportunities and treatment is achieved”</p> <p>The Council of Ministers, the Minister of Labour, Social Issues and Equal Opportunities and the Interior Minister are responsible for taking measures of a positive nature in order to fight discrimination in connection with the right to employment. The Council of Ministers and the Minister of Education and Science are responsible for taking measures of a positive nature in order to fight discrimination in connection with the right to education</p>	<p>“Different treatment that is based on a [protected] characteristic does not constitute discrimination when because of the nature of the professional activities or the conditions in which the profession or activity is conducted, those characteristics constitute an essential real and professional requirement, provided that the purpose of the different treatment shall be justified and the requirement shall not exceed that which is essential to realise it”</p>	<p>“Permission of a discrimination because of the exercise of the freedom of conscience and religion may be imposed only by law for a public interest or for the protection of the rights of others”</p>	-	<p>To clarify the meaning of the exception relating to “distinctions in compensation and benefits”;</p>

<p><b>Bosnia &amp; Herzegovina</b></p>	<p>The following measures shall not be considered discriminatory if: “they define maximum age as the most appropriate for terminating working relation and determine age as a condition for retirement”; “putting into a less favourable position while defining rights and obligations from the family relation when defined with the Law, and especially in order to protect rights and interests of children, which has to be justified with legitimate purpose, protection of public moral, along with favouring marriage in accordance with provisions of the family law”;</p>	<p>Measures which “come out of implementation or adoption of temporary special measures designed to prevent or compensate damages that persons suffer on [protected] grounds especially members of vulnerable groups, like persons with disabilities, members of national minorities, women, pregnant women, children, youth, elders and other socially excluded persons, civilian victims of war, victims in criminal proceedings, displaced persons, refugees and asylum seekers; i.e. to enable their full participation in all spheres of life”</p>	<p>Measures which “are based on features related to [protected] grounds when in limited circumstances due to nature of concrete professional activities or context in which these are implemented, such feature represents real and defining condition in terms of choice of occupation. This exception shall be a subject to occasional examinations”</p>	<p>Measures shall not be considered discriminatory “when establishing an employment relation, membership, and taking actions that are in compliance with preaching and operating of registered churches and religious communities in BiH, and other public or private organizations working in accordance with the Constitution and laws, if demanded by religious doctrines, beliefs or goals”</p> <p>Measures which “are based on distinction, exclusion or giving advance in relation to employment as a staff member of an institution that is done in compliance with doctrines, basic presumptions, dogmas, beliefs or learning of actual confession or religion, having in mind that every distinction, exclusion or giving advance is done consciously in order not to hurt religious feelings of members of that confession or religion”</p>	<p>Measures “based on citizenship in a way prescribed by the Law”</p>	<p>To clarify the wording of the provision referring to the exception in relation to staff members of certain institutions</p>
<p><b>Croatia</b></p>	<p>Placing in a less favourable position shall not be deemed discrimination in the following cases: “when such a conduct is set forth by law with the aim to preserve health and to prevent criminal acts and misdemeanours, and when the means used are appropriate and necessary for the aim to be achieved; “granting of privileges to pregnant women, children, young people, older persons, persons with caring responsibilities who regularly</p>	<p>“positive action, i.e. when such a conduct is based on provisions of laws, subordinate regulations, programmes, measures or decisions with the aim to improve the status of ethnic, religious, language or other minorities or other groups of citizens or persons discriminated on the [protected] grounds”</p>	<p>Placing in a less favourable position “in relation to a particular job, when the nature of the job is such or the job is performed under such conditions that its characteristics related to any of the [protected] grounds present an actual and decisive condition for performing that job, provided that the purpose to be achieved is justified and the condition appropriate”</p>	<p>Placing in a less favourable position “in relation to occupational activities, entering into membership and acting in conformity with the canon and mission of a church and religious congregation entered into the Register of Religious Congregations of the Republic of Croatia, and</p>	<p>Placing in a less favourable position “on the grounds of nationality pursuant to separate regulations”</p>	

	<p>fulfil their caring duties, and disabled persons with a view to their protection, when such a conduct is based on provisions of laws, subordinate regulations, programmes and measures”; “on the grounds of age and sex in the course of determining insurance premiums, insurance amounts and other insurance conditions in line with relevant and accurate statistical data and rules of actuarial calculations, in which case costs related to pregnancy and motherhood may not justify differences”; “fixing of minimum conditions of age and/or professional experience and/or level of education limit for access to a certain employment or for acquiring other advantages linked to employment when it is provided for in separate regulations”; “fixing of a suitable and appropriate maximum age as a reason for the termination of an employment and prescribing a certain age as a condition for acquiring the right to retirement”; “placing in a less favourable position when regulating the rights and obligations arising from family relations when it is stipulated by law, particularly with the aim to protect the rights and interests of children, which must be justified by a legitimate aim, protection of public morality and favouring marriage in line with Family Act provisions”</p>			<p>any other public or private organization which acts in conformity with the Constitution and laws, if this is required by the religious doctrine, beliefs or objectives”</p>		
<p><b>Former Yugoslav Republic of Macedonia</b></p>	<p>It shall not be deemed discrimination: “setting the marriage, illegitimate community and family exclusively as heterosexual community, i.e. of one man and one woman”; “achievement of the principle of freedom of speech, public performance, opinion and public informing granted with the Constitution”; “setting up requirements for minimum age, professional experience or length of service in the recruitment procedures or in granting certain job-related benefits”; “setting up requirements for maximum</p>	<p>The affirmative measures: “for the benefit of any person, group of persons or community in order to eliminate or to diminish the actual inequalities (...) in order to ensure their natural development and effective exercise of their right to equal opportunities in comparison to other persons, groups of persons and communities”; “affirmative measures which aim to protection of the marginalized groups in order to eliminate or to diminish the actual inequalities”; “the special protection of pregnant woman and mother, stipulated by law, except when the pregnant woman or mother does not wish to</p>	<p>Different treatment of “persons on the basis of characteristics related to any discriminatory ground, when the said characteristics, by the nature of the particular occupation or activity, or of the conditions in which it is carried out, constitute a genuine and determining requirement, the objective is lawful, and the requirement does not exceed the necessary level for its achievement”</p>	<p>The “different treatment of persons on the basis of religion, belief, sex or other characteristics in relation to occupation carried out in religious institutions or organizations when, by reason of nature of the particular occupation or activity or of the conditions in which it is carried out the religion, belief, sex or</p>	<p>The “different treatment of persons which are not citizens of the Republic of Macedonia related to the rights and freedoms granted with the Constitution, with the legislation and international</p>	<p>To delete the grounds of “sex or other characteristics” from the exception pertaining to employers with an ethos based on religion or belief;</p>

	<p>age in recruitment procedures, which is connected to the need for training or to the needs of rational time limitations related to the retirement provided for in the law”; “setting up requirements for minimum and maximum age for access to certain levels of training and education, when the same is objectively justified for achieving lawful objective”</p>	<p>use this protection and has notified the employer for the same in written form”; “the measures provided for in the Law on Employment Promotion”; “different treatment of persons with disabilities during training and acquiring education to the effect of satisfying special educational needs aiming at equalization of the opportunities”; “the measures aimed to providing balance in the participation of men and women until this measures are required”; “special measures which benefit the persons or the groups in less favourable situation result on any discriminatory basis in order to equalization of their opportunities, until that measures are satisfied”; “special protection, stipulated by law, of children without parents, under aged persons, single parents and persons with disabilities”; “measures for protection of originality and identity of the persons belonging to ethnic, religious and language minorities and their right to sustain and develop, individually or jointly, their own identity together with other members in their group and to stimulate conditions for promotion of that identity”; “measures in the field of the education and the training which should provide participation of the persons from ethnic minorities until that measures are required”</p>		<p>other characteristics constitute a genuine and determining requirement, when the objective is lawful, and the requirement does not exceed necessary level for its achievement”</p> <p>The “different treatment of the persons on the basis of religion, belief, sex or other characteristics in relation to education and training for the purposes of the carrying out of the occupation connected to certain religion;</p> <p>“if the participants or bodies of churches and of religious communities, citizen organizations, political parties, syndicate and other organizations entered in register in line with the Constitution and legislation, shall act according to their own doctrine, beliefs and/or objectives set up in their statutes, programmes and/or regulations”</p>	<p>agreements to which the Republic of Macedonia is a party, and which directly arise out of the citizenship of Republic of Macedonia”</p>	
Montenegro	-	<p>“Special measures aimed at creating conditions for the realization of national, gender and overall equality and protection of persons being in unequal position on any ground”</p> <p>“Taking measures of protection according to certain criteria of persons”</p>	<p>“Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified, as well as taking measures of protection according to certain criteria of persons”</p>	-	-	<p>To amend the definition of genuine and determining occupational requirement and specifically state that such requirement is permissible only when “the requirement is proportionate”;</p> <p>To clarify: “taking measures of protection according to certain criteria of persons”</p>

Serbia	"Limitations pertaining to persons performing certain state functions, as well as limitations necessary to prevent advocating or pursuing fascist, Nazi or racist activities, prescribed in accordance with the law, shall not be considered to constitute discrimination"	<p>"Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination"</p> <p>"undertaking protective measures towards certain categories of persons (women, pregnant women, women who have recently given birth, parents, underage persons, disabled persons and the like) [shall] be considered to constitute discrimination"</p>	"Different treatment, exclusion or giving priority on account of the specific character of a job, for which an individual's personal characteristic constitutes a genuine and decisive precondition for performing the said job, if the objective to be achieved is justified, shall not be considered to constitute discrimination"	"the conduct of priests, that is to say, religious officials, which is in keeping with a religious doctrine, beliefs or the objectives of churches and religious communities" shall not be considered to constitute discrimination"	"A foreign person in the Republic of Serbia, in accordance with international treaties, shall have all the rights guaranteed by the Constitution and by law, with the exception of those rights that, in accordance with the Constitution and the law, are only enjoyed by the citizens of the Republic of Serbia"	<p>To amend the definition of genuine and determining occupational requirement and specifically state that such requirement is permissible only when "the requirement is proportionate";</p> <p>To clarify the meaning of the exception pertaining to the "conduct of priests" stipulated in Article 18 of the Law.</p>
Kosovo <sup>4</sup>	-	"With a view to ensuring full equality in practice, a measure to prevent or compensate for disadvantages linked to one or more [protected] grounds shall not be deemed to be discrimination, provided that it is also in compliance with international human rights standards"	"a difference of treatment which is based on a characteristic related to one or more [protected] grounds shall not be defined as discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a real and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate"	-	-	

<sup>4</sup> This designation is without prejudice to positions on Kosovo's status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

## Anti-Discrimination Bodies

Jurisdiction	Name	Competences	Independence/Funding	Measures	Recommendations
Albania	The Commissioner for Protection from Discrimination	Examine complaints from persons or groups of persons; examine complaints from organisations that have a lawful interest to act in the name and with the written consent of individuals or groups of individuals; perform administrative investigations; impose administrative sanctions; encourage the principle of equality and non-discrimination, especially by sensitising and informing about those issues, also including the offering of written information; monitor the implementation of the law; take polls in connection with discrimination; make recommendations to the competent authorities, especially by proposing the approval of new legislation or the amendment or reform of existing legislation; publish reports and make recommendations about any kind of issue related to discrimination; address public opinion directly about any kind of issue related to discrimination; at the request of the court examining a case, set out an opinion in writing on any kind of issue that is related to discrimination; contribute to reporting and to submit reports to international and regional bodies; represent a complainant in the judicial organs in civil cases, with his approval; inform about the right of protection from discrimination and the legal means available; hold a regular dialogue in connection with issues of discrimination with the respective social groups, including non-governmental organisations; conduct consciousness-raising and educational activities that aid in the implementation of this law	<p>“The Commissioner is independent in the exercise of duty and is subject only to the Constitution and law”</p> <p>The Commissioner is elected by a majority of all members of the Assembly;</p> <p>The Commissioner submits a report at least once a year before the commissions of the Assembly;</p> <p>The Commissioner is prohibited from being part of a political organization or party, from carrying out political, state and professional activity, and from taking part in the leading organs of social, economic and commercial organizations;</p> <p>The Commissioner has his own independent budget, which is financed from the State Budget and from various donations</p>	<p>The Commissioner expresses himself by a decision</p> <p>The decision contains appropriate measures and regulations</p> <p>If the person against whom the complaint was submitted does not inform the Commissioner or does not implement the decision, the Commissioner imposes a measure of a punishment by fine (ranging from 10,000 to 80,000 lek)</p> <p>As a final means, especially when the natural or legal subject does not comply with the decision of the Commissioner or does not pay the fine within three months after the time period set by the Commissioner and the sanction has not been objected to in court, the Commissioner may ask the competent authorities to remove or suspend the license or authorisation of the natural or legal subject to conduct his activity</p>	
Bosnia &Herzegovina	Ombudsman for Human Rights of Bosnia and Herzegovina	Receive individual and group complaints related to discrimination; provide needed information to natural and legal persons who filed a complaint for discrimination about their rights and obligations, and possibilities of judicial and other forms of protection; propose initiation of the process of mediation in compliance with provisions of the Law on Mediation; collect and analyze statistical data on discrimination cases; deliver annual and if necessary extraordinary reports on discrimination; inform the public on discrimination manifestations; conduct surveys in the field of discrimination on its own initiative; give opinions and recommendations aiming to prevent and combat discrimination, and suggest appropriate legal and other solutions to the competent institutions in BiH; have the right to initiate and participate in	<p>The Ombudsman of Bosnia and Herzegovina (BiH) shall deliver annual reports to the Parliamentary Assembly of BiH, the Federation of BiH Parliament, the Republika Srpska National Assembly and Brcko District Assembly;</p> <p>The budget of the BiH Ombudsman shall have a special budget line necessary for the functioning of a special department/ special departments for combating discrimination</p>		To ensure that competences of the Ombudsperson also relate to discrimination complaints in the private sphere, if not already the case;



		proceedings for protection from discrimination for misdemeanours; monitor legislations and provide advice to legislative and executive bodies; raise awareness on issues related to racism and racial discrimination in society; improve policy and practices aiming to ensure equal treatment			
Croatia	Ombudsman/special ombudsmen	Receive reports of all the natural and legal persons; provide necessary information to natural and legal persons that have filed a complaint on account of discrimination with regard to their rights and obligations and to possibilities of court and other protection; if the court proceedings have not yet been initiated, examine individual reports and take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons; warn the public about the occurrence of discrimination; with the parties' consent, conduct mediation with a possibility of reaching an out-of-court settlement; file criminal charges related to discrimination cases to the competent state attorney's office; collect and analyze statistical data on discrimination cases, inform the Croatian Parliament on the occurrence of discrimination in annual and, when required, extraordinary reports; conduct surveys concerning discrimination, give opinions and recommendations, and suggest appropriate legal and strategic solutions to the Government of the Republic of Croatia	<p>The Ombudsman shall inform the Croatian Parliament on the occurrence of discrimination in annual and, when required, extraordinary reports;</p> <p>The Ombudsman shall perform his/her duties with independence and autonomy. Any form of influence on the Ombudsman's work shall be forbidden.</p> <p>In the exercise of his/her powers, the Ombudsman shall act in accordance with the constitutional and legal provisions and international legal acts on human rights and freedoms accepted by the Republic of Croatia</p> <p>In the performance of his/her duties the Ombudsman shall adhere to the principles of fairness, equality and morality and shall act impartially and in accordance with standards of good administration.</p>	<p>"take actions falling within his/her competence required for elimination of discrimination and protection of rights of discriminated persons"</p> <p>file criminal charges related to discrimination cases to the competent state attorney's office;</p>	

Former Yugoslav Republic of Macedonia	Commission for Protection against Discrimination	Act upon complaints, give opinion and recommendations in cases of discrimination; give information to complainant on his/her rights and opportunities for initiating court or other procedure; initiate a procedure in front the competent bodies; submit annual report to the Assembly of the former Yugoslav Republic of Macedonia; inform the public regarding cases of discrimination and undertake activities for promotion and education of equality, human rights and non-discrimination; monitor the implementation of the Law, initiate amendments of regulations because of implementation and improvement of the protection against discrimination; establish cooperation with bodies authorized for establishing equality and protection of human rights in the local self-government; give recommendations to state bodies for undertaking measures for administration of equality; give opinions on draft laws significant for the protection against discrimination; collect statistical and other data, form data bases, conduct studies, researches and trainings in relation to discrimination; cooperate with national bodies of other countries, as well as with international organizations in the area of protection against discrimination and adopt rules of procedure and other acts for internal organization of the work	The Commission for protection against discrimination is an autonomous and independent body;  The Commission consists of seven members;  The members are appointed by the Assembly of the Republic of Macedonia with a five-year mandate and a right to be re-elected;	The Commission issues an opinion regarding the alleged discrimination;  The Commission recommends a manner for eliminating the infringements of the right;  If the person to whom the recommendation is given does not act upon the recommendation, or does not eliminate the infringement of the right, the Commission may initiate a procedure in front a competent body for determining its responsibility;	
Montenegro	Protector of Human Rights and Freedoms	Provide required information to the complainant who considers to be discriminated by the natural or legal person, about his/her rights and duties, as well as about possibilities of court protection; conduct conciliation proceeding; inform the public about the important issues of discrimination; if necessary, carry out the researches in the field of discrimination; keep separate records of submitted complaints with regard to discrimination; collect and analyze statistical data on cases of discrimination; undertake actions to raise awareness on issues related to discrimination			To ensure full independence of the Human Rights Protector in relevant legislation  To consider the expansion of the competences of the Human Rights Protector to the private sphere as well for cases involving discrimination;
Serbia	The Commissioner for Protection of Equality	Receive and review complaints, provide opinions and recommendations in specific cases, and pass measures; provide information to the person lodging a complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection, or recommend reconciliation; file law suits in his/her own name, and with the agreement and on behalf of the person discriminated against, unless proceedings before a court of law have already been initiated or concluded by passing an enforceable decision; submit misdemeanour notices on account of violations of rights guaranteed by this Law; submit an	The Commissioner shall be elected by a majority vote of the overall number of representatives of the people, acting upon a proposal submitted by the committee authorised to deal with constitutional matters;  The Commissioner may not perform any other public or political function or any political activity;	The Commissioner shall give an opinion on whether there has been a violation of rights;  If the Commissioner decides that there has been a violation of the provisions of this Law, the Commissioner shall issue a recommendation to the person against whom the complaint was submitted, suggesting a way of redressing the violation in question;	To explicitly include the conduct of surveys in the Commissioner's competences.

		<p>annual report and special reports to the National Assembly about the situation concerning the protection of equality; warn the public of the most frequent, typical and severe cases of discrimination; 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 organs authorised to ensure equality and the protection of human rights on the territory of an autonomous province or a local government; recommend measures to public administration organs and other persons aimed at ensuring equality.</p>	<p>The Commissioner shall be relieved from duty if he/she performs another duty or a job that could influence his/her independence;</p> <p>The Commissioner shall enjoy immunity.</p>	<p>If the person to whom a recommendation is addressed fails to act upon it, that is, if he/she fails to redress the violation in question, the Commissioner shall caution him/her;</p> <p>Should the person fail to redress the violation in question within 30 days of having been cautioned, the Commissioner may inform the public about it</p>	
Kosovo <sup>5</sup>	Ombudsperson of Kosovo	<p>Investigate alleged violations of human rights; draw attention to cases when the institutions of Kosovo violate human rights and make recommendation to stop such cases and when it is necessary to express his/her opinion on attitudes and reactions of the relevant institutions relating to such cases; inform about human rights and to make efforts to combat all forms of discrimination through increasing of awareness, especially through information and education and through the media; inform the Government, the Assembly and other competent institutions of Kosovo on matters relating to promotion and protection of human rights and freedoms; publish notifications, opinions, recommendations, proposals and his/her own reports; recommend the promulgation of new laws in the Assembly, modification of the laws in force and promulgation or amendment of administrative and sub-legal acts by the institutions of Kosovo; to prepare annual reports, periodical reports and others on the situation of human rights and freedoms in Kosovo; recommend to the Assembly the harmonization of legislation with international standards for human rights and freedoms and their effective implementation; cooperate, in accordance with the Constitution and legislation in force, with all organizations, local and international institutions dealing with protection of human rights and freedoms</p>	<p>Article 3 of the Law on the Ombudsperson sets out that the Ombudsperson is an independent institution and that “provisions of this Law apply to protect the rights, freedoms and interests of all persons in the Republic of Kosovo and abroad from illegal actions or failure to act of the bodies of public authorities of the Republic of Kosovo”</p>	<p>“Issues a decision in which his findings and recommendations are submitted”</p>	<p>To consider the expansion of the competences of the Ombudsperson to the private sphere as well for cases involving discrimination</p>

<sup>5</sup> This designation is without prejudice to positions on Kosovo’s status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

## Judicial Remedies

Jurisdiction	Judicial Proceedings	Legal Standing/Third Party Intervention	Burden of Proof	Remedies	Sanctions	Recommendations
Albania	<p>“Every person or group of persons who claim that discrimination has been exercised against them (...) may submit a lawsuit to the competent court according to the definitions of the Code of Civil Procedure for indemnification according to law or, as the case may be, to make a criminal denunciation before the organs competent for criminal prosecution”</p> <p>“The lawsuit should be brought no later than five years from the occurrence of discrimination and no later than three years from the day of knowing about the discriminatory behaviour”</p>	<p>“An organisation with a lawful interest” which has “as the declared object of their activity the protection of human rights or which offer assistance to victims of discrimination” may submit a complaint to the Commissioner;</p> <p>“An organisation with a lawful interest or the Commissioner may submit a lawsuit in the name of a person or group of persons, provided that the Commissioner or organisation shall have the consent by special power of attorney or by declaration before the court of the person or group of persons injured by the discrimination”</p>	<p>“After the plaintiff submits the evidence on which he bases his claim and on the basis of which the court may presume discriminating behaviour, the defendant is obligated to prove that the facts do not constitute discrimination according to this law”</p>	<p>“Indemnification includes, among other things, the correction of the legal violations and their consequences through return to the prior situation, appropriate compensation for the property and non-property damages or through other appropriate measures”</p>	-	<p>To allow third-party intervention in support of complainants</p> <p>To revise the provision pertaining to burden of proof to align it with the requirements of the relevant EU Directives.</p>
Bosnia & Herzegovina	<p>“Discriminated person shall be able to seek protection of his/her rights through existing judicial and administrative proceedings”</p> <p>“Court and other bodies conducting proceedings are obliged to take urgent actions in proceedings, ensuring that all claims about discrimination are investigated as soon as possible”</p> <p>“When all claims are based on the same factual and legal ground, claims can be submitted</p>	<p>During court proceedings, “a third party can join a person or group of persons claiming to be victims of discrimination in the capacity of a body, organization, institution, association or other person whose scope of activities includes protection from discrimination of persons or group of persons whose rights are being decided upon within the proceeding”</p> <p>“The court shall allow participation of a third party only with consent of a person in whose case the third party wants to intervene”</p>	<p>“In cases when a person or group of persons provide facts in proceedings, corroborating allegations that prohibition of discrimination is violated; alleged offender shall have a duty to prove that the principle of equal treatment or prohibition of discrimination has not been breached”</p>	<p>Determination that “a respondent violated a plaintiff’s right to equal treatment” (lawsuit for determining discrimination);</p> <p>Prohibition of “undertaking actions that violate or can violate plaintiff’s right to equal treatment, i.e. to perform actions to remove discrimination or its consequences (lawsuit for prohibiting or ending discrimination)”;</p> <p>Compensation for “material and non-</p>	<p>Fines ranging from 450 to 10,000 KM; relating to specific acts.</p> <p>“Decision on a minor offence prescribed by this Law shall be published in all media available in the whole territory of Bosnia and Herzegovina”</p>	<p>To assess how effective this system of remedies and sanctions is</p>

	<p>cumulatively in a single lawsuit which shall be decided in civil law proceedings”</p> <p>“Deadline for submitting the lawsuit is 3 months after finding about violation of a right and latest one year as of the day a violation was committed”</p> <p>“Regardless of the outcome of the proceedings, the third party shall cover its expenses for participation in the civil proceedings”</p>			<p>material damage (lawsuit for compensation)”;</p> <p>Publishing “a verdict which finds a violation of the right to equal treatment on the expense of the respondent, in case when discrimination is committed through media (printed and electronic)”</p>		
Croatia	<p>“Any person who considers that his/her right has been violated on account of discrimination may request protection of that right in the proceedings deciding upon that right as the main issue, and he/she may also request protection in special proceedings “</p> <p>“Special proceedings for the purpose of protection against discrimination in the area of work and employment shall be deemed to be litigations arising from labour relations”</p> <p>“The court and other bodies conducting the proceedings shall urgently undertake actions within the proceedings, endeavouring to investigate discrimination-related statements as soon as possible”</p>	<p>In litigation “a plaintiff may be joined by an intervenor, being a body, organisation, institution, association or another person that, within its scope of activities, deals with the protection of the right to equal treatment in relation to groups whose rights are decided upon in the proceedings. The court shall decide on the participation of an intervenor by applying accordingly the provisions of the Civil Procedure Act”</p> <p>“The court shall allow participation of the intervenor only with the plaintiff’s consent”</p> <p>“Associations, bodies, institutions or other organisations set up in line with law and having a justified interest in protecting collective interests of a certain group, or those which within their scope of activities deal with the protection of the right to equal treatment, may bring a legal action against a person that has violated the right to equal treatment, if they make plausible that the defendant’s conduct has violated the right to equal treatment of a larger number of persons who predominantly belong to the group whose rights the plaintiff defends”</p>	<p>“If a party in court or other proceedings claims that his/her right to equal treatment pursuant to provisions of this Act has been violated, he/she shall make it plausible that discrimination has taken place. In this case, it shall be for the respondent to prove that there has been no discrimination”</p>	<p>Establishing that “the respondent has violated the plaintiff’s right to equal treatment or that the action the respondent has undertaken or failed to undertake may directly result in the violation of the right to equal treatment (action for determination of discrimination)”;</p> <p>Prohibiting “the undertaking of activities which violate or may violate the plaintiff’s right to equal treatment, or to carry out activities which eliminate discrimination or its consequences (action for prohibition or elimination of discrimination)”;</p> <p>Compensating for “proprietary and non-proprietary damage caused by the violation of the rights protected by this Act (action for</p>	<p>Fines ranging from HRK 5,000 to HRK 300,000; relating to specific acts</p>	<p>To assess how effective this system of remedies and sanctions is</p> <p>To specify the time-limit for initiating anti-discrimination lawsuits, in the law or by reference to other legislation</p>

				damages)”;  Publishing in the media “the ruling establishing the violation of the right to equal treatment, at the respondent’s cost”		
Former Yugoslav Republic of Macedonia	<p>“The person considering that some right has been infringed because of discrimination is entitled to submit a lawsuit in front competent court”</p> <p>“The provisions from the Law on civil procedure are adequately applied to the procedure”</p> <p>“The procedure is urgent”</p>	<p>In a litigation procedure a “body, organization, institution, association or another person, which in the frame of his/her activity deals with protection of the right of equal treatment may join as third party from the party of the person claiming to be a victim of discrimination, whose rights are being decided in the procedure”</p> <p>“The court shall decide on the matter of participation of a third party by applying the provisions from the Law on civil procedure”</p> <p>“Associations and foundations, institutions or other organizations from civil society, that have a justified interest for protection of collective interests of certain group or in the frames of its activity they deal with protection of the rights to equal treatment, may file a lawsuit and in the procedure in front of the court to act as co litigants against the person who violated the right to equal treatment, if they make it probable that with the treatment of the defendant, the right to equal treatment has been violated to larger number of persons”</p>	<p>“If the party in a court proceeding shall claim that in accordance with the provisions of this Law his/her right to equal treatment has been violated, he/she is obliged to state all the facts and evidence justifying his/her claim. Providing evidence that there has been no discrimination is on the burden of the opposing party”</p>	<p>Determination that the respondent “violated the right of the plaintiff to equal treatment, i.e. the action that he/she has undertaken or overlooked may directly lead to violation of the right to equality in the acting”;</p> <p>Prohibiting “undertaking actions violating or actions that may violate the right of the plaintiff to equal treatment, i.e. to perform actions for eliminating the discrimination or its consequences”;</p> <p>“Compensating the pecuniary and non-pecuniary damages caused by violating the rights protected by this Law”</p> <p>Announcing “the verdict in which one determines the violation of the rights to equal treatment in the media on expense of the respondent”</p>	<p>Fines ranging from EUR 400 to EUR 10000; relating to specific acts</p>	<p>To assess how effective this system of remedies and sanctions is</p> <p>To revise the provision pertaining to burden of proof to align it with the requirement of the EU Directives;</p>
Montenegro	<p>“Anyone who considers to be damaged by discriminatory treatment of an authority and other legal and natural person shall be entitled to the court protection, in accordance with the law”</p>	<p>“The lawsuit may be filed, on behalf of discriminated persons, also by organizations or individuals who are dealing with the protection of human rights” (except for compensation);</p>	<p>“If the plaintiff proved the likelihood of respondent committing an act of discrimination, the burden of proving that due to that act the violation of equality in rights and equality before the law did not occur, passes on the respondent”</p>	<p>Establishing the “fact that the respondent has acted discriminatory against the plaintiff”;</p> <p>Prohibiting “exercising the activity that bears potential threat of discrimination, i.e. prohibition of repetition</p>	<p>Fine ranging from two hundred to three hundred times the minimum wage in Montenegro; relating to specific acts</p>	<p>To assess how effective this system of remedies and sanctions is</p> <p>To expand the types of cases leading to the imposition of fines</p> <p>To allow third-party</p>

	<p>“The proceeding shall be initiated by filing a lawsuit”</p> <p>“The provisions of the law regulating civil proceeding shall be accordingly applied”</p> <p>“The proceeding is urgent”</p> <p>“The lawsuit may be filed within 90 days from the day of cognition for the committed discrimination”</p>			<p>of discrimination activity”;</p> <p>“Compensation of damage, in accordance with the law”;</p> <p>In “case discrimination is performed through the media, publication in the media, on the expense of respondent, of the judgment establishing discrimination”</p>		<p>intervention in support of complainants, and in compensation cases</p> <p>To revise the provision pertaining to burden of proof to align it with the requirements of the relevant EU Directives</p>
Serbia	<p>“Anyone who has suffered discriminatory treatment shall have the right to initiate a lawsuit”</p> <p>“The provisions of the law regulating litigation proceedings shall apply accordingly to such a lawsuit”</p> <p>“The proceedings shall be conducted urgently”</p>	<p>The lawsuits (except for lawsuits for compensation) may be initiated by the Commissioner and an organisation engaged in the protection of human rights or the rights of a certain group of people”</p> <p>“If discriminatory treatment solely affects a particular person, these plaintiffs may initiate a lawsuit only with his/her consent given in writing”</p>	<p>“If the plaintiff proves the likelihood of the defendant’s having committed an act of discrimination, the burden of providing evidence that no violation of the principle of equality or the principle of equal rights and obligations has occurred shall fall on the defendant”</p>	<p>Imposing a ban on an activity that poses the threat of discrimination, a ban on proceeding with a discriminatory activity, or a ban on repeating a discriminatory activity;</p> <p>Establishing that the respondent has treated the plaintiff or another party in a discriminatory manner;</p> <p>Taking steps to redress the consequences of discriminatory treatment;</p> <p>Compensation for material and non-material damage;</p> <p>Publishing the decision passed;</p>	<p>Fines from 5,000 to 100,000 dinars; relating to specific acts</p>	<p>To assess how effective this system of remedies and sanctions is</p> <p>To allow third-party intervention in support of complainants and in compensation cases</p> <p>To revise the provision pertaining to burden of proof; as it currently refers to “proving” the likelihood which would appear to go beyond the mere establishment of facts required by the Equality Directives.</p>

Kosovo <sup>6</sup>	Any claim of discrimination shall be “decided or adjudicated in accordance with applicable law by administrative bodies and courts of competent jurisdiction, which have jurisdiction over the concrete issue covered by the claim”	“Associations, organisations or other legal entities may institute or support legal actions either on behalf of a claimant or claimants, with their consent, for utilising any judicial and/or administrative procedure for the enforcement of obligations under this Law”	“When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment”	“Compensation for both pecuniary and non-pecuniary damages, suffered by victims of violations which compensation may include restitution of all rights and other remedies, provided within the applicable Law which the competent body deems appropriate”	Fines ranging from EUR 500 to EUR 10000; relating to specific acts	To include in the Law an indication of the role of courts and types of proceedings related to discrimination complaints before courts, along with references to the appropriate courts and procedures, and a list of claims  To allow third-party intervention in support of complainants
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<sup>6</sup> This designation is without prejudice to positions on Kosovo’s status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.