



# EQUAL RIGHTS TRUST

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## **Submission to the Pre-Sessional Working Group for the 72<sup>nd</sup> session of the Committee on the Elimination of All Forms of Discrimination against Women in relation to the fourth periodic report of**

### **Serbia**

**June 2018**

#### **Introduction**

1. The Equal Rights Trust (the Trust) makes this submission to the pre-sessional working group for the 72<sup>nd</sup> session of the Committee on the Elimination of Discrimination against Women (the Committee) in advance of its consideration of a list of issues to be raised with Serbia.
2. The Trust is an independent international organisation whose mission is to eliminate discrimination and ensure that everyone can participate in society on an equal basis. We work in partnership with equality defenders around the world to secure the adoption and implementation of equality laws. Over the course of the last decade, we have worked in partnership with civil society in more than 40 different countries, supporting efforts to secure the adoption and implementation of comprehensive equality laws. We have also worked at the international level to improve knowledge and understanding of the rights to equality and non-discrimination, and the role of equality law in securing rights and development.
3. The Trust has been involved in challenging discrimination in Serbia since 2014. Our work has ranged from capacity-building and awareness-raising with civil society, lawyers, government, statutory and constitutional bodies, support to working with lawyers taking strategic litigation in cases of discrimination. We are currently working in Serbia with two partners on a project that seeks to improve the effectiveness of Serbia's legal and policy framework on equality in practice. Our partners are: the Association of Citizens Praxis (Praxis), a leading Serbian NGO based in Belgrade which has significant experience combatting discrimination; and the Sandzak Committee for Protection of Human Rights and Freedoms (Sandzak Committee), a regional Serbian NGO based in Novi Pazar that aims to protect personal and collective human rights.
4. Over the last year, the Trust and its partners have been preparing a report on the effectiveness of Serbia's legal and policy framework on equality. The report is due to be published in the coming months; this submission presents its preliminary findings. The report assesses both the content of Serbia's equality laws for compliance with its international and regional legal obligations, and the extent to which Serbia has adopted the practical measures required in order to ensure the effective enforcement and implementation of its equality laws in practice. The report has been prepared by the Trust and two expert consultants: Professor Nevena Petrušić, the inaugural Commissioner for the Protection of Equality in Serbia (2010-2015) and Professor of Law, and Ms Kosana Beker,

Assistant to the Commissioner for the Protection of Equality in Serbia (2010-2016) and equality law academic (the researchers). The report is based on extensive research conducted over the past 12 months, including: field research conducted by five civil society organisations (CSOs) in different regions of Serbia; focus group discussions with individuals exposed to discrimination, CSO representatives and lawyers convened in Niš, Belgrade, Novi Pazar, Pančevo, and Vranje; and over 55 interviews with key stakeholders, including legal experts, government officials, and representatives of private sector organisations. The report's findings are currently being validated, including by an expert Working Group comprising leaders of Serbian civil society.

5. In the course of this research, questions have been raised as to the effectiveness of Serbia's equality law framework and its ability to combat discrimination in practice. In particular, our research has indicated that: (a) there is a widespread lack of awareness of the existence of Serbia's equality laws amongst both rights-holders and duty-bearers; and (b) individuals are unable or unwilling to seek legal redress due to the cost of proceedings and lack of confidence in the judiciary as an efficient and independent form of redress. These findings raise concerns about the extent to which Serbia is effectively meeting its obligations under the Convention on the Elimination of all forms of Discrimination Against Women (the Convention).

### **Obligations under Article 2 of the Convention**

6. Under Article 2 of the Convention, states parties "condemn discrimination" and agree to pursue a "policy of eliminating discrimination against women" using all appropriate means. To this end, they undertake to: (a) embody the principle of equality between men and women in law and ensure its practical realisation; (b) prohibit discrimination against women through legislation and other means; (c) guarantee the rights of women equally with men and ensure their effective protection through national tribunals; (d) refrain from discriminating against women through public bodies; (e) take all appropriate measures to eliminate discrimination against women; (f) take all appropriate measures to modify or abolish laws, regulations, customs and practices which discriminate against women; and (g) repeal all national penal provisions which discriminate against women.
7. The Committee, in its General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the CEDAW, made clear that "Article 2 is crucial to the full implementation of the Convention" and that the obligations under Article 2 are "inextricably linked with all other substantive provisions of the Convention".<sup>1</sup> As the Committee has recognised, the realisation of women's rights under the Convention can only be achieved when there is a strong and effectively implemented legal framework to eliminate discrimination and enshrine equality between men and women.

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<sup>1</sup> United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the core obligations of States parties under article 2*, UN Doc. CEDAW/C/GC/28, 2010, Para 6.

8. Article 2(c) establishes an obligation on states parties to protect in law the rights of women and ensure effective enforcement of the legislative framework, requiring the “effective protection of women against any act of discrimination”. The Committee has noted that:

*States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal where appropriate.<sup>2</sup>*

9. Furthermore, in its General Recommendation No. 33 on Women’s Access to Justice, the Committee has noted that there are six interrelated and essential components necessary to ensure access to justice: “justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems.”<sup>3</sup>
10. In recent years, Serbia has made undeniable progress in enacting equality legislation. The most comprehensive is the Law on the Prohibition of Discrimination (the LPD)<sup>4</sup> which *inter alia* prohibits direct and indirect discrimination on an extensive and open-ended list of grounds – including gender, marital and family status, among others – and is generally in line with international best practice standards. The LPD also established the role of the Commissioner for the Protection of Equality (Commissioner) who has the power to receive and review complaints and initiate legal proceedings pertaining to violations of the LPD,<sup>5</sup> among other functions. Whilst the LPD provides relatively comprehensive protection of the rights to equality and non-discrimination, there are some areas in which it falls short of international standards, such as the omission of an explicit provision defining denial of reasonable accommodation as a form of discrimination. Nevertheless, most concerning amongst the findings of our research are the serious questions raised about the effectiveness of the implementation of this legislation in practice.

### **Areas of Concern and Proposed Questions**

11. The Trust’s research for the forthcoming report has led us to be concerned about the extent to which Serbia is meeting its obligations under the Convention in respect of: (a) public awareness of equality laws; (b) access to justice; (c) timely and effective remedies; and (d) enforcement of its equality laws by independent and competent bodies. These areas of concern affect all victims of discrimination in Serbia, including women. We therefore urge the Committee to question Serbia regarding the measures which it has taken or is taking to ensure that it meets its obligations in these respects under the Convention.

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<sup>2</sup> *Ibid.*, Para 34.

<sup>3</sup> CEDAW, *General Recommendation No. 33 on women’s access to justice*, UN Doc. CEDAW/C/GC/33, 2015, Para 14.

<sup>4</sup> Official Gazette of the Republic of Serbia, No. 22/2009.

<sup>5</sup> *Ibid.*, Article 33.

## *Awareness of equality laws*

12. The Committee has noted that, in adopting a policy of eliminating discrimination against women as required by Article 2, states parties must ensure women have access to information about their rights under the Convention and that they are able to effectively promote and claim those rights.<sup>6</sup> In this respect, the Committee has called on states parties to develop “outreach activities and distribute (...) information about the justice mechanisms, procedures and remedies that are available” in relation to women’s rights.<sup>7</sup>
13. In its last Concluding Observations on Serbia, the Committee highlighted that the Convention had not been “invoked, applied or referred to in court proceedings, nor have women claimed their rights to non-discrimination and equality”, noting that this suggests a general “lack of awareness among women and among the judiciary and legal professionals about the rights of women under the Convention”.<sup>8</sup>
14. The Trust’s research over the past 12 months indicates that there continues to be widespread lack of awareness amongst rights-holders, including women, of the existence of Serbia’s equality laws and/or mechanisms for redress. The Trust convened five focus groups with victims of discrimination and their representatives in late 2017. In three of these focus groups, participants explicitly highlighted that lack of awareness of Serbia’s equality laws is one of the main reasons for their poor enforcement of the right to non-discrimination.<sup>9</sup> For example, a participant at a focus group in Vranje stated: “in 90% of cases, people recognise discrimination, but they do not know what to do when it happens and how to react to it.”<sup>10</sup>
15. The Trust urges the Committee to ask Serbia: 1) What is the state’s assessment of the current level of public awareness of equality laws? 2) What measures have been taken to ensure that women are made aware of their rights under the Convention and domestic law? 3) What assessment, if any, has the state made of the effectiveness of these measures? 4) What measures does the state plan to take to address the lack of awareness of rights among women?
16. The Trust’s researchers conducted interviews with 47 duty-bearers from the public and private sector to assess their level of awareness of Serbia’s equality laws. Overwhelmingly, interviewees were unfamiliar with the key elements of equality laws, including their obligations as duty-bearers; most interviewees were aware that discrimination was prohibited in Serbia, but their knowledge extended little further.<sup>11</sup>

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<sup>6</sup> See above, note 1, Para 27.

<sup>7</sup> CEDAW, *Concluding Observations on Serbia*, UN Doc CEDAW/C/SRB/CO/2-3, 30 July 2013, Para 17(c).

<sup>8</sup> *Ibid.*, Para 8.

<sup>9</sup> Equal Rights Trust focus groups held in Belgrade, 10 November 2017; Novi Pazar, 15 November 2017; and Vranje, 21 December 2017.

<sup>10</sup> Equal Rights Trust focus group held in Vranje, 21 December 2017.

<sup>11</sup> Equal Rights Trust interviews with public and private sector duty-bearers, various locations, 2017-2018. Full details of interviews available on request

17. The Trust therefore calls on the Committee to ask Serbia: 1) What is the state's assessment of the current level of awareness amongst duty-bearers of equality laws? 2) What measures has the state taken to ensure adequate awareness of these laws and their obligations among duty-bearers?

### ***Access to justice***

#### *Economic barriers*

18. The Committee has noted that the Convention requires states parties to provide women with access to “affordable, accessible and timely remedies, with legal aid and assistance as necessary”.<sup>12</sup> This requires states parties to remove economic barriers by providing legal aid and ensuring court costs are “reduced for women with low incomes and waived for women in poverty”.<sup>13</sup> However, our research shows that many individuals in Serbia – particularly amongst marginalised groups who are overrepresented among the poor – are unable to access to justice in relation to discrimination, due to the absence of state-funded legal aid and high court fees.
19. In Serbia, there is no general scheme under which an individual can apply for free or reduced-fee legal services. Claimants also face significant court fees which apply to all civil litigation in Serbia.<sup>14</sup> The LPD does not provide for any release from payment of such fees in discrimination proceedings. Further, while some schemes for free or reduced cost legal representation or court access do exist, these are *ad hoc* in nature and public awareness of them is low.<sup>15</sup> A participant in one of our focus groups explained how concerns over the cost of legal proceedings can impede access to justice:

*There is a lack of money for paying the court fees. People believe that court proceedings are expensive, that the judiciary system is slow, they do not know the legal terminology, and there are no free legal aid systems in all municipalities.<sup>16</sup>*

20. The Trust therefore urges the Committee to ask Serbia: 1) What measures has the state taken to remove economic barriers to women's access to justice? 2) What assessment, if any, has the state made of the effectiveness of these measures? 3) What measures does the state plan to take to address the economic barriers to women's access to justice?

#### *Physical barriers*

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<sup>12</sup> See above, note 1, Para 34.

<sup>13</sup> See above, note 3, Para 17(a).

<sup>14</sup> World Bank, *Serbia Judicial Functional Review*, 2014, available at: <http://www.mdtfjss.org.rs/data/pub/sjfr/en/Serbia-Judicial-Functional-Review.pdf>, p. 24.

<sup>15</sup> Equal Rights Trust interview with representative of a Legal Clinic in Niš, 27 December 2017.

<sup>16</sup> Equal Rights Trust focus group, held in Niš, 1 November 2017.

21. The Committee has emphasised that effective access to justice requires states parties to ensure that courts are available “throughout the entire territory of the state party, including in remote, rural and isolated areas”.<sup>17</sup> In 2013, jurisdiction for discrimination proceedings in Serbia was changed from the more numerous Basic Courts to the Higher Courts, of which there are only 25.<sup>18</sup> Self-evidently, a reduction in the number of courts with jurisdiction to hear discrimination complaints creates additional barriers to access to justice, in terms of time and cost of travel to attend court hearings.
22. The Trust therefore calls on the Committee to ask Serbia: 1) What measures has the state taken to ensure the availability of courts for women involved in, and wishing to bring, legal proceedings relating to discrimination? 2) What assessment, if any, has the state made of the effectiveness of these measures? 3) What measures does the state plan to take to address the lack of availability of courts for women involved in, and wishing to bring, legal proceedings relating to discrimination?
23. The Committee has also called on states parties to ensure that the “physical environment” of judicial institutions and other services are “welcoming, secure and accessible to all women”.<sup>19</sup> They must “pay special attention to access to justice systems for women with disabilities”.<sup>20</sup> Our research indicates that persons with physical disabilities continue to face difficulties in accessing justice, due to the physical inaccessibility of lawyers’ offices and court buildings, among other barriers.<sup>21</sup>
24. The Trust therefore urges the Committee to ask Serbia: 1) What measures has the state taken to ensure that judicial institutions and other services are physically accessible for all, including women with disabilities? 2) What assessment, if any, has the state made of the effectiveness of these measures? 3) What measures does the state plan to take to address the inaccessibility of judicial institutions and other services?

### ***Affordable, accessible and timely remedies***

25. The Committee has determined that it is incumbent on states parties to ensure “women have recourse to affordable, accessible and timely remedies” for instances of discrimination.<sup>22</sup> Delays in court proceedings in Serbia are well-documented, particularly

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<sup>17</sup> See above, note 1, Para 16(a).

<sup>18</sup> Article 23 of the Law on Courts; “Official Gazette of the RS”, nos. 116/2008, 104/2009, 101/2010, 31/2011 – other law, 78/2011 – other law, 101/2011, 101/2013, 106/2015, 40/2015 – other law, 13/2016, 108/2016 and 113/2017.

<sup>19</sup> See above, note 1, Para 17(e).

<sup>20</sup> *Ibid.*, Para 17(g).

<sup>21</sup> See, for example; Report on Accessibility of Public Authorities Premises to Persons with Disabilities, Commissioner for protection of Equality, Belgrade, 2013, available at: [http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images\\_files\\_Izvestaj\\_o\\_pristupacnosti\\_poslovnih\\_zgrada\\_drzavnih\\_organa.pdf](http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2012/11/images_files_Izvestaj_o_pristupacnosti_poslovnih_zgrada_drzavnih_organa.pdf).

<sup>22</sup> See above, note 1, Para 34.

in relation to the constitutional appeal process.<sup>23</sup> An EU-supported scheme to tackle case backlog has been implemented but the number of pending cases continues to be a concern.<sup>24</sup> Participants interviewed by the Trust's researchers indicated that the duration of judicial proceedings, combined with a lack of legal aid funding, is a major disincentive to seeking legal redress for discrimination. One stated that "[m]any give up as soon as they are informed that the procedure is very long,<sup>25</sup> while another noted that "[a]ll such proceedings last long, they are expensive and we don't have money to pay the lawyers, courts, etc".<sup>26</sup>

The Trust therefore urges the Committee to ask Serbia: 1) What measures has the state taken to ensure women have access to timely judicial remedies? 2) What assessment, if any, has the state made of the effectiveness of these measures? 3) What measures does the state plan to take to address the delays in court proceedings?

### ***Enforcement by competent and independent bodies***

26. Compliance with Article 2 requires that women's complaints of acts of discrimination be "settled in a fair hearing by a competent and independent court or tribunal where appropriate".<sup>27</sup> Victims and potential victims of discrimination in Serbia reported to the Trust's researchers their lack of confidence in the independence of the judiciary.<sup>28</sup> Public surveys conducted in Serbia have made similar findings<sup>29</sup> and concerns regarding judicial independence have been raised by the Committee's sister bodies.<sup>30</sup>

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<sup>23</sup> See above, for example, note 14, p. 88; in 2014 there were over 700,000 cases pending for more than five years, and almost 200,000 pending for over ten years.

<sup>24</sup> European Commission, *Serbia 2018 Report*, COM (2018) 450 final, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-serbia-report.pdf>, p. 14.

<sup>25</sup> Equal Rights Trust focus group held in Novi Pazar, 15 November 2017.

<sup>26</sup> Case Study Report on the experience of discrimination of a Roma woman referred to as 'S.J.', prepared by one of the Trust's field research sub-grantees in 2017.

<sup>27</sup> See above, note 1, Para 34.

<sup>28</sup> Views were expressed in the focus group held in Pančevo, 8 December 2017, and in the Case Study Report on the experience of discrimination of a bisexual women referred to as 'M.', prepared by one of the Trust's field research sub-grantees in 2017.

<sup>29</sup> See, for example; Lawyers' Committee for Human Rights (YUCOM), Danilo Vuković (ed), *Access to Justice and Free Legal Aid in Serbia – challenges and reforms*, 2013, available at: <http://en.yucom.org.rs/access-to-justice-and-free-legal-aid-in-serbia/#prettyPhoto>. This study found that thirty per cent of respondents had decided not to initiate court proceedings due to a lack of trust in the judicial system. See also above, note 14, pp. 71-72: in this study conducted by the World Bank, which surveyed 3288 people, roughly half of whom had had experience of judicial proceedings, only 26 per cent of respondents indicated that they trusted the judicial system. The reasons cited for the lack of trust included: the duration of proceedings; corruption; political influence; lack of fairness in court decisions and failure of the state to prosecute certain cases.

<sup>30</sup> United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations on Serbia*, UN Doc CERD/C/SRB/CO/2-5, 3 January 2018, Para 11; United Nations Human Rights Committee, *Concluding Observations on Serbia*, UN Doc CCPR/C/SRB/CO/3, 10 April 2017, Para 34.

27. Therefore, the Trust calls on the Committee to ask Serbia: 1) What measures has the state taken to improve the independence and transparency of the judiciary? 2) What assessment, if any, has the state made of the effectiveness of these measures? 3) What measures does the state plan to take to improve judicial independence and transparency?
28. During the Trust's research, civil society representatives expressed concern about the limitations on the mandate and powers of the Commissioner under the LPD. Concerns were raised in particular over the lack of a power to investigate matters and initiate litigation, without first receiving a complaint, and about the adequacy of the Commissioner's budget to fulfil its statutory functions.<sup>31</sup>
29. Therefore, the Trust calls on the Committee to ask Serbia: 1) What measures has the state taken to ensure that the Commissioner's mandate and budget is adequate to enforce the LPD in practice? 2) What assessment, if any, has the state made of the effectiveness of these measures?

## **Conclusion**

30. The findings of our research indicate that the effectiveness of Serbia's legal and policy framework in practice is hampered by a number of factors including: (a) limited awareness of equality laws amongst both rights-holders and duty-bearers; (b) economic and physical barriers to access to justice; and (c) a lack of public confidence in the court system as an efficient and independent mechanism for redress. We urge the Committee to question the state party on the steps it has taken to address these barriers to effective protection of the rights to equality and non-discrimination in practice.
31. We would like to express our gratitude to the Committee for the opportunity to make this submission. We intend to provide the Committee with a copy of our report once it has been finalised and look forward to continuing to support the Committee as it assesses Serbia's compliance with its obligations under the Convention.

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<sup>31</sup> Meeting of the Equality Law Expert Working Group, Sremski Karlovci, 7-8 June 2018.