

# Serbia

## National legal study on ageism and age discrimination

This study has been produced in connection with HelpAge International's global report, *Advancing equality for older people* →



Under international human rights law, States agree to combat discrimination and make progress towards equality. This requires the adoption of comprehensive anti-discrimination legislation, which prohibits all forms of discrimination in all areas of life on an open-ended and extensive list of grounds, including age.<sup>1</sup> The law should establish the framework for promoting equality for older people, and put in place the necessary enforcement and implementation mechanisms needed to ensure access to justice and remedy for victims.

The Serbian legislative framework is broadly compliant with these requirements, although there remains some room for improvement.

### Equality and non-discrimination obligations

Treaty ratification	Ratified	Individual complaints
ICCPR	✓	✓
ICESCR	✓	✗
ICERD	✓	✓
CEDAW	✓	✓
CRPD	✓	✓
CRC	✓	✗
CAT	✓	✓
ICMW	✗	✗
CPED	✓	✓

Serbia has accepted non-discrimination obligations through the ratification of international human rights treaties. The State is party to the International Covenant on Civil and Political Rights (ICCPR), which contains a free-standing right to non-discrimination, and prohibits discrimination in respect of all Covenant rights.<sup>2</sup>

Serbia is also a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as each of the ground-specific treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD). Individuals who have experienced age discrimination are empowered to bring complaints directly to the Human Rights Committee and the CERD, CEDAW and CRPD Committees after exhausting domestic remedies. Additionally, Serbia is a party to relevant regional human rights instruments. The State has ratified the European Convention on Human Rights, as well as Protocol 12 to the Convention, which provides an autonomous right to non-discrimination. Serbia is also party to the revised European Social Charter. As a pre-accession State, Serbia is required to harmonise its legislation with the corpus of EU law, including the requirements of the Equal Treatment Directives.

### The prohibition of age discrimination

Personal scope	
Has the State adopted comprehensive legislation?	✓
Does the law expressly prohibit age discrimination?	✓
Is the list of grounds open-ended and non-exhaustive?	✓

The principal piece of equality legislation in Serbia is the Law on the Prohibition of Discrimination (the LPD), which sits alongside specific equality laws including the Law on the Prevention of Discrimination against



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Persons with Disabilities (LPDPD), and the Law on Gender Equality (LGE), as well as constitutional equality guarantees and anti-discrimination provisions in other legal fields.<sup>3</sup> The LPD has a broad **personal scope**: prohibiting discrimination on the basis of an open-ended and extensive list of grounds that expressly includes age.<sup>4</sup> The law makes clear that such discrimination may be ‘overt or covert’, may involve both acts and omissions, and includes discrimination based on **association** and **perception**.<sup>5</sup> Serbian courts have clarified that a discriminatory ‘intent’ or ‘motive’ is not required to prove discrimination, consistent with best practice.<sup>6</sup> Article 13 of the Law describes “severe forms of discrimination”, which, since June 2021, includes “provoking and encouraging inequality, hatred and intolerance on the grounds of (...) age”. Furthermore, Article 23 establishes a general prohibition of age discrimination, noting the right of older people “to dignified living conditions without discrimination, and in particular the right to equal access and protection from neglect and harassment in the use of health and other public services”.

**Multiple and intersectional** discrimination are both listed as severe forms of discrimination.<sup>7</sup> Although this recognition is positive, it should be noted that international human rights law does not distinguish intersectional discrimination as a more serious form of harm than discrimination that occurs on the basis of a single ground.

Personal scope	
Is multiple discrimination prohibited?	✓
Is discrimination based on association prohibited?	✓
Is discrimination based on perception prohibited?	✓

Forms of prohibited conduct are detailed under Article 5 of the law, and include:

1. **direct discrimination**;
2. **indirect discrimination**;
3. violation of the principle of equal rights and obligations;
4. **victimisation**;
5. associating for the purpose of exercising discrimination;
6. hate speech;
7. **harassment**, degrading treatment and sexual harassment; and
8. incitement to discrimination.

**Segregation** is also prohibited.<sup>8</sup> Each of these forms of discrimination is detailed further under Articles 5-12 of the law. Whilst **denial of reasonable accommodation** is not explicitly listed as a form of discrimination, the amended Article 14 provides that “employers are obliged to take appropriate measures if necessary in a particular case in order to provide access, reasonably adapted workplace, participation, professional development and advancement in the work of employees who are in an unequal position in relation to other employees”. This requirement applies *inter alia* to ‘the elderly’. Consistent with international standards, the denial of an accommodation in employment is not prohibited where such an accommodation imposes a “disproportionate burden on the employer”. Measures will not be considered disproportionate, if they can be “reduced by appropriate public and employment policy measures”.<sup>9</sup> The recognition of a right to reasonable accommodation under Article 14 of the Law is a positive development: providing a means to remove barriers for older people in the workplace and ensure their equal participation. However, denial of reasonable accommodation is not recognised as a discrete form of discrimination, and the duty only applies in the area of employment, excluding other areas of life where such accommodations may be required, such as the provision of goods and services.

Prohibited conduct	
Direct discrimination	✓
Indirect discrimination	✓
Harassment	✓
Denial of reasonable accommodation	?

The obligation to “respect the principle of equality” (including the right to non-discrimination) applies to “everyone”,<sup>10</sup> defined under Article 2 to include all individuals “residing on the territory of the Republic of Serbia or a territory under its jurisdiction, regardless of whether that individual is a national of the Republic of Serbia, some other state or a stateless person, as well as any legal entity registered or operating on the territory of the Republic of Serbia”.<sup>11</sup> The law has a broad **personal scope**: Part III of the LPD prohibits discrimination in different areas of life, including labour relations; the provision of public services, and use of public premises and public spaces; education; and the provision of health care services.<sup>12</sup> This list has recently been expanded to include the area of housing.<sup>13</sup>

The law specifies that differential treatment on the basis of age may be **justified** only where measures adopted pursue a legitimate aim and are necessary and appropriate to that aim.<sup>14</sup> Examples of legitimate differences in treatment are set out under Article 23, which largely mirrors the wording of Article 6(1) of the European Union Framework Employment Directive. This includes, for instance, the setting of special conditions of training and employment, including in relation to the remuneration and dismissal of older people to “ensure their protection”. Article 16 contains a general exception relating to genuine occupational requirements, which applies in the area of work. To be legitimate, measures adopted pursuant to this provision must be ‘justified’. Concerningly, Article 16 also permits the adoption of ‘protection measures’ for certain categories of persons. This includes, for example, pregnant women, persons with disabilities, and parents amongst others. Whilst older persons aren’t expressly included in this list, there is a risk that paternalistic measures built on ageist assumptions could be adopted with the goal of ‘protecting’ older workers. It is important, therefore, that Articles 23 and 16 are interpreted narrowly, in view of the State’s broader human rights obligations. In particular, the UN treaty bodies have stressed that stereotypes cannot be used to justify an otherwise discriminatory policy or practice.<sup>15</sup>

## Equality duties and other equality measures

Alongside eliminating discrimination, States are required to advance equality for members of discriminated groups, including older people. This, in turn, requires the adoption and effective implementation of a comprehensive package of proactive and targeted equality measures which seek to identify and address structural barriers to equal participation. To meet their non-discrimination and equality obligations under international law, many States have enacted equality duties that require public authorities and other duty-bearers such as employers and educators to assess the impact of their policies and mainstream the rights of discriminated groups in their work.

The Serbian equality law framework contains a number of provisions that permit the adoption of **positive action** measures. Whilst the framing of some of these provisions is problematic, and not fully consistent with international standards,<sup>16</sup> they nonetheless offer a means to challenge forms of structural discrimination and make effective progress towards equality. Article 21 of the Constitution, and Article 14 of the LPD each permit the adoption of measures designed to ‘achieve full equality’ for individuals or groups in an ‘unequal position’ in Serbian society. Similar provisions are contained in the LPDPD,<sup>17</sup> and the Law on Gender Equality. Consistent with best practice, Article 14 of the LPD stipulates that positive action measures should be time limited, and “applied [only] until the goal for which they were prescribed is achieved, unless otherwise prescribed by law”.

Under the LPDPD, certain duty-bearers in different areas of life are required to ‘adopt measures’ designed to ensure the equal participation of persons with disabilities, although these measures aren’t generally specified, and the law does not expressly refer to older people. By contrast, the new Law on Gender Equality details several specific measures that should be adopted to achieve gender equality. This includes measures aimed at improving rights protections for certain ‘vulnerable social groups’, including women who “find themselves in an unequal position” on account of their age. Examples of equality measures set out in the law include, *inter alia*, the development of a national gender strategy and an implementing action plan; the development of work plans by public authorities and employers with over 50 staff to implement special measures for gender equality; the adoption of a gender risk management plan, and the mainstreaming of gender equality in the budgetary process.

Unlike the LGE, the LPD does not specify the particular measures that must be adopted to ensure substantive equality. However, in 2021, a new equality duty was introduced into the law, which requires public authorities to conduct an **equality impact assessment** “when preparing a new regulation or public policy relevant to the exercise of the rights of socio-economically disadvantaged persons or groups of persons”.<sup>18</sup> The assessment should include a description of the policy area, and the position of socio-economically disadvantaged groups; an assessment of the proportionality and necessity of suggested changes; and a full risk assessment.<sup>19</sup> Whilst this provision does not expressly extend to older people, human rights bodies have expressed concern at the high levels of poverty affecting older people within Serbia.<sup>20</sup> As this provision has only recently come into effect, its impact on implementation remains to be seen. However, it is undoubtedly a positive development. To ensure the effectiveness of the duty, Serbia should ensure the engagement and participation of older people and groups working on their behalf as part of the equality impact assessment process.

## Enforcement and implementation

To ensure access to justice for victims of discrimination, a wide range of measures are required. This includes the establishment and adequate resourcing of institutions empowered to enforce the legal framework; the amelioration of national rules governing evidence and proof in discrimination cases; and the provision of legal aid and assistance, alongside procedural accommodation and accessibility measures, to remove financial and physical justice barriers. While States may adopt slightly different approaches to the enforcement and implementation of equality law, in all cases people who have been subjected to discrimination must be ensured the right to seek legal redress and an effective remedy.

Enforcement of the anti-discrimination law framework is dealt with through a variety of mechanisms. Notably, the LPD established the position of the Commissioner for the Protection of Equality (Serbia’s national **equality body**) who has the power to receive and review complaints and initiate legal proceedings pertaining to violations of the LPD,<sup>21</sup> among other functions. Serbia’s three equality laws each provide for misdemeanour proceedings to be commenced with respect to violations of certain provisions.<sup>22</sup>

The civil law also provides for a wide range of remedies and sanctions for violations of the right to non-discrimination, including compensation and declaratory relief.<sup>23</sup> Consistent with best practice, Article 45 of the LPD provides for a shift in the **burden of proof** in discrimination cases.

The Commissioner for the Protection of Equality is established under the LPD. The competencies of the commissioner are set out under Article 33 of the Law, which include promotion, prevention, support and litigation functions. The term of the commissioner for the Protection of Equality ended on 27 May 2020,<sup>24</sup> and was not renewed for several months, leaving an unprecedented gap in protection, at a time when the need for effective institutions was of especial importance, in light of the COVID-19 pandemic. As Kosana Beker – the former assistant to the Commissioner for the Protection of Equality – explained, “we were seven months without protection (...) you could go to court, but you know you need money for the court (...) the law cannot be effective if you don't have institutions”.<sup>25</sup> This issue has been partly addressed through recent reforms to the LPD, which now provides for an extension of the term of the previous commissioner to cover the period between appointments. Nonetheless, this situation highlights a broader issue in the implementation of equality legislation in Serbia, which may serve to limit the effective enjoyment of rights by older people.

## Gaps and opportunities

Serbia has a sophisticated anti-discrimination law framework which prohibits age-based discrimination and provides avenues for older people to enforce their rights. Nonetheless, despite recent legislative amendments, there remain gaps and weaknesses in the legal framework. In particular, discrimination prohibitions in the LPD overlap, creating confusion in practice and unnecessary complexity within the law. Whilst the 2021 amendments expand the law’s scope of protection (by identifying instruction to discriminate, segregation and sexual harassment as forms of discrimination), some of the definitions used are problematic. For instance, ground-based harassment and sexual harassment are combined into a single provision, which may create issues in application. Most concerningly, exceptions relating to age discrimination and genuine occupational requirements are broadly drafted, creating a risk that ageist assumptions could be used to justify differential treatment in cases concerning older people, contrary to the requirements of international law and best practice.

Judicial practice on older people rights is a developing area, and despite some positive judgments, some negative practice is also recorded. In 2020, the Constitutional Court issued judgment in an important case concerning older people. As an emergency response to the COVID-19 pandemic, all people aged 65 and over were required to stay indoors. People belonging to this group were allowed to leave the house just once a week for 30 minutes for grocery shopping. Whilst Article 21 of the Constitution prohibits discrimination on the basis of age, age is not included in the list of grounds under Article 202 of the Constitution, which governs derogation in times of national emergency. Consequently, the court held that the measures adopted were legitimate.<sup>26</sup>

The biggest impediment to the protection of older people's rights in Serbia is the enforcement and implementation of the legal framework, which is impeded in practice through a range of factors including:

1. limited awareness of equality laws amongst both rights-holders and duty-bearers;
2. economic and physical barriers to access to justice; and
3. a lack of public confidence in the court system as an efficient and independent mechanism for redress.<sup>27</sup>

Despite improvements in some of these areas in recent years,<sup>28</sup> as the non-appointment of a new Commissioner for the Protection of Equality demonstrates, weak implementation remains a significant problem in practice.

## Endnotes

1. For a discussion of the human rights framework on age discrimination see HelpAge International, *Advancing equality for older people, 2022*, available at: [www.helpage.org/AgeEquality](http://www.helpage.org/AgeEquality)

2. International Covenant on Civil and Political Rights, Articles 26 and 2(1).

3. Law on the Prohibition of Discrimination (LPD), 'Official Gazette of the Republic of Serbia', No. 22/2009; Law on the Prevention Discrimination against Persons with Disabilities (LPDPD), 'Official Gazette of the Republic of Serbia', Nos. 33/2006 and 13/2016; Law on Gender Equality (LGE), 'Official Gazette of the Republic of Serbia', No. 52/2021; and Constitution of the Republic of Serbia, 2006, Article 21. For a discussion of non-discrimination provisions or provisions guaranteeing 'equal rights' in other legal fields, as well as criminal code provisions, see Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, 2019, pp.71–78 and Annex 3.

4. Law on the Prohibition of Discrimination, Article 2(1).

5. Article 2 makes clear that discrimination may occur based on 'real or assumed personal characteristics' and extends to persons, groups, and 'members of their families, or persons close to them'. See *Ibid.*

6. For example, in the decision of the Appellate Court in Nis, GŽ 487/16 from 23 March 2016, it has been stated that "in determining the existence of discrimination, intention or motive is not relevant, given that the aim of protection against discrimination is legal clarification of the situation – the unacceptability of conducted act and its consequences, regardless of whether this can be attributed to the defendant".

7. *Ibid.*, Article 13(5).

8. Law on the Prohibition of Discrimination, Article 5.

9. *Ibid.*

10. *Ibid.*, Article 4.

11. *Ibid.*, Article 2.

12. Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, 2019, p.58.

13. Law on the Prohibition of Discrimination, Article 27a.

14. *Ibid.*, Article 23.

15. See Note 1.

16. See, for example, discussion of the 'special protection' provisions of the Serbian Constitution in Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, 2019, pp.37–38.

17. Law on the Prevention Discrimination against Persons with Disabilities, Article 8.

18. Law on the Prohibition of Discrimination, Article 14.

19. *Ibid.*

20. See Committee on Economic, Social and Cultural Rights, Concluding Observations: Serbia, UN Doc. E/C.12/SRB/CO/2, 2014, paras. 16 and 29, respectively.

21. Law on the Prohibition of Discrimination, Article 33.

22. Law on the Prohibition on Discrimination, Articles 50-60; Law on the Prevention of Discrimination against Persons with Disabilities, Articles 46-52; Law on Gender Equality, Articles 67-70.

23. For further information see Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, 2019, pp.93–94, available at: [www.equalrightstrust.org/ertdocumentbank/Serbia%20report\\_EN.pdf](http://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf)

24. European Commission, Commission Staff Working Document: Serbia 2020 Report, 2020, p.36, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/serbia_report_2020.pdf)

25. Equal Rights Trust, Interview with Kosana Beker, Former Assistant to the Commissioner for the Protection of Equality in Serbia (2010–2016), London, 23 February 2021.

26. Constitutional Court of the Republic of Serbia, Decision No. IUo-45/202.

27. Equal Rights Trust, *Equality in Practice: Implementing Serbia's Equality Laws*, 2019, available at: [www.equalrightstrust.org/ertdocumentbank/Serbia%20report\\_EN.pdf](http://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf)

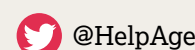
28. See, for instance, the small, documented increase in public awareness of discrimination and the relevant legal framework in, Commissioner for the Protection of Equality, *Abridged Version of the 2019 Regular Annual Report of the Commissioner for Protection of Equality*, 2019, p.12, available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2020/05/Skraceni-redovni-godisnji-izvestaj-2019-engl.pdf>

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