

Pursuant to the Article IV 4 a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina- House of Representatives, at the 57th session on 8 July 2009 and at the 33rd session of House of Peoples on 23 July 2009 adopts

LAW ON PROHIBITION OF DISCRIMINATION

CHAPTER I: GENERAL PROVISIONS

Article 1 **(Subject of the Law)**

This Law shall provide a framework for implementation of equal rights and opportunities to all persons in BiH and shall define a system of protection from discrimination.

In compliance with the BiH Constitution and international standards related to human rights and fundamental freedoms, this Law defines responsibilities and obligations of legislative, judicial, executive authorities in BiH and legal persons and individuals with public authorities in BiH, (hereinafter “competent authorities in BiH”) shall ensure protection, promotion and creation of conditions for equal treatment.

Article 2 **(Discrimination)**

Discrimination, in terms of this Law, shall be every different treatment including every exclusion, limitation or preference based on real or assumed features towards any person or group of persons on grounds of their 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 with a purpose or a consequence to disable or endanger recognition, enjoyment or realization, of rights and freedoms in all areas of public life.

Prohibition of discrimination shall be applied to all public bodies, all natural and legal persons, in public and private sector, in all spheres, especially: employment, membership in professional organisations, education, training, housing, health, social protection, goods and services designated for public and public places together with performing economic activities and public services.

CHAPTER II: FORMS OF DISCRIMINATION

Article 3 **(Forms of Discrimination)**

Every different treatment on grounds defined in Article 2, 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 shall be considered to be direct discrimination.

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 shall be considered to be indirect discrimination.

Article 4
(Other Forms of Discrimination)

Harassment shall be considered discrimination in every situation when behaviour is related to one of mentioned grounds from Article 2 that aims for or has an effect of harming person's dignity and creating intimidating, hostile, degrading, humiliating or offensive atmosphere.

Sexual harassment shall be considered every form of unwanted verbal, non- verbal or physical behaviour of sexual nature which aims for or has effect of harming dignity of a person, especially when it creates fearful, hostile, degrading, humiliating or offensive environment.

Mobbing shall be considered every form of non- physical harassment at working place with repetitive actions that have humiliating effect on a victim and aim for or has degradation of employee's working conditions or professional status as a consequence.

Segregation shall be an act by which (natural or legal) person separates other persons on basis of one of the grounds given in Article 2 of this Law, in compliance with the definition of discrimination from the Article 2 of this Law

Discrimination shall also be considered instruction to discriminate and assistance to others in discrimination.

Incitement to discriminate. Every advocacy for national, racial or religious hatred shall represent an incitement to discriminate and shall be forbidden.

Article 5
(Exceptions from Principle of Equal Treatment)

Legal measures and actions shall not be considered discriminatory when reduced to unfavourable distinction or different treatment if based on objective and reasonable justification. Following measures shall not be considered discriminatory if they realize a legitimate goal and if there is a reasonable relation ratio of proportionality between means used and goals to be achieved and when:

They come out of implementation or adoption of temporary special measures designed to prevent or compensate damages that persons suffer and on grounds given in Article 2, 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;

They are based on features related to grounds given in Article 2 of this Law, 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;

They 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 religious,, 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;

They define maximum age as the most appropriate for terminating working relation and determine age as a condition for retirement;

They are based on citizenship in a way prescribed by the Law;

They are based on realization of reasonable accommodation aiming to ensure the principle of equal treatment in relation to persons with disabilities. 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 an unreasonable burden for the employer;

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 laws.

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 organisations working in accordance with the Constitution and laws, if demanded by religious doctrines, beliefs or goals.

CHAPTER III: PROTECTED RIGHTS

Article 6 **(Scope of Application)**

This Law shall apply to actions of 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 to the action of all legal and natural persons, in all spheres of life, but especially in the following fields:

Employment, work and working conditions, including access to employment, occupation and self-employment, working conditions, remuneration, promotions and dismissals;

Education, science and sports. Access to education should not depend on immigration status of children or their parents;

Social protection, including social insurance, social benefits, social assistance (housing allowances, allowances for youth, etc.) and ways of treating social protection beneficiaries;

Health protection including access to care and treatments, in relation to ways of providing care and treatment of patients;

Trainings, including initial trainings and continuous professional training, all sorts and all levels of professional trainings, advanced professional trainings, additional qualifications and requalification, including gaining practical working experience;

Judiciary and administration, including activities of police and other law enforcement officers, border control officers, military and prison staff. Concretely, all persons shall be equal before courts and tribunals;

Housing, including access to housing, housing conditions and termination of a lease contract;

Public information and the media;

Membership in professional organizations, including membership in organizations of employers or employees or any other organization whose members perform certain vocation; involvement in such organizations and benefits given by these organizations;

Goods and services designated to public and public places, including, e.g. when purchasing goods in a shop, submitting an application for a loan in a bank and in relation to access to discotheques, coffee shops and restaurants;

Performing entrepreneurship, including law on market competition, relations between companies, and relations between companies and the state;

Participation in cultural and art creations;

(m) Equal participation of all citizens in public life;

(n) Families, while marital partners shall enjoy full equality of rights and responsibilities in relation to marital community, during marital community and divorce, including rights and responsibilities in raising children, in accordance with provisions of the Family Law;

(o) Rights of a child, including measures of protection needed according to their status of minors, by their families, society and the state.

CHAPTER IV: COMPETENT INSTITUTIONS FOR PROTECTION FROM DISCRIMINATION

Article 7

(Central Institution for Prevention of Discrimination)

Central institution competent for protection from discrimination is the Ombudsman for Human Rights of Bosnia and Herzegovina (hereinafter: BiH Ombudsman).

Within its competences, the BiH Ombudsman shall have the competence to:

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;

The BiH Ombudsman may decide not to accept a complaint or to initiate an investigative procedure;

Propose initiation of 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 to the Parliamentary Assembly of BiH, FBiH Parliament, RS National Assembly and Brcko District Assembly;

Inform 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 a proceedings for protection from discrimination for misdemeanours prescribed by this Law;

Monitor legislations and provide advices 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.

(3) When developing regular reports, opinions and recommendations on discrimination manifestations, the BiH Ombudsman shall cooperate with civil society organizations dealing with protection and promotion of human rights and organizations dealing with protection of groups at high risk of discrimination.

(4) The Ombudsman of BiH shall provide assistance to persons or groups of persons addressing international bodies for protection from discrimination providing them with guidelines, advices, consultations during a procedure, proposals and recommendations.

(5) In order to exercise its competences, BiH Ombudsman shall establish a special department that would exclusively consider cases of alleged discrimination related to actions of public bodies at the state level, entities, cantons and Brcko District of BiH, municipal institutions and bodies, and legal persons with public authorities, as well as actions of all legal and natural persons, in all spheres of life. The budget of the BiH Ombudsman shall have a special budget line necessary for functioning of a special department/ special departments for combating discrimination.

(6) All state, entity and cantonal institutions, and Brcko District of BiH bodies, municipal institutions and legal persons, with public authorities, and all other legal and natural persons shall be obliged to deliver, upon a request from the BiH Ombudsman, requested data and documents within 30 days as of the day when a request is received.

(7) Competent institutions in BiH shall be obliged to cooperate with the BiH Ombudsman and deliver their responds and notifications in written within the deadline defined by the BiH Ombudsman and report on efficiency of recommendations given in order to end discrimination.

Article 8

(Records Keeping and Coordination of Competent Bodies)

Competent institutions in BiH shall be obliged to regularly keep records of all reported cases of discrimination and to deliver collected data to the Ministry for Human Rights and Refugees.

In accordance with its competences defined by the law, Ministry for Human Rights and Refugees shall be obliged to, based on collected data on manifestations and scope of discrimination, to produce a report for the Council of Ministers of BiH at least once a year, and special

reports containing proposal of measures for prevention and suppression of manifestations of discrimination in Bosnia and Herzegovina.

The Ministry for Human Rights and Refugees shall be obliged to report, through the Council of Ministers, to the BiH Parliamentary Assembly about manifestations of discrimination and with regards to that, propose concrete legislative or other measures.

In line with provisions of this Article, special records shall be established in legislative, executive and judicial bodies for the purpose of registering cases of discrimination determined in criminal, civil, non-litigation and enforcement proceedings.

Central database for committed acts of discrimination shall be established in the Ministry for Human Rights and Refugees.

The Ministry for Human Rights and Refugees shall issue a Rulebook on methods for collection of data on cases of discrimination in Bosnia and Herzegovina within 90 days after the Law enters into force, that shall define content and form of a questionnaire for collecting data on cases of discrimination and other issues related to procedure for collecting necessary data.

Article 9
(Monitoring)

Ministry for Human Rights and Refugees shall monitor the implementation of the Law.

Article 10
(Cooperation with Civil Society Organizations)

While developing reports, preparing laws, strategies and other plans related to situation in human rights and discrimination issues, all competent authorities shall be obliged to cooperate with civil society organizations dealing with protection and promotion of human rights, and protection of rights of persons and groups of persons exposed to a high risk of discrimination.

CHAPTER V: PROCEEDINGS FOR PROTECTION FROM DISCRIMINATION

Article 11
(Protection in Existing Proceedings)

Every person or group of persons who consider to be discriminated shall be able to seek protection of his/ her rights through existing judicial and administrative proceedings.

In cases when a violation of a right to the equal treatment comes out of an administrative decision, appeal in administration proceeding and eventual initiation of an administrative dispute based on protection from discrimination, requesting annulment of such administrative decision, shall not prevent a person from paragraph 1 of this Article to initiate a judicial proceeding for protection from discrimination.

All concrete claims given in Article 12 of this Law, as individual or joint, can be requested in order to submit a lawsuit in civil proceeding.

Article 12
(Special Lawsuits for Protection from Discrimination)

A person or group of persons exposed to any form of discrimination in accordance with provisions of this Law, shall be authorized to submit a lawsuit and claim:

BiH Law on Prohibition of Discrimination
BiH Official Gazette No. 59/09, published on 28 July 2009
Entered into force on 5 August 2009

To determine that a respondent violated a plaintiff's right to equal treatment i.e. that the action s/he undertaken or failed to undertake can directly lead to violation of a right to equal treatment (lawsuit for determining discrimination);

To prohibit 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);

To compensate material and non-material damage caused by violation of rights protected by this Law (lawsuit for compensation);

To publish 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), i.e. any form.

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.

When all claims are based on the same factual and legal ground, claims can be submitted cumulatively in a single lawsuit which shall be decided in a civil law proceedings, if these claims are mutually connected and if the same court has subject matter jurisdiction for every of these claims.

Claims, referred to in paragraph 1 of this Article shall be decided by a competent court through application of provisions of the laws on civil proceedings being applied in BiH, unless stipulated otherwise by this Law.

Article 13

(Competences, Deadlines and Execution)

If not prescribed differently with this Law, and in compliance with the laws on courts in both Entities and BiH Brcko District, courts having general territorial jurisdiction are competent for disputes upon a lawsuit from Article 12 of this Law in first and second instance.

(2) Revision shall be always allowed in proceedings prescribed by Article 12 of this Law.

(3) Competent court may decide, on grounds of the lawsuits from Article 12, paragraphs b) and d), that appeal does not stay the enforcement or determine shorter deadline for taking action ordered to a respondent.

(4) Deadline for submitting the lawsuit referred to in Article 12 of this Law is 3 months after finding about violation of a right and latest one year as of the day a violation was committed. Deadline for submitting a request for revision is 3 months as of the day when second-instance judgement was delivered.

Article 14

(Temporary Safety Measures)

A court may determine a temporary measure in proceedings from Articles 11 and 12, according to provisions of the laws on civil proceedings that are applied in Bosnia and Herzegovina.

Article 15

(Burden of Proof)

In cases when a person or group of persons provide facts in proceedings from Article 12 of this Law, 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.

In cases when a person considers that s/he suffered consequences of discrimination, as an evidence for realization of the right from paragraph 1 of this Article, statistical data or database can be used.

In cases when a person considers that s/he suffered consequences of discrimination due failure of reasonable accommodation, burden of proof lies with the respondent.

Article 16
(Participation of Third Persons)

During proceedings, in accordance with the claims referred to in Article 12 of this Law, 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.

The court shall allow participation of a third party only with consent of a person in whose case the third party wants to intervene.

Regardless of the outcome of the proceedings, the third party shall cover its expenses for participation in the civil proceedings.

Article 17
(Collective Lawsuit for Protection from Discrimination)

Associations, bodies, institutions and other organizations established in compliance with appropriate regulations, and have a justified interest for protection of interest of a certain group, or they deal with protection from discrimination of a certain group of persons in scope of their activities, can file a lawsuit against a person who violates the right to equal treatment, if it is probable that acting of respondent violates the right to equal treatment of a larger number of persons largely belonging to a group whose rights are protected by a plaintiff.

Article 18
(Protection of Persons who Report Discrimination or Participate in Proceedings)

A person who reported discrimination or participated in legal proceedings for protection from discrimination shall suffer the consequences of such report or participation.

CHAPTER VI: PENAL PROVISIONS (MINOR OFFENCE PROVISIONS)

Article 19
(Violation of Article 2, paragraph 2 of the Law)

A legal person who puts a person or a group of persons into a less favourable position on grounds given in Article 2 (Discrimination), paragraph (1), in a way described in Article 3 (Forms of Discrimination) and Article 4 (Other Forms of Discrimination) of this Law, shall be fined for minor offence with 1,500 to 5,000 KM.

A responsible person in state, entity and cantonal institution, Brcko District body, municipal institutions, legal person with public authorities and other legal person shall be also fined for minor offence from paragraph (1) of this Article in the amount of 7,000 to 1,500 KM.

A natural person shall be fined with 550 to 1,500 KM for a minor offence paragraph (1) of this Article.

If a minor offence from paragraph (1) of this Article is conducted by failure to act upon Ombudsman's recommendation, a legal person shall be fined with 2,500 to 6,500 KM, and a responsible person in the legal person or a natural person shall be fined with 1,000 to 3,000 KM.

If a minor offence from paragraph (1) of this Article is conducted by failure to act upon a warrant of a court, a legal person shall be fined with 3,500 to 10,000 KM and a responsible person in a legal person or a natural person shall be fined with 2,000 to 5,000 KM.

Article 20

(Violations of Article 7, paragraphs 6 and 7 of the Law)

A legal person shall be fined with 1,000 to 5,000 KM for a minor offence, if:

a) it does not deliver data or documents upon the Ombudsman's request, i.e. if it does not deliver them within prescribed deadline, and does not allow access, contrary to Article 7 (Central Body for Protection from Discrimination), paragraph (6) of this Law;

b) It does not cooperate with the Ombudsman and does not provide responds or notifications in written, i.e. does not inform about effect of recommendations given in order to end discrimination, contrary to Article 7, paragraph (7) of this Law.

(2) For minor offence from paragraph (1) of this Article, a responsible person in a state, entities' and cantonal institution, Brcko District body, municipal institution, legal person with public authorities and in another legal person, shall be fined with 500 to 1,500 KM.

For minor offence from paragraph (1) of this Article a natural person shall also be fined with 450 to 1,000 KM.

Article 21

(Violation of Article 18)

A legal person that puts into a less favourable position a person who has reported discrimination in good faith or a person who has participated in a proceeding for protection from discrimination in every way, based on reporting discrimination or participation in a proceeding, contrary to Article 18 (Protection of persons who report discrimination or participate in proceedings) of this Law, shall be fined for minor offence with 1,000 to 10,000 KM.

A responsible person in state, entity and cantonal institution, Brcko District body, municipal institution, legal person with public authority and other legal person, shall be fined for minor offence from paragraph (1) with 1,000 to 3,500 KM.

A natural person shall also be fined for minor offence with 700 to 2,000 KM for a misdemeanour from paragraph (1) of this Article.

A responsible person in a legal person, intentionally commits minor offence from paragraph (1) of this Article, shall be fined with 2,000 to 7,000 KM, and if a natural person intentionally commits misdemeanour, a natural person shall be fined with 1,500 to 4,000 KM.

Article 22

(Measures of Protection)

For minor offences prescribed by the Law, measures of protection of seizure of goods and prohibition of a certain professional activity, business activity or duty, may be declared.

Protective measures of seizure of goods shall be obligatory every time when a minor offence is committed through use of these objects, i.e. if use of objects has been designated to commit minor offence or objects have been created for committing minor offences.

Article 23

(Publishing Minor Offence Decision)

Decision on a **minor offence** prescribed by this Law shall be published in all media available at the whole territory of Bosnia and Herzegovina.

CHAPTER VII: TRANSITIONAL AND FINAL PROVISIONS

Article 24

(Harmonization of other Regulations with this Law)

This Law shall be applied in cases of incompliance of other laws with this Law within the proceedings based on this Law.

All laws and general regulations shall be harmonized with provisions of this Law within a year after this law enters into force.

This Law does not prejudice provisions and conditions determined in international treaties and agreements with religious communities, which do not interfere with their working, normative and organizational autonomy and the principle to fully exercise the right to religious freedoms and expression.

Article 25

(Entering into Force)

This Law shall enter into force on the eight day from the day of its publication in the "Official Gazette of Bosnia and Herzegovina".

PA BiH, No. 405/09
23 July 2009
Sarajevo

Chairman of the HoR
Beriz Belkic

Chairman of the HoP
Ilija Filipovic