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# Serbia

**Constitution (2006), art. 43 al 4**

*Freedom of manifesting religion or beliefs may be restricted by law only if that is necessary in a democratic society to protect lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent inciting of religious, national, and racial hatred.*

**Constitution, art. 49** *Any inciting of racial, ethnic, religious or other inequality or hatred shall be prohibited and punishable.*

**Constitution, art. 50, al. 3** Censorship shall not be applied in the Republic of Serbia. Competent court may prevent the dissemination of information through means of public informing only when this is necessary in a democratic society to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence.

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***Criminal Code (2005) Article 174*** *Whoever publicly ridicules a nation, national or ethnic group living in Serbia : a fine or imprisonment up to three months*

***Criminal Code (2005) Article 317***

Code anyone who instigates or exacerbates national, racial or religious hatred or intolerance among the peoples and ethnic communities living in the Republic of Serbia, will be punished by imprisonment of six months to five years. If such an offence is committed by coercion, maltreatment, ccrnprcmisingsecurity, exposure to derision of national, ethnic or religious symbols, damage to other person's goods, desecration of monuments, memorials or graves, the offender will be punished by imprisonment of one to eight years. If such an offence is committed by abuse of position or authority, or if these offences result in riots, violence or other grave consequences to co-existence of the peoples, national minorities or ethnic groups living in the Republic of Serbia, the perpetrator will be punished for the offence by imprisonment of one to eight years, or by imprisonment of two to ten years.

***Criminal Code (2005) Article 387***

anyone who on grounds of race, colour, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and ratified international treaties will be punished by imprisonment of six months to five years. The same penalty will be imposed on anyone who persecutes organisations or individuals due to their commitment to achieving equality of people. Anyone who propagates ideas of superiority of one race over another or propagates racial intolerance or instigates racial discrimination will be punished by imprisonment of three months to three years.

**Public Information Law, art. 38** prohibits hate speech or dissemination of ideas, information or opinion inciting discrimination, hatred, or violence against persons or groups of people on the ground of their belonging or not belonging to a race, religion, nation, ethnic group sex or on account of their sexual orientation, whether or not a criminal offence has been committed by making them public

**Broadcasting Law, art. 21** the Rep Broad Agency sees to it that the programmes broadcast by the Broadcasters do not contain information inciting discrimination, hatred or violence against persons or groups of people on the ground of their political affiliation or belonging or not belonging to a race religion nation ethnic group sex or because of their sexual preference.

**Advertising Law, art 7 :** the principle of prohibition of discrimination. According to Article 7 paragraph 1 of the Law, advertising may not, directly or indirectly, incite discrimination on any grounds, and particularly on the grounds of race, skin color, sex, national origin, social origin, birth, religion, political or other belief, property status, culture, language, age, physical and mental disability.

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**Charter of Human and Minority Rights and civil liberties (2003) Art. 51** Any provocation and instigation of national, ethnic, religious and other inequality, as well as provocation and conflagration of national, ethnic, racial, religious and other hatred and intolerance shall be prohibited and punishable.

**Law on protection of rights and freedoms of national Minorities (2002), art. 7,**  
Every misuse of rights provided under the Law directed at violent subversion of the constitutional order, violation of territorial integrity of the Republic, violation of guaranteed freedoms and rights of man and citizen and instigation of national, racial and religious intolerance and hatred shall be prohibited. The rights provided under the Law may not be used to further goals that are in contravention with principles of international law or are directed against public safety, morals or health of people. Exercising of rights guaranteed by this Law may not affect duties and responsibilities deriving from citizenship.

**Act on Associatio of Citizens in associations, social organizations and political parties (1990) art. 2** : It is prohibited to establish organizations the program and statutory objectives of which and methods of their fulfilment are aimed at: violent destruction of the constitutional system; endangering the territorial integrity and independence of the country; violation of freedoms and human rights and rights of citizens guaranteed by the Constitution; inflammation of national, race and religious hatred and intolerance.

**Act on social organizations and associations of citizens art. 29** : Social organizations and associations of citizens cannot be established, that is their work shall be prohibited if the right to freedom of association is used for:

- violation of constitutionally guaranteed freedoms and human rights of citizens;
- endangering peace and equal international cooperation;
- applying pressure to citizens regarding the choice of their nationality;
- inflammation of national, race, and religious hatred and intolerance,
- soliciting criminal acts;

or if the right to freedom of association is used in a manner which is offending public morale.

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# Case Law

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# Serbia

Constitutional Court: <http://www.ustavni.sud.rs/>

РЕПУБЛИКА СРБИЈА  
УСТАВНИ СУД

База судске праксе

Број предмета: [ ] Датум доношења одлуке: [ ]

Освојени акт: [ ]

Врста одлуке:

- Одлучивање уставности или законитости опште акта
- Одлучивање по жалби за незакону привремену изјаву / изјаву самостраве
- Општа уставност закона пре нестог проглашења
- Одлучивање о одговору уставног намену одлуку српског АП
- Разрешање судба надлежности
- Изборни спор
- Разрешање Устава о обављању функција председника Републике
- Одлучивање по жалби на одлуку о потреби замера извршног посланика
- Изборни спор
- Одлучивање о изјави судара и разних тужилаца на одлуку Вишег савета судова и Државног већа тужилаца
- Други предмете са ознаком У

Изабав одлучивања:

- Закључак (допостављање предлогиницијативе Народне скупштине на одговор/мишљења)
- Закључак о законитости са поступком
- Закључак о одговору на поднаписане итерференцијалне доделених органа, органа ЈПС
- Закључак о одговору на поднаписане итерференцијалне доделених органа, органа ЈПС

Предметни регистар:

- Административна
- Војска и одбрана
- Европска
- Завештање квалитетне средине

Претражити по делу текста: [ ]

Уставни суд Србије - Немањина 26 - 113 906 Београд, Република Србија  
(+381 11) 3616 371 - факс (+381 11) 2681 675

Supreme Court: <http://www.vk.sud.rs/>

РЕПУБЛИКА СРБИЈА  
ВРХОВНИ КАСАЦИОНИ СУД

Немањина 9  
11000 Београд

Среда - 12. Јануар 2011.

Почтовани грађани,

Последна година била је у знаку реформе правосудја у Републици Србији. Када је реч о судској, чије реформе је да се обезбеди независно, транспарентно, ефикасно и одговорно судство, које треба да омогући једнаку заштиту права грађана, без дискриминације и брже и правне оствариване правди.

Закон о уређењу судова и Закон о седнично и подручна судова и јавних тужилаштава основани су нови судови. Судови опште надлежности су Врховни касациони суд као највиши суд у Републици, који одлучује о ванредним правним пословима; апелациони судови у Београду, Новом Саду, Нишу и Крагујевцу, као жалбени; основни и виши судови, са надлежношћу која је донекле промињена у односу на оне коју су имали општински и окружни судови. Како судови промене надлежности основани су прекршајни судови, Виши прекршајни суд, Управни суд, привредни судови и Привредни апелациони суд.

Изборени су судије за нове судове, који су ступили на функцију 1. Јануара 2010. године и постављени су вршиоци функција председника судова. Донет је Судски пословник, као најзначајнији и најобимнији акт за унутрашње пословање суда, а вршиоци функција председника судова утврдили су годишњи распоред послова за 2010. годину.

За рад Врховног касационог суда, Привредног апелационог суда, Управног суда и Апелационог суда у Београду обезбеђена је нова судска зграда, у Немањина 9, у Београду. Сви наведени судови ускоро треба да почну са радом у тој згради.

Изражавам наду да ће реформа судства грађанима обезбедити правну сигурност, брже и ефикасније судске поступке, што треба да поврати поверење грађана у рад судова.

Ната Месаревић,  
председник Врховног касационог суда

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# Public Policies

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**MINISTRY FOR HUMAN  
AND MINORITY RIGHTS  
Belgrade, 17, September, 2010**

**INFORMATION  
ON PROHIBITION OF INCITEMENT TO NATIONAL, RACIAL OR  
RELIGIOUS HATRED**

**Prohibition of discrimination**

*The Constitution of the Republic of Serbia* in Article 21, Paragraphs 1, 2 and 3 stipulates that all people are equal before the Constitution and law and that everyone has the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability is prohibited.

According to the provisions of Article 2, Paragraph 1 (1) of the *Law on Prohibition of Discrimination* the expressions “discrimination“ and “discriminatory treatment“ stand for any unjustifiable differentiation or inequitable treatment, i.e. act of omission (exclusion, limitation or giving priority) regarding persons or groups, as well as their family members or people close to them, performed in an overt or concealed manner, on grounds of race, colour, descent, citizenship, national affiliation or ethnic origin, language, religious or political convictions, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health condition, disability, marital status and family responsibilities, previous condemnations, age, physical appearance, membership of political organizations, trade unions and other workers and employers organizations and other real and/or imputed personal characteristics. Under Article 1, Paragraph 2 of the aforementioned Law, a Commissioner for the protection of equality, an independent, state body, autonomously performing all functions prescribed by this Law, is established. Court protection against discrimination is regulated under provisions in Articles 41 to 46. Everyone who has been subjected to a discriminatory treatment has the right to file a complaint with the court, and the proceedings based on the complaint are dealt with under urgent procedure.

The provisions of Article 18 of the *Anti-discrimination Law* stipulate that discrimination occurs if the principle of freedom of manifesting one’s religion or beliefs is breached and/or if a person or group is denied their right to adopt, maintain, express or change their religion or beliefs, or to express or behave in accordance with their beliefs in public or in private. Actions of priests or clergy members which are in line with the religious doctrine, beliefs or aims of churches or religious communities registered in the religious communities’ registry do not constitute discrimination, in conformity with a special law governing freedom of religion and the status of churches and religious communities.

*The Law on the Foundations of the Education System* in Article 46 prohibits activities whereby groups or individuals are jeopardized or degraded on grounds of race, nationality, language and religious affiliation, as well as the incitement of such acts, while fines are envisaged for persons who jeopardize or degrade groups and individuals based on race, nationality, religion, language and sexual orientation.

According to Article 18 of the *Labour Law* both direct and indirect discriminations are prohibited against persons seeking employment and employees in respect to their sex, origin, language, race, color of skin, age, pregnancy, health status or disability, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality.

One of the main provisions of the *Health Care Law*, within the meaning of Article 20 thereof is the principle of fairness in health care, which is exercised through prohibition of discrimination in providing health care, *inter alia*, on grounds of race, nationality, religion, culture and language.

*The Law on the Protection of Rights and Freedoms of National Minorities* regulates this issue in Article 17 by stipulating that members of national minorities have the right to full and impartial information in their respective languages, including the right to express, receive, impart and exchange information and ideas by means of press and other public media, that the state is to provide informational, cultural and educational contents in national minorities' languages as part of public broadcasting service programs, and/or that it may establish special radio and television stations to broadcast programs in national minorities' languages

The provisions of Article 7 of the *Law on Civil Servants* stipulate that it is forbidden to be in favour of or to discriminate against a civil servant in his or her rights and obligations, especially on grounds of racial, religious, sexual, national or political affiliation or for some other personal attribute.

### Freedom of Thought, Conscience and Religion

The right to freedom of thought, conscience and religion is guaranteed by Article 43 of the *Constitution of the Republic of Serbia*. Everyone has the right to stand by one's belief or religion or change them by choice. No person has the obligation to declare their religious or other beliefs. Everyone has the freedom to manifest their religion or religious beliefs in worship, observance, practice and teaching, individually or in community with others, and to manifest their beliefs in private or in public. The freedom of manifesting religion or beliefs may be restricted by law only if this is necessary in a democratic society to protect the lives and health of people, morals of democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent the incitement of religious, national, and racial hatred.



Article 2 of the *Law on Churches and Religious Communities* regulates the prohibition of religious discrimination. Under the provisions of this Article no one can be either subjected to coercion which could threaten the freedom of religion or be coerced to declare his religion, religious belief or its absence thereof. No one can be disturbed, discriminated or privileged due to his/her religious convictions, affiliation or non-affiliation to a religious community, or due to participation or nonparticipation in religious services or due to practising or not practising all guaranteed religious freedoms and rights.

Article 40 of the *Law on Churches and Religious Communities*<sup>1</sup> foresees the right to religious instruction in state and private primary and secondary schools, and grants the right to traditional churches and religious communities to organize religious instruction in state schools: the Serbian Orthodox Church, the Islamic Community, the Roman Catholic Church, the Slovak Evangelical Church of the A.C. (Augsburg Confession), the Jewish Community, the Christian Reformed Church and the Christian Evangelical Church of the A.C.

Religious instruction was introduced in the first grades of primary and secondary education in the Republic of Serbia in the 2001/2002 school year and is organized irrespective of the total number of religious adherents in a particular community. Every school year, traditional churches and religious communities nominate teachers to schools, and the Ministry of Education provides the gross wage per lesson delivered. The Law on Churches and Religious Communities allows the establishment of institutions for education of priests, as well as the establishment of preschool institutions, primary schools, gymnasiums, secondary vocational and arts schools, faculties and universities. Accredited religious education institutions are eligible for budget funding in proportion to the share of adherents of the relevant church or religious community in the population of Serbia.

Persons belonging to national minorities in the Republic of Serbia attend to their religious needs in the following churches and religious communities:

- the Serbian Orthodox Church: the Roma, Vlachs, Bulgarians in Eastern Serbia,
- the Islamic Community: Bosniaks, Albanians, the Roma, Egyptians, Ashkali, Gorani,
- the Roman Catholic Church with the Greek Catholic Church: Hungarians (for the most part), Croats, Bunjevac, Sokac, Czechs, Germans, Slovaks (only one village), Bulgarians in Banat, Ukrainians, Ruthenians,
- the Slovak Evangelical Church of the A.C.: Slovaks,
- the Christian Reformed Church: Hungarians (a minor part),

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<sup>1</sup> Official Gazette of the Republic of Serbia, No. 36/2006

- the Judaist Community: Jews,
- the Dacia Felix Eparchy of the Romanian Orthodox Church: Romanians in Banat,
- Podvorye of the Moscow Patriarchate: Russians,
- Confessional communities: a number of members of national minorities identify in religious terms with communities belonging to the new Protestantism.

Two Organizations of the Islamic Community are active in the Republic of Serbia, namely the Islamic Community in Serbia and the Islamic Community of Serbia.

### Freedom of Thought and Expression

Article 46, paragraph 1 of the *Constitution of the Republic of Serbia* guarantees the freedom of thought and expression, as well as the freedom to seek, receive and impart information and ideas through speech, writing, image or in some other manner. According to paragraph 2 of the same Article of the Constitution, the guaranteed freedom of expression may be restricted by law if necessary to safeguard the rights and reputation of others, to uphold the authority and impartiality of the court and to protect public health, morals of a democratic society and national security. According to Article 79 of the Constitution, persons belonging to national minorities have the right to full, timely and objective information in their respective languages, including the right to express, receive, send and exchange information and ideas.

Constitution of the Republic of Serbia guarantees freedom of media and press. Pursuant to Article 50 of the Constitution, every person shall have the freedom, without prior permission and in the manner envisaged by law, to establish newspapers and other forms of public information. Television and radio stations shall be established pursuant to law. Censorship shall not be applied in the Republic of Serbia. The competent court may prevent the dissemination of information and ideas through means of public informing only if necessary in a democratic society to prevent inciting a violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence or to prevent advocacy of racial, national or religious hatred, inciting discrimination, hostility or violence. The law regulates the realization of the right to correcting false, incomplete or inaccurately imparted information resulting in violation of rights or interests of any person, as well as the right to react to the communicated information.

Article 1 of the Law on Public Information<sup>2</sup> regulates the right to public information as a right to freedom of expressing thoughts, as well as the rights and obligations of participants in the public information process. The right to public information includes, in particular, the freedom of expression of thought, freedom to collect, research, publish and impart ideas, information and opinions, freedom to print and distribute newspapers and other printed media, freedom to produce and broadcast radio and television programs, freedom to receive ideas, information and opinions, as well as freedom to establish legal entities dealing with public information.

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<sup>2</sup> "Official Gazette of the Republic of Serbia", No. 43/2003 and 61/2005

Article 2 of the Law on Public Information stipulates that public information is free and in the interest of the public. Public information may not be censored. No person may, even indirectly, restrict the freedom of public information, in particular by misusing state or private authorities, by misusing rights, influence or control over the means of printing and distributing printed media or over broadcasting devices and radio frequencies, or in any other manner conducive to limiting a free flow of ideas, information and opinions. Furthermore, no person may exert physical or any other kind of pressure in terms of media and their employees, or other influence restricting their professional duties. The court shall decide upon violation of freedom of information by urgent procedure.

Article 5, paragraph 1 of the *Law on Public Information* foresees that, in the interest of the right of national minorities and ethnic communities to information in their respective languages and fostering of their cultures and identities, the Republic, autonomous province or local government shall provide a proportion of funding or other prerequisites for the operation of media in the languages of national minorities and ethnic communities.

All areas in Serbia populated by national minorities may receive broadcast programs from the neighboring countries. In addition, information and ideas are received and imparted by means of rebroadcasting radio and television programs. Freedom to rebroadcast and directly receive radio and television programs is in conformity with the obligations and rules under the European Convention on Cross-border Television and the Television without Frontiers Directive.

Eleven print media founded by national councils of national minorities (except for the magazine in the Albanian language) regularly receive 20–100% of required funding from the national budget. These media are *Perspektiva* (in the Albanian language), *Bošnjačka riječ* (in the Bosniak/Bosnian language), *Bratstvo* (in the Bulgarian language), *Magyar Szó* (in the Hungarian language), *Them* and *Romano Nevipe* (in the Romani language), *Libertatea* (in the Romanian language), *Ruske slovo* (in the Ruthenian language), *Hlas L'udu* (in the Slovak language), *Ridne slovo* (in the Ukrainian language) and *Hrvatska riječ* (in the Croat language). These print media are issued on a weekly, fortnightly or monthly basis (except for the publication in the Hungarian language, which is a daily paper). Budget funding is also awarded to the following religious publications: *Glas islama* (the Islamic community in Serbia), *Blagovesti* (the Belgrade Archbishopric), *Bilten* (the Islamic Community of Serbia), *Bilten* (the Union of Jewish Municipalities of Serbia), *Evangelisticki glasnik* (the Slovak Evangelical Church of the A.C. in Serbia), *Reformatus elet* (the Christian Reformed Church), *Alapke* (the Evangelical Church of Serbia – Vojvodina) and *Stražerul* (the Dacia Felix Eparchy of the Romanian Orthodox Church).<sup>3</sup>

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<sup>3</sup> Data on the broadcasting of radio and television programs in the languages of national minorities are presented in Appendix 1 to this Report, Table 4

## **Legal protection against insult, label, discrimination and violence under the criminal law**

Chapter 17 of the Criminal Code regulates criminal offences against honor and reputation. Article 170 defines the criminal offence of insult, while the criminal offence of libel is defined in Article 171. The novelty with regard to previous criminal legislation is that penalties for these criminal offences included fines only. The criminal offence of insult is not valid if the statement is given within a serious critique in a scientific, literary or artistic piece of work, while performing official duty, journalistic activities or political activities, while defending a right or protecting justified interests, or if it is obvious from the means of expression or other circumstances that the act is not performed with the purpose of demeaning. The novelty is that the offence of libel and insult, even when it is directed against a state body, is no longer prosecuted by a public prosecutor. According to the provisions, the issue is prosecuted by a private person and/or the damaged party, which sends a message to judges that the criminal offences are no longer considered dangerous for society.

*The Criminal Code* in Article 128 prescribes punishment of imprisonment of up to three years to anyone who denies or restricts the right of man and citizen guaranteed by the Constitution, laws or other legislation, or general acts or ratified international treaties on grounds of nationality or ethnicity, race or religion or due to absence of such affiliation or difference in political or other conviction, sex, language, education, social status, social origin, property or other personal characteristic, or pursuant to such difference grants privileges or benefits to others. If such an act is committed by an official in discharge of duty, such a person will be punished with imprisonment of three months to five years.

According to Article 317 of the *Criminal Code* anyone who instigates or exacerbates national, racial or religious hatred or intolerance among the peoples and ethnic communities living in the Republic of Serbia, will be punished by imprisonment of six months to five years. If such an offence is committed by coercion, maltreatment, compromising security, exposure to derision of national, ethnic or religious symbols, damage to other person's goods, desecration of monuments, memorials or graves, the offender will be punished by imprisonment of one to eight years. If such an offence is committed by abuse of position or authority, or if these offences result in riots, violence or other grave consequences to co-existence of the peoples, national minorities or ethnic groups living in the Republic of Serbia, the perpetrator will be punished for the offence by imprisonment of one to eight years, or by imprisonment of two to ten years.

Under the provisions of Article 387 of the *Criminal Code* anyone who on grounds of race, colour, nationality, ethnic origin or other personal characteristic violates fundamental human rights and freedoms guaranteed by universally accepted rules of international law and ratified international treaties will be punished by imprisonment of six months to five years. The same penalty will be imposed on anyone who persecutes organisations or individuals due to their commitment to achieving equality of people. Anyone who propagates ideas of superiority of one race over another or propagates racial

intolerance or instigates racial discrimination will be punished by imprisonment of three months to three years.

### **Measures for the improvement of the position of the Roma national minority**

The Roma are one of the most disadvantaged social groups in the Republic of Serbia. Therefore the state undertakes necessary measures for the improvement of the position of the Roma national minority. The Republic of Serbia acceded to the regional programme for the improvement of the position of the Roma in central and South-eastern Europe "The Decade of Roma Inclusion 2005-2015" and presided over the Decade from 1 July 2008 to 30 June 2009.

The Government of the Republic of Serbia established the Council for the Promotion of the Status of Roma in March 2008 and has 22 members, including representatives of the ministries of finance, health, education, public administration and local self-government, as well as other sectors which may have impact on the promotion of the status of the Roma minority. The Roma Inclusion Office was established by the Decision of the Assembly of the AP Vojvodina in 2006 to implement the Roma integration action plans and to develop and implement programs for the promotion of the status of Roma in the field of education, health, employment, housing, human and other rights. The Roma Integration Council of AP Vojvodina was established in 2005

The National Strategy for the Improvement of the Position of the Roma was adopted by the Government of the Republic of Serbia in April 2009. The strategic goal of this document is the improvement of the position of the Roma national minority in Serbia, i.e. reduction of the current differences between the Roma and the majority population. This document, in special chapters, deals with the issues related to education, living conditions, employment, displaced persons, problems in relation with readmission, issues concerning the availability of personal documents, social insurance and social protection, health care, position of women, access to information, culture, political engagement and representation of the Roma, as well as with discrimination and other related issues. Each chapter contains the international and national legislation framework upon which the Strategy has been designed, a description of the state of affairs in a specific domain, an overview of the ongoing and previous initiatives in the domain, recommendations for further course of action, and finally, priority activities. The main principles and values upon which the Strategy for the Improvement of the Position of the Roma relies imply the following: the obligation on the part of the state to take care of the respect, protection and observance of rights of the Roma under the law; a full and effective involvement of the Roma in all segments of social life; respect, recognition and promotion of diversity; equal opportunities based on equal rights; gender equality; prevention and fight against all forms of discrimination; implementation of affirmative action measures. In 2005 the Republic of Serbia adopted national action plans for the improvement of the position of the Roma in education, employment, housing and health care.