



REPUBLIC OF  
SERBIA



COMMISSIONER  
FOR PROTECTION  
OF EQUALITY

# GENDER EQUALITY

## Authorities of the Commissioner and Strategic Litigation

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Republic of Serbia



# About Commissioner

Independent, autonomous and specialized central state authority for suppressing discrimination (LPD 2009).

- ⤴ Prevention of all forms and cases of discrimination
- ⤴ Protection of equality of natural persons and legal entities in all spheres of social relations

## Duties:

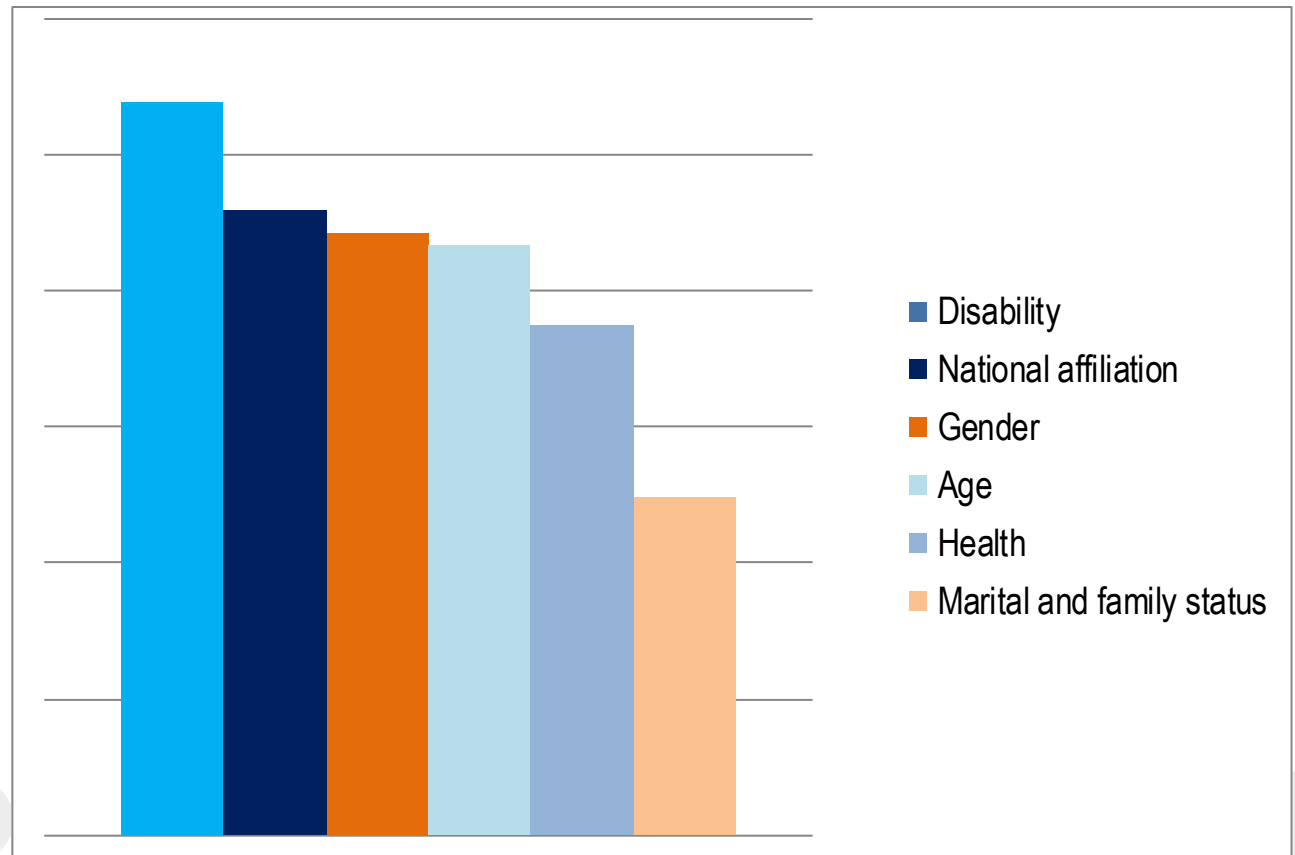
- ⤴ acts upon complaints;
- ⤴ conducts strategic litigation, files misdemeanor charges;
- ⤴ recommends measures for achieving equality;
- ⤴ submits an annual report and special reports to the National Assembly;
- ⤴ initiates the amendments to regulations;
- ⤴ warns the public of the most common and difficult cases of discrimination;
- ⤴ conducts other activities in order to improve protection against discrimination (surveys, publications/manuals, workshops, trainings for police officers, labor and other inspectors, all civil servants, media, judges etc).



# Gender equality in Serbia

Commissioner's practice shows that gender discrimination is one of the most common grounds of discrimination in citizens' complaints during the entire period of the institution's work.

Top 3 ranked grounds in terms of frequency: **gender** - in addition to disability and nationality/ethnic origin



# Progress in improving gender equality

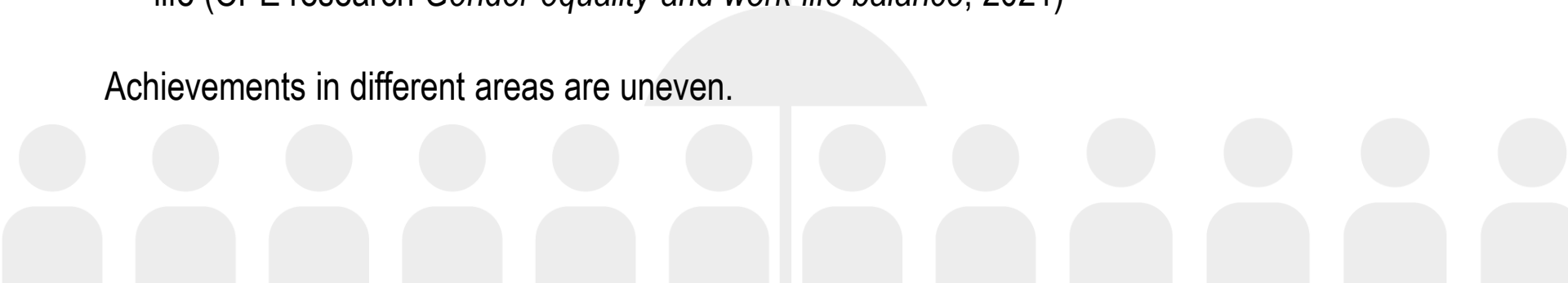
**Improved legal framework** – new laws and strategy documents

(e.g. electoral gender quota of 40%, new duty for CPE – to keep records of final judgments and decisions made in litigation for protection against discrimination)

**Raised knowledge and awareness of the importance of gender equality:**

- 42% of citizens believe that women are the most discriminated group (CPE survey *Citizens' Attitudes towards Discrimination*, 2019)
- 41% of employed and 37% of unemployed respondents believe that women are very discriminated against in the field of work and employment (CPE survey *Discrimination in the labor market*, 2019)
- 85% of respondents (both genders) agree that women are more likely to face negative consequences for their professional life due to the inability to reconcile business and private life (CPE research *Gender equality and work-life balance*, 2021)

Achievements in different areas are uneven.



# Women's participation in public and political life in Serbia



## Commissioners recommendations on measures to achieve equality:

- ↑ National Parliament - regarding gender representation in all parliamentary committees and international parliamentary institutions (2012, 2014)
- ↑ Government - equal representation of genders when appointing new ministers (2013, 2014, 2017)
- ↑ All local self-governments - equal representation of women and men (2017, 2020)



## Parliament

40% female MPs  
(99/250)

25% female chair of  
committees (5/20)

75% female secretaries  
of committees (15/20)

**RANKED**  
**28. in world**  
**14. in Europe**

## Government

Female Primeminister

40% Femal Deputy Prime  
Ministers (2/5)

43% female ministers  
(10/23)

31% female state  
secretaries (20/65)

**RANKED**  
**19. in world**  
**10. in Europe**

## Local SelfGovernments

15% female presidents (23  
LSG + 2 city municipalities)

21% female presidents of  
city/municipal assemblies  
(29/145)

50% female head of local  
administration (73/145)

**Equal to**  
**European**  
**average 15%**

# Gender representation

**Judiciary:** 72% women perform the judicial function

- ↑ 58% female presidents in court of general and special jurisdiction
- ↑ 77% women judges in appellate courts, but no female presidents
- ↑ 66% women judges in the Supreme Court of Cassation, female president

**Political parties:** all parliamentary parties are headed by men

**Women Parliamentary Network** (2013)



# Women in diplomacy

In addition to positive developments in the field of women's participation in political and public life, there is a greater participation of **women in international cooperation**, their representation in the diplomatic service and delegations participating in the work of international organizations.

**Diplomacy:** 38% female chiefs of diplomatic missions

(102 different diplomatic missions in the world: 18 female ambassadors, 9 female Charge d'Affaires, 7 female Consuls General, 5 women in the position of consul-general)

- ↑ Especially encouraging: the fact that a larger number of women (71%) were appointed heads of the permanent missions of the Republic of Serbia to international organisations.





# Areas of discrimination

Discrimination against women - particularly pronounced in the **labor market**, in the **economic sphere**, **education** and **participation in decisionmaking**.

## Some of the CPEs cases:

- changes to salary, conditions and duties upon announcing pregnancy, while on parental leave or on return to work;
- missing out on career advancement opportunities during pregnancy/return to work;
- dismissal and redundancy after parental leave;
- unequal retirement conditions for women employed in the public sector;
- sexist portrayal of women in the media and advertisements;
- stereotypical portrayal of women and gender roles in textbooks;
- denial of scholarships to doctoral students due to pregnancy and maternity leave;
- posing conditions that prevents girls enrollment in the Military High School;
- allocating less funding for women's football and basketball clubs compared to men's clubs playing in the same league.



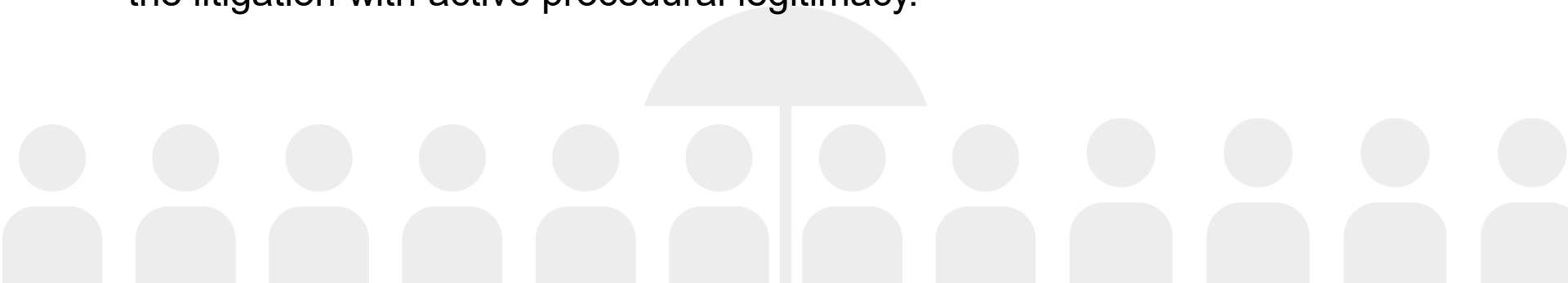
# Strategic Litigation

## What is strategic litigation?

- A form of litigation in the public interest in order to produce a certain social change or to establish case law.
- It seeks to achieve broader social goals, enhance case law, raise awareness of discrimination, and improve the position of social groups that are discriminated against.

## What is the position of the Commissioner in the litigation?

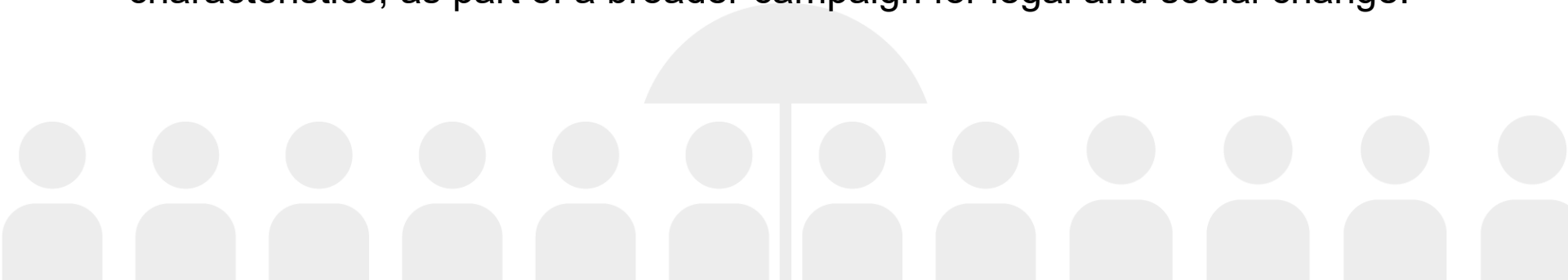
- The Commissioner **is not** representing a discriminated person, but is a party in the litigation with active procedural legitimacy.



# Strategic Litigation

## Main objectives of the litigations:

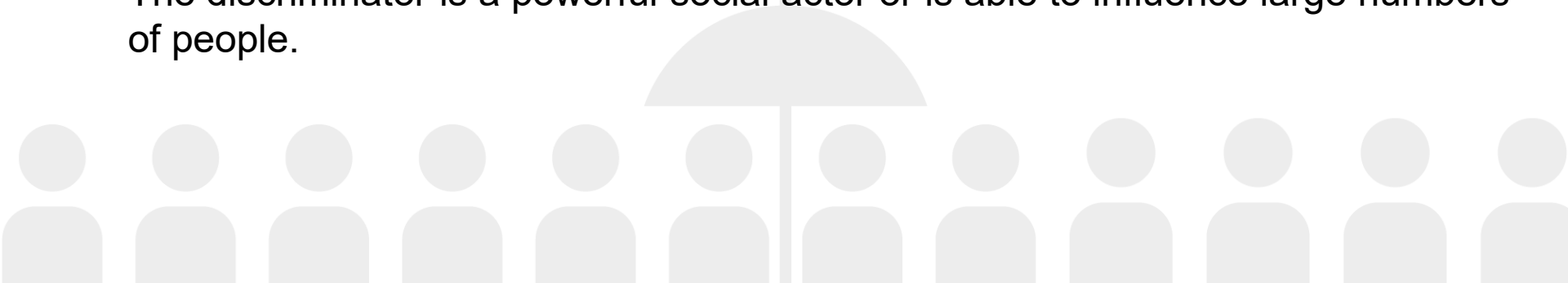
- Clarifying a particular legal rule and seeking the court's interpretation of it.
- Ensuring that anti-discrimination regulations are applied.
- Establishing relationships between several anti-discrimination regulations.
- Highlighting a serious issue that appears when a public policy or practice has an adverse impact on a large group of people based on their personal characteristics, as part of a broader campaign for legal and social change.



# Strategic Litigation

## Case selection criteria:

- Discrimination in the particular case is widespread and may have serious consequences.
- There is sufficient evidence that discrimination has taken place.
- The case can shed light on a particular issue.
- Discriminatory behaviour has affected particularly vulnerable groups.
- The discriminator is a powerful social actor or is able to influence large numbers of people.



# Strategic Litigation

STRATEGIC OBJECTIVE OF THE COMMISSIONER in initiating civil proceedings (among others) is to develop caselaw which will:

1. establish that discrimination against Roma is inadmissible, and that stereotypes do not constitute a legal basis for treating Roma differently.
2. refer to discrimination against women who return to work after maternity leave.
3. ensure that persons with disabilities have equal access to facilities.
4. refer to discrimination that exists in education, especially the segregation of the youngest Roma or children with disabilities.
5. be a guide in cases of discrimination in the field of work and employment.
6. refer to discrimination in the field of health, based on health status and age
7. create conditions for judicial authorities to recognize discrimination and apply anti-discrimination legislation.



# Lawsuits, Initiatives

**Strategic litigation cases** – 21 case in total.

- 6 cases related to gender/sex discrimination (out of that number in 2 cases the Court did not adopt the claim to determine discrimination)

## **CPE proposals for review of constitutionality and legality**

- ⤴ Constitutional Court adopted a decision determining the unconstitutionality which refers to the unequal treatment of insured agricultural female workers;
- ⤴ Also, decision determining the unconstitutionality of law provisions which refers to unequal retirement conditions for women employed in the public sector.



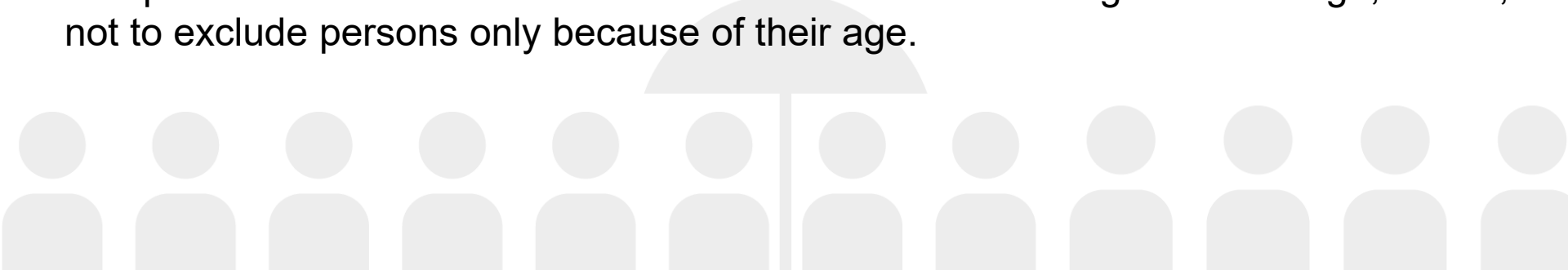
# General Recommendations

Commissioner is authorized to monitor the implementation of laws concerning the prohibition of discrimination and **make recommendations to public authorities and other persons to achieve equality – general recommendations.**

Examples:

General recommendation to **insurance companies:**

- To ensure equal treatment for women and men, when determining insurance premiums and benefits.
- To provide travel health insurance service to all citizens regardless of age, that is, not to exclude persons only because of their age.



# General Recommendations

## General recommendation to **municipal/city administration**:

- To enable the change of personal name for transsexual and transgender persons in cases when the change of personal name is necessary in order to harmonize it with sex or gender identity, in accordance with the law, without additional conditions and restrictions.
- To take into account, when applying the regulations in the procedure of changing the sex designation in the birth register, that not only a person who changed gender by surgical means has the right to change their sex designation, but also a person to whom a confirmation was issued of the conducted hormone therapy for at least one year, with the indication of specialists in psychiatry and endocrinology.





# General Recommendations

General recommendation to **Serbian Academy of Sciences and Arts**:

- To take appropriate measures to achieve the principle of gender equality during the next membership elections, as well as to make additional efforts to promote women's scientific and artistic contribution.

General recommendation to **Public media institution – Radio Television of Serbia**:

- To enable broadcasting in accessible formats of basic information regarding the upcoming elections, i.e. to make information on the upcoming elections available to hearing impaired viewers through the use of subtitles and sign language, in order to enable full and timely information of these persons for the purpose of their equal participation in elections.



# Strategic Litigation Case 1

## Discrimination based on sex (gender) and family status at work

### Facts of the case:

One (employed) woman has submitted a complaint to the Commissioner in August 2019 claiming that she is discriminated against in the working place. She stated that she had a fixed-term employment contract since 2007. She remained pregnant in January 2018, and in April 2018, she signed an employment contract for indefinite period of time. However, her employer forced her to sign the termination of her employment contract blankly. Despite the high-risk pregnancy, she worked until legal deadline for maternity leave. The employer asked her to pay the taxes and insurance contribution herself, and then he paid the insurance irregularly, which made it difficult for her to exercise her right to health care. In addition, when she addressed the public, the Commissioner and the Labor Inspectorate, with her problem, the employer activated „employment termination agreement”, which left her without a job while she was on a child care leave.

# Strategic Litigation Case 1

For these reasons, the Commissioner initiated a strategic litigation, and filed a lawsuit to the High Court in Belgrade, due to discrimination based on gender and family status in the field of labour. The lawsuit was filed because the employer discriminated against the employee during pregnancy, maternity leave and leave for child care, by denying her rights during this period and blackmailing her into signing a blank agreement on termination of employment. A special form of discrimination was also committed - calling to account (victimization), because the employer activated a blankly signed agreement on termination of employment, after the complainant had reported him to the labour inspection and thus punished her for asking for protection against discrimination.

After the court procedure (The Court of Appeals, once have returned the case to the High Court for reconsideration), the High Court adopted the claim of the Commissioner in April 2021, and the Court of Appeals then in December 2021, passed a judgment which, in the relevant part, confirms the High Court ruling

# Strategic Litigation Case 1

Strategic goal:

- To establish that denying rights of an employed woman during pregnancy maternity leave and leave for child care - constitute discrimination.



# Strategic Litigation Case 2

## Discrimination based on sex gender and sexual orientation

### Facts of the case:

The defendant is a law professor and author of the article regarding domestic violence. In the article, he indirectly stated that the protection of women from violence is not always justified. As he implied, the law does not take into account whether a woman has a lover, whether she earns or is supported, nervous or in a mood, whether she has entered some property or whether she has moved into her husband's apartment.

He stated that the „man is the head of the family“, and other gender stereotypes.

Also, he stated that Pride parade celebrate „primitive, violent, low-minded, bare and vulgar sexuality“, and implied that do not deserve police protection.

# Strategic Litigation Case 2

## Relevant legal provisions

### **Hate speech**

#### Article 11

It is forbidden to express ideas, information and opinions inciting discrimination, hatred or violence against an individual or a group of persons on account of his/her or their personal characteristics, in public organs and other publications, in gatherings and places accessible to the public, by writing out and displaying messages or symbols, and in other ways.

### **Harassment and humiliating treatment**

#### Article 12

It is forbidden to expose an individual or a group of persons, on the basis of his/her or their personal characteristics, to harassment and humiliating treatment aiming at or constituting violation of his/her or their dignity, especially if it induces fear or creates a hostile, hurt or offensive environment.

# Strategic Litigation Case 2

## Relevant legal provisions

### Gender discrimination

#### Article 20

It is forbidden to deny rights or to grant privileges, be it publicly or covertly, pertaining to gender or gender change. It is forbidden to practise physical violence, exploitation, express hatred, disparagement, blackmail and harassment pertaining to gender, **as well as to publicly advocate, support and practise conduct in keeping with prejudices, customs and other social models of behaviour based on the idea of gender inferiority or superiority; that is, the stereotyped roles of the genders.**



# Strategic Litigation Case 2

**First instance Court** (Higher Court) have find violation of the Law on prohibition of discrimination

**The Appellate court** reversed the decision and rejected the claim of the Commissioner to determine discrimination.

**The Supreme Court of Cassation** rejected the Commissioner's revision.

Strategic goal:

To clarify distinction between freedom of speech and hate speech (harassment).

The Supreme Court, in its reasoning, did not clarify this difference.







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Thank you for your attention!

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