

Education against discrimination



- guidebook for work on prevention and overcoming of
discrimination for professionals working in the
area of education and upbringing -

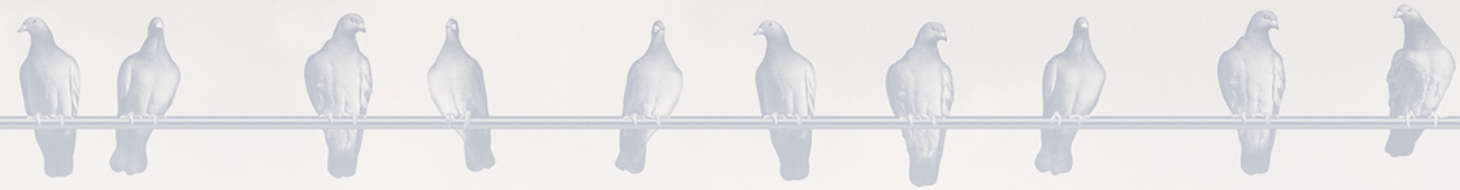


Project is funded by
the European Union



Centar za građansko obrazovanje
Centre for Civic Education





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Podgorica, 2018

EDUCATION AGAINST DISCRIMINATION

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Publisher:

Centre for Civic Education (CCE)



Centar za građansko obrazovanje
Centre for Civic Education

Editor:

Daliborka Uljarevic

Authors:

Petar Djukanovic

Tamara Milas

Edition:

50 copies

Print:

Studio Mouse

Publication is a part of project '360° Full Circle for Human Rights?' which is implemented by Centre for Civic Education (CCE) in partnership with NGO Alternative Theatre Company (ATAK) from Podgorica, Human Rights House from Zagreb and International Documentary Film Festival (BELDOCS) from Belgrade, in cooperation with Ministry of Education and Institution of Protector of Human Rights and Freedoms from Montenegro, and is financed by the European Union.



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Introduction

Guidebook for work on prevention and overcoming of discrimination for professionals working in the area of education and upbringing was created within the project *360° Full Circle for Human Rights!*, which with the support of the European Union is implemented by the Centre for Civic Education (CCE) in partnership with NGO Alternative Theatre Company (ATAK) from Podgorica, Human Rights House from Zagreb and International Documentary Film Festival (BELDOCS) from Belgrade, in cooperation with Ministry of Education and Institution of Protector of Human Rights and Freedoms from Montenegro.

One of the *specific objectives* of the project is promotion of concept of education without discrimination in formal educational-upbringing system and development of anti-discrimination and the culture of human rights amongst the youth. Thus, this guidebook is intended for professionals working with youth in education (teachers, professional services, heads of schools, councils of parents, expert bodies and actives) with an aim to aid them in recognizing, prevention and processing of discrimination cases, other violations of human rights and violence within schooling institutions and before institutions outside of educational system.

The guidebook contains terms of discrimination and its various manifestations clarified in detail, the role and responsibility of participants of upbringing-educational process, and the overview of legislative and institutional framework is also given which protects citizens from discrimination and violation of human rights, with the procedure of processing the cases, as well as the overview of the most important international documents and standards in this area.

The ultimate goal of the guidebook is to, as an auxiliary mean in the work with youth, even in teaching, contribute to development, encourage and nurture anti-discrimination culture via education.



What is discrimination and how to recognize it?

The right to non-discrimination is one of the basic human rights and thus the prohibition of discrimination is defined by many international documents on human rights and is embedded in contemporary national democratic legal systems as one of the constitutional principles.

Discrimination is one of the most severe forms of jeopardizing the human rights and it is detrimental to individuals and society in the entirety. We all have human rights. They belong to us by birth, i.e. by the fact that we are humans, they are universal and belong to everyone with no difference, they are inalienable since they are not a matter of merit and reward, they cannot be sold or taken away and they are indivisible, which means that all human rights are equally important. For example, human rights are the right to life, freedom of movements, freedom of speech etc.

The state is not prescribing human rights, but has an obligation to create and implement laws and other measures which are protecting and improving them. **Respect of human rights is based on the belief that each human is equally valuable** and that no one can be deprived of the right to move freely, to think and express his/her opinion, to participate in the life of society on equal basis, to advance on the basis of his/her abilities, to be acquitted of torture and inhumane treatment and discrimination. **Human rights and prohibition of discrimination create a possibility for each one of us to develop and achieve a maximum of one's personal potentials.**

Each human has a set of other rights and obligations which the state is prescribing by laws and which are regulating the behaviour of people and their mutual relations, performance of professional roles and similar. **However, all laws regulating the life of humans in one society must be based on full respect and perseverance of basic human rights and freedoms as the carrying principles and values of contemporary democratic society.**

Discrimination occurs when certain people are being treated differently in relation to others, which are in the same or comparable situation, only due to affiliation or an assumed affiliation to certain group, i.e. due to one of their personal features.

Discrimination is dangerous because it means unjustified differentiation which produces unequal approach and enjoyment of human rights and freedoms.



In the basis of discriminatory conduct there are stereotypes and prejudice, that is, the general attitudes that we build on incomplete, often inaccurate information/knowledge, which are followed by strong sentiments, such as fear, and sometimes even hate. For example, attitudes that all Roma people are lazy, dirty and prone to theft, or that women are 'the weaker gender', who belong in the kitchen and doing housework, or that all homosexuals are 'sick' and 'perverted' persons. We all have prejudice and stereotypes, but it is important to enlighten them in order to open ourselves to other people, to have more understanding and to accept them as our equals.

Prejudices are easily turning into discrimination and causing that, under their influence, we start acting towards others as they are different than us by moving away from them, isolating them, limiting them in enjoying their rights and freedoms, prohibiting them to equally share the space with us, to educate, to get employed or to work, and we even act violently (individual violent acts, all to the organized, planned, systematic activities such as the Holocaust terror was). Thus, discrimination is also defined as an occurrence where an individual or a group of people are proclaimed less valuable in relation to other individuals or groups, thus their rights and freedoms are being 'legitimately' abolished or limited on the basis of that. The Nazism as ideology has legitimised discrimination which has turned into extermination of millions of people, dominantly the Jews, Roma and others who have been proclaimed a threat to 'purity' and 'perfection' of the Aryan race.

Discrimination is preventing the personal development of a person, development of his/her talents and achievement of all potential that certain person is caring within oneself, and it is important to emphasize that discrimination annuls possibilities, both for individual and the broader development of a social community.

Often, and incorrectly, discrimination is being equated with every violation of rights. **Discrimination is always simultaneously a violation of right (one or many), although this does not apply other way around.** Usually as an example of delimitation a situation is stated *when a company does not pay compensations for overtime work to workers.* By this act, the rights of all are being violated. *If the compensation would be paid to one group of workers, but not to the other which consists of Roma workers, then we could be speaking about existence of discrimination.*

For simpler understanding of the term, the formulation is often being used which **designates discrimination as unequal treatment towards equal, i.e. equal to unequal people.**

In further elaboration, it could be said that discrimination occurs when one person or group is being treated more unfavourable in relation to other person or group who are in the same or similar situation on the basis of their personal feature. For example: *the management does not allow enrolment to high school to a girl who is*



HIV positive. This is discrimination in the approach to right to education as per health condition. There is no medical or other justifiable reason for a person who lives with HIV to be prohibited the enrolment to school, i.e. to be treated differently in relation to peers who do not have this chronic illness, since it does not represent any danger for environment considering that infection is not being transmitted by social contacts.

Discrimination also occurs when a person or group is being treated in the same manner, although some personal feature puts them in a position which requires and renders the different treatment justifiable. This is illustrated by a known example: *if the pupils with special educational needs would be requested to work in a manner that does not correspond to their characteristics, interest, possibilities, and that likewise the school is not adjusted to their needs either*. Namely, this conduct which is equal towards everyone brings in a harder position and produces more unfavorable consequences upon pupils with special educational needs in relation to other children.

Thus, **discrimination may be unequal conduct or treatment towards a person or group due to some personal feature or conduct which is equal, but produces disproportionate consequences of inequality for a person or group, because personal features which require and justify different conduct have been ignored**. In both cases discrimination has occurred because one person or a group are put in more unfavourable position in relation to other person or group only on the basis of some personal feature.

Discriminatory conduct may be by **act** or **omission**. For example: *if management of school passes a rule that pupils of Roma nationality may not use the school canteen*, this is discriminatory conduct by an *act*. Discrimination by *omission* occurs *if at the entrance to the school and inside the school premises mobility is not ensured (no ramps or elevators were put, names of cabinets and other school premises were not inscribed in Braille letters, etc.), in order to provide equal access, stay and movement of children with disabilities in the school institution*.

Prohibition of discrimination is a constitutional category. Constitution prohibits any direct or indirect discrimination on any ground. Exceptions from the prohibition are regulations and introduction of special measures which are directed to the creation of conditions for achievement of full national, gender and overall equality and protection of persons which are on any ground in a highly unequal position and are applied until the conditions are met due to which they were introduced (the so-called measures of affirmative action, i.e. measures of positive discrimination).

The European Court for Human Rights (ECHR) defines discrimination in a following manner: *'...discrimination implies different treatment, without objective and valid justification, of a person in relatively similar situations.'*¹ On the basis of the practice of ECHR, the Constitutional Court of Montenegro gives detailed determination of this

¹ ECHR, *Willis v. the United Kingdom* (App. No. 36042/97) 11 June 2002, paragraph 48



term: *'The European Court of Human Rights designates discrimination as different treatment of same or similar cases, when there are no reasonable and objective justifications for it, namely, when there is no legitimate goal to be aspired to, or there is no proportion (proportionality) between goals and manners in which this legitimate goal wants to be achieved.'*¹²

Development of the state and society in all spheres of life and towards each citizen is based on respect and constant improvement of human rights, equality and egalitarianism as key anti-discrimination principles.

Law on Prohibition of Discrimination defines discrimination as *'any legal or actual distinction-making or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on race, colour of skin, national affiliation, social or ethnic origin, affiliation to the minority nation or minority national community, language, religion or belief, political or other opinion, gender, gender change, gender identity, sexual orientation and/or intersexual characteristics, health condition, disability, age, material status, marital or family status, membership in a group or assumed membership in a group, political party or other organisation as well as other personal characteristics'*¹³.

Law on Prohibition of Discrimination defines the occurrence of discrimination as unequal treatment, distinction-making on the basis of personal features by which violation of principle of equality is being exerted, due to unequal conduct, disempowerment, unjustifiable placing in worse position, privileging, favouring or placing in a better position with no real justification for it and similar.

*'Discrimination is also deemed incitement, aiding, giving instructions, as well as announced intention to discriminate a certain person or group on any grounds from the Paragraph 2 of this Article (personal feature)'*¹⁴.

Therefore, **every form of discrimination, on any grounds is prohibited by the law.** The Law is applied equally both to citizens and non-citizens of Montenegro, and the fact that someone agreed to discrimination does not acquit the person exerting it from responsibility.

The institutional framework was also established for citizens of Montenegro to be able to address and report cases of discrimination and receive proper protection.

2 Constitutional Court of Montenegro (14 June 2012) U-I No. 33/11

3 Law on Prohibition of Discrimination, Official Gazette of Montenegro, No. 046/10, 040/11, 018/14, 042/17

4 *Ibidem*



Personal features – a basis of discrimination

Differences among people are permanent and preferable. People are different per numerous basis, they are performing different roles and holding different positions in the society. However, this positioning must be based on objective benchmarks alongside the fact that everyone, regardless of different statuses in society, must have guaranteed basic rights and freedoms. Differentiating turns into discrimination when only on the basis of particular personal features the people are being deprived of right to equal treatment and possibilities in society, i.e. the exercise of human rights is aggravated for them as well as social mobility because they are of certain religion, gender or sexual orientation, i.e. they have other legally protected personal characteristics.

The society is democratic when instead on the basis of the colour of skin, origin, sexual orientation or gender, people hold different positions on the basis of their abilities, knowledge, skill and devotion.

By prohibition of discrimination, the principle of equality is being protected, and when citizens are unequal in exercise of rights and freedoms in their position due to some of their personal features, it is clear that discrimination exists.

Discrimination is based on **distinction and unequal treatment as per some of personal features**. If a teacher gives a better grade to some pupil because he is likable to him, although in relation to other pupils he did not show more knowledge, then this is non-objectivity and violation of professional rules and procedures for grading which are tied to the profession and the role of a teacher, but it is not discrimination. We could speak about discrimination *if the case was that teacher gave a lower grade to the pupil who is Roma in relation to pupil who does not belong to Roma population, only because he does not like him for his ethnic affiliation or colour of skin, although both of them have done the exam equally good.*

Law on Prohibition of Discrimination prescribes **a list of attributes or features** which must not be a basis for distinction when it comes to equal access to rights, position in the society and possibilities for advancement in various areas of life. This list encompasses gender, age of life, race or ethnic affiliation, religion, political or other conviction, disability, sexual orientation, and in addition to that there are material status, education, social position, health condition, labour status, language and similar. The legal literature deems personal features also the **protected basis**.



Personal features, as a basis for discrimination, may be **inherent or acquired**. Inherent are, for example, colour of skin or gender. Acquired features are those that we adopt or acquire throughout the life, but which we can change, such as political beliefs or material status, or marital status and similar. **Being either inherent or acquired, personal features must not be a basis for unequal treatment of conduct.** *The fact that we are of different genders cannot create any justifiable basis for distinction in the amount of salary for the same work that we are performing.* Not only real, but also **assumed personal feature** appears as a basis of discrimination. For example: *someone who is not a member of LGBT population, but works in organisation advocating for rights of this group, may be a victim of discrimination due to his sexual orientation being wrongly assumed.* Law on Prohibition of Discrimination explicitly prohibits discrimination regardless whether the different treatment was made on the basis of real or assumed personal feature.

Similarly, a person may be discriminated against also on the basis of personal feature of some of their family member, close friend or some person with whom they are in close contact. For example, *when the whole families are victims of discrimination because their child is a declared member of LGBT population or is HIV positive.*

Although in laws, declarations, conventions and other documents the list of personal features is usually being stated, it is never closed and final, since it is left a possibility for, on the basis of experience, some other personal features to be included in it for which it is determined that they are frequent basis for exerting discrimination.



Forms of discrimination

Discrimination, as it is often said, is one term with many faces.

In the most basic division, discrimination may be **direct and indirect**.

Law on Prohibition of Discrimination defines **direct discrimination** as '*occurrence that a person or a group of persons, in the same or similar situation are or were brought, or may be brought in an unequal position in respect to other person or group of persons by an act, action or failure to act, on any ground referred to in paragraph 2 of this Article (any of personal features)*'⁵.

Direct discrimination exists when the factors unrelated to merits, ability or potential of a person or group of persons are used as a basic reason for unfavourable conduct towards these persons or groups. Discrimination is direct when conduct is caused by some of discriminatory basis by which the person is placed, or was placed, or may be placed in more unfavourable position by other person in same or similar/comparable situation.

Direct discrimination in education occurs when teacher of technical education states that only male pupils will be going to competition in that subject, because dealing with technics is not for girls, by which all girls interested in technics and wishing to improve themselves in that area, are placed in unfavourable position and are discriminated as per gender. Or, when class-teacher refuses to talk with parents of a pupil who is Roma, or he is not inviting them to parent meetings as he is inviting parents of other pupils. Also, if shortly before the pride parade, the class-teacher warns the pupils to stay away from 'parading', tells them 'dirty' jokes about LGBT persons and warns them that anyone who supports the parade in any manner will have to deal with him. Furthermore, discrimination is also when a pupil with special educational needs is not enabled to go to school trip because the professor deems he will not be able to participate in activities with other children, ignoring the fact that this sort of activities may be made available also to the child with special educational needs. Direct discrimination is specific by the fact that the person who perpetrates it has no need to hide the intention to discriminate someone.

Indirect discrimination exists '*if apparently neutral provision of a regulation or general act, criterion or practice is bringing or can bring a person or a group of persons into*

⁵ Ibidem



*unequal position in respect to other person or group of persons, on any ground referred to in paragraph 2 of this Article (personal feature), unless the provision, criterion or practice are objectively and reasonably justified by a legitimate purpose and achievable with the means appropriate and necessary to use for achieving that purpose, and when they are acceptable and proportionate in relation to the purpose to be achieved*⁶.

Indirect discrimination is harder to recognize and thus is more dangerous. Often, in literature, an example is mentioned *when in the job advertisement for professors of physical education among other, a condition is requested for candidate to be taller than 180 cm*. This apparently usual advertisement with neutral requests places female candidates in unfavourable position, because this body height is much less common with women than men. Or, *if professor introduces the rule that pupils are doing their homework and sending them to him by email from their homes*, then he is placing in unfavourable position those who do not have Internet access at home. So, indirect discrimination occurs when some rule or practice is set in manner that it marginalizes certain person. Unlike direct one, in the case of indirect discrimination, the one who discriminates does not wish for his discriminatory behaviour to be visible, thereby he exerts his discriminatory intention under seemingly equal approach. Sometimes, the one who perpetrates it, is not aware at all that by his conduct he is acting discriminatory.



Special forms of discrimination

Law on Prohibition of Discrimination defines also the prohibited special forms of discrimination among which are harassment, sexual harassment, segregation and hate speech.

Harassment is a behaviour directed to violation of dignity of discriminated person on any ground and creation of intimidating, hostile, humiliating or offensive environment. The Law on Prohibition of Discrimination states: *'any unwanted behaviour, including also harassment via audio and video surveillance, mobile devices, social networks and Internet, which has the purpose or the consequence of which is violation of the personal dignity, and causes fear, the state of intimidation or inconvenience, creation of hostile, humiliating or offensive environment shall be deemed discrimination'*⁷.

The example of this form of discrimination in education would be *when a group of pupils is teasing, calling their classmate insulting names due to his real or assumed sexual orientation and loudly commenting on how all 'fagots' should be killed off. Or, when the class of a pupil is ridiculing achievements of their friend only because of his personal feature or affiliation, i.e. when the Roma pupil is being ridiculed by his classmates, because he does not know how to always correctly apply the grammar cases while speaking, is speaking the majority language with an accent, or is reading slower, and the teacher is not reacting to prevent such degradation.*

Ridicule of physical appearance, social origin, gender, sexual orientation or some other personal feature, either by pupils or professors, is also an example of harassment, regardless whether it comes from pupils or teachers. For example: *the professor is 'entertaining' the class by ridiculing physical appearance of their female friend, his pupil, by calling her fat and stupid, or when a teacher tells jokes to pupils at the expense of some of minority groups. The similar example would be also when the one when professor is imitating and ridiculing the walk, talk and appearance of a pupil with development issues or disability.*

In addition to verbal there is also harassment or degrading by gestures, such as sticking the tongue out, or when, for example, *pupils are closing their nose as if someone smells unpleasantly when they are passing by their classmates who are Roma. In literature there are also noted examples of scaring the guide-dog who assists the pupil with poor vision, or kicking the white cane, spitting and similar.*

⁷ Ibidem



Sexual harassment, also, represents a form of discrimination. It relates to sexist speech by which the victim is directed comments on account of physical appearance with clear sexual allusions, inviting to sexual intercourse and similar. Sexism is being performed also by gestures, for example, *by looking, blowing kisses or directing grimaces or gestures with sexual connotations, pinching or slapping the backside, fondling or caressing to which the victim did not agree and similar.*

Sexual harassment is defined by the Law as *'any unwanted, verbal, non-verbal or physical behaviour of sexual nature, by which it is intended to harm dignity of some person or group of persons, i.e. by which such effect is achieved, especially if such behaviour causes fear or creates hostile, humiliating, threatening, degrading or insulting environment'*⁸.

For example, *director of school, while on the meeting with colleagues-professors tells the female colleague that she can go to seminar/vocational training only if she kisses him on his cheek in front of everyone, or when teacher is 'joking' with female pupil who is teenager using sexual allusions, encourages classmates to comment her appearance and similar.* An example of verbal sexual harassments are *jokes with sexual connotation, catcalling, directing too many compliments, often telephone calls and inappropriate SMS messages and e-mails, as well as harassment of this type via social networks.*

Victimisation is a form of discrimination when the victim who is discriminated, or someone who wishes to help the victim, or refuses to act discriminatory, is brought into unequal position due to his/her behaviour. This is **illicit pressure or retribution**, the continuation of violation of equal treatment of person who reported the discrimination, who participated in procedure for protection against discrimination, or has clearly expressed intention to do so, for the purpose of exerting a pressure on him/her to give up on that intention. Victim of discrimination is victimised also when he/she thinks he/she will not be protected properly upon reporting the case.

So, a victim of discrimination who decided to seek legal aid and support for resolving his/her case can be victimised. For example: *a pupil tells the professor who degrades and discriminates him that, should he continue such behaviour, he will report the case to director of institution. Professor after that starts threatening him that if he does that, he will never be able to receive a passing grade, because he will find ways to pose him requests during exam that a pupil cannot fulfil and directs other threats.* Or, *a person who was present during situation in which harassment or mobbing occurred and is ready to testify of that situation, now suffers harassment or mobbing himself/herself (the management is not sending her to additional trainings and specialisations, exerts other forms of pressures, humiliates, does not respond to her requests and similar).* Example of victimisation may also be when a pupil who came

to the aid of a peer while a group of classmates was insulting him and threatening to beat him because he is 'a disgusting gay', starts to receive threats and insults from the same group.

Precisely the fear of victimisation is the most frequent factor which causes non-reporting of cases of discrimination, non-initiation of proceedings for protection against discrimination or the lack of reaction during testifying to the case.

Victimisation is processed in the Law on Prohibition of Discrimination in the Article 4 under name *Persons reporting discrimination*, in which it is noted that *'No one shall suffer adverse consequences for reporting the case of discrimination, giving deposition before a competent authority or offering evidence in the proceedings investigating a case of discrimination'*. The same Article prescribes *'Persons are protected against any adverse conduct or consequence as a reaction to report or proceeding being led due to violation of the principle of non-discrimination'*⁹.

Prohibition of victimisation is of special importance for reporting, initiating and leading the procedures against discrimination. Thereby, an additional possibility of protection is given to victims of victimisation and the condemnation and unacceptability of discriminatory behaviour is emphasized, considering that the fear of negative consequences of reporting discrimination is one of the largest obstacles in achieving effective protection.

Segregation is a form of discrimination which implies *'any act, action or failure to act, by which forcible or systematic separation or distinction of persons on any of personal features is being conducted'*¹⁰.

Segregation is dangerous, because it excludes and isolates persons and groups and renders their integration into society harder. This is one of the worst forms of discrimination and represents a serious violation of human rights.

The UN Convention on fight against discrimination in education from 1960, deems discrimination in education to be *'any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education, and in particular in a manner of establishing or maintaining separate educational systems or institutions for persons or groups of persons'*¹¹.

Segregation in the process of upbringing and education exists when, contrary to the laws and right to choice, separate classes are formed based on social, ethnic or economic

9 Ibidem

10 Ibidem

11 Convention against Discrimination in Education, adopted at 11th session of General Conference of the United Nations Educational, Scientific and Cultural Organisation on 14 December 1960



status of pupils or affiliation to a minority group, non-familiarity with language in which the teaching is taking place and similar. It most frequently targets Roma children and children with special educational needs, harms the equality in access to the right to education and contributes to further marginalisation of children belonging to vulnerable groups. For example, *when Roma are separated in special classes with explanation that they do not know enough the majority language to be following the teaching effortlessly with other pupils. Or, when in the premises of regular schools, children are being assigned in separate classes, and prevented to use the common playgrounds, school libraries and reading-rooms, canteens and similar.*

The most known example of segregation as severe violation of human rights is apartheid system in Southern Africa, but also the phenomena in the region 'two schools under one roof' which exists in Bosnia and Herzegovina, where in the same school building, pupils of two ethnic groups are educated – Bosniaks and Croats, with physical separation, with separate entrance to the school building, and are working as per different plans and programmes (Bosnian and Croatian).

Education system has a key role in upbringing and educating for culture of dialogue, understanding of human rights and tolerance, which can prevent the occurrence of hate speech.

The Law on Prohibition of Discrimination prescribe also other **special forms of discrimination**:

- *Discrimination in use of facilities and areas in public use*

Examples: *Public/city library is inaccessible for persons with disabilities; school does not have toilets adapted to be used by persons with disabilities which creates difficulties of unobstructed stay in educational institution and following of teaching;*

- *Discrimination in access to goods, services in public and private sector and commodities*

Example: *visually impaired person kicked out of restaurant because he was accompanied by guide-dog;*

- *Discrimination based on health conditions*

Example: *boy infected with HIV was withdrawn from school after protest of parents of pupils from the class;*

- *Discrimination based on age*

Example: *the older professor is not allowed to go to seminar/vocational specialisation due to 'assessment' of director that she no longer needs it in her age, and that it is better for someone younger to go;*

- *Discrimination based on political, union or other organisation*

Examples: *the management of school is ignoring for months the requests and letters of a professor who is member of education union to be received for a conversation in relation to the subject he teaches; director is reducing the norm of lessons of French language to the professor who has excellent results in competitions only because she is a member of a political party not close to him;*

- *Discrimination in field of labour*

Examples: *the school director has openly told a person with disability who has applied for the work position of professor in high school that he does not wish to accept her due to her disability; when during an interview for job, a woman gets a question whether she is planning to have children and to get married;*

- *Discrimination in the field of upbringing, education and vocational training*

Example: *in one school a decision was passed that Roma pupils cannot be members of pupils' parliament;*

- *Racial discrimination*

Example: *peers are mistreating a Roma pupil making him eat trash from garbage can, to which he has opposed and has fought with one of the peers. The teacher is punishing him for physical violence and peers who have mistreated him go unpunished;*

- *Discrimination based on religion and belief*

Example: *the school director requests from employees of Islamic religion who intend to use free days for Eid to submit a request for absence from work one week prior to it, although according to the law they have right to free days for their religion holiday without anyone's permission;*

- *Discrimination of persons with disability*

Example: *school premises are unadjusted for access, stay and movement of persons with disability;*

- *Discrimination on the basis of gender identity, sexual orientation and/or inter-sexual characteristics*

Example: *Professor of biology inappropriately and discriminately speaks about LGBT persons, same-gender communities and families and speaks about homosexuality to pupils as of a feature which deviates from normal behaviour equating it with tendency to crime, use of alcohol or drugs.*



Hate speech

According to provisions of the Law on Prohibition of Discrimination *'the hate speech is any form of expression of ideas, claims, information and opinion which spreads, incites, encourages or justifies discrimination, hatred or violence against persons or group of persons for their personal feature, xenophobia, racial hate, anti-Semitism or other forms of hatred based on intolerance, including also the intolerance expressed in the form of nationalism, discrimination and hostility towards minorities'*¹².

Generally speaking, **hate speech is any public, written or oral speech by which individuals, groups which are deemed different due to some of their characteristics are being degraded, humiliated or hate is being spread against them.**

As per definition of Committee of Ministers of the Council of Europe, *the hate speech covers all forms of expressions that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance including intolerance expressed by aggressive nationalism and ethnic hatred, discrimination and hostility towards minorities and migrants and people with immigrant origin.* As per same definition, other forms of discrimination and prejudice, such as hatred towards Roma, hatred towards Christians, islamophobia, misogyny, sexism and discrimination based on sexual orientation and gender identity, also fall within the hate speech.

Author Sandra Coliver defines the hate speech as any *'expression which is abusive, insulting, intimidating, harassing and/or which incites to violence, hatred or discrimination'*¹³.

*'It may therefore be claimed that in legal theory, the hate speech, despite everything, still has proportionally precise meaning. It is colloquial expression for certain types of offensive speech which spread and justify hatred, intolerance and prejudice, and invites to and encourages to violence or discrimination against certain 'vulnerable', and as a rule also historically victimised/discriminated groups and their members, who may be identified as per race, national or ethnic origin, skin colour, religion, gender, sexual orientation or some other (group) features'*¹⁴.

Hate speech occurs in real but also in virtual world – on Internet, social networks, via press or graffiti, in public speech of politicians, religious leaders or public personalities. **When**

12 Ibidem

13 The Article 19 (ed. Sandra Coliver): Striking a Balance - Hate Speech, Freedom of Expression and Non- discrimination, University of Essex, 1992

14 Vesna Alaburic, Limitation of 'hate speech' in democratic society – theoretical, legislative and practical aspects, Hrvatska pravna revija, Zagreb, 2003

agitating or directly inviting to violence and hatred towards someone because he/she is different, diverse, is a member of 'those others', we are dealing with hate speech.

Close to the term of *hate speech* is *hate crime*, which is defined as any form of violence or criminal offense perpetrated towards a person or group of persons due to real and/or assumed characteristics, in the form of physical, verbal, psychological violence, or threats which person or group of persons suffers only because they belong to certain minority/vulnerable group. **Hate speech causes hate crime as the most brutal expression of discrimination and violence conditioned by intolerance.**

Hate speech is contrary to freedom of expression/speech i.e. hate speech unlike freedom of speech demolishes values of democratic society, abolishes dialogue. Right to freedom of expression is fundamental human right, of priceless importance for individual and society as a whole. However, **freedom of expression ceases when we start by speech to propagate or encourage hatred, intolerance, to intimidate, ridicule and degrade, threat and advocate for limitation of rights and freedoms of other persons by utilising violence.**

Not every expression of ideas and opinions to which we do not agree or are not pleasant to us, or contain strong criticism or satire, is hate speech. So long as the speech which is directed to us, or we are directing to others, does not encourage hatred or discrimination towards some group or an individual due to personal features, it is not a hate speech. It is usually said that **where hate speech begins, the freedom of speech stops.**

Hate speech in education occurs in many manners: writing discriminatory messages on walls of school, classroom or in the immediate vicinity of school, inviting to hatred and violence towards some of actors of educational process due to his/her characteristic or affiliation. For example: *graffiti are written on the wall of school building The Knife, The Barbed Wire, Srebrenica! (Nož, žica, Srebrenica!) or graffiti with a message Kill, Slaughter, Fagot Not To Exist! (Ubij, zakolji, da peder ne postoji!) or Knife in the throat of Gypsies! (Ciganima nož u grlo!). Or, on one kindergarten with the name of Anne Frank which is situated in the suburbia of Paris, recently a graffiti were written with symbols of Nazism and a message: Jews are forbidden!*

Hate speech sometimes can be placed also via school newspapers, social networks and web pages of school and other contents which are created or used in educational process, as well as via various gatherings, tribunes, happenings in school or in the school's organisation. For example: *there is a text published in school newspaper that gives an interview with a known musician who promotes homophobia.* Or, when participants of educational process publicly express ideas, information and opinion which invites for unequal treatment, hatred and violence towards a person or group of persons due to some of their personal features. For example: *the school professor has posted a status on her Facebook profile in which she states that LGBT persons should be silenced in all manners because they spread diseases.*



Severe forms of discrimination

Certain discriminatory behaviours, or forms of discrimination are especially dangerous for society. These forms of discrimination are specially stated also in the Law and are qualified as **severe cases** of illicit conduct and require more severe reaction of all actors of society which have role in prevention and reaction to discrimination, especially courts and specialized institutions.

Multiple or intersectional discrimination occurs when a person or a group is discriminated against, i.e. exposed to unequal conduct or treatment as per multiple features. For example, *Roma girl who is a person with disability may be threefold discriminated, as per gender, ethnicity or on the basis of disability*. Some person can be discriminated on the basis of personal feature in different situations as per time and space. For example, *Roma girl with disability is discriminated on the basis of disability, since she has no access to premises of educational institutions in the place she lives in. She is discriminated on the basis of her ethnicity when someone directs her racist comments on the street*. Additional multiple discrimination is when a person is discriminated on the basis of multiple personal features simultaneously, which renders the severity of discrimination more complex, i.e. creates additional obstacles in access to education.

Repeated discrimination occurs multiple times towards one same person. For example: *Roma pupil is rejected for admission to three high schools in the city he lives in*. There is also discrimination which occurs in longer period of time towards one same person or group of persons (**prolonged discrimination**). For example: *for years nothing is being undertaken for entrance of the school to be adjusted to persons with disabilities*.

Discrimination by propaganda via public newsletters, as well as by writing and highlighting content and symbols of discriminatory content in public places. For example: *an author text was published in daily newspapers of a university professor in which he calls the LGBT persons sick people and asks for prohibition of affirmation of their rights*.

Discrimination that has especially **severe consequences upon discriminated person, group of persons or upon their property**. This is the case with hate crimes which can also have a form of severe physical violence towards members of certain groups, such as, for example, *beating and inflicting severe bodily injuries to a member of LGBT population, or a member of Roma population*.



When making distinctions is not a discrimination – special or the measures of affirmative action

Not every distinction-making, i.e. different treatment is discrimination. Practice of the European Court of Human Rights indicates that if the objective and consequences of unequal treatment are unjustified, there can be discussion about discrimination. Distinction-making is allowed and justified when, for example, during employment procedure, special professional qualifications are requested in line with requirements of the work position which is specific. This situation is closer defined also by the Law on Prohibition of Discrimination in the part which relates to discrimination in the area of labour work: *'Distinction, exclusion or giving preference is not considered to be discrimination if so require the peculiarities of the particular work in which personal characteristic of a person represent real and decisive condition of doing the work, if the purpose to be achieved that way is justified, and if the objective is proportionate, as well as taking measures of protection according to certain criteria of persons referred to in paragraph 1 of this Article'*¹⁵.

Affirmative action is a type of discrimination which is socially preferable and applicable in various systems and societies when a certain group of people needs to be enabled to gradually reach the formal, and subsequently also substantial equality and inclusiveness into society. Affirmative action is also called **preferential treatment** or **positive discrimination**.

An example of affirmative action are *also the incentive measures for enrolment of Roma children in schools in order to improve their educational status and achievements and thus create a basis for better opportunities in employment, more complete integration in society, and similar.* These measures are applied in order to improve the social status of certain groups that have been marginalized and disempowered for a long period of time, such as women, persons with disabilities and Roma. Their application overcomes the social deprivation of certain groups and creates the possibility to reach the same starting positions more quickly and easily, from which, along with other members of the society, they can equally make progress in education, employment and overall socio-economic status. Another example of this measure is *the quota system and the rule that every third place on the list of candidates for councillors or deputies belongs to a woman, in order to ensure greater representation of women in politics.*



In the Montenegrin legislation, these measures are called special measures, and are defined by the Law on Prohibition of Discrimination as *'regulations and special measures aimed at creating the conditions for the realization of national, gender and overall equality and protection of persons who are in any manner in an unequal position, can be adopted, i.e. introduced and implemented, within the framework of their competencies and authorizations, by state bodies, state administration bodies, local self-government units, public enterprises and other legal entities that exercise public authority, as well as other legal and natural persons. The measures referred to in paragraph 1 of this Article shall be applied proportionately to the needs and possibilities and shall last until the achievement of the objectives determined by those measures'*¹⁶.

As per one of the definitions *'Special measures are specific amenities which enable an equal participation in public life, remove existing inequalities or ensure rights that were previously withheld to persons with a certain marker that can be a basis for discrimination. Special measures are introduced temporarily in order to achieve a real equality and are not deemed discrimination. Special measures must aspire to achievement of a legitimate objective'*¹⁷.

Affirmative action is a constitutional category: *'Regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination'*¹⁸.

However, **during implementation of these measures it should be taken care that all preconditions are created so that these measures would achieve the intended effect.** Without careful planning and consistent application, these measures can lose their point and even contribute to deepening of discrimination. All stakeholders of educational process, first of all, must be introduced with these measures, and there must exist precise and coordinated manners of implementation as well as the strengthened awareness of stakeholders about the point and necessity of application of these measures.

Application of measures of affirmative action is a complex process that must be well-planned and monitored in order to give the intended results.


This especially relates to education, because education is a precondition to social integration and mobility. If the existing affirmative action measures provide Roma children and youth with enrolment into schools alongside receiving scholarships for

16 Ibidem

17 Rulebook on discrimination and mobbing on workplace, prof. PhD sc. Mario Vinković, Zagreb <https://www.zagreb.hr/>

[UserDocs/Images/Arhiva/Priru%C4%8Dnik%20o%20diskriminaciji%20i%20mobbingu%20na%20radnom%20mjestu.pdf](#)

18 Constitution of Montenegro, Off. Gazette of MNE, No. 1/2007 and 38/2013 - Amendments I-XVI



schooling, but are implemented without clear criteria and consistent respect of the same, then they are transforming into their opposite. The essence of affirmative action is not thus respected, and a gap is created between Roma and non-Roma pupils due to a sense of injustice. On the other hand, decrease of motivation of young Roma occurs as well, because they are receiving scholarships without criteria, are not investing an effort and work into education knowing that they will go into next grade and thereby they are not even achieving any significant educational success, thus the measures remain without effect.

Responsibility for success of the applied affirmative action rests on managements of schools and teaching staff to implement the measures taking into account the existence of procedures, that youth from groups which are included by measures are truly progressing, that motivation to work and adopt knowledge is developed, that there is constant cooperation with their parents, with enabling effective assistance in learning... No measure will give any results if pupils have not adopted a certain standard of knowledge that represents a basis for progressing through educational cycles. If affirmative action is not implemented with clear criteria and if effort is not invested to truly aid pupils to adopt the knowledge and improve their skills, then this is discrimination, not a support.



Who are discriminators and who are their victims?

Anyone can be a victim of discrimination, same as anyone is a potential discriminator, and discrimination may occur in any sphere of life, i.e. society (private sphere or public one). An individual, group that shares a personal trait, even a legal entity may be victims of discrimination.

An individual may be a victim of discrimination in education if the admission to school is prohibited to him due to some personal trait. A group of persons, such as persons with disabilities, is discriminated if school premises are not accessible. A legal entity is institution, school. Can school be discriminated? It can. If local community does not wish to cooperate or do not support school because the majority of pupils are Roma children.

In any of the possible relations between participants of pedagogic-educational process, the discrimination can occur.



Discrimination in education

Discrimination in the area of pedagogy, education and vocational training is prohibited by Law on Prohibition of Discrimination: *'Discrimination in the field of upbringing, education and vocational training is considered to be making difficult or denying the enrolment into upbringing-educational institution and institution of high education and the choice of educational programme at all levels of upbringing and education, expelling from these institutions, making difficult or denying the possibility to attend classes and participate in other upbringing and educational activities, classification of children, pupils, participants in education and students, abusing or otherwise making unjustified differentiation or unequally treating them, on any ground referred to in Article 2, paragraph 2 of this Law (personal characteristics)*¹⁹.

General Law on Education also prohibits discrimination: *'Physical, psychological and social violence; abuse and neglect of children and pupils; physical punishment and insulting of the person, or sexual abuse of children and pupils or employees and any other form of discrimination in terms of law are prohibited in the institution*²⁰.

The same law guarantees also the principle of availability and equality in the approach to education: *'The locations of the institutions within the territory of the Republic enable citizens the equal access in acquiring education*²¹, i.e. *'Regardless of the national affiliation, race, gender, language, religion, and social background, disability and of other personal characteristics, all Montenegrin citizens shall be equal in the exercising of the right to education. Foreign nationals who have temporary residence or permanent residence in Montenegro, are equal to Montenegrin citizens in achieving right to education, in accordance with the special law*²².

Education plays a key role in securing sustainability and functionality of democratic system and civic society that are based on values of human rights and anti-discrimination.

By its objectives, content and methods of work, in addition to acquiring knowledge from various areas, education is aimed at construction of anti-discriminatory culture and the culture of human rights within young persons. Except for teaching about

¹⁹ Law on Prohibition of Discrimination, Official Gazette of Montenegro, No. 046/10, 040/11, 018/14, 042/17

²⁰ General Law on Education, Official Gazette of Montenegro, No. 64/2002, 31/2005, 49/2007, 4/2008 – other law, 21/2009 – other law, 45/2010, 40/2011 – other law, 45/2011, 36/2013 – Decision of CC MNE, 39/2013 and 44/2013 and 47/2017 Look up: Decision of CC MNE - 12/2011. Look up: Decision of CC MNE 23/2011

²¹ Ibidem.

²² Ibidem.



human rights via terms, conventions and laws, the educational system shall by its entire functioning be directed to construction of personality of young persons in order for them to understand, adopt and practice anti-discriminatory values and principles. Responsibility of employees in education implies, in addition to adhering to and the continuous improvement of professional standards, also the respect for the human personality, rejection of discrimination towards colleagues, pupils and their parents, as well as other participants of the educational process.

Participants of educational process have many roles and responsibilities in developing the anti-discrimination culture. This requires also a more active involvement and support of external actors, i.e. the society in its entirety. Upbringing for the anti-discrimination culture is an issue of consistency and hence the action of all society's stakeholders that affect the socialization and upbringing of youth, with equal dedication, aimed at reaching goals of education as an activity of the broadest public interest is important.

Objectives of education are formulated and based on anti-discrimination principles by which possibilities for versatile development of an individual is created, regardless of gender, age, social and cultural origin, national and religious affiliation and any other personal trait/characteristic, i.e. affiliation. Also, **the task of education is to develop conscience, need and capabilities of young persons to actively contribute to preservation and improvement of human rights, legal state, a healthy and sustainable environment, development of society in the spirit of promotion and cherishing of multi-ethnicity and differences.**

Stakeholders or participants of educational process are pupils and their professors, school management and other employees in the institutions, professional bodies and services, parents, but also actors outside of educational system that can affect it. Various forms of relations occur in relations between actors. Thus also discrimination. And **everyone can be a victim of discrimination and simultaneously those who exert it by their actions.**

However, **no stakeholder of the pedagogic-educational process must be exposed to discrimination**, i.e. to physical, psychological and social violence, sexual abuse or any other form of discriminatory conduct that offends personality, with special attention towards pupils who must not be neglected or exposed to any form of danger to personal and physical integrity.

If special attention is not dedicated to education for deconstruction of prejudices and stereotypes from the earliest level of educational system, there will be no important breakthroughs in relation to fight and eradication of discrimination in society. Each participant in the educational process is obligated to respect the right to prohibition of discrimination and respect for equality in achievement of rights and obligations as it is determined by domestic laws, international documents and standards.



Various forms of discrimination in education

Prohibition of discrimination is an ideal of modern society that seeks to achieve principle of parity and equality in all spheres of social life, including education as well. And the education is a key channel of social mobility, and if it is based on principles of equal chances and merits then it is in the service of general social welfare.

Discrimination in education may occur in any of the segments of the process: during enrolment into educational institution, in the process of forming and in functioning of pupils' and other school organs and bodies, during creation and adoption of teaching plans and programmes, in everyday communication and mutual relations among participants of the process, through teaching process, contents in textbooks, employment process, achievement of right to professional advancement and training, management of school and similar.

Discrimination during employment in educational institutions is occurring when equality in the opportunity for employment is undermined as well as the equality in enjoyment of rights deriving from employment status and in relation to employment. Possibility of discrimination exists even in the area of professional training and advancement under equal terms, as well as in participating in work of professional and managerial organs in the school. To resolve these concrete cases, the first address for help is Labour Inspection that takes care of legality of employment process and achievement of rights in employment and as per employment. Depending on severity of the case, other organs are available as well, such as Ministry of Education, institution of Protector of Human Rights and Freedoms, as well as court protection.

Example: *director of the school wishes not to employ a person with disability for a workplace of a professor due to his/her condition, although it is the best candidate who applied to the call. Instead of him/her, he accepts a candidate with lower references who has no disability. Also, discrimination would be also if director of educational institution asks a candidate on job interview about political affiliation, or employs a candidate for his/her political affiliation and not on the basis of objectively verifiable formal references required by workplace.*

Discrimination in management of the school and during decision-making is also one of specific forms of discrimination in education. It occurs when pupils, their parents, employees in school as members of a certain group or due to some personal feature are being excluded from the work of school bodies (pupils', professional ones, parents' councils and similar), from planning and realisation of school's plans and programmes, self-evaluation of school and other analysis that are necessary in order to harmonize the plan and programme of school



with needs of all participants and goals of pedagogical-educational process (this is especially important for creation of conditions for school to be inclusive).

Pupils can be discriminated also when their right to participation during deciding on issues of importance for their needs and interests via, for example, work of pupils' bodies are deprived or limited due to some personal feature or affiliation to a group, or when pupils are not included on an equal basis into domestic and international researches on quality of education. Example: *Roma pupils are not included into work of Pupils' Parliament, or are included but without possibility of active participation in decision-making.*

For the process of education to unfold in a manner that provides equality and inclusiveness, children, their parents and school employees must be also equally included regardless of their affiliation or personal traits. Only equally passed decisions can contribute to achievement of full effects of education and good functioning of educational institutions.

Discrimination in respect of school rules occurs: if all participants of educational process are not timely and in-detail informed about all rights and obligations that they have as per law; if all participants of educational process are not participating equally in formulating and adopting special school rules, because some persons have this right hindered due to personal trait and affiliation; if rules and sanctions for their irreverence are not applied equally to all participants of educational process, but selectively depending on their personal trait or affiliation; if there is tolerance to or lack of action in the case of prohibited behaviour towards certain participants due to their personal trait. Example: *it is unacceptable and discriminatory conduct if equal attention is not dedicated to respect of school rules and obligations by all pupils, thus situation of large number of absences from school of Roma pupils is completely ignored and measures are not undertaken to determine the reason and to fix the situation with wrong approach that this is normal and expected behaviour of Roma pupils.*

Discrimination in provision of protection against discrimination and violence in school is occurring if educational institution is not providing protection and support to each participant of education in the situations of violence, abuse and neglect in equal and same basis, but is making difference in relation to affiliation or personal trait. Law prohibits physical punishment, disrespect and insults to personality of pupils without partiality to affiliation or personal trait, and the same is related also to undue behaviour that jeopardizes personal and physical integrity of education workers in the institution, members of managerial structures, one word – any of employees or participants of educational process in the school.

Discrimination may occur when discriminatory behaviour or conduct in the school is negated, even in the case of severe violence, when it is being hidden and no conduct is undertaken in the direction of resolving due to victim's personal trait or affiliation. Also, discrimination exists when expression of hate, bigotry or openly discriminatory attitudes of any of participants of educational process are being tolerated, encouraged or justified. Example: *a professor has said to a pupil who has complained about peer violence to stop provoking other pupils*

by his 'aberrant' behaviour and to start acting 'normally'. Or, fellow professors insult and disparage their colleague in front of students because of her poor material status, and school administration does do anything to prevent such behaviour. I.e., parents of Roma pupils complain about discrimination of their children by peers, who make a school environment and a life in it difficult for them, but teachers and school administration do not respond adequately, describing the situation as 'childish teasing' and similar.

Cultural, linguistic and other peculiarities should be treated with care, as discrimination exists when the values of culture of members of the majority population are promoted through work plans, while others are negated or neglected. The use of language is a relevant issue when assessing the degree of equal access to education for all students. For example, *if in the communities, where some national community is a majority, it is not enabled that students attend lectures in their mother tongue. Or, if topics related to language, literature, history and culture of national communities are ignored by teaching programmes or not adequately represented then all students are not in an equitable position in the education process, and it does not contribute to the building of mutual understanding and tolerance. I.e., when the school development plan and curriculum do not reflect the specificities of the local community, and especially the conditions which pupils from vulnerable groups live in.*

Discrimination in access to the right to education is manifested through the non-application of measures legally prescribed, which aim to enable enrolment of pupils from vulnerable groups, pupils with special educational needs and pupils of national minorities (inconsistent application or refusal to apply affirmative action measures). For example, *when teaching assistants are not provided for the inclusion of children with special educational needs.*

Discrimination is also when additional conditions or conditions that are not provided for by law and by-laws, such as seeking additional documents for enrolment in school, are posed to participants due to some personal trait or affiliation to the group, or automatically due to the current lack of documents, such as birth certificates or certificate of citizenship, a child is not enabled to enrol to school although some children (such as Roma) have difficulties to obtain these documents in a timely manner. An example is also when an adequate approach and opportunities for movement through educational institution for children and youth with disabilities are not provided. Or, if certificates for a completed class or completed level of education are not issued due to some personal characteristics of a pupil, which renders access and mobility to higher education levels or employment more difficult.

Discrimination can occur in the course of the educational/teaching process and the process of assessing the achievement of knowledge standards in the educational process. If the criteria and expectations of the achievement of individual pupils because of their personal characteristics or affiliation are unjustifiably and in advance reduced, because it is consciously or unconsciously assumed that their learning and material mastering capacities are weaker and similar. Or, if pupils with special educational needs are imposed learning obligations that are not in line with the individual development plan and exceed their ability, that is, they are




asked everything as the other children.

Discrimination also occurs when it is not ensured that the pupil, regardless of personal trait, achieves general accomplishments, if he is not provided with support for progressing through the offer of various teaching methods, supplementary teaching and support in learning, or if assessment of achievements is not adapted to the needs of pupils and individual advancement. That is, when the teaching curriculum for pupils is reduced due to some of their personal traits compared to other pupils (some topics, lessons are being dropped, or not required to be learned by pupils, because it is unjustifiably assumed that they are too difficult for children from certain groups). Furthermore, if special criteria provided for by the law for assessing the achievement of pupils with special educational needs, or gifted pupils are not applied, and when individual monitoring of achievement and development is omitted. The unjustified application of lower standards in the assessment of individual pupils due to their personal characteristics causes a lower level of educational achievement. If pupils are unjustifiably given passing marks in order to transition to the next grade, and if they have not met the minimum standards of knowledge, their progress in learning and achievements in continuing education are being permanently endangered, perpetuating the disadvantaged position in education, and later hindering employment. For example: *pupils of Roma nationality are excluded from English language classes, on the grounds that the matter in this subject is too difficult and 'insuperable' for them. Or, for Roma pupils, special, less demanding teaching criteria are established, resulting in the fact that these children are prevented from gaining access to knowledge of the appropriate quality, the possibility which their peers of non-Roma nationality have. That is, teachers do not encourage Roma children to learn and advance, mostly because of negative stereotypes about Roma.* All of this indicates the complexity and demand for the role of professors and heads of the educational institution in preventing discrimination and fulfilling the purpose of education in the best interest, and through equal access to all pupils.

Discrimination through the contents of textbooks because textbooks can be inconsistent with scientific discoveries and thus support and further strengthen stereotypes and prejudices against certain groups and their rights. Bearing in mind that the goal of education is to develop awareness of diversity, equality and inter-culturalism, it is necessary that the things that are passed as a knowledge through textbooks are the facts that are scientifically based, not the propagation of non-scientific content and semi-truths. Example: *textbooks show the LGBT population as a pathological phenomenon and social deviation despite scientific discoveries that have proven that this is not a disease, nor any kind of deviance. Or, the contents of textbooks are full of gender stereotypes in opposition to the concept of gender equality built on modern scientific achievements.*

Discrimination through the use of confidential data of participants in the educational process occurs in situations where confidential personal data are used to bring one of the participants of the educational process into an unequal position. Responsibility in regards to the prevention of discrimination in education requires commitment and patience, as discrimination can occur



in numerous and different nuances. It is therefore important in any activity or process in the education process, during the planning and implementation phase of the teaching activities, to raise awareness on all potential situations that may cause inequitable treatment and to adequately prevent them. Discrimination in education leaves grave consequences, especially for the personality and further course of education and the lives of young people.

Who to ask for help if there is discrimination - support network inside and outside school

The civic and moral obligation of each participant of the educational process is to actively prevent the occurrence of discrimination and to react to any discriminatory treatment that occurs, regardless of whether it is a relation between pupils, pupils and professors or pupils and management, professors among themselves, or with some other actor in the educational process.

Internal school resources that can help in the prevention and resolution of cases of discrimination

Although discrimination in education can happen to every participant of the educational process, **pupils** are the most vulnerable group. The law guarantees pupils the right to protection against all kinds of violence, discrimination, abuse and neglect in school, as determined in greater detail by the school statute. It is also important the obligation of a pupil to respect the personality of his classmates and schoolmates, as well as the personality of the professor and cooperate with them through regular attendance, adhering to discipline during classes and other important regulations and rules at school.

The role of the upbringing-educational process in preventing discrimination is crucial. Creating a safe and stimulating environment and an atmosphere of cooperation, tolerance, mutual respect and open communication among the actors of the educational process develops a system of positive values that act preventively on the occurrence of discrimination, both in the school institution and outside. The school that fosters the culture of anti-discrimination educates person for a life in a society that is inclusive and fosters equality as the principle of functioning.

In order to prevent discrimination, it is the responsibility of educational institutions and all who work in it to cultivate special sensitivity and constantly work to improve awareness of the importance of tolerance of diversity and a culture of appreciation.

In order for prevention to be successful, each of the participants in the educational process must be familiar with their rights and obligations. The school statute and other acts regulating the functioning of the institution must be more closely determined in the cases of discrimination and the division of roles and responsibilities of all participants in the process. The institution is obliged to implement prevention through programmes and content development in the school that promote tolerance, the importance of the culture of human rights and anti-discrimination values. Also, the institution should develop and implement programmes that encourage



pupils' and parents' participation and cooperation with teachers and school management in designing behavioural rules that promote mutual respect. In order to strengthen prevention, institutions should also engage themselves, participate and develop projects and trainings for acquiring the necessary knowledge and skills for identifying, preventing and acting in cases of discriminatory behaviour for teachers and other participants in the educational process that work with young people. The responsible institution builds and develops cooperation with the local community, local civil society and other actors as resources outside the institution that can contribute to the development of an anti-discrimination culture.

Pupils have the right to be active participants in their own education through the opportunity to freely express their opinion on the work of teachers, to ask for a commission check of their knowledge during the course of their classes, to submit an objection to the grade at the end of the classification period, the academic year or the exam, to organize themselves through the class community and the pupils' parliament and participate in the decision-making process important for their interest, together with professional bodies in the school.

Thanks to the class community and the pupils' parliament, pupils develop and articulate their own attitudes about the quality of certain aspects of the upbringing-educational process and have the opportunity for their voice to be heard more easily and better in relation to other actors of the process, teachers and school management.

Pupils must be enabled to say what they think freely, because it permanently and successfully creates a critical awareness that is a prerequisite and key effect of every successful educational process. Critical awareness and the constant need for review, analysis of attitudes, facts, opinions and procedures is the best mechanism for decomposing stereotypes and prejudices from which discrimination arises, followed by violence and other forms of human rights violations. It is precisely the full freedom of thought and expression, with the limitations on hate speech, that has a preventive role in the emergence of conflicts, the appearance of discrimination, violations of rights and violence in school. Additionally, pupils' participation in school life is also the best training for later active participation in social life.

For success in the educational process, it is crucial that all of its participants feel safe and secure, protected from human rights violations and discrimination. Each pupil has the right to protection from all forms of violence, discrimination, abuse and neglect in school. Also, against the pupil who does not fulfil the obligations and who does not comply with school rules, educational measures may be imposed: warning, reprimand and exclusion from school. If he behaves inappropriately towards pupils (abusive speech, threatening, provoking, or participating in a fight, etc.) he can be reprimanded, or if he causes national and religious intolerance in school, or he / she exercises psychological, physical and sexual violence, then he can even be excluded from school. The initiation of educational measures can be initiated by the pupil, the parent or any of the employees in the school. They are exerted by taking into account the best interests of pupils, with the support of a pedagogue or school psychologist, and with the possibility of appeal of a pupil and his parents to the decision on the application of measures.



No pupil can be victimized due to an expressed personal critical opinion or complaint on any segment of the upbringing-educational process at school. The decision on any disciplinary or educational measure is final only when all the rights to appeal available to the pupil and his or her parents are exhausted. Any other treatment is a violation of the rights of pupils.

Only in the community that provides respect for the individual's personality, which is open, inclusive and provides the opportunity to learn through a considerate and respectful atmosphere, it is possible to build competencies of pupils who will be ready to actively and productively, as responsible citizens, participate and contribute to the community.

All participants in the education process are obliged to prevent the occurrence of discrimination and other forms of human rights violations, interact and communicate with each other, to develop and promote the values of tolerance and understanding, cooperation and solidarity. **When discrimination occurs, everyone is obliged to react** and to process every individual case in a timely and adequate manner in order to solve and eliminate the negative consequences in the best interest of pupils.

When discrimination occurs, there are many opportunities to protect and prevent any further deterioration of the situation. The first solution available to students is to **talk to one of the professors**, or with **the class elder**, or **to consult a psycho-pedagogical** service at school. Namely, in addition to lecturing and transferring knowledge from specific subjects, professors at the same time have the role of providing support when pupils face a problem, to hear them out, and instruct on how to solve any difficulty they may encounter in mastering the material, relations with classmates and schoolmates, teachers or management. According to the statute of the school, it is the duty of the professor to take care of solving the educational and teaching problems of the pupils. It is precisely this role of a professor as mediator between discriminator and victim that can be very important in finding an adequate solution in case of discrimination. The professor can be involved in solving by explaining to pupils why discriminatory and violent behaviour is not permissible, why it is wrong, which consequences it causes, how it is punished, and so on. Of course, the professor can assess whether the individual case is such that it is necessary to look for some other manner of solving, through cooperation with the professional service, administration, parents, colleagues, or some other institution outside the support system provided by the educational institution itself in case of severe cases of discrimination. Everyone who participates in the educational system has the obligation to, by reacting, prevent discrimination or some other type of violation of rights, without delay and in accordance with the best interests of the pupil. It is a great responsibility for the professors to properly assess the gravity of the case in which discrimination has occurred and to resolve it in the fastest and most effective way. It is therefore important that professors know what is the legal regulation and the sequence of steps that must be fulfilled in order to prevent the emergence of more serious consequences of discrimination.

In order to prevent discrimination, teachers should take care also to adapt the process of planning and programming to the needs of each pupil, to thoroughly familiarize themselves with



the needs of pupils, to know and follow their developmental characteristics and advancement and accordingly plan a real programme that will monitor the cognitive needs and opportunities of pupils. They must take into account the social context which pupils come from and design plans and programmes that will equally include and engage all pupils, encourage their joint work and teamwork to complement each other. Professors have the task of getting to know and consistently applying the spirit of laws, conventions and other important documents that promote the rights and freedoms of pupils, children and young people. Finally, they should, as examples that young people learn from, in relation to their colleagues, management and external actors, nurture an open, respectful communication and mutual respect in accordance with the rights and obligations prescribed by educational laws.

In order to avoid discrimination against pupils from certain social groups, such as Roma, professors should strive to approach pupils with the necessary sense of their individual learning characteristics during the teaching process. This is important, not only in planning and programming, but also in assessing pupils' achievements that must respect individual progress in mastering the material.

The preventive role of teachers requires their constant effort to actively contribute to the development of the principle of equal opportunities in an educational institution, in working with pupils, in relations with colleagues. Teachers prevent discrimination by respecting every child, and in addition to transferring knowledge, they provide support in the development of individual characteristics and social values and skills of young people in the spirit of tolerance, understanding and acceptance of diversity. Professors have an indispensable role in the process of informing and supporting pupils to get to know each other and actively use the possibilities of protection against discrimination, violation of human rights and violence.

School director ensures equality of pupils in exercising the right to education and upbringing, in accordance with their abilities. In the institution he/she manages, the director has an irreplaceable role in promoting and advocating anti-discrimination values and respecting the rights of each pupil and employee. Special sensitivity is important when implementing enrolment procedures in school, which implies clear criteria that recognize and contribute to the implementation of the principles of affirmative action, for example for Roma pupils. The school management must undertake all measures so that the educational institution is in the right sense inclusive.

Sometimes cases of discrimination are grave and require, besides interviewing and taking disciplinary and educational measures, also the initiative of the director to deal with cases before other institutions outside the school institution which have the authority to protect against human rights violations and discrimination.

The task of professional services (**pedagogical - psychological services**) is to improve upbringing-educational work in an educational institution through professional support and provide assistance to pupils, parents, teaching staff and school management in relation to all



matters of relevance to education and upbringing.

The school pedagogue should encourage, create, cooperate, evaluate, provide help and support, diagnose, counsel, teach, organize, plan and mediate in problem situations, or perform activities that can be defined as preventive, advisory-instructive, analytical-research and operative ones.

The role of school pedagogues and psychologists to provide support and engage in, or mediate in addressing discrimination cases, is enormous. They work to ensure that every child has the right to a quality and unimpeded learning and to their protection against any form of violence, abuse and protection of dignity that in the cases of discrimination is usually seriously violated. The psychological-pedagogical service provides support and intervention in crisis situations in the school, when a case of discrimination or violence occurs among the participants in the educational process. In order to avoid the need for such intervention, pedagogues and psychologists have the role to work on developing and implementing preventive programmes against the occurrence of discrimination or any other violation of rights, i.e. violence. Addressing a psychologist or pedagogue is confidential, which is very important for young people to have the freedom to share their problems or a situation with the service in order for it to help them in the best way, and to know that they are not alone in a situation where they are exposed to the consequences of discrimination or violence. Confidentiality is one of the basic principles of the work of these services and is reflected in the obligation to treat all data, information they receive in relation to children and from children in accordance with the protection of privacy and personality of the child until they have the parents and pupils' consent to use them or make them public if the need arises and in accordance with the law. In schools that have a pedagogical psychological service, it represents a valuable resource in building an anti-discrimination culture.

The pedagogical-psychological services have a particularly important role in the development of programmes for the prevention of discrimination and violence in schools that include both the perpetrators and the victims, as this is the attitude of the two parties at the same level. Educational programmes should strengthen and develop social competence on both sides.

The requirement of a timely and adequate response / intervention in the event of discrimination requires constant monitoring of the situation in the school institution, frequent conversations with pupils, constant attention that ensures that actions which in the approach to education, its content, relations between actors in the upbringing-educational process can lead or indicate the appearance of discrimination, are identified on time.

In the event of discrimination, it is important to immediately stop discriminatory behaviour / treatment. It is necessary to provide support to the actors of the case, both to the victim, as well as to the discriminator and witnesses of the case. With the victim of discrimination, it is necessary to talk and show support, let him/her know there is no need to be afraid, that he/she is not alone, that he/she is not guilty for discrimination that



he/she has experienced, that he/she is a victim of wrong and unacceptable behaviour, which is punishable and will be sanctioned. It is also important to encourage the victim to cooperate and openly communicate in order to determine the facts of the case and contribute to its prompt and successful resolution. It sometimes requires time, careful approach to the victim, patience in conversation, especially with a young person to whom it is not easy to talk about the experience of discrimination, violence or any other human rights violation. The experience of discrimination is difficult and requires strong support. In conversation with the victim and the discriminator, it is obligatory to include another of the actors of the upbringing-educational process, such as professional services as support in these sensitive situations for both parties, especially in the case of young people, pupils. It is also necessary to immediately inform also the parents of the pupil and interview them, inform them about the details and include them in solving the problem, with the cooperation and consultation with the professional services at the school. When processing the case, all details should be recorded in the form of an official note, which later serves as a basis for taking concrete measures and resolving cases within the school, or outside the system before the competent institutions. An overview of as precise as possible information and situation descriptions is important for the proper selection of the case management strategy. During the interview with the victim of discrimination, but also with the discriminator, attention should be paid to family factors, characteristics of the family framework from which young people come, whether one of them is a victim of violence and neglect themselves within the family, and similar. All this information is important for making the complete picture and can offer a guideline for effective treatment. Discrimination sometimes escalates into physical violence, or severe verbal violence, which is then solved by applying educational or disciplinary measures. In the case of more serious and more severe cases of discrimination, i.e. severe physical violence, it is necessary to include the police, and in the case of young people also the Centre for Social Work. Whatever incident that may happen, the conduct upon it requires full respect for the personality of the victim and the discriminator, careful consideration of all aspects of the case, in order for the prosecution to take place adequately and have an effect in the best interest of both sides.



External support system in solving cases of discrimination in education

Problems and cases of discrimination and violation of human rights at school are best tried to be solved within the institution, through a network of support provided by the professors, class elders, the director i.e. the school administration, as well as with the help of professional services and cooperation with parental and pupils' bodies. If the case is more complex, or the victim of discrimination and human rights violation is not satisfied with how the school resolves the situation, then he/she can also address institutions operating outside a school institution, which are responsible for controlling its work in accordance with the law, such as the Ministry of Education, Inspection for Education and Sport (formerly Educational Inspection), Protector of Human Rights and Freedoms or court.

Inspection Department for Education and Sport

Inspection Department for Education and Sport, within its jurisdiction can contribute to the resolution of cases of discrimination in education, since this represents a gross violation of the principles and provisions of all educational laws for the application of which the Department performs supervision.

Inspection supervision is regular, at least once a year, and may be extraordinary (upon notification), as well as control, which is conducted in order to determine whether the decision on inspection supervision, which identified a certain misdemeanour or a more severe form of violation of the law, is being handled.

The inspection is guided by the principle of prevention and urgency, and during the inspection supervision, a record is made and a conclusion is reached, i.e. a decision, requiring the school to correct the illegalities within a certain period. If preventive conduct has not given effect, stricter measures are taken.

Protector of Human Rights and Freedoms

In the case of discrimination in the field of education, there is a possibility of addressing the Ombudsman as an institutional mechanism for protection against discrimination. The complaint form can be found on the institution's website, and a written submission may also be sent which should contain clearly recorded information, including the basis of discrimination. The procedure before the Ombudsman is free and confidential.



After examining a particular case, the Ombudsman determines whether there has been a violation of human rights or discrimination. If he finds that there has been a violation, or if there has been discrimination, he refers the opinion to the educational institution in which the case occurred with the recommendation and the deadline for the violation to be removed. If an educational institution fails to act upon the recommendation of the Ombudsman, he may also invite a higher authority (for example, the Ministry of Education) to get acquainted with the case and contribute to it, or may inform the public through reports or media to exert pressure to resolve the case. Depending on the severity of the discrimination case, the institution can instruct the party to process the case before the court.

Judicial protection against discrimination

Article 15 of the Law on Prohibition of Discrimination states: *'Discrimination in the field of education and vocational training is considered to be an impediment or disabling of enrollment in the educational institution and institution of higher education, as well as the selection of programmes at all levels of education, exclusion from these institutions contrary to the regulations in the field of education and upbringing, an impediment or denial of the possibility of attending classes and participation in other educational activities, the classification of children, pupils and students, or otherwise making differences or unequal treatment of them, on one of the grounds referred to in Article 2, paragraph 2 of this Law'*²³.

In the case of discrimination, everyone has the right to file a lawsuit with the court to protect the rights. Litigation disputes are characteristic of the so-called *general accumulation of lawsuits*. This means that the claim may require the determination of discretion, the prohibition of performing or repeating discrimination, the elimination of the consequences of discrimination, the compensation of damages, and the requirement of public announcement of the judgment on discrimination. Only determining the existence of discrimination does not provide an adequate level of protection against such actions, and only by the accumulation of some of the aforementioned requirements this mechanism achieves the complete protection purpose.



National and international documents that prohibit discrimination

Prohibition of discrimination - Montenegrin legal framework

The Constitution of Montenegro - the basis for the prohibition of discrimination

Respect for human rights and the prohibition of discrimination are constitutional categories.

The Constitution of Montenegro guarantees the protection of inviolability and prescribes the obligation of citizens to respect each other's human rights and freedoms, as well as the equality of all before the law, regardless of their personal character or specialty. The Constitution prohibits incitement of hatred and intolerance towards anyone and on any grounds, as well as discrimination. Discrimination is permitted only by the application of regulations and special measures aimed at contributing to the achievement of equality of persons who are in any way in inequitable position, such as encouraging gender or national equality. Justification of the introduction of special measures exists only until the objectives for which they are introduced are achieved. The Constitution guarantees the right to education under equal conditions and stipulates that primary education is compulsory and free of charge. In the part relating to the protection of the identity of minorities, the Constitution prescribes a set of rights, such as the right to freely express identity, ethnic and religious distinctions, private and official use of alphabets, the display of national symbols and the celebration of the holidays. In the field of education, minorities have the right to educate themselves in their language and alphabet in state institutions through teaching curricula that cover the history and culture of minorities.

Labour Law - prohibition of discrimination in employment and work

The provisions of this Law are especially important for all those employed in the upbringing-educational process and are the basis for the identification and processing of cases of discrimination arising in the process of employment or at work.

The prohibition of discrimination is included in the provisions of the Labour Law, which prohibits **direct and indirect discrimination during job search, as well as in exercising the rights of employees as per numerous prohibited grounds.** The law provides a ban in the field of prescribing the conditions for employment, that is, during the design of the competition, the selection of candidates for certain job positions, the provision of working conditions and during the exercise of employment



rights, education and vocational training and specialization, in procedures and rules for promotion at work or when deciding and handing over the dismissal.

The Labour Law prohibits **harassment and sexual harassment at work and regarding work, as well as the victimization** of those who decide to prosecute discrimination.

The law also defines **mobbing** as a type of abuse at work, i.e. *'Any behaviour towards an employee or a group of employees by the employer that is repeating, which aims or represents a violation of dignity, reputation, personal and professional integrity, the position of an employee that creates an enmity, degrading or offensive environment, aggravates the working conditions, which leads to the fact that employee becomes isolated or persuaded to cancel a work contract on their own initiative'*.²⁴

Positive discrimination is also prescribed by the Law, as well as special protection measures for certain categories that are prescribed by law, collective agreement and labour contract and refer to the protection of persons with disabilities, women during pregnancy and maternity leave, care and special care of the child which are not considered discrimination. According to the law, education and vocational education must be accessible to everyone without discrimination and always enabled when it is a job requirement.

Law on Gender Equality - Prohibition of discrimination based on gender and gender identity


The Law on Gender Equality regulates the manner in which it is realized and ensures the realization of the concept of gender equality as well as the measures for removing gender discrimination in order to create equal opportunities for the participation of women and men and other gender identities in accordance with the highest standards in all spheres of society.

Gender equality is defined as *'equal participation of women and men, as well as persons of different gender identities in all areas of the public and private sector, equal position and equal opportunities for exercising all rights and freedoms, and the use of personal knowledge and skills for the development of society, as well as achieving equal benefits from the result of the work'*²⁵.

The law defines discrimination based on sex as *'any legal or factual, direct or indirect discrimination or unequal treatment or failure to act towards one person or group of persons of one sex in relation to persons of the other sex, as well as exclusion, restriction or giving priority to one person or group of persons of one sex in relation to persons of the other sex, which hinders or denies to any person enjoyment or*

²⁴ Labour Law, Official Gazette of Montenegro, no. 049/08, 026/09, 088/09, 026/10, 059/11, 066/12, 031/14, 053/14, 004/18

²⁵ Law on Gender Equality, Off. Gazette of RMNE, no. 46/07 and Off. Gazette of Montenegro, no. 73/10, 40/11, 35/15



exercising the human rights and freedoms in civil and political, economic, social, cultural and other areas of public and private life.²⁶

The law defines *unequal treatment* as any treatment that makes distinction between men and women because they belong to different sexes, or unjustly gives priority to a person of one sex in relation to the face of the other sex. State institutions and other entities in all sectors of the society, when making decisions, carrying out activities within their competence, take into account and evaluate the impact on the achievement of gender equality.

In accordance with the law, any incitement, aiding, giving instructions that a person or group is discriminated against by sex is defined as discrimination.

Law on Minority Rights and Freedoms - Prohibition of discrimination on national, ethnic, religious and linguistic basis

According to the Law, minorities are equal with other citizens and enjoy equal protection, and any violation of minority rights is illegal and punishable. Minorities have the right to express, preserve, transfer and develop their identity and tradition. The state of Montenegro is legally obliged to develop and improve the study of the tradition, culture and minority languages. The law guarantees minorities the right to use their language and alphabet. In those territories where minorities comprise a majority or at least 5% of the population, according to the last two censuses, minority language is also in official use. This means that the names of schools are also written in the language of the minority. The law guarantees minorities also the right to study in their own language and the appropriate representation of their language in general and vocational education, depending on the number of pupils and the financial possibilities of the state. The relevant programmes for the education of minorities in their own language also contain parts on the history, culture and tradition of minorities.

In schools where education is conducted in the official language, the law stipulates that the matter programmes include content relating to the history, culture and tradition of minorities in order to encourage mutual understanding and tolerance through the educational process. Minorities are also included in the preparation of programmes for minority and official language schools through an opinion that minority councils give to the authorised institution. The law stipulates that minority language teaching is carried out by teachers belonging to minorities, or members of the dominant population who have active knowledge of the minority language. Directors of educational institutions that educate in minority languages also belong to minorities. When choosing a director, the authorised institution that appoints a school director, is given the opinion of national minorities' councils.

²⁶ Ibidem.



Law on the Prohibition of Discrimination of Persons with Disabilities

The law prescribes an explicit prohibition of discrimination against persons or groups with disabilities on any basis and in all spheres, as well as protection and measures for promoting the equality of this group. In the part relating to the prohibition and protection against discrimination, the provisions of the Law on the Prohibition of Discrimination and other laws that prevent discrimination in different areas apply, unless they are contrary to the umbrella law.

Disability based discrimination is defined as *'any legal or factual, directly or indirectly, deliberately or unintentionally making a difference or unequal treatment, i.e. failure to act towards one person or group of persons with disabilities in relation to other persons, as well as exclusion, restriction or giving priority to a person in relation to a person with disabilities, for which a person with disabilities is hindered or denied recognition, enjoyment or achievement of human rights and freedoms in political, educational, economic, social, cultural, sports, civic and other areas of public and private life'*²⁷.

Any action that incites or instructs discrimination, or disturbs the person with disabilities, is also prohibited. The law does not relieve the responsibility of persons who commit discrimination, even in the case of persons with disabilities agreeing to discriminatory treatment. As special forms of discrimination, the law recognizes hate speech and disdain, as well as segregation or grouping of persons based on disability.

Grouping or segregation is a particular form of discrimination that occurs when the grouping is planned, systematically or continuously separating a person or group of persons with disabilities and joining them into one or more groups in a particular situation, when in the same or similar situation this separation and joining is not carried out with another person or group of persons. This phenomenon is particularly dangerous in the field of education and in complete contradiction with the goals and spirit of educational laws.

Discrimination is also the inaccessibility of facilities and areas in public use, that is, the absence of secured access, movement, residence and work in facilities for public use, as well as access to public spaces in accordance with regulations on spatial planning and construction of facilities.

Discrimination in the field of upbringing, education and vocational training of persons with disabilities is also prohibited, in the sense of: *'1) disabling, restricting or aggravating a person with a disability in choosing an educational programme and enrolling and accessing and staying in an upbringing-educational institution, in*

²⁷ Law on Prohibition of Discrimination of Persons with Disabilities, Off. Gazette of MNE, no. 35/2015 and 44/2015

accordance with his or her abilities; 2) disabling, restricting or hindering the person with disabilities in attending the teaching and knowledge testing, as well as participation in other upbringing or educational activities, including participation in extra-curricular activities and competitions; 3) non-implementation and non-execution of special measures referred to in Article 5 of this Law for the establishment and provision of individualized support for uninterrupted attendance of teaching and assessment of knowledge, as well as participation in other upbringing or educational activities, including participation in extra-curricular activities and competitions, in accordance with the regulations in the field education and upbringing; and 4) exclusion of persons with disabilities from the upbringing-educational institution, while in the same or similar situation their peers are not subjected to this.¹²⁸.

Criminal Code of Montenegro

The Criminal Code prescribes the criminal offense - **racial and other discrimination**, which punishes the violation of human rights and freedoms guaranteed by internationally ratified treaties and rules of international law based on differences in race or other personality.

When assessing the criminal offense of **hate crime**, an aggravating circumstance will be judged by the court if the offense is committed by hatred because of race, religion, national or ethnic origin, gender, sexual orientation or gender identity of another person.

Article 433 *Racial and other discrimination* of the Criminal Code is also of importance for the protection against discrimination in education '(1) Whoever because of national or ethnic affiliation, race or religion, or because of the absence of that affiliation or because of differences in political or other opinion, gender, language, education, social status, social origin, sexual orientation, gender identity, disability, or any another personal trait violates the basic human rights and freedoms guaranteed by generally accepted rules of international law and ratified by international treaties by Montenegro, shall be punished by imprisonment from six months to five years.(2) Whoever spreads ideas about the superiority of one race over another or propagates hatred or intolerance based on race, gender, disability, sexual orientation, gender identity or other personal characteristics or incites racial or other discrimination, shall be punished by imprisonment of three months to three years.¹²⁹.

The Criminal Code foresees the criminal offense of violation of equality 'Whoever because of national or ethnic affiliation, race or religion, or because of the absence of that affiliation or because of differences in political or other opinion, gender, language, education, social status, social origin, sexual orientation, gender identity, disability,

²⁸ Ibidem.

²⁹ Ibidem.



material status or any other personality, denies or restricts someone's human rights and freedoms established by the Constitution, laws or other regulations or general acts or ratified international treaties or grants privileges or benefits on the basis of this difference, shall be punished by imprisonment of up to three years³⁰.

Anti-discrimination principles and values in national laws regulating the field of education

According to the General Law on Education, the goal of education is to 'provide the opportunity for a comprehensive development of the individual, regardless of gender, age, disability, social and cultural background, national and religious affiliation, and physical and psychological constitution'³¹. Also, the goal of education and upbringing is to 'develop awareness, the need and the ability to preserve and promote human rights, the rule of law, the natural and social environment, multi-ethnicity and diversity'³². In the process of education and upbringing, everyone has the right to equal involvement and participation.

Law defines education as an activity of public interest, and in that sense, education is secular, that is, religious education is not permitted in public educational institutions, except in schools that are licensed as secondary religious schools. The provision of the Law that speaks about the autonomy of institutions of education in which political organization and activities are not allowed, as well as the organization of political events, is also important.

The law stipulates that the arrangement of educational institutions in the field must ensure the equal accessibility of education to all citizens. Citizens of Montenegro are 'equal in the exercise of the right to education, regardless of nationality, race, sex, language, religion, social origin, disability or other personal characteristic. Foreign nationals who have temporary residence or permanent residence in Montenegro are equal in exercising their right to education with Montenegrin citizens, in accordance with a special law'³³. Discrimination is expressly prohibited: „In the institution it is not allowed: physical, psychological and social violence; abuse and neglect of children and pupils; physical punishment and insulting of personality, i.e., sexual abuse of children and pupils or employees and any other form of discrimination in the sense of the law"³⁴.

30 Ibidem.

31 General Law on Education, Official Gazette of RMNE, no. 64/2002, 31/2005, 49/2007, 4/2008 – other law, 21/2009 – other law, 45/2010, 40/2011 – other law, 45/2011, 36/2013 – Decision of CC MNE, 39/2013 and 44/2013 and 47/2017. Look up: Decision of CC MNE 12/2011. Look up: Decision of CC MNE 23/2011.

32 Ibidem.

33 Ibidem.

34 Ibidem.

The legal text prescribes the rights and obligations of all participants in the educational process, the procedures for forming and the jurisdiction of professional bodies in the school (teachers' council), parents' council, student parliament, pupils, and teaching staff in general. The law specifically emphasizes the right of pupils to protect themselves from all forms of violence in school, discrimination, abuse and neglect.

The anti-discrimination provisions of the general Law on Education, as well as other domestic and international anti-discrimination standards, permeate legal solutions that regulate individually each of the educational levels, from primary, secondary and higher education.

Prohibition of discrimination and the right to education - international standards

Universal Declaration of Human Rights

In addition to promoting the universal principle of non-discrimination, the Declaration emphasizes the critical importance of upbringing and education in achieving human rights standards that the declaration contains and promotes.

Article 7 of the Declaration promotes the general prohibition of discrimination: *'Everyone is equal before the law and has the right without any distinction to equal protection of the law. Everyone is entitled to the same protection against any discrimination that violates this Declaration and against any incitement to such discrimination'*³⁵.

Article 26 states that *'1. Everyone has the right to education. Education should be free at least in elementary and lower schools. Primary education is compulsory. Technical and vocational education should be equally accessible to everyone on the basis of their ability. Education should be directed towards the full development of human personality and the strengthening of respect for human rights and fundamental freedoms. It should promote understanding, tolerance and friendship among all nations, racial and religious groups, as well as the United Nations peace-keeping activity'*³⁶.

Convention on the Rights of Persons with Disabilities³⁷

By the Convention, signatory states undertake to ensure inclusiveness of education at all levels as well as lifelong learning based on the principle of equal opportunities and without discrimination. The obligation is to sign a system of education that will

³⁵ Universal Declaration of Human Rights, adopted and proclaimed by resolution of General Assembly of the United Nations 217 (III) from 10 December 1948.

³⁶ Ibidem.

³⁷ Convention of United Nations on Rights of Persons with Disabilities with the Optional Protocol, General Assembly of the United Nations, 13 December 2006.



enable the development of the potential of persons with disabilities, strengthen their sense of dignity and values, respecting human rights, freedoms and diversity. The Convention obliges the creation of an education system that develops talents, creativity and the full potential of physical and mental abilities to empower disabled people to participate effectively in the life of society.

The signatories of the Convention guarantee that they will work to prevent exclusion of children with disabilities from compulsory primary and secondary education, that is, their inclusion in education on an equal footing with others. It is the duty of the signatories to ensure that persons with disabilities have unobstructed access to secondary education, vocational training, adult education and lifelong education without discrimination and equally with others, with reasonable adjustments that should ensure easier accessibility and use of educational institutions.

This includes a reasonable adaptation of education to the needs of people with disabilities and the provision of support in the education process to contribute to educational success as a prerequisite for inclusion in societies, such as providing learning of the Braille letter, alternative ways and means of communication, orientation skills, and other support systems, such as mentoring for successful self-movement, etc.

In addition, signatory states undertake to pay attention to the employment of teaching staff who speak the sign language and know the Braille letter, in particular persons with disabilities as teachers, and employ experts and staff who will be support at all levels of education. It is the duty of the signatories to ensure that persons with disabilities have unobstructed access to secondary education, vocational training, adult education and lifelong education without discrimination and equally with others, with reasonable adjustments that should ensure easier accessibility and use of educational institutions.

Convention on the Rights of the Child ³⁸

This Convention is a key document aimed at guaranteeing that children's rights are respected, including the right to education, and that primary education is free and accessible to everyone. The Convention encourages member states to do their utmost to ensure that both general and professional secondary education is accessible to everyone, but also free of charge.

The signatories are committed to working to permanently reduce the rate of dropout, and to ensure that students are informed about all important aspects of education. They agree that education is focused on the development of personality, talent and mental and physical abilities to their full potential, but also on the development of

38 Convention on the Rights of Child, adopted by the General Assembly of United Nations, 1989.



respect for human rights and principles guaranteed by the UN General Declaration on Human Rights, and through education to develop respect for one's own cultural identity, language and values, but also to other cultures and civilizations.

Signatory states undertake to create an education system that prepares children to take responsibility in social life, develop tolerance and understanding of peace, gender equality and friendship towards nations, ethnic, national and religious groups.

States must also develop measures that will prevent interference in the education of children, such as exploitation and child labour, but also to undertake all appropriate measures to ensure that school discipline is implemented in a manner appropriate to children's human dignity and in accordance with the Convention.

European Convention on Human Rights and Fundamental Freedoms

Regarding the right to education, the Convention guarantees that no one should be deprived of the right to education. In carrying out its functions in the field of education and teaching, the state must respect the right of parents to provide education and teaching in accordance with their religious and philosophical beliefs. Article 14 prescribes: *'The enjoyment of the rights and freedoms envisaged in this Convention shall be provided without discrimination on any ground such as sex, race, skin colour, language, religion, political or other opinion, national or social origin, connection with a national minority, birth or other status'*³⁹.

Protocol 12 to the Convention prescribes a general prohibition of discrimination in the sense that any right envisaged by law must be exercised without discrimination on any ground such as, for example, sex, race, skin colour, language, religion, political or other belief, national or social origin, association with a national minority, property or other status.

Framework Convention for the Protection of National Minorities⁴⁰

The Convention prescribes for the parties the obligation to guarantee to members of minorities parity and equal legal protection and prohibit any discrimination on grounds of belonging to a particular minority. States oblige themselves to undertake measures to promote tolerance and intercultural dialogue, cooperation and understanding among citizens regardless of religious, ethnic, national or linguistic affiliation, especially in the fields of education, culture and mass information.

In the field of education, signatories must strive to provide conditions for the cultivation of minority culture, language and religion. In that sense, it is necessary to undertake activities on training of teaching staff, developing teaching materials and enabling

39 European Convention on Human Rights and Fundamental Freedoms, Council of Europe, 1950.

40 Framework Convention for the Protection of National Minorities, Council of Europe, Strasbourg 1995.



contacts and exchanges among pupils and teachers of different communities. The contracting parties undertake to provide equal access to education at all levels for members of minorities. Minorities have the right to establish their educational institutions for education and training. Every member of a minority has the right to learn his / her mother tongue, and in the areas inhabited by minorities in a significant number, if there are sufficient requests for this, it must be provided, in accordance with the possibilities of the state and the education system, that minorities learn their mother tongue or be educated on that language.

European Charter on Regional and Minority Languages ⁴¹

The main goal of the Charter is that signatory states recognize regional or minority languages as an expression of cultural wealth, and to promote the study and research of regional or minority languages at universities or similar institutions. In this way, their cultural identity is fostered as an important factor in the social integration of minorities. The anti-discrimination provision consists in the fact that no one should be excluded, restricted or adversely treated because he/she uses a minority or regional language, which would lead to discouraging anyone to use and develop the language of the minority which he/she belongs to.

States must enable minorities to study in minority languages, wherever possible, at all levels of education. This includes providing conditions for learning / education in minority languages through training of teaching staff and creating other necessary conditions for comprehensive and functional education in minority languages.

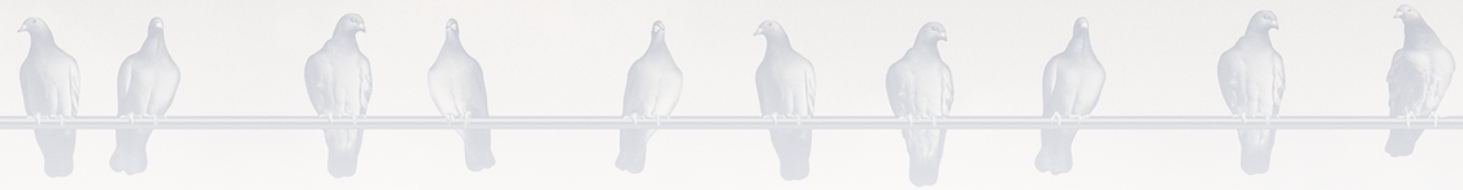
International Covenant on Civil and Political Rights ⁴²

The International Covenant on Civil and Political Rights prescribes that all persons are equal before the law and have the right, without any discrimination, to equal legal protection. This means that the law should prohibit any discrimination and guarantee to all persons equal and effective protection against any discrimination, in particular based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Covenant prohibits general discrimination and inequality before the law, that is, it prescribes a norm that no law may have discriminatory provisions entered in it, regardless of the matter regulated by it. States also have an obligation not to deny members of ethnic, religious or linguistic minorities the right to foster their own cultural life together with other members of their group, to confess and maintain their religion or use their own language.

⁴¹ European Charter on Regional and Minority Languages, Council of Europe, Strasbourg, 1992.

⁴² International Covenant on Civil and Political Rights, adopted by Resolution 2200A (XXI) of the General Assembly on 16 December 1966, entered into force on 23 March 1976, in accordance with the Article 49.



International Covenant on Economic, Social and Cultural Rights ⁴³

The main intention of the Covenant is to encourage signatories to continually improve economic, social and cultural rights for the purpose of universal social progress, prevention of conflict, poverty, human rights violations and discrimination.

Signatory states are obliged to ensure everyone the right to education that is focused on the development of personality, dignity and empowerment of respect for human rights and freedoms. Education itself should focus on building an individual into an active participant in social life willing to contribute to understanding, developing tolerance and friendship among people of different racial, ethnic and religious backgrounds and to the consequent preservation of peace. In that direction, states should ensure the obligation and availability of free basic education for everyone. Secondary education should also be available to everyone and mandatory with the gradual implementation of measures in order to be free of charge. States should do their best to make university education gradually free and generally available to everyone according to capabilities. Finally, the signatories should work diligently to expand the school network, develop various scholarship programmes, and continually strengthen the standards of teaching staff. In doing so, the freedom of parents must be respected to choose for their children religious and moral education that best suits their beliefs in the institutions prescribed by the state.

International Convention on the Elimination of All Forms of Racial Discrimination ⁴⁴

This Convention was the first, and for a long time, the only, internationally binding instrument that defined the notion of discrimination. The Convention declares every doctrine of superiority among races to be scientifically unfounded, immoral and socially dangerous phenomenon that must be prevented by active measures through the promotion of tolerance and coexistence in the cooperation of different nations in one country, and among different nations around the world.

It is a particular duty of signatory states to take measures in the field of education and upbringing, informing and culture in order to combat prejudices that lead to racial discrimination by improving understanding, tolerance and friendship among nations, ethnic and racial groups in the spirit of the principles and values of the United Nations.

⁴³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signing, ratification and accession by Resolution of General Assembly 2200A (XXI) from 16 December 1966

⁴⁴ International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signing and ratification by Resolution of the General Assembly 2106 A (XX) from 21 December 1965, and entered into force on 4 January 1969 in accordance with the Article 19.



Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ⁴⁵

The Declaration was adopted with the aim of contributing to the political and social stability of the signatory states through the promotion and protection of the rights of members of national, ethnic, religious and linguistic minorities.

It obliges states to protect the survival and identity of minorities on their territory and to improve the conditions for it to develop constantly. In accordance with the Declaration, persons belonging to national or ethnic, religious and linguistic minorities have the right to freely, without any interference from the side and without discrimination, privately and publicly enjoy and practice their culture, their religion and use their own language. The state is obliged to enable the effective participation of minorities in social, economic, political and other areas of social life, including education. In the field of education, the state is obliged to undertake incentive measures for acquiring knowledge about the history, tradition, language and culture of minorities living in their area, and to provide conditions for minorities to educate themselves about the society in which they live and participate in the decision-making process, in particular those which concern them, both at the local and regional level. Minorities must be given the freedom to express their identity as long as it is in accordance with the law. Whenever possible, states are obliged to allow minorities to learn in their own language and in general to learn their own language.

Recommendation CM / Rec (2010) 5 of the Committee of Ministers to member states on measures for fight against discrimination based on sexual orientation or gender identity ⁴⁶

The recommendation was made in order to counter discrimination against the development of social inclusion and persons of different sexual orientation and gender identity. States that have adopted it should work on the permanent elimination of discrimination based on sexual orientation and gender identity as an obstacle to the enjoyment of human rights and freedoms. Education is in focus as an important channel of combating homophobia and discrimination. In that sense, the state should take active measures to ensure the right to education without discrimination based on sexual orientation and racial identity in a safe environment, without violence and exclusion and other forms of discriminatory treatment. States should work on the

45 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted and proclaimed on 47th session of General Assembly of the United Nations, on 18 December 1992 (resolution no. 47/135)

46 Recommendation CM / Rec (2010) 5 of the Committee of Ministers to member states on measures for fight against discrimination based on sexual orientation or gender identity, Council of Europe, accepted by Committee of Ministers on 31 March 2010 on 1081 meeting of deputy ministers.



development of tolerance within educational institutions by raising understanding and accepting different sex and gender identities by providing objective information in school curricula and providing support services and informing young people to live in accordance with their sexual orientation and gender identity. Educational institutions should have designed policies of equality, security and support for protection against discrimination.

Important instruments adopted by the Council of Europe that can be useful as the basis for the development of anti-discrimination mechanisms in education are also:

- *Directive no. 2000/78 / EC of 27 November 2000 on the general framework for equal treatment of citizens in employment and at work*
- *Directive no. 2000/43 / EC of 29 June 2000 on the implementation of the principle of equal treatment, regardless of racial or ethnic origin.*



