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CRIMINAL-LAW PROTECTION AGAINST DISCRIMINATION IN THE REPUBLIC OF SERBIA

ABSTRACT: Discrimination represents one of the most severe forms of violation of human rights. Rules prohibiting discrimination are contained in numerous international human rights instruments, while states have enacted laws explicitly prohibiting discrimination and providing protection against it. In accordance with international instruments, as well as constitutional and statutory provisions, it may be concluded that the prohibition of discrimination constitutes a fundamental principle of every democratic society. The legal system of the Republic of Serbia provides various forms of civil-law, criminal-law, misdemeanor, and constitutional-court protection against discrimination. Criminal-law protection against discrimination in Serbia is regulated by the Criminal Code (2005), which prescribes a number of criminal offences related to the prohibition of discrimination, as well as offences containing elements of discrimination, thereby providing protection in cases of discrimination and violations of the principle of equality. Many unlawful acts prescribed as criminal offences by the Criminal Code originated from the criminal offence of violation of equality. For this reason, this incrimination is considered

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fundamental within the corpus of criminal offences protecting the equality of citizens and, accordingly, it constituted the subject of analysis in this paper. Nevertheless, it should be emphasized that the criminal-procedural response to the problem of discrimination, in comparison with other forms of protection, is of a secondary nature, as may be concluded from the overview of the presence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia.

Keywords: *violation of equality, discrimination, criminal-law protection, practice of judicial authorities.*

1. Introduction

Article 21 of the Constitution of the Republic of Serbia (2006) stipulates that all persons are equal before the Constitution and the law, that everyone is entitled to equal legal protection without discrimination, and that any discrimination, whether direct or indirect, on any grounds is prohibited, in particular on the grounds of race, sex, national affiliation, social origin, birth, religion, political or other belief, property status, culture, language, age, and mental or physical disability. The same Article further provides that special measures which the Republic of Serbia may introduce in order to achieve full equality of individuals or groups of individuals who are in a substantially unequal position in relation to other citizens shall not be considered discrimination. Discrimination is a “key term in understanding diversity. It involves placing a social group or an individual in the position of persons of lesser value, those whose rights are revoked or diminished, or whose values are denied. It entails equal treatment of unequal persons and unequal treatment of equal persons” (Vidaković et al., 2020, p. 11). Discrimination is “one of the most severe forms of endangerment of human rights and is detrimental both to individuals and to society as a whole” (Đukanović & Milaš, 2018, p. 7).

The word discrimination “is of Latin origin (lat. *discriminare*) and means to separate, to distinguish. Over time, in practice, and particularly in the field of law, the term discrimination has acquired the meaning of impermissible differentiation” (Petrušić, 2012, p. 7). In practice, discrimination is commonly referred to by various terms: “unequal treatment, making distinctions based on personal characteristics, violation of the principle of equality, differential treatment, deprivation of rights, placing in an inferior position, privileging, favoritism, placing in a superior position, and the like” (Pažin et al., 2012, p. 13). In theory, it is often emphasized that discrimination means “treating

someone differently and unjustly because of specific characteristics that the person possesses” (Đuković, 2021, p. 12). Discrimination can be “based on various personal characteristics, which may be real or merely assumed to exist. It can manifest in different areas of social life and can be carried out by anyone, can occur anywhere, and can affect anyone – individuals, groups of people, as well as legal entities” (Janković, Kotević & Pajvančić, 2016, p. 10). Thus, it refers to such “differentiation – exclusion, restriction, or favoritism – of persons in the same or similar situation, carried out because of a personal characteristic (race, nationality, sex, disability, etc.), which endangers, limits, or prevents rights and freedoms, without a justified, reasonable cause and disproportionately” (Vodinelić, 2008, p. 29).

Article 4, paragraph 1 of the Anti-Discrimination Act (2009) provides that all persons are equal and enjoy equal status and equal legal protection, regardless of personal characteristics. In accordance with constitutional and statutory provisions, it can be concluded that the prohibition of discrimination constitutes a cornerstone of every democratic society. Article 2, paragraph 1, item 1 of the Anti-Discrimination Act (2009) defines the terms “discrimination” and “discriminatory conduct.” According to these provisions, these terms refer to any unjustified differentiation or unequal treatment, or omission (exclusion, restriction, or giving preference), in relation to individuals or groups, as well as members of their families or persons close to them, either openly or covertly, based on race, skin color, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender, gender identity, sexual orientation, sexual characteristics, income level, property status, birth, genetic traits, health status, disability, marital and family status, criminal record, age, appearance, membership in political, trade union, or other organizations, and other actual or perceived personal characteristics.

Taking into account that “in specific life situations discrimination does not have only one form of appearance, but is generally manifested in about ten different forms of impermissible behavior, the task of the law is to identify and prohibit all these impermissible forms of discriminatory conduct” (Gajin, 2008, p. 17). The Anti-Discrimination Act (2009), in Articles 5 and 13, prescribes the forms and aggravated forms of discrimination. According to these statutory provisions, the forms of discrimination include direct and indirect discrimination, violation of the principle of equal rights and obligations, incitement to liability, association for the purpose of committing discrimination, hate speech, harassment, degrading treatment, sexual and gender-based harassment, and incitement to discrimination. Additionally, segregation is any act by which a natural or legal person separates other

persons or groups of persons on the basis of a personal characteristic without objective and reasonable justification (voluntary separation from others based on a personal characteristic does not constitute segregation). Furthermore, another form of discrimination is incitement to discrimination. In addition to the basic forms, the law recognizes aggravated forms of discrimination, such as: causing and promoting inequality, hatred, and intolerance on the basis of national, racial, or religious affiliation, language, political orientation, sex, gender identity, sexual orientation, disability, or age; promoting or committing discrimination by public authorities and in proceedings before public authorities; promoting discrimination through public media; slavery, human trafficking, segregation, apartheid, genocide, ethnic cleansing, and their promotion; discrimination against a person based on two or more personal characteristics, regardless of whether the influence of individual characteristics can be distinguished (multiple discrimination) or cannot be distinguished (intersectional discrimination); discrimination that is committed repeatedly (repeated discrimination) or over an extended period of time (prolonged discrimination) against the same person or group of persons; discrimination that results in serious consequences for the discriminated person, others, or property, especially in cases where the act constitutes a punishable offense motivated predominantly or exclusively by hatred or intolerance toward the victim based on their personal characteristic.

2. Legal Framework for Protection against Discrimination

At the beginning of this section, it should be noted that discrimination was not prohibited in certain earlier periods. It is well known that the phenomenon of discrimination “is linked to the oldest states and their earliest legal acts, that is, their codes. At the same time, discrimination extends throughout the entire Middle Ages, up to the modern era” (Joksić, 2011, p. 323). Moreover, “in certain historical periods of human societal development, some forms of discrimination were common and widely socially accepted (e.g., slavery, the caste system in India, segregation of Black people in America, etc.). However, with the development of modern societies, many forms of discrimination have become unacceptable and prohibited. Today, rules prohibiting discrimination are contained in numerous international human rights instruments, and states have enacted laws that explicitly prohibit discrimination and provide protection against it” (Petrušić & Beker, 2012, p. 15).

The Republic of Serbia has ratified the most important universal and regional agreements in the field of human rights and the prohibition of

discrimination. As a member of the United Nations and a legal successor of the former states – the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia, and the State Union of Serbia and Montenegro – the Republic of Serbia is a signatory to the most significant international treaties concerning the prohibition of discrimination: the Charter of the United Nations of 1945, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

In addition to the aforementioned, other United Nations conventions are also significant for the prohibition of discrimination, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and others (Milenković, 2010, p. 12). Important Council of Europe documents in this field include the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, ratified in 2003, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the so-called Lanzarote Convention), ratified by the Republic of Serbia in 2010, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of April 2011, ratified by the Republic of Serbia in 2013 (the so-called Istanbul Convention). In addition to the primary sources of European Union law, which reflect a general commitment to the prohibition of discrimination, the most important EU directives in this area are: Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin; Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Taking into account that the European Convention on Human Rights holds the status of a ratified international instrument in Serbia (Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 2003), “the case law of the European Court of Human Rights is of exceptional importance for the application of anti-discrimination law in the country” (Nikolić, 2008, p. 65). In theory, it is emphasized that the issue of human rights and protection against discrimination represents a relatively new area of law in our national legislation, “the regulation and implementation of which, both within the system of civil-law protection and in criminal proceedings, is often accompanied by politically

and socially sensitive issues” (Drobnjak, 2008, p. 51). Considering the aspect of our legislative framework, in Serbia, anti-discrimination laws and provisions have been adopted over the past two decades, which over time have proven to constitute a solid anti-discrimination legal framework, that is, a comprehensive system of legal protection against discrimination based on civil-law, criminal-law, and misdemeanor-law protection.

General and specific anti-discrimination laws have been enacted, such as the Law on the Prohibition of Discrimination (2009), the Law on the Protection of the Rights and Freedoms of National Minorities (2002), the Law on the Prevention of Discrimination of Persons with Disabilities (2006), the Gender Equality Law (2021), the Law on Mobility with the Assistance of Guide Dogs (2015), and the Law on the Use of Sign Language (2015). In addition to these laws, anti-discrimination provisions are also contained in other legislation, including the Labour Law (2005), the Law on Professional Rehabilitation and Employment of Persons with Disabilities (2009), the Health Care Law (2019), the Law on Patients’ Rights (2013), the Law on the Protection of Persons with Mental Disorders (2013), the Police Law (2016), and others. Criminal-law protection against discrimination is regulated by the Criminal Code (2005), which prescribes criminal offences that provide protection in cases of discrimination and violations of the principle of equality. At this point, it is also necessary to mention the Strategy for the Prevention and Protection against Discrimination for the period 2022–2030 (2022), which is based on the principles of equality and non-discrimination, equal opportunities and inclusive equality, gender equality, intersectoral and multidisciplinary approaches through continuous cooperation of all actors at all levels, participation, constant collection of statistical data, analysis and evaluation of achieved results for the purpose of creating new measures and activities, and respect for the human rights and freedoms of all citizens of the Republic of Serbia. The Strategy proceeds from the position that the Republic of Serbia is an inclusive society with zero tolerance for discrimination, in which all citizens, regardless of their personal characteristics, have equal opportunities and enjoy all rights and freedoms guaranteed on an equal basis by the Constitution, laws, and international treaties.

3. Criminal-Law Protection against Discrimination

Criminal liability of a discriminator “is provided as an exception in comparative law” (Petrušić et al., 2012, p. 27). International good practice “generally requires that discrimination be treated as a matter of civil rather than criminal law. However, in order to provide comprehensive protection

against discrimination, certain serious forms of discrimination may be classified under criminal law” (Equal Rights Trust, 2019, p. 71).

In our legal system, “in order for legal protection against discrimination to be effective and efficient, various forms of civil-law, criminal-law, misdemeanor-law, and constitutional court protection have been prescribed” (Petrušić, 2014, p. 28). Criminal-law protection against discrimination in Serbia is regulated by the Criminal Code (2005), which prescribes a range of criminal offences related to the prohibition of discrimination, as well as offences containing elements of discrimination, providing protection in cases of discrimination and violations of the principle of equality. These criminal offences include: violation of equality (Article 128), violation of the right to use language and script (Article 129), violation of the freedom to express national or ethnic affiliation (Article 130), violation of freedom of religion and performance of religious rites (Article 131), extortion of testimony (Article 136), and abuse and torture (Article 137) from the group of criminal offences against the freedoms and rights of humans and citizens; violation of reputation based on racial, religious, national, or other affiliation (Article 174) from the group of criminal offences against honour and reputation; incitement of national, racial, and religious hatred and intolerance (Article 317) from the group of criminal offences against the constitutional order and security of the Republic of Serbia; violent behavior at a sports event or public gathering (Article 344a) from the group of criminal offences against public order and peace; as well as the criminal offence of racial and other discrimination (Article 387) from the group of criminal offences against humanity and other goods protected by international law.

As can be observed, criminal-law norms criminalizing discriminatory behavior are found in different groups of criminal offences, and although each of the offences listed deserves to be the subject of a separate analysis, the criminal offence of violation of equality (Article 128 of the Criminal Code, 2005) will be presented in more detail below, which “in a way represents a general, fundamental incrimination from which all other incriminations are, in fact, derived, as a form of a special variant of this general incrimination” (Petrušić et al., 2012, p. 29; Dragojlović & Gujić, 2018, p. 38). If human rights are understood as a set of rights that a human being possesses simply by being human, it can be concluded that the entirety of criminal law serves to protect fundamental human rights. However, the majority of prescribed criminal offences protect goods that are clearly limited in relation to other goods (Stojanović, 2012, p. 440). By prescribing the criminal offences in Chapter XIV of the Criminal Code (2005), personal rights and freedoms are protected, that is, rights related to the personality of the holder of those

rights. The criminal offence of violation of equality, “considering its protected object, belongs to the category of criminal offences against the right to lawful conduct in relations with public officials” (Čejović & Kulić, 2014, p. 402).

From the perspective of social philosophy, equality represents the existence of equal opportunities for all individuals within a given society, both regarding their contributions to the economic, cultural, and social progress, and in terms of enjoying the benefits of that societal progress. Equality means that all people, regardless of the differences among them, are equal in rights. The principle of human equality is one of the most important principles of modern society, signifying that legal regulation does not make any distinction between individuals or groups whose certain characteristics, which differentiate them from others, are an inalienable part of their identity. However, the natural right to equality has never been a reality for all people. Equality requires non-discrimination, that is, a prohibition of policies that harm an individual or group based on national, racial, religious, sexual, age, or any other difference. One of the most effective and significant means of preventing discrimination remains criminal-law protection.

The criminal offence of violation of equality is “in a way the classical definition of discrimination” (Petrušić et al., 2012, pp. 29–30). It consists of a basic form, prescribed in paragraph 1, and an aggravated form, prescribed in paragraph 2. The protected object comprises the human and citizen rights established by the Constitution of the Republic of Serbia, laws or other regulations, general acts, or ratified international treaties. In other words, according to legal theory, “the object of protection is legal equality of citizens, but not in its entirety, only a specific segment. This legal equality of citizens – the constitutional principle of equality of citizens – is protected under certain conditions” (Dragojlović, 2025, p. 55). This criminal offence provides criminal-law protection against discrimination.

Paragraph 1 prescribes the basic form, which is committed by anyone who, on the grounds of national or ethnic affiliation, race, or religion, or due to the absence of such affiliation, or because of differences regarding political or other beliefs, sex, disability, sexual orientation, gender identity, language, education, social status, social origin, property status, or any other personal characteristic, denies or restricts the human and citizen rights established by the Constitution, laws, other regulations, general acts, or ratified international treaties to another person, or grants them privileges or benefits on the basis of such differences (Dragojlović & Gujić, 2018; Miladinović Stefanović, 2017).

This incrimination represents the realization of the aforementioned constitutional prohibition of discrimination. The act of commission consists of

denial or restriction, or of granting privileges or benefits. Denial – represents the complete deprivation of a certain right to a person. That is, a human right guaranteed by the Constitution and established by laws or other regulations is entirely denied, or the person is completely prevented from its exercise (enjoyment). Restriction – consists of the partial deprivation of a certain human right. This right is limited for a person, so they are unable to exercise it fully or appropriately. Granting a privilege – denotes enabling the use of a right as a special advantage. Granting a benefit – is considered any action that provides more favorable opportunities for the exercise of a right. These actions are carried out due to a certain personal characteristic of the person to whom they are directed. In theory, it is explicitly emphasized “that a privilege or benefit granted to someone must not be prescribed or provided by any legal or sublegal act” (Stojanović, 2006, p. 364). This is a consequential criminal offence. The consequence of the act occurs as a violation of citizens’ rights to equality in the exercise of guaranteed rights or as a violation of their legal interest. It constitutes any infringement of the equality of the person toward whom the offence is committed in relation to other persons. Anyone can be the perpetrator. The subjective element of the offence is intent as a form of the perpetrator’s guilt. For this offence, imprisonment of up to three years is prescribed. The aggravated form of the offence, prescribed in paragraph 2, arises as an offence qualified by a special personal characteristic of the perpetrator (*delicta propria*). This offence exists if the act of commission was carried out by a public official in a special manner – in the performance of official duties, that is, in the regular execution of tasks, responsibilities, or powers in official service when deciding on the rights or freedoms of other persons. For this offence, imprisonment of three months to five years is prescribed.

4. The Criminal Offence of Violation of Equality in the Practice of Judicial Authorities in Serbia

This subsection presents data on the prevalence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia, through the following parameters: criminal complaints of adult persons for the period 2021–2023, indictments of adult persons for the period 2021–2023, and convictions of adult persons for the period 2021–2023. Thus, the prevalence of the criminal offence of violation of equality in Serbia can best be assessed through the analysis of the official number of filed criminal complaints and indictments, as well as the convictions handed down against adult perpetrators, in relation to the data statistically recorded for the group of criminal offences against the freedoms and rights of humans and

citizens, as well as in relation to the data recorded for all criminal offences at the level of the Republic of Serbia. In the theoretical part of the study, the method of theoretical content analysis was primarily applied, along with the basic methods of concretization and specialization, while in the research part, statistical and analytical-deductive methods, as well as the method of quantitative data analysis, were applied. The research is based on official statistical data from the Statistical Office of the Republic of Serbia.

Table 1. Number of criminal complaints filed against adult persons, by criminal offence, for the period 2021–2023

	Year 2021		Year 2022		Year 2023	
	Total	Known perpetrators	Total	Known perpetrators	Total	Known perpetrators
Republic of Serbia	80632	54240	82958	51414	74504	47760
Criminal offences against the freedoms and rights of humans and citizens	3811	3445	3779	3345	3352	3015
Violation of equality	17	17	15	15	2	1

Source: Bilten, 714, 2024; Bilten, 702, 2023; Bilten, 689, 2022

From the previous table, it can be seen that the number of criminal complaints filed against adult persons for the criminal offence of violation of equality significantly deviates in 2023 compared to previous years. Furthermore, regarding the filed criminal complaints, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

Table 2. Number of indicted adult persons, by criminal offence, for the period 2021–2023

	Year 2021		Year 2022		Year 2023	
	Total	Women	Total	Women	Total	Women
Republic of Serbia	31870	3496	30406	3342	31101	3557
Criminal offences against the freedoms and rights of humans and citizens	1351	115	1354	129	1486	128
Violation of equality	—	—	1	1	1	—

Source: Bilten, 714, 2024; Bilten 702, 2023; Bilten, 689, 2022

From the previous table, it can be seen that the number of indictments filed in the observed three-year period against adult persons for the criminal offence of violation of equality does not differ significantly. Furthermore, in this area, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

Table 3. Number of convictions, dismissals, and acquittals, by criminal offence, for the period 2021–2023

	Year 2021	Year 2022	Year 2023
	Convictions	Convictions	Convictions
Republic of Serbia	27 508	26200	26919
Criminal offences against the freedoms and rights of humans and citizens	1 051	1086	1164
Violation of equality	—	1	1

Source: Bilten ,714, 2024; Bilten, 702, 2023; Bilten, 689, 2022

From the previous table, it can be seen that the number of convictions handed down in the observed three-year period against adult persons for the criminal offence of violation of equality does not differ significantly. Furthermore, in this area, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

5. Conclusion

Although the possibilities for committing discrimination are numerous, the possibilities for protection against it are equally numerous. Contemporary trends are directed towards prevention, which should include the education and information of citizens about human rights and freedoms from the earliest age.

Legal protection, as a repressive measure of protection, is applied when a violation of equality occurs. Although civil-law liability is given primary importance in comparative law, in the Republic of Serbia, liability is most often sought through criminal proceedings. The reason for this is the fact that discrimination was incorporated into our legislation through the criminal-law sanctioning of its forms. Many prohibited actions prescribed by the Criminal Code as criminal offences have originated from the criminal offence of violation

of equality. For this reason, this incrimination is considered fundamental within the corpus of criminal offences that protect the equality of citizens.

What should be particularly emphasized, however, is that the criminal-procedural response to the problem of discrimination (compared to other forms of protection) is of a secondary nature, as can be easily observed from the review of the prevalence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia over the presented three-year period. Specifically, the number of criminal complaints filed, the number of indictments brought, and the number of convictions handed down against adult persons for the criminal offence of violation of equality during the observed three-year period do not differ significantly by year. However, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation according to any analyzed criterion. This certainly leads to the conclusion that in the fight against discrimination, compared to the criminal-law and criminal-procedural treatment of the violation of equality, the predominant response lies in a wide range of general social, political, cultural, and certainly economic factors.

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Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, J.M., J.D. and A.K.; methodology, J.M. and J.D.; resources, J.M. and A.K.; formal analysis, J.M., J.D. and A.K.; writing – original draft preparation, J.M.; writing – review and editing, J.M. All authors have read and agreed to the published version of the manuscript.

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Data availability statement

The original contributions presented in the study are included in the article. Further inquiries may be directed to the corresponding authors.

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KRIVIČNOPRAVNA ZAŠTITA OD DISKRIMINACIJE U REPUBLICI SRBIJI

APSTRAKT: Diskriminacija je jedan od najtežih oblika ugrožavanja ljudskih prava. Pravila o zabrani diskriminacije sadržana su u brojnim međunarodnim dokumentima o ljudskim pravima, a države su donele zakone kojima su izričito zabranile diskriminaciju i propisale zaštitu od diskriminacije. Shodno međunarodnim dokumentima, kao i ustavnim i zakonskim odredbama, zaključuje se da je zabrana diskriminacije temelj svakog demokratskog društva. U našem pravnom sistemu propisani su raznovrsni oblici građanskopravne, krivičnopravne, prekršajnopravne i ustavnosudske zaštite od diskriminacije. Krivičnopravna zaštita od diskriminacije u Srbiji uređena je Krivičnim zakonikom (2005), koji propisuje čitav niz krivičnih dela u vezi sa zabranom diskriminacije, kao i sa elementima diskriminacije, i koja pružaju zaštitu u slučajevima

diskriminacije i povrede načela jednakosti. Mnoga nedozvoljena postupanja koja su propisana Krivičnim zakonikom kao krivična dela nastala su iz krivičnog dela povrede ravnopravnosti. Zbog toga se ova inkriminacija smatra osnovnom u korpusu krivičnih dela kojima se štiti ravnopravnost građana, i shodno ovome, bila je i predmet analize u ovom radu. Ipak treba naglasiti da je krivičnoprocesni odgovor na problem diskriminacije (u odnosu na druge načine zaštite) sekundarnog karaktera, što se iz pregleda zastupljenosti krivičnog dela povreda ravnopravnosti u praksi pravosudnih organa u Republici Srbiji može zaključiti.

Ključne reči: *povreda ravnopravnosti, diskriminacija, krivičnopravna zaštita, praksa pravosudnih organa.*

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