

**Independent report of Network SOS Vojvodina on implementation
of priority recommendations from the CEDAW Committee
to the Republic of Serbia, for period 2019-2021**

March 2021

INTRODUCTION

This Report represents key findings on monitoring the implementation of the CEDAW Committee recommendations directed to the Republic of Serbia (Recommendations No. 12 (a), 26 (a), 44 and 48 (d)).

Report had been prepared by a group of organizations and independent experts gathered around the initiative of Network SOS Vojvodina.

Brief status overview in relation to key reporting recommendations

The index of gender equality (EIGE¹) indicates slight improvements in gender equality in Serbia. Nevertheless, gender differences are still highly recognizable.

Positive tendencies are noticed in enhanced representation of women in national and local assemblies (at 40%) due to increased legal quotas, in enhanced representation of women in the Government of the Republic of Serbia (43%), and increased registered employment. Gender differences remain visible in all areas covered by the CEDAW Convention. The institutional gender equality mechanisms remain underdeveloped, especially at local level, regardless to recent establishment of the Ministry of human and minority rights and social dialogue, with a mandate to monitor gender equality status, besides already existing Coordination body for gender equality.

The National Strategy for Gender Equality had expired in 2020. The accompanying Action Plan for 2018 – 2020, although prepared, had never been adopted. The Draft of the Law on gender equality is in public hearing phase.

The COVID-19 pandemic had a significant influence on gender equality and the status of women in the Republic of Serbia, by additionally burdening the women working in public health sector (80% of employed in this sector are women). Layoffs in service sector mostly affected women, while those who continued their employment were faced with additional burden, trying to coordinate their professional and family obligations while working from home.

Recommendation No. 12 (a): *Adoption of changes and amendments to the Law on prohibition of discrimination*

Recommendation status: Partially implemented.

Changes and amendments to the Law have been prepared during 2017 and 2018. The European Commission had provided an Opinion on the Draft of the Law in 2018. In 2019, the information that the Government had adopted the Draft Law on changes and amendments to the Law on prohibition of discrimination, was published, but the Law was never presented to the National Assembly of the Republic of Serbia.²

In February 2021, Initial baselines for drafting the Law on changes and amendments to the Law on prohibition of discrimination have been published, while new Draft Law on changes and amendments to the Law on prohibition of discrimination was published in the beginning of March.

Compared to the previous Draft, new Draft Law had been significantly improved and does not include provisions which were criticized by the civil society. The public hearing has begun, and it will last from March 4 to 23, 2021.

¹ Available at: <https://www.rodnaravnopravnost.gov.rs/en/node/450>

² Source <https://www.srbija.gov.rs/vest/365594/usvojen-predlog-zakona-o-izmenama-i-dopunama-zakona-o-zabrani-diskriminacije.php> and <https://www.danas.rs/politika/vlada-usvojila-predlog-izmena-i-dopuna-zakona-o-zabrani-diskriminacije/> (accessed on February 26, 2020.)

The thematic social dialog on provisions included in the Draft Law, had been organized on March 5, 2021. Representatives of civil society had stated suggestions for improvement of proposed provisions concerning sexual harassment, discrimination of LGBT persons, multiple discrimination, including intersectional discrimination, and other as well. Adopted conclusions included and supported these suggestions. It remains to monitor the process and analyse final legal provisions.

We propose that CEDAW Committee requires from the State: *to improve anti discriminatory legal framework in the transparent process by adopting changes and amendments of Law on prohibition of discrimination which will adequately define indirect discrimination, define and prohibit incitement to discriminate, sexual harassment and different forms of multiple discrimination, including intersectional discrimination; to establish an obligation of reasonable adjustment, especially enforce capacities of the Commissioner for the Protection of Equality and ensure continuity of its work; improve access to justice to victims of discrimination and provide efficient judicial protection in cases of massive violation of rights on non-discrimination.*

Recommendation No. 26 (a): *The State should abolish article 16 of the Law on public order and peace, and ensure that women who engage in prostitution should not be criminalized by laws, and to provide exit programs and alternative possibilities for women who wishes to leave from prostitution.*

Recommendation status: Not implemented.

- The Republic of Serbia did not abolish article 16 from the Law on public order and peace³, the misdemeanour punishment of women in prostitution continued, and State did not provide adequate support in exit programs for women who wishes to leave from prostitution.
- Even though the Law envisions penalties both for engaging in prostitution and users of prostitution services, the data show that the Law is being implemented in a way that only women who provide services are being subjected to penalties.
- According to the data from the Police Department, in 2019 there has been registered total of 288 of perpetrators of the offense, out of which 206 were women, while in 2020 there has been registered total of 312 of perpetrators of the offense, out of which 214 were women.⁴
- Disproportionately more penalties are issued to engaging in prostitution than the use of prostitution services.
- Over the last years, the analysis of court verdicts shows that legal provisions are being applied to the detriment of women: in 2017⁵ for engaging in prostitution 70 final convictions were issued, for 60 persons: 58 women and 2 men, while for using prostitution services 19 convictions were issued, and all 19 for men. Prison sentence had been imposed in 19 cases for engaging in prostitution, while for using prostitution services, courts have been issuing only financial penalties.
- In 2019, the Appeal misdemeanour Court in Belgrade, had resolved appellate cases for verdicts under article 16 of the Law on misdemeanour in which 7 offenders were women and 2 men, which once more confirms that provisions from this article disproportionately more affect women.⁶
- The State had not initiated any public discussion on this complex subject, nor it has shown the intent to deal with implementing Committee recommendation. This issue had been raised in public only by the NGO Atina, in December 2019, by organizing a round table on prevention of sexual

³ In the Law on public order and peace, in article 3, prostitution is defined as „providing sexual services for compensation in money or other value“, while in article 16, which abolition was recommended by the CEDAW Committee defines misdemeanour sanctions for prostitution, use of prostitution services and provision of premises for prostitution, as well as cession of premises to a minor for prostitution. Prostitution is also mentioned in the Criminal Code, in article 184 which envisioned penalties for those who „induces or incites another to prostitution or participates in the surrender of a person to another for the purpose of prostitution or who promotes or advertises prostitution through the public service media and other similar means“.

⁴ Data submitted by the Ministry of Interior as part of the process of preparation of this Report, February 2021

⁵ <https://www.womenngo.org.rs/vesti/1507-analiza-sudskih-presuda-za-prekrasajno-delo-prostituticija-tokom-2017-godine>

⁶ Data provided by the Appeal misdemeanour Court in Belgrade, within the process of preparing this Report, February 2021

exploitation and prostitution⁷, with the aim of acquainting the professional public in Serbia with the abolitionist model of regulation (example from France) and with the Recommendation 26 (a) of the CEDAW Committee. Besides lack of political will during 2020 there were no objective preconditions, since the National Assembly of the Republic of Serbia did not hold sessions during most part of the year, due to the pandemic and holding general elections.

- Because of the pandemic, some services established previously, were cancelled. State urgent shelter for human trafficking victims had been closed. Thus, the only available specialized facilities are currently one organized by NGO Atina.

We propose that CEDAW Committee: *changes the recommendation, having in mind that existing formulation of recommendation is faced with resistance from the institutions, in relation to its implementation, and because some of the interested parties are able to interpretate it as a stimulus to legalization of prostitution. We propose to the Committee to recommend to the Republic of Serbia revision of article 16 of the Law on public order and peace.*

In order to combat disproportionately greater punishment of women in prostitution, to reduce the risk from sexual exploitation and violence against women, and to promote gender equality, Committee should recommend deleting of the first act in this article, that is „engaging in prostitution“, and imposing misdemeanor sanctions only to the two other actions - „use of prostitution services „and „cession of premises“. In this way, the interpretation that prostitution is legalized, would be avoided, as well as other arbitrary interpretations, given that the act „mediation in prostitution“, in case of deletion of the entire article 16 of the Law on public order and peace, would remain punishable by the Criminal Code.

As for the second requirement from this recommendation (exit programs and alternative possibilities for obtaining income for women in prostitution), given that the State has not taken any actions in this regard during this period, the CEDAW Committee should more strongly require from the Republic of Serbia to implement this requirement.

Recommendation No. 44: Elimination of multiple and interconnected forms of discrimination, experienced by vulnerable group of women, ensuring at the same time their economic empowerment.

Recommendation status: Partially implemented.

- The new Strategy on prevention and protection from discrimination, which includes measures for elimination of all forms of multiple and interconnected discrimination of vulnerable groups of women, has not been adopted. Accordingly, preventive measures for elimination of discrimination and interconnected forms of discrimination experienced by vulnerable groups of women, were not envisioned as well.
- During 2019 Commissioner for the Protection of Equality initiated 1479 procedures for sanctioning violation of the Law on prohibition of discrimination⁸. Commissioner had received 711 complaints, out of which 579 were submitted by the citizens. From that number, 283 were submitted by women (48,9%), and 296 by man (51,1%). In 578 complaints (81,3%) discrimination was based on personal characteristics, out of which in 116 (20%) discrimination was based on more than one personal characteristics.
- In 2019, most complaints were submitted due to discrimination based on disability (16,2%), followed by gender (13,2%), with more women than men submitted complaints for discrimination based on gender. Other grounds of discrimination are directly and indirectly related to this basis of discrimination, such as marital and family status, as 58 complaints are classified, or sexual

⁷ <http://atina.org.rs/sr/u-ambasadi-francuske-na-dan-ljudskih-prava-o-preveniciji-seksualnog-iskori%C5%A1%C4%87avanja-i-prostitucije>

⁸ Regular Annual Report of the Commissioner for Protection of Equality for 2019

http://ravnopravnost.gov.rs/wp-content/uploads/2021/01/Zaklju%C4%8Dak-povodom-razmatranja-Redovnog-godi%C5%A1njeg-izve%C5%A1taja-PZZR-za-2019.-godinu_CIR.pdf

orientation – 18 persons stated this personal characteristic, or gender identity as a discrimination base in 12 cases. It could be said that a total of 148 reported experiencing gender discrimination.

- The highest number of complaints are related to labour and employment (32,2%), followed by the proceedings before public authorities (21,8%), then education and professional training (14,3%), providing public services (7,5%), social protection (5,8%) and health care (3,8%).
- More women (103) than men (70) had complained on a discrimination when hiring, especially for discrimination at work during pregnancy and after returning from maternity leave and childcare leave. Similar number of women and man had complained about discrimination in education and professional training (42 women and 49 men), and in social care more women (26) than men (10).
- COVID-19 pandemic had influence on deterioration of status of women from specific multiple discriminated groups. Women migrants have been in especially difficult position. According to the data from NGO Atina, after a state of emergency was declared and during that period (from March 15 to May 6, 2020), there was a ban on movement out of shelters and asylum centres, which lead to deprivation of necessary service support to migrant population. This mostly affected providing medical protection to women migrants, especially during state of emergency, when in many cases women migrants were not able to receive health care and access to health protection, as well as other means of support – psychosocial and legal – since it was not possible to maintain contact with civil society organizations which provided this support. Accommodation for women migrants⁹ and support which they receive are not fully adapted to their needs.
- Within the shelters and asylum centres, programs for women migrants empowerment and self-development are not available. The only available workshops and trainings for this vulnerable group, are those provided periodically by the civil society organizations, within or outside of the shelters and asylum centre, while the state does not provide any support activities of this type. Additional problem for adult women migrants is that they are not able to become employed or work during the asylum procedure, since they do not have access to pre-qualification work programs. In this regard, CEDAW Committee should require from the Republic of Serbia to provide access to continuous programs of support, which contribute to integration of this vulnerable group.
- Status of elderly women and men (age 65+), who were not allowed to leave home during state of emergency, was also deteriorated. Pandemic led to endangering their rights to adequate health care, since majority of health system had completely oriented towards reducing consequences of the COVID-19 pandemic. Also, access to long-term care services, which is not otherwise adjusted to the needs of users, was further worsened during the pandemic due to interruption or reduced workload of appropriate services, as well as fear of contact with people outside the household. The elderly in residential institutions (most of whom are women) were certainly in the most difficult position, due to high exposure to health risks and endangered health during the pandemic, isolation and declining quality of life in every aspect.
- For similar reasons, women with disabilities were also in an extremely difficult position. Availability of support services and adequate health care was significantly worsened during the pandemic. Poor availability and inadequate accessibility, as well as satisfying quality of support services before the pandemic, were only worsened during pandemic.
- Women victims of violence had also faced obstacles in access to support and protection services, they were even more at risk from violence during state of emergency, curfew and long-term home isolation, with the perpetrators.
- The COVID-19 pandemic had negative consequences and further aggravated the situation of Roma women, especially those from rural areas. State financial support measures intended for all adult

⁹ According to the data of the Commissariat for Refugees and Migration of the Republic of Serbia, at the end of 2020, there were 6015 migrants in 19 shelters and asylum centres in Serbia, of which 660 were children. According to available operational data from the field, the share of women in the total refugee-migrant population during 2020 ranged between 3-5%, which is a slight decrease compared to 2019. The problems that women migrants continuously face, during 2020, due to the COVID-19 pandemic, became even more complicated and produced new risks, so the position of this vulnerable group in the reference period became even more vulnerable. Information available at <http://www.kirs.gov.rs/cir/aktuelno/medunarodni-dan-migranata/3489>

citizens were not available to them because a large number of them do not have access to the internet to apply for assistance and do not have bank accounts to receive payments.

- Part of the recommendation related to the preparation of a comprehensive study on the assessment of the situation of special needs and aspirations of vulnerable groups of women (Roma women, elderly women, women with disabilities, single mothers, rural women, refugees and internally displaced women, women head of households, women from national minorities, victims of violence and LGBTI), is not implemented. Partial research was conducted by the civil society organizations more than by the institutions,¹⁰ no effort has been made to integrate these studies into an integral study that would comprehensively and systematically review the key forms of discrimination, problems and needs of these groups of women, and on that basis enable a systematic approach to policy making and measures for improving their position and protection.

We propose that CEDAW Committee renew this recommendation with confirmed determination.

Recommendation No. 48 (d): *Suppression of discrimination in relation to property and inheritance; equalize marriage and partnership in relation to property and inheritance rights; to achieve right to joint ownership and establishing a system of joint registration of property.*

Recommendation status: Partially implemented.

- Discrimination of women in relation to property and inheritance is still very much present in the practice, although laws which regulate property and inheritance relations equally treat women and men. Marriage and partner (extramarital) community are equal by the Constitution, nevertheless this is not consistently applied in all laws.
- Even though the issues of joint property and system of its registration have been regulated in a satisfactory manner, in recent years this system has collapsed.
- Laws regulating property and inheritance relations treat women and men equally. More and more women own real estate, especially in cities, but men still dominate among landowners and real estate owners.
- According to the data of the Republic Geodetic Institute¹¹, women own 25,6% of real estate, in the case of 0,3% of real estate it is joint property, and women are co-owners in 12.8% of real estate in which there is co-ownership and in which women participate.
- When observed according to the type of real estate, in the case of land parcels, women are the exclusive owners in 24,2% of parcels, the exclusive owners of 25,6% of all buildings and the exclusive owners of 42,6% of special parts of buildings. Out of the total number of plots, 0,1% is in joint ownership, and 0,7% of the total number of buildings is in joint ownership.
- In the total number of buildings where there is co-ownership, women appear as co-owners in 12,3% of plots, 15,8% of buildings and 8,2% of special parts of buildings.
- This results as a consequence of several factors: insufficiently harmonized normative solutions that need to be changed; gender patterns and customs of the environment, especially in rural areas, due to which women renounce their share of inheritance in favour of male heirs; up until to date, the state system has not seriously intervened in customs, social and gender barriers.

¹⁰ Studies conducted, related to vulnerable groups of women: 1. *In 2018, the Serbian Government's Social Inclusion and Poverty Reduction Team conducted a Regional Survey on the situation of Roma men and women in the Western Balkans*, available at: <http://socijalnoukljucivanje.gov.rs/rs/predstavljeno-regionalno-istrazivanje-o-polozaju-roma-i-romkinja-na-zapadnom-balkanu/2>. *Research on the position of older women in Serbia*, Commissioner for the Protection of Equality, 2017-2018, available at: <http://ravnopravnost.gov.rs/rs/istrazivanje-o-polozaju-starijih-zena-u-srbiji/>. 3. *The position of elderly women in political and public life in Serbia*, NGOs Amity and FemPlatz, 2020, available at: http://www.amity-yu.org/wp-content/uploads/2020/12/Zene_u_politickom_i_javnom_zivotu_Srbije_Amity_2020.pdf. 4. *The position of single parents in the labour market in the Republic of Serbia*, Ana and Vlade Divac Foundation, 2018, available at: https://www.divac.com/upload/document/publikacija_srpski_za_web.pdf. 6. *Research on the position of single mothers in local communities in Serbia*, Ana and Vlade Divac Foundation, 2019, available at: https://www.divac.com/upload/document/publikacija_istrazivanje_o_polozaju_samohranih_rod.pdf

¹¹ Data submitted by the RGI as part of the preparation of this Report, in February 2021.

- Marital and extramarital partners do not enjoy the same inheritance rights as marital partners. For example, an extramarital partner is not recognized as the legal heir. Extramarital partners are most often forced to regulate dispositions of property upon death by will.
- When it comes to exercising the right to joint property, the Family Law enables the exercise of this right, equally for women and men and without distinction in the treatment of marital and extramarital union.
- The same law prescribes that the property they acquired through work during marriage, i.e., extramarital union, is their joint property, regardless of whether both spouses are registered in the public register or only one of them (assumption that the other spouse is also registered).
- This solution was somewhat collapsed by the Law on the Procedure of Registration in the Real Estate Cadastre and Lines, which enabled the general regime to deviate from the statement of both spouses that in this particular case it is not about joint, but special property of one of the spouses. In practice, it is most common for women to make declarations of special property in favour of men, without having enough information about the legal consequences of the statement they made - that is, to deprive them of joint property acquired in a marital or extramarital union.

We propose that CEDAW Committee requires from the state (Republic of Serbia) to:

- *Require changes, amendments and harmonization of provisions of Family Law and Law on the Procedure of Registration in the Real Cadastre and Lines, in relation to inheritance rights in marriage, extramarital and family community, with the aim to prevent discrimination of women and avoiding regime of registration of joint property.*
- *Require conducting a research for collecting comprehensive practical data on differences in property status of women and man, as well as on inheritance difference in status of marital and extramarital partners.*
- *Require conducting trainings and raising awareness and informative campaigns for women on their property and inheritance rights, especially in rural areas.*