



Centar za
podršku ženama
Center for Support
of Women

NGO report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Serbia

Center for Support of Women, Kikinda, Republic of Serbia

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Introduction

This report was prepared by Center for Support of Women,¹ coordinating organization of SOS Vojvodina Network, and the group of independent experts, upon the invitation of the Secretariat, to share relevant information regarding the report provided by the authorities of the Republic of Serbia², and referring to the recommendations³ of the Committee of Parties, adopted in 2020, on the implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).

The contents of this report are the sole responsibility of Center for Support of Women.

I Fundamental rights, equality, and non-discrimination (Article 4)

The principle of equality and the prohibition of discrimination were proclaimed by the Constitution of the Republic of Serbia⁴ from 2006 (Art. 21), as well as by the Law on Prohibition of Discrimination and the Law on Amendments to the Law on Prohibition of Discrimination⁵. The prohibition of gender discrimination has been expanded to include personal characteristics based on gender and gender identity, change/adjustment of sex to gender identity, pregnancy, maternity leave, childcare leave or special care leave, so that discrimination is prohibited with regard to all personal characteristics and in all areas of social life; The definition of indirect discrimination (Art. 7) is aligned with the definition in European anti-discrimination law, and severe forms of discrimination include incitement to discrimination, segregation, sexual and gender-based harassment and intersectional discrimination (Art. 13). The obligation of public authorities to assess their compliance with the principle of equality in the preparation of regulations and public policies concerning socio-economically disadvantaged persons was introduced (Art. 14, paragraphs 4 and 5). However, there are no prescribed sanctions for non-fulfillment of this obligation, so that its fulfillment is a matter of good will of public authorities, which diminishes the effects of a positive legal solution.

From the aspect of preventing and suppressing discrimination in providing protection against violence against women, the introduction of an explicit prohibition of discriminatory behavior by an official, i.e. a responsible person in a public authority in the process of protecting the rights of persons before courts and public authorities is significant (Art. 15, paragraph 2, the Law on Prohibition of Discrimination).

Deficiencies regarding judicial protection against discrimination have not been remedied. Although there is a lack of comprehensive research regarding the effectiveness of judicial protection against discrimination, the collected data indicate that the sanctions imposed by the courts in cases of discrimination are not effective, proportional to the severity of the injury and the damage caused, and do not have a deterring effect.⁶

¹ Center for Support of Women www.cpz.rs

² Council of Europe, GREVIO, Reporting form submitted by the Serbian authorities on the implementation of the recommendations of the Committee of the Parties <https://rm.coe.int/reporting-form-on-the-implementation-of-the-recommendations-addressed-/1680aa7cee>

³ Council of Europe, GREVIO, Recommendation by the Committee of Parties, <https://rm.coe.int/committee-of-the-parties-recommendations-on-serbia/pdfa/16809a46c0>

⁴ The Constitution of the Republic of Serbia, "Official Gazette of the Republic of Serbia", No.98/2006 and 115/2021

⁵ "Official Gazette of the Republic of Serbia", No.22/2009 and 52/2021

⁶ Đukić, L. Petrušić, N. Janković, B., Research of judicial practice in lawsuits for protection against discrimination, Judicial Academy, OSCE, Belgrade, 2022.

A positive development in the legal regulation is the prescription of the obligation of the courts to keep records of processed cases of discrimination, with detailed data on the basis of discrimination and the area of social relations in which the discrimination was carried out. Courts are also obliged to submit decisions to the Commissioner for the Protection of Equality, who keeps unique records. (Art. 40b) Records are still not kept because the by-law on the manner of keeping records has not been adopted.

In 2021, the Law on Gender Equality⁷ was adopted, which prohibits discrimination based on sex, sexual characteristics and gender in all areas of social life (Art. 4, paragraph 1), as well as violence against women in the private and public sphere (Art. 52). The Law stipulates that special measures and programs intended for victims of violence to protect, eliminate and mitigate the consequences of violence, support to victims of violence (safe houses, social housing programs, personal assistance, etc.), programs for working with persons who have committed violence, are not considered discrimination, as well as special measures and programs intended for victims of violence and perpetrators of violence from sensitive social groups (Art. 53).

Although there are no reliable data on the prevalence of violence against women from certain vulnerable and marginalized groups, research shows that the risk of violence is increased for women vulnerable groups, such as women with disabilities, older women, Roma women, women whose partners have an addiction to alcohol or psychoactive substances, women of different sexual orientation and gender identity, asylum seekers, women victims of human trafficking, etc.⁸ These groups of women often encounter prejudices from professionals, which leads to inadequate responses from institutions in implementing mechanisms for preventing and protecting against violence and providing adequate support adapted to their needs.

The Government of the Republic of Serbia adopted the Strategy for the prevention and combating against gender-based violence against women and domestic violence for the period 2021-2025⁹, in which it is stated that, due to widespread stereotypes and prejudices among professionals, in practice there are cases of unequal and inadequate treatment by competent authorities in cases of violence against Roma women, women with disabilities, women of different sexual orientation and gender identity, older women, as well as women from other vulnerable and multiple discriminated groups.

Within Special Objective 1, various measures are envisaged, including training programs for media workers on gender-sensitive, non-discriminatory, ethical reporting on gender-based violence against women and domestic violence, including the specifics of violence against women from multiple discriminated groups. Within Special Objective 2, it is planned to expand the capacity of existing shelters/safe houses, while ensuring access to all women, especially women with disabilities, Roma women and migrant/asylum seekers. Special Objective 4 focuses on establishing comprehensive and functional system for collecting and analyzing data on gender-based violence against women and domestic violence, and recognizes that transparent, stable and sustainable funding of policies, measures and specialized services to support women to leave situations of violence is not provided, and measures that should provide accessible specialized services to all women, including women from vulnerable and multiple discriminated groups are planned.

⁷ “Official Gazette of the Republic of Serbia”, No. 51/2021.

⁸ Bogavac, Lj. Otašević, S. Cucić, V. Popadić, D. The first national study on the social problem of sexual abuse of children in the Republic of Serbia - final report. Belgrade: Incest trauma center, 2015

⁹ Ministry of Labour, Employment, Veteran and Social Affairs, <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/sektor-za-socijalnu-zastitu/strategija-za-spreccavanje-i-borbu-protiv-rodno-zasnovanog-nasilja-prema-zenama-i-nasilja-u-porodici-za-period-2021-2025-godine>

In the part of the Strategy that refers to the protection and support of women victims of gender-based violence and domestic violence during crisis situations, it is foreseen that the difficulties faced by women in situations of violence during the state of emergency caused by the COVID-19 pandemic, will be reviewed and the needs of women will be determined for psycho-social and economic support.

The goals and measures established by the Strategy represent a good framework for effectively preventing violence against women and creating conditions for women from vulnerable and marginalized groups to have equal access to all general and specialized support services and enjoy protection from violence on an equal basis.

From the aspect of preventing discrimination against women in the field of providing protection and support to women from sensitive and marginalized groups, the Strategy for Prevention and Protection Against Discrimination for the period from 2022 to 2030¹⁰ and the Action Plan for its implementation for the period from 2022 to 2023¹¹ are significant.

The general strategic goal of the Strategy is equalized opportunities for members of groups at risk of discrimination to enjoy all human rights and freedoms on an equal basis with others, as well as improved efficiency of the system of prevention and protection against discrimination in all areas and at all levels. Four specific goals have been established: Harmonized national legislation with international anti-discrimination standards and practice; A systemically introduced anti-discrimination perspective in the creation, implementation and monitoring of public policies; Improved equality and greater social inclusion of members of groups that are at increased risk of discrimination; Improved system of prevention and protection against discrimination. The implementation of the Strategy is entrusted to the Council¹², a temporary body of the Government established in March 2023, whose composition includes representatives of civil society organizations dealing with the promotion and protection of the rights of groups at risk of discrimination.

For combating discrimination against women from vulnerable and marginalized groups in the field of protection from violence, the following activities determined by the Action Plan are particularly significant: establishing methodologies for evaluating the impact of public policies on the position of members of groups at risk of discrimination, activities aimed at improving collection, recording and availability of data classified by personal characteristics of members of groups that are at risk of discrimination (gender, age, nationality, disability, etc.), training in the field of anti-discrimination for employees of bodies operating in eight priority areas, including public administration, judiciary, internal affairs and security, creation and

¹⁰ Coordination Body, Republic of Serbia, <https://www.rodnaravnopravnost.gov.rs/sr/dokumenti/strategije-i-akcioni-planovi/strategija-prevenicije-i-zastite-od-diskriminacije>

¹¹ "Official Gazette of the Republic of Serbia", No.112/2022

¹² By decision of the Government of Republic of Serbia in August 2015, the Council for Monitoring the Implementation of the Action Plan for the Implementation of the Strategy for Prevention and Protection from Discrimination for the period from 2014 to 2018 was established as the first working body of the Government in the field of prevention and protection from discrimination. The council worked until 2019. With the adoption of the Strategy for Prevention and Protection against Discrimination for the period from 2022 to 2030 ("Official Gazette of Republic of Serbia", No. 12/22), the continuation of this practice is foreseen, in the form of establishing of the Council for monitoring the implementation of the Strategy for Prevention and Protection against Discrimination for the period from 2022 to 2030, which, in addition to representatives of state administration bodies relevant to the implementation of the measures provided for in Strategy, also includes representatives of 12 civil society organizations selected through a public call. None of these 12 organisations is specialized in women rights, or women led organisation. Ministry of human and minority rights and social dialogue <https://www.minlmpdd.gov.rs/konkursi-javni-pozivi-69.php>

realization of trainings for employees in ministries, secretariats and municipal administrations in the field of equality and non-discrimination.

Although the last year of the implementation of the Action Plan is coming to an end, there is no publicly available data on the activities carried out after its adoption, nor are their effects known.

The provisions of the Law on Free Legal Aid¹³ have several shortcomings. The conditions for acquiring the right to free legal aid are restrictive. The Law contains a discriminatory norm that guarantees free legal aid only to victims of domestic violence. Victims of other forms of gender-based violence are not equal in terms of access to quality free legal aid and support.¹⁴ No transparent mechanism has been established to monitor the quality of legal aid services provided. The law prohibits and sanctions the provision of free legal assistance to CSOs¹⁵ who have been providing this assistance for a long time and systematically, especially to victims of gender-based violence, as well as to public notaries and Law Faculties. They can only provide free legal support (providing general legal information and filling out forms).¹⁶ The decision process on acquiring the right to free legal aid is complex. Local self-government officials have wide discretion when deciding on a request for legal aid. The record of beneficiaries of free legal aid is neither gender-sensitive nor complete. In the records of provided free legal aid services, data on service users are not classified according to their nationality and other personal characteristics, so it is unknown how many women from vulnerable groups received free legal aid.

The Law on Court Fees¹⁷, in the part that refers to the exemption from paying fees, should be extended to procedures related to the protection of victims of gender-based violence, domestic violence, especially for multiple discriminated and vulnerable groups. Also, victims of gender-based violence, domestic violence and torture are not exempt from notary fees.

II Comprehensive and coordinated policies implemented under the responsibility of an adequately mandated and resourced coordinating body (Articles 7 and 10)

Aforementioned Strategy for the prevention and combating against gender-based violence against women and domestic violence for the period from 2021 to 2025¹⁸ follows the provisions of the Istanbul Convention and relies on all the recommendations from GREVIO's Baseline Evaluation report¹⁹ on the assessment of legislative and other measures that implement the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence²⁰ (Istanbul Convention) in Serbia.

¹³ "Official Gazette of the Republic of Serbia ", No. 87/2018

¹⁴ The circle of free legal aid providers includes only lawyers and free legal aid services of local self-governments (LSG). There are currently 3,304 lawyers among registered providers of free legal aid and support, 24 LSG have not registered providers of free legal aid, and among registered providers of legal support there are only 31 CSOs, 11 of which are in Belgrade.

¹⁵ Law on Free Legal Aid, Article 58, paragraph 1

¹⁶ Law on Free Legal Aid, Article 9, paragraph 5

¹⁷ "Official Gazette of the Republic of Serbia ", No. 28/94, 53/95, 16/97, 34/2001, 9/2002, 29/2004, 61/2005, 116/2008, 31/2009, 101/2011, 93/2012, 93/2014, 106/2015 and 95/2018)

¹⁸ Ministry of Labour, Employment, Veteran and Social Affairs, <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/sektor-za-socijalnu-zastitu/strategija-za-spreccavanje-i-borbu-protiv-rodno-zasnovanog-nasilja-prema-zenama-i-nasilja-u-porodici-za-period-2021-2025-godine>

¹⁹ Council of Europe, GREVIO, <https://rm.coe.int/grevio-report-on-serbia/16809987e3>

²⁰ Council of Europe, GREVIO, Istanbul Convention, <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=210>

The Action Plan for the implementation of this Strategy has not yet been adopted even after two years since its adoption, although the Draft Action Plan was prepared in a transparent and inclusive process in which women from vulnerable groups also participated. Therefore, a positive assessment cannot be given regarding the fulfillment of the state's obligations in terms of preventing any form of discrimination against women in access to protection and support services in situations of violence.

Also, in AP Vojvodina, the Program for the Protection of Women from Violence in the Family and Partner Relations and other forms of gender-based violence for the period from 2023 to 2026, was prepared in 2022, but has not yet been adopted, and 10 local self-governments on the territory of AP Vojvodina have adopted local action plans for gender equality which incorporate goals and measures for preventing gender-based violence.²¹

As for the Strategy for Gender Equality for the period from 2021 to 2030²², also mentioned in the also mentioned in the previous chapter regarding discrimination, it foresees measures and activities for all forms of violence covered by the Istanbul Convention. It sets a goal that implies ensuring equal opportunities for the realization and protection of human rights as a prerequisite for development and a safe society. One of the measures within this goal is to improve the safety of women and girls in the public and private spheres through the elimination of all forms of violence, including human trafficking, sexual and other forms of exploitation, especially in times of crises and emergency situations.

By acceding to the Istanbul Convention, the Republic of Serbia undertook the obligation to harmonize its legislation, policies and practices with international standards in the field of protecting women from violence, which implies the criminalization of various types of violence against women and the prescription of sanctions that are effective, proportionate and deter from the commission of criminal acts (special and general prevention).

Criminal Code of the Republic of Serbia²³ incriminates behaviors that ensure the protection of women from all forms of violence. Femicide - the violent taking of a woman's life by men, is not criminalized as a separate crime, so these acts qualify as different forms of murder and other crimes qualified by death.

Domestic violence is criminalized by the Criminal Code, which prescribes the basic, three serious and one minor form of the crime of domestic violence (Art. 194). These incriminations ensure the protection of family members from psychological and physical violence, while cases of sexual violence in the family are sanctioned by applying other provisions of the Criminal Code. Criminal protection against domestic violence is provided to family members who are considered to be: spouses, their children, spouses' ancestors in the direct line of blood relationship, extramarital partners and their children, adoptive parents and adopted children, breadwinners, brothers and sisters, their spouses and children, ex-spouses and their children and parents of ex-spouses, if they live in a joint household, as well as persons who have a joint child or a child about to be born, although they have never lived in the same family household. Criminal Code excludes from criminal protection against domestic violence ex-spouses who do not live in a common household and

²¹ Institute for Gender Equality, AP Vojvodina <https://ravnopravnost.org.rs/dodeljena-sredstva-za-izradu-lap-a-u-oblasti-unapredjenja-rodne-ravnopravnosti-u-vojvodini-2/>

²² Coordination body for Gender Equality, Republic of Serbia, <https://www.rodnaravnopravnost.gov.rs/sr/dokumenti/strategije-i-akcioni-planovi/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-2021>

²³ Criminal Code "Official Gazette of the Republic of Serbia", No.85/2005, 88/20025, 107/2005, 72/2011, 111/2011, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

do not have a common child, ex-common-law partners, who can live in a common household, as well as parents of common-law partners. This solution is not fully in accordance with the standards set in international documents, and it ignores the fact that domestic violence does not end with the termination of a marital or extramarital union, which is confirmed by research.

Domestic violence is defined in the Family Law²⁴ and in the Law on Prevention of Domestic Violence²⁵, which, in the context of providing protection against domestic violence, also define a family member. Analysis of the definitions contained in these three laws shows an uneven definition of a family member and domestic violence. Applying these three laws does not ensure equal protection for the same group of persons. Some persons who are recognized as family members and who enjoy preventive and Family Law protection will not necessarily enjoy Criminal Code protection. The situation is similar with regard to the definition of domestic violence: different forms of violence are subsumed under domestic violence in all three laws, with the narrowest definition contained in the Family Law, somewhat broader in the Criminal Code, and the broadest in the Law on Prevention of Domestic Violence, which can also lead to unequal legal protection.²⁶

The Strategy for the prevention and combating against gender-based violence against women and domestic violence for the period from 2021 to 2025, as well as the Provincial Program for the Protection of Women from Domestic and Partner Violence and other forms of gender-based violence for the period from 2023 to 2026, recognizes and supports actions with measures of all competent institutions and that place the rights of women victims at the center of their actions.

Actors involved are Ministry of Human and Minority Rights and Social Dialogue, Ministry of Labour, Employment, Veterans and Social Affairs, Ministry of Family Care and Demography, Ministry of Justice, Ministry of Interior, Ministry of Health, Ministry of State Administration and Local Self-Government, Ministry of Education, Science and Technological Development, Ministry of Culture and Information, bodies of autonomous provinces and local self-government units, Ministry of Trade, Tourism and Telecommunications, Ministry of Finance, Commissioner for the Protection of Equality, Judicial Academy, National Academy for Public Administration, courts, public prosecutor's offices, Republic Public Prosecutor's Office, High Council of the Judiciary, State Council of Prosecutors, Administration for the Execution of Criminal Sanctions, Coordinating Body for Gender Equality, Republic Institute for Social Care, centers for social work, health institutions at all levels, Health Council of Serbia, Medical Chamber of Serbia, Chamber of Nurses and Technicians, Institute for Public Health of Serbia, experts and academic community, CSOs, media, associations of journalists, the Regulatory Body for Electronic Media, the Press Council.

Coordination of activities on preventing domestic violence and violence against women is entrusted at the national level to the Coordination Body of the Government of the Republic of Serbia, and at the regional level to the Coordination Body of the Government of AP Vojvodina.

The Government of the Republic of Serbia is forming the Coordinating Body for Gender Equality as a mechanism that coordinates activities in the field of gender equality, including the prevention of domestic

²⁴ Family Law "Official Gazette of the Republic of Serbia", No.18/2005, 72/2011 and 6/2015

²⁵ "Official Gazette of the Republic of Serbia" No. 94/2016

²⁶ Čopić, S. Development of the legislative framework for the protection of women victims of violence in Serbia, Temida, 2019, vol. 22, no. 2, pg. 143-168.

violence and violence against women²⁷, and the Government of AP Vojvodina is forming a Coordinating Body for Gender Equality at the regional level, which coordinates activities in the field of gender equality, including and domestic violence and violence against women²⁸.

Although the Law prescribes a period of 6 months after the entry into force, in which institutional mechanisms for gender equality must be formed²⁹, that deadline expired on November 30, 2021. Coordination bodies were formed after the deadline prescribed by the Law. The Coordination Body of the Government of the Republic of Serbia was formed on October 31, 2022. The Coordination Body of the Government of AP Vojvodina was formed on March 30, 2022.³⁰

There is no act on the systematization of jobs in the Coordination Body. Professional administrative support to the Coordinating Body is provided by a team of four members.³¹ There is no publicly available data on the financing of employees and engaged persons at the Coordination Body. Until now, the work of this body has been financed to a significant extent by international organizations.

The competences of the Coordination Body include coordinating the work of state administration bodies and other actors at the national level (horizontal coordination) and coordinating the activities of the authorities and other actors at the regional and local level (vertical coordination) in matters important for achieving gender equality and preventing gender-based violence and violence towards women.

The Ministry of Human and Minority Rights and Social Dialogue participates in monitoring and reporting on the state of gender equality, including gender-based violence and violence against women at the national level, but it is not directly responsible for the implementation of the Law on Prevention of Domestic Violence, which is the responsibility of the Ministry of work, employment, veterans and social issues.

In addition, the new Law on the Protector of Citizens³² stipulates that the Protector of Citizens also performs the duties of the national rapporteur in the field of human trafficking, in accordance with the Law on the Ratification of the Council of Europe Convention on Combating Trafficking in Human Beings³³, a national independent mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the Law on Ratification of the Convention on the Rights of Persons with Disabilities.³⁴

The competences of the Coordinating Body for Gender Equality of the Provincial Government include activities on harmonizing the positions of bodies and organizations of the provincial administration, other provincial organizations and services, in the field of gender equality, including gender-based violence and violence against women.³⁵

²⁷ The Law on Gender Equality, "Official Gazette of the Republic of Serbia", No.52/2021, Article 60, paragraph 1, item 5

²⁸ The Law on Gender Equality, "Official Gazette of the Republic of Serbia", No.52/2021, Article 62, paragraph 3, item 1

²⁹ The Law on Gender Equality, "Official Gazette of the Republic of Serbia", No.52/2021, Article 73, item 1

³⁰ Available at: <https://vojvodina.gov.rs/vesti/pokra%D1%98inska-vlada-donela-odluku-o-obr?id=106576>

³¹ The source is the response of the Coordinating Body to the inquiry I sent to the Coordinating Body.

³² „Official Gazette of the Republic of Serbia”, The Law on the Ombudsman No. 105/21, Article 2, paragraph 2

³³ „Official Gazette of the Republic of Serbia”, International Agreements, No. 19/2009

³⁴ „Official Gazette of the Republic of Serbia”, International Agreements, No. 42/2009

³⁵ „Official Gazette of the AP Vojvodina”, No. 38/2022

The Law on Gender Equality regulates the mechanism of coordination of monitoring, reporting, collection and publication of gender-sensitive data on gender-based violence and violence against women as instruments for monitoring and coordinating activities to promote gender equality, including the prevention of gender-based violence and violence against women.

The obligation of public authorities, employers and bodies for gender equality in local self-government units to report annually to the ministry competent for gender equality, on the state of gender equality³⁶, including gender-based violence and violence against women, has been established. Based on the submitted reports, the Ministry of Human and Minority Rights and Social Dialogue, in cooperation with gender equality bodies, prepares a summary report on the situation in the area of gender equality and submits it to the Government for adoption, no later than March 1 of the current year for the previous year.

The Ministry for Human and Minority Rights, which is responsible for monitoring and reporting on the state of gender equality within its competences, does not have the competence related to the supervision of the implementation of the Law on Gender Equality. Supervision over the implementation of the Law on Prevention of Domestic Violence is the responsibility of the Ministry of Labor, Employment, Veteran and Social Affairs, which is also responsible for inspection supervision.

In order to establish instruments of control over the implementation of the Law on Gender Equality, it is necessary to establish the right of inspection supervision by the Law on Ministries.

III Financial resources (Article 8)

The Action Plan for the implementation of the Gender Equality Strategy for 2022 and 2023 foresees that funds in the budget for the implementation of measures to improve the safety of women and girls in the public and private sphere through the elimination of all forms of violence, including human trafficking, sexual and other forms of exploitation, especially in times of crises and emergency situations, are to be provided by the Ministry of Justice, the Ministry of Human and Minority Rights and Social Dialogue, the Ministry of Defense and the Ministry of State Administration and Local Self-Government, mostly regular funds within the limit.

However, the state did not allocate special funds for activities to prevent and fight against all forms of violence against women included in the Istanbul Convention. The Action Plan for the implementation of the Strategy foresees how many funds are necessary for the implementation of measures and activities, but this will be confirmed only when the Action Plan is adopted.

With the adoption of the Law on Gender Equality³⁷, the measures related to specialized support services for women and other victims of violence have become meaningless, because the state has foreseen that they will be financed from the budget of local self-governments.

Namely, in Article 58 of the Law, measures related to specialized services are financed from the budget of local self-government, and Art. 77 in paragraph. 2, that their implementation begins on January 1, 2024. Until then, victims of violence from local governments where there are no specialized support services will

³⁶ The Law on Gender Equality, "Official Gazette of the Republic of Serbia", No.52/2021, Article 66, paragraph 4

³⁷ The Law on Gender Equality, "Official Gazette of the Republic of Serbia", No.52/2021

not be able to use them. The Law on Gender Equality stipulates that the specialized service of psychological treatment of perpetrators of violence will be financed from the national budget and free of charge for them. In this way, the Law discriminates victims of violence³⁸, because for them free specialized support services depend on decisions, capacities and available resources at the local self-government level.

An obstacle reviewing the total amount of funds for the prevention of gender-based violence is in lack of a single classification of services - the same type of service is defined differently in different local self-governments, and updated documentation is unavailable in some local self-governments.³⁹ The latest research⁴⁰ shows that almost every seventh local self-government does not provide social protection services at all, and that more complex services with a larger number of users are available only in larger cities. Allocations for social protection services in 2018 amounted to only 0.07% of GDP. More than 1/3 of the total funds allocated for social protection services were spent in Belgrade and Novi Sad.⁴¹ For example, the total expenditures for accommodation services, which in 2018 were provided by 26 local self-governments, mostly larger cities, amounted to slightly more than 400 million RSD.⁴² The accommodation service in shelters for different user groups was more or less at the same level as in 2015, and was provided in 15 local self-governments, while the amount of funds for the shelter service for victims of violence was increased. In 2012, it was almost 53 million RSD, and in 2018 it was slightly more than 115 million RSD.⁴³

Although the Strategy for preventing and combating gender-based violence against women and domestic violence foresees the provision of sufficient and stable financial resources to increase the number and quality of specialized services, as well as the financing of women's CSOs that provide specialized services to women who have experienced violence, the state has not yet taken measures to encourage long-term and sustainable financial support to non-governmental organizations, except in exceptional cases, such as the Safe House in Belgrade, which was founded and is run by the CSO Counseling against domestic violence, and is fully financed from the budget of the City of Belgrade.

Specialized women's organizations that provide specialized services to women victims of violence, such as the SOS telephone and Centers for victims of sexual violence, do not have financial support from the state and their work solely depends on donor support.

IV Non-governmental organisations and civil society (Article 9)

Existing legal framework for providing support services to women victims of violence is not fully in line with the Istanbul convention and international standards, and funding of support services to women victims of violence provided by women civil society organizations is not enabled.

³⁸ <https://www.womenngo.org.rs/prakticne-politike/zagovaranje/1792-2021-predstavljena-nova-strategija-za-sprecavanje-i-borbu-protiv-rodno-zasnovanog-nasilja-prema-zenama-i-nasilja-u-porodici-za-period-2021-do-2025>

³⁹ Lacmanović, V. and Zečević, A. Mapping of legally defined social protection services in the Republic of Serbia for women and children victims of domestic violence and their consideration in the context of the response to the crisis situation caused by the coronavirus, available at: <https://www.ips.ac.rs/publications/mapiranje-zakonom-definisanih-usluga-socijalne-zastite-u-republici-srbiji-za-zene-i-decu-zrtve-nasilja-u-porodici-i-njihovo-razmatranje-u-kontekstu-odgovora-na-kriznu-situaciju-izazvanu-koronavirusom/>

⁴⁰ Matković, G. and Strnjaković, M. Mapping social protection services and material support under the jurisdiction of local self-government units in the Republic of Serbia, 2020, Belgrade

⁴¹ Ibid, pg.77

⁴² Ibid, pg.41

⁴³ Ibid

The Law on Social Care⁴⁴ introduced decentralization in providing social care services, placing them at the local level. Consequently, their funding became dependent from local self-government budgets. The also Law recognized civil society organizations as one of service providers. From 2018, civil society organizations providing support services for women victims of violence, such as SOS phone, have been obtaining the licence from the relevant state institution. Once they obtain the license they become providers of social care service at local level. Although the funding of social care services, by the Law on Social Care, should be provided from local self-government budgets, it is not so in most of the cases. Thus, organizations rely on the funds from international donors. Within the Network SOS Vojvodina, coordinated by Center for Support of Women, 6 women organizations provide licenced SOS phone service, while the funding of service is based on the donor funds, not from local self-government budgets. One of rare examples is City of Uzice, providing funds from local self-government budget for the SOS phone service support provided by Women Center Uzice. The service is provided also to women from other towns in Zlatibor region.

Besides, specialized support services for women and girls victims of violence, are not recognized by the Law on Social Care. For some forms of violence, such as sexual violence, there is a lack of available and specialized services, with no sustainable funding.

When it comes to providing support of free legal aid, the Law on Free Legal Aid⁴⁵ prohibits provision of free legal aid by CSOs, which have been systematically and for long period of time providing free legal aid, especially to victims of gender-based violence.

V Data collection and research (Article 11)

Various administrative data on violence against women and domestic violence are collected in Serbia. They are collected by state bodies and institutions that are involved in the system of prevention and protection from violence - the Ministry of Interior, courts, public prosecutor's offices, the Ministry of Justice, the Ministry of Labour, Employment, Veterans and Social Affairs and the Ministry of Health, that is, the data are collect by sector, in relation to authority. Administrative data are kept within separate systems involved in the prevention and protection against violence and are adapted to the needs and competences of individual systems.

Data on certain types of violence are not available because the laws on the basis of which the content of records are defined are not aligned with the Istanbul Convention.

The Law on Prevention of Domestic Violence⁴⁶ prescribed the establishment of a unified and centralized record of cases of domestic violence, but it has not yet been established.

There is no systematized and structured collection and recording of data in the relevant institutions, and the data kept by individual institutions are incomparable, since there is no single methodology for recording data.

The Law on Prevention of Domestic Violence foresees that data are to be collected only for criminal acts of domestic violence, and not for other criminal acts of gender-based violence to which the Law applies.

⁴⁴ "Official Gazette of the Republic of Serbia" No. 24/2011 and 117/2022

⁴⁵ "Official Gazette of the Republic of Serbia" No. 87/2018, available at: <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html>

⁴⁶ "Official Gazette of the Republic of Serbia" No. 94/2016

Data on certain types of violence are not available because the laws which define the content of records are not aligned with the provisions of the Istanbul Convention.

In institutions where certain records exist, the data from those records are usually not available to the public or are available upon request.

There is a lack of efficient and adequate cooperation between competent authorities and data exchange between systems.

Classification of existing data is not adequately and uniquely defined in all relevant institutions by type of violence, type of relationship between victim and perpetrator, as well as other important personal characteristics of victim and perpetrator - gender, age, disability, etc. Only the Ministry of Interior and judicial authorities collect data on the sex of the perpetrator and the victim, as well as on the relationship between the victim and the perpetrator.

Data from judicial statistics do not provide the possibility of determining the scope and characteristics of reported and judicially prosecuted acts of gender-based violence against women because the method of data collection is centered around the perpetrator, so there is no unified data on all victims of criminal acts, for all criminal acts covered by the Istanbul Convention.

Data on gender-based violence against women and domestic violence are diverse and are collected within the statistical data of the Institute of Statistics of the Republic of Serbia⁴⁷, administrative data of services that act in this area and qualitative data and analysis, research that is conducted periodically.

During 2021, with the support of the UNDP office in Serbia, the initial document "Collection and recording of data regarding cases of violence against women and domestic violence" was prepared, which, in addition to analyzing the legal framework, reviewing the collection of administrative data in existing records, also provides a proposal for unified reporting and access to data with a model for establishing a Central Information System (CIS) for monitoring cases of gender-based violence against women, with a proposal to improve existing records in order to enable the establishment of a central record in accordance with the standards of the Istanbul Convention. Until 2022, the initiative to establish CIS for monitoring cases of gender-based violence, was led by the Coordinating Body for Gender Equality of the Government of the Republic of Serbia.

VI Immediate response, prevention, and protection (Article 50)

In the period from 2018 to 2022, the Ministry of Interior conducted specialist trainings aimed at developing professional capacities of competent police officers for the implementation of the Law on Prevention of Domestic Violence.⁴⁸ However, the very content of the trainings, changes and challenges in practice did not result in the adjustment of the program and content, which remained the same throughout the entire period. There was a lack of transfer of experiences and education aimed at overcoming doubts in practice.

⁴⁷ Institute of Statistics of the Republic of Serbia www.stat.gov.rs

⁴⁸ Criminal Police University <https://www.kpu.edu.rs/cms/akademija/izdvajamo/vesti/6946-na-univerzitetu-zapocet-peti-ciklus-specijalizovane-obuke-policijskih-sluzbenika-za-primenu-zakona-o-spreccavanju-nasilja-u-porodici>

The Ministry of Interior, according to the number of police officers who completed specialist training, has determined a sufficient number of officers for the immediate implementation of the Law on Prevention of Domestic Violence. However, that number was not aimed at adequate profiles of police officers, nor was the number and profile determined according to the needs for the work on field. Therefore, a significant number of police officers who attended specialist training rarely or never applied the Law on Prevention of Domestic Violence. In this regard, the number of competent police officers who implement the Law on Prevention of Domestic Violence, their organization and scope of work, is still not adequate to the challenges and needs for the implementation.

The Ministry of Interior did not established facilities designed to establish a relationship of trust between the victim and law enforcement personnel.

In all higher courts and higher public prosecutor's offices in the territory of the Republic of Serbia, there are services for help and support to witnesses and victims, while special rooms are provided only in those higher courts that are equipped with audio and video recording equipment for the examination of victims and witnesses, i.e. in which there are screen rooms, but not all screen rooms are specifically designed in a way that facilitates the establishment of trust between the victim and law enforcement personnel. Also, the staff assigned to work with victims, in addition to this responsibility, perform many other tasks that are not related to their role.

The Ministry of Interior did not undertake planned activities aimed at analyzing the actions of police officers in cases of domestic violence and protection of victims. Analyzes, or controls, were most often carried out through the work of the internal control sector, but only in cases of illegality or irregularities. On the other hand, the results of those analyzes were not available to the competent police officers in the Republic of Serbia, i.e. there was no exchange of information, and therefore the developing of practice and legal work. In this regard, the same mistakes and doubts in the work were repeated very often.

In relation to the actions of public prosecutions in cases of domestic violence, there are no procedures for the identification and analysis of cases in which protection was unsuccessful, although that would be necessary, because the public prosecutor, in accordance with the Law on Prevention of Domestic Violence, manages the group for coordination and cooperation that brings protection and support plans for victims of domestic violence, so in case of failure of the adopted protection plan, it would be necessary to carry out an appropriate analysis and assessment in order to determine the causes that contributed to it.

VII Emergency barring, restraining or protection orders (Articles 52 and 53)

The Law on the Prevention of Domestic Violence foresees the obligation of the police, i.e. the specialized competent police officer, to assess the risk of domestic violence in cases of domestic violence, and by applying the risks prescribed by the Law on the Prevention of Domestic Violence, the General Protocol on Handling and Cooperation, institutions, bodies and organizations in situations of violence against women in the family and in partner relationships, as well as the Special Protocol on the behavior of police officers in cases of violence against women in the family and in partner relationships. If the assessment establishes the existence of an immediate danger of domestic violence, the competent police officer is obliged to order one or both emergency measures, namely: the measure of temporary removal of the perpetrator from the

apartment and the measure of temporary prohibition of the perpetrator from contacting the victim of violence and approaching her.

The emergency measure lasts 48 hours and can be extended by a court decision for 30 days at the proposal of the public prosecutor.

The basic public prosecutor's offices create and maintain special records in accordance with Art. 32 of the Law on Prevention of Domestic Violence, as well as records of the work of the Coordination and Cooperation Group. Reports on the actions of public prosecutor's offices, are submitted to the Republic Public Prosecutor's Office every month.⁴⁹ These reports show the following data.

From 2019 to 2021 The public prosecutor's offices submitted a proposal for the extension of the emergency measures against 58,054 persons, of which the court adopted 55,866 proposals. Lawsuits for determination of protection measures against domestic violence, in accordance with the Family Law, were filed against 784 persons, of which 321 lawsuits were accepted. In the mentioned period, 8,152 meetings of the Group for Coordination and Cooperation were held, a total of 140,061 cases of domestic violence were discussed and 52,993 individual protection and support plans for the victim were created. During this three-year period there was a constant trend in decrease in number of proposals for the extension of emergency measures, and those adopted by courts, as well as number of cases of domestic violence discussed on the meetings of Group for Coordination and Cooperation, and individual plans created.

Statistical data for the crime of domestic violence from Article 194 of the Criminal Code for the period from 2019 to 2021 and based on the annual reports of the public prosecutors offices, indicate that 26,460 persons were reported for committing the crime of domestic violence under Article 194 of the Criminal Code, 10,411 persons were accused, while the courts handed down convictions against 8,200 persons. It is important to mention that during this period there was a constant trend of decrease in numbers of reported, accused and convicted persons, for each year compared to previous (for 9,03% in 2019, 9,26% in 2020, and 11,51% in 2021). Also, within the gender structure of the victims, there is a high prevalence of women (app.70%).

Also, the Family Law⁵⁰, which came into effect on July 1, 2005, provides that the court, based on the complaint of the victim, legal representative or guardian, but also based on the complaint of the public prosecutor or the guardianship authority, may by judgment impose protection measures against domestic violence for a period of up to one year, after which period they may be extended as long as there are reasons for which they were determined. The Family Law provides the following protection measures against domestic violence: 1) issuance of an order for eviction from the family apartment or house, regardless of the right of ownership or lease of real estate; 2) issuance of an order for moving into a family apartment or house, regardless of the right of ownership or lease of real estate; 3) prohibition of approaching a family member at a certain distance; 4) prohibition of access to the area around the place of residence or place of work of a family member; 5) prohibition of further harassment of a family member. These protective measures, after the filing of the lawsuit, can also be determined as temporary, in which case they are also valid during the procedure itself for determining protective measures against domestic violence.

⁴⁹ Dr. Jasmina Kiurski, Biljana Stepanov, Manual for the actions of public prosecutors in the prosecution of the criminal offense of domestic violence, UNDP, 2022. <https://www.undp.org/sr/serbia/publications/prirucnik-za-postupanje-javnih-tuzilaca-u-procesuiranju-krivcnog-dela-nasilje-u-porodici>

⁵⁰ "Official Gazette of the Republic of Serbia" No. 18/2015, 72/2011 and 6/2015

The emergency measures provided for by the Law on the Prevention of Domestic Violence, as well as the protection measures against domestic violence provided by the Family Law, can be imposed for the above-mentioned forms of violence against women only if the perpetrator and the victim are in the relationship of family members, and by what relationship includes a current or former partnership.

In the period from 2018 to 2022, the Ministry of Interior took measures to processing possible perpetrators for violating protection measures in accordance with the Law on Prevention of Domestic Violence, in the manner prescribed by the Law on Misdemeanors. Namely, the violation of emergency measures is a violation from Art. 36 of the Law on Prevention of Domestic Violence.

However, no coordinated measures were taken to continuously control the observance of these measures, even if they are within the competence of monitoring or detection (police work, among other things, is the detection of misdemeanors). Professionals did not specifically plan or implement activities with the clear goal of more effective implementation of protection measures, but control was based only on reports of violations. There was a lack of proactive action, which resulted in the number of violations of emergency measures being approximately the same for years, and there are reports that it is much higher, given that there is a lack of adequate reactions in terms of continuous control of compliance.

Domestic violence is recognized as a risk factor in other laws as well, such as the Law on Weapons and Ammunition⁵¹, in which a final criminal conviction for domestic violence is one of the elements that prevents obtaining a license to possess/carry a firearm. In the period from June 2017 to June 2020, 52 cases of domestic violence against women with the use and/or threat of firearms were recorded: 19 femicides with firearms, 19 attempted femicides and 14 cases of domestic violence against women with the threat of firearms.⁵² The femicides committed in this period took a total of 21 lives (19 women and two people close to them).⁵³ Every third recorded case of femicide was committed in a public space.⁵⁴ Only in the first three months in 2023, 10 women were killed.

It is important that the State commence the process of harmonizing the definition of a family member in Art.112 of the Criminal Code with the definition in Art.197 of the Family Law to ensure criminal-legal protection to a wider range of persons.

Specific Recommendations

32. *Please report on measures taken by your authorities contributing to the implementation of the recommendation to provide for gender-sensitive specialist women's throughout the country and for all forms of violence covered by the Istanbul Convention (paragraph 122), including by setting up rape crisis and /or sexual violence referral centers offering free of charge professional forensic examinations (paragraph 140) and by ensuring that the national helpline is confidential and anonymous and refers victims to specialist support services provided by the women's NGOs (Recommendation A.8, IC-CP/Inf (2020)5).*

⁵¹ " Official Gazette of the Republic of Serbia ", No. 20/2015, 10/2019, 20/2020 and 14/2022

⁵² Analysis of cases of femicide committed with firearms, UNDP, 2021. Available at: <https://www.undp.org/sr/serbia/publications/analiza-slu%C4%8Dajeva-femicida-vatrenim-oru%C5%BEjem-jun-2017-%E2%80%93-jun-2020>

⁵³ Ibid.

⁵⁴ Ibid.

Even though, the Istanbul Convention, ratified in 2013, stipulates the obligation for providing specialized support services which enable recovery from violence, support services for women who experience gender-based in the Republic of Serbia are not fully harmonized with binding international standards, nor are support services sufficiently available. Specialized services for women and girls victims of violence, are not recognized by the Law on Social Care. For some forms of violence, such as sexual violence, there is a lack of available and specialized services, with no sustainable funding. Support services for victims of sexual violence, are not recognized as specialized support services by the Law on Social Care. This service has been provided based on principles of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and envisioned by the Decision on the Program for the Protection of Women against Domestic Violence in APV⁵⁵, since 2016 in 4 Centers for victims of sexual violence. Service of medical and psychological support are being provided, 24 hours a day, seven days a week, to women and girls over the age of 15 in three general hospitals on the territory of AP Vojvodina (Zrenjanin, Sremska Mitrovica, Kikinda) and the Clinical Centre of Vojvodina (Novi Sad), they are managed by the Centre for Support of Women. All services are free for beneficiaries and are being provided by the financial support of international organizations or donors, as the state has not yet provided any funding, and currently, the service is covering a limited geographical area.

33. *Please report on measures taken by your authorities contributing to the implementation of the recommendation to speedily reform the Criminal Code provisions covering sexual violence to be based on the notion of freely given consent as required by Article 36 of the Istanbul Convention and to ensure appropriate sanctions for all sexual acts without the consent of the victim, irrespective of personal characteristics. (Recommendation A.11, IC-CP/Inf (2020)5).*

Criminal Code protection against sexual violence is provided through the criminalization of behavior that protects sexual freedom: rape (Art. 178), rape of a helpless person (Art. 179), rape with of child (Art. 180), rape by abuse of position (Art. 181), illicit sexual acts (Art. 182), sexual harassment (Art. 182a), solicitation and facilitation sexual intercourse (Art. 183), brokering in prostitution (Art. 184), displaying, obtaining and possessing pornographic material and exploiting a minor persons for pornography (Art. 185), inducing a child to attend sexual acts (Art. 185a), using a computer network or communication by other technical means to commit crimes against sexual freedom against a minor (Art. 185b).

A new concept of the criminal act of rape was accepted, which ensures equal legal protection for all victims, regardless of the gender of the victim and the perpetrator (the victim and the perpetrator are defined in a gender-neutral sense) and their sexual orientation, as well as a new way of defining the act of committing rape and other sexual delict, which, in addition to felony, also includes an act equal to it.⁵⁶ However, the legislator still foresees only "classical rape", which consists in the coercion of the victim (passive subject) into sexual intercourse or an act equivalent to it, using force or threatening to directly attack the life or body of that person or a person close to him (so-called qualified threat).⁵⁷ The emphasis is on coercion and not on the absence of the victim's free consent to sexual intercourse, so the definition of the act of execution is

⁵⁵ "Official Gazette of AP Vojvodina" No. 54/2014, available at: http://demo.paragraf.rs/demo/combined/Old/t/2015_01/t01_0120.htm

⁵⁶ Čopić, S. Criminal protection of victims of sexual violence in Serbia. In: S. Bejatović, V. Turanjanin (ed.) Injured person and criminal legal instruments of protection (international legal standards, norms and practice), Belgrade: Serbian Association for Criminal Law Theory and Practice, Intermex-Belgrade, 2020, pg. 191-211.

⁵⁷ Škulić, M. The criminal offense of rape in the criminal law of Serbia - current changes, some controversial issues and possible future modifications, Crimen, 2017, vol. VIII, no. 3, pg. 393-441

still not fully aligned with the Istanbul Convention. Nor are the definitions of the criminal acts of rape (against a helpless person, with a child and abuse of position) fully harmonized with the Istanbul Convention, because not all actions from Art. 36 paragraph 1. of Istanbul Convention are included.⁵⁸

The criminalization of sexual harassment can be evaluated positively, but the name of the act itself is not adequate because it is about illegal behavior of a sexual nature, so a more appropriate name would be sexual harassment, and the description of the act of execution is insufficiently defined⁵⁹. When it comes to the criminal offense of female genital mutilation (121a), the legislator did not fully comply with the standards from the Istanbul Convention: for example, it foresees the possibility of determining particularly extenuating circumstances under which this crime was committed, and thus the possibility of a lighter punishment, but it is not clear what the definition of particularly extenuating circumstances includes, nor does it foresee a more severe form if the victim is a minor.⁶⁰ When it comes to the criminal offense of forced marriage (Art. 187a), the law did not prescribe a qualifying circumstance related to the way the act was committed, nor any other circumstance that would make the act more serious and be threatened with a more severe punishment.⁶¹ The criminal acts of extramarital union with a minor and incest, although by their essence they imply sexual activities with a child, are not prescribed as criminal acts against sexual freedom, so with regard to these acts there is no possibility of applying the Law on Special Measures for the Prevention of Criminal Offenses against Sexual Freedom according to minors.⁶²

The law also provides for the criminal act of stalking(138a), which is defined in the group of criminal acts against the rights and freedoms of man and citizen, but the definition of the act of execution is not fully harmonized with the Istanbul Convention.⁶³

It is significant that for all the crimes listed above, which ensure the protection of women from violence, the prosecution is undertaken *ex officio*, regardless of the relationship between the victim and the perpetrator, except for the basic form of the criminal offense of sexual harassment, which is prosecuted by proposal. Also, the prescribed punishments for acts that are important for the protection of women from violence were tightened by amendments to the Criminal Code from 2016, and then in 2019.⁶⁴

In addition to the above, the protection of women and girls from violence is achieved through the implementation of other incriminations that protect marriage and family, life and body, humanity and other goods protected by international law, etc.

⁵⁸ Drobňjak, T. Macanović, V. Ignjatović, T. Achieved progress and shortcomings of the criminal-legal system of protection after harmonization with the Council of Europe Convention on preventing and combating violence against women and domestic violence pre-EU treaty. Practical policy proposal 03/12. Belgrade: Koalicija prEUgovor, 2017.

⁵⁹ Jovanović, S. New criminal law responses of RS to violence against women, *Temida*, 2019 vol. 22, no. 2, pg. 169-187.

⁶⁰ *Ibid*

⁶¹ *Ibid*

⁶² "Official Gazette of the Republic of Serbia", No.13/2013

⁶³ Jovanović, S. New criminal law responses of RS to violence against women, *Temida*, 2019 vol. 22, no. 2

⁶⁴ Criminal Code "Official Gazette of the Republic of Serbia", No.85/2005, 88/20025, 107/2005, 72/2011, 111/2011, 121/2012, 104/2013,108/2014, 94/2016 and 35/2019.