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Gender equality



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Country report

Gender equality

How are EU rules transposed into
national law?

Serbia

Ivana Krstic

Reporting period 1 January 2019 – 31 December 2019

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1 Introduction

1.1 Basic structure of the national legal system

The Republic of Serbia is a constitutional, multi-party, parliamentary democracy. Its history is that of a federal unit within a federal state – the Socialist Federal Republic of Yugoslavia (SFRY). After the dissolution of the SFRY in the 1990s, it was again structured as a federal state with two federal units, and known as the Federal Republic of Yugoslavia (FRY). From 2003 to 2006, Serbia was part of the State Union of Serbia and Montenegro, into which the Federal Republic of Yugoslavia had been transformed. On 5 June 2006, the National Assembly of Serbia declared Serbia the successor to the State Union, following the decision of the Parliament of Montenegro who declared Montenegro independent. It finally became a single state, which means that the legal competence for anti-discrimination law is directly applicable in all parts of the State. Specific activities within the rights and responsibilities of the Republic and autonomous provinces may be delegated to the local self-government.

Within the original scope of responsibilities, the local self-government unit passes regulations independently, in accordance with its rights and responsibilities determined by the Constitution. The state authorities, the authorities of the autonomous provinces, the authorities of self-government units, and organisations entrusted with the exercise of public powers, are all obliged to monitor the accomplishment of gender-based equality.

Serbia's court system includes courts of general jurisdiction and specialised courts. General jurisdiction courts include the basic courts, the higher courts, the courts of appeal, and the Supreme Court of Cassation. The specialised courts include the Administrative Court, the commercial courts, the Commercial Appellate Court, the misdemeanour courts and the Misdemeanour Appellate Court.

1.2 List of main legislation transposing and implementing the directives

- The Law on Equality between the Sexes, better known as The Gender Equality Act (GEA)¹ proclaims gender equality in Serbia in all areas of public and private life;
- The Law on the Prohibition of Discrimination (LPD)² establishes a coherent system of protection from discrimination in Serbia;
- The Labour Law³ provides specific provisions against discrimination at work and related to employment;
- The Law on Social Protection⁴ regulates the objectives and principles of social protection, rights, procedures for exercising the right to social protection, use of social services, etc.;
- The Law on Health Care⁵ regulates the healthcare system, the organisation of healthcare services, the rights and obligations of patients, health protection, etc.;
- The Law on Health Insurance⁶ governs entitlements deriving from compulsory health insurance of insured persons and other citizens, being covered by compulsory health

¹ Gender Equality Act, Official Gazette of the Republic of Serbia, No. 104/2009. This law was adopted on 11 December 2009 and entered into force on 25 December 2009.

² Law on the Prohibition of Discrimination, Official Gazette of the Republic of Serbia, No. 22/2009, 26 March 2009. It entered into force eight days after it was published in the Official Gazette, on 3 April 2009 (except for the provisions relating to the Commissioner for the Protection of Equality which entered into force on 1 January 2010).

³ Labour Law, Official Journal of the Republic of Serbia, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court decision, 113/2017, 95/2018. It entered into force on 23 March 2005. The Law was amended several times, in 2005, 2009, 2013, 2014, 2017 and 2018.

⁴ The Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011.

⁵ The Law on Healthcare, Official Gazette of the Republic of Serbia, No. 25/2019. The law entered into force on 11 April 2019.

⁶ The Law on Health Insurance, Official Gazette of the Republic of Serbia, No. 25/2019. The law entered into force on 11 April 2019.

- insurance, the compulsory health insurance organisation and financing, voluntary health insurance and other issues relevant to the health insurance system;
- The Law on Prevention of Domestic Violence⁷ provides urgent, adequate and efficient protection and support to victims of domestic violence.

1.3 Sources of law

The Constitution of the Republic of Serbia establishes in Article 16(2) the hierarchy of legal norms, providing that ratified international treaties must be in conformity with the Constitution. Article 194 of the Constitution confirms this hierarchy as it stipulates that laws and other general acts must not be in contravention of the universally accepted rules of the international law (international customary law) and the ratified international treaties. Therefore, the Constitution prescribes the following hierarchy of legal norms: the Constitution, international law, laws, and bylaws.⁸

The Constitution of the Republic of Serbia accepts the so-called monistic concept, as the mentioned sources make an integral part of the legal order of the Republic of Serbia and are applied directly. That is visible from Article 18(2) of the Constitution, which guarantees direct application of human and minority rights 'guaranteed by the universally accepted rules of international law, the ratified international treaties and laws'.⁹ The Republic of Serbia has ratified all the international and regional treaties and conventions that set up standards in the fields of human rights, women's rights and gender equality. In other words, the Convention on the Elimination of all Forms of Discrimination against Women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, European Convention on Human Rights, Convention on Prevention and Combating Violence against Women and Domestic Violence, as well as other human rights treaties ratified by Serbia, may be directly applied. Also, the European Council granted Serbia the status of candidate country in 2012. The Stabilisation and Association Agreement (SAA) between Serbia and the EU entered into force in September 2013. Since the opening of Serbia's accession negotiations in January 2014, 12 out of 35 chapters have been opened, two of which provisionally closed. It is of particular importance that Serbia accepts the EU *acquis* with respect to Chapter 23 (Judiciary and Fundamental Rights) as it stands on 1 January 2016 and acknowledges its commitment to implement it fully by the time it accesses to EU membership.¹⁰

Moreover, the Constitution of the Republic of Serbia contains a very significant provision, which reads that the norms in the area of human and minority rights are interpreted with a view to promoting the values of a democratic society, in conformity with the applicable international standards of human and minority rights, as well as practices of international institutions that monitor the implementation thereof.¹¹ In other words, the Constitution explicitly states that human rights provisions must be interpreted in accordance with the practice of monitoring human rights bodies, referring here primarily to the case law of the ECtHR and of different UN Committees dealing with human rights protection (for instance, CEDAW, HRC). Such a provision constitutes evidence that the legislator had the intention

⁷ The Law on Prevention of Domestic Violence, Official Gazette of the Republic of Serbia, No. 94/2016, was adopted on 24 November 2016 and entered into force on 25 December 2016.

⁸ In addition, the Constitution prescribes in Article 167(1)(1) that the Constitutional Court shall decide on the compliance of laws and other general acts with the Constitution, the universally accepted rules of the international law and the ratified international treaties, as well as on the compliance of the ratified international treaties with the Constitution (Article 167(1)(2)), confirming this hierarchy of norms in the legal order of the Republic of Serbia.

⁹ The translation of legal acts in English used in this report is taken from the website of the Official Gazette, <http://propisi.pravno-informacioni-sistem.rs>.

¹⁰ The European Commission issued a draft Strategy for EU enlargement at the end of 2017. It provides guidelines for, among other things, Serbian accession to the EU. According to the Strategy, Serbia is expected to reach a broad agreement on normalisation of relations with Kosovo by the end of 2019, and complete its negotiations by the end of 2023, allowing it to join the Union by 2025. See European Commission, Serbia 2018 Report, Strasbourg, 17 April 2018.

¹¹ Article 18(3) of the Constitution.

of pointing to the significance of the international monitoring bodies in the area of human rights protection, which usually have the right to carry out authentic interpretations of conventions, on the basis of which they were set up.

Finally, in Article 145(2) the Constitution stipulates that court decisions are based on the Constitution and the law, as well as on a ratified international treaty and a regulation passed pursuant to laws. On the other hand, Article 142(2) of the Constitution reads that courts 'shall try pursuant to the Constitution, laws and other general acts, when so envisaged by the law, the universally accepted rules of the international law and the ratified international treaties', where the international law was left out for unclear reasons. Such inconsistency in regulating this area may also cause an ambivalent and inconsistent relationship of domestic authorities to the international law in practice.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

The Serbian Constitution¹² in Article 21(3) contains the general anti-discrimination clause, prohibiting any direct or indirect discrimination on any grounds, including sex and gender. On the other hand, it does not explicitly cover marital status, gender, gender identity, sexual orientation and pregnancy, although these grounds are particularly linked to women's position in a society.

Article 15 of the Constitution guarantees gender equality and states: 'The State shall guarantee the equality of women and men and develop equal opportunities policy'. However, the provisions of the Constitution are not written in gender sensitive language.

2.1.2 Other constitutional protection of equality between men and women

Apart from the two articles mentioned above, the Constitution also contains Article 62 which guarantees the equality of spouses, and stipulates in Paragraph 3 that 'Conclusion, duration or dissolution of marriage shall be based on the equality of man and woman'. The Constitution prohibits forced labour and all forms of human trafficking.¹³ It also guarantees parental rights based on gender equality, special protection of reproductive rights and the right to asylum for fear of gender-based persecution.¹⁴ Furthermore, Article 110 provides the basis for equality in parliamentary life, as it stipulates that equality and representation of different genders must be realised, in accordance with the law.

However, the Constitution guarantees freedom to procreate,¹⁵ stating that 'everyone shall have the freedom to decide whether they shall procreate or not' and does not confirm women's reproductive rights.

2.2 Equal treatment legislation

In Serbia, there is a general anti-discrimination law (the Law on the Prohibition of Discrimination), as well as specific legislation which covers only gender (the Gender Equality Act). However, the LPD in Article 2(1) prohibits discrimination on the following grounds: race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations. It is an open clause and provides protection from discrimination based on 'other real or presumed personal characteristic.'

The Law on Equality between Sexes (GEA)¹⁶ proclaims gender equality in Serbia in all areas of public and private life. The adoption of this law marked an important step towards integrating the international standards and EU Directives on gender equality and non-discrimination in the Serbian legal framework. Serbia is committed to acceptance of the EU *acquis* concerning, among others, gender equality, and to implement it fully by the time it accesses to EU membership. The GEA obliges public authorities to develop active equal opportunity policies in all spheres of public life in all phases of planning, formulating

¹² The Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006.

¹³ Article 26(2) of the Constitution.

¹⁴ Article 57 of the Constitution.

¹⁵ Article 63 of the Constitution.

¹⁶ Gender Equality Act, Official Gazette of the Republic of Serbia, No. 104/2009. This law was adopted on 11 December 2009 and entered into force on 25 December 2009.

and implementing decisions that affect the position of women and men, which is a clear example of gender mainstreaming.

In Serbia, there is also the Law on Prevention of Discrimination against Persons with Disabilities, which prohibits discrimination based on disability.¹⁷ This Law prohibits discrimination on the ground of disability and aims to promote the inclusion of persons with disabilities in all spheres of society.¹⁸

Also, the Law on Protection of Rights and Freedoms of National Minorities¹⁹ provides protection to national minorities from all forms of discrimination in exercising their civil rights and freedoms and obliges public officials to abstain from acts and regulations that are discriminatory towards them.

Finally, gender equality clauses have been integrated in the legislation related to the specific sectors, such as labour, family relations, social protection, health care, media, education, political life, sports, etc.

¹⁷ Law on the Prevention of Discrimination against Persons with Disabilities, Official Gazette of the Republic of Serbia, No. 33/2006, 13/2016.

¹⁸ This Law was followed by the Law on Professional Rehabilitation and Employment of Persons with Disabilities, which was adopted with the aim of creating a possibility for persons with disabilities to be included in larger numbers in the open labour market, and to improve the quality of their employability and/or employment quality. See the Law on the Professional Rehabilitation and Employment of Persons with Disabilities, Official Gazette of the Republic of Serbia, Nos. 36/2009, 32/2013.

¹⁹ Law on the Protection of Rights and Freedoms of National Minorities, Official Gazette of FRY, No. 11/2002 of 27 February 2002, Official Gazette of Serbia and Montenegro, No. 1/2003 – Constitutional Charter, Official Gazette of the Republic of Serbia, No. 72/2009 – other law, Official Gazette of the Republic of Serbia, Nos. 97/2013 – decision of the Constitutional Court, 47/2018.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

In Serbia, there are some surveys that have been published over the last five years that provide insights into the legal definition, implementation and limits of central concepts of gender equality law in Serbia.

It is worth mentioning the Gender Analysis for Serbia from 2016,²⁰ where it was highlighted that although the GEA makes a distinction between *sex* and *gender* in Article 10, it refers only to the equality between sexes and equal opportunity policy and does not introduce gender equality.

In another study on Equality in Practice in Serbia,²¹ the authors argue that the LGE does not contain an overarching express prohibition on discrimination on the ground of gender. *Gender based discrimination* is defined in Article 4 as:

'any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritising) aimed at hindering, jeopardising, preventing or denying exercising or enjoyment of human rights and freedoms to a person or a group of persons in the area of politics, economy, social, cultural, civil, family life or any other area.'

The authors claim that this definition refers only to the purpose of conduct, rather than to its effect, but this omission is likely the result of oversight in drafting, rather than deliberate omission, and has not arisen in practice. When it comes to indirect discrimination, authors elaborate on the meaning of 'unjustified' in the definition of discrimination which says in Article 4 that:

'Unjustified distinction, exclusion, limitation and treatment or other undertaken measures, within the meaning of this law, include in particular, if: 1) An undertaken measure is not justified by a lawful or legitimate aim; and 2) There is no proportion between the actions undertaken and the aim to be achieved by such actions.'

Authors of the study argue that this is largely consistent with international best practice regarding the circumstances in which indirect discrimination may be justified, but it does not reflect international best practice with respect to the justification of direct discrimination which may occur under exceptional circumstances and 'against strictly defined criteria.' Furthermore, the authors argue that harassment is only expressly prohibited in the context of the workforce, and that it does not define denial of reasonable accommodation, multiple discrimination, discrimination by association and discrimination by perception.

3.1.2 Other issues

The study Equality in Practice in Serbia also refers to some problems in the implementation of central concepts by courts. Thus, authors found that in a number of court decisions, judges incorrectly characterised discrimination as 'unequal treatment' without considering whether the conduct had occurred in relation to a prohibited personal characteristic; that sometimes judges misunderstood the relevance of protected characteristics, and in more

²⁰ Dokmanović, M. (2016), Gender Analysis for Serbia, IPA - NEAR, available at http://europa.rs/files/Gender_Equality/Gender-Analysis-Serbia-dec-2016.pdf.

²¹ Petrušić, N., Beker, K. (2018), Equality in Practice in Serbia, Implementing Serbia's Equality Laws, Equal Rights Trust, https://www.equalrightstrust.org/ertdocumentbank/Serbia%20report_EN.pdf.

complex cases, some judges do not recognise the distinction between direct and indirect discrimination.²²

3.1.3 General overview of national acts

The main legislation that contains central anti-discrimination concepts are the LDP and the GEA.

The LPD, as a general act, defines direct and indirect discrimination, harassment, instruction to discriminate and positive action.

The GEA does not define instruction to discriminate but defines sexual harassment. It also provides definitions of 'sex' and 'gender'.

Finally, the Labour Law defines direct and indirect discrimination, as well as harassment and sexual harassment.

3.1.4 Political and societal debate and pending legislative proposals

Since 2015, the adoption of a new piece of legislation with some significant changes was expected to happen at the end of 2015, but was postponed due to some misunderstandings of the Working group that prepared the text. The name of the law was changed twice from the Law on Gender Equality to the Law on Sex Equality and, finally, to the Law on Equality of Women and Men showing misunderstanding of two main concepts: 'sex' and 'gender', as well as resistance to combating gender discrimination. The main claim was that the Serbian constitution does not recognise gender equality, but only 'equality between women and men'.²³ Due to lack of wider consensus, the Coordination body for Gender Equality withdrew the Draft Law from the parliamentary procedure in February 2016. It was expected that comments received from different stakeholders will be carefully considered in order to adopt a good piece of legislation for combating gender discrimination by the end of 2016. However, the new piece of legislation was not adopted by the Government and published on the website of the Ministry of Labour, Employment, Veteran's Affairs and Social Affairs before June 2018.²⁴ Moreover, this process was not finalised, and the law was not submitted to the National Assembly and adopted by the end of 2019.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

Article 10 of the GEA defines both terms. Therefore, while 'sex' relates to biological features of a person, 'gender' means socially established roles, position and status of women and men in public and private lives out of which, due to social, cultural and historic differences, discrimination ensues on the basis of biologically belonging to a sex. These are the only definitions of these terms in Serbian legislation. The National Strategy for Gender Equality (2016 to 2020) also relies on these definitions and defines 'gender equality' as:

'equal participation of all persons regardless of their gender in all areas of social and private life, as well as their equal status, equal opportunities for exercising their

²² Petrušić, N., Beker, K. (2018), Equality in Practice in Serbia, Implementing Serbia's Equality Laws, Equal Rights Trust, 105.

²³ *Politika*, *Zašto je povučen zakon o ravnopravnosti žena i muškaraca?* (Why was the Law on Equality of Women and Men withdrawn?), 18 February 2016, <http://www.politika.rs/sr/clanak/349327/Drustvo/Zasto-je-povucen-zakon-o-ravnopravnosti-zena-i-muskaraca>.

²⁴ Government of the Republic of Serbia, Coordination Body for Gender Equality, the Draft Law on Gender Equality, <https://www.rodnaravnopravnost.gov.rs/sr/dokumenti/predlozi-i-nacrti/nacrt-zakona-o-rodnoj-ravnopravnosti>.

rights and the equal benefit from the achieved results in accordance with the Constitution of the Republic of Serbia, generally accepted rules of international rights, confirmed international agreements and laws.²⁵

3.2.2 Protection of transgender, intersex and non-binary persons

The general anti-discrimination law, the LPE, prohibits in Article 2(1) discrimination, among others, based on 'gender identity' and 'sexual orientation', protecting also transgender and intersex persons. However, the first comprehensive report on the legal position of intersex, carried out by NGO Gayten, was presented in March 2019 and has not yet been published.²⁶ Also, in practice, transgender persons are exposed to everyday discrimination, particularly due to the fact that they have problems with changing documents in accordance with their new identity.

Two important laws were adopted in order to improve the position of transgender persons in Serbia. The Law on National Identification Number was adopted in 2018, and prescribes that if a citizen changes data concerning his/her sex, the competent authority is obliged to issue a new ID number within 15 days.²⁷ In addition, Amendments to the Law on Registers offers the possibility to enter data on ethnicity and the change of sex, by decision of the competent authority based on the certificate of the competent medical institution.²⁸

In December 2018, the first bylaw was adopted in order to regulate who can change the documents. The rulebook of the competent health institution on the manner of issuing and the form certificate on the sex change²⁹ defines that it can be a person who has undergone at least a year of hormonal therapy, or after the gender confirmation surgery (Article 3(1)). This is the first time that persons who have not undergone gender confirmation surgery will be legally recognised. Also, without any wider discussion, during 2018, the Draft Law on Gender Identity was submitted to the National Assembly, which for the first time recognises non-binary persons, and defines terms 'gender identity',³⁰ 'transsexualism',³¹ 'intersex'³² and 'binary gender role division'.³³

3.2.3 Specific requirements

It is not yet clear if some specific requirements have to be fulfilled in order to benefit from legal non-discrimination protection in Serbia. So far, there has only been one case where the Commissioner for the Protection of Equality – an independent, autonomous and

²⁵ The National Strategy for Gender Equality (2016 to 2020), Official Gazette of the Republic of Serbia, No. 04/16, adopted on 14 January 2016.

²⁶ A short report on the position of intersex in Serbia was published in 2017. See UNDP, Research on the Position of Intersex in Albania, Bosnia and Herzegovina, FYROM and Serbia (*Istraživanje o položaju interseks osoba u Albaniji, Bosni i Hercegovini, Bivšoj Jugoslovenoj Republici Makedoniji i Srbiji*), Belgrade, 2018.

²⁷ Law on National Identification Number of Citizens (*Zakon o jedinstvenom matičnom broju građana*), Official Gazette of the Republic of Serbia, No. 24/2018, 3 April 2018.

²⁸ Amendments to the Law on Registers (*Zakon o izmenama i dopunama Zakona o matičnim knjigama*), Official Gazette of the Republic of Serbia, No. 47/18, 28 June 2018.

²⁹ The rulebook of the competent health institution on the manner of issuing and the form certificate on the sex change (*Pravilnik o načinu izdavanja i obrascu potvrde nadležne zdravstvene ustanove o promeni pola*), 21 December 2018, Minister of health, Act no. 110- 00 - 392/2018-26, entered into force on 1 January 2019.

³⁰ Gender identity is defined in Article 3(2) as 'an internal and personal experience of a person as he/she understands their gender and which may, but may not, match the gender attributed to the birth, including personal experience of his/her own body, as well as other modes of gender expression such as dress, manner of speaking, gesturing, and the like.'

³¹ Transsexualism is defined in Article 3(3) as 'a feeling of deep, internal disharmony between the biological sex of person and his/her gender identity, as determined by a psychiatrist, which may, or may not, be medically removed (hormone-surgical treatment).'

³² Intersex is explained in Article 3(8) as 'a general term used for a person born with reproductive or genital anatomy that does not conform to the typical definitions of male and female.'

³³ Binary gender role division is described in Article 3(7) as 'a division by which persons are divided exclusively into two genders, male and female, and gender and gender roles defined upon them.'

specialised non-discrimination public body established by the LPD – found discrimination of transgender person because the higher education institution refused to issue a diploma to a new name. However, in that case, the person had undergone gender confirmation surgery and her identity was confirmed by German courts.³⁴ It can be assumed that some problems can arise in relation to the existence of a binary system for persons who have legally changed their identity, but have not undergone gender confirmation surgery. Also, it is uncertain whether other transgender persons will be recognised as such (e.g. those who had no hormonal therapy, or whose therapy lasted for less than a year).

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

In Serbia, direct discrimination is prohibited and defined in both anti-discrimination laws.

Article 5 of the GEA prohibits direct discrimination which is considered to be:

'any unjustified distinction, exclusion or limitation by which, under the same or similar circumstances, by any act or action of the public authorities, the employer or the provider of services, some person or a group of persons are placed or were placed in a subordinate position, namely, by which they might be placed in a gender-wise subordinate position.'

This provision limits application of this provision to public authorities, the employer and the provider of services.

Article 6 of the LPD says that:

'Direct discrimination shall occur if an individual or a group of persons, on the grounds of his/her or their personal characteristics, in the same or a similar situation, are placed or have been placed or might be placed in a less favourable position through any act, action or omission.'

This definition is in line with the definition from EU directives.

There are many cases of direct discrimination in Serbia. For example, in 2019, the Commissioner continued to receive complaints claiming direct discrimination for advertisements seeking only persons of a particular gender, usually female.³⁵

3.3.2 Prohibition of pregnancy and maternity discrimination

Pregnancy and maternity discrimination are not explicitly prohibited as a form of direct sex discrimination as such, but they are covered by the ground 'sex' and 'family status'.³⁶ Also, the GEA contains Article 16(1-2) which stipulates that the absence from work due to pregnancy and parenthood must not be any barrier to promotion to a higher rank, advancement or professional training, or grounds for assigning a person an inadequate job or for termination of the employment contract. Furthermore, the initiation of proceedings by an employee for gender-based discrimination, harassment, sexual harassment or sexual blackmail may not be considered a justified reason to terminate the employment contract, discontinue the employment or other (contracted) work-based

³⁴ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *M. Dj. against the Faculty of Law*, complaint No. 202, opinion of 24 February 2012.

³⁵ The Commissioner for the Protection of Equality, *Regular Annual Report for 2019*, 145.

³⁶ The Commissioner for the Protection of Equality considers discrimination in relation to pregnancy and maternity to be sex discrimination. See e.g. Serbia, Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *J.M. against S.M. d.o.o.*, complaint No. 07-00-232/2015-02, opinion of 3 August 2015.

relation, or to declare an employee redundant in accordance with the regulations governing labour (Article 16(3)).

The Commissioner in its practice acts in cases of pregnancy and maternity discrimination. For example, the Commissioner found discrimination in the case of an Austrian citizen who had been employed in a company since 2006. After informing her employer that she was pregnant, the employer terminated her contract, without first applying to the National Employment Service for permission to do so.³⁷

3.3.3 Specific difficulties

In Serbia, there are no difficulties in applying the concept of direct sex discrimination.

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

In Serbia, indirect discrimination is prohibited in national law.

The GEA contains a definition of indirect discrimination in Article 6, which is defined as:

'any unjustified distinction, exclusion or limitation by which, under the same or similar circumstances, a person or a group of persons are placed in a subordinate position gender-wise in a personal capacity, by adopting an act or performing an action that is apparently based on the principle of equality and non-discrimination.'

The LPD also defines indirect discrimination. In Article 7 it says that:

'Indirect discrimination shall occur if an individual or a group of individuals, on account of his/her or their personal characteristics, is placed in a less favourable position through an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination, unless it is justified by a lawful objective and the means of achieving that objective are appropriate and necessary.'

However, the definition of indirect discrimination does not contain any 'would' language, and can be interpreted as being limited to an actual occurrence of disadvantage, making it impossible to challenge neutral provisions before they in fact cause actual disadvantage to anyone. In its report on Serbia, the European Commission against Racism and Intolerance (ECRI) also criticised the fact that the definition of indirect discrimination seems to exclude the possibility of challenging an apparently neutral provision even before actual disadvantages occur.³⁸ It also uses the wording 'an act, action or omission that is apparently based on the principle of equality and prohibition of discrimination' instead of the wording 'an apparently neutral provision, criterion or practice', when the essence of this form of discrimination is neutrality, which causes an unequal position of a certain group in practice. Also, in the study, *Equality in Practice in Serbia*, the authors argue that the language of Article 7 is confusing, that the concept of the 'principle of equality and prohibition of discrimination' is vaguely-defined and that it differs from definitions given in the EU Directives.³⁹

³⁷ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 155.

³⁸ *ECRI report on Serbia (fifth monitoring cycle)*, Council of Europe, 22 March 2017, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Serbia/SRB-CbC-V-2017-021-ENG.pdf>.

³⁹ Petrušić, N., Beker, K. (2018), *Equality in Practice in Serbia*, Implementing Serbia's Equality Laws, Equal Rights Trust, 50.

There are not many cases where indirect discrimination was found. In 2019, it was found in relation to discrimination based on health, but not in relation to sex and gender.⁴⁰ However, it is illustrative to mention one case from 2017, where the Commissioner for the Protection of Equality found indirect sex discrimination in relation to a woman (L.T.) who was employed at the Ministry of the Interior, the Police Administration of the city of Belgrade.⁴¹ Since 2009, she had been a deputy commander, but in 2016 she was transferred to a lower-paid job and was replaced by a man. In its declaration, the Police Directorate stated that the Police Administration was of the opinion that assigning L.T. to the position of an officer (miscellaneous police affairs with the Prevention and Community Policing Unit within the Police Administration) would strengthen her work ethics and enhance her on-the-job performance, while her male colleague was assigned to the position of a Railroad Safety Deputy Commander as he was highly committed, a motivated self-starter, efficient and a result-oriented professional, qualities he had demonstrated in his everyday work. The Commissioner was of the opinion that the Police Directorate did not provide sufficient grounds for concluding that her unfavourable reassignment was based on objective and justified reasons that are not related to her sex. The Commissioner found that there are still a significantly lower percentage of women in leadership positions. In the Police Administration of the city of Belgrade, only 4 women are employed as executives, while among 1 475 employed women, only 76 are in managerial positions. In addition, the Commissioner found that interviews with women employed with the police showed that there is an unwritten rule that men have priority in promotion. One of the main reasons that impedes women from promotion are prejudices and stereotypes that men are better managers than women.

3.4.2 Statistical evidence

While the LPD does not contain any specific rule in relation to statistics, the GEA contains several provisions which relate to statistical data, but not to statistical evidence. Furthermore, the Civil Procedure Code does not mention statistical evidence as evidence before the court.⁴² It just says in Article 7 that parties are obliged to present all the facts on which they base their claim and to propose evidence which determines that fact.

However, although judges are reluctant to use statistical data as evidence in court in cases of discrimination, statistical evidence in order to establish indirect discrimination is used by the Commissioner for the Protection of Equality. Moreover, the Commissioner emphasised that the use of statistical data is relevant in cases involving both direct and indirect discrimination, and that even a minimum percentage of members of vulnerable groups, under certain circumstances, can be enough to qualify a specific practice as discriminatory, especially when a long-lasting practice can deepen the existence of discrimination.⁴³ For example, in one case a complaint was submitted by a woman employed in a public company. She claimed to have been discriminated against for being female, due to her not being promoted in accordance with her professional qualifications. Looking at the statistics, it was found that the number of women in managerial positions in the company was far below the number of men. Therefore, the Commissioner issued a recommendation that the public company should develop a plan of measures to eliminate or mitigate gender disparity.⁴⁴

⁴⁰ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), recommendations to public authorities, complaint No. 07-00-64/2019-02, opinion of 18 June 2019.

⁴¹ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *L. T. against the Police administration of the city of Belgrade*, complaint No. 07-00-69/2017-02, opinion of 23 June 2017.

⁴² The Civil Procedure Code, Official Gazette of the Republic of Serbia, No. 72/2011, 49/2013 – decision CC, 74/2013 – decision CC and 55/2014.

⁴³ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *A. against the Centre for Social Work*, complaint No. 07-00-00581/2016-02, opinion from 12 April 2017.

⁴⁴ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 136.

3.4.3 Application of the objective justification test

According to Article 7 of the LPD, indirect discrimination can be justified if an apparently neutral act, action or omission has a lawful objective and the means of achieving that objective are appropriate and necessary. The means will be proportionate if they are closely linked to the achievement of the legitimate aim, and if they cannot be achieved with less intrusion into someone's rights. It is the same justification test as that in the relevant EU directives.

However, Article 6 of the GEA states that indirect discrimination is any unjustified distinction, exclusion or limitation by which, under the same or similar circumstances, a person or a group of persons are placed in a subordinate position gender-wise in a personal capacity, by adopting an act or performing an action that is apparently based on the principle of equality and non-discrimination. This provision does not include a proportionality test. Nevertheless, Article 4 defines discrimination and explains that 'unjustified distinction, exclusion, limitation and treatment or other undertaken measures', exists if a measure taken is not justified by a lawful or legitimate aim, and if there is no proportion between the actions taken and the aim to be achieved by such actions. Thus, the proportionality test also applies to Article 6 of the GEA, though this test is less elaborate than in Article 7 of the LPD.

In one case the Court correctly applied the proportionality test in the sense that it requires that means have to be 'appropriate and necessary'. The Court found that difference in treatment did not have an objective and reasonable justification, concluding that it does not pursue a legitimate aim and there is no proportionality between the means employed and the aim sought to be realised.⁴⁵ Also, the Commissioner for the Protection of Equality issued several opinions where it adequately applied the proportionality test in cases of discrimination.⁴⁶

3.4.4 Specific difficulties

There are some difficulties in Serbia in applying the concept of indirect sex discrimination. The main problem is the use of statistical data in order to prove discrimination. Statistical data are used by the Commissioner for the Protection of Equality, but courts are still reluctant to rely on statistical data as evidence.

Also, the definition provided in Article 6 of the GEA does not include a proportionality test and it is questionable how courts will apply it in practice.

3.5 Multiple discrimination and intersectional discrimination⁴⁷

3.5.1 Definition and explicit prohibition

Article 13(5) of the LPD recognises 'discrimination against individuals on the basis of two or more personal characteristics (multiple or intersecting discrimination)' as a serious form of discrimination. This means that a more severe penalty should be imposed in a case of multiple or intersecting discrimination.

⁴⁵ Appellate Court in Nis, 21 Gž. br.1961/16, 31 August 2016.

⁴⁶ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *A.V. from B. against the Hunting Society B.*, complaint No. 07-00- 556/2018-02, opinion from 14 November 2018.

⁴⁷ See for more information Fredman, S. (2016), *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, <https://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb>.

3.5.2 Case law and judicial recognition

There is some case law before the Commissioner for the Protection of Equality that addresses multiple discrimination. The practice of the Commissioner in 2019 shows that multiple discrimination is most frequent in relation to women - due to their sex, and to their marital and family status - in the area of employment.⁴⁸ In 2019, there was a decrease in the number of complaints before the Commissioner, where several grounds of discrimination were raised (116 in 2019, compared to 188 in 2018 and 138 complaints in 2017).⁴⁹ It is not mentioned whether multiple discrimination was actually present in all these cases, as it is usual for applicants to name several grounds of discrimination when they are not sure what personal characteristic was a ground for discrimination in their case.

The Commissioner also highlighted that measures such as prohibition of employment in the public sector have a significantly more negative effect on women than on men, especially on women from multiply disadvantaged groups (i.e. Roma women, women with disabilities, single mothers, rural women, etc.), since they are less likely to be employed, and advocated for a change of the Law on the manner of determining the maximum number of employees in the public sector.⁵⁰

The Government in its Strategy for Gender Equality recognised groups of women who are at risk of multiple discrimination. These are: Roma women, women older than 60, young women, women living in rural areas, pregnant women and women with dependent children, women with a different sexual orientation, female victims of domestic violence, women with disabilities, single mothers, women from ethnic minority groups, unemployed and unskilled women.⁵¹

There still is no solid case law before civil courts in order to assess whether the detrimental effect of multiple discrimination is recognised and whether it provides a basis to award higher compensation.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Article 21(4) of the Serbian Constitution recognises positive action providing that:

'special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination.'

This provision is gender neutral, referring to any group in a substantially unequal position compared to other citizens. Women are not explicitly mentioned as a group who need protection from discrimination, disregarding the fact that this form of discrimination is the most prevalent in the society.⁵²

The GEA in Article 7 stipulates that it is not considered to be discrimination 'if some special measures are adopted in order to eliminate and prevent an unequal status of women and men and accomplish equal opportunities of both sexes.' Special measures are considered to be measures of a provisional nature aimed to abolish inequality and accelerate and achieve full gender equality in practice (Article 10(4)).

⁴⁸ The Commissioner for the Protection of Equality, *Regular Annual Report for 2019*, 250.

⁴⁹ The Commissioner for the Protection of Equality, *Regular Annual Report for 2019*, 250.

⁵⁰ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 270.

⁵¹ National Strategy for Gender Equality for the period 2016-2020, adopted on 14 January 2016, 30.

⁵² Dokmanović, M. (2016), Gender Analysis for Serbia, IPA - NEAR, 12, 13.

Positive action is also recognised in the LPD, in Article 14, which stipulates that:

'Measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position shall not be considered to constitute discrimination.'

These definitions comply with the EU definition found in Article 157(4) of the TFEU, particularly as some other provisions in anti-discrimination laws guarantee equal opportunities for both sexes in employment. Thus, Article 16 of the LPD prohibits violation of the principle of equal opportunity in gaining employment or equal conditions in enjoying all the rights pertaining to the sphere of labour. Article 16(3) further proclaims that protective measures towards certain categories of persons, such as women, pregnant women, or women who have recently given birth, shall not be considered to constitute discrimination.

The GEA in Article 7 provides that it is not considered to be discrimination if some special measures are adopted in order to eliminate and prevent an unequal status of women and men and accomplish equal opportunities of both sexes. Also, Article 3 stipulates that the public authorities conduct an active policy of equal opportunities in all fields of social life, which means 'the accomplishment of gender equality in all stages of planning, decision-making and implementation of decisions, which are of influence on the status of women and men.' Furthermore, Article 13 stipulates that an employer who employs more than 50 persons for an indefinite period of time is obliged to adopt a plan of measures to eliminate or mitigate unequal gender representation for each calendar year. The employer is obliged to prepare an annual report on the implementation of the plan of measures not later than by 31 January of the current year for the previous year.

The plan of measures and the report must be submitted by the employer to the Ministry in charge of issues concerning gender equality, which defines its content and method. Finally, Article 14 imposes a duty on public authorities to implement positive measures if representation of the less-represented sex in an organisational unit in managerial positions and in the management and supervisory bodies is under 30 %.

Finally, the Labour Law provides in Article 22(2) that provisions of the law, general act (Labour rulebook or collective agreement) and employment contracts relating to special protection and assistance to specific categories of employees, such as women on maternity leave and childcare leave and special childcare, do not constitute discrimination.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

The GEA makes a distinction between 'equal opportunities' and 'positive action.' The first concept 'equal opportunities' has been defined in Article 3, which says:

'Public authorities develop an active policy of equal opportunities in all areas of social life. Equal opportunities policy implies the equal participation of women in all phases of planning, adoption and implementation of decisions that have an impact on the status of women and men.'

In addition, Article 10(4) further explains that 'equal opportunities mean respect for and accomplishment of human rights based on gender in all fields of social life and an opportunity to use equally the results deriving from the development of the society.'

Another concept 'positive action' is enshrined in Article 7 as special measures adopted with the aim to eliminate and prevent the unequal position of women and men and achieving equal gender opportunities, which shall not be considered as discrimination.

In Article 11, the GEA first prescribes that employers are obliged to ensure that employees, regardless of sex, have equal opportunities and equal treatment in the employment. It further explains that special measures are not considered to be discrimination, such as special measures to increase employment and employment opportunities for the less employed sex, special measures to increase the participation of the less represented sex in the professional training and providing equal opportunities for promotion, as well as other special measures, established in accordance with the law.

3.6.3 Specific difficulties

In the area of employment, the GEA imposes a duty on employers to adopt a plan of measures to eliminate or mitigate unequal gender representation among employees, but this obligation has not been carried out in practice. In one study on citizens' perception of discrimination in Serbia, 40 % of the respondents fully supported positive action in the area of employment, while an additional 33 % partially agreed with it.⁵³ Positive action in the area of education was acceptable for 64 % of respondents for secondary education and 62 % for tertiary education. Also, it is interesting to note that lower-educated persons accepted positive action in greater numbers (48 %), than those with higher education (38 %).

The problem with affirmative measures is that public officials are unaware of positive action programmes as they are not carefully planned and promoted. The Commissioner for the Protection of Equality also concludes that affirmative measures in the area of employment have produced some results, but there is a need to carefully assess their effects. Also, their successful implementation requires constant inspection and supervision and effective judicial protection.⁵⁴ In addition, the CEDAW expressed its concern that, as a general rule, the measures taken are not gender-specific and target a range of vulnerable social groups. It is also concerned about the absence of gender-relevant statistics on the application of the temporary social measures and the absence of gender-disaggregated data on their impact. Further, the CEDAW recommends that Serbia raise awareness among relevant government officials, parliamentarians, employers and the general public, especially women, of such measures and their impact.⁵⁵

3.6.4 Measures to improve the gender balance on company boards

Article 14 of the GEA imposes a duty on public authorities to implement positive measures if representation of the less-represented sex in an organisational unit in managerial positions and in management and supervisory bodies is under 30 %. However, this duty applies only to public authorities, and there are no reports on whether this duty has been carried out in practice. On the other hand, the LPD prohibits discrimination based on sex and the structure of company boards can be challenged under this Law. However, the Gender Equality Index in the Republic of Serbia shows that women are still underrepresented on the boards of the largest quoted companies, as well as at the Central Bank, although Serbia performs slightly better in this respect than the EU average.⁵⁶ In addition, data suggest that the share of women on the boards of the largest quoted companies has slightly increased from 17.3 % in 2014 to 19.3 % in 2016. However, the share of women among the members of the Executive Board of the National Bank of Serbia

⁵³ Report on the research of public opinion, The attitude of citizens towards discrimination in the Republic of Serbia (*Izveštaj o istraživanju javnog mnjenja Odnos građana i građanki prema diskriminaciji u Srbiji*), Commissioner for the Protection of Equality, Belgrade, 2016.

⁵⁴ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 88.

⁵⁵ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 6.

⁵⁶ Government of the Republic of Serbia, Gender Equality Index 2016, Coordination Body for Gender Equality of the Government of the Republic of Serbia, the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the Statistical Office of the Republic of Serbia, December 2016.

has dropped from 31 % in 2014 to 27.6 % in 2016.⁵⁷ However, it must be taken into account that there are no women coming from vulnerable groups represented on the boards. Therefore, the Committee on the Elimination of Discrimination against Women recommends Serbia to accelerate equal representation of Roma women and women with disabilities in all areas of political and public life.⁵⁸

When it comes to the boards of broadcasting organisations, the share of women was extremely low. In 2014, women represented 11 % of board members, but in 2016 this ratio significantly changed, when women constituted one third of board members (33.3 %). In 2017, the female percentage increased to 42.9 % of board members. According to the data on the basis of which the indicator of participation of women on the boards of research funding organisations was calculated, in 2014 and in 2016 there were no women, and among the members of the highest decision-making bodies of national Olympic sports organisations in both observed years women made up only 3.8 %.⁵⁹

3.6.5 Positive action measures to improve the gender balance in other fields

The State introduced positive action measures also in the field of education, healthcare and housing. In recent years, some progress was achieved in relation to academic achievement, truancy and the dropout rate among Roma girls.

In Serbia, the 2002 Law on Local Elections for the first time introduced positive measures for women, stipulating that they have to be included in each electoral list for local elections.⁶⁰ Article 20(3) prescribes that one in every four candidates on the list must be a candidate of the under-represented sex, while the total number of the less-represented sex on the list cannot be less than 30 %. It was an amendment of 2007 which prescribed that at least 30 % of candidates from the under-represented sex must be on the list.⁶¹ In 2004, the Law on Election of MPs was amended, introducing the same provision.⁶² However, this provision did not impose an obligation to actually adhere to it and, in practice, it did not secure 30 % of the underrepresented gender's representation in Parliament.⁶³ According to the amendments to the Law regarding the election of MPs since 2011, it is stipulated that in the list of each party, every third candidate must be a representative of the underrepresented sex, and this rule for the first time secured 33 % of women in the Serbian Parliament.⁶⁴ Currently, there are 93 female MPs (out of 250, or 37.2 %), which is more than one third of the total. The average share of women among MPs of the National Assembly of Serbia was 33.7 % in 2014, and in 2016, it was 34.4 %.⁶⁵

⁵⁷ Government of the Republic of Serbia, Gender Equality Index for the Republic of Serbia, Measuring Gender Equality in the Republic of Serbia 2016, Coordination Body for Gender Equality of the Government of the Republic of Serbia, the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the Statistical Office of the Republic of Serbia, December 2018, 45, http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2018/12/Indeks_rodne_ravnopravnosti_u_Republici_Srbiji_2018_eng.pdf.

⁵⁸ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 10.

⁵⁹ Gender Equality Index for the Republic of Serbia, Measuring Gender Equality in the Republic of Serbia 2016, 45.

⁶⁰ The Law on Local Elections, Official Gazette of the Republic of Serbia, No. 33/02.

⁶¹ Amendments to the Law on Local Elections, Official Gazette of the Republic of Serbia, No. 129/07.

⁶² The Law on Election of MPs, Official Gazette of the Republic of Serbia, Nos 35/2000, 57/2003 -the Constitutional Court decision, 72/2003, 75/2003, 18/2004, 101/2005, 85/2005, 104/2009, 28/2011 -the Constitutional Court decision, and 36/2011.

⁶³ According to the amendments to the Law on the Election of MPs and the Law on Local Elections from 16 February 2020, the census was raised to 40 %.

⁶⁴ Article 40(a), The Law on the Election of MPs, The Official Gazette of the Republic of Serbia, 35/2000, 57/2003 - decision CCRS, 72/2003, 75/2003, 18/2004, 101/2005, 85/2005, 104/2009, 28/2011 - decision CC, 36/2011. See also the Law on Local Elections, The Official Gazette of the Republic of Serbia, 129/07, 34/10-CC, 54/1; Autonomous Parliamentary Decision on the Election of MPs in the Parliament of the Autonomous Province of Vojvodina, The Official Gazette of the AP Vojvodina, 23/14.

⁶⁵ Gender Equality Index for the Republic of Serbia, Measuring Gender Equality in the Republic of Serbia 2016, 45.

However, women are less represented in the executive branch. The average participation of women in the Government of the Republic of Serbia (among ministers) in the 2014 index (the average for the period 2013-2015) was 21 % and in 2016 (the average for the period 2015-2017) it was 22.5 %.⁶⁶

The president of the Assembly is a woman, and there are two female vice-presidents compared to three male vice-presidents. The last Serbian Government was formed on 29 June 2017, having 4 female Ministers (out of 21 Ministers), one of them being a Deputy Prime Minister and President of the Coordination Body for Gender Equality. However, for the first time, a woman was appointed Prime Minister of Serbia. Therefore, in the Global Gender Gap report, it was found that Serbia had made progress on closing its gender gap in ministerial representation.⁶⁷

Nevertheless, the situation differs at a local level, but it is improving. The average share of women among the representatives in local assemblies in 2014 (the average for the period 2013-2015) was 18.7 %, and in 2016 (the average for the period 2015-2017) it was 30.3 %, with the turning point in 2016, when the share of women among the representatives of local assemblies increased from 19 % to 36 % after the local elections.⁶⁸ This improvement is very important, especially in the light of the one research study conducted by the Commissioner on the position of women in municipalities, which found that out of 169 municipalities, women are presidents in only 12 (7.1 %).⁶⁹ However, only 6 % of mayors in Serbia are women.⁷⁰ In 2019, the number of women presidents in municipalities and women mayors was 7.6 % (out of 158 municipalities).⁷¹

With the aim to provide conditions for promotion and better inclusion in the process of education and professional training, the GEA stipulates that the public authorities in charge of education can take special measures for the inclusion into these processes of the pupils or groups of pupils who, because of their culture, tradition and social-economic conditions, leave the school prematurely (Article 33, Paragraph 1). Measures of special support for pupils or groups of pupils to promote their transfer from lower to higher educational levels can be also taken, for continuation of their education. The public authorities in charge of education shall establish special teaching curricula for the return of pupils to schools and other educational institutions. The public authorities in charge of education may also take other special measures, especially measures to encourage education of the less-represented gender in the field of information technology, engineering and technology.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

According to the LPD, harassment is explicitly prohibited and constitutes a form of discrimination. However, it is not defined, as Article 12 combines a prohibition of harassment and humiliating treatment which is confusing. Thus, it says that:

⁶⁶ Gender Equality Index for the Republic of Serbia, Measuring Gender Equality in the Republic of Serbia 2016, 45.

⁶⁷ The Global Gender Gap Report 2017, World Economic Forum, November 2017, 18, http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

⁶⁸ Gender Equality Index for the Republic of Serbia, Measuring Gender Equality in the Republic of Serbia 2016, 45.

⁶⁹ *Rodna ravnopravnost u jedinicama lokalne samouprave (Gender Equality in Local Self-Government Units)*, Commissioner for the Protection of Equality, Belgrade, November 2017, 7, <http://ravnopravnost.gov.rs/rs/rodna-ravnopravnost-u-jedinicama-lokalne-samouprave-presek-stanja-u-sprovođenju-preporuke-mera-jedinicama-lokalne-samouprave-za-ostvarivanje-rodne-ravnopravnosti/>.

⁷⁰ OSCE-led survey on Violence against Women, Well-being and Safety of Women, OSCE 2019, 13, <https://www.osce.org/secretariat/413237?download=true>.

⁷¹ Belgrade Centre for Human Rights (2020), *Ljudska prava u Srbiji u 2018* (Human Rights in Serbia in 2018), Belgrade, 318.

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

In other words, this Article defines humiliating treatment, and is confusing as humiliating treatment is a possible element of harassment.

However, harassment is defined in Article 10(6) of the GEA as any unwanted verbal, non-verbal or physical act, committed with the purpose or effect of violating a person's dignity, and of creating a fear or a hostile, degrading, humiliating or offensive environment that is based on sex. This definition complies with the EU definition found in Article 2(1)(c) of Directive 2006/54.

The Labour Law prohibits harassment in Article 21. Harassment is defined as any unbecoming conduct 'aiming at or amounting to the violation of dignity of a person seeking employment, as well as of an employed person, and which causes fear or creates a hostile, degrading or offensive environment' (Article 21(2)).

In one case, the Commissioner found that a statement of the director of the tourist organisation was humiliating, particularly to Hungarian women. He stated that 'the Hungarian language is best learned by sleeping with a Hungarian woman'. The controversial statement was given during the live broadcasting of the visit of the President of the Republic of Serbia to his firm. His defence was that by using the verb 'to sleep', he did not allude to a sexual act, but to 'being with a Hungarian', and considering that his statement did not contain offensive content, it could not violate the dignity of women. The Commissioner disagreed and recommended the director not to make statements in the future that insult the dignity of women and perpetuate gender stereotypes.⁷²

3.7.2 Scope of the prohibition of harassment

Article 12 of the LPD does not restrict its application only to the sphere of employment, and although not expressly mentioned, includes access to goods and services. However, Article 18 of the GEA only mentions harassment in the context of sanctions for the violation of duties at work. Also, the Labour Law restricts its application to the area of employment.

3.7.3 Definition and explicit prohibition of sexual harassment

Sexual harassment is explicitly prohibited in the GEA, and defined as:

'any unwanted verbal, non-verbal or physical act of a sexual nature, committed with the aim or with the effect of violating personal dignity, establishment of intimidating, hostile, humiliating, degrading or offensive environment, which is based on sex' (Article 10(7)).

This definition complies with the EU definition in Article 2(1)(d) of Directive 2006/54. Furthermore, the GEA contains a definition of sexual blackmail, which means:

'any conduct of the responsible person who, with the intention to seek services of a sexual nature, blackmails another person stating that certain data will be disclosed regarding such person or against someone close to such person or that may harm her or his honour or reputation in case he/she refuses to render the requested services' (Article 10(8)).

⁷² Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), complaint no. 07-00-200/2019-02, opinion of 17 June 2019.

Also, the Labour Law contains a definition in Article 21(3), where sexual harassment is defined as:

'any verbal, non-verbal or physical behaviour aiming at or amounting to the violation of the dignity of a person seeking employment, as well as an employed person, in the sphere of sexual life, and which causes fear or creates a hostile, degrading or offensive environment.'

This definition of sexual harassment is more in line with the definition in EU law.

3.7.4 Scope of the prohibition of sexual harassment

While the Labour Law restricts the application of sexual harassment to the area of employment, the GEA does not include such a restriction, but the scope of its application is unclear. Article 4 only stipulates that gender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritising) aimed at hindering, jeopardising, preventing or denying the exercise or enjoyment of human rights and freedoms to a person or a group of persons in the area of *politics, economy, social, cultural, civil, family life or any other area*. However, Article 18 only mentions sexual harassment in the context of sanctions for the violation of duties at work.

3.7.5 Understanding of (sexual) harassment as discrimination

The GEA does not specify that harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct, amounts to discrimination. It only says that:

'Harassment, sexual harassment or sexual blackmail at work or related to work by an employee against another employee are considered violation of duties at work and constitute grounds to terminate the employment contract, pronouncing the measure of termination of employment, as well as grounds to expel the employee from work' (Article 18).

3.7.6 Specific difficulties

The main difficulty in relation to prevention and prohibition of sexual harassment is a lack of measures to address sexual harassment in employment, specifically with regard to young women and lesbian, bisexual and transgender women, including a disproportionately low number of convictions for sexual harassment, that adversely affects women's possibilities for employment and promotion. Therefore, the CEDAW is recommending to Serbia the following:

- to undertake a comprehensive survey to assess the prevalence of sexual harassment at the workplace;
- to encourage reporting of sexual harassment at the workplace and raise public awareness about its discriminatory nature, negative impact on women's employment and possible sanctions;
- to strengthen the mechanism to effectively address cases of sexual harassment, including in court; and
- to collect disaggregated statistics on the number and nature of complaints of sexual harassment at the workplace, in the public and private sectors.⁷³

⁷³ Committee on the Elimination of Discrimination against Women, Concluding Observations on the fourth periodic report of Serbia, 14 March 2019, p. 11.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

In Serbia, instruction to discriminate is prohibited, but not defined in the LPD. However, the LPD only prohibits the activities of organisations for the purpose of e.g. 'inciting nationally, racially, religiously or otherwise motivated hatred, divisions or enmity' (Article 10). This constitutes a form of discrimination. In addition, the LPD provides in Article 13(1) that 'causing and inciting inequality, hatred and enmity on the grounds of ... gender' is considered to be a serious form of discrimination.

3.8.2 Specific difficulties

Instruction to discriminate is not recognised as a special form of discrimination in Serbian anti-discrimination legislation. Article 13(1) of the LPD only provides that:

'causing and encouraging inequality, hatred and enmity on the grounds of national, racial or religious affiliation, language, political opinions, gender, gender identity, sexual orientation or disability' is considered to be a severe form of discrimination'.⁷⁴

3.9 Other forms of discrimination

Discrimination by association and assumed discrimination are prohibited in Serbian law. The LPD in Article 2(1) prohibits discrimination based on presumed personal characteristics.

The LPD also prohibits discrimination based on association with persons with particular characteristics in Article 2(1). However, its application is limited to 'family members' and persons close to those being discriminated against.

However, the GEA does not explicitly cover discrimination by association and assumed discrimination.

3.10 Evaluation of implementation

The Serbian law that implements the EU law concepts discussed in this chapter are satisfactory. However, the main problem can be caused by the language used for defining 'indirect discrimination' in the LPD, as well as the fact that the GEA does not explicitly cover discrimination by association and assumed discrimination.

3.11 Remaining issues

Serbian anti-discrimination law also recognises some other forms of discrimination, such as violation of the principle of equal rights and obligations, association for the purpose of exercising discrimination, and hate speech.

Violation of the principle of equal rights and obligations is prohibited in Article 8 of the LPD as:

'A violation of the principle of equal rights and obligations shall occur if an individual or a group of persons, on account of his/her or their personal characteristics, is unwarrantedly denied rights and freedoms or has obligations imposed that, in the same or a similar situation, are not denied to or imposed upon another person or

⁷⁴ Article 34 of the Criminal Code stipulates that anyone who, with intent, incites another to commit a criminal offence shall be punished as prescribed by law for such offences. Article 387 prohibits racial and other discrimination, Article 128 outlaws the violation of equality (Article 128) and the most important Article 317 prohibits incitement of national, racial and religious hatred and intolerance.

group of persons, if the objective or the consequence of the measures undertaken is unjustified, and if the measures undertaken are not commensurate with the objective achieved through them.'

Association for the purpose of exercising discrimination is prohibited in Article 10 as an association:

'for the purpose of exercising discrimination; that is, this Law prohibits activities of organisations or groups that are aimed at violating freedoms and rights guaranteed by the Constitution, rules of international law and the law, or at inciting nationally, racially, religiously or otherwise motivated hatred, divisions or enmity.'

Finally, Article 11 forbids to:

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

These forms of discrimination are not recognised in the GEA, but as the LPD is the general anti-discrimination law, they also apply to gender discrimination.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising equal pay

There are some surveys on the gender pay gap in Serbia.

Under the Gender Pay Gap analyses done in 2013 for Serbia, Macedonia and Montenegro, it was found that, on average, women have lower wages than men. In Serbia the gap is at 3.3 % as the so-called unadjusted wage gap.⁷⁵ However, the true gap is higher and when personal labour market characteristics are taken into account, the gap in Serbia rises to 11 %.

In 2014, the data of the Statistical Office of the Republic of Serbia, published in the book 'Women and Men in Serbia 2014', very illustratively shows that women, in almost all sectors, are paid less than men for the same work. The biggest difference is in the financial sector and insurance activities where the salary of women, for the same position, is RSD 91 144 (EUR 765), while the salary of men is RSD 120 518 (EUR 1 010). It is paradoxical that even in the healthcare and social protection sectors, where women represent most of the employees, the salary of a woman is approximately RSD 15 463 (EUR 130) lower than the earnings of men. In the wholesale trade and retail trade sector the pay gap is about RSD 20 000 (EUR 170)– against women.⁷⁶

The results of the study 'The Pay Gap between Women and Men', conducted in 2015, shows that employed women in Serbia earn 11 % less than men. By comparing the earnings of women and men of the same education, work experience and vocations, the authors of this study concluded that women in Serbia would have to work an additional 40 days a year in order to earn as much as men with the same characteristics on the labour market.⁷⁷

Also, in one analysis it was highlighted that there is a lack of mechanisms for respecting the principle of equal pay, as human resources of the Labour Inspectorate are scarce, its control of the respect of the labour laws is weak, so violations of labour rights and gender equality are frequent.⁷⁸ Also, during the trainings with labour inspectorates, they very often claim that the gender pay gap does not exist in Serbia. However, the majority of students at Belgrade University, in one questionnaire, respondents believe that gender pay exists in Serbia (54.6 % male students and 45.4 % female students).⁷⁹ Also, some organisations claim that the gender pay gap is rising and is not the subject of any policy in Serbia.⁸⁰

The final report on the evaluation of the Action Plan for Gender Equality Strategy shows that the gender pay gap is 8.7 %.⁸¹

⁷⁵ Gender Pay Gap in the Western Balkans Countries: Evidence from Serbia, Montenegro and Macedonia, FREN, Policy Brief, 2013, <http://ebooks.ien.bg.ac.rs/579/>.

⁷⁶ Women and Men in Serbia 2014, the Statistical Office of the Republic of Serbia, Belgrade, 2014.

⁷⁷ The pay gap between women and men, Foundation for the Advancement of Economics, Belgrade, 2015.

⁷⁸ Dokmanović, M. (2016), Gender Analysis for Serbia, IPA - NEAR, 21.

⁷⁹ *Stavovi studenata Univerziteta u Beogradu o rodnoj ravnopravnosti u Republici Srbiji*, (Attitudes of students of the Belgrade University on gender equality in the Republic of Serbia), Centre for international public policy, Belgrade, 2019, p. 19 available at <http://cmjp.rs/wp-content/uploads/2019/01/Izveštaj.pdf>.

⁸⁰ Shadow report to the CEDAW regarding the fourth reporting cycle of Serbia, Priorities and Recommendations for the Elimination of Discrimination against Women in Serbia, SOS Vojvodina Network, 2019, <https://udruzenjeromanb.org.rs/images/vesti/2019/CEDAW-Shadow-Report-SOSV-Network-2019.pdf>.

⁸¹ *Finalni izveštaj evaluacije Akcionog plana za sprovođenje Nacionalne strategije za rodnu ravnopravnost Republike Srbije* (Final report on the evaluation of the Action plan for the implementation of the National Strategy for Gender Equality in the Republic of Serbia), SeCons, 2019, 31.

The Committee on the Elimination of Discrimination Against Women underlines that there is a persistent gender pay gap and vertical and horizontal occupational segregation in the labour market, and invites Serbia to ensure that the principle of equal pay for work of equal value is implemented, including by regularly reviewing wages in traditionally female and male sectors, with a view to closing the gender pay gap.⁸²

4.1.2 Surveys on the difficulties of realising equal treatment at work

In the labour market, women of the same characteristics as men have an equal chance of employment. However, women face difficulties in entering the labour market.

According to the Labour Force Survey in Serbia for 2019, gender inequalities in the labour market are continuously very pronounced.⁸³ Women have a significantly lower activity rate than men (59.2 % vs. 77.4 %), although higher than in 2018 (46.7 %), lower employment rates (52.9 % to 70.7 %) and much higher inactivity rates (40.8 % to 22.6 %). Also, 10.7 % of women are unemployed, in comparison with 8.7 % of men. Some groups of women face major employment barriers. Among young women (15-24 years), the unemployment rate is as high as 37.8 %. Access to the labour market remains particularly difficult for Roma women and women with disabilities.⁸⁴ Horizontal and vertical occupational segregation in the labour market is very pronounced.⁸⁵

Women's inactivity reflects unpaid work in the household; inadequate support to women in reconciling work and family responsibilities; employers' discriminatory treatment of young women; the existing wage gap; lower statutory retirement age; as well as the existence of a statutory minimum social insurance contributions base, which discourages formal part-time work, an option more commonly used by women with family responsibilities in other countries.⁸⁶ However, there is a very high poverty rate of part-time workers in Serbia.⁸⁷

Bearing all this in mind, the State needs to create more opportunities for women, particularly for young women, Roma women, women with disabilities and rural women. It should also enhance women's access to employment, especially in higher-paying and male-dominated sectors, and introduce incentives for public and private sector employers to recruit women.⁸⁸

4.1.3 Other issues

The Commissioner for the Protection of Equality highlights that legal framework prescribes equal pay for work of equal value, but she stresses that it is very hard to prove inequality in payment between men and women for work of equal value as there is non-transparency of wage system data and inaccessibility of information on add-ons, bonuses and rewards which are crucial for determining discrimination in this area. The Commissioner pointed out that unequal earnings for the same work were the result of discrimination against women, and not the lack of legal framework.⁸⁹

⁸² CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 10. Serbia, Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), complaint no. 07-00-200/2019-02, opinion of 17 June 2019, 13.

⁸³ Statistical Office of the Republic of Serbia, Labour Force Survey in the Republic of Serbia, 2019, Belgrade, 2020, <https://publikacije.stat.gov.rs/G2020/Pdf/G20205658.pdf>.

⁸⁴ European Commission, Serbia 2019 Report, SWD (2019) 219 final, 29 May 2019, 78.

⁸⁵ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 13.

⁸⁶ Petrušić, H., Beker, K. (2018) *Equality in Practice in Serbia*, Implementing Serbia's Equality Laws, Equal Rights Trust, 56.

⁸⁷ Access to social protection for people working on non-standard contracts and as self-employed in Europe, A study of national policies, 2017, 25.

⁸⁸ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 13.

⁸⁹ The Commissioner for the Protection of Equality, *Regular Annual Report for 2018*, 182-133.

Also, the main problem in relation to equal treatment at work for women exists due to the different unobserved characteristics. These could vary from the differences in female and male labour market behaviour which employers perceive as less valuable. For example, women may be perceived as less flexible in terms of working hours or business trips due to home and reproductive responsibilities, to other non-measurable effort and ability related variables, as well as labour market frictions. These elements need to be further investigated and elaborated.⁹⁰

Concerning the realisation of equal treatment at work, it is important to have regular and public reporting on discriminatory employer practices and measures taken, regular evaluation of active employment measures from the perspective of its effects on gender segregation by sectors, occupations and decision-making positions, and evaluation of active employment measures from the perspective of effectiveness in increasing the quality of (formal) employment of women.⁹¹

4.1.4 Political and societal debate and pending legislative proposals

The National Strategy for Gender Equality 2016-2020 highlights the need to establish functional mechanisms for gender equality at all levels, to include gender perspective in all strategic documents, to have gender analysis of policies, programmes and measures, and to introduce gender sensitive statistics and records. The Draft Law on Gender Equality better reflects these goals than the current GEA, but it was already stressed that the adoption of this instrument is delayed and uncertain. One of the specific goals included in this policy document is to change the labour legislation which would additionally secure gender equality of employees, and to commit all public authorities and private employers to develop internal mechanisms for combating and prevention of discrimination.

In 2016, the Law on the salary system in the public sector was adopted, introducing the principle of equal pay for equal work for all public sector employees.⁹² However, its implementation was postponed to 1 January 2021. There was no official explanation of the reasons for the postponement, but some argued that some ministries need more time to prepare a full analysis of the effects of the law.⁹³

4.2 Equal pay

4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value has been implemented in national legislation. The Labour Law stipulates in Article 104(2) that employees shall be guaranteed equal earnings for the same work or work of equal value performed with an employer. It defines work of the same value as work requiring the same professional qualification level, the same work abilities, responsibility and physical and intellectual effort (Article 16(3)). However, payment based on physical effort can be indirectly discriminatory for women. The ECJ stated in the *Rummier* case that:

‘the failure to take into consideration values corresponding to the average performance of female workers in establishing a progressive pay scale based on the

⁹⁰ Gender Pay Gap in the Western Balkans Countries: Evidence from Serbia, Montenegro and Macedonia, FREN, Policy Brief, 2013.

⁹¹ Shadow report to the CEDAW regarding the fourth reporting cycle of Serbia, Priorities and Recommendations for the Elimination of Discrimination against Women in Serbia, SOS Vojvodina Network, 2019, 8.

⁹² Law on the salary system in the public sector, Official Gazette of the Republic of Serbia, Nos. 8/2016, 108/2016, 113/2017, 95/2018, 86/2019.

⁹³ ING-PRO, *Zakon o sistemu platnih razreda: primena se odlaže za jul 2020. godine, ukida se zabrana zapošljavanja u javnom sektoru* (Law on the salary system: Postponed until July 2020, public sector employment ban lifted), 12 June 2019, <https://www.propisi.net/zakon-o-sistemu-platnih-razreda-primena-se-odlaze-za-jul-2020-godine-ukida-se-zabrana-zaposljavanja-u-javnom-sektoru/>.

degree of muscle demand and muscular effort may indeed have the effect of placing women workers, who cannot take jobs which are beyond their physical strength, at a disadvantage.⁹⁴

Also, anti-discrimination legislation contains the principle of equal pay. Thus, Article 16(1) of the LPD prohibits discrimination in the sphere of employment, and violation of the principle of equal opportunity in gaining employment or equal conditions for enjoying all rights pertaining to the sphere of employment, including equal pay for work of equal value. Furthermore, the GEA is even more explicit and in Article 17 guarantees the right to equal remuneration for the same work or work of equal value with the same employer, in accordance with the Labour Law, for all employees regardless of their sex. Thus far, collective agreements do not contain the same provision and it can be concluded that this requirement does not apply to more than one employer.

In Serbia there are many difficulties in relation to the application of the principle of equal pay for equal work and work of equal value in practice. The problem mostly lies in the fact that there is no transparency in this area and usually, employees do not know the salaries of their co-workers. Also, even if female employees are aware of inconsistencies in their salaries compared to male workers, they do not initiate any available proceedings. Thus, relevant case law is still lacking in this area. The author argues that the State needs to adopt different measures to tackle this issue, such as wage transparency, clearly defining what is considered to be 'pay', combating gender stereotypes, etc. Also, the State should start implementing the Law on the salary system in the public sector. Selective wage increases in 2019, as well as the postponement of the wage system reform, have widened wage disparities across the public sector and also pay gaps within the private sector.⁹⁵

4.2.2 Definition in national law

The Labour Law contains a definition of pay in Article 105. Pay is considered to be earnings realised for work performed and time spent at work, earnings based on the employee's contribution to business success of the employer (bonuses, premiums and the like), and other income based on employment in conformity with the labour rulebook or national collective agreement and contract of employment.

Pay is understood to mean the earnings including tax and dues payable on earnings. Also, pay includes all employment-related income, while some amounts are considered as the costs that have been reimbursed and not the pay in the following cases:

- travelling to and from work, in the amount of the price of public transportation tickets; for the time spent on business trips in the country; for the time spent on business trips abroad, at the minimum amount determined by special regulations; and for accommodation and food for working in the field, if the employer failed to provide to the employee the accommodation and food without compensation (Article 118(1-4));
- a retirement gratuity, in the minimum amount of three average monthly earnings; a refund of funeral expenses in the event of death of a member of immediate family, and to members of the immediate family in the event of death of the employee; and the compensation of damage sustained due to an injury at work or a professional illness (Article 119); and
- employment anniversary bonus and solidarity assistance (Article 120(1)).

⁹⁴ ECJ, Case 237/85, *Gisela Rummier v. Dato – Druck GmbH*, Judgment of 1 July 1986, para. 24.

⁹⁵ European Commission, *Serbia 2019 Report*, SWD (2019) 219 final, 29 May 2019, 45.

This definition does not comply with the definition of Article 157(2) TFEU, which considers bonus,⁹⁶ travel costs,⁹⁷ and 'all elements of remuneration'⁹⁸ to fall under the concept of 'pay'. It also does not explicitly include 'in kind', although it can be considered that it includes both cash and in-kind.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Serbian law does not explicitly implement Article 4 of Recast Directive 2006/54 in the provision guaranteeing equal pay for equal work, as the above-mentioned Article 104 of the Labour Law only guarantees equal remuneration for the same work or work of equal value performed with an employer. However, Article 18 prohibits direct and indirect discrimination of persons seeking employment, as well as employees based on, among other grounds, gender. Therefore, it also implicitly covers pay. Furthermore, Article 20 prohibits discrimination regarding, inter alia, conditions of labour and all rights deriving from an employment relation, which includes remuneration. The GEA in this area refers to the Labour Law.

4.2.4 Related case law

There is no national case law related to the issue of equal pay for equal work.

4.2.5 Permissibility of pay differences

In Serbian law there is no justification for pay differences based on gender.

4.2.6 Requirement for comparators

The provisions described above do not mention a comparator. Thus, whether a hypothetical comparator is allowed or not would have to be defined in case law (a judicial interpretation being required).

4.2.7 Existence of parameters for establishing the equal value of the work performed

Article 104(3) of the Labour Law states that work of the same value presupposes:

- the same professional qualifications;
- the same work abilities;
- the same responsibility; and
- the same physical and intellectual efforts.

As was already highlighted, according to the ECJ, the payment based on physical effort can be indirectly discriminatory for women.⁹⁹

4.2.8 Other relevant rules or policies

There are no other relevant rules or policies that provide parameters for establishing the equal value of the work performed.

4.2.9 Job evaluation and classification systems

The classification system for public servants is prescribed by the Decree on Job Classification and Criteria for Job Descriptions of Civil Servants, which was amended in

⁹⁶ ECJ, Case 333/97, *Susanne Lewen v Lothar Denda*, Judgment of 21 October 1999.

⁹⁷ ECJ, Case 12/81, *Eileen Garland v British Rail Engineering Limited*, Judgment of 9 February 1982.

⁹⁸ ECJ, Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena*, Judgment of 8 April 1976.

⁹⁹ Case 237/85, *Gisela Rummier v. Dato - Druck GmbH*, Judgment of 1 July 1986, para. 24.

2019 with the aim to introduce competences in the job descriptions.¹⁰⁰ The Decree prescribes the process of job classification of civil service posts, which is based on comparing an individual job description with the standard job description for a certain type of job.¹⁰¹ The Decree on the catalogue of job posts in the public services and other public sector organisations was adopted in 2017, and amended in 2018.¹⁰² The Catalogue prescribes a list of jobs and their standard job descriptions, as well as requirements for the job, in the areas of health, education, social protection, culture, sports, tourism, organisations of compulsory social insurance and in other public sector organisations. The Catalogue also includes standard job descriptions for supporting and auxiliary technical jobs in the public sector.

Also, the local self-government units have a basis for classifying the posts of local government employees under the Decree on Criteria for the Classification of Job Posts in Autonomous Provinces and Local Self-Government Units.¹⁰³

4.2.10 Wage transparency

Serbian (case) law does not address wage transparency. The national Strategy for Prevention and Protection against Discrimination from 2013 emphasises that it is necessary to eliminate differences in wages between women and men.¹⁰⁴ The Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination for the period 2014-2018 requires further elaboration of the principle of equal pay for men and women and the introduction of sanctions for acting contrary to this principle,¹⁰⁵ but does not require pay transparency.

According to the National Strategy for Gender Equality (2016-2020), adopted in January 2016, women spend significantly more time performing unpaid jobs which mostly concern housework and childcare.¹⁰⁶ They also work in less paid sectors, while the difference in salaries between men and women in the same category is 5.1 %.¹⁰⁷ The particular aim is to improve the economic status of women and their status in the labour market. However, in the Global Gender Gap report it was found that Serbia had made progress on closing its gender gap in estimated earned income and is ranked at 40, while concerning wage equality for similar work, it was in 91st place.¹⁰⁸

According to one study, there is relatively little information on salaries. The information on total salaries in the civil service, disaggregated into different categories, is available on the web pages of all civil service bodies, and in information booklets that provide general information about the operation of civil service bodies. However, statistics on salaries related to gender are not available. The reason for that is found in the poor functioning of the Human Resource Management Information System, which does not allow for easy preparation of analytical reports and statistics, including salary levels. Information on salary levels is not provided in job announcements, either.¹⁰⁹

¹⁰⁰ Decree on Job Classification and Criteria for Job Descriptions of Civil Servants, Official Gazette Nos. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08, 104/09, 99/14, 94/17, 16/2018, 2/2019 and 4/2019.

¹⁰¹ SIGMA, The principles of Public Administration – Serbia, OECD, May 2019, 24.

¹⁰² Decree on the Catalogue of Job Posts in Public Services and Other Public Sector Organisations, Official Gazette of the Republic of Serbia, No. 81/2017, 43/2018.

¹⁰³ Decree on Criteria for the Classification of Job Posts and Criteria for the Description of Job Posts of Civil Servants in Autonomous Provinces and Local Self-Government Units, Official Gazette No. 88/2016, 113/2017.

¹⁰⁴ Strategy for Prevention and Protection against Discrimination, Official Gazette of the Republic of Serbia, No. 60/2013, 37.

¹⁰⁵ Action Plan for the Implementation of the Strategy for Prevention and Protection against Discrimination, Official Gazette of the Republic of Serbia, No. 107/2014, 62.

¹⁰⁶ National Strategy for Gender Equality, Official Gazette of the Republic of Serbia, No. 04/16, 10.

¹⁰⁷ National Strategy for Gender Equality, Official Gazette of the Republic of Serbia, No. 04/16, 17.

¹⁰⁸ The Global Gender Gap Report 2017, World Economic Forum, November 2017, 18, 290, http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

¹⁰⁹ SIGMA (2019) The principles of Public Administration – Serbia, OECD, 24.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency is not applied in Serbia.

4.2.12 Other measures, tools or procedures

No other measures, tools or procedures have been developed to enhance pay transparency and the closure of the equal pay gap.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

The personal scope in relation to access to employment, vocational training, working conditions etc. is defined in Serbian law. In Article 16(2), the LPD prohibits discrimination in relation to access to employment, vocational training, working conditions, etc. in both the public and private sector. The same is true for the Labour Law and the GEA.

Article 5(1) of the Labour Law defines a worker as a natural person employed with an employer. The Labour Law specifies in Article 2 that it applies to:

'all employees who work in the territory of the Republic of Serbia with a national or foreign legal entity and/or a natural person, as well as to employees assigned to work abroad by an employer, unless otherwise specified by the law.'

It also applies to employees in government agencies, territorial autonomy agencies and local self-government agencies, and public services, as well as to employed foreign nationals and stateless persons, unless otherwise specified by the law. This definition of a 'worker' reflects the relevant case law of the CJEU.

Article 18 of the Labour Law prohibits discrimination based on, inter alia, sex, race, colour of the skin, age, pregnancy, disability, ethnic origin, religion and sexual orientation.

Article 16(2) of the LPD prohibits discrimination in the sphere of employment and the rights to protection from discrimination are granted to:

'a person who is employed, a person doing temporary or occasional work, or working on the basis of a contract of service or some other kind of contract, a person doing additional work, a person performing a public function, a member of the army, a person seeking employment, a student or pupil doing work practice and undergoing training without concluding a contract of employment, a person undergoing professional training and advanced training without concluding a contract of employment, a volunteer or any other person who works on any grounds whatsoever.'

The GEA prohibits discrimination in employment based on gender and applies to a legal entity or natural person employing, i.e. engaging one or several persons to perform work, (Article 10(9)).

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

The material scope in relation to (access to) employment is defined in Serbian law. Serbian legislation covers prohibition of discrimination in relation to employment. The Labour Law stipulates in Article 20 that discrimination is prohibited in relation to:

- 1) employment conditions and choice of candidates for performing a specific job;
- 2) conditions of employment and all rights deriving from an employment relation;
- 3) education, vocational training and specialisation;
- 4) job promotion; and
- 5) terminating an employment contract/dismissal.

In Article 16(1), the LPD prohibits discrimination in the sphere of employment, such as the right to employment, free choice of employment, promotion, professional training and professional rehabilitation, equal pay for work of equal value, fair and satisfactory working conditions, paid vacation, joining a trade union and protection from dismissal.

Also, the GEA stipulates in Article 11 that any employer is obliged to provide to employees, regardless of their sex, equal opportunities and treatment, in relation to the accomplishment of rights resulting from employment and work-related rights, in accordance with the relevant employment law. It also proclaims equal access to jobs and positions (Article 14), equality in employment and hiring for work (Article 15), equality in promotion, advancement or professional training (Article 16), equal remuneration for the same work or work of equal value (Article 17), equality in vocational training and training (Article 19), equality in termination of employment and hiring for work (Article 20), equal representation in trade unions and associations of employers (Article 21), and promotion in employment (Article 22).

This scope is more limited than the scope of Article 14(1) of Recast Directive 2006/54, as it does not explicitly mention self-employment, occupation and vocational guidance, but they are also included in Article 11(1) of the GEA, as it says that:

‘Any employer is obliged to provide to employees, regardless of their sex, equal opportunities and treatment, in relation to the accomplishment of rights resulting from employment and work-related rights.’

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

The exception on occupational activities has been implemented into Serbian law.

In Serbia, national legislation provides for an exception for genuine and determining occupational requirements.

The LPD stipulates in Article 16(3) that:

‘different treatment, exclusion or giving priority on account of the specific character of a job, for which an individual’s personal characteristic constitutes a genuine and decisive precondition for performing the said job, if the objective to be achieved is justified, shall not be considered to constitute discrimination.’

This definition does not explicitly state that such a requirement should adhere to the proportionality principle. However, Article 8 of the LPD is applicable in this case, as it says that a violation of the principle of equality shall occur:

‘if an individual or a group of persons, on account of his/her or their personal characteristics, is unwarrantedly denied rights and freedoms or has obligations

imposed that, in the same or a similar situation, are not denied to or imposed upon another person or group of persons, if the objective or the consequence of the measures taken is unjustified, and if the measures taken are not proportional to the objective achieved’.

Also, the Labour Law contains the same provision and stipulates in Article 22, Paragraph 1 that different treatment, exclusion or giving priority on account of the specific character of a job shall not be considered as discrimination, where the nature of a job is such, or where a job is performed in such conditions, that it constitutes a genuine and decisive precondition for performing the said job, and where the purpose intended to be achieved is justified.

The duty of assessment of the occupational activities according to Article 31(3) of Recast Directive 2006/54 still does not apply in Serbia.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

The national law provides for sufficient protection against the non-hiring, non-prolongation of contracts and dismissal of women, connected to their state of pregnancy and/or maternity. However, in practice, women are often exposed to discrimination due to non-continuation of a fixed-term contract.

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The exception on protection for women, in particular as regards pregnancy and maternity, has been implemented in Serbian law.

The Serbian Constitution stipulates in Article 60(5) that women are provided with special protection at work and special work conditions in accordance with the law.

The Labour Law stipulates in Article 12(2) that an employed woman shall be entitled to special protection in the course of pregnancy and childbirth. The Labour Law stipulates that an employer may not request from the candidate information relating to family and/or marital status and family planning, and/or to be furnished with documents and other evidence having no direct bearing on the performance of jobs for which the employment relationship is established (Article 26(2)). Moreover, an employer may not make the establishment of the employment relationship dependent on a pregnancy test, unless the relevant jobs involve considerable risk for the health of the woman and child, as determined by a competent healthcare agency (Article 26(3)).

Also, Article 16(3) of the LPD stipulates that it shall not be considered to constitute discrimination to take protective measures towards certain categories of persons, such as women, pregnant women, and women who have recently given birth. The GEA further stipulates that absence from work because of pregnancy and parenthood must not be any barrier to promotion to a higher rank, advancement or professional training, or ground for assigning a person an inadequate job or terminating the employment contract.

4.3.6 Particular difficulties

There are no particular difficulties related to the personal and material scope of national law in relation to access to work, vocational training, employment, working conditions etc.

However, in practice, many problems exist. Thus, the gender gap in employment persists at around 11 %, and the growth in female employment has decelerated more sharply

compared to male employment over the last two years.¹¹⁰ There are only 30 % of women in leadership positions and the same percentage of women engaged in the private sector, who work mainly in the capital – Belgrade.¹¹¹ The practice of the Commissioner shows that sex discrimination is very much present in the employment sphere (20.3 % of complaints which claimed to be discrimination based on sex) and the most common violations are during the hiring process when employers demand that the candidate be of a particular gender, and reassignments to a lower position or a position with a lower income upon returning from maternity and parental leave.¹¹² Also, traditional gender stereotypes influence the fact that women dedicate significant time to unpaid jobs and childcare. The majority of citizens believe that successful women neglect their family duties and that a higher salary unavoidably brings family problems.¹¹³

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

Women are still discriminated against at work due their reproductive role. The National Employment Service (NES) implements a number of various affirmative actions aimed at stimulating employers to employ women and vulnerable women. The NES collaborates with local self-government units and organisations in preparing specific measures in local action plans targeting women. In its 21 local branches, NES has established mobile employment units in order to reach the vulnerable population in rural areas, such as rural women. It also develops programmes and measures aimed at increasing competencies and employment opportunities of women who will become a working surplus (whose jobs will not exist anymore due to some structural changes in the company) implements measures to foster employment and economic empowerment of victims of domestic violence and trafficking, and supports wider implementation of flexible work contracts favourable for women and their reconciliation of work and family life.¹¹⁴ However, these measures are not sufficiently efficient due to a great number of unemployed persons, a lack of jobs, and a lack of effective protective mechanisms.¹¹⁵

4.4 Evaluation of implementation

The Serbian legislation in the area of equal pay and equal treatment at work is satisfactory, but the overall problem is the implementation of existing legislation in practice.

4.5 Remaining issues

The equal pay for work of equal value cannot be implemented unless there is a wage transparency, which will allow women to challenge the gender pay gap. Also, it is important to train labour inspectors on this matter as the majority of them are not aware of the existence of the gender pay gap. Another issue is the existence of gender stereotypes and prejudices which can lead to the decision not to hire women for higher positions in a company, as men are considered to be more stable for managerial positions. In addition to the poor availability of management and top-paid jobs, the problem is the traditional division of occupations into 'male' and 'female' – the occupations for the latter often less well-paid and less prestigious. The high concentration of female workforce in lower paying jobs leads to the almost complete feminisation of certain occupations and the absence of women in other important areas of work.¹¹⁶

¹¹⁰ Republic of Serbia: Staff Report for the 2019 Article IV Consultation and Second Review under the Policy Coordination Instrument-Press Release; Staff Report; Information Annex; Staff Statement; and Statement by the Executive Director for Republic of Serbia, International Monetary Fund, July 2019, 22.

¹¹¹ Blic Biznis, Profil zene direktora u Srbiji (Profile of the female director in Serbia), 16 April 2019, <https://www.blic.rs/biznis/vesti/profil-zene-direktora-u-srbiji-ima-manje-od-42-godine-bavi-se-ulepsavanjem-i/jvscjgg>.

¹¹² The Commissioner for the Protection of Equality, Regular Annual Report for 2019, 145.

¹¹³ The Commissioner for the Protection of Equality, Special Report on the Discrimination of Women 2015, 102.

¹¹⁴ Dokmanović, M. (2016), Gender Analysis for Serbia, IPA - NEAR, 60.

¹¹⁵ Dokmanović, M. (2016), Gender Analysis for Serbia, IPA - NEAR, 22.

¹¹⁶ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (Poseban izveštaj u oblasti rada i zapošljavanja), 117-118.

Also, it is important to highlight that the general measure on prohibition of employment in the public sector – which was introduced in 2013 by the Government in order to decrease the number of employees in the public sector – has a significantly more negative effect on women than on men, especially on women from multiply disadvantaged groups (i.e. Roma women, women with disabilities, single mothers, rural women, etc.) since they are less employed and less employable.¹¹⁷ This prohibition was abandoned on 31 December 2019, but employment is still controlled by the Government Commission. In addition, measures such as reduction of salaries in the public sector also affect women more than men, since almost 80 % of women are employed in social welfare centres, and more than 70 % in education and judiciary.¹¹⁸

¹¹⁷ Shadow Report to the CEDAW regarding the fourth reporting cycle of Serbia, Platform of Organisations for Cooperation with UN Human Rights mechanisms, 4 January 2019, <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2019/02/2019-01-28-CEDAW-Shadow-report-Platform-of-Organizations-Serbia.pdf>.

¹¹⁸ Statistical Office of the Republic of Serbia, Women and men in the Republic of Serbia, Belgrade, 2017.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)¹¹⁹

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

There are several papers and research studies which deal with work-life balance in Serbia. In one paper from 2015, it was found that the average number of working hours per week in Serbia is 48 for men and 43 for women, while the average number in the EU is 40. As well as job-related stress, this affects the ability of workers to reconcile their work and private life.¹²⁰ In addition, the share of workers with part-time employment out of the total employment in Serbia is 8.1 %, which is associated with lower income, and a significant number of employees – 9.7 % – have a second job (on average they spend 19 hours per week on the second job).¹²¹ It is also important to emphasise that most of the unpaid work is performed by women, while men spend more time on paid work.¹²² Single parents and couples with children have more hours of unpaid work compared to single parents or couples without children. Married women with children and single mothers report more hours of unpaid work than men of the same status. In Serbia, men spend 33 hours, and women 46 hours for taking care of children and grandchildren; men spend 10 hours compared with 18 hours for women for cooking and/or housework; and men spend 20 hours and women 28 hours for taking care of elderly or disabled relatives.¹²³ All these numbers are much higher than the EU average and show that women spend more hours doing unpaid work than men. Furthermore, 40 % responded that their existing working time arrangements do not fit well, or not at all well, with their family and social obligations.¹²⁴ Finally, in Serbia, 85 % of women and 77 % of men experience conflict between work commitments and private life. The authors of the study argue that it probably has something to do with the organisation of work and inflexible working hours.¹²⁵ Also, they point out that the difference in contribution of men and women in housework in Serbia is 50 % and that 49 % of women of a working age are not part of the labour force, and half of those women (57 %) would like to have a paid job.

The new Gender Index published in 2018 measuring inequality for the period 2015-2017 also demonstrated marked gender inequalities in the household care.¹²⁶ Therefore, when it comes to taking care of the elderly, children and family members with disabilities, the gender gap is still very pronounced, because among women aged 18 and over, 41.2 %

¹¹⁹ See Masselot, A. (2018) Family leave: enforcement of the protection against dismissal and unfavourable treatment, European network of legal experts in gender equality and non-discrimination, <https://www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb> and McColgan, A., (2015), Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway, European network of legal experts in gender equality and non-discrimination, <https://www.equalitylaw.eu/downloads/3631-reconciliation>.

¹²⁰ Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 189.

¹²¹ Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 189.

¹²² Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 190.

¹²³ Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 191.

¹²⁴ Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 192-193.

¹²⁵ Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 195.

¹²⁶ Government of the Republic of Serbia, Gender Equality Index 2016, Coordination Body for Gender Equality of the Government of the Republic of Serbia, the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the Statistical Office of the Republic of Serbia, December 2016, 9.

perform these activities on a daily basis and among men, 29.5 %.¹²⁷ An additional burden on women's work-life balance, apart from unpaid domestic work, is care for family members, as services fail to do so.

Also, one survey, conducted in 2017 with 330 employers (who employ 126 244 employees), showed that every fifth employer allows flexible working time, and only 10 % allow work from home.¹²⁸ The most vulnerable groups of women are women with disabilities, Roma women, women living in rural areas and older women.¹²⁹ There are 130 000 single parents in Serbia, and they need support from the State and society in order to achieve work-life balance. In addition, over 74 % of women who report that they work in agriculture do so as unpaid family members.¹³⁰

Thus, it can be concluded that no results have been achieved in this field, as measures for diminishing the gap in this area are not sufficiently determined, and rely on 'weaker' interventions (such as awareness raising), rather than legal interventions.¹³¹

5.1.2 Other issues

In Serbia, there is a relatively high level of job insecurity, as 16.6 % of respondents from the study conducted in 2015 believed that there is 'likely' or 'quite likely' possibility that they could lose their job in the following six months. This insecurity puts some pressure on the employees and affects their work-life balance.¹³² Also, women are sometimes questioned about family plans during job interviews, or are constantly on short term contracts.¹³³ Therefore, if they get a job, they want to show their commitment to their working obligations which sometimes results in their decision to postpone their marriage or having children, and causes much more pressure at work.

Quality of life is also very important and findings from Eurofound's European Quality of Life Survey (EQLS) show that many of the quality of life indicators are lower in Serbia than on average in the EU 28.¹³⁴ For example, the WHO-5 Mental Well-being Index was lowest in Serbia among all the surveyed countries in the EQLS, at 52 in 2016 versus an EU 28 average of 64 (on a scale of 1–100). The share of respondents reporting that they felt free to decide how to live their lives has decreased in Serbia from 36 % in 2011 to 23 % in 2016, which is below the respective EU 28 average of 26 %. Also, compared to the EU 28 average in the domain of the use of time, Serbia has recorded a value 17 points lower. Compared to the results of the Member States in the domain of time, Serbia is ranked 25th, ranking between Romania and Portugal. However, it differs in the fact that it is significantly worse in the sub-domain of housework activities and better in the sub-domain of social activities.¹³⁵

It is also important to highlight that the economic growth rate has been continuously positive since 2015, and in 2017 it was 2 % of real GDP growth, but this growth rate is

¹²⁷ Government of the Republic of Serbia, Gender Equality Index 2016, 41.

¹²⁸ *Usklađivanje rada i roditeljstva* (Balancing between work and Family), *Kabinet ministra bez portfelja zaduženog za demografiju i populacionu politiku, Privredna komora Srbije*, Belgrade, 2017, 21.

¹²⁹ European Commission, Serbia 2019 Report, SWD (2019) 219 final, 29 May 2019, 27.

¹³⁰ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 15.

¹³¹ *Finalni izveštaj evaluacije Akcionog plana za sprovođenje Nacionalne strategije za rodnu ravnopravnost Republike Srbije* (Final report on the evaluation of the Action plan for the implementation of the National Strategy for Gender Equality in the Republic of Serbia), SeCons, 2019, 65.

¹³² Golubović, N., Golubović S., Comparative analysis of Work-Life Balance in FYR Macedonia, Montenegro and Serbia, *Facta Universitatis*, vol. 12, No. 3, 2015, 188.

¹³³ Human Rights and Business Country Guide for Serbia, Belgrade Centre for Human Rights, the Danish Institute for Human Rights, 26, <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2016/09/Country-Guide-Serbia-FINAL-English-August-2016.pdf>.

¹³⁴ Eurofound, Living and working in Serbia, 5 June 2018, <https://www.eurofound.europa.eu/country/serbia>.

¹³⁵ Government of the Republic of Serbia, Gender Equality Index 2016, Coordination Body for Gender Equality of the Government of the Republic of Serbia, the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the Statistical Office of the Republic of Serbia, December 2016, 9.

lower than the European average (2.4 %) and significantly lower per capita in Euro (EUR 5 581 in Serbia compared to EUR 30 000 in the EU).¹³⁶ High economic inequalities are also expressed in the degree of risk of financial poverty, as well as income inequalities measured by the Gini coefficient (a [measure of statistical dispersion](#) intended to represent the income or wealth distribution of a nation's residents, and is the most commonly used measurement of inequality), which are greater than in any of the EU 28 Member States.

One very important issue is the length of parental leave (365 days) which presents a problem for 5.2 % of employers, questioned in one study, as well as frequent sick leave to take care of a child (64.8 %).¹³⁷

5.1.3 Overview of national acts on work-life balance issues

In Serbia, there are no specific acts on work-life balance.

The Labour Law prescribes rights, duties and responsibilities arising from employment, and/or on the ground of work. It provides special protection to an employed woman during the course of pregnancy and childbirth. The Labour Law also prescribes part-time employment, and the employment relations for performing jobs outside an employer's premises, which includes remote work and work at home. It also prescribes a work timetable and possibility for flexible working hours.

5.1.4 Political and societal debate and pending legislative proposals

There are no current political debates to change the legislation in order to allow better work-life balance. However, there is an ongoing debate on measures to increase the use of legal possibilities and to motivate employers to allow flexible working hours for employees. On 30 March 2017, the Minister without Portfolio in charge of demography and population policy, and the Director of the Development Agency of Serbia signed a Cooperation agreement whose primary goal is to raise the awareness of employers about the need for a balance between work and parenting. In its activities aimed at entrepreneurs, the Agency promised to highlight the importance of the needs of parents and future parents in order to align their family and business obligations to the employer and family in the best possible way. However, this agreement showed that its main purpose is to improve the demographic picture of Serbia.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

The Labour Law in Article 12 only states that an employed woman is entitled to special protection during pregnancy.

This definition is not consistent with the definition in Article 2 of Directive 92/85 as it does not include information to the employer on her condition, but it is logical that a pregnant woman needs to inform her employer about her state in order to receive special protection. On the other hand, a pregnant woman is protected even if she did not inform her employer about her pregnancy, but he/she found out that she was pregnant and acted contrary to provisions which require protection during pregnancy.

¹³⁶ Government of the Republic of Serbia, Gender Equality Index 2016, Coordination Body for Gender Equality of the Government of the Republic of Serbia, the Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia and the Statistical Office of the Republic of Serbia, December 2016, 19.

¹³⁷ *Usklađivanje rada i roditeljstva* (Balancing between work and Family), *Kabinet ministra bez portfelja zaduženog za demografiju i populacionu politiku, Privredna komora Srbije*, Belgrade, 2017, 25-26.

5.2.2 Obligation to inform employer

The Labour Code does not expressly require that the pregnant worker inform the employer about the pregnancy. However, Article 15(3) stipulates that an employee is obliged to notify the employer of essential circumstances that influence or could influence the performance of jobs, stipulated in the employment contract. This notification is seen as an opportunity for an employer to properly organise his/her work and find a replacement in due time. Also, this notification is important from the perspective that an employee in the course of pregnancy may not work at jobs that, in terms of the findings of a medical agency, are harmful to her health, and particularly at jobs requiring heavy lifting or those characterised by harmful radiation or exposure to extreme temperatures and vibrations (Article 89(1) of the Labour Law). In addition, it is also important from the perspective of allowing the pregnant employee paid leave during the day, in order to undergo any medical examination related to her pregnancy, as required by her physician. In this case, the employee is obliged to timely inform her employer of such absence.

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

There is no relevant case law concerning the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding.

5.2.4 Implementation of protective measures (Article 4-6 of Directive 92/85)

Protective measures mentioned in Articles 4-7 of Directive 92/85 have been implemented in Serbian law.

In Article 16(3), the LPD provides that it cannot be considered as discrimination when protective measures are taken regarding certain categories of employees, such as women, pregnant women, and women who have recently given birth.

The Labour Law provides in Article 22(2) that provisions of the law, labour rulebook or collective agreement (general act) and employment contracts relating to special protection and assistance to specific categories of employees, such as women on maternity leave, on childcare leave, and special childcare leave, shall not be considered as discrimination. It also protects motherhood in Articles 89-93(a). Article 89 stipulates that an employed woman may not work during her pregnancy in jobs that, in terms of the findings of a medical agency, are harmful to her health and the health of the child, and particularly in jobs requiring lifting heavy weights or jobs characterised by harmful radiation or exposure to extreme temperatures and vibrations. Article 90 stipulates that an employed woman during the first 32 weeks of her pregnancy may not work overtime or at night, should such work, according to the findings of a competent medical agency, be harmful to her health and the health of the child. Also, an employed woman may not work overtime or at night during the last eight weeks of her pregnancy. Article 91 provides that one of the parents with a child under three may work overtime and/or at night only upon their consent in writing. A self-supporting parent with a child not older than seven, or a child with a serious disability, may work overtime and/or at night only upon their consent in writing. Article 92 provides that an employer may reschedule the working hours of an employed woman during her pregnancy, and of an employed parent with a child under three years, or a child with a serious psycho-physical ailment, but only upon consent of the employee in writing. These rights also apply to an adoptive parent and/or guardian of the child (Article 93). Finally, Article 93(a) stipulates that the employer shall provide that the employed woman, upon returning to work after the birth of the child, during the first year enjoys the right to one or more breaks during working hours with a total duration of 90 minutes, or the right to reduce the daily working hours by 90 minutes, in order to be able to breastfeed her child, if the daily working hours of the employed woman equal six or more hours. The break or the reduced working hours shall be considered as part of the working hours that

shall be compensated to the employed woman by remuneration in the amount of the basic earnings, increased by seniority compensation.

These provisions are in accordance with Articles 4-7 of Directive 92/85, and in some aspects even provide wider protection, especially in relation to the age of children that can initiate this special protection.

5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no relevant case law on issues addressed in Articles 4 and 5 of Directive 92/85.

5.2.6 Prohibition of night work

The Labour Law prescribes that an employed woman is entitled to special protection during the course of pregnancy (Article 12(2)). It also prescribes in Article 89(1) that an employee in the course of pregnancy and an employee who is breastfeeding a child may not work at jobs that, in terms of the findings of a medical agency, are harmful to her health and health of the child. However, it does not expressly prohibit night work. On the other hand, Article 91 prescribes that one of the parents with a child under three years of age, a self-supporting parent with a child not older than seven years of age, or a child with serious disability, may work at night only on the ground of his/her consent in writing.

5.2.7 Case law on the prohibition of night work

There is no relevant case law on the prohibition of night work.

5.2.8 Prohibition of dismissal

Dismissal is prohibited in Serbian law from the beginning of the pregnancy until the end of the maternity leave. Article 187 of the Labour Law provides that an employer cannot cancel the employment contract with an employee during pregnancy, maternity leave, leave for childcare (parental leave) and leave for special childcare. If an employee has a fixed-term contract, it will be extended until the expiry of the maternity leave.

The decision to terminate the employment contract is null and void if at the date of termination of employment the employer was aware of the existence of the circumstances described above, or if the employee, within 30 days of receipt of the notice of termination, informs the employer of the existence of these circumstances, and submits the appropriate certificate of an authorised physician or other competent authority.

Furthermore, Article 183 stipulates that the use of maternity leave, absence from work for childcare and absence from work for special childcare are not justified reasons to terminate an employment contract.

Serbian law does not allow dismissals in exceptional cases as stipulated in Article 10(1), except in one case – when the company closes down. In that case, payment continues during maternity and parental leave. Even if an employee is made redundant during her maternity leave, the Labour Law protects her from the termination of the employment. However, after the return from parental leave, an employer may cancel the employment contract with an employee, should there be a justified reason relating to the employee's work ability, his conduct, and the employer's needs, should due to technological, economic or organisational changes, the performing of a particular job become unnecessary, or the scope of the job become reduced (Article 179(9)). However, Article 182 stipulates that in this case, the employer may not employ another person to perform the same jobs within six months from the day of termination of the employment relationship. Should it be necessary, prior to the expiry of this time limit, to perform the same job, the priority for

concluding the employment contract shall be applied to the employee whose employment relationship was terminated.

5.2.9 Redundancy and payment during maternity leave

The Labour Law stipulates in Article 157 that the criterion for establishing employee redundancy may not be the absence from work during maternity leave, a pregnant worker, a worker on maternity and paternity leave, nor a worker on leave for special childcare. During maternity leave, the worker is paid 100 % of their salary from the budget of the Republic of Serbia. However, the average amount is calculated in different ways. Thus, for the first 30 days, 100 % is the average for the previous 12 months, calculated on the basis of the total earnings, while after 30 days, 100 % is calculated from the average for the previous 3 months.

5.2.10 Employer's obligation to substantiate a dismissal

The employer is not allowed to dismiss an employee from the beginning of her pregnancy until the end of her maternity leave, as indicated above. In addition to the provisions in the Labour Law, the GEA stipulates in Article 16(3) that the absence from work due to pregnancy and parenthood can be no reason to terminate the employment contract, according to the Labour Law. Also, the Labour Law stipulates in Article 187(1) that in the course of pregnancy, maternity leave, leave of absence for nursing a child and leave of absence for special care of a child, the employer cannot cancel the employment contract of the employee.

If an employee is in fixed-term employment, such employment is automatically extended to the end of such leave.

5.2.11 Case law on the protection against dismissal

There is relevant case law showing that in some cases women were dismissed after they returned from parental leave as redundant due to changes in the business environment. Although in those cases the employer claimed that female workers were not dismissed due to their pregnancy and leave, but due to technological and organisational changes in their firm, the Commissioner found that the employer did not provide an objective and reasonable justification for cancelling an employment contract.¹³⁸ However, there are also some cases in which the employer very openly stated his/her position towards employees returning from maternity leave. In one case, the employer offered the employee – who had just returned from maternity leave – a termination of her employment by agreement; a transfer to a lower post or a declaration of redundancy.¹³⁹ The director of the company even stated that 'women with young children are not eligible to work in [their] company, because they need people who will work from 8.00 to 22.00'. The Commissioner underlined that such an act was discriminatory, and recommended for the employer to provide appropriate training to all employees working in managerial positions in order to overcome gender stereotypes and prejudices, and to familiarise themselves with anti-discrimination law. The director who made the discriminatory statement was advised to issue a written apology to the complainants and in future to refrain from discriminatory practices and statements that put women in an unequal position because of their family status.

There are also some cases where the employer did not want to extend a contract due to pregnancy and this was also considered as unlawful conduct by the Commissioner.¹⁴⁰

¹³⁸ See, e.g. Serbia, Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *I. S. from P. against A.A. doo*, complaint No. 07-00-450/2014-02, opinion of 29 January 2015.

¹³⁹ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 156.

¹⁴⁰ See, e.g. Serbia, Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *D.M.M. against P SCG*, complaint No. 07-00-00475/2014-02, opinion of 29 January 2015.

Bearing this practice in mind, the Committee on the Elimination of Discrimination against Women requires the State to facilitate the return of young mothers to work, in particular by maintaining adequate financial support.¹⁴¹

5.3 Maternity leave

5.3.1 Length

According to Article 94(1) of the Labour Law, an employed woman is entitled to leave from work due to pregnancy and childbirth (maternity leave), as well as to leave from work for childcare (parental leave), of 365 days altogether. An employed woman is entitled to commence maternity leave, based on findings of a competent medical agency, 45 days at the earliest, and 28 days in any case, prior to the time of the expected delivery (Article 94(2)). The maternity leave shall be three full months from the day of childbirth (Article 94(3)).

The maternity leave of three full months from the day of childbirth also applies should a child be stillborn or die before the expiry of maternity leave (Article 95).

5.3.2 Obligatory maternity leave

An employed pregnant woman must commence maternity leave 28 days before the expected date of delivery (Article 94(2)) and cannot be on maternity leave for less than three full months (Article 94(3)).

5.3.3 Legal protection of employment rights (Article 5, 6 and 7 of Directive 92/85)

Article 16(2) of the Labour Law stipulates that an employer is obliged to provide to an employee conditions of employment and to organise work such as to achieve safety and protection of life and health at work, in conformity with the law and other regulations. Also, some other provisions were described above which protect an employee from hazardous jobs or from night work during pregnancy.

5.3.4 Legal protection of rights ensuing from the employment contract

The Labour Law stipulates in Article 94(7) that during maternity leave and childcare leave, a female employee is entitled to compensation of earnings, in conformity with the law. Also, Article 157 provides that the criterion for establishing collective redundancy shall not include the absence of an employee temporarily prevented from working due to pregnancy, maternity leave, and childcare leave. This means that during maternity leave a woman has a right to maternity pay.

5.3.5 Level of pay or allowance

The Law on financial support for families with children¹⁴² provides that the amount of maternity pay – which is an allowance from the State – is equal to the average basic salary paid in the past 18 months prior to the month in which maternity leave was taken, up to a maximum amount of three average salaries in Serbia (Article 13(3)). The average monthly salary is determined based on data published by the public authority in charge of statistics (Article 9(1)).

Maternity pay is higher than sick pay, as sick pay is a minimum of 65 % of average earnings in the preceding three months before the month in which the temporary impediment for work occurred, on the condition that it may not be lower than the minimum

¹⁴¹ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 13.

¹⁴² The Law on Financial Support for Families with Children, Official Gazette of the Republic of Serbia, Nos. 113/2017, 50/2018.

salary, where the impediment for work was caused by illness or injury sustained outside work (Article 115(1)).

5.3.6 Additional statutory maternity benefits

The amount of maternity pay is equal to the average basic salary.

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

There are no conditions for eligibility for benefits applicable in Serbian legislation.

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

While the Labour Law and the LPD include provisions on gender discrimination in employment, only Article 16(2) of the GEA explicitly provides that the absence from work because of pregnancy and parenthood can be no reason to assign a person an inadequate job and terminate the employment contract in accordance with the Labour Law. Upon returning from maternity leave, an employee continues working under the terms and conditions applicable until maternity leave and also benefits from any improvement in working conditions to which she would have been entitled during her absence, unless changes have been introduced through an annex to the contract of employment.

5.3.9 Legal right to share maternity leave

There is no right to share maternity leave in Serbia.

5.3.10 Case law

There is no relevant case law concerning maternity leave.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

The Labour Law provides for adoption leave. Article 97 stipulates that an adoptive parent of a child under five is entitled, for taking care of the child, to be absent from work for eight consecutive months, from the day the child arrives at the adoptive family, and at most until the child turns five. If the child is adopted before it is three months old, the adoptive parent is entitled, for the purpose of childcare, to be absent from work until the child is 11 months old. This right is stipulated in Article 97(3) and belongs to a person in whose care the child is for adaptation before establishing the adoption, and after the adoption to one of the adoptive parents. During the absence from work for the purpose of childcare, an adoptive parent is entitled to compensation of earnings in conformity with the law. This compensation is also stipulated in Article 10(2) of the Law on financial support for families with children.

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

National legislation does not provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave. However, it can be argued to exist based on provisions in the Law on the Prohibition of Discrimination and the Labour Law (general anti-discrimination provisions).

5.4.3 Case law

There is no relevant case law concerning adoption leave.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Directive 2010/18 has not been explicitly implemented in Serbia.

5.5.2 Applicability to public and private sectors (Clause 1 Directive 2010/18)

The Labour Law, which recognises the right to parental leave, applies to both the public and the private sector.

5.5.3 Scope of the transposing legislation

The scope of the Labour Law includes contracts of employment for part-time workers, fixed-term contract workers, and employment contracts with a temporary agency.

5.5.4 Length of parental leave

The total duration of parental leave is from 3 months after the birth of the baby until the expiry of 365 days from the day of commencement of maternity leave (Article 94(4) of the Labour Law). However, Article 94(a)(1) provides an even longer period of parental leave for an employed woman for the third and every subsequent new-born child for the duration of two years in total. This right is also due to an employed woman who gives birth in the first delivery to three or more children, as well as to an employed woman who has given birth to one, two or three children, and who gives birth in the subsequent delivery to two or more children (Article 94(a)(2)). Also, this right is due to the father of a child, but only if the mother abandons the child, dies, or is prevented due to other justified reasons to exercise this right (serving a prison term, serious illness, etc.), or if the mother is not employed (Article 94(5)).

5.5.5 Age limits

Workers are entitled to parental leave until the children are one year old.

5.5.6 Individual nature of the right to parental leave

Parental leave is recognised for one parent of the child. However, a father has a very limited possibility of acquiring this right. Only the compensation during parental leave is subject to agreement between parents and can be changed over time.¹⁴³

5.5.7 Transferability of the right to parental leave

Maternity leave cannot be shared under Serbian law. An employee cannot choose to take maternity leave on a part-time basis.

Parental leave is recognised for one parent. Serbian law recognises parental leave of the father in very limited cases, such as if the mother abandons the child, dies, or is prevented due to other justified reasons to exercise this right (serving a prison term, serious illness, etc.). The father also has this right if the mother is not employed.

5.5.8 Form of parental leave

Parental leave only applies to a parent who does not work full time and takes care of his/her child and it cannot be taken piecemeal.

¹⁴³ Article 4 of the Rulebook on Detailed Conditions and the Manner of Exercising the Right to Financial Support to Families with Children, Official Gazette of the Republic of Serbia, Nos. 29/2002, 80/2004, 123/2004, 17/2006, 107/2006, 51/2010, 73/2010 and 27/2011 – CC decision.

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

There is no work and/or length of service requirement in order to benefit from parental leave.

5.5.10 Notice period

There is no notice period.

5.5.11 Postponement of parental leave (Clause 3(c) of Directive 2010/18)

There is no situation where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation.

5.5.12 Special arrangements for small firms (Clause 3(d) of Directive 2010/18)

There are no special arrangements for small firms.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) of Directive 2010/18)

The parental leave for children with a disability or a long-term illness is the same as for parents of other children. However, the Labour Law stipulates in Article 96 that one of the parents of a child in need of special care due to a serious psycho-physical ailment, is entitled, upon expiry of the maternity and parental leave, to be absent from work, or to work half of the full working hours, at most until the child turns five. This right can be exercised based on the opinion of an agency competent to assess the degree of the child's psycho-physical ailment, in conformity with the law. During that time, the employee is entitled to compensation of earnings, in conformity with the law. While working half of the full working hours, the employee shall be entitled to earnings in conformity with the law, labour rulebook or collective agreement (general act) and employment contract, and for the other half of the full working hours – to compensation of earnings, in conformity with the law.¹⁴⁴ Article 98 further provides that a parent who takes care of a person suffering from cerebral palsy, poliomyelitis, or of a type of paralysis or muscular dystrophy or other serious disease, based on the findings of a competent medical agency, and upon their request, may work reduced working hours, but not less than half of the full working hours. This employee is entitled to appropriate earnings, commensurate to the time spent at work, in conformity with the law, labour rulebook or collective agreement (general act) and the employment contract. According to Article 100, one of two parents of a child with disability is entitled to the absence from work until the child turns three.

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Serbian law protects adoptive parents by recognising adoptive leave and leave for the care of an adoptive child. Rights and obligations that exist between biological parents and their children exist also between adoptive parents and an adopted child. According to Article 97(3), an adoptive parent of a child under five years of age is entitled, in order to take care of the child, to be absent from work for eight consecutive months from the day of adoption, until the child turns five years old. If the child is three months old on the day of adoption, an adoptive parent is entitled to be absent from work until the child is 11 months old.

Also, Article 22(1) of the Labour Law prescribes that special protection and assistance provided to, among others, adoptive parents are not considered to be discrimination.

¹⁴⁴ Conditions, procedure, and the manner of exercising the right to be absent from work for special childcare is regulated in detail by the Minister in charge of social childcare.

Article 93 further prescribes additional protection: adoptive parents with a child under three years of age may work overtime and by night only with their written consent; and an employer may redistribute the working time of an employed adoptive mother.¹⁴⁵

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

The GEA in Article 16(2) stipulates that absence from work because of pregnancy and parenthood must not be grounds for assigning a person an inadequate job and terminating an employment contract in accordance with the law regulating the labour. Although not explicitly included in the Labour Law and the LPD, less favourable treatment can be challenged through the general anti-discrimination provisions.

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

Upon returning from parental leave, an employee continues working under the terms and conditions applicable before parental leave, unless changes have been introduced through an annex to the contract of employment. Although not explicitly mentioned, Article 1 of the GEA stipulates that any employer is obliged to provide to employees, regardless of their sex, equal opportunities and treatment, in relation to the accomplishment of rights resulting from employment and work-related rights, in accordance with the relevant employment law, and defines in Article 4 that gender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritising) aimed at hindering, jeopardising, preventing or denying exercising or enjoyment of human rights and freedoms to a person or a group of persons in the area of, among other, economy, social, and family life.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

The rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave.

5.5.18 Status of the employment contract or relationship during parental leave

The employment contract remains in force for the duration of the parental leave and during this period the contract cannot be terminated.

There is no work and/or length of service requirement in order to benefit from parental leave. However, 100 % of compensation will be provided to a parent who has worked for at least six continuous months. For a parent having worked between three and six months the compensation will be 60 %, and for less than three months, compensation will be 30 % of the salary (Article 12(2) of the Law on financial support for families with children).

5.5.19 Continuity of entitlement to social security benefits

There is continuity in the entitlement to social security cover (Article 85(2)(5) of the Law on Social Protection). Also, healthcare is covered during the period of parental leave (Article 11(2)(2) of the Law on Healthcare), and the Law on Health Insurance recognises the right to healthcare provided by virtue of compulsory health insurance covering medical examinations and treatment of women relating to family planning, pregnancy, delivery and the postnatal period of up to 12 months after delivery (Article 34(2)).

¹⁴⁵ Redistribution of working time means the introduction of longer and shorter working hours, taking into consideration the restrictions on the average working time for the reference period, as well as holidays (daily, weekly) and the overtime work.

5.5.20 Remuneration

According to the Labour Law, during parental leave, a female employee and/or father are entitled to compensation of earnings, in conformity with the law (Article 94(7)). The parental leave is paid by the employer, who refunds the paid amount from the budget of the State through municipalities.

5.5.21 Social security allowance

The social security system in Serbia provides for an allowance during parental leave, according to Article 85(2)(5), which is a part of birth policies, and is paid in addition to the compensation of lost earnings. The amount of this allowance is adjusted twice a year (on 1 April and 1 October) on the basis of the consumer price index, and currently takes the form of parental allowance.

This allowance is not recognised for adoptive parents, as the parental allowance is a measure of prenatal policy, and its goal is to encourage having children.

On 28 June 2018, the Serbian Parliament adopted a number of amendments to the Law on Financial Support for Families with Children.¹⁴⁶ These amendments introduce substantial changes in the parental allowance scheme. The new parental allowances scheme has been applicable since 1 July 2018. Compared to the 2017 payments, increases are most pronounced for the third (10 times increase) and fourth child (5.8 times increase), while for the first and second child, the increase is 2.5 and 3.1 respectively:

- for the first child EUR 850 (RSD 100 000.00);
- for the second child EUR 2 000 (RSD 240 000.00) in 24 instalments;
- for the third child EUR 12 200 (RSD 1 440 million) in 24 instalments; and
- for the fourth child EUR 18 300 (RSD 2 160 million) in 24 instalments.¹⁴⁷

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

Serbian legislation includes more favourable provisions in relation to the duration of parental leave and of leave for the care of a seriously ill child and a child with a disability.

5.5.23 Case law

There is no relevant case law concerning maternity and parental leave.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

The Labour Law in Article 77 stipulates that a father has seven days of paternity leave when his spouse gives birth. This is paid leave, which means that a father has 100 % compensation during the leave. Although the Labour Law recognises only married couples, Article 65(5) of the Constitution stipulates that cohabitation is to be equated to marriage in accordance with the law.

¹⁴⁶ The Law on the Amendments of the Law on Financial Support for Families with Children, Official Gazette of the Republic of Serbia, No. 50/2018, entered into force on 7 July 2018.

¹⁴⁷ See *Roditelj Srbija* (Parents of Serbia), *Iznos roditeljskog dodatka* (The Amount of Parental Allowance), <https://www.bebac.com/tekst/iznosi-republickog-roditeljskog-dodatka>.

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

Protection against unfavourable treatment and/or dismissal has not been provided explicitly, but they are ensured under the anti-discrimination clauses in the Labour Law, the LPD and the GEA.

5.6.3 Case law

The Commissioner gave its opinion that Article 17(6) of the Law on Financial Support for Families with Children stipulates that the father of the child may also be entitled to the reimbursement of other income on the basis of the birth and care of the child, if the mother is not alive, left the child or is prevented from taking care of the child for objective reasons. The Commissioner considers that it is not clear why the father of a child can only receive compensation if the mother is not alive, she left the child, or for objective reasons she is prevented from taking immediate care of the child. She asked if that means that she is primarily responsible for her child? The Commissioner points out that there is no objective and reasonable justification for making such a difference between men and women and submits an initiative to change the law.¹⁴⁸ However, this law has not yet been amended, nor has the Constitutional Court ruled on the initiative for its unconstitutionality.¹⁴⁹

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

The Labour Law prescribes in Article 77(1) that an employee is entitled to paid leave for a total of up to five working days during the calendar year, in the case of marriage, childbirth, serious illness of a close family member, and in other cases stipulated by a general act and employment contract. In addition, an employee is also entitled to:

- 1) five business days following the death of a close family member;
- 2) two consecutive days for each case of voluntary blood donation, including the day of blood donation (Article 77(2)).

'Close family members' include spouses, children, brothers, sisters, parents, adoptive parents, and guardians (Article 77(3)). The employer may also grant the employee leave for other relatives and for other persons living in a joint family household with an employee, for the duration determined by the decision of the employer (Article 77(4)).

The general act and the employment contract may determine the right to paid leave for a period longer than the duration determined above (Article 77(5)).

5.7.2 Case law

There is no national case law in relation to unfavourable treatment (including pay and working conditions) and/or dismissal related to (the taking up of) time off for *force majeure*.

¹⁴⁸ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), Initiative for the change of the Law on Financial Support for Families with Children, No. 07-00- 100/2018-02, from 27 March 2018. See also the case where the Commissioner found discrimination as the right to free preschool education was recognised only for a mother of three children, and not for a father of three children. Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), S.P. from T. against the local council of municipality T., complaint no. 07-00- 349/2018-02, opinion from 1 October 2018.

¹⁴⁹ The Commissioner for the Protection of Equality, *Regular Annual Report for 2019*, 112.

5.8 Care leave

5.8.1 Existence of care (or carers') leave in national law

The Labour Law stipulates in Article 77(1) that an employee has the right to a paid leave of absence for a maximum of seven workdays in a calendar year, in cases of serious illness of a member of their immediate family, and in other cases as determined in the general act (labour rulebook or collective agreement) and the employment contract. Members of the immediate family are considered to be: the spouse, children, brothers, sisters, parents, adoptive parents, adoptee, guardian and other persons who live in a joint family household with the employee (Article 77(4)).

However, the Law in Articles 96-100 sets out the leave for special care of a child or another person. Article 96(1) provides that one of the parents of a child in need of special care due to a serious psycho-physical ailment, shall be entitled, upon expiry of the maternity and parental leave, to be absent from work, or to work half of the full working hours, at most until the child turns five. This right is exercised based on the opinion of an agency competent to assess the degree of the child's psycho-physical ailment, in conformity with the law. During this leave, an employee is entitled to compensation of earnings, in conformity with the law (Article 96(3)). The employee can also request to work half time, and in that case, he/she is entitled to compensation for another half of the full working hours (Article 96(4)), which means that in this case there is no loss of earnings. Conditions, procedure, and the manner of exercising the right to absence from work for special care of a child is regulated in detail by the Minister in charge of social childcare. This right also pertains to one of the adoptive parents, foster parents, and/or guardian of the child, should the child, due to a psycho-physical ailment, need special care (Article 99). They are entitled to absence from work until the child turns three (Article 100(1)).

Also, according to Article 98(1), a parent or a guardian and/or a person who takes care of a person suffering from cerebral palsy, poliomyelitis, or of a type of paralysis or muscular dystrophy or other serious disease, based on the findings of a competent medical agency, and upon their request, may work reduced working hours, but not less than half of the full working hours. An employee working reduced working hours is entitled to appropriate earnings, commensurate with the time spent at work, in conformity with the law, labour rulebook or collective agreement (general act) and the employment contract (Article 98(2)). In this case, if an employee works half time, the earnings are also 50 %.

In any other case, the employer may grant an employee unpaid leave, during which time the rights and duties relating to the employee's employment remain, unless otherwise determined for specific rights and duties by law, labour rulebook or collective agreement (general act) and contract of employment (Article 78).

Moreover, the Labour Law provides other measures to help the employee with a seriously ill child or child with a disability. Article 91(2) protects a parent with a child that has a serious disability: they can work overtime and/or work at night only upon their consent in writing.

5.8.2 Case law

There is no relevant case law on time off/care leave.

5.9 Leave in relation to surrogacy

Surrogacy is still not allowed in Serbia, and the draft of the Civil Code includes an introduction of surrogate motherhood in Serbia.¹⁵⁰ However, this right is very restrictive

¹⁵⁰ Text available in Serbian at <http://www.mpravde.gov.rs/files/NACRT.pdf>.

as the right is limited to Serbian nationals, or to foreigners residing in Serbia for at least three (five) years.¹⁵¹ The aim of this provision is to avoid reproductive tourism. Surrogate mothering with cross-border effects gives rise to complicated legal problems as regards the definition and recognition of legal parentage of the intended parents both in the countries in which the surrogate mother gives birth to the child, as well as in countries in which the intended parents wish to live with their child.¹⁵²

The only provision that currently exists in relation to surrogacy is Article 49(18) of the Law on Biomedically Assisted Fertilization.¹⁵³ This Article prohibits in these procedures the involvement of a woman who intends to give her child to a third party after its birth, with or without paying any fees or achieving any tangible or intangible benefits, as well as offering services or surrogate motherhood by a woman or any other person with or without paying any fees or achieving other tangible or intangible benefits. Also, Article 66(1) incriminates surrogacy as defined in Article 49(18) and prescribes punishment of 3 to 10 years' imprisonment for a mother or any person who offers to be a surrogate mother.

5.10 Flexible working time arrangements

5.10.1 Right to reduce or extend working time

The Labour Law stipulates in Article 39 that an employment relationship may also be established as part-time employment for either an indefinite or a definite period of time (Article 39). In this case, an employee has all rights deriving from the employment relationship, proportionally to the time spent at work. However, there is no possibility to reduce working time per week on request, nor the right to extend working time – in the case of structural overtime, for example.

5.10.2 Right to adjust working time patterns

There is no right to adjust working time patterns.

The Labour Law only provides in Article 92 that an employer may reschedule the working hours of an employed woman in course of pregnancy, and of an employed parent with a child under three, or a child with a serious psycho-physical ailment, only upon consent of the employee in writing. An adoptive parent and/or guardian of the child has the same right (Article 93).

Also, the Labour Law stipulates that the employer will provide that the employed woman, upon returning to work prior to expiry of the first year after the birth of the child, has the right to one or more breaks during working hours for a total duration of 90 minutes, or the right to reduce the daily working hours by 90 minutes, in order to be able to breastfeed her child, if the daily working hours of the employed woman equal six or more hours. This break will be considered as a part of the working hours that will be compensated to the employed woman as remuneration in the amount of the basic earnings, increased by seniority compensation. (Article 93(a)).

In addition, Article 55(4) prescribes that if the nature of work and the organisation of work permit it, the beginning and the end of the working hours may be determined, or contracted, in a special time interval (flexible working hours). The adjustment of working hours can be requested not only in relation to breastfeeding, within the stipulated 40 hours per week, but employers in Serbia are still reluctant to introduce this type of work.

¹⁵¹ Article 2276 of the draft Civil Code.

¹⁵² Bordaš B., *Restriktivni koncept surogat materinstva u radnom tekstu građanskog zakonika Srbije* (Restrictive Concept of Surrogacy in the draft text of the Civil Code of Serbia), *Zbornik radova Pravnog fakulteta u Novom Sadu*, 3/2015, p. 979.

¹⁵³ The Law on Biomedically Assisted Fertilization, Official Gazette of the Republic of Serbia, No. 40/2017, 113/2017.

5.10.3 Right to work from home or remotely

According to Article 42 of the Labour Law, an employment relationship can be established to perform work outside the employer's premises and/or at home. In this case, an employment contract has to include, among other things, working hours in accordance with work standards; type of work and the methods and organisation of work; conditions of work and the method of supervision over the employee's work; the amount of earnings for the work performed and the pay-day schedule; utilisation of the employee's instruments of work and the compensation for their utilisation; reimbursement of other work expenses and the way they are defined; and other rights and obligations. However, an employee is not entitled to work from home or remotely on request.

5.10.4 Other legal rights to flexible working arrangements

There are no possibilities for flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future.

5.10.5 Case law

There is no relevant case law concerning flexible working time arrangements.

5.11 Evaluation of implementation

The overall legislation is satisfactory in Serbia. However, its implementation is still weak, especially concerning parental leave for fathers. In 2018, only 300 fathers took this opportunity, which is 70 % more than in 2017, while their number in 2019 was 338. In the capital, Belgrade, 131 fathers took this opportunity.¹⁵⁴ Fathers are not taking this opportunity due to the existence of traditional gender stereotypes and roles, as well as due to the existing procedure, as they can use this right if they are employed, and mothers are prevented from taking care of a child or if they abandoned the child.

Also, the legislation needs to be changed to allow fathers to use parental leave in the first three months after the delivery of a baby, as well as to change the provision of the Law on Financial Support for Families with Children which stipulates that the father of the child may be entitled to the reimbursement of other income on the basis of the birth and care of the child, if the mother is not alive, left the child or is prevented from taking care of the child for objective reasons.

5.12 Remaining issues

A remaining issue is to allow surrogacy and to abandon the restrictive approach stipulated in the draft Civil Code.

¹⁵⁴ The Commissioner for the Protection of Equality (2019), Particular Report in the area of Work and Employment (*Poseban izveštaj u oblasti rada i zapošljavanja*), 151.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

In respect of occupational pensions, Serbian anti-discrimination law does not cover prohibition of discrimination.

Serbia has no occupational pension insurances.

6.1.2 Other issues related to gender equality and social security

N/A.

6.1.3 Political and societal debate and pending legislative proposals

N/A.

6.2 Direct and indirect discrimination

N/A.

6.3 Personal scope

N/A.

6.4 Material scope

N/A.

6.5 Exclusions

N/A.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

N/A.

6.7 Actuarial factors

N/A.

6.8 Difficulties

N/A.

6.9 Evaluation of implementation

N/A.

6.10 Remaining issues

N/A.

7 Statutory schemes of social security (Directive 79/7)

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

There are many surveys and reports showing that the Serbian pension system needs total reform and that the current situation is very unfavourable. It is illustrative to mention one study from 2017, of which the key findings are: low adequacy of current pension system; the at-risk-of-poverty or social exclusion rate for the elderly in 2016 was 31.2 %, while the severe material deprivation rate was 20.9 %, much higher than EU 28 averages; the 2014 fiscal-consolidation measures imposed cuts on pensions that were above the national average; demographic projections show rapid population ageing, which will increase the old-age (20/64) dependency ratio to 42.8 % by 2035; the greatest challenge will be maintaining the sustainability of the Pension Fund as the working-age population shrinks; the provision of better safety nets for the most vulnerable elderly people, aged 75+, by relaxing the financial social assistance eligibility conditions – this is vital, due to rapid population ageing; and there is also a need to increase the coverage of personal pension schemes, through tax subsidies and flexible investment options for the Voluntary Pension Funds.¹⁵⁵

7.1.2 Other relevant issues

The problems with the pension system in Serbia reflect gender perspective. The pension reform in 2014 imposed a phased-in equalisation of the retirement age for women, raising it to 65 by 2032. However, the coverage rate of pension payments for people aged 65-79 was higher for men (89 %) than for women (81.5 %) in 2011, while in 2016 the gender gap in coverage rates was 15.0 percentage points.¹⁵⁶

The rates of severe material deprivation for persons aged 65+ and 75+ are 20.9 % and 21.7 % respectively, almost four times more than the EU 28 averages (5.9 % and 6.1 %). Gender differences are prominent, as the above-quoted rates are much higher for women.¹⁵⁷

The share of self-employed pensioners in the total number of old-age pensioners is low, at 4.9 % in 2016, although it had increased 2.3 times compared with 2008. The share of women in this category is low at 22.2 %, reflecting the low level of participation by women in the self-employment sector.¹⁵⁸ However, another important issue with self-employed is that they enter retirement earlier than other workers: 34.6 % had fewer than 20 years of service, while 77 % retired with fewer than 30 years of service. Therefore, the average old-age pension for the self-employed category was EUR 219.70 per month, which is 7.1 % lower than the average for the employee category (2016).¹⁵⁹

7.1.3 Overview of national acts

The statutory schemes of social security are prescribed in several laws.

¹⁵⁵ Pejtin Stokić Lj., Bajce J., (2017), ESPN Thematic Report: Assessment of Pension Adequacy in Serbia, European Social Policy Network.

¹⁵⁶ Pejtin Stokić Lj., Bajce J., (2017), ESPN Thematic Report: Assessment of Pension Adequacy in Serbia, European Social Policy Network, 5.

¹⁵⁷ Pejtin Stokić Lj., Bajce J., (2017), ESPN Thematic Report: Assessment of Pension Adequacy in Serbia, European Social Policy Network, 8.

¹⁵⁸ Pejtin Stokić Lj., Bajce J., (2017), ESPN Thematic Report: Assessment of Pension Adequacy in Serbia, European Social Policy Network, 10.

¹⁵⁹ Pejtin Stokić Lj., Bajce J., (2017), ESPN Thematic Report: Assessment of Pension Adequacy in Serbia, European Social Policy Network, 10.

The Law on Social Protection¹⁶⁰ regulates the principles of social protection, the rights and services of social protection, the procedures for exercising the right to social protection and the use of social protection services, the rights and obligations of social welfare beneficiaries, the establishment and operation of social welfare institutions, the conditions under which social protection services can provide other forms of organisation, supervision of the work of social welfare institutions, inspection supervision in the performance of social welfare activities, the position of professional workers and professional associates, support and improvement of the quality of social work, as well as other issues of importance for social protection.

The Law on Pension and Disability Insurance¹⁶¹ regulates the mandatory retirement and disability insurance, as well as mandatory and disability insurance for persons not covered by mandatory insurance, having entered mandatory insurance and scheme. Retirement and disability insurance assures rights to certain benefits in cases of certain risks stipulated by Law: the right to old-age pension, the rights to disability pension, the right to pecuniary benefit for bodily damage and the right to carer's allowance. These benefits assure material and social security of contributors.

The Law on Housing and Maintenance of Buildings¹⁶² regulates relations between apartment owners with respect to the operation and maintenance of residential, business, and residential-business buildings, regulating for the first time forced eviction.

7.1.4 Political and societal debate and pending legislative proposals

There is an ongoing debate on the reform of the pension system in Serbia. Some of the challenges are ageing of population, financial deficit due to low efficiency in collection of contributions, instable economic situation, high number of young pensioners. It is also faced with the decline in the standard of living, a huge public debt, high unemployment rate, and high number of workers who are not registered. The Government already increased the retirement age for women, which in 2023 will equalise with men, redefined minimum and maximum pension. However, there is a necessity to fully reform the pension system in Serbia, but some measures are unpopular, and they must be accompanied by at least one that would be widely accepted and popular.¹⁶³

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment for men and women in matters of social security has been implemented in national legislation.

The GEA stipulates in Article 4 that gender-based discrimination is any unjustified differentiation or unequal treatment or failure to treat (exclusion, restriction or prioritising) aimed at hindering, jeopardising, preventing or denying the exercise or enjoyment of human rights and freedoms to a person or a group of persons in the social area, among others. It also stipulates in Article 23(1) that gender-based discrimination is prohibited on the occasion of accomplishment and enjoyment of rights in the area of social care, regardless of the subjects arranging or implementing this care. It further provides that in order to improve the financial position of self-supporting and unemployed parents, the

¹⁶⁰ The Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011.

¹⁶¹ The Law on Pension and Disability Insurance, Official Gazette of the Republic of Serbia, Nos. 34/2003, 64/2004 – decision of the CC, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – decision of the CC, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014 and 142/2014, 73/2018, 46/2019, 86/2019.

¹⁶² The Law on Housing and Maintenance of Buildings, Official Gazette of the Republic of Serbia, Nos. 104/2016, 9/2020.

¹⁶³ See for more Stevanović M., Marković-Blagojević, M., Reform of the Pension System in Serbia and Analysis of Growth in the number of Pensioners, Linkages between Education and Employment, Conference Paper, October 2014.

allocation of budgetary funds shall be effectuated at the level of the Republic of Serbia, the autonomous province and self-government units pursuant to law. Furthermore, it provides an obligation for social and healthcare institutions and other institutions dealing with protection of women and children to adjust their work organisation and working hours to the requirements of their clients.

The LPD prohibits discrimination that is considered to occur in the case of conduct contrary to the principle of gender equality, i.e. the principle of observing the equal rights and freedoms of women and men in political, economic, cultural and other aspects of public, professional, private and family life; this means it also applies to social life (Article 20).

Finally, the Law on Social Protection prohibits discrimination of the beneficiary of social protection based on, inter alia, sex (Article 25).

7.3 Personal scope

The personal scope of Serbian law relating to statutory social security schemes is broader, as Article 4 of the Law on Social Protection stipulates that each individual or family in need of help and support to overcome their social and subsistence difficulties, and to create conditions in order to meet their basic needs, have the right to social security, which is a public assistance scheme. Article 41 further specifies that the beneficiary who cannot achieve basic living conditions with their work, income from property or from other sources is entitled to social protection.

7.4 Material scope

The material scope of Serbian law relating to statutory social security schemes is broader than specified in Article 3(1-2) of Directive 79/9. According to Article 41(3) this scheme covers the beneficiary whose well-being, security and productive life in society is threatened by risk due to age, disability, illness, family and other life circumstances.

7.5 Exclusions

Serbian law does not make exclusions from the material scope as specified in Article 7 of Directive 79/7.

7.6 Actuarial factors

Sex is not used as an actuarial factor in statutory social security schemes.

7.7 Difficulties

There are no specific difficulties in Serbia in relation to implementing Directive 79/7.

7.8 Evaluation of implementation

It was already said that personal and material scope of Serbian law relating to statutory social security schemes is broader than specified in Article 3(1-2) of Directive 79/9. Discrimination is prohibited in the areas of social security, including housing and social housing, pensions and disability insurance.¹⁶⁴ However, due to the overall economic situation in Serbia, social security benefits are not enough for a decent life.

¹⁶⁴ Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011; Law on Housing and Maintenance of Buildings, Official Gazette of the Republic of Serbia, No. 104/2016; Law on Pension and Disability Insurance, Official Gazette of the Republic of Serbia, Nos. 34/2003, 64/2004 – decision of the CC, 84/2004, 85/2005, 101/2005, 63/2006 – decision of the CC, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014 and 142/2014; Law on Contributions for Mandatory Social Insurance, Official Gazette of the Republic of Serbia, Nos. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012, 8/2013, 47/2013, 108/2013, 6/2014, 57/2014, 68/2014, 5/2015, 112/2015, 5/2016, 7/2017.

7.9 Remaining issues

The remaining issue is the need to intensify efforts to promote equality and combat discrimination against vulnerable groups with regard to their access to social security, including particularly Roma women, women with disabilities, and LGBTIQ+ persons.¹⁶⁵ For Roma women, it is important to highlight that exercise of the right to social welfare benefits also depends on birth registration, citizenship and registration of permanent residence. If a woman does not possess personal documents, she will not be able to exercise the right to social welfare or other social protection services. One research study conducted in 2015 showed that the right to social protection was exercised by 38 % of women who are right holders, and 43 % of men. Additionally, 27 % of women responded that their partners were holders of the right to social protection, while the same answer was given by only 7 % of men. This points to the prevalence of traditional gender roles in the family including a tendency for men to apply to be the right holders on behalf of their families.¹⁶⁶ Also, the Committee on the Elimination of Discrimination against Women recommends Serbia to conduct a comprehensive survey to assess the situation and the particular needs and aspirations of vulnerable groups of women – such as Roma women, older women, poor women, women with disabilities, refugee and internally displaced women and women heads of household – and to ensure their economic empowerment.¹⁶⁷

¹⁶⁵ CESCR, Concluding Observations: Serbia, UN Doc. E/C.12/SRB/CO/2, 10 July 2014, Para 7.

¹⁶⁶ Praxis, Alternative Report concerning Serbia to the CEDAW for consideration at the 72nd Pre-Sessional Working Group (23-27 July 2018), July 2018, https://www.praxis.org.rs/images/praxis_downloads/Alternative_Report_concerning_Serbia_for_consideration_at_the_CEDAW.pdf.

¹⁶⁷ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 16.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

The number of self-employed is very high, and in 2018, even 31.64 % of all workers were self-employed workers.¹⁶⁸ However, self-employed workers are faced with some barriers.

One survey showed that women's entrepreneurship in rural areas is constrained by limited ownership of farmland.¹⁶⁹ If rural women buy or inherit land, tradition obliges them to register the land in the names of their husbands, or other male relatives. This practice prevents women from starting or joining agricultural cooperatives. Even if they have farms, their jobs are unofficial, as payments are not officially registered at the Statistical Office. Another problem in the agrarian sector is mainly related to the impact of tradition and educational structure between inhabitants in the rural area. In order to start their own business, women need governmental support in education programmes, business development, as well as in promotion and marketing.¹⁷⁰ Also, women are faced with difficulties like credit access, market information, potential market access in business activities, so implementation of innovation is not as fast as business led by men.¹⁷¹ In one questionnaire, women entrepreneurs identified the main barriers to their business as: lack of information (60 %), unfair competition (60 %), negative attitudes of the environment (20 %), difficult access to financing (20 %) and lack of family support (20 %).¹⁷²

The Committee on the Elimination of Discrimination against Women is concerned about the limited number of women entrepreneurs, and encourages the State to enhance entrepreneurship opportunities.¹⁷³

8.1.2 Other issues

In order to understand women entrepreneurs in Serbia, it is important to highlight that their dominant financing is by banks, followed by relatives and friends. In addition, grants from the state/international financial organisations have also been used in business financing, but to a much lesser extent due to complicated administrative procedures.¹⁷⁴ However, their sales level increased from 10 % (in 2017) to 20 % (in 2018) due to increased investment in promotional activities, employees training programmes, as well as stronger state support for the development of women entrepreneurship in Serbia in the past few years.¹⁷⁵ Women also believe that for improving their business performance, it is important to organise fairs, conferences, and organised gatherings, but not frequently, as they are not able to attend them due to their family responsibilities.¹⁷⁶

¹⁶⁸ Macrotrends, Serbia Self-employed, Total, <https://www.macrotrends.net/countries/serbia/SRB/SL.EMP.SELF.ZS/self-employed-total-percentage-total-employment-modeled-ilo-estimate>.

¹⁶⁹ Women's Access to Economic Opportunities in Serbia, Social Inclusion and Poverty Reduction Unit, the World Bank, March 2016, 26.

¹⁷⁰ Maksimović G., Otović S., Demirović D., Vermezović T., (2016), A review investigating agrarian female entrepreneurship in the Republic of Serbia, *Ekonomika poljoprivrede*, no. 1, 29 - 46.

¹⁷¹ Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 64.

¹⁷² Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 69.

¹⁷³ CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 15.

¹⁷⁴ Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 67.

¹⁷⁵ Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 68.

¹⁷⁶ Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 70.

8.1.3 Overview of national acts

In Serbia, there is no specific law on the self-employed. The main piece of legislation in the area of self-employment is the Law on Employment and Unemployment Insurance.¹⁷⁷ The Law defines active employment measures as measures aimed at supporting self-employment (Article 43(1)(4)). Article 51 further defines support to self-employment and prescribes in Article 52 that further education and training shall be activities aimed at offering an unemployed person the possibility to undergo theoretical and practical training to gain new skills and knowledge in order to find employment, thus creating possibilities for employment and self-employment. Another important act is the LPD, which in Article 16 prohibits discrimination in the sphere of labour, but does not explicitly cover self-employed.

8.1.4 Political and societal debate and pending legislative proposals

There is an ongoing debate on the need to adopt the Law on social entrepreneurship.¹⁷⁸ Currently, social entrepreneurship exists only in the form of individual initiatives, addressing the problems of unemployment and social exclusion. Social entrepreneurship is not adequately recognised in the Serbian legal system, but the importance of this form of entrepreneurship is recognised by both the civil sector and professionals.¹⁷⁹

8.2 Implementation of Directive 2010/41/EU

Directive 2010/41/EU has not been explicitly implemented in Serbian law.

8.3 Personal scope

8.3.1 Scope

The LPD does not cover self-employment. The GEA does not mention self-employment, except in Article 22(2) where it says that promotion of employment and self-employment of the less-represented sex is allowed. The agency in charge of employment shall promote employment and self-employment of the less-represented sex by including a large number of persons of that particular sex in some active employment policy measures, which include: developing equal opportunities, career guidance, professional information, counselling and individual employment plans, additional education and training, other activities aimed at promotion of self-employment and employment of the less-represented sex.

In addition, the Labour Law in Article 20 prohibits discrimination with regard to access to employment, selection and recruitment (Paragraph 1), and job promotion (Paragraph 4), and does not cover self-employment and occupation. However, the Law on Employment and Unemployment Insurance governs employment-related activities and institutions competent for employment affairs, rights and obligations of the unemployed person and the employer, active employment policy, unemployment insurance and other matters relevant to employment, creating employment and preventing long-term unemployment in the Republic of Serbia (Article 1).¹⁸⁰ This Law covers self-employment. Article 43(4)

¹⁷⁷ Law on Employment and Unemployment Insurance, Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 38/2015, 113/2017.

¹⁷⁸ Social entrepreneurship is defined in Article 2(1) of the Draft Law on Social Entrepreneurship and the Employment in Social Enterprise as 'organized social activity of public interest, which is carried out in order to create new possibilities for solving social, economic and other problems of the less employed persons and their communities, to prevent the emergence and elimination of consequences of social exclusion and to strengthen social solidarity and cohesion.'

¹⁷⁹ Damnjanović A., Danilović N., Ristić Z., Social Entrepreneurship in Serbia – the Entrepreneurial Spirit leading to Social Changes, 21st International Scientific Conference on Economic and Social Development, Belgrade, 18-19 May 2017, 308.

¹⁸⁰ Law on Employment and Unemployment Insurance, Official Gazette of the Republic of Serbia, No. 36/2009, 88/2010, 38/2015, 113/2017.

includes in the active employment measures the support to self-employment, while Article 51 defines this support. Article 52 stipulates further education and training in order to promote self-employment. Article 5(1) prohibits discrimination as it is defined in the LPD and guarantees freedom of choice of employment and occupation. Employment activities comprise dissemination of information on employment opportunities and conditions; job matching in Serbia and abroad; vocational guidance and career counselling; and implementation of active employment policy measures (Article 6).

8.3.2 Definitions

Article 51(2) of the Law on Employment and Unemployment Insurance defines¹⁸¹ self-employment as:

'starting a sole proprietorship, cooperative, agricultural estate or some other form of entrepreneurship by an unemployed person or jointly by a group of unemployed persons, as well as establishing a company if the founder enters into a contract of employment with the company.'

In other words, self-employed workers are those who, working on their own account or with one or a few partners or in a cooperative, hold the type of jobs defined as 'self-employment jobs', i.e. jobs where the remuneration is directly dependent upon the profits derived from the goods and services produced.

Under Article 83 of the Company Law¹⁸² the entrepreneur is a natural person who performs business activities with the aim of generating income and who is registered in accordance with the Law on the procedure for registration in the Business Registers Agency.¹⁸³ Entrepreneurs are responsible with all of their assets for liabilities arising from their business activities, including the assets resulting from their business activities.

8.3.3 Categorisation and coverage

In Serbia, all self-employed workers are considered part of the same category.

8.3.4 Recognition of life partners

Life partners are still not recognised in Serbia. However, during 2018, two draft laws were submitted to the National Assembly in order to recognise life partners: the Draft Law on Registered Same-Sex Partnership, as well as the draft amendments to the Family Law, which in Article 1 recognises same-sex partners and equalises them with common-law marriage.

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Serbian law has not implemented Article 4 of Directive 2010/41/EU explicitly in relation to self-employed activities, although it can be argued that Article 2(1) of the GEA includes it as it stipulates that gender equality means equal participation of women and men in all fields of the public and the private sector, and that the prohibition of harassment and sexual harassment, as well as of the instruction to discriminate apply, also in this area.

¹⁸¹ Law on Employment and Unemployment Insurance, Official Gazette of Serbia, Nos. 36/2009, 88/2010, 38/2015, 113/2017.

¹⁸² The Company Law, Official Gazette of Serbia, Nos. 36/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019.

¹⁸³ The Law on the procedure for registration in the Business Registers Agency, Official Gazette of Serbia, Nos. 99/2011, 83/2014, 31/2019.

Thus, the material scope of national law relating to equal treatment in self-employment is more restricted than specified in Article 4 Directive 2010/41/EU.

8.4.2 Material scope

The LPD does not recognise the self-employment as a particular area of law which is expressly protected by this piece of legislation. However, Article 16(2) prohibits discrimination in the labour force and protects 'any person participating in the work on any basis.' Bearing this in mind, it can be argued that the self-employed person is protected from any form of discrimination stipulated in the LPD. However, further judicial interpretation is required in order to clarify this issue.

8.5 Positive action

The Labour Law stipulates in Article 156 that the public organisation in charge of employment is bound to communicate to the employer a proposal of measures with the aim of preventing or reducing, as much as possible, the number of notices of cancellation of employment contracts, and/or to ensure retraining, additional training, self-employment and other measures aimed at finding new employment for redundant employees.

Despite the fact that the Serbian Government supports women's entrepreneurship,¹⁸⁴ together with local self-governments, international organisations and NGOs, women in Serbia face more unfavourable conditions for the development of their enterprises than men due to their position in the labour market, the gender gap in property ownership, greater involvement of women in the home, and the still strong gender stereotypes which cause a lack of confidence among women and influence their willingness to initiate their own business venture.¹⁸⁵ The main problems are: difficulty in obtaining funds from financial institutions and lack of initial capital, inadequate tax incentives, the property usually being registered in the husband's name, weak business contacts, the lack of information, inflexible childcare, difficulties in adjusting to family and business duties, etc.¹⁸⁶

8.6 Social protection

Serbia has a system for social protection of self-employed workers. A self-employed woman has a right to maternity leave and parental leave for 365 days, and the right to leave for special childcare. A self-employed woman during maternity and parental leave has a right to compensation, according to Article 10 and 11 of the Law on financial support to families with children. Pursuant to this Law, the total amount of compensation is defined under Article 11 of the Law, and its recipients are persons who prior to the exercise of this right had been self-employed for more than six months continuously.

They also enjoy healthcare protection during pregnancy and maternity and parental leave.

In Serbia, there is only one system of social protection, and there is no choice between various systems.

¹⁸⁴ For example, every three years, the autonomous administrative body responsible for gender equality presents a programme to encourage employment and self-employment of women, which includes measures and activities to encourage employment and self-employment of women who have been jobless for more than two years, single parents, mothers with children under three, and women who have been made redundant.

¹⁸⁵ See Arandjelovic, R. Fuelling the Economic Potential of Women in Serbia, Overview of the situation in female entrepreneurship in Serbia, obstacles most often encountered by women in business and proposed answers, 5, <http://ebooks.iien.bg.ac.rs/1299/1/jovanovic%2C%20Iazic.pdf>.

¹⁸⁶ National Strategy for Gender Equality, Official Gazette of the Republic of Serbia, No. 04/2016, 19.

8.7 Maternity benefits

Article 8 of Directive 2010/41/EU regarding maternity benefits for self-employed persons has been implemented in Serbian law.

The Labour Law stipulates in Article 203 that an individual can independently perform an activity as entrepreneur, in conformity with the law.

The new Law on Financial Support to Families with Children, which came into effect on 1 July 2018, expands the categories eligible for maternity allowance to include self-employed women, owners of agricultural properties and those under work engagement, as well as unemployed women who realised income in the period of 18 months before the birth of the child.

A self-employed woman has a right to maternity leave and parental leave for 365 days, and the right to leave for special childcare. A self-employed woman during maternity and parental leave has a right to compensation, and the basis for calculating the amount of compensation is the taxable profit in the last 12 months prior to maternity leave.¹⁸⁷ This means that maternity allowance depends on prior profit. A self-employed woman has the possibility to temporarily close shop, or to temporarily entrust that activity to another person (Article 2(3)(7) of the Rulebook). The payment is made by the Municipality in monthly instalments.

The maternity allowance for self-employed women is granted on a mandatory basis and there is no choice between systems.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

This is not applicable, as occupational social security is not recognised in Serbia.

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 of Recast Directive 2006/54)

N/A.

8.9 Prohibition of discrimination

N/A.

8.10 Evaluation of implementation

Article 14(1)(a) of Recast Directive 2006/54 has not been explicitly implemented in Serbian law as regards self-employment.

8.11 Remaining issues

One of the remaining issues is to remove the existing barriers in relation to the self-employed. Women entrepreneurs in Serbia are confronted with significant barriers in their everyday business activities, especially taking into account the difficulties in accessing the necessary information about potential markets and technology and even the potential sources for their financing. At the same time, they are faced with family care activities and

¹⁸⁷ Article 2(3)(6) and Article 9(3) of the Rulebook on Detailed Conditions and the Manner of Exercising the Right to Financial Support to Families with Children.

other social norms,¹⁸⁸ which limit their performance. Women's entrepreneurship in rural areas is constrained by limited ownership of farmland, mainly due to traditional practice that obliges them to register the land in the names of their husbands, or other male relatives, if they buy it or inherit it, and this practice needs to be changed.

¹⁸⁸ Jovanović O., Women Entrepreneurship in Serbia - Potentials and Constraints, *Journal of Women's Entrepreneurship and Education*, no. 3-4, 2018, 60.

9 Goods and services (Directive 2004/113)¹⁸⁹

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

There are no comprehensive surveys and reports about the difficulties linked to equal access to and supply of goods and services

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

There are no specific problems of discrimination in the online environment/digital market/collaborative economy. However, there is a need to establish business environment and innovative solutions to overcome the traditional challenges and facilitate Serbia's transition to the digital economy era. The aim is to stimulate, among other things, entrepreneurial growth and development of a knowledge-based society in Serbia.¹⁹⁰

9.1.3 Political and societal debate

There is an ongoing debate on the need to have more government investments in digital infrastructure, to support the necessary legal framework and to develop entrepreneurial and digital competencies, in order to improve the digital agenda for Serbia.

9.2 Prohibition of direct and indirect discrimination

Whereas the GEA does not explicitly contain provisions on equal access to goods and services, the LPD in Article 17(1) prohibits discrimination in the provision of public services, but not goods.

9.3 Material scope

The material scope of Serbian law relating to access to goods and services is more restricted than what is specified in Article 3 of Directive 2004/113, as it does not cover goods.

The LPD states in Article 17(1) that discrimination occurs:

'if a legal or physical entity, within the framework of its/his/her activities or profession, refuses to provide a service on the grounds of a personal characteristic of an individual or a group of persons, or if the said entity, in order to provide the service in question, requires the fulfilment of some condition that is not required of other individuals or group of persons, or if the said entity unwarrantedly gives priority to another individual or a group of persons when it comes to providing a service.'

In other words, the term 'public services' refers to services available to the public (whether by private or public authorities, entities, companies, etc.). Furthermore, Article 17(2) of the LPD also guarantees to everyone:

'the right to equal access to premises in public use (premises where the head offices of public administration organs are located, premises used in the sphere of

¹⁸⁹ See e.g. Caracciolo di Torella E., and McLellan, B., (2018) Gender equality and the collaborative economy European network of legal experts in gender equality and non-discrimination, <https://www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb>.

¹⁹⁰ More on this issue, see Pitić G., Savić N., Verbić S., Digital Transformation and Serbia, *Ekonomika preduzeća*, 20 January 2018.

education, healthcare, social welfare, culture, sports, tourism, premises used for the purpose of environmental protection, protection against natural disasters and the like), as well as public spaces (parks, squares, streets, pedestrian crossings and other public transport routes, etc.), in accordance with the law.'

In relation to services, the scope is therefore equal as it also applies both to the public and to the private sector, including public bodies and outside the area of private and family life.

The LPD does not expressly prohibit discrimination in the provision of goods and services more broadly, such as in retail, hospitality, entertainment, accommodation and housing industries, and public housing; but the decisions of the Commissioner have determined that the prohibition applies in such areas.¹⁹¹

9.4 Exceptions

There are no explicit exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education.

9.5 Justification of differences in treatment

Differences in treatment in the provision of goods and services cannot be justified in Serbian law, except for indirect discrimination when difference in treatment is justified by a lawful objective and the means of achieving that objective are appropriate and necessary (Article 7 of the LPD).

9.6 Actuarial factors

The Law on Insurance¹⁹² does not address the use of sex as a factor in the calculation of premiums and benefits for the purpose of insurance and related financial services. The GEA, however, prohibits gender discrimination in all areas of life (Article 4), but in practice, for some forms of insurance (such as life and health insurance) individuals' premiums and benefits depend on different factors (age, occupation, duration of premium), including sex.

In one case before the Commissioner, a female client had accidentally discovered that her insurance company prescribed different amounts of premium for men and women (EUR 276.84 for women and EUR 168.72 for men).¹⁹³ The Commissioner found that the LPD was applicable to the premium and that this amounted to sex discrimination which was not justified due to the fact that, compared to men, women did not receive any additional health services which were covered by their premium. In 2019, another complaint was submitted by J.L.S., in the name and with the consent of her daughter L.S., against the company A.D., claiming the use of sex as a factor in the calculation of premiums for non-life insurance.¹⁹⁴ She claimed that the premium for non-life insurance was EUR 100 higher for women. She discovered this difference in pricing when she compared the premium she paid with that of her nephews, S. and S.S., who paid a lower premium for the same insurance. J.L.S. stated that this difference in the amount of premium for men and women was explained by the agent of the company in a correspondence email sent to her as a 'company house policy', confirming that the premium is more expensive for women. However, company A.D. pointed out that this is a misunderstanding in communication, and that the agent cannot use any tariff other than unisex tariffs.

¹⁹¹ Petrušić, N., Beker, K. (2018), Equality in Practice in Serbia, Implementing Serbia's Equality Laws, Equal Rights Trust, 58.

¹⁹² Law on Insurance, Official Gazette of the Republic of Serbia, No. 139/14, June 2015.

¹⁹³ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *M. J. against U. insurance*, complaint No. 07-00-93/2016-02, opinion from 10 June 2016.

¹⁹⁴ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), *J.L.S. v A.D.*, complaint No. 07-00-54/2019-02, opinion from 28 May 2019.

The Commissioner found that in 2016, the Executive Board for non-life insurance made a decision to apply a single insurance premium for men and women for private voluntary health insurance and for combined voluntary health insurance. Therefore, the Commissioner noted that the fact that some previously concluded contracts have lower established premiums is a consequence of the fact that the contracts were concluded for a different period of time and that different premiums were in force at the time of their conclusion. However, it was established that the tariffs premium for private voluntary health insurance and the tariffs premium for combined voluntary health insurance in addition to the amounts for unisex premiums, also contain columns with specific amounts for men and women, which serve the purpose of certain internal reporting and financial analysis. Therefore, the Commissioner recommended to company A.D. to inform employees in writing of the purpose of the data in the tables relating to men and women or to delete them, in order to avoid misunderstandings in future communications between employees and clients. It is evident that after the Commissioner's opinion delivered in 2016, the single premium for women and men was introduced. However, what is not clear from this opinion is what specific columns with different amounts for men and women were included in the tariffs and what exactly was their purpose. It shows that this is an area in which more careful observance is needed in order to avoid discrimination based on sex in the calculation of premiums.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

The exception of Article 5(2) of Directive 2004/113 has not been interpreted in Serbia. Risk factors based on sex in connection with insurance premiums and benefits are used in practice and are still not considered to be incompatible with the principle of equal treatment of men and women.

9.8 Positive action measures (Article 6 of Directive 2004/113)

The GEA stipulates in Article 7 that it is not considered discrimination if some special measures are adopted in order to eliminate and prevent an unequal status of women and men and accomplish equal opportunities of both sexes. Also, the LPD allows measures introduced for the purpose of achieving full equality, protection and progress of an individual or a group of persons in an unequal position. As this Law is to ensure equal access to services, positive measures are allowed in relation to access to and supply of services.

9.9 Specific problems related to pregnancy, maternity or parenthood

Serbian legislation does not make any specific reference to pregnancy, maternity and parenthood in relation to access and supply of goods and services as a source of gender discrimination. As a consequence, discriminatory practices are less visible and more difficult to tackle. However, the past few years have seen an increase in the establishment of new services aimed to help parents during parenthood, such as private kindergartens, childcare services, playgrounds, etc. Also, it is important to mention Article 25 of the GEA, which stipulates that social and healthcare institutions and other institutions dealing with the protection of women and children are obliged to adjust their work organisation and working hours to the requirements of their clients.

9.10 Evaluation of implementation

It was already mentioned that the material scope of Serbian law relating to access to goods and services is more restricted than that specified in Article 3 of Directive 2004/113, as it does not explicitly cover goods. However, the Commissioner applies Article 17 of the LPD very broadly, which stipulates the prohibition of discrimination in the provision of goods.

9.11 Remaining issues

The remaining issue is to secure access to public buildings, which in the majority of cases are not accessible, or are partially accessible. This issue has a gender dimension in relation to women with disabilities, as the share of women in the total population of people with disabilities in Serbia is significantly higher (58.2 % women compared to 41.8 % of men), as well as in the share of the population older than 65 years (60.3 % of women compared to 39.7 % of men).¹⁹⁵ Also, access to health and social services must be secured, especially for older women living in rural areas.¹⁹⁶

¹⁹⁵ Krstic, I., Beker, K. (2017), Situation Analyses of Legal Capacity and Persons with Disabilities in Serbia (*Situaciona analiza – poslovna sposobnost i osobe sa invaliditetom u Srbiji*), MDRI, Belgrade.

¹⁹⁶ *Siva knjiga javnih usluga* (Silver book of public services), *Evropski pokret u Srbiji*, Centar za evropske politike, Belgrade, 2018, 23, http://www.emins.org/wp-content/uploads/2018/05/2018_Siva-knjiga-javnih-usluga.pdf; CEDAW, Concluding observations on the fourth periodic report of Serbia, 14 March 2019, 15.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

In 2018, the OSCE conducted a survey on the Well-being and Safety of Women in Serbia.¹⁹⁷ It included a quantitative and qualitative component, covering 15 expert interviews; a survey of a representative sample of 2 023 women aged 18-74 living in Serbia; 8 focus groups with women from various backgrounds; as well as 4 in-depth interviews with women on the violence they have experienced. The survey on a representative sample revealed a number of trends and findings about the prevalence of violence against women (VAW) in Serbia, confirming that it is a significant concern. More than a quarter of interviewed women personally know someone who has been subjected to VAW. Twenty-two per cent of women surveyed said that they had experienced physical or sexual violence by their partner or non-partner since the age of 15, and 18 % of women by their ex-partner. Ten per cent of women with current partners said they had experienced physical or sexual violence at the hands of their current partner. Very few women who have experienced violence have reported it to the police. Three out of ten women believe domestic violence is a private matter and nearly a quarter hold the victim responsible or believe that they exaggerate claims of abuse or rape. They are also prevented from reporting due to feelings of shame, and fear or mistrust of the police, social workers and healthcare professionals, caused by the perceived stereotypes among representatives of these professions. In addition to shame, and mistrust of services, economic dependence and fear of retaliation by the perpetrator and the main barriers to reporting.

The survey showed that women of all ages, from each income group and in all parts of the country are exposed to VAW. Many women surveyed have heard of services to help affected women (73 %) but few women have accessed those services and only in cases of the most serious incidence of physical and/or sexual violence. Only 3 % contacted a women's shelter and 1 % a victim support organisation. The survey revealed that numerous barriers prevent women from accessing services. Particularly in rural areas, support services are simply not available, while other women face physical barriers to access or lack long-term and practical support with respect to housing and money. Where support services exist, they are insufficient, and their consistency and quality need to be improved. The key experts, who were interviewed for this study, shared that there is a need for pluralism in service provision and advocated for partnership between the State and civil society organisations.

The expert interviews also identified some gaps concerning data collection on VAW and underlined the importance of the planned development and implementation of one unique database. They also referred to the insufficient protection of victims during court proceedings, and the need to improve training for professionals. There are four main conclusions that derive from this survey: 1. Cultural norms and attitudes contribute to gender inequality and violence against women; 2. Violence against women is underreported; 3. The provision of services needs to be improved, including multi-sectorial cooperation; 4. There are gaps in the implementation of legislation and in data collection.

In July 2018, Serbia submitted its first report to the GREVIO (Group of Experts on Action against Violence against Women and Domestic Violence),¹⁹⁸ which contains a lot of

¹⁹⁷ Survey on the Well-being and Safety of Women in Serbia, OSCE-Led survey, 5 July 2019, <https://www.osce.org/sr/secretariat/419756>.

¹⁹⁸ Comments submitted by Serbia on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (baseline Report), received by GREVIO on 3 July 2018 GREVIO/Inf (2018) 9, 40-41,

information concerning provisions of the Istanbul Convention and their implementation in Serbia. On 29 November 2019, the GREVIO published its first baseline evaluation report on Serbia.¹⁹⁹ The GREVIO welcomed many legal and policy reforms, but also identified a number of priority issues requiring further action by the Serbian authorities to comply fully with relevant international standards.

Also in 2019, research on the institutional response to femicide in Serbia was prepared by NGO FemPlatz. Authors relied on analyses of final court decisions from 2015 to 2017. However, the research was not easy as the authors were informed by some courts that they do not have gender disaggregated data, hence they could not provide information on cases of femicide since their records are based on perpetrators and not on victims. The analyses of court judgments showed that in 42.6 % of cases, in the reasoning of the judgment there was no data on the age of women killed; in 38.2 % of cases, there was no data on the number of children of the victim; in 89.7 %, no data on the education of the victim, and in 69.1 %, no data on employment status. This data confirms that the courts do not sufficiently deal with victims, and that they focus on the perpetrator.²⁰⁰ Also, in 14.7 % of judgments there is no information about the relationship between a victim and perpetrator before the crime was committed. Although the history of violence/bullying of the victim by the offender indicates the dynamics of violent relationships and their frequency, and signals the need to investigate the relationship between the perpetrator and the victim, in situations where the perpetrator has not previously been convicted, as a rule, the court does not explore this relationship.²⁰¹ However, the data collected confirm that one of the most significant risk factors is the victim's decision to leave the abuser.²⁰² One of the main conclusions of this study is that in many cases, a murder could have been prevented were it not for the lack of a timely and effective response from the institutions - above all, the prosecution and social services, who minimise the existing danger. Judges do not make a clear distinction between a victim and a perpetrator and rather impose protection measures on both, thereby expressing the view that they are equally responsible for the violence, which further encourages the perpetrator.²⁰³ Finally, in many cases the sentence was mild, usually due to the qualification of a criminal act as ordinary murder, while there were elements to qualify it as a serious murder.²⁰⁴

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

The Family Law, which was adopted and entered into force in 2005, introduces the civil protection against domestic violence.²⁰⁵ It provides a definition of domestic violence, stipulates the protective measures from domestic violence, and regulates the special court proceeding for the ruling of protective measures.

https://www.ecoi.net/en/file/local/1456395/1226_1547566160_grevioinf-2018-9-docx.pdf. This report is followed by alternative report Improved Legislation failed Protection, Independent report on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Autonomous Women's Centre Belgrade, 2018, <https://rm.coe.int/improved-legislation-failed-protection-independent-awc-s-report-to-gre/16808e2f8b>.

¹⁹⁹ GREVIO's (Baseline) Evaluation Report – Serbia, Council of Europe, 22 January 2020.

²⁰⁰ Konstantinovic Vilic, S., Petrusic, N., Beker, K. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji* (Social and institutional response to the femicide in Serbia), FemPlatz, 350.

²⁰¹ Konstantinovic Vilic, S., Petrusic, N., Beker, K. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji* (Social and institutional response to the femicide in Serbia), FemPlatz, 351.

²⁰² Konstantinovic Vilic, S., Petrusic, N., Beker, K. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji* (Social and institutional response to the femicide in Serbia), FemPlatz, 352.

²⁰³ Konstantinovic Vilic, S., Petrusic, N., Beker, K. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji* (Social and institutional response to the femicide in Serbia), FemPlatz, 352.

²⁰⁴ Konstantinovic Vilic, S., Petrusic, N., Beker, K. (2019) *Društveni i institucionalni odgovor na femicid u Srbiji* (Social and institutional response to the femicide in Serbia), FemPlatz, 354.

²⁰⁵ The Family Law, Official Gazette of Serbia, No. 18/2005, 72/2011, 6/2015.

Serbia also adopted the Law on the Prevention of Domestic Violence, which entered into force on 1 July 2017.²⁰⁶ This Law regulates the organisation and conduct of state authorities and institutions, as to secure the effective prevention of domestic violence, and the provision of urgent, timely and effective protection and support to its victims. This Law applies to all cases of domestic violence of which the definition was transposed from the Convention, as well as to all criminal offences of gender-based violence which are explicitly listed in the Law on the Prevention of Domestic Violence. For the first 27 months from the implementation of the Law on the Prevention of Domestic Violence, domestic violence was reported in 110 000 cases.²⁰⁷ Approximately 4 000 domestic violence cases are reviewed each month and, on average, 1 500 to 1 600 contact bans are issued, as well as 700 measures to remove a perpetrator from the house. However, it is important to underline that between 12 % and 15 % of perpetrators repeat the violence. Also, between 10 % and 12 % of perpetrators violate emergency measures. This number may be higher, but many cases remain unreported. Also, the challenges that remain are the victim's persistence to close the case, as well as a weak system of social and other support to victims, which is uneven across the country; unable to meet the complex needs of women and children; and not available for an extended period of time.

A special normative framework for combating domestic violence was established in Serbia in Article 118a of the Criminal Code from 2002.²⁰⁸ It was changed in 2005 with the adoption of the new Criminal Code, which lists numerous criminal offences that protect the physical, psychological and/or sexual integrity of a person, and criminalise domestic violence in Article 194.²⁰⁹ In 2016, the new criminal acts were introduced in order to further align domestic framework with the Istanbul Convention: stalking (Article 83a of the Criminal Code); forced marriage (Article 187a of the Criminal Code); genital mutilation of women (Article 121a of the Criminal Code); and sexual harassment (Article 182a of the Criminal Code). In order to harmonise the legislation with Articles 36 and 40 of the Convention, the prison sentences were increased for a certain number of crimes in the category of sexual offences. Corresponding to Article 36(3) of the Convention, mandatory *ex officio* prosecution of crimes in the category of sexual offences was introduced. The procedure is initiated by the public prosecutor, even if the victim of such crime was a marital spouse. Furthermore, corresponding to Article 53 of the Convention, a new criminal offence was introduced: *violation of a restraining order* (Article 340a of the Criminal Code).²¹⁰

However, the GREVIO found that conviction rates for most forms of violence against women are extremely low due to low levels of reporting and lack of guidance on how to build a case, as well as due to insufficient training on more recently introduced offences. Although domestic violence cases have seen an increase in the number of persons charged, there is an even more marked increase in the number of charges ultimately dropped. Where convictions close the case, the sanctions imposed are often conditional and the full sentencing range is rarely made use of. For female victims of violence who desire legal representation in cases concerning them, legal aid is, in principle, available. However, the Law on Free Legal Aid distinguishes between victims of domestic violence – who always qualify – and victims of other forms of violence covered by the Istanbul Convention, who must demonstrate their eligibility through a lengthy application process. The Law also

²⁰⁶ The Law on the Prevention of Domestic Violence, Official Gazette of the Republic of Serbia, No. 94/2016, adopted on and implemented from 1 June 2017.

²⁰⁷ Bogosav, B., *Jeziva statistika* (Scary statistics), Blic, 30 September 2019, <https://www.blic.rs/vesti/drustvo/jeziva-statistika-za-dve-godine-prijavljeno-110000-slucajeva-nasilja-u-porodici-ali/nvdrctm>.

²⁰⁸ Criminal Code, Official Gazette of Serbia, No. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, 16/91, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03.

²⁰⁹ Criminal Code, Official Gazette of Serbia, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019.

²¹⁰ Comments submitted by Serbia on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (baseline Report), received by GREVIO on 3 July 2018 GREVIO/Inf (2018) 9, 40-41, https://www.ecoi.net/en/file/local/1456395/1226_1547566160_grevioinf-2018-9-docx.pdf.

limits legal aid to women's NGOs who have good expertise in the legal representation of female victims of domestic violence.

10.1.3 National provisions on online violence and online harassment

Online violence and online harassment are also prohibited by the LPD. In those cases, the Commissioner can submit a criminal charge to the prosecutor. In 2018, the first criminal charge concerned women and domestic violence. Namely, a story about a man who shot a woman was published on Facebook. Below the published text, a person A.B. wrote comments such as: 'Everyone should kill his whore and be good'; 'And if my sister cheat her husband and he reveal it, he should kill her'; 'Not all whores were killed for whore, and can now make comments on the Internet'. According to the Commissioner, on the occasion of the news of partner violence and the murder of one woman, A.B. made a series of comments which incite hatred, discrimination and violence against women. Those comments justify violence against women and provoke the reaction of other users in the form of emoticons and likes. The Commissioner particularly pointed out that domestic violence is a widespread phenomenon that leads to negative physical, psychological, social and financial consequences for women, children, the family and the community. The Commissioner points to the number of women who have lost their lives from partners and former partners in recent years and asked the prosecution to act upon this application.²¹¹

10.1.4 Political and societal debate

The domain of violence is the only domain for which the index value for the Republic of Serbia has not been calculated. There is an ongoing debate that domestic violence is prohibited and will not be tolerated. However, the dominant patriarchal forms still dominate in a society and are present even in rhetoric of politicians, ministers, and MPs.

Another issue is a prohibition of present online violence and harassment. Serbia's government is devoted to providing measures for institutional response to emerging forms of high-tech crime. New IT equipment and specialised software was purchased for the police and prosecution. It is planned to adopt operational procedures to collect and provide electronic evidence. Therefore, it plans to strengthen the cyber security and the capacity of the police to prevent hacking attacks and online violence and harassment.

10.2 Ratification of the Istanbul Convention

Serbia ratified the Istanbul Convention on 31 October 2013. However, Serbia has made reservations regarding Article 30(2) and Article 44(1)(e), and Paragraphs 3-4, until it harmonises its criminal legislation with these provisions. While Article 30(2) is to ensure adequate state compensation to those who have sustained serious bodily injury or impairment of health, Article 44 concerns establishment of jurisdiction by a person who has her or his habitual residence in their territory. Also, Article 44(3) stipulates that States will take the necessary legislative or other measures to establish jurisdiction and to prosecute acts of sexual violence, including rape, forced marriage, female genital mutilation and forced abortion and forced sterilisation. This means that the pre-existing legal framework in Serbia was not fully in compliance with the obligation under the Convention, particularly in relation to criminal legislation. This change requires the introduction of some new legislation and the redefinition of some existing criminal acts.

In its progress report for Serbia for 2016, the European Commission ascertained that the Council of Europe Istanbul Convention needs to be adequately implemented, and the protection of women against all forms of violence needs to be strengthened.²¹² On 23 November 2016, the National Assembly adopted the first Law on the Prevention of

²¹¹ Higher Prosecutors Office in Belgrade, criminal charge no. 07-00-00035/2018-02, from 12 February 2018.

²¹² European Commission, Serbia 2016 Report, SWD (2016) 361 final, 9 November 2016, 63, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf.

Domestic Violence²¹³ (entered into force on 1 June 2017), and which is line with the Istanbul Convention.²¹⁴ Its purpose is to secure effective prevention of domestic violence and to provide urgent, adequate and efficient protection and support to victims of domestic violence. Domestic violence is broadly defined to include physical, sexual, psychological, or economic violence. Victims of domestic violence have the right to information, the right to free legal aid, and the right to an individual plan of protection and support. The Law regulates the procedure for protecting victims of domestic violence, including risk recognition and risk assessment. Public authorities are obliged to act in a timely manner, and to provide legal aid, psychosocial and other support for recovery, empowerment and self-reliance for each victim.

In 2017, the Coordination Body for Gender Equality initiated the adoption of the National Strategy for the Prevention and Suppression of Violence against Women and Young Girls in the Family and Partnership Relations. The Draft National Strategy (2018-2022) was opened for public discussion in 2018, but this document has not been adopted yet.²¹⁵

Since the adoption of the Law on the Prevention of Domestic Violence, police and social workers were trained on the matter of domestic violence, but there is a need for these professionals to be further trained to implement the law efficiently. A new SOS hotline for female victims of violence was introduced. Additionally, Serbia adopted a national programme for safeguarding and improving sexual and reproductive health in order to align its priorities with the global strategy for women's, children's and adolescents' health (2016-2030). However, additional funding is needed to ensure its implementation.²¹⁶

The GREVIO also urges the State to ensure that the provisions of the Istanbul Convention are implemented without discrimination on any of the grounds listed in Article 4(3). It also has other recommendations, such as to ensure stable and sustainable funding for all relevant policies and measures; to introduce standardised data categories for all relevant actors; to ensure the provision of specialist women's support services with a gendered approach and to ensure access of all women, in particular women with disabilities, Roma women and female migrants / asylum seekers; to ensure confidentiality and anonymity of all callers to the national helpline; and to ensure women's informed and free decision-making in relation to medical procedures such as abortion and sterilisation, in particular where women with disabilities in residential institutions are concerned.²¹⁷

²¹³ The Law on the Prevention of Domestic Violence, Official Gazette of the Republic of Serbia, No. 94/2016, adopted on and implemented from 1 June 2017.

²¹⁴ European Commission, Serbia 2018 Report, SWD (2018) 152, 17 April 2018, final, 27.

²¹⁵ Human Rights Council, National Report, 13 November 2017, 12, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx>.

²¹⁶ European Commission, Serbia 2019 Report, SWD (2019) 219 final, 29 May 2019, 28.

²¹⁷ GREVIO's (Baseline) Evaluation Report – Serbia, Council of Europe, 22 January 2020, 7.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

The last comprehensive survey on particular difficulties related to obtaining legal redress was done by the World Bank in 2012, also analysing regional framework on free legal aid and proposing concrete solutions for the future law regulating legal aid in Serbia. Certain difficulties are mentioned in some surveys or analyses that also deal with other aspects of non-discrimination law. The latest of that kind is the study on Equality in Practice, where authors highlight some specific limits for obtaining legal redress. The authors claim that good legal framework is seriously impeded by three key factors: many individuals in Serbia are unaware of their rights to equality and non-discrimination; they cannot afford to seek legal redress when violations occur; and they have difficulties in access to the buildings.²¹⁸

11.1.2 Other issues related to the pursuit of a discrimination claim

There are still some open issues or questions of concern related to the pursuit of a discriminatory claim. First, some victims are reluctant to submit a lawsuit due to traditional considerations or fear of consequences. Discrimination cases are not treated as urgent, despite the normative provision. It is illustrative to note that in one small city in Serbia, one employee submitted a lawsuit for sexual harassment against her employer and the president of the municipality. She and her family were exposed to maltreatment from other employees, and citizens who supported the president. Her case got media coverage and a lot of pressure was put on her and her family to abandon the lawsuit. Despite all these facts, her case was not relocated to another court as the assigned judge and the president of the court are friends with the president of the municipality.

Sometimes higher courts show less understanding and knowledge on gender equality than lower courts. It is interesting to mention that in one case, the Commissioner initiated strategic litigation for discrimination on the grounds of sex and sexual orientation. In November 2017, a law faculty professor published an article in the Internet edition of one magazine under the title 'Domestic Violence and Violence against the Family'. The author stated that the Law on the Prevention of Domestic Violence does not intend to protect the poor, but:

'women regardless of whether they are weak or strong, loved or unloved, nervous, freaky and well-off, whether they have lover or not, whether they earn or are dependent, whether they have entered into a property or have moved into the husband's apartment.'

The author further advocates traditional and patriarchal organisation of a family, in which the man is the head of the family and should make all important decisions regarding the family, which put women in an unequal position. The Commissioner emphasised that protection from domestic violence should not be selective, depending on the personal circumstances of each woman. The first instance court found that the author is a public figure and that he has a duty not to advocate discrimination and ideas that encourage discrimination, and which can have detrimental effects on democratic processes and human rights guarantees in a society.²¹⁹ Unfortunately, the higher court overturned the decision, finding that the author of the text is protected by his freedom of expression and

²¹⁸ Petrušić, N., Beker, K. (2018), Equality in Practice in Serbia, Implementing Serbia's Equality Laws, Equal Rights Trust, 87.

²¹⁹ Higher court in Novi Sad, II. 1344/2017, judgment from 8 May 2018.

that also includes information that can offend, shock, or disturb others, finding no discrimination in this case.²²⁰

11.1.3 Political and societal debate and pending legislative proposals

There is no political or societal debate or pending legislative proposal in the area of legal redress, except the one that existed for 15 years concerning the adoption of the Law on Free Legal Aid.²²¹ The Law was finally adopted in 2018 and will enter into force on 1 October 2019. The Law recognises that victims of domestic violence are direct beneficiaries of the Law, without the need to prove their poor material situation in order to qualify for legal aid (Article 4(3)(4)).

11.2 Victimisation

The provisions on victimisation have been implemented in Serbian legislation. The Gender Equality Act does not use the term 'victimisation', but it stipulates in Article 4(2) that it is considered to be discrimination if a person is unjustifiably treated or might be treated in a worse manner than another person, explicitly or mainly because such person is seeking or intends to seek legal protection against discrimination or if a person has offered or intends to offer evidence of discriminatory treatment. Furthermore, victimisation is enshrined in the LPD as a special form of discrimination.²²² Article 9 says that:

'Discrimination shall exist if an individual or a group of persons is unwarrantedly treated worse than others are treated or would be treated, solely or predominantly on account of requesting or intending to request protection from discrimination, or due to having offered or intending to offer evidence of discriminatory treatment.'

In other words, this Law protects victims of discrimination, as well as other persons, such as witnesses, or persons who help a victim of discrimination to bring a complaint.

In 2018, the Commissioner adopted the first opinion in a case of victimisation. In this case, the opinion was issued against the School for Primary and Secondary Education from Pirot, where the complainant is employed as a psychologist.²²³ The complainant states, inter alia, that she suffered 'numerous consequences' from the time when she 'openly expressed her suspicion' that School teachers committed discrimination against a Roma pupil. The complainant stated that at the end of the school year 2016/17 she was removed from the position of the team coordinator to protect students from violence, abuse and neglect. In March 2017, she was removed from the position of the coordinator of the Parents' Council, and in February 2017, her employment contract was changed. She also pointed out that, from the moment she reported violence and discrimination, she was exposed to discomfort by the school principal and some colleagues. The Commissioner found that she had made probable that an act of discrimination occurred, given that the changes in her employment status and position in the workplace arose after she stated that discrimination against the student had been made and after she began to report the act of discrimination to various institutions. In addition, the facts and evidence offered by the School did not provide sufficient grounds for concluding that the stated changes in the labour status and position of complainant were not caused by the fact that she reported discriminatory treatment towards the student. Bearing in mind the above, the Commissioner gave the opinion that the School had not treated the complainant correctly, after she offered evidence of discriminatory treatment, and by doing that, the School violated the provision of Article 9 of the Law on the Prohibition of Discrimination. Therefore, the school principals were

²²⁰ Appellate Court in Novi Sad, GŽ. 3576/18, judgment from 17 October 2010.

²²¹ Law on Free Legal Aid, Official Gazette of the Republic of Serbia, No. 87/20018. This law was adopted on 13 November 2018 and entered into force on 21 November 2018.

²²² Victimisation is called 'calling to account' in Serbian law.

²²³ Commissioner for the Protection of Equality (*Poverenik za zaštitu ravnopravnosti*), J.J. from P. against the School for Primary and Secondary Education M., complaint No. 07-00- 00303/2018-02, opinion from 24 December 2018.

recommended to take all measures within their jurisdiction in order to eliminate the consequences of unjustifiably worse treatment of the complainant because of offering evidence of discriminatory treatment against the student, as well as to make a written apology to the complainant for breach of the prohibition of calling for responsibility.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

In Serbia, the access to courts is safeguarded for alleged victims of sex discrimination. The GEA has several provisions which guarantee the access to courts, such as Article 46, which stipulates that the alleged victim of sex discrimination can initiate a lawsuit before the court of general jurisdiction, as well as before the court in whose territory the claimant has permanent residence or temporary residence. Also, this is the only anti-discrimination law in Serbia that provides release from advanced payment of the costs of proceedings: in Article 48 the GEA stipulates that in the proceedings to accomplish civil protection from gender-based discrimination, the claimant is released from advance payment of the costs of proceedings, which are paid from court funds.

However, access to courts in Serbia is seriously impeded by several factors: the lack of knowledge about the existing legal anti-discrimination framework, the unwillingness of the victim to go to court, strongly rooted traditional stereotypes which entail a greater degree of tolerance of discrimination acts, lack of family support in some cases, etc. Some boundaries are also seen in the fact that victims of discrimination cannot afford to seek legal redress when violations occur, and have difficulties in physically accessing courts (some buildings are often physically inaccessible to persons with disabilities and older persons, and there is a lack of state funding for translation and sign language facilities for individuals meeting with their lawyers).²²⁴ Therefore, The Government needs to support a wide-ranging public education campaign to inform those whom the laws are designed to protect and empower, about their rights and available remedies.

In Serbia, the access to courts is safeguarded for anti-discrimination/gender equality interest groups and other legal entities.

A civil lawsuit can be initiated, with the consent of the discriminated person, on his/her behalf, by the trade union or the associations whose objectives are related to promotion of gender equality. These organisations may join the claimant in the capacity of the intervening party. Moreover, in cases of discrimination violating the rights of a larger number of persons, they may initiate the proceedings on their own behalf. A person whose right has been violated may join the claimant in the capacity of an intervening party. (Article 43(2) of the GEA).

After entering the proceedings, i.e. after the initiation of the proceedings, organisations may inform, through mass media or in another adequate manner, other persons who have suffered damage, trade unions and associations, about the initiated proceedings and invite them to join the claimant as an intervening party or co-claimant (Article 43(3) of the GEA). A new claimant may join the proceedings subsequently together with the claimant and without the consent of the defendant after the new claimant has entered the main hearing (Article 43(4) of the GEA).

Also, the LPD provides in Article 35(3) that the lawsuit may be initiated by an organisation engaged in the protection of human rights, or the rights of a certain group of people on behalf of and with the agreement of the person whose rights have been violated. Trade unions can represent a member in a labour dispute, a lawyer holding a bar exam (Article 85(3) of the Civil Procedure Code). The LPD requires that if discriminatory treatment solely

²²⁴ Petrušić, N., Beker, K. (2018) *Equality in Practice in Serbia*, Implementing Serbia's Equality Laws, Equal Rights Trust, 87, 92-93.

affects one particular person, organisations may initiate a lawsuit only with his/her consent given in writing. Otherwise, this consent is not required.

However, the right to intervention is not explicitly mentioned in the LPD, but it is based on Article 35(3-4), which gives standing for initiating lawsuits to organisations and to the Commissioner for the Protection of Equality. These rights also derive from the Civil Procedure Code (Articles 215-217) which is *lex generalis* to the LPD and recognises the right to intervention in someone else's anti-discrimination lawsuit for those who have legal authority to initiate the lawsuit. Article 215(1) states that 'If a person has a legal interest in assisting one of the parties in the ongoing litigation between other persons, such person may join that party.' The person who intervenes may become involved in the litigation at any time during the proceedings, until the judgment about the claim comes into effect, as well as during the proceedings continued by submitting a legal remedy (Article 215(2)).

Although the GEA is better equipped to serve victims of gender discrimination, there is still no case law under this specialised anti-discrimination law and victims have chosen the LPD for civil protection.

11.3.2 Availability of legal aid

Serbia adopted a Law on Free Legal Aid,²²⁵ but the effects of this law are still unknown as implementation only started on 1 October 2019. Thus far, victims of gender discrimination can receive legal aid from different benefactors (mostly NGOs) in the form of information, legal advice and representation. This legal aid can also be obtained by the Commissioner for the Protection of Equality in the form of information and legal advice, but also in the form of initiating a lawsuit by the Commissioner in a strategic case of discrimination.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The LPD primarily applies to public authorities, but it also has horizontal effect. Non-State actors are bound by its provisions, as it proclaims in Article 4(2) that everyone is obliged to respect the principle of equality. However, it is not so explicit in the GEA. Therefore, Article 2(4) obliges state authorities to follow the realisation of gender equality, which are also responsible for development of active equal opportunity policies (Article 3(2)). It is only clear that the employer has some direct responsibilities, such as to provide equal opportunities and equal treatment to all employees (Article 11(1)).

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

There is no horizontal direct effect of the charter after *Bauer* in Serbia.

11.5 Burden of proof

Serbian legislation provides for a shift of the burden of proof in sex discrimination cases.

The GEA contains a provision on the shift of the burden of proof in Article 49(2), which provides that if the:

'claimant has made it probable during the proceedings that an act of gender-based discrimination was committed, the burden of proof that such an act had not caused any violation of the principle of equality, namely of the principle of equal rights and obligations, will be borne by the defendant.'

The LPD contains the same provision in Article 45.

²²⁵ Law on Free Legal Aid, Official Gazette of the Republic of Serbia, No. 87/20018. This law was adopted on 13 November 2018 and entered into force on 21 November 2018.

These provisions comply with EU law, specifically in the light of case C-415/10 *Kelly and Meister*. However, case law still does not provide clear rules on the application of this principle. It also seems from the textual interpretation of the relevant articles that this rule applies only in a case of direct and indirect discrimination. The interpretation should be, however, that the rule on the shift of the burden of proof also applies to harassment and victimisation.²²⁶

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

In Serbia, there is a range of applicable sanctions in sex discrimination cases.

The special civil procedure is regulated by Articles 43-51 of the GEA, which includes some specific provisions designed to help victims of sex discrimination.

Article 43 provides measures that can be requested by the civil court:

- to establish the violation caused by the discriminatory act;
- to prohibit the pursuing of activities threatening to inflict a violation;
- to prohibit further activities and/or repetition of activities that caused a violation;
- to relocate turnover of means, namely the objects having made a violation (textbooks that are discriminatory or present a certain sex in a stereotype manner, printed matter, advertising aids, promotional material, etc.);
- to eliminate the violation and *restitution in integrum*; and
- to receive compensation for pecuniary and non-pecuniary damages.

These proceedings are treated as especially urgent (Article 47), which means that they have priority in consideration of the case. The first hearing must be held within 15 days from the receipt of the lawsuit. The time to respond to the lawsuit is eight days. The decision on the motion to issue a temporary measure must be adopted by the court within three days from the date of receipt of the motion. Temporary measures are allowed if the proponent makes it probable that there is a concrete danger of violation of some right due to discriminatory actions and that there would be considerable pecuniary and non-pecuniary damage if the interim measure is not ordered (Article 50).

The time to make an objection to the decision on the interim measure amounts to 48 hours from the receipt of the decision. The decision concerning the objection is to be adopted within the next 48 hours. The term to file an appeal against the decision in the proceedings to accomplish civil legal protection because of gender-based discrimination is eight days, and the second instance court is obliged to decide on the appeal within three months from the date of its submission, pursuant to the law governing civil procedure.

Article 43(4) of the LPD expressly allows compensation for material and non-material damage in a case of discrimination.²²⁷ Article 43, Paragraph 4 of the LPDPD also expressly provides compensation of damages that occurred due to a discriminatory act.²²⁸ The principles from the Law on Contract and Torts apply to determination of the type of damage, and a causal link between the discriminatory act and damage.

²²⁶ See Petrusic, N., Krstic, I., Marinkovic, T., (2016) *Commentary on the Law on the Prohibition of Discrimination*, The Commissioner for the Protection of Equality, Sluzbeni glasnik, Belgrade, 289.

²²⁷ If the claimant is the Commissioner for the Protection of Equality, an organisation engaged in the protection of human rights or the rights of a certain group of people, or a person who deliberately exposed him/herself to discriminatory treatment intending to directly verify the application of the regulations pertaining to the prohibition of discrimination in a particular case, the compensation cannot be claimed.

²²⁸ According to Article 43 of the LPDPD, the claimant can request: (1) court prohibition of further discriminatory behaviour, (2) remedying actions to remove the consequences of discriminatory behaviour, (3) the court's confirmation that an action or behaviour is discriminatory, and (4) compensation for pecuniary and non-pecuniary damages caused by discriminatory behaviour.

However, according to Article 43 of the LPD, the claimant may also demand the following:

- to impose a ban on an activity that poses the threat of discrimination, a ban on proceeding with a discriminatory activity, or a ban on repeating a discriminatory activity;
- that the court establish that the defendant has treated the claimant or another party in a discriminatory manner;
- to take steps to redress the consequences of discriminatory treatment; and
- that the decision passed in any of the lawsuits referred to above be published.

The GEA and the LPD include fines that can be imposed in misdemeanour proceedings, ranging from EUR 84 to 840 (RSD 10 000 to 100 000).

Finally, some acts can be considered to be criminal acts, for which it is possible to impose monetary fines or imprisonment. Those criminal acts are:

- Violation of Article 128 (violation of equality): a maximum of three years of imprisonment and for the more severe form three months to five years of imprisonment;²²⁹ and
- Violation of Article 387 (racial and other discrimination) from three months to five years of imprisonment for the more severe form.

11.6.2 Effectiveness, proportionality and dissuasiveness

Anti-discrimination laws (the LPD and the GEA), the Labour Law and the Criminal Code provide different ranges of sanctions for discriminatory behaviour. These sanctions can be civil and criminal sanctions and fines. However, there are several problems which affect effectiveness, proportionality and dissuasiveness of sanctions.

Firstly, anti-discrimination proceedings are urgent, but they are not treated as such in practice. Especially in misdemeanour proceedings, the whole case very often becomes obsolete, due to inaction of courts.²³⁰ Another problem is the execution of decisions of the court.

The sanctions imposed are not very high, especially in relation to compensation for non-pecuniary damages. Problems also lie in the fact that the monetary fines that can be imposed range from EUR 84 to 840, which is only symbolic in comparison to some other laws.

On the other hand, both anti-discrimination laws offer the possibility of introducing a temporary measure in order to prevent discriminatory treatment, with a view to eliminating the danger of violence or some major irreparable damage. Also, the two anti-discrimination laws include different measures, from the prohibition of discriminatory acts and compensation to the publication of the court decision, which has proved to be a very efficient measure in Serbia, especially in relation to the opinions issued by the Commissioner for the Protection of Equality.

11.7 Equality body

Serbia has an equality body, the Commissioner for the Protection of Equality.²³¹

²²⁹ In 2016, Article 128 was extended to also include gender identity. Amendments to the Criminal Code, Official Gazette of the Republic of Serbia, No. 94/2016.

²³⁰ Krstić, I. (2018), *Zabrana diskriminacije u međunarodnom i domaćem pravu* (The prohibition of Discrimination in International and Domestic Law), *Pravni fakultet Univerziteta u Beogradu, Beograd*, 301.

²³¹ The official website is <http://ravnopravnost.gov.rs/en/>.

The Commissioner has the competence to deal with all grounds of discrimination covered in the LPD. It explicitly covers 'race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability', and all other grounds of discrimination not mentioned in Article 2(1).

The Commissioner is an independent, autonomous and specialised state body elected by Parliament, which has a wide mandate in the area of the promotion of equality and anti-discrimination in all areas of social life.

The Commissioner has a range of measures available, but from the perspective of victims of discrimination the most relevant is to receive and consider claims regarding discrimination, to provide an opinion and recommendations in concrete cases, to provide information to the complainant on his/her rights and possibilities of initiating a court procedure or other type of protection measures, and to file complaints for protection from discrimination on behalf of but with the approval of the discriminated person and to file offence reports against the prohibited discrimination act.²³² In short, it has two main responsibilities: to prevent and to protect from discrimination.

11.8 Social partners

Social partners in Serbia play an important role in ensuring compliance with and enforcement of gender equality law, although it can be said that their work should be much more intense and wider. The Confederation of Autonomous Trade Unions of Serbia, Women's Section, performs activities aimed at empowering women, increasing their visibility and representation in the trade union organs, improving gender equality, equality in the field of employment, protection of women's rights and protection of maternity, abolishing discrimination.²³³ The Section organises seminars and round tables, publishes brochures, and cooperates with governmental bodies, NGOs and international organisations on different matters.

The GEA contains two important provisions in relation to the role of trade unions. Article 21 stipulates that in collective negotiations, trade unions and associations of employers should make efforts to ensure that 30 % of the representatives of the less-represented gender are included in the committees to hold negotiations in compliance with the law regulating employment (namely, the number of representatives of less-represented gender proportional to the participation of that particular gender in the membership of trade unions and associations of employers). Moreover, trade unions have a significant role in civil protection from gender discrimination. An anti-discrimination lawsuit can be initiated, with the consent of the discriminated person, on his/her behalf, by the trade union or the associations whose objectives are related to promotion of gender equality. These subjects may join the claimant in the capacity of an intervening party. In the case of discrimination violating the rights of a larger number of persons, trade unions and associations may initiate proceedings on their own behalf.

After entering the proceedings, namely after the initiation of the proceedings, trade unions and associations may inform, through mass media or in another adequate manner, other persons who have suffered damage, trade unions and associations about the initiated proceedings and invite them to join the claimant as the intervening party or the co-claimant (Article 43).

²³² The Commissioner also submits annual and special reports to Parliament on the situation in the equality protection field; informs the public about the most common, typical and severe cases of discrimination; monitors the enforcement of the law and other regulations; initiates the adoption of or amendments to such regulations; and provides an opinion on the provisions of the law and other regulations with regard to the fight against discrimination; establishes and maintains cooperation with bodies in charge of equality and human rights protection on the territories of the Autonomous Provinces and local self-governments; and recommends equality measures to state bodies and institutions.

²³³ See more on the website of CATUS, Women's Section, at <http://www.sindikat.rs/ENG/women.html>.

According to the amendments to the Labour Law, from June 2014, the provisions of all collective agreements not contrary to the law remained in force until 29 January 2015. Therefore, new collective agreements were concluded in the first half of 2015, in order to comply with the amendments to the Labour Law and in order to support the affirmation of social dialogue. Also, a special collective agreement was signed for the public authorities,²³⁴ providing better working conditions and more rights for employees. It provides some further protection for pregnant workers and those on maternity leave and leave for childcare.

The Labour Law specifies the minimum rights of employees, together with the general collective agreement which is not designed to implement gender equality law.²³⁵ However, the scope of gender protection enshrined in the Labour Law has been explained in this report. The Labour Law is relevant for all employers, regardless of their business activities. Since specific collective agreements are used to provide more extensive rights for employees, with the latest changes, an employer will have more freedom to determine the rights of his employees, but it has to respect the minimum norms stipulated in the Labour Law and the general collective agreement.

11.9 Other relevant bodies

Strategic litigation can be initiated by the Commissioner for the Protection of Equality. Since its foundation in 2010, the Commissioner initiated 17 strategic litigations, out of which three were gender discrimination cases.

The Ombudsman (Protector of Citizens), whose Office was established on 24 December 2007, is another independent body that protects and promotes the fulfilment of citizens' rights by controlling whether the bodies and organisations exercising public authority perform their job in a legal and regular manner. Some issues from his/her domain can be linked with gender equality.²³⁶ The Protector of Citizens can be addressed by filing a complaint or contacted directly by anyone (Serbian citizens, foreigners, stateless persons, refugees, displaced persons, citizen associations, legal entities, etc.) who believes themselves to be deprived of their rights by improper application of regulations of the Republic of Serbia (or failure to apply them) by administrative bodies. However, prior to filing a complaint, complainants must try to protect their rights in an appropriate legal procedure. Also, the Ombudsman cannot initiate strategic litigation.

Strategic litigation can be initiated by civil society organisations (CSOs) and the tester (person who deliberately exposed himself/herself to discrimination). In practice, strategic litigation initiated by actors mentioned above is rare, especially in relation to gender equality.

11.10 Evaluation of implementation

Despite positive legal provisions governing legal standing, burden of proof and jurisdiction, which are broadly consistent with EU law, access to justice for victims of discrimination in Serbia is seriously impeded in practice.

The existing mechanism for protection from gender discrimination in Serbia is very satisfactory. There are several possible ways to be protected, including a free of charge and effective complaint procedure before the Commissioner for the Protection of Equality.

²³⁴ Special collective agreement for the public authorities, Official Gazette of the Republic of Serbia, No. 25/2015, 50/2015.

²³⁵ The Minister of Labour and Social Policy rendered a Decision stipulating that the General Collective Agreement shall apply to all employers in the territory of the Republic of Serbia; Official Gazette of the Republic of Serbia, No. 104/2008, Annex I, 8/2009 Annex II, 11 November 2008. It has applied since 1 January 2009.

²³⁶ The Law on the Protector of Citizens, Official Gazette of the Republic of Serbia, No. 79/2005, 54/2007.

However, the Commissioner cannot impose fines for discriminatory acts. Also the monetary fines that can be imposed range from EUR 84 to 840, which is only symbolic in comparison to some other laws and cannot be considered to be dissuasive.

In addition, there is confusion with the existence of three special anti-discrimination procedures, which also introduce different protective measures. In practice, there is no case under the procedure established in the GEA and all complaints were initiated by the LPD.

11.11 Remaining issues

The effective functioning of equality law requires the adoption of specific rules relating to evidence and proof, including the reverse burden of proof, which is stipulated in the law, but is still not applied correctly in practice.

12 Overall assessment

The following transposition problems were mentioned in this report:

Legal provisions

1. Pregnancy and maternity discrimination are not explicitly prohibited as a form of direct sex discrimination.
2. The GEA does not specify that harassment and sexual harassment, as well as any less favourable treatment based on the person's rejection of or submission to such conduct, amounts to discrimination. However, harassment and sexual harassment are prohibited in the Labour Law.
3. Instruction to discriminate is not recognised as a special form of discrimination in Serbian anti-discrimination legislation.
4. Serbian law does not address wage transparency.
5. There is no possibility for flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future.
6. The LPD does not expressly cover self-employment.
7. Serbian legislation does not make any specific references to pregnancy, maternity and parenthood discrimination in relation to the access and supply of goods and services as a form of gender discrimination.
8. Anti-discrimination legislation does not explicitly guarantee that an employed woman, after returning from maternity leave, should remain in the same or equivalent job.

Protection mechanisms and implementation issues

1. There is an overlap with the LPD in relation to civil procedure, and unfortunately, there has been no case law under the GEA so far (although it provides better protection with respect to terms and release from advance payment of the costs of proceedings).
2. Court practice is still underdeveloped and sanctions for gender discrimination are mild and cannot be perceived as effective and dissuasive.
3. Neither the new GEA nor amendments to the LPD were adopted until the end of 2019, showing that there is a lack of political will to give priority to prevent gender discrimination.
4. Although different national strategies were adopted in order to tackle discrimination and many measures were implemented in order to improve sex equality, women still face everyday discrimination, particularly in the workplace.
5. There are many difficulties in relation to the application of the principle of equal pay for equal work and work of equal value in practice, as well as in relation to access to work, vocational training, employment, working conditions, etc. In general, many women are asked about their family plans in interviews, and many of them are faced with limited access to work and with termination of their employment contract after returning from parental leave. Also, fathers are still not equal in their rights to take parental leave, and apart from the unsatisfactory legal norm, the cause of this should be sought in the deeply rooted gender stereotypes and traditional roles for women and men.

6. There are also many obstacles to the punishment of perpetrators of gender-based violence, as well as a lack of resources and supporting mechanisms for victims.

It can be concluded that the implementation of existing legislation must be improved in practice, and that all relevant partners must implement different measures in order to comprehensively combat sex discrimination and tackle gender stereotypes, including some legislative amendments, which need to be included in a new GEA (when it is adopted). However, the discussion on the adoption of this law, which is already three years late, demonstrates some misunderstanding of and resistance to combating gender discrimination.

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