

Serbia

In recent years, Serbia has adopted a set of antidiscrimination laws and developed strategies and policies aimed at gender equality. Advances in terms of gender equality have been achieved in the area of power and decision-making, showing that the introduction of quotas for women's political participation has had successful results. However, the persistence of gender inequality and continued discrimination of women in various fields has led to the adoption of the National Strategy for Gender Equality in 2016, together with an action plan for 2016-2018, which aims to improve the position of women and bring Serbia closer to the EU and international standards. In addition, a budget system law adopted in 2015 introduced gender-responsive budgeting as mandatory for all budget users at national, provincial and local levels, to be introduced gradually by 2020.

1. Discrimination in the family

a) Overarching legal framework for marriage

Women in Serbia have equal rights to men to enter into marriage (Constitution of the Republic of Serbia, Article 62). The Family Act also stipulates that marriage is not valid if a spouse agreed to enter it under duress, or out of fear caused by a serious threat (Family Act, Article 40; UNFPA, 2014, p.1). An amendment to the Criminal Code adopted on 24 November 2016 and entering into force on 1 June 2017, introduces a new criminal offence to this regard, providing that whoever by force or threat compels another person to enter into marriage shall be punished with imprisonment in a term between three months and three years (Praxis, 2016, p.16). Only civil marriages are legally recognised in Serbia, and religious or customary marriage ceremonies cannot be performed until after the marriage has been registered (Family Law, Article 31). Common-law (unregistered) marriages are legally recognised in Serbia, and common-law spouses have the same legal rights as those in registered marriages in regard to parental authority and property ownership (Family Law, Article 27).

b) Child marriage

The legal minimum age of marriage for women and men is 18. However, a court may grant an exemption from the age of 16, if it deems that the minor is mature enough to 'enjoy the rights and fulfil the responsibilities of marriage' (US Department of State, 2015; Family Law, Articles 11 and 23). It is a criminal offence for an adult to live in a common-law (unregistered) marriage with a minor (aged 14-18 years). However, prosecution can be avoided if the couple marry (Criminal Code, Article 190). The UNFPA also reports that in cases of an adult cohabiting with a minor, where convictions are brought, courts most often issue a suspended sentence. In most cases, such relationships involve an older man living with an underage girl (UNFPA, 2014, p.3). In 2015, 114 persons were reported for this crime; 60 of whom were convicted (Statistical Office of the Republic of Serbia, 2016, pp. 4 and 9).

Child marriage is void (Family Law, Articles 23 and 37) and while the rate of child and forced marriage among the general population is relatively low, child marriage is more common in rural areas of the southern and eastern parts of the country and among the Roma communities in Serbia. The United

Nations Population Fund (UNFPA) reports that that marriage within Roma communities is rarely officially registered and laws in regard to minimum marriage age are not adequately implemented (Family Law, Articles 23 and 37); CEDAW, 2013, p.12). Roma women's limited autonomy within the family, the importance of girls' virginity for family honour, poverty, the low value placed on girls' education in Roma communities, and discrimination and social marginalisation all push Roma girls towards child marriage (Praxis, 2016; UNFPA, 2014). In the Romani community, boys and girls generally marry between the ages of 14 and 18, with 16 as the average age. Boys generally marry a few years later than girls, and some girls marry as early as age 12 (Hotchkiss et al., 2016, p.2).

Some measures have been taken to generate social support for the enforcement of laws on the minimum age for marriage, notably the 'Strategy for the Social Inclusion of Roma in the Republic of Serbia 2016-2025', which stipulates measures pertaining to prevention and reduction of child and forced marriages in the Roma community (CEDAW, 2017, p.7). The Strategy cites as a measure that of "advancing the system of prevention and support to reduce the number of child and forced marriages and adolescent pregnancies in the Roma community" but does not cite specific awareness raising activities (Strategy for the Social Inclusion of Roma in the Republic of Serbia 2016-2025, p. 82.)

c) Household responsibilities

Regarding women's and men's household responsibilities, there is no specific law stating women and men can both be recognised as the head of the household in Serbia (The World Bank, 2016). Women and men have equal parental authority over children during marriage or common-law marriage under the Family Law (Family Law, Articles 26, 27; Constitution of the Republic of Serbia, Article 65). The law does not regulate the relationship of unmarried partners towards their common child (except in the case of bio-medically assisted conception Art. 58 par. 2 of the Family Law), so that the rights and duties of the parents and relatives towards the child born in unmarried cohabitation exist only when the origin of the child is determined. There are no restrictions on either married or unmarried women choosing where to live, nor any provisions requiring wives to obey their husbands. However, in many places in Serbia, men are considered the de-facto head of the household and upon marriage; it is not uncommon for women to live with their husband's family, where the father is seen to as the ultimate authority over children (Sovic et al., 2016, p.99).

Furthermore, a recent study by the European Bank for Reconstruction and Development, in collaboration with the World Bank, reveals that 46 per cent of men and 40 per cent of women believe that a woman should do the household chores, even if her husband is not working. Lastly, 57% of Serbians favour a traditional family arrangement where the man works and the woman takes care of the family (IBRD, Life in Transition Survey III, 2017)

d) Divorce

Women have the same rights as to initiate divorce and the requirements to finalize a divorce or annulment are the same for both men and women (Family Law, Articles 40 and 41; Constitution of the Republic of Serbia, Article 62). Women and men also have the same rights to be legal guardians of their children after divorce and have equal rights and responsibilities to the latter after divorce (CEDAW, 2006, p.139; Family Law, Article 264). Customary and religious laws are not valid sources of

law under the constitution, in regard to parental authority or any other matter (The World Bank, 2016). In practice, however, custody is nearly always given to the mother, except in the Kosovo, Raska, and Metohija regions, where tradition has always called for custody to be given to the father, or if the father is unsuitable, to the father's family. In these regions, this practice is still frequently followed (Kte'pi, Bill, 2013, pp.1085-1086).

e) Inheritance

The Inheritance Law guarantees equal inheritance rights for men and women, as wives and as daughters, both in terms of land and non-land assets (Inheritance Law, Articles 8 and 9; Constitution of the Republic of Serbia, Article 59). In some rural regions, however, according to custom, widows and daughters are expected to waive their inheritance rights to property in favour of male members of the family (FAO, 2015; Petrusic et al. 2015). Women have the same rights as men to make a will (Inheritance Law, Article 79).

2. Restricted Physical integrity

a) Violence against women

Serbia ratified the Council of Europe's 'Convention on preventing and combating violence against women and domestic violence', which came into force on 1 August 2014 (Council of Europe Treaty Office, 2017). This Convention has precedence over domestic legislation (Constitution of Serbia, Articles 167 and 194). Serbia also adopted a National Strategy for Gender Equality for the years 2016-2020. The Strategy highlights key national policies to reduce gender stereotypes and change some harmful cultural norms, as well as focuses on the development of new policies that would promote equal opportunities between women and men (UN Women, 2016), and the raising of public awareness regarding gender-based violence (Council of Europe, p.156).

b) Domestic violence

Domestic violence is a criminal offence in Serbia under Article 194 of the Criminal Code. A system of protection from domestic violence was also established under the Family Law in 2005 (IRB, 2015). While there is no national law on violence against women, in November 2016 a new 'Law on the Prevention of Domestic Violence' came into effect, which stipulates the removal of the perpetrator from the home and the issuing of a temporary restraining order, for 48 hours, which can be prolonged by the court (CEDAW, 2017, pgs.8-9). There are also activities underway to help enforce, monitor and promote such legislation, mainly through a project led by the Coordination Body for Gender Equality and in accordance with the National Action Plan for Gender Equality, which includes the drafting of the National Strategy for Combating Violence against Women, adopted in early 2016.

The Criminal Code defines a perpetrator of domestic violence as someone who 'by use of violence, threat of attacks against life or body, insolent or ruthless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his family' (IRB, 2015; Criminal Code, Article 194). The law also protects unmarried partners and former spouses (Criminal Code, Articles 112(28) and 194). A more comprehensive definition is found in the Family Law, which includes sexual, physical,

psychological, and verbal violence, as well as restrictions on freedom of movement and communication as domestic violence (UNDP, 2015). Penalties for domestic violence are a fine and prison sentences of up to 15 years if a death of a family member occurs (Criminal Code, Article 194). Under the Family Law, courts can issue restraining orders, banning the perpetrator from approaching the victim or her place of work, and ordering him to leave the family home (UNDP, 2015, p.10; Official Gazette of the Republic of Serbia, 18/05, 72/2011, 6/2015). Violation of a restraining order can result in imprisonment (Criminal Code, Article 194). There are some provisions for mediation (i.e. The 2015 Law on Settlement and Mediation in Resolving Disputes), but implementation of the law remains poor (Petrović and Počuča, 2015).

Domestic Violence remains high in Serbia, fed in part by poverty, vestiges of the trauma of wartime atrocities, and a culture where brutality against women has been traditionally hushed up. Slow official responses and poor implementation of existing legislation persists, although there are indications of an increasing willingness of women to report incidences of domestic violence.

The country's priorities regarding violence against women are outlined in the *National Strategy for Prevention and Elimination of Violence against Women in the Family and in Intimate Partner Relationships* and envisages the establishment of a comprehensive mechanism for the prevention of, and protection from, violence against women, that promotes multi-sectorial cooperation and training and capacity building of authorities, specialised services, and a system of measures to ensure protection and support for victims of violence (UN Women, 2017; CEDAW, 2016, p.2). The implementation of the new Provincial Program on the Protection of Women from Violence in the Family and in Intimate Partner Relations 2015-2020 is currently underway (UN Women, 2017; CEDAW, 2016, p.2). Currently 12 out of 14 safe houses (total capacity 160 persons) are state-owned, out of which three provide accommodation free of charge, and one is used for the emergency accommodation. The Coordination Body for Gender Equality is planning to perform mapping of the capacity of the existing services for the victims of violence against women and introduce a telephone helpline for victim support (CEDAW, 2017, p.9).

Despite progress, laws on domestic violence continue to not be adequately implemented in practice (US Department of State, 2015). A report on Serbia's progress towards EU integration notes that as of 2016, a specialised department in the Criminal Investigations Directorate to prevent and fight domestic violence has been created, but needs to be reinforced (European Commission, 2016, p.18). Emergency protection orders are not issued promptly, the number of shelters is insufficient, there is no national helpline, there is often an informal acceptance by police of domestic violence whereby violence against women is often considered a private matter, and little assistance is provided to women seeking help (European Commission 2016, p.63; UNDP, 2016).

c) Rape

Rape is a criminal offence in Serbia and is gender neutral (Criminal Code, Article 178). It is also specifically named as a war crime and a crime against humanity (Criminal Code, Articles 371, 372), in part a response to the use of rape, sexual violence, and forced pregnancy as weapons of war during the Balkan conflicts. Rape is defined as 'whoever forces another to sexual intercourse or an equal act

by use of force or threat of direct attack against the body of such or other person' (Criminal Code, Article 178). Marital rape is criminalized in the Criminal Code, which states that prosecution for rape within marriage will be undertaken only if the victim agrees with a criminal prosecution, and not ex officio, even if there is clear evidence that the crime was committed (Criminal Codes, Article 186). The law is not based on lack of consent. Furthermore, perpetrators are not exempt from facing criminal charges if they marry the victim (the World Bank, 2016). At any point, the victim of marital rape can withdraw charges and the case is then automatically dismissed (The World Bank, 2016; European Women's Lobby, 2013, p.64).

The penalties for rape are between two and eighteen years imprisonment, depending on the age of the victim, the number of perpetrators, and the level of violence used (Criminal Code, Article 194). However, the US Department of State's human rights report notes that the law is not enforced effectively and only a small percentage of rape victims report their attacks because of fear of reprisal from their attackers or humiliation in court (US Department of State, 2015). There no specialised court proceeding for women who have survived sexual violence; instead, women are often expected to repeat their testimony several times and testify before the court (Network Women Against Violence, 2015). However, a Special Protocol of the Ministry of Health of the Republic of Serbia on Protection and Treatment of Women Victims of Violence was adopted in 2010.

d) Sexual harassment

Sexual harassment is explicitly prohibited in the Law on Gender Equality, and defined as 'any unwanted verbal, non-verbal or physical act of a sexual nature, committed with the aim or with the purpose to violate personal dignity, establishment of intimidating, hostile, humiliating, degrading or offensive environment, which is based on sex' (Law on Gender Equality, Article 10; European Commission, 2015). Also, the Labour Law contains a definition, 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' Labour Law, Article 21(3); European Commission (2015). While definitions of sexual harassment cover the workplace, they do not cover education establishments, public spaces, sporting establishments or cyber harassment or cyber stalking (the World Bank, 2016).

Laws on sexual harassment include civil remedies and criminal penalties (Labour Law, Articles 23 and 273). In 2010, a specific law was introduced addressing harassment (Law on the Prevention of Harassment in the Workplace). Under this law, employers can be fined for failing to inform staff that sexual harassment is prohibited (Trifunovic, Skoko, & Jovicic Law Office Website, accessed March 2017). The Law also requires employers to implement measures for informing and training employees relative to various forms of harassment (Article 7). Sexual harassment is a crime punishable by imprisonment for up to six months in cases that do not involve abuse or a power relationship and for up to one year for abuse of a subordinate or dependent (Criminal Code, Article 181). The government does not, however, always enforce the law effectively. Public awareness of the problem remains low, and women file few complaints (US Department of State, 2016).

e) Female genital mutilation

There is no evidence to suggest that female genital mutilation is practised in Serbia.

f) Abortion

Abortion is legal in Serbia and can be performed until the 10th gestational week, upon request of the pregnant woman age 16 or over. Abortions are also permitted from weeks 10-20 in cases of rape, incest, psychological trauma or socioeconomic reasons with approval by a panel of experts from the health institution. Beyond 20 weeks, abortions can be performed to save the life or health of the woman, but approval of an ethical committee is needed. Parental consent is required for young people under 16 years of age (Serbian Law on the procedures for the termination of pregnancy and health institutions).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women and men have equal rights to own and access land and non-land assets, under the Constitution (Freedom House, 2016; Constitution of the Republic of Serbia, Articles 34 and 57). Customary and religious laws are not valid sources of law under the Constitution, in regard to land and property rights or any other matter (The World Bank, 2016).

Marital status does not affect women's rights to property (Constitution of the Republic of Serbia, Article 34; Family Codes Articles 172 and 177; Law on Basis of Ownership and Property Relations, Articles 1 and 3). Under the Family Law, each spouse retains ownership of any property that they owned prior to marriage; property acquired during marriage may be owned in common or separately, or divided according to an agreement drawn up at the time of the marriage (Family Law, Article 29). Both must agree on the administration of marital property (Family Code, Article 177) and the default marital property regime is partial community of property (Family Code, Articles 171-174 and 181-182). Sons and daughters have equal inheritance rights, as do female and male surviving spouses (The World Bank, 2016).

Although men own most land and property in Serbia, there is significant discrepancy between regions in terms of women's land ownership (FAO, 2015). In some rural areas, women do not have de facto access to land. This is because if women buy or inherit land, tradition obliges them to register it in the name of their husband or another close male relative (European Commission, 2015, p.40). More specifically, once married, any land or property that the woman does own is traditionally signed over to her male relatives, so that it remains in the family (CEDAW, 2011, p.16). Just 0.2% of property belonging to Roma is registered in a woman's name (Marjanovic, D., 2015, p.11). Throughout her life, women in rural environments are expected to be subordinate to her father, husband, or son. Traditionally, rural women live in households with patrilineal kin, where male authority is predominant (FAO 2015).

b) Secure access to formal financial resources

In terms of access to formal financial services, married women have as the same rights as married men to open a bank account at a formal institution. There are no specific laws prohibiting discrimination by creditors on the basis of sex or marital status in access to credit, nor do married women need the signatures of their husbands (The World Bank, 2016). However, women often experience difficulty in obtaining credit, due to poverty and because few women own property or land to act as collateral (European Commission, 2015, p.40; Pavlović and Radojičić, 2015, p.185). Women account for 30-40% of recipients of loans awarded by the state-run Development Fund (which provides credit to start businesses), according to the most recent CEDAW report. A separate scheme operates in the most underdeveloped municipalities of Serbia, and just over 20% of entrepreneurs receiving credit through this scheme were women. Neither, however, specifically targets women (CEDAW, 2011 p.54). Further hindering women entrepreneurs are traditional views of women as primarily mothers and housewives, and many banks, who remain sceptical of the financing of female entrepreneurship (Cvetkovic, 2015).

c) Workplace rights

Serbia has ratified a number of relevant ILO Conventions, including 100, 111, 156, and 183 but not 189 (ILO, 2017). There is also a law that mandates non-discrimination on the basis of sex in employment, specifically covering selection criteria, hiring, terms and conditions, promotions, training and termination (but not job advertisements, recruitment, or assignments). Under the Anti-Discrimination Act an employee may file a complaint to the Equality Commissioner, whose task is to prevent all forms, types and cases of discrimination, or file a claim to the competent court. There is also a law that mandates equal remuneration for work of equal value (Labour Law, Articles 104(2) and 16(3); Law on the Prohibition of Discrimination, Article 16 (1)). However, application in practice of this principle continues to be difficult in Serbia, likely due to the lack of transparency and the fact that employees rarely know the salaries of their co-workers (European Commission, 2016, p. 19). Women also tend not to initiate any available proceedings, such that relevant case law is lacking in this area. Employers may settle claims both before and after they are initiated. More generally, there are no restrictions on women entering certain professions, they do not require permission from their husband or legal guardian to register a business, and they may work the same night hours as men (The World Bank, 2016).

Women are entitled to 135 days of paid maternity leave, at 100% of their salary (up to a maximum of five times the national average monthly wage (Labour Law, Article 94). Maternity leave is financed through the state Social Security fund (The World Bank, 2016). Serbia also now obliges employers to provide break time for employees who are breast-feeding (Labour Law, Article 93a) and is gradually removing gender differences in retirement ages for men and women so that they are equal by 2032. Five days of paid paternity leave are guaranteed under the Labour Law (Labour Law, Art. 77). Furthermore, the law does mandate parental leave up to 230 days, paid entirely by the government (Labour Law, Article 94).

Despite the robust framework for gender equality, anti-discrimination policies, and parental leave in Serbia, existing legislation and policies have not yet been fully implemented (World Bank/Social

Inclusion and Poverty Reduction Unit, 2016, p.37) and laws on the dismissal of pregnant women and women on maternity leave, sexual harassment, and inequality in promotion and pay are not systematically enforced and there is no law protecting women's employment security while they are on maternity leave (The World Bank, 2016). Furthermore, there is no legislation prohibiting employers asking about women's family intentions or pregnancy during recruitment or promotion processes.

4. Restricted Civil liberties

a) Citizenship rights

Married and unmarried women have the same rights as married and unmarried men to acquire, change, and retain Serbian nationality (Law on Citizenship of the Republic of Serbia; Constitution of the Republic of Serbia, Art. 38). Married and unmarried women also have equal rights to married and unmarried men in terms of conferring nationality to their spouse and children (Law on Citizenship of the Republic of Serbia, Articles 7, 8, and 17). The same holds for registering the birth of children. Birth registration of Roma children, however, continues to be a challenge, particularly when the parents are unable to produce valid identity documents. Data from UNICEF reveal that approximately 5% of Roma children are unable to secure a birth certificate. There are, however, measures in place in Serbia to increase access to birth registration and allow for late or delayed registration for unregistered adults or children, particularly in rural areas (CEDAW, 2017, p. 21).

Married and unmarried women have the same rights as men to apply for identity cards and all are required to present an extract from the birth registrar or other documentation to establish their identity (Identity Card Law, Article 7). Women and men also have equal rights to apply for passports (Serbia passport application procedures) and they may equally travel outside the country (The World Bank, 2016).

b) Voting

The Serbian Constitution provides women with equality with men in voting, irrespective of marital status (Constitution, Article 52). It has, however, been observed by Organisation for Security and Cooperation in Europe (OSCE) that a lack of voter information provided in the Roma language is one of the main reasons for low electoral participation by Roma men and women. Roma women particularly remain politically underrepresented due to traditional practices that discriminate against their participation (OSCE, 2016). The Ministry of Labour, Employment, Veteran and Social Affairs has, however, announced the adoption of the 'Strategy for the Social Inclusion of Roma in the Republic of Serbia 2016-2025'. Among other aims, the newly adopted strategy aims to facilitate an improvement of the status of Roma women and gender equality (The Strategy for Social Inclusion of Roma for the 2016-2025 Period, p.5).

c) Political voice

In terms of political participation, women and men enjoy equal rights to hold legislature, executive, and judiciary public and political office (Constitution of the Republic of Serbia, Articles 53, 100, 167, and 172; Official Website of the Constitutional Court of Serbia). In addition, under the Law on Election of Members of Parliament, for every three candidates on an electoral list, one must be of the

underrepresented sex (Quota Project, 2016). This is the case for national elections (Law on Altering and Amending the Law on Election of Members of Parliament, 36/2011) and local elections (Law on Altering and Amending the Law on Local Elections No. 54/2011) and there are legal sanctions for non-compliance at both levels, including not proclaiming the candidate list and withdrawing state funding (Law on the Elections of Representatives, Article 40a; Law on Local Elections, Article 20 (4–5)). The Republic Electoral Commission is tasked with monitoring and oversight of this legislation. Women however, continue to be underrepresented in positions that have an actual impact on decision-making. There are no specific laws that provide for training for women to support their effective participation in political and public life, although a cross-party Women’s Parliamentary Network was set up in 2013, which has, among other things, submitted amendments to laws and initiated debates on issues of relevance to promoting gender equality and the development of the equal opportunities policies. The above mentioned National Strategy for Gender Equality for the years 2016-2020 and related Action Plan also aims to achieve no less than 30% of women’s participation in advisory and expertise bodies at all levels mandated for planning and drafting of public policies and measures, in particular in the fields of health, economic development, education and science and agriculture and rural development (European Council, 2017, p. 156).

d) Access to justice

In their access to justice, unmarried and married women have an equal capacity as married men to be sued and to sue. There are similarly no restrictions regarding women’s (either married or unmarried) testimonies carrying the same evidentiary weight in court as a married man’s in all types of court. The law does not recognize customary or personal law courts (Constitution of the Republic of Serbia, Article 100).

There are reports that human rights defenders in Serbia have been the targets of physical violence, death threats, hate speech, harassment and defamation, as well as faced imposed restrictions on their freedom of assembly (Civil Rights Defenders, 2016). However, Serbia also has in place an Anti-Discrimination Law that prohibits discrimination on the basis of racial or ethnic origin, citizenship, national affiliation, language, religion, gender and sexual orientation. The law also prohibits direct and indirect discrimination, as well as victimization; the work of racist organizations; hate speech; harassment and humiliating treatment. The Anti-discrimination Law designates the Commissioner for the Protection of Equality (‘the Equality Commissioner’) as Serbia’s ‘equality body’. The Equality Commissioner’s powers include taking action in cases of discrimination against individuals or groups of individuals. The Equality Commissioner can also bring discrimination cases to civil courts. Furthermore, several articles of the Constitution of the Republic of Serbia protect against any violation of guaranteed human rights or the inciting racial, ethnic, religious or other inequality or hatred (Constitution of the Republic of Serbia, Articles 5, 27, 49, 55).

A recent report from the World Bank shows that Serbian women experience the judicial system differently from men and more frequently report that justice services are inaccessible and attorney fees cost prohibitive. Women are also more likely to experience barriers to access to justice and inefficiencies in justice service delivery because they are more likely to be parties to certain types of cases, such as custody disputes and gender- based violence, which exhibit specific problems relating to procedural abuse and delay (The World Bank (2015) p.7).

The Government of the Republic of Serbia has adopted a new National Strategy for Gender Equality for the years 2016-2020. The Strategy highlights key national policies to reduce gender stereotypes and change some harmful cultural norms, as well as focuses on the development of new policies that would promote equal opportunities between women and men. Furthermore, there is a law governing the production and/or dissemination of gender statistics (Law on Gender Equality, Arts. 12 and 40).

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