

## SERBIA

### 1. Discriminatory family code

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 both parties have the physical and psychological maturity to marry.<sup>1</sup>

It is a criminal offence for an adult to live in a common-law (unregistered) marriage with a minor (aged 14-18). However, prosecution can be avoided if the couple marry.<sup>2</sup>

Only civil marriages are legally recognised in Serbia, and religious marriage ceremonies cannot be performed until after the marriage has been registered.<sup>3</sup> 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.<sup>4</sup>

No information was found to suggest that there are plans to remove the clause in the Family Law allowing marriage from 16 in certain circumstances, or to remove the clause in the Criminal Code that allows adults co-habiting with a minor to escape prosecution by marrying their underage partner.

The United Nations Population Fund (UNFPA) reports that marriages within Roma communities are rarely officially registered.<sup>5</sup> **Early marriage** is common in Roma communities in Serbia,<sup>6, 7, 8</sup> indicating that the laws in regard to minimum marriage age are not adequately implemented. According to qualitative research on early marriage undertaken by UNFPA, 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 early marriage.<sup>9</sup> The 2006 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) official report notes that early marriage is also common within the Vlach ethnic minority.<sup>10</sup>

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

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<sup>1</sup> CEDAW (2006), p.91

<sup>2</sup> Criminal Code, Article 190

<sup>3</sup> CEDAW (2006), p.138

<sup>4</sup> Family Law, Article 27; CEDAW (2011), p.62

<sup>5</sup> Popovicki Capin, Ana (2012), p.3

<sup>6</sup> CEDAW (2011), p.17

<sup>7</sup> Cozzarelli, Catherine (2010), p.9

<sup>8</sup> Popovicki Capin, Ana (2012)

<sup>9</sup> Popovicki Capin, Ana (2012)

<sup>10</sup> CEDAW (2006), p.92

living with an underage girl. In 2011, 123 persons were reported for this crime; 59 were convicted, of which 47 received suspended sentences.<sup>11</sup>

Women and men have equal **parental authority** over children during marriage, under the Family Law.<sup>12</sup> Legally, women and men can both be recognised as the head of the household in Serbia (law not specified).<sup>13</sup>

Women and men have the same decision-making authority over children after divorce.<sup>14</sup>

Customary and religious laws are not valid sources of law under the constitution, in regard to parental authority or any other matters.<sup>15</sup>

Stereotypes relating to gender roles remain strong in Serbia, with men considered to be the head of the household, and the role of breadwinner closely linked with that of being a 'real' man.<sup>16</sup> Women are seen as primarily responsible for childcare and domestic work in the home. Reflecting this, mothers receive an allowance from the state for their first, second, third, and fourth children.<sup>17</sup>

The Constitution guarantees equal **inheritance** rights for men and women, as wives and as daughters.<sup>18</sup>

Customary and religious laws are not valid sources of law under the Constitution, in regard to inheritance or any other matters.<sup>19</sup>

In some rural regions, it is reported that women are expected to waive their inheritance rights to property in favour of male members of the family.<sup>20</sup>

In cases of dispute, the competent guardianship authority should take a decision on custody in the child's best interests, rather than the sex of the parent, which can be taken into consideration only in special cases (for example, in cases involving very young children). However, in some regions, tradition dictates that in cases of **divorce**, child custody is awarded to the father or the father's family, regardless of the best interests of the child.<sup>21</sup> A shadow report submitted to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Committee in 2012 also notes that courts often fail to enforce maintenance orders.<sup>22</sup>

### **More**

Women and men have the same right to initiate **divorce** in Serbia.

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<sup>11</sup> Popovicki Capin, Ana (2012), p.2

<sup>12</sup> CEDAW (2011), p.61

<sup>13</sup> International Bank for Reconstruction and Development/The World Bank (2011) p.126

<sup>14</sup> CEDAW (2006), p.23, 105

<sup>15</sup> International Bank for Reconstruction and Development/The World Bank (2011), p.126

<sup>16</sup> World Bank (2011), p.194

<sup>17</sup> CEDAW (2011), p.55

<sup>18</sup> CEDAW (2006), p.80

<sup>19</sup> International Bank for Reconstruction and Development/The World Bank (2011), p.126

<sup>20</sup> CEDAW (2006), p.80

<sup>21</sup> CEDAW (2006), p. 23, 87, 90, 105

<sup>22</sup> Praxis / ERRC (2012), p.4

## 2. Restricted physical integrity

Serbia has ratified the Council of Europe 'Convention on preventing and combating violence against women and domestic violence' in November 2013.<sup>23</sup>

While there is no specific law criminalising **domestic violence**, it is a criminal offence in Serbia, under Article 194 of the Criminal Code. Domestic violence is also covered under the Family Law and the Law on Gender Equality.<sup>24, 25</sup>

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'.<sup>26</sup> 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.<sup>27</sup>

Under the Criminal Code, penalties for domestic violence are a fine or up to 12 months imprisonment or up to eight years imprisonment if the violence results in serious injury, or is directed at a child under 14.<sup>28</sup> 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.<sup>29</sup> Violation of a restraining order can result in imprisonment.<sup>30</sup>

The National Strategy for Prevention and Elimination of Violence Against Women in the Family and in Intimate Partner Relationships adopted in 2011 envisages the establishment of a comprehensive mechanism for the prevention of, and protection from, violence against women, that promotes multi-sectorial cooperation, specialised services, and a system of measures to ensure protection and support for victims of violence.<sup>31</sup> Also in 2011, a general protocol on procedures and cooperation between institutions, agencies and organisations in situations of domestic violence was adopted.<sup>32</sup>

Information included in a shadow report submitted to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Committee in 2012 by PRAXIS and the European Roma Rights Centre (ERRC) indicates that the laws on domestic violence are not adequately implemented in practice. For instance, despite the fact that the law requires that domestic violence cases be considered urgently by the courts, there are often significant delays (averaging six months) between the registering of criminal charges and the public prosecutor beginning an investigation. In addition, courts appear reluctant to imprison people convicted for domestic violence, instead opposing suspended sentences. Out of 54 cases represented by PRAXIS, only one resulted in a prison sentence.<sup>33</sup> A report on Serbia's

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<sup>23</sup> Council of Europe Treaty Office (2013)

<sup>24</sup> Council of Europe (2009), p.83

<sup>25</sup> CEDAW (2011), p.62

<sup>26</sup> Criminal Code, Article 194

<sup>27</sup> Council of Europe (2009), p.83

<sup>28</sup> Criminal Code, Article 194

<sup>29</sup> Council of Europe (2009), p.86

<sup>30</sup> Criminal Code, Article 194

<sup>31</sup> Zeitlin, June (2012), p.2

<sup>32</sup> European Commission (2012), p.15

<sup>33</sup> Praxis / ERRC (2012), p.2

progress towards EU integration notes that as of 2012, the action plan for the implementation of the National Strategy had yet to be adopted.<sup>34</sup>

Roma women in particular face barriers to accessing support services, according to the Organisation for Social Co-operation in Europe (OSCE) Special Representative and the European Union (EU) progress report.<sup>35, 36</sup>

It appears that women do not routinely report domestic violence. Data in the *World Development Report* for 2012 indicates that among women living in urban areas, while 23% of women surveyed had experienced physical violence, just 3% had sought help from outside services. Reasons cited for not reporting included fear of the consequences, fear that the woman might lose her children, embarrassment or shame, belief that violence is normal and not serious, and a perception that police will not investigate unless the abuse is fatal.<sup>37</sup> Research by UNDP found that women in rural areas were more likely to say that domestic violence was a private matter that should not be shared with anyone (7.6% of rural women as opposed to 2.8% of urban women), and less likely to approach an outside institution for help (73.7% of rural women as opposed to 81.4% of urban women).<sup>38</sup> According to USAID, research conducted by NGOs found that incidence of domestic violence is highest in families where men have returned from participating in the war, and where a husband / partner earns less money than the woman.<sup>39</sup>

The Women Against Violence Europe (WAVE) network notes an overall lack of official data in regard to violence against women cases.<sup>40</sup>

The Praxis / EERC report states that in consultation with public prosecutors, police usually file domestic cases as misdemeanour rather than criminal charges, except in cases where the violence has resulted in significant injury. This has the effect of minimising such violence, and reinforcing the idea that it is a 'private' matter. The report also notes a general lack of sensitivity among police and other service providers in dealing with women and children affected by domestic violence.<sup>41</sup>

According to the OSCE Special Representative, Roma women's rights NGOs reported that police often display an 'informal acceptance' of domestic violence within Roma communities, and fail to provide women with assistance.<sup>42</sup>

**Rape** is a criminal offence in Serbia.<sup>43</sup> It is also specifically named as a war crime and a crime against humanity.<sup>44</sup> The language used in the Criminal Code is gender neutral, meaning that rape against men can also be prosecuted, and that women can be prosecuted as perpetrators.<sup>45</sup>

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<sup>34</sup> European Commission (2012), p.15

<sup>35</sup> Zeitlin, June (2012), p.6

<sup>36</sup> European Commission (2012), p.18

<sup>37</sup> World Bank (2011), p.164, 167-168, 171

<sup>38</sup> UNDP (2012) '

<sup>39</sup> Cozzarelli, Catherine (2010), p.15

<sup>40</sup> WAVE (2011)

<sup>41</sup> EERC (2012), p.2-5

<sup>42</sup> Zeitlin, June (2012), p.6

<sup>43</sup> Criminal Code, Article 178

<sup>44</sup> Criminal Code, Articles 371, 372

The definition of rape does not specifically include spousal rape. However, amendments to the Criminal Code in 2002 removed a clause that defined rape as forced sexual intercourse 'outside of matrimony'.<sup>46</sup>

There is nothing in the Criminal Code to indicate that a perpetrator can escape prosecution by marrying the victim.

The penalties for rape are between two and 18 years' imprisonment, depending on the age of the victim, the number of perpetrators, and the level of violence used.<sup>47</sup>

The US Department of State's human rights report notes that women's rights advocates believed that sentences in rape convictions were often lenient.<sup>48</sup>

In her report, the OSCE Special Representative notes that sexual violence remains a hidden problem in Serbia.<sup>49</sup> The US Department of State human rights report notes that many women do not report rape because of fear of reprisals or humiliation in court.<sup>50</sup>

In 2010, 115 cases of rape were registered, resulting in 58 convictions.<sup>51</sup>

Results of a survey reported by UNDP found that 3.8% of women said they had experienced sexual violence from an intimate partner at some point in their lives.<sup>52</sup> Research conducted among young people found that 17% of boys thought that sexual violence was the result of women's 'inappropriate' behaviour.<sup>53</sup>

In 2010, a specific law was introduced addressing **sexual harassment** (Law on the Prevention of Harassment in the Workplace).<sup>54, 55</sup>

Sexual harassment is also addressed under the Labour Code (Article 18) and the Law on Gender Equality, and the Criminal Code includes a clause covering abuse of power to coerce someone into a sexual act (Article 181).<sup>56, 57</sup>

The Labour Code and the Law on the Prevention of Harassment at the Workplace cover sexual harassment in the work place.<sup>58, 59</sup> It is unclear what areas are covered by the Law on Gender Equality.

Under the Law on the Prevention of Harassment at the Workplace, employers can be fined for failing to inform staff that sexual harassment is prohibited.<sup>60</sup> It is not clear what sanctions are in place for perpetrators.

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<sup>45</sup> CEDAW (2006), p.62

<sup>46</sup> Council of Europe (2009), p.86

<sup>47</sup> Criminal Code, Article 194

<sup>48</sup> US Department of State (2013)

<sup>49</sup> Zeitlin, June (2012), p.8

<sup>50</sup> US Department of State (2013)

<sup>51</sup> CEDAW (2012), p.11

<sup>52</sup> UNDP Serbia (2010), p.1

<sup>53</sup> United Nations in Serbia (2013) p.1

<sup>54</sup> Trifunovic & Cvetkovic,(2010), p.1

<sup>55</sup> Zeitlin, June (2012), p.2

<sup>56</sup> Council of Europe (2009), p.83

<sup>57</sup> CEDAW (2011), p.48

<sup>58</sup> Council of Europe (2009)pp.83-84

<sup>59</sup> Trifunovic & Cvetkovic Law Office (2010), p.1

Under the Criminal Code, the punishment for abuse of power to coerce someone into a sexual act is punishable by between three months and three years imprisonment.<sup>61</sup>

The US Department of State country report on human rights practices states that sexual harassment is a common problem, but is not widely reported.<sup>62</sup>

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

### **More**

During the Balkan **conflicts** and the conflict in Kosovo, rape, sexual violence, and forced pregnancy were routinely used as a weapon of war by all sides. In particular, sexual violence was used by Serbian and ethnic Serb forces from other parts of the former Yugoslavia against women and men belonging to other ethnic groups. Recent years have seen Serbia take a more cooperative stance in regard to working with the International Criminal Tribunal for the former Yugoslavia, and in 2009, five Serbian political, police and military leaders were convicted of the deportation, forcible transfer, murder and persecution (including rape) of thousands of ethnic Albanians during the 1999 Kosovo conflict, and each sentenced to 22 years in prison.<sup>63</sup>

According to the Praxis / ERRC report, **femicide** (as in the murder of women) is a recognisable problem in Serbia, exacerbated, according to Praxis / ERRC, by the high number of weapons in circulation in the civilian population, an outcome of the Balkans conflict.<sup>64</sup> In 2011, 44 women were murdered, as well as two police officers who were responding to a report of domestic violence.<sup>65, 66</sup>

**Abortion** is available on demand in Serbia.<sup>67</sup> In 2013, the Serbian Orthodox Church called for abortion to be banned in all circumstances, except to protect the life of the mother.<sup>68</sup>

## **3. Son bias**

The male/female **sex ratio** for the working age population (15-64) in 2013 is 1.0 while the sex ratio at birth is 1.07.<sup>69</sup> There is no evidence to suggest that Serbia is a country of concern in relation to **missing women**.

In 2012, the ratio of female to male in primary school enrolment was 99.8 and 102 for secondary education.<sup>70</sup>

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<sup>60</sup> Trifunovic & Cvetkovic Law Office (2010), p.1

<sup>61</sup> Council of Europe (2009), p.84

<sup>62</sup> US Department of State (2013) ‘

<sup>63</sup> Amnesty International (2010), p.280

<sup>64</sup> Praxis /ERRC (2012), p.4

<sup>65</sup> WAVE) (2011)

<sup>66</sup> ERRC (2012), p.3

<sup>67</sup> United Nations Department of Economic and Social Affairs, Population Division (2013)

<sup>68</sup> Balkan Insight (2013)

<sup>69</sup> CIA World Fact Book

<sup>70</sup> World Bank Development Indicators Database

## 4. Restricted resources and assets

Women and men have equal rights to **own and access land and property other than land**, under the Constitution,<sup>71</sup> but respect for traditional customs restricts the ownership rights of some Serbian women.<sup>[46]</sup> In some rural areas, women do not have de facto access to land, as if women buy or inherit land, tradition obliges them to register it in the name of their husband or another close male relative.<sup>[47]</sup> The 2011 Convention on the Elimination of all forms of Discrimination against Women (CEDAW) report notes that a survey conducted in 2008 in one rural area found that women made up 10% of landowners.<sup>[48]</sup> In 2009, the Ministry of Agriculture launched a six-year programme of rural development, which will include working with rural women to raise awareness of ownership rights, and to provide support to rural women entrepreneurs.<sup>[49]</sup>

Customary and religious laws are not valid sources of law under the Constitution, in regard to land and property rights or any other matter.<sup>72</sup>

Marital status does not affect women's rights to property.<sup>73</sup> 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 (Article 29).<sup>74</sup>

Most land and property in Serbia is owned by men; the Food and Agriculture Organization reports that 18% of agricultural holdings were held by women.<sup>75, 76</sup> 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.<sup>77</sup> Once married, any land or property that the woman does own is usually signed over to her male relatives, so that it remains in the family.<sup>78</sup> According to the official CEDAW report (2011), just 0.2% of property registered to Roma is registered in the name of Roma women.<sup>79</sup>

Serbian law guarantees equal **access to bank loans** for men and women.<sup>80</sup> According to USAID, women often experience difficulty in obtaining **credit**, due to poverty and because few women own property or land to act as collateral.<sup>81</sup>

Women account for 30-40% of recipients of loans awarded by the state-run Development Fund (which provides credit to start businesses); this figure has been increasing year on year, according to the official CEDAW report. A separate scheme operates in the most underdeveloped municipalities of Serbia, and as of 2011, just over 20% of entrepreneurs receiving credit through this scheme were women. Neither of

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<sup>71</sup> CEDAW (2006), p.135

<sup>72</sup> International Bank for Reconstruction and Development/The World Bank (2011), p.126

<sup>73</sup> International Bank for Reconstruction and Development/The World Bank (2011), p.126

<sup>74</sup> CEDAW (2011) p.61

<sup>75</sup> OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

<sup>76</sup> Cozzarelli, Catherine (2010), p.23

<sup>77</sup> CEDAW (2006), p.80

<sup>78</sup> CEDAW (2011), p.58

<sup>79</sup> CEDAW (2011) p.16

<sup>80</sup> CEDAW (2006), p.79

<sup>81</sup> Cozzarelli, Catherine (2010), p.15

these schemes, it appears, specifically targets women.<sup>82</sup> No further information on women's access to credit was found.

Data from the Microfinance Information Exchange indicates that in 2012, 42.59% of recipients of micro-credit were women.<sup>83</sup>

## 5. Restricted civil liberties

The Constitution guarantees freedom of **access to public space**, and both men and women have the right to choose where they live and work. Women and men have the same right to apply for and receive a passport.<sup>84</sup>

As members of the wider Roma community, Roma women face de facto restrictions on free access to public space,. Pressure from the EU to reduce the number of Serbian Roma leaving the country to claim asylum in EU countries has also led to restrictions on freedom of movement out of the country for Roma.<sup>85, 86</sup> Roma girls are often removed from school at an early age, to protect their virginity, help out at home, and prepare for marriage, while Roma women often face considerable discrimination in the labour market.<sup>87, 88</sup> Finally, high rates of illiteracy among Roma women also limit public engagement.<sup>89</sup>

According to Amnesty International and Human Rights Watch, in 2012 around 1000 Roma were forcibly evicted from their homes in the Belvil settlement in Belgrade, and resettled either to southern Serbia, or to segregated settlements of metal containers on the outskirts of Belgrade where it was difficult to find work.<sup>90, 91</sup>

Women and girls belonging to members of other ethnic minorities also face discrimination that impacts on their free access to public space. Human Rights Watch reports that a group of Hungarian-speaking children and young people were physically attacked in the town of Subotica.<sup>92</sup>

While there are no legal restrictions on women's right to choose where they live, according to information contained in the official Convention on the Elimination of all forms of Discrimination against Women (CEDAW) report (2011), in many rural areas, women routinely move to their husband's household when they marry.<sup>93</sup>

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<sup>82</sup> CEDAW (2011), p.54

<sup>83</sup> Microfinance Information Exchange (2013)

<sup>84</sup> CEDAW (2011) p.33, 60

<sup>85</sup> Amnesty International (2013), p.229

<sup>86</sup> Human Rights Watch (2013), p.474

<sup>87</sup> CEDAW (2012), p.16

<sup>88</sup> Cozzarelli, Catherine (2010), p.9

<sup>89</sup> Zeitlin, June (2012), p.5

<sup>90</sup> Amnesty International (2013), p.229

<sup>91</sup> Human Rights Watch (2013), p.474

<sup>92</sup> Human Rights Watch (2013) p.472

<sup>93</sup> CEDAW (2011), p.58

Concerning **quotas**, under the Law on Election of Members of Parliament, for every three candidates on an electoral list, one must be of the underrepresented sex.<sup>94</sup> This is the case for national elections<sup>95</sup> and local elections.<sup>96</sup>

### **More**

According to a report by USAID, there are a large number of women working in the Serbian **media**, including in senior managerial positions. However, gender stereotyping is still seen as a problem (including by the government), as is the sensationalist coverage of cases of gender-based violence, and the negative portrayal of minority groups.<sup>97</sup>

Regarding **workplace rights**, Under the Law on Prohibition of Discrimination, discrimination in employment on the basis of gender is illegal.<sup>98</sup> Since 2009, Public Works programmes have included a quota targeting women, with the aim of increasing women's employment.<sup>99</sup>

Women are entitled to up to a year's paid **maternity leave**, at 100% of their salary (up to a maximum of five times the national average monthly wage).<sup>100</sup> Maternity leave is financed through the state Social Security fund.<sup>101</sup>

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<sup>94</sup> quotaProject (2013)

<sup>95</sup> Article 40. As amended by Law on Altering and Amending the Law on Election of Members of Parliament, 36/2011

<sup>96</sup> Law on Local Elections, as amended by Law on Altering and Amending the Law on Local Elections No. 54/2011

<sup>97</sup> Cozzarelli, Catherine (2010), p.13

<sup>98</sup> CEDAW (2011), p.38

<sup>99</sup> International Labour Organization (2012), p.33

<sup>100</sup> Labour Law, Article 94

<sup>101</sup> ILO (2011)

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