

On the Road to the EU

Monitoring
Equal Opportunities
for Women and Men
in South Eastern Europe

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Monitoring Equal Opportunities for Women and Men in

Serbia

by *Marija Lukic*

ALBANIA
BOSNIA AND
HERZEGOVINA
CROATIA
KOSOVO
MACEDONIA
MONTENEGRO
SERBIA

2006

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Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,¹ we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

¹ See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.² To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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These national experts prepared full monitoring reports on equal opportunities for women and men on the basis of a detailed methodology prepared under the project “Bringing the EU Home.”

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INTRODUCTION

As of today, Serbia is a diverse community with no social consensus on the majority of war crimes related issues, as well as racism, homophobia, gender equality, and so forth. The conflict in values, ideologies, and goals, is intense and persistent.

At the same time, poverty, social exclusion, and violence are predominant characteristics, a way of life for marginalized groups, including women.¹

During the socialist era generations were taught and raised on the principle of equality, including between men and women. Protections for equality and equal opportunities in the state regulated public domain were not merely empty rhetoric, but were to a significant extent implemented and enforced. Serbia's social insurance and safety net was functional and covered the majority of working people. In the midst of the current social transition exacerbated by the postwar fallout of nationalism, clericalism, and lack of adequate state response, there has been a backlash against gender equality, a reverting back to traditional gender roles. These conflicting values and principles have left their imprint on public discourse and political decision making alike, and continue to do so.

One of the rare issues where consensus has emerged *within* society and *between* society and state is strong sense affiliation and orientation towards the European Union (EU). In its Feasibility Report of April 12, 2005, the European Commission concluded that Serbia (and Montenegro) is sufficiently prepared to negotiate a Stabilization and Association Agreement (SAA) with the EU. On April 25, 2005, the Council endorsed the Feasibility Report and invited the Commission to submit the negotiation directives for the SAA. In October 2005, the Serbian Parliament adopted a Resolution on Accelerated Accession towards EU. To date, EU has played an important, if not crucial role in political and public rhetoric, albeit there remains an ostensible rift between the values it espouses and those that currently obtain in Serbia. Notwithstanding, Serbians have tremendous social expectations *vis-à-vis* EU membership.

Like EU accession, the transition therefor was generally perceived as a fast process sans side effects, and public expectations were unrealistic. Legislative initiative has not been followed by the creation of clear-cut, sustainable, and effective implementation mechanisms. This leaves the impression that more of what has been done is for the sake of harmonization itself, then for the sake of the wellbeing of the citizenry.

¹ The first draft of *The Implementation of Poverty Reduction Strategy* (based on 2003 survey results) stated that 10.5 percent of the population is poor (cf., a regional standard of USD 2.15 per day). But, around 50 percent of the population reported that they are grappling with financial difficulties, or are unable to make ends meet. The first draft of *The Implementation of Poverty Reduction Strategy*. 2004. Government of Serbia, 10, 13.

Serbia's Parliament has enacted some important legislation *vis-à-vis* the state's responsibility to protect political, social, and other human rights. A case in point is the Ombudsman Act. Some gender equality mechanisms have been introduced, but randomly funded. To date, Serbia has not adopted either an Antidiscrimination Act, or a Gender Equality Act. Drafts for both have been prepared by nongovernmental and/or independent experts groups without financial backing from and substantive policy involvement of the government. The new institutions generally lack the requisite authority to stop and prevent discriminatory practices by those who violate other's rights or abuse their own power.

Serbia is still a country without a new Constitution, the Milosevic era Constitution still in force, without clear-cut boundaries, institutional settings, and division of powers, especially between central and local authority. This contributes to tensions between state administration bodies as well as within society at large.

EQUAL PAY

Council Directive 75/117/EEC of February 10, 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Pay for Work of Equal Value

Serbia is in the process of drafting its new Constitution, the currently effective Constitution having been in force since 1990.² Neither the Constitution, nor the Charter for Human and Minority Rights of Serbia and Montenegro,³ mention the principle of equal pay for equal work or work of equal value. The draft Equality between Men and Women Act⁴ includes the equal pay principle,⁵ as well as the principle of shifting the burden of proof to the employer.

Serbia, that is, former Yugoslavia and subsequently the State Union of Serbia and Montenegro, have ratified a number of important international conventions incorporating the equal pay principle: the ILO Convention No.100/1951; the Convention on the Elimination of All Forms of Discrimination against Women (CEDOW, 2001); and the Covenant for Social, Economic and Cultural Rights (1992) have been ratified.⁶

² The *Constitution of the Republic of Serbia*, the *Official Gazette*, No.1/90.

³ The *Charter of Human and Minority Rights of Serbia and Montenegro*, the *Official Gazette*, 1/2003.

⁴ Currently, there is still lively discussions among women's groups whether or not to have equal rights legislation providing for equality between men and women, or, rather, a gender equality act.

⁵ Article 14 of the working document on the draft *Equality between Men and Women Act* stipulates that "Everyone has a right to equal pay for equal work or for work of equal value."

⁶ Cf., www.unhchr.ch/report.pdf.

As the result of effective lobbying by women's groups Serbia's Labor Code of 2001 incorporated the equal pay principle for the first time. It was subsequently further developed in the 2004 Labor Code.⁷

Employer decision or employee work contract in contravention of the aforesaid principles will be invalid. The law says that in case of infringement of this right, employees are entitled to claim damages⁸ before court of law. Employees are entitled to financial compensation equivalent to the loss of pay they had been denied in conjunction with the principle of equal pay for equal work, or work of equal value.

SECTION 2 – Implementation of the Principle of Equal Pay for Work of Equal Value: Legal Foundations and Institutional Structures

2.1 General presentation

The Labor Code covers both the public and private sector, albeit it does not set forth specific obligations for either. The Labor Inspectorate and the Ministry of Labor, Employment and Social Policy are responsible for implementation of the Labor Code.

The Labor Inspectorate is responsible for monitoring the implementation of the Labor Code and all related legislation concerning duties and rights of employees.⁹ Consequently, the Inspectorate can issue an order to the employer to remove all detected abuse, and violations in the required time specified by the inspector. The employer has the obligation to inform the inspector regarding execution of the order within 15 days from the set deadline.¹⁰

⁷ Article 105, the *Labor Code*. "The Employee shall have the right to appropriate pay (salary), which shall be determined pursuant to act of law, general statutory measures, and individual work contract. All employees shall be guaranteed equal pay for equal work or work of equal value that they perform for the employer. The work of equal value shall be the work which requires the same educational/professional background, the same working ability, and responsibility, physical and intellectual effort." Additionally, the Labor Code defines pay as "remuneration for work that is performed, time that is spent, based on the contribution to the employer's professional success (bonuses, etc.), and other payments based on the employment relationship, pursuant to general act of law and the work contract."

⁸ Article 104, paragraph 3, the *Labor Code*.

⁹ Article 268, the *Labor Code*.

¹⁰ Article 269, the *Labor Code*.

The Labor Inspectorate acts as the state body of first instance in a general administrative procedure. Legal redress is provided before the Ministry of Labor, Employment and Social Policy within a deadline of eight days.¹¹

Noncompliance with or infringement of the Labor Inspector's order incurs a legal penalty. Breach of statutory provisions prohibiting discrimination is likewise punishable. Statutory fines range from CSD 800,000 to CSD 1,000,000 (EUR 13,300 to 16,600) for a company, CSD 40,000 to CSD 50,000 (EUR 660 to 830) for a responsible individual, and from CSD 400,000–CSD 500,000 (EUR 6600 to 8300) for an employer.¹²

The penalty provision refers to the general prohibition of discrimination, and does not mention specific grounds of discrimination, including sex. The equal pay principle theoretically could be covered by this provision as well. But, lack of clear definition of equal pay through discrimination can create problems by generating inconsistent practice before state institutions.

According to Serbian labor legislation, the inspector will *ex officio*, submit the requirement for instituting misdemeanor procedure¹³ when he/she finds that there is a case of discrimination implying violation of the equal pay principle as well, and his/her order to comply with the Labor Code were not followed. Labor inspectorates can institute procedure before the Inspectorate within the customary procedure for monitoring legislation, or upon the requests of workers who claim to have been discriminated against (wronged). To date, the Inspectorate does not have data on cases concerning the equal pay principle, or regarding any other type of discrimination case for that matter.

2.2 Job classification system

The Labor Code requires from each employee or company, whether private or state owned, to have a job classification system.

The Employer's Organizational Structure and HR Document sets forth the employer's organizational structure, job classification, required type and level of educational/professional

¹¹ The second instance procedure before the Ministry of Labor must be completed within 15 days at the most. The *Labor Code* does not allow parties to institute administrative court procedure against the Inspectorate's and the Ministry of Labor's decisions. Article 272, paragraph 1, the *Labor Code*.

¹² Article 273, the *Labor Code*. The Serbian dinar (CSD) and Euro (EUR) exchange rate is 85:1.

¹³ Article 270, the *Labor Code*.

*background, and other condition of work regarding these specific jobs. No such requirements exist for employers with five or less employees.*¹⁴

The job classification system also provides particular coefficients for individual workplaces, but this does not imply that actual pay should and would be identical even though two employees might have the same job titles. Bearing in mind the aforementioned definition of payment, there are numerous possibilities for claiming that wage differentials are based on individual performance and contribution to the employer's success.

2.3 Available legal procedures in cases involving the violation of the principle of equal pay for work of equal value

Under Serbia's Labor code going to court is the sole redress mechanism available for employees wronged in conjunction with the equal pay principle. Like most other court procedures, this, too, is protracted and expensive. Except for court tax relief, litigants in all labor disputes, must bear all other legal costs: for lawyers, experts, witnesses, and so forth. The lawyer's fee is CSD 6,250 (approximately EUR 100) per one trial session. This is set by BAR code of tariffs, but the actual rate can vary. The employee can seek only pecuniary damages that she/he suffered on the ground of denial of unequal pay. A claim for nonpecuniary damages cannot be enforced in these cases.

Even more importantly, the petitioner must prove that she/he suffered actual damage/loss. Given all the contributing factors that constitute "payment," pursuant to the legal definition of pay, and further, the absence of specific rules *vis-à-vis* burden of proof in discrimination cases, enforcement of rights faces serious obstacles.

2.4 Out-of-court alternatives

Recent legislative changes include mediation and specific reconciliation procedures in labor disputes. In 2004 the Parliament of Serbia adopted the Code of Mediation in Labor Disputes. The Agency for Mediation of Labor Dispute has, however, a very limited mandate and authority to handle such cases. In individual labor disputes, the Agency can intervene in only two types of cases: when a work contract has already been terminated, and in complaints involving the minimum wage requirement.¹⁵ These faster and less expensive procedures are not available for equal pay cases.

¹⁴ Article 24, the *Labor Code*.

¹⁵ Articles 7, 8, and 3, the *Mediation for Labor Disputes Act*, the *Official Gazette*, 125/04.

The system of legal aid in Serbia is fragmented and dysfunctional. Workers who consider themselves wronged have access to legal information and consultation, including issuance of initial writs (petitions or complaints) in municipal legal aid offices. To date, these provide the only resources for labor disputes, including cases involving the equal pay principle. Since, however, not all municipalities provide such legal services and available lawyers are not labor law specialists, the real support is provided by the trade unions.

The Code of Civil Procedure contains a provision related to pro bono representation for low income litigants. It provides that when a party is exempted from paying all court related costs, he/she can be granted pro bono legal representation only if it is necessary for the interest of that party.¹⁶ However, in practice this almost never happens. The government has recognized the importance of legal aid reform and has initiated the process of drafting legal aid legislation. A special focus needs to be given to labor disputes by the new mechanisms currently being established.

2.5 Means of informing employees of their rights to equal pay for work of equal value

Serbian legislation sets forth workers' right to be informed and express their opinions about important labor relations issues.¹⁷ Additionally, employers are legally obliged to inform employees about working conditions, organization of the work, performance, rights and duties arising from work, and legislation for worker protection.¹⁸

According to many experts, however, the implementation of these rights and duties are lacking *vis-à-vis* equal pay and discrimination itself. For instance, neither the Inspectorate, nor the Ministry of Labor collects information on cases regarding equal pay and other forms of discrimination. To date, Serbia's two biggest trade unions have not handled such a claim. This leads to the conclusion that neither workers and employers, nor the institutions obliged to monitor implementation of the equal pay principle are fully aware of their existence.

Professionals and activists affiliated with Serbia's two biggest trade unions often assert that workers are rarely informed about their rights, especially legal protections against discrimination.¹⁹ Trade union legal experts claim that very few cases of violation of the

¹⁶ Articles 165-168, *The Code of Civil Procedure*, the *Official Gazette of RS*, No.58/2004.

¹⁷ Article 13, the *Labor Code*.

¹⁸ Article 16, the *Labor Code*.

¹⁹ "Mass media, society, employers, as well as trade unions, pay little attention to problems of discrimination," said a trade union lawyer anonymously during one of our interviews.

equal pay principle are ever identified. The issue is especially visible in relations to low skilled jobs.

2.6 Role of trade unions

Offices of the two biggest trade unions – Nezavisnost (Independence) and Savez Samostalnih Sindikata (Association of Independent Trade Unions) provide legal aid in labor disputes. For instance, the Association of Independent Trade Unions has about 60 places, and Independence has a women section – an SOS hotline for women who suffer sex based discrimination at the workplace. They offer free consultations and representation before court of law.

The General Collective Bargaining Code of Serbia, as an agreement between the government and the major trade unions, has no equal pay provisions. Serbia is currently in the midst of drafting a new collective bargaining agreement, and as of September 2005 previous agreements have become invalid. Women trade union activists assert that new collective bargaining agreements will provide for the equal pay principle.

SECTION 3 – Factual Background with Regard to the Principle of Equal Pay for Work of Equal Value: Related Research and Statistics

The labor market is still segregated by sex. Women still constitute a majority in public sector jobs like health, social welfare, and education. But their ratio is very low in areas like civil engineering, or, say, production of gas and energy. Further, there are only 44 female experts for every 100 male counterpart, yet 112 women are trainees and technicians. In 2002, women accounted for 20 percent of the membership of all political/legislative, 30 percent of all government officials, and 28 percent of leaders at local level.²⁰ In 2004 11 percent of the Serbian Parliament's 250 MPs were women. In a total of 14 cabinet ministries, one woman served as a Cabinet minister (Minister for Agriculture).

Unequal access to jobs, especially well paid jobs and positions, the double burden on women concerning work and family life, among other factors, give rise to a general inequality of pay between men and women. The findings of the Voice of Difference

²⁰ Ibid.

research “Competitiveness of Women with Children in the Labor Market in Serbia”²¹ showed a more detailed picture of inequality in pay.

The distribution according to monthly earnings in regular jobs shows that most women (19 percent) among the total number interviewed had monthly earnings of CSD 7,500–CSD 9,000²² (approximately EUR 125–EUR 150), most men (27 percent) had monthly earnings of CSD 10,500 to CSD 15,000 (EUR 175–EUR 250). A comparison of wives’ and husbands’ regular monthly income levels shows that the number of women whose husbands earn more is greatest in relation to women in the lowest income brackets.

Comparing labor force data from a survey conducted by the Federal Bureau for Statistics in September 2001 and survey data published by the Voice of Difference in March 2002 indicates that the correlation between women’s and men’s earnings is approximately the same. By comparing average incomes from women’s and men’s regular jobs,²³ it is clear that women’s income is some 20 percent lower, which is approximately the same as the percentage of average income from regular job obtained from the Voice of Difference’s survey.²⁴

State statistics with gender segregated data have recently been significantly improved. They track cross-sector representation of male and female employees and their pay. For instance, the ratio between women and men who work in the education sector is 189 (women) to 100 (men). Here women earn 124 percent of men’s pay. The discrepancy in the social security and health sector is much bigger: there are 328 women employed for every 100 men; here the women earn 89 percent of men’s salary. Further, there are 16 women for every 100 men in the civil engineering industry, where they earn 106 percent of men’s pay,²⁵ versus 74 percent in the metallurgy industry. This data reveals that horizontal and vertical job segregation between men and women still persists in Serbia’s labor market.

The most recent publicly known case of unequal pay in Serbia is from IMPOL SEVAL. IMPOL SEVAL is a factory in Sevojno, which is in the midst of privatization

²¹ Dinki, M., Jovanovic, I., Momčilović, J., “The Position of Women in the Labor Market in Serbia – Analysis” in *Competitiveness of Women with Children in the Labor Market*. 2002. Belgrade: Voice of Difference.

²² At that time, the CSD – EUR exchange rate was approximately 60:1 (CSD 60 for EUR 1).

²³ According to the survey by the Federal Bureau for Statistics, this includes regular pay, company-paid meals, trade union assistance, and other income from employment.

²⁴ Cf., Voice of Difference. *Competitiveness of Women with Children on the Labor Market in Serbia*. 2002. Belgrade: Voice of Difference.

²⁵ The Statistical Office of the Republic of Serbia, *Women and Men in Serbia*. 2005. The Statistical Office of the Republic of Serbia, 44.

and planned staff downsizing. The Board decided to pay compensation—as an incentive—to employees who would leave the company voluntarily. However, compensation was EUR 50 less for female versus their male counterparts for each working year spent at the company.²⁶ Female workers lodged a complaint against this decision to the Labor Inspectorate, on the ground of discrimination based on violation of the equal pay principle. The Inspectorate first ruled that the Board’s decision is legitimate. The women employees concerned stepped up public pressure, organizing a media campaign.²⁷ Finally, the Minister of Labor declared that this practice was discriminatory. However, at this stage the Labor Inspector’s ruling can only be challenged in court of law. In the meantime, the Board has decided to reduce the incentive payment for male workers thereby making it equal to that offered to women. This case is not, unfortunately, unique—except for the publicity—in respect of unequal pay and treatment.

SECTION 4 – Conclusions. Areas of Concern. Recommendations

4.1 Conclusions

- Equal pay for equal work or work of equal value is one of the newest principles in Serbian labor legislation and its violation has not been recognized as sex-based discrimination. This leaves room for institutional discretion in monitoring and protecting this principle, thereby also giving rise to equivocal, disparate, and weak implementation. Bearing in mind the potential impact of the equal pay principle in fighting discriminatory practices in Serbia, it has certainly not reached its full potential.
- Mechanisms for protecting the equal pay principle are weak, expensive, and inefficient. A number of procedures are available: administrative procedure before the Labor Inspectorate, court misdemeanor lawsuits, as well as classical legal action to claim damages before civil courts. But neither alternative is applicable in cases involving the equal pay principle, nor is legal aid for such cases guaranteed by the state.
- State institutions responsible for implementing the Labor Code, as well as to safeguard the principles set forth by Serbian legislation do not systematically

²⁶ While legitimizing differences in payment, the Board and management used arguments of average pay and different levels of contribution to social insurance schemes for men and women.

²⁷ They reached out to the women’s section of trade unions, women’s NGOs, the Council for Gender Equality of the Ministry of Labor, Social Policy, the Ministry itself, and also to the Gender Equality Committee of Parliament.

detect and collect cases of unequal pay, nor any other type of discrimination. Consequently there is no information on the contributing factors to unequal pay, forms of inequality in this regard, and state responses to it.

- It is important to stress recent improvement of data collection by the Employment Agency as well as the Statistical Office of the Republic of Serbia. These initiatives are welcome, and reveal many important general characteristics of the unequal status and treatment of women in the labor market, among them job segregation.
- According to predominantly trade union resources, experts' opinions and professionals in the institutions that should monitor implementation of these principles, workers are purely informed on equal pay principles. This also helps to explain the scarcity of cases based on violation of the equal pay principle.

4.2 Areas of Concern

- On average, women in Serbia still earn around 20 percent less than men.
- The labor market is still segregated horizontally and vertically, based on sex.
- State protection with regard to the principle of equal pay is weak and fragmented.
- No data is available on discrimination regarding equal payment.
- The implementation of the equal pay principle is not at the required level, because of the lack of awareness, and weak state protections.

4.3 Recommendations

- The equal pay principle should be defined in the context and language of antidiscrimination. It should specifically refer to grounds like sex, race, etc.
- It is important to include alternative mechanisms for implementing and protecting the equal pay principle, including mediation via the Mediation Agency for Labor Disputes. Additionally, the state should provide legal aid, at least in respect of information and counseling, in all labor dispute cases. Representation of employees should be available on a pro bono basis for those in need, and, if possible, in cases of severe forms of discrimination. Trade unions should play a greater role in mediation as well as in providing legal aid.
- The Labor Inspectorate and the Ministry for Employment, Labor, and Social Policy should establish a system for detecting, collecting, and analyzing all

cases of unequal pay. This would help formulate policies to prevent unequal pay between men and women by targeting internal and external factors (job classification system, promotion, employment, vocational and educational trainings, etc.) of this pay-related discrimination.

- Data of a partially segregated market shows the systematic nature of discrimination against women in the labor market, and explains to some extent the inequality of pay between men and women. To remedy this issue requires a systematic and coordinated government and societal approach. This phenomenon should be further explored and analyzed, before taking any action.
- Public education campaigns are needed to inform employees about their rights in respect of the equal pay principle. At the same time professionals and officials of state institutions should be trained and educated in all aspects of this kind of inequality. Trade union resources should be harnessed to their full extent in this area.

EQUAL TREATMENT AT THE WORKPLACE: EMPLOYMENT, TRAINING AND WORKING CONDITIONS

Council Directive 76/207/EEC of February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion and working conditions. Amended in September 23, 2002 through **Directive 2002/73/EEC** of the European Parliament and of the Council.

SECTION 1 – National Legal Framework Concerning the Principle of Equal Treatment for Women and Men

1.1 General provisions

The 1990 Constitution of the Republic of Serbia defines Serbia as a social justice state,²⁸ and provides that citizens have rights and duties, and they all have equal protection before the state and other bodies irrespective of sex and numerous other grounds.²⁹

In the area of work and labor rights, the Serbian Constitution guarantees right to work, freedom of work, free choice of profession and employment, and participation in management.³⁰ Additionally, in the following paragraph it stipulates that “*Everyone shall have equal access to jobs and positions.*”

Serbia’s Charter of Human and Minority Rights³¹ incorporates a sophisticated prohibition of discrimination, covering direct and indirect discrimination, and for the first time affirmative action measures.³² The Charter clearly follows the provisions of

²⁸ Article 1, the *Constitution of the Republic of Serbia*, the *Official Gazette*, No.1/90.

²⁹ Article 13, the *Constitution*.

³⁰ Article 35, paragraphs 1-3, the *Constitution*.

³¹ Article 3, *Charter of Human and Minority Rights of Serbia and Montenegro*, the *Official Gazette SCG*, 6/2003.

³² It provides that “Everybody shall be equal before the law. Everyone shall have equal protection before the law, without discrimination. Direct and indirect discrimination shall be prohibited, irrespective of the grounds, including race, color, sex, nationality, social background, birth or similar status, religious denomination, political or other affiliation, economic status, culture, language, age, or mental or physical disability.” It is permissible to institute temporary special measures to achieve equality, special protections for individuals or groups who are in an unequal situation, so they be able to fully enjoy all human and minority rights under the equal opportunities principle. Such special measures can only be in place until equality objectives have been met.

relevant international treaties and international law.³³ Additionally, all international norms Serbia has espoused by ratifying international agreements override any provisions in Serbian national legislation that are in contravention thereof.³⁴

A comparison of all antidiscrimination provisions on the books in Serbia will show that the country's new Labor Code sets forth the broadest prohibition: "Discrimination based on sex, direct and indirect, shall be prohibited against individuals who are seeking a job, as well as against employees."³⁵ The Labor Code defines not only grounds of discrimination, direct and indirect discrimination, but it also develops the concept of legitimate discrimination.³⁶

The Employment and Social Insurance in Unemployment Act is the first piece of national legislation in Serbia's legal order that has adopted affirmative action for women in the labor market. The Act incorporates the principle of equal access, treatment, and prohibition of discrimination in employment.³⁷ In contrast with all other legal norms in Serbia, the Employment and Social Insurance in Unemployment Act specifically provides for equal treatment between men and women. It is one thing, however, to formally acknowledge the importance of this principle, and quite another

³³ Human and minority rights guaranteed by universally accepted rules of international law, and international treaties in force in the State Union are guaranteed by this Charter and will be directly applicable. Article 7, the *Charter of Human and Minority Rights*.

³⁴ Article 16, the *Constitutional Charter of the State Union*, the *Official Gazette SCG*, No.1/2003.

³⁵ The Code lists the other grounds of discriminations: birth, language, race, skin color, age, pregnancy, health, or disability, nationality, religious denomination, marital and family status, sexual orientation, political or other belief, social background, economic status, membership in political parties, unions, or some other personal characteristic. Article 18, the *Labor Code*.

³⁶ "Differentiation, exclusion or prioritization for a certain job shall not be considered discriminating when the nature of the work is such or the work is done under such circumstances that qualities relating to some of the grounds referred to in Article 18 of this act of law represent the true and decisive requirement for performance of such a job, and that the purpose aimed at is justified."

³⁷ "(...) job applicants are guaranteed equal access to jobs, and equal treatment in the hiring procedure, irrespectively of her/his, race, color of skin, nationality, ethnicity, language, religious denomination, political or other opinion, and belief, social background, and heritage, economic status, marital or family status, family obligation, age, membership in union, association or political organization, or any other factor that can be basis for discrimination, or unequal treatment against individuals among existing differences that are irrelevant for operating particular job performance." Equal access to jobs and equal treatment between men and women in the hiring process is guaranteed under Article 8, the *Employment and Social Insurance in Unemployment Act*, the *Official Gazette of RS*, No.71/2003.

to what actually happens in practice. It is very hard to keep records of interviews and employment practices in either the private or the public sector. Further, protections for those who consider themselves wronged in the course of the hiring process are weak. The Employment and Social Insurance in Unemployment Act requires,³⁸ similarly to the Labor Code, that the wronged parties to take their case to court of law, where it is hard to substantiate their claims for the reasons mentioned in conjunction with the Labor Code.

Civil society groups and experts in Serbia recently have started the process of drafting two crucially important pieces of legislation regarding equal treatment: the Antidiscrimination Act and the Gender Equality Act. Yet, neither has entered the Parliamentary process and it is hard to predict when political debate over them will commence. The draft Gender Equality Act covers all important aspects of discrimination: in labor relations, social policy, and public life. It provides a basis for institutional change and new procedures/lawsuits on the ground of discrimination before civil courts.

Serbia's present Constitution does not currently underpin the country's legal order. The process of drafting a new Constitution is thus pivotal to a new kind of governance and political equilibrium. The Charter of Human Rights has set new standards for legislation *vis-à-vis* the equality issue. The future of the State Union of Serbia and Montenegro still, however, remains uncertain. Consequently, it is of considerable urgency that Serbia adopt two key pieces of antidiscrimination legislation: the Antidiscrimination Code and the Gender Equality Act. It also holds true, that a new Constitution for Serbia would redefine the country's political and legal framework.

1.2 The concept of discrimination on the ground of sex: definitions and legal sanctions

The Labor Code³⁹ defines direct discrimination as *any act or behavior caused by some of the grounds set forth in article 18 of the Labor Code by which an individual seeking a job, or an employee, is placed in a disadvantaged position compared with others in the same or a similar situation. Indirect discrimination, under this act of law, occurs when an apparently neutral provision, criterion, or practice places or could place an individual at disadvantage compared with others on grounds of characteristic traits, status, belief, or affiliation specified in Article 18.*

³⁸ Article 21, the *Employment and Social Insurance in Unemployment Act*.

³⁹ Article 19, the *Labor Code*.

This antidiscrimination provision is applicable regarding: *conditions of employment and choices of jobseekers to undertake particular duties, conditions at the workplace, and all rights deriving from the employment relationship, education, training, vocational training, promotion, and termination of the work contract.*⁴⁰ All provisions of the work contract in contravention of the antidiscrimination norm will be voided.⁴¹

The Labor Code specifically refers to marital and family status in its enumeration of grounds of discrimination. Yet there exists no legal declaration of equality between men and women, and no specific legal link between the principle of equality between the sexes with discrimination based on pregnancy and motherhood. In Serbia the latter are regarded as a basis for special protective measures, and not as potential grounds for claims of sex based discrimination.

1.3 Legal status of harassment and sexual harassment

Serbia's 2004 Labor Code sets forth legal protections against sexual harassment at the workplace. The former Criminal Code classified sexual violence as a specific criminal offense, but recent changes thereof have removed the criminal status of the offense.⁴²

The Labor Code states that harassment and sexual harassment is prohibited. *Harassment is, under this act of law, all unwanted behavior arising from grounds defined in Article 18 (antidiscrimination provision) with the purpose or effect of violation of dignity of the individual seeking a job, or of an employee, and which causes fear, or creates a hostile, humiliating and threatening environment.*⁴³

It must be noted that the Labor Code does not define sexual harassment as sex-based discrimination and is not confined to discrimination only between men and women. On the other hand, the Code does incorporate harassment and sexual harassment as prohibited behavior, but sets forth only vague protective mechanisms, which do not include the efficient and less costly internal complaints procedure. Obviously, it is also

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² The new provisions in force can be interpreted in the context of harassment and sexual harassment through definitions of intercourse by abusing power (Article 181, the *Criminal Code*), and prohibited sexual acts (Article 182). On the other hand, there is a new, broader definition of "Abuse and Maltreatment" that could cover serious aspects of sexual harassment (Article 137). Thus, instead of improving a weak protection against sexual violence, lawmakers have decriminalized and integrated it into neutral provisions of other types of crime.

⁴³ Article 21, the *Labor Code*.

necessary to shift the burden of proof from victim to perpetrator. Importantly, Serbian legislation has failed to prohibit the most severe, *quid pro quo*, form of harassment.⁴⁴

Sexual harassment cases reported to the women's sections of trade unions have shown that criminal procedure is too complicated, long, and expensive to be pursued by private individuals. The civil litigation option introduced by the 2004 Labor Code is still very new and not yet well known among employees or employers.

SECTION 2 – Implementation of the Principle of Equal Treatment for Women and Men: Legal Foundations and Institutional Structures

2.1 General presentation

The legal foundations for prohibition of discrimination are broad-based, solid, and applicable to both the public and private sector. The Labor Code theoretically protects employees from discrimination in all aspects of labor relations, but in the absence of effective implementation mechanisms enforcement of its provisions is well-nigh impossible.

Further, although the antidiscrimination clauses of the Labor Code can be interpreted as applicable to job advertisements, that is, prohibiting the discriminatory practice of seeking an employee of a specific sex, in reality discriminatory job advertisements abound.

The Code is more specific regarding discrimination. It stipulates that job applicants must submit all documentation and other evidence to verify their qualifications for a specific job. By contrast, the employer may not ask an applicant for information regarding personal matters such as family or marital status, family planning, or other evidence and documents not directly relevant to the performance of a specific job the work contract is being concluded for.⁴⁵ Under the same provision the employer may not make employment conditional on the job applicant's signing of an unconditional

⁴⁴ "Something for something" – making positive or negative treatment dependent on compliance with demanded conduct of a sexual nature.

⁴⁵ Article 26, the *Labor Code*.

waiver *vis-à-vis* termination of the work contract.⁴⁶ However, in reality job applicants' privacy is often unlawfully violated, but difficult to prove.⁴⁷

2.2 Available legal procedures in cases involving the violation of the principle of equal treatment for women and men

The legal penalty in lawsuits for violation of Criminal Code provisions on equality between women and men is imprisonment of up to three years. In more serious cases (where, for instance, a public official is the perpetrator in the course of his/her duties) the legal penalty can be up to five years imprisonment.⁴⁸

There are several options for civil litigation to seek legal redress for discrimination or unequal treatment. A case in point is to file suit for damages incurred by unequal treatment. In court the employee has to substantiate his/her claim that he/she has been wronged. In normal civil suits under the Obligations Act⁴⁹ the petitioner/plaintiff bears the burden of proof. Compensation is set in the amount of the loss incurred. However, even this limited provision makes it impossible for a job seeker to claim damages through the court system, since litigation is prohibitively expensive and government or other sources of legal aid are not available to all.

A company or responsible person found guilty of discrimination is punishable under misdemeanor procedures. Labor legislation stipulates the legal penalties therefor.⁵⁰

Another option for redress is to report a case of discrimination to the Labor Inspectorate. Once again, however, the person discriminated against must substantiate

⁴⁶ This particular article has been driven by the discriminatory practice that many face. Some women have reported that they sign voluntary termination clauses in addition to the original one, with the mutual understanding that if she gets pregnant she will leave/lose her job. It is one of the most often reported cases—the contract with a voluntary termination clause signed before the actual work contract is signed. Many women's groups and trade unions have received such reports, but only a very few take legal action and come forward in public. A high rate of unemployment, insecure jobs, the absence of clear and transparent labor rights in the labor market, and lack of meticulous inspection of the enforcement of labor legislation, leaves no room for individual protection and struggle.

⁴⁷ On the other hand, the Act does try to cover the right to privacy in as much detail as possible. The employee has the right to see all documentation with his/her personal data that are kept with the employer and the right to request elimination of data that is irrelevant to the job in question, as well as documentation containing untruthful information.

⁴⁸ Article 128, the *Criminal Code*.

⁴⁹ Articles 154-160, the *Obligations Act*, the *Official Gazette SRY*, 31/93.

⁵⁰ More on fines and penalty measures can be found on the section on "Equal Pay."

the fact of discrimination. To date, no information has been collected of complaints against discrimination lodged with Labor Offices.

In the event of termination of an individual work contract, employees cannot turn to the new Agency for Mediation established under the Mediation for Labor Disputes Act. The Agency is not yet operational, so the effectiveness of this new institutional mechanism remains to be seen.

Serbia's labor legislation requires that the parties themselves cover the full cost of litigation.⁵¹

Trade union potential to provide legal aid, to negotiate and take active role in the individual mediation process should not be underestimated. However, besides providing legal aid, trade unions can only take an active role in litigation if they claim and prove legal interest.⁵² This condition originates from general provisions of civil procedure, and affects all procedures not only in cases of discrimination but, likewise, all natural persons and legal entities, not just trade unions. The Labor Code also, however, sets forth grounds for participation and involvement of employee representatives, including trade unions, to take an active role in *assessing the right to associate, participate in collective bargaining negotiations, mediation of collective or individual disputes, consultancy, informing and expressing their views*.⁵³ This leaves the door open for trade unions to represent, together with an employee, a case involving discrimination not only before court of law, but also in internal procedures.

2.3 Protective measures with regard to women's participation in the labor market

The Labor Code protects pregnant women and parents on parental leave against termination of the work contract. An employee may not be dismissed during pregnancy, maternity leave, absence for childcare, or special care of the child.⁵⁴ An employee a nonpermanent work contract may have his/her work contract terminated upon expiry thereof.⁵⁵

⁵¹ Article 14, the *Mediation of Labor Disputes Act*.

⁵² Article 208, the *Code of Civil Procedure*. On the other hand, private individuals and legal entities could be parties to litigation pursuant to Article 73 of the *Code of Civil Procedure*.

⁵³ Article 13, paragraph 1, the *Labor Code*.

⁵⁴ Article 187, the *Labor Code*.

⁵⁵ *Ibid.*

Serbia's national legislation provides no other job protections for women with small children. Women are not entitled to their old job or an equivalent position after returning from maternity leave, nor are they entitled to benefit from any improvements in working conditions made during her absence from work. In the absence any legal guarantees to return to their former employment the situation of the working women after pregnancy/parental leave is quite precarious.⁵⁶

2.4 Prohibition of dismissal

The Labor Code offers general protection against dismissal or other forms of retribution for trade union or other association membership involved in the collective bargaining process, for participation in mediation of collective or individual disputes, consultation, and for informing others or expressing views on important labor issues. The Labor Act provides that *an employee or his/her representative may not be called to account, or placed in detrimental working conditions for pursuing the aforementioned lawful activities.*⁵⁷

2.5 Women's and men's jobs

Although Serbian labor legislation does not specifically classify occupations into men's and women's jobs, it would be important to monitor a new provision setting forth the concept of legitimate discrimination. The new standard is that "the nature of the job or working conditions is such that specific characteristics of men and women would be an objective and determining factor." It would be useful to see if and how this new standard will impact pay, including the gender pay gap.

SECTION 3 – Gender Equality Bodies

Since 2002, equal treatment bodies have been established on the local, regional and national level. Some have state institution prerogatives, and are relatively stable and sustainable in an unstable political environment. Additionally, over 40 individuals or bodies operate at local government level as gender focal points originating from a 2002 Organization for Security and Co-Operation in Europe (OSCE) program, as well as councils and committees within local legislative bodies since 2004.

⁵⁶ Article 179, the *Labor Code*.

⁵⁷ Article 13, the *Labor Code*.

Those with broad authority to promote and monitor equality are the Secretariat for Labor, Employment, and Equality between Men and Women on the regional level, and the Parliamentarian Committee for Equality between Men and Women, and the governmental Council for Equality between Men and Women nationwide.

Based in Vojvodina, the Secretariat for Labor, Employment, and Equality between Men and Women has the mandate to observe and initiate new policies regarding equality between men and women. This was the first state/government mechanism with responsibility to incorporate gender equality criteria into Vojvodina's public policy, especially its social policy. The Secretariat itself determines whether and to what extent gender equality in Vojvodina would be a part of its public policy focus. In recent years, especially when it was the only gender equality mechanism in the entire country, many groups and national and international organizations used this open and effective channel of communication to get the topic of gender equality onto the public agenda.

In 2003 the Government of Serbia established the Council for Equality between Men and Women as an intergovernmental mechanism with a mandate defined via a Government Decision signed by the prime minister.⁵⁸

⁵⁸ The Council for Equality should

1) monitor and institute measures for advancing policies for equality achievement as well as intergovernmental collaboration;

2) enforce compliance of national laws with international conventions on women's human rights;

3) monitor and analyze implementation of laws and ratified international treaties against sex based discrimination and suggest measures for their realization;

4) make initiatives for implementation of short-term measures that contribute to achievement of equality;

5) monitor implementing of equality policies and estimate their impact on equality objectives and report back to the government;

6) launch initiatives to accumulate statistical data and commence statistical programs that will allow access to equal treatment of both sexes;

7) monitor data on representation of each sex in elected and appointed positions, and inform the government thereof;

8) monitor and analyze selection criteria in various election and appointments procedures involving public office and positions, and establish procedures to overcome obstacles that negatively impact the selection and appointments of the less represented sex;

9) initiate and support a program of vocational training and education of employees in state institutions with the aim to promote equality between sexes;

10) *take into consideration and initiate programs and measures for supporting and training women to make them ready to participate in public and political life;*

11) take into consideration other issues related to achievement of gender equality.

Decision to Establish a Council for Equality between Men and Women, the Official Gazette, Nos.13/2003, 83/2004, and 3/2005.

The Council comprises representatives of the Ministry of Sport and Education, the Ministry of Finance, the Ministry of Interior, the Ministry of Labor, Employment and Social Policy, the Ministry of Culture and Information, and the Ministry of Local Self-Government, as well as renowned experts and representatives of organizations specializing in gender equality issues. The government appoints Council members, and the administrative and expert/professional support is provided by the Ministry of Labor, Employment, and Social Policy. The Minister for Labor, Employment, and Social Policy heads the Council as President. It has 18 members, 9 from ministries, and other governmental bodies, 5 experts, and 4 NGO representatives.⁵⁹

The Council is neither perceived nor established as independent, decision making body. It has no guaranteed funding or authority that would render Council decisions and findings binding in any respect. To date, the only power and support that the Council has been able to muster was media attention and support by women's organizations and other civic groups, and professional associations. Despite its meager powers the Council's potential strengths have not been fully exploited. In a new development and after nearly two years of volunteer work by Council members, in the year 2006 the Council expects to receive government funding for the first time to the tune of approximately EUR 30,000.

The Committee for Equality between Men and Women wields substantial influence on public policy. It was established in 2004 by the Parliamentary Rulebook⁶⁰ as one of 30 Committees in the Serbian Parliament.⁶¹ *Comprising 15 members, Committee evaluates draft/proposed legislation that promote gender equality between men and women. It also monitors policies already in effect as well as compliance with acts of law and other measures adopted by the government, and other state bodies and officials accountable to Parliament.*⁶²

⁵⁹ *Decision to Appoint Members of the Council for Equality between Men and Women*, the *Official Gazette*, No.98/04.

⁶⁰ Article 40, the *Rulebook of Parliament*, the *Official Gazette of RS*, No.53/05.

⁶¹ Parliament decided to form committees to assess and analyze issues arising from the power of Parliament, to initiate legislation, as well as to monitor the government in framing and implementing policies, in the area of concern of each committee. Once established, the committee is allocated the appropriate funding.

⁶² Article 71, the *Rulebook of Parliament*.

The Committee does not possess decision making authority yet, located in Parliament and connected with other institutions, it is the closest to legislative power. Its effective lobbying has recently translated into major legislative change.⁶³

All of Serbia's gender equality bodies register individuals' requests and claims related to discrimination, but none of them have mandate to deal with individual cases.

On the regional level, the Council and the Secretariat have come forth with initiatives to train and educate officials who are or would be engaged in the gender equality monitoring and consequently mainstreaming.

Since Serbia established the institution of the Ombudsman in 2005, expectations are that it would handle individual cases of discrimination. No Ombudsman has yet been appointed and it is likewise not yet known when or how his/her office and organization will be set up.⁶⁴

SECTION 4 – Factual Background with Regard to the Principle of Equal Treatment for Women and Men: Related Research and Statistics

4.1 Research and statistics on women's access to and presence in the labor market

New governmental policies are built on the principle of individual initiative, active measures for employment, competitiveness of the labor force, and protection for vulnerable groups, including women. However, research data shows that the ratio of women jobseekers is still far higher than that of those who actually find employment. State statistics show that in August 2005 women accounted for 54 percent of the unemployed. Thus, even though women are more active in looking for a job, they still account for the majority of unemployed.⁶⁵ In the first five months of this year, women accounted for 46.5 percent of those who were able to find a job.

⁶³ For example, initial efforts towards enacting an *Antidiscrimination Act* and a *Gender Equality Act* came from this forum. Changes in the *Criminal Code* to criminalize domestic violence, the *Family Code* to grant restraining orders for victims of domestic violence, and to give certain rights to women who give birth, etc., are some examples of positive collaboration between the Committee, the Council, and women's rights organizations.

⁶⁴ Article 6 of the *Ombudsman Act* provides that particular focus must be given to specialization of knowledge and authority in the area of children's rights, gender equality, and rights of people with disabilities, the *Official Gazette of RS*, No.79/05.

⁶⁵ Monthly report of the National Employment Agency, September 2005.

Although in a very limited manner, the Employment and Social Security in the Cases of Unemployment Code specifically sets forth grounds for affirmative action *vis-à-vis* certain disadvantaged groups, including women. Affirmative action is introduced by Article 31 in the section on active employment policies. This constitutes a new strategy to bolster employment in Serbia. Active measures need to be incorporated into the programs of active employment policies, with due attention to women's disproportionate unemployment levels.⁶⁶

Article 31 of the Employment Relationship Code⁶⁷ allows for gender equality to be assessed in all activities offered by active employment policies. By contrast, it is not clear how "excessive unemployment" of female workers will be interpreted in practice. It would be more effective to set this standard by other subcategories, or in a percentage/ratio context.

Welcome developments in social policy and gender equality are the pilot programs of the National Employment Agency and reconstruction of its internal structure to enable monitoring of the gender impact of new measures in active employment policy, and issuing monthly reports on the status of (un)employment with more gender segregated data.

4.2 Women in the labor market after maternity leave

There is no statistical or other research regarding the factual situation on maternity leave. Professionals from social assistance agencies report that women tend to use the longest period for pregnancy and maternity leave—from one to two years paid maternity/parental leave. According to their records, there have been about 15 men per year who have taken parental leave since the new Labor Code entered into force.

⁶⁶ These are the following: encouraging measures for new hiring; employment of specific categories of workers (those seeking first jobs, looking for a job for a longer period of time, or those over 50 years of age); employment of refugees and displaced persons; employment of ethnic minorities with a higher ratio of unemployment; employment and professional rehabilitation of people with disabilities and individuals with reduced working capacity; employment of those who are dismissed because of layoffs; professional mobility; self-employment; employment on public work and other measures to improve employment.

⁶⁷ Article 31, paragraphs 5 and 6, the *Employment Relationship Code*.

4.3 Discriminatory job advertisements

There is no research on discriminatory advertising, which is still common practice in Serbia. The Media Act⁶⁸ prohibits hate speech, but not discriminatory advertisements. Under the hate speech provisions of the Act *publishing ideas, information, and opinions that contribute to discrimination, hate, or violence towards an individual or a group belonging to a particular race, religious denomination, nation, ethnic group, sex or sexual orientation, is prohibited.*

Persons who have been discriminated against thereunder, as well as any other organization and legal entity striving to protect human rights and freedoms, can bring a lawsuit before court of law. However, a journalist and editor will not be responsible if the petitioner fails to prove intention to discriminate on the defendant's part.⁶⁹

4.4 Sexual harassment

There is no government or NGO research on sexual harassment. Resources are thus fragmented and can only interpret the situation of specific groups of women. Data from the Students Union of Serbia shows that only a small minority of both male and female students are aware of cases of sexual harassment at their own schools, and at the University of Nis as much as 40 percent⁷⁰ of the student population claim the same.

A survey done by the group Voice of Difference showed an interesting pattern.

When asked whether any of their male colleagues had ever made *inappropriate jokes* or *inappropriate comments* related to sex, the majority of women (55 percent) answered in the affirmative.⁷¹ Respondents experienced *comments and whistling* on account of their physical appearance or manner of dress in 30 percent of cases.⁷² In 11 percent of cases

⁶⁸ Article 38, the *Media Act*, the *Official Gazette*, No.43/2003, 61/2005.

⁶⁹ *Ibid.*, Article 40.

⁷⁰ Research done in 2004 by the Serbian Student Union. *Economist Magazin*, November 15, 2004.

⁷¹ The majority of respondents who did mind these kind of jokes expressed their disapproval (55 percent). In doing so, most turned to their female colleagues (75 percent). In the majority of cases, the reaction to the inappropriate behavior did not lead to an improvement of the situation (57 percent), while among situations with a certain improvement it improved fully in a mere eight percent of cases.

⁷² One half stated that they minded this, but only 56 percent of them expressed disapproval. The majority of respondents turned to/confided in their female colleagues (65 percent). In half of the cases the situation improved, but of this number harassment ceased in only 10 percent of cases.

there was an *attempt to make physical contact against the will of the respondent*. Six percent of respondents reported *an invitation to dinner or a business trip by their bosses*, who simultaneously let them know that their decision would bring them either certain benefits or a loss of rights. An even smaller percentage of the respondents (4 percent) reported that their *bosses had “suggested” sexual intercourse* with them.

Respondents' answers that they knew other women who had experienced these things make it rather likely that this phenomenon is much more widespread, and that it is easier for the respondents to bear witness to somebody else's experience than to their own.⁷³

The issue of sexual harassment has been introduced into public discourse, has been identified as a topic of public discussion, but to date there has been no research.

SECTION 5 – Conclusions. Areas of Concern. Recommendations

5.1 Conclusions

- Sex-based discrimination, gender equality have not been defined substantively or conceptually in Serbia's progressive national legislation. It is mentioned, besides other forms of discrimination, in general antidiscrimination provisions mostly in the Charter for Human and Minority Rights, the Constitution, and legislation arising from the domain of social policy and employment. In the absence of a genuine enforcing mechanism for compliance with the Charter, however, protection against discrimination, including its sex-based variety, is vague and weak.
- Sexual harassment has not been defined as sex-based discrimination, its *quid pro quo* variety is not prohibited by Serbia's Labor Code, and no internal procedure is available to wronged persons to seek redress. Thus, the victims of sexual harassment can only seek protection from the court system for less severe behavior.
- Since all established bodies for gender equality possess the mandate to monitor and take the initiative at policy level, women who suffer discrimination turn to the Labor Inspectorate and to the court system for protection. Despite their energy and enthusiasm, gender equality bodies do not have the right to take up individual cases. In consequence, many victims choose not to seek protection.

⁷³ Lukic, M. and Jovanovic, S., *Unequal – at Work and at Home? Competitiveness of Women with Children in the Labor Market*. 2002. Belgrade.

- Despite recent improvements in the work of national statistical and employment agencies, the institutions that face and should resolve discrimination cases in the first place, predominantly the Labor Inspectorate, do not have any data to work with. This prevents any effective mechanisms and monitoring changes in the field of employment and social policy. In the same time it also constitutes a hindrance to any attempt at adopting gender mainstreaming policies.
- Different institutions are involved in monitoring and implementing antidiscrimination provisions and equality principles. Some are very new in the legal and political system; some have been assigned this duty as a new, additional role. There is a great need to launch extensive educational campaigns, as well as professional education and training for the institutions responsible for enforcement of these new mechanisms and laws, and monitor their impact.

5.2 Areas of concern

- Serbia has not yet enacted a Gender Equality Act, an Antidiscrimination Act, and discrimination based on sex has not yet been defined.
- Vague definitions and lack of knowledge *vis-à-vis* a basis for protection against discrimination leads to weak or random implementation of these principles.
- There is no effective state response to sexual harassment.
- Discrimination at workplace is still hidden since there are no statistics or systematically collected data on the most frequent or typical form thereof, causes and effects, etc.
- None of the equality bodies have taken action in individual cases, and none wield binding decision making authority.

5.3 Recommendations

- It is vitally important to adopt a Gender Equality Act and an Antidiscrimination Act as soon as possible and subsequently to a broad based, comprehensive, and open public debate. These acts of law should establish enforcing mechanisms and provide for ongoing research on the status of women in Serbia with resulting recommendations and suggestions that would be followed up. In the meantime it is important to stress the principles set in the Charter for Human and Minority Rights by using it in legal and political discourse.

- Sexual harassment should be defined as sex-based discrimination, including its *quid pro quo* variety. Protection against sexual harassment, except for *quid pro quo*, should begin inside the company, based on internal regulation and policy.
- State equality bodies should join forces with experts and civil society groups to set up, organize, and follow-up trainings for staff of major institutions that deal with sex-based discrimination. Such sessions should welcome the participation of legal professionals and high ranking governmental officials, thus strengthening the existing institutional framework, but anticipating the improvement thereof by constantly challenging the impact of their work.
- It is of the utmost importance to enable institutions that will execute and monitor implementation of equal opportunity legislation directly to collect data and make it available for further analysis or to the general public. At the same time, this should be a job requirement for people responsible for monitoring and overseeing compliance with legislation, especially *vis-à-vis* gender equality.

PREGNANCY AND MOTHERHOOD PROTECTION

1. **Council Directive 92/85/EEC of October 19, 1992** on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Measures and Improvements at Work of Pregnant Workers, Workers Who have Recently Given Birth, or are Breastfeeding

SECTION 1 – Legal and Conceptual Framework

The Labor Code of Serbia guarantees special protection for women “during pregnancy and childbirth,” and to parents on parental leave.⁷⁴ One such protection is that *hiring cannot be made conditional on the job applicant submitting to a pregnancy test, unless the job in question is associated with significant risk for the health of a woman and her child, as verified by competent medical authority.*⁷⁵ The Code also states that criteria for staff reduction cannot be based on temporary leave, or pregnancy, maternity leave, childcare and special care for child.⁷⁶

The Code does not refer to *breastfeeding women and workers who have recently given birth*. Its protective measures are focused on pregnancy and the entire duration of maternity and/or parental leave, without providing a legal option to reconcile work and family responsibilities.

SECTION 2 – Assessing the Risk to the Safety or Health of a Pregnant Worker and the Employer’s Obligations

2.1 Assessing the risk to the safety or health of a pregnant worker

In its general provision on workers’ rights, Serbia’s labor legislation decrees the protection of occupational health and safety.⁷⁷

⁷⁴ Article 12, the *Labor Code*.

⁷⁵ Article 26, paragraph 3, the *Labor Code*.

⁷⁶ Article 157, the *Labor Code*.

⁷⁷ Employees have a right to adequate pay, safety, and protection of life and health, health care, protection of personal integrity, and other rights related to illness, impairment, and loss of working ability and old age, financial benefits for temporary unemployment, and other forms of protection pursuant to act of law and general acts.

As regards the Labor Code's protections for pregnant workers or women who are breastfeeding it stipulates that *during pregnancy pregnant women may not work at jobs, based on the opinion of the competent medical institution, that could cause damage to their health and the health of their baby, especially when the job in question requires lifting of heavy weights or where they are exposed to radiation hazard, high temperatures and vibrations.*⁷⁸

Besides this provision – and contrary to the protection of employees under the age of 18 – here exists no list of concrete agents and working conditions under which pregnant workers and workers who are breastfeeding may under no circumstances be obliged to perform duties. It is up to the discretion of medical professionals to decide whether or not pregnant women are able to perform professional activities.

2.2 Employer's obligations

The Labor Code provides that *it is the employer's obligation to provide a safe working environment by creating all necessary conditions for occupational health and safety at the workplace in compliance with act of law, as well as to inform employees about working conditions, organization of work, and rights and duties arising from labor regulations and regulations governing protection of life and health at work.*⁷⁹

The new Health and Security at the Workplace Code does not set forth specific provisions *vis-à-vis* pregnant women, women who have recently given birth, or breastfeeding women. Consequently, the grounds for protection are vague and general. The Code makes only a single mention of pregnant women, providing for employers' obligation to guarantee occupational health and safety for pregnant women workers, employees under the age of 18, and employees with reduced work capacity, informing them in writing about the results of risk assessments at the workplace and about measures that should be taken to eliminate them.⁸⁰

Under the Labor Code, the employer is obliged to undertake all protective measures, but there is no mandatory obligation to transfer the pregnant woman or parent raising a young child to another, a more suitable position. The Labor Code does allow the employer to offer such an employee another, *equivalent* job⁸¹ or workplace within a maximum distance of 50 kilometers from her prior position, as well as a job with

⁷⁸ Article 89 of the *Labor Code*.

⁷⁹ Article 16, the *Labor Code*.

⁸⁰ Article 30, the *Health and Safety at the Workplace Act*, No.101/05.

⁸¹ An *equivalent* job is defined as one with comparable performance criteria, and requiring the same qualifications, albeit not necessarily at the same rate of pay.

another employer.⁸² There is no legal requirement in such an event either to obtain the employee's prior written consent, neither is there a legal prohibition of transfer to another workplace within a maximum distance of 50 kilometers for pregnant women or parents with young children. In the event that the employee does not want to accept such a transfer, this constitutes a legitimate ground for termination of the work contract.⁸³

The Labor Code offers limited, if any, protection for workers with family responsibilities, and no guaranteed right to the same job or an equivalent position for working women returning to work after maternity or parental leave.

SECTION 3 – Cases in Which Exposure is Prohibited for Pregnant Workers and Workers Who Have Recently Given Birth

For the first 32 weeks of their pregnancy, *employed women may not work overtime or night shifts, if, based on authoritative medical opinion, this work could endanger their health or the health of their baby. During the last 8 weeks of pregnancy, pregnant women may not work overtime or night shifts.*⁸⁴

Since Labor Code provisions for workers' occupational health and safety set forth no specific protections for pregnant women, any such protections are up to the employer's judgment, the practice of the medical institutions, and the Labor Inspectorate's monitoring activity.

SECTION 4 – Night Work

As mentioned above, night work is strictly prohibited during the last eight weeks of pregnancy. Night work is likewise prohibited during the first 32 weeks of pregnancy in the event that it is harmful—based on authoritative medical opinion—to the health of the mother and her child.

The Labor Code sets additional standards for parents with children up to 3 years of age, and single parents with children up to 7 years of age, or with disabled children. They may only work overtime or night shifts based on their prior written consent.⁸⁵

⁸² Article 171, the *Labor Code*.

⁸³ Article 179, the *Labor Code*.

⁸⁴ Article 90, the *Labor Code*.

⁸⁵ Article 91, the *Labor Code*.

SECTION 5 – Maternity Leave and Time Off for Prenatal Examination

An employed woman has the right to take a leave of absence on the ground of pregnancy and childbirth (maternity leave), and leave for childcare thereafter, for up to a total of 365 days for the first and second child, and for up to two years for the third and fourth child. Employed women have the right to commence their leave of absence 45 days before their due date at the earliest, and 28 days prior thereto on a mandatory basis. Maternity leave lasts for up to three months after childbirth.

After the expiry of maternity leave in conjunction with childbirth, childcare leave (parental leave) commences for up to 365 days for the first and second child, and an additional 365 days for the third and fourth child. The father of the child has the right to childcare leave under the same set of conditions, commencing after the first three months of maternity leave.⁸⁶ *During the period of maternity leave and absence from work on account of childcare, employed women and fathers have the right to benefit payments pursuant to Serbian legislation.*⁸⁷ Adoptive parents also enjoy all of these rights.⁸⁸

For the first year (in the case of first and second child) or 2 years for subsequent children, the state–social security and health insurance–provides a benefit equivalent to the employee’s full pay. The only requirement therefor is that the employee had to have been employed continuously for at least six months prior to childbirth.⁸⁹ If the pregnant worker was employed for between three and six months prior to childbirth, her benefit will be equivalent to 60 percent of her pay. If she had been employed for less than three months, her benefit will be 30 percent thereof.⁹⁰ In the cases of extended childcare leave of up to three years based on sickness of the child or mother, the benefit will be the equivalent of 65 percent of the mother’s pay for the second year. One of the parents, adoptive parents, foster parents, or guardians has a right to take unpaid childcare leave for up to the child’s third birthday.⁹¹

⁸⁶ Only if the mother deserts the child, dies, or is prevented from caring for the child due to other justified reasons.

⁸⁷ Article 94, the *Labor Code*. Foster parent, or custodial parent of a child younger than five years of age has the right to continuous leave of up to eight months.

⁸⁸ Article 99.

⁸⁹ Article 12, the *Financial Support for Families with Children Act*, the *Official Gazette*, No.16/02.

⁹⁰ *Ibid.*

⁹¹ Article 100.

SECTION 6 – Prohibition of Dismissal and Defense Rights

The Labor Code protects pregnant women and parents on parental leave against termination of the work contract. Employees may not be dismissed during pregnancy, maternity leave, absence for childcare, or special care of the child.⁹² Employees with nonpermanent work contracts can be dismissed after expiration of the contract term.⁹³

However, in the absence of a guarantee for working women to return to the same or a comparable job after childcare leave, and given the employer's right to terminate the work contract on the ground of inadequate work performance, knowledge, skills, and experience to get the job done,⁹⁴ workers are in an extremely precarious situation when they return to work after maternity and childcare leave.

As with cases of unequal treatment and other forms of discrimination, the labor inspector has the right to institute misdemeanor proceedings. Since, however, the Labor Inspectorate has not set up a system for filing complaints within its organization, it is hard to talk about real implementation of this principle.

Data shows that women do tend to take maternity leave up for up to the allowed maximum period of time (one or two years depending on the number of children). By contrast, social insurance professionals have reported that in Serbia around 15 men a year take up parental leave. There has not yet been a campaign to promote parental leave, and the State Agency for Social Protection says that money is the most important factor when men go on childcare leave. The larger the number of women earning higher pay, the more men take up parental leave. However, this hardly ever happens in Serbia today.

The new amendments to the Financial Support for Families with Children Act⁹⁵ set forth a “parenthood allowance” for women who are directly engaged in taking care of a newborn child—for the first, second, third, and fourth born child. The Act prevents mothers from access to this allowance if their parenthood rights have been terminated for previously born children. Fathers are entitled to this allowance only if the mother is dead, has abandoned the child, or by legitimate reasons is prevented from taking care of the child.⁹⁶

⁹² Article 187, the *Labor Code*.

⁹³ *Ibid.*

⁹⁴ Article 179, the *Labor Code*.

⁹⁵ Amendments to the *Financial Support for Families with Children Act*, the *Official Gazette*, No.115/05.

⁹⁶ *Ibid.*

There is no specific provision in Serbian labor or any other legislation for granting pregnant women time off for prenatal examinations.

Although lawmakers were particularly concerned about pregnant women and have adopted measures for extensive parental leave of up to three years, it must be noted that this policy also has its drawbacks. In the absence of legal protections for breastfeeding women, and women with very small babies that would allow working mothers to work part-time and reconcile professional and family life allow for the inference that it was more important for lawmakers to guarantee a long leave of absence from work than to provide job security and facilitate good work performance for working women with young children. Since the social network, especially the social care system is in ruins and parents with young/preschool age children struggle to find quality affordable childcare services, the new policies are indicative of an attitude that children are more the individual responsibility of their parents, predominantly their mothers, than a social priority in Serbia.

SECTION 7 – Conclusions. Areas of Concern. Recommendations

7.1 Conclusions

- Serbia's Labor Code does not set forth the terms *breastfeeding women* or *women who have recently given birth*. Women are compelled to choose between family and career, and there is no gradual return to the work. Additionally, the labor Code leaves pregnant women or those who have recently given birth without protection in some situations.
- The Labor Code, following a mostly "overprotective" pattern does not oblige the employer to transfer a pregnant worker to a suitable workplace, if the one she is working at turns out to be dangerous to her health. Consequently, once the decision has been made that carrying on with professional responsibilities could jeopardize the pregnant woman's health and that of her child, her immediate reaction is to go to maternity leave.
- The Labor Code has not specifically defined what kind of jobs or conditions pose a hazard to pregnant women or their children, thus leaving them in an unequal and uncertain position, at the mercy of a medical professional's discretion.
- Parental leave of up to two years for the third and subsequent child can lead to loss of connection with the world of work for the majority of women. Instead of operating a functional social care system, the state decided to make parenting an individual responsibility dependent on individual resources. The low ratio of men on parental leave is indicative of the economic and

professional handicaps women must bear. Further, this state of affairs sustains and perpetuates the social gender stereotype that women's role is predominantly in the home with her children.

- The Financial Support for Women with Children Act still sets forth a number of discriminatory provisions, requiring a mother to be directly involved in childcare. Additionally, it discriminates fathers by prohibiting their access to allowance, but at the same time not setting requirements for them to be "proper fathers."

7.2 Areas of concern

- The protection of pregnant women is inadequate while they are at work, and there are no policies regarding breastfeeding workers and those who have recently given birth to gradually return to work.
- There are no clear standards or classification of dangerous jobs for pregnant women, or their children.
- There is no requirement for the employer to transfer a pregnant woman to a suitable job in the event that her present one could be dangerous to her health or to the health of her child.
- Up to three years maternity/parental leave prevents—primarily—women from keeping abreast with professional development, while sending the message that children are women's individual responsibility.
- Discriminatory provisions of the Financial Support for Families with Children Code revive and strengthen inequality between women and men.

7.3 Recommendations

- It is important to put teeth into provisions aiming at reconciliation of work and family responsibilities and elimination of a "forced choice" between the two. Accordingly, there should be legal provisions for time off work for breastfeeding and part-time work should be available as a working woman with a young child of under one year of age reenters the work force. It is also vital that some of the legal measures governing pregnant working women's situation be changed, and for instance prohibit the employer's mandating a pregnant worker's transfer to a work location far from her home without her consent. Such a change would help keep pregnant women working as long as their medical condition allowed them to do so.

- The Labor Code should set forth the requirement that the employer try to find a suitable transfer for a pregnant worker, before she decides to take early maternity leave rather than accept an unsuitable job transfer.
- It is important to define in as much detail as possible the kind of jobs that pose a hazard to pregnant workers and their children, and then to consult professional medical opinion in complex and exceptional cases.
- The present system of two to three years of maternity/parental leave should be reconsidered and changed. The state should develop programs to bolster institutional and social care support for families with children to make raising children a responsibility for all.
- It is important to abolish discriminatory provisions in the Financial Support of Families with Children Code, thereby treating all children and parents by the same criteria.

PROTECTION OF SELF-EMPLOYED WOMEN DURING THEIR PREGNANCY AND MOTHERHOOD

Council Directive 86/613/EEC of December 11, 1986 on the application of the principle of equal treatment between women and men engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.

SECTION 1 – National Legal Framework on Self-Employment: General Provisions

The Labor Code does not specifically address the category of self-employed worker, but considers all working relationships equal. In providing therefor, it also incorporates an antidiscrimination clause. By contrast, the Retirement and Disability Pension Act and the Health Protection Act do make a distinction between a proprietor who is an employer and someone who works on their own, for and in his/her own business.

Under the Labor Code the employer is legally obliged to provide social insurance coverage to his/her employees, all of whom must be enrolled in such coverage irrespectively of the nature of the contractual relationship.⁹⁷

Serbia's social insurance legislation sets forth a specific definition of self-employment. Its Pension Act stipulates that the following must be enrolled in the country's mandatory retirement pension scheme: *employed persons, self-employed persons, and*

⁹⁷ Consequently, there is a specific requirement for employers to submit a photocopy of the application for mandatory social insurance within 15 days from signing the contract. Article 35, the *Labor Code*.

farmers.⁹⁸ The Act also defines categories of insured self-employed persons.⁹⁹ Separate provisions apply to farmers.¹⁰⁰

Under Serbian law, women and men still retire at different ages. The Retirement and Disability Pension Code of Serbia also contains a few discriminatory norms that give rise to gender inequality. These provisions directly contribute to unequal pay and lower retirement pensions for women.

SECTION 2 – Social Rights of Spouses of Self-Employed Workers

2.1 Formation of companies by spouses

To start a business the self-employed entrepreneur must register it while fulfilling all legal requirements therefore. There are no legal provisions that would prevent spouses from forming a company or make it more difficult for them to do so than for unmarried persons.¹⁰¹

2.2 Recognition of the work of spouses

The Labor Code speaks about different types of the employment, like, for instance, work off the employer's premises, including at home. Such work also needs to be performed under formal contract by the employee alone or together with the members

⁹⁸ Article 11, the *Retirement and Disability Pension Insurance Act*, the *Official Gazette of RS*, Nos.34/2003, 64/2994, and 84/2004.

⁹⁹ They are: Persons who pursue economic or other kinds of activity, unless they are not insured based on employment contract; Individuals who are founders or members of economic associations, who work in them, regardless of whether or not they are formally employed with this company; people who work under other kinds of work contracts, such as product contracts, authors' contracts, or other contract based on which they receive pay, and they are not insured based on other criteria; priests, and other church officials, if there is no other basis for insurance; people who stop to pursue actions based on self-employment, while they receive financial contribution based on the labor legislation. Article 12, the *Retirement and Disability Pension Insurance Act*.

¹⁰⁰ Insured people–farmers are individuals who work, according to the law, on the farm (farmers, members of their household, and members of a mixed household), if they are not insured employees, or self-employed workers, pensioners or people in education. Household means cohabitation of life, economic activities, and expenditure of the income realized by work of their members, regardless of blood kinship or other relationship. Articles 287-28, the *Retirement Pension Act*.

¹⁰¹ The *Registration of Economic Entities Act*, the *Official Gazette*, No.61/2005.

of his/her family.¹⁰² The Labor Code thus allows an employee to involve other people performing work, but does not acknowledge it as work. By contrast, some initiatives, including the draft of the Gender Equality Act recognize work done in home, as well as other kinds of to date invisible work done by women.¹⁰³

Most recent data shows that there are over half a million housewives (609,501) in Serbia,¹⁰⁴ whose access to the health care system is a pressing matter. It is still debatable whether Serbia has the economic and social clout to recognize housewives' right to a retirement pension, and thus put household work on a par with other working activities.

2.3 The rights of self-employed workers whose work activity is interrupted due to pregnancy and motherhood

Under the Retirement Pension Code one family member must be enrolled in the country's mandatory social insurance scheme, and then other family members can also sign up.¹⁰⁵ Further, anyone can join the voluntary scheme to extend their own rights or assure these rights to others.¹⁰⁶ This piece of legislation provides that family members, starting with spouses, have the right to a family retirement pension.

According to the Health Insurance Code, the right to health protection is guaranteed to – among others – employees, self-employed persons, rural workers/peasants, and agricultural workers.¹⁰⁷ *Health insurance covers employees' family members, and all other categories mentioned above. Agricultural workers constitute the only exceptions—under their*

¹⁰² Family members are: spouse, children, parents, brothers and sisters of the employee or his/her spouse. Article 43, the *Labor Code*.

¹⁰³ This working document provides that the unemployed person who is not enrolled in a health insurance scheme on another ground, would be insured on the ground of housekeeping and other related work (housekeeping, taking care of children and other family members, work on the farms etc.). The financial means therefor are allocated by Serbia's national budget. Article 15, the working *Draft Equality between Men and Women in Serbia Act*.

¹⁰⁴ Employment Agency Statistics, 2002 – “Gender and Activities.”

¹⁰⁵ Articles 15 and 16, the *Retirement Pension Code*.

¹⁰⁶ *Ibid.*, Article 16.

¹⁰⁷ Article 8, the *Health Insurance Code*, the *Official Gazette of RS*, Nos.18.92, 26/93, 25/96, 46/98, 55/99, 29/2001, 18/2002, and 18/2005.

insurance scheme all members of the household are covered.¹⁰⁸ The right to paid leave is granted for employed persons, owners or founders, but not self-employed persons. Paid leave is granted for protecting pregnancy and for taking care of a child or other family member in need of care.¹⁰⁹

The self-employed also, for the time being, receive a monthly benefit while on maternity/parental leave.¹¹⁰

SECTION 3 – Legal Means of Redress

The only legal means of redress available for cases involving access to social insurance or other rights arising from social policy measures is for the wronged person to first lodge a complaint through administrative channels with the Ministry of Labor, Employment, and Social Policy as the ultimate arbiter within the administrative process. Should this not produce a satisfactory outcome, the wronged person can decide to file suit in court of law. Court protection itself is limited: in an administrative dispute before court of law, the court's role is not to decide the case on the merits, but to test whether all administrative procedures have been duly followed. Nonetheless, the court can rule to return the case to the social insurance office for a second ruling on the same issue.

SECTION 4 – Related Research and Statistics

4.1 Social perception of self-employed women and men

According to 2003 data, in Serbia 430,000 people are self-employed, 180,000 of whom are women. In 2004, there were 163,197 self-employed women and 496,230 self-employed men, among a total of 659,427 registered self-employed persons.¹¹¹ By contrast, 154,630 – or the majority – out of 212,002 “assisting” members of households working informally, without work contracts, were women.¹¹²

¹⁰⁸ The *Health Insurance Code* defines members of family as following: husband or wife (marital partner), children born in marriage or out of wedlock, adopted children, parents, grandparents, step mother and father, brothers and sisters who are financially supported by the insured person. Article 9, the *Health Insurance Code*.

¹⁰⁹ Article 30, the *Health Insurance Code*.

¹¹⁰ Article 10, the *Financial Support for Families with Children Act*.

¹¹¹ The Employment Agency, August 2005.

¹¹² *Survey of the Labor Force in Serbia*. October 2004. Statistical Agency.

4.2 Research on women in agriculture

The latest data shows that there are around 1,300,000 registered agricultural workers, but no sex-segregated data is available therefore. Since the process of registering farms as individual households is still ongoing, it is hard to estimate how many women are already and will be employed. To date, they have mostly had health insurance, but not retirement pensions, unless of the family variety. One aim of the registration process is to make the social insurance system accessible to women. One area of research that has already commenced, albeit in a fragmentary manner, is the position of rural women. There are several groups working with women in agriculture initiating educational programs and training for would-be entrepreneurs in Serbia.

4.3 Research on the status and rights of self-employed women

No research has to date been done on the situation of self-employed women in Serbia. Consequently, it is hard to define, enumerate, and prioritize the issues they face. It is pivotal to start collecting and analyzing the appropriate information as the underpinning for appropriate public policies in this area.

SECTION 5 – Conclusions. Areas of Concern. Recommendations

5.1 Conclusions

- Serbia's Labor Code follows EU recommendations by introducing flexible types of employment, thus making it more accessible to different categories of people. Employment from home, supported by other family members, is one of them. There is no available data on the status of this "additional, cheap" working force in Serbia.
- There is a huge difference between the number of self-employed men and women—three times as many men than women are self-employed. In contrast, more than half of all family members contributing informally to work around the household are women.
- Rural women's and housewives' work has not been recognized and valued. They are still dependant on their spouses or other family members engaged in some type of employment.
- Access to social insurance schemes for poor families, including single parents, is extremely limited.

5.2 Areas of concern

- There is a discrepancy in the number of self-employed women versus men indicative of a pattern of patriarchal relations in and outside the family.
- The Retirement Code reinforces traditional values and bolsters gender inequality.
- No data is available on rural work, self-employment, and flexible types of employment, that is, “supporting family members.”

5.3 Recommendations

- A general and inclusive public discourse is necessary between state representatives and civil society groups on discriminatory provisions of the Serbian Retirement Code. It is important to open up public dialogue and thereby obtain an accurate and realistic idea of the state’s position and possibilities in this area. Reaching consensus among a majority of stakeholders would educate public opinion, but render all responsible *vis-à-vis* urgent issues in this particular aspect of overall reform.
- It is crucially important to monitor and make adjustments to the status of contributing family members, recognizing their right to social insurance coverage as soon as possible.
- Proactive measures are needed to help women entrepreneurs, and otherwise provide assistance to self-employment. Additionally, research is necessary to shed light on the causes and contributing factors to the low ratio of self-employed women. This would enable policy makers to develop effective future strategies to boost the number of self-employed women.
- The registration of farms in Serbia deserves support, and should be accompanied by promotional campaigns and monitoring activities to help enroll rural women in social insurance schemes.
- Poor parents’ and especially single parents’ access to social benefits must be improved.

5.4 Final Recommendations

- It is crucially important to adopt Serbia’s new Constitution, thus supporting the rule of law, political stability, institutional accountability, and transparent state mechanisms for a stable and democratic social transformation. Equally important, is to adopt the two pieces of legislation regarding equality between

men and women: the Antidiscrimination Act and the Gender Equality Act. These should be based on diverse and inclusive social dialogue and followed by a powerful and ongoing public education campaign and monitoring procedure set in motion by the Acts themselves. In the meantime, the Charter for Human and Minority Rights should be used as much as possible thereby bringing antidiscrimination discourse into Serbia's political and legal system.

- On the legislative level, even as recent developments point to positive changes, it is important to introduce new principles to incorporate the gender equality aspect of economic and social transitions. The existing and new mechanisms for preventing sex-based discrimination should be efficient, accessible, and available to all. It is necessary to provide legal aid for those who claim they have been discriminated against and are without sufficient financial means to institute and participate in court procedures. All expenses related to court protection in these cases should be free of charge. It is very important to introduce the principle of shifting the burden of proof to the defendant into civil litigation involving discrimination. Additionally, it is important to have clear definitions of sex-based discrimination and the concept of gender equality integrated into all relevant legal acts.
- Trade unions could play a major role in uncovering discrimination and protecting workers from it, as well as in safeguarding the principle of equality, including between men and women. This role should be reaffirmed in the new General Bargaining Agreement Act, as well as in the new institutional framework, predominantly in terms of new mechanisms and institutions for mediation of labor disputes. Additionally, there is a great need for a major campaign to promote new rights and procedures to combat discrimination and affirm gender equality principles. Last, but not least, there is a need to educate trade unions as well on issues related to equality between men and women.
- It is crucially important to provide systematic and continuous trainings and other educational programs to officials of institutions responsible for implementing and/or monitoring antidiscrimination policy *vis-à-vis* equality between men and women. Further, it is vital to establish and support projects involving data collection on actual cases of discrimination, starting with the Labor Inspectorate Office. Data collecting should be mandatory and based on tested methodology, and be followed by proper analysis thereof regarding the status, contributing factors of discrimination, and all effects that new policies cause.
- Generally speaking, it is important to organize a public debate on the EU concept of gender equality, that is, equality between men and women. Such a discourse should embrace policy makers as well as all stakeholders. A forum like this would make for a broader understanding of and consequently a

consensus around key principles of gender equality. This would help to eliminate conflicting, patriarchal, and patronizing values embodied in some of the legal definitions, social and political expectations of new policies regarding equality between men and women.

ANNEX

List of Legislation Screened

- The Obligations Act, articles 154-160. the *Official Gazette SRY*, No.31/93.
- The Health and Safety at the Workplace Act, No.101/05.
- The Charter of Human and Minority Rights of Serbia and Montenegro, the *Official Gazette*, No.1/2003.
- The Code of Civil Procedure, the *Official Gazette of RS*, 58-2004.
- The Mediation for Labor Disputes Act, the *Official Gazette*, No.125/04.
- The Constitution of the Republic of Serbia, the *Official Gazette*, No.1/90.
- The Criminal Code, the *Official Gazette of RS*, No.85/05
- Decision on the Appointment of Members of the Council for Equality between Men and Women, the *Official Gazette*, No.98/04.
- Decision on the Establishment of the Council for Equality between Men and Women, the *Official Gazette*, No.13/2003, 83/2004, and 3/2005.
- The Labor Code of the Republic of Serbia, the *Official Gazette*, No.24/05.
- The Media Act, the *Official Gazette*, No.43/2003, 61/2005.
- The Health Insurance Act, the *Official Gazette of RS*, No.18.92, 26/93, 25/96, 46/98, 55/99, 29/2001, 18/2002, and 18/2005.
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- The Constitutional Charter of State Union, the *Official Gazette SCG*, No.1/2003.
- The Draft Equality between Men and Women Act.
- The Ombudsman Act, the *Official Gazette of RS*, No.79/05.
- The Registration of Economic Entities Act, the *Official Gazette of RS*, No.61/2005.
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