OFFICE FOR HUMAN AND MINORITY RIGHTS

Sector for the Promotion and Protection of Human Rights

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Right to Work

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• Introduction

As a member of international and regional treaties on human rights, the Republic of Serbia is clearly demonstrating support for the realization of their objectives and is actively participating in the creation and implementation of new standards in promotion and protection of human rights.

Pursuant to the Constitution of the Republic of Serbia, the generally accepted rules of international law and ratified international agreements are integral part of the domestic legal order and are directly implemented. Republic of Serbia is a member to eight fundamental international agreements in the field of human rights protection and is actively acting in accordance with them, by delivering periodical reports to contracting entities, participating in the Universal Periodic Review and by accepting mandates of the special procedures of the UN Council for Human Rights. These mutual interactive relations mostly comprise of the exchange of information on the state of affairs that in the end result in recommendations addressed to Serbia with the aim of implementing such recommendations in their entirety.

In January 2013, Republic of Serbia passed the second cycle of the Universal Periodic Review before the UN Council for Human Rights. Among the recommendations accepted at the time was to consider establishing a national supervisory authority for the implementation of recommendations issued by the UN mechanisms for human rights. In order to fulfil the said recommendation of the UN Council for Human Rights, in 2014, the Government of the Republic of Serbia formed the Council for monitoring of the implementation of recommendations of UN mechanisms for human rights with nine members appointed among the officials and civil servants holding positions in Ministries in charge of justice, foreign affairs, internal affairs, labour, employment, veteran and social issues, education, science and technological development, health, culture and information, state administration and local self-government and from the European Integration Office. The Council is headed by the Director of the Office for Human and Minority Rights, and this Office is providing expert and administrative support to the Council. Participation of other relevant actors in the Council meetings, such as of the representatives of the Council for Human and Minority Rights and Gender Equality of the National Parliament, Ombudsman and the Commissioner for the Protection of Equality, has been envisaged as well, and where necessary other persons whose participation is useful for the work of the Council may be invited to attend a Council meeting as well. The Office for Human and Minority Rights has initiated and organized a number of consultations on the inclusion of civil sector organizations in the work of the Council. The Council mandate includes the following: to examine and monitor the implementation of the recommendations issued to the Republic of Serbia in the process of the Universal Periodic Review of the United Nations Council for Human Rights and recommendations of eight contracting entities of the United Nations; to propose measures for the implementation of recommendations obtained; to provide opinions on the progress made in the field of human rights over a reporting period and to provide expert explanations on the condition of human rights and results achieved by the implementation of recommendations. In the second Council meeting on November 25, 2015, draft layout of the Plan for Monitoring of Recommendations was adopted, which contains records on all the recommendations issued by the UN mechanisms for human rights, listing of institutions participating in realization, activities undertaken to fulfil them, dynamics of their realization and objections made by the civil society organizations that delivered shadow reports to the UN mechanisms for human rights and by other relevant actors. Since a large number of recommendations of the UN mechanisms for human rights pertain to the improvement of the position of women in the labour market, it is expected that the Council, as the new national mechanism, will contribute to the improvement and realization of women’s right to work.

Coordination Body of the Republic of Serbia Government for Gender Equality that was established on October 30, 2014, coordinates the operations of the state administration authorities and considers all the issues relating to gender equality. The President of this body is the Deputy Prime Minister of the Government and Minister for Construction, Transport and Infrastructure, and it members are the Minister of Labour, Employment, Veteran and Social Issues, advisor to the Minister of Interior, Secretary General of the Government and the President of the Serbian Chamber of Commerce. The expert group made up of the high representatives of the governmental departments and institutions from which the members of this Body are appointed meets once a month, with administrative and technical support provided by the Office of the Deputy Prime Minister of the Government and Office of the Minister for European Integration. Among the key tasks of this Body is to strengthen the position of women in the field of economy.

Very important gender equality mechanism introduced into Republic of Serbia is Gender Equality Index. Gender Equality Index is an EU instrument that measures gender equality, more precisely equality between women and men, in six priority areas: distribution of time, money, labor, knowledge, power, health, and two sub-domains: violence against women and inter-sector inequalities. Gender Equality Index has been established on the EU level with the assistance of European Institute for Gender Equality. In Serbia its introduction has started in 2013. with the initiative of Coordination Body for Gender Equality in cooperation with Social Inclusion and Poverty Reduction Unit and Republical Statistical Office of the Republic of Serbia, with the support of European Institute for Gender Equality.

• Legislative Framework - Laws and Bylaws

Republic of Serbia has adopted a number of laws regulating ban on discrimination in the field of labour and employment: the Labour Law from 2005 that prohibits all aspects of discrimination in employment, regardless of the basis thereof or any personal characteristic. The Law on Employment and Insurance from Unemployment is based on the principle of anti-discrimination. The Law on the Prohibition of Discrimination and the Law on Gender Equality were adopted in 2009, as was the Law on Prevention of Harassment at Work from 2010.

Pursuant to the provisions of Article 18 of the Labour Law, direct and indirect discrimination against persons seeking employment, as well as against the employed is prohibited, in regard to their gender, birth, language, race, colour of skin, age, pregnancy, health condition, i.e. disability, nationality, religion, marital status, family commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, unions or any other personal characteristic.

Pursuant to the Law on the Prohibition of Discrimination, discrimination shall not be considered to include the special measures introduced with the aim of achieving complete equality, protection and progress of a person, i.e. of a group of persons in an unequal position (Article 14).

Pursuant to the Law on Gender Equality, discrimination or breach of the principles of equal rights and obligations shall not be considered to include the adoption of special measures with the aim of removing and preventing unequal position of women and men and realization of equal opportunities of the sexes (Article 7). Nobody may suffer any adverse consequences due to their giving statement before the competent authority or due to their public warning of a case of discrimination as a witness or victim to the gender-based discrimination (Article 8).

In addition to that, significant novelties were introduced by the Law on Gender Equality in the field of labour and employment, which should contribute to the improved position of women as the less represented sex and provide for a more efficient protection of their rights (Articles 11 to 22): special measures aimed at increased employment and employability of the less employed sex or special measures aimed at increased participation of the less represented sex in professional training and ensuring equal opportunities for promotion (Article 11, paragraph 2) are not considered to comprise discrimination or infringement of the principle of equal opportunities; keeping records and documentation on the employees’ structure as per their sex is prescribed (Article 12). A novelty introduced by this Law pertains to the Plan of Measures for elimination or mitigation of unbalanced representation of sexes for each calendar year that the employers with more than 50 employees employed for an indefinite period of time are obliged to adopt and to submit annual reports on the implementation thereof by January 31 of the current year for the previous year. The report must be delivered to the Ministry in charge of gender equality (Article 13). Equal availability of jobs and positions has been envisaged by this Law, so that if the representation of the less represented sex in each organizational unit, in managerial positions and in management and supervisory bodies falls below the level of 30%, the public authorities shall be obliged to apply affirmative measures in compliance with the Law on Civil Servants and with the Law on Public Administration (Article 14).

In addition to that, Article 16 envisages that a person’s gender may not present any obstruction to their promotion at work. Absence from work due to pregnancy and parenthood must not present any obstruction to the election to a higher rank, promotion or professional training. Absence from work due to pregnancy and parenthood must not be the basis for allocation to an inadequate jobs or for termination of employment contract in compliance with the law regulating labour (Assignment and Promotion). Pursuant to provisions of Article 17 of the Law, the employee, regardless of his/her sex, shall realize the right to equal salary for the same work or work of the equal value with the employer, in compliance with the law regulating labour (Equal Salary for the Same Work or Work of the Same Value). In addition to that, pursuant to Article 19 of the said Law, in each cycle of professional specialization or training, the employer shall ensure that the representation of sexes reflects the structure of employees with the employer or alternatively in the organizational unit for which the training is provided, to the greatest degree possible (Professional Specialization and Training).

In order to ensure the implementation of the said provisions in practice, the Law has regulated procedure intended for the employers with the aim of controlling them with regard to the obligations from the labour and legal relation, whereby the gender-based discrimination is prevented:

1. The employer employing more than 50 employees for an indefinite period of time shall be obliged to adopt a Plan of Measures for elimination or mitigation of unbalanced representation of sexes for each calendar year, by January 31 at the latest; 2. The employer shall be obliged to produce an annual report on the implementation of the Plan of Measures referred to in paragraph 1 of this Article by January 31 of the current year for the previous year at the latest; 3. The employer shall be obliged to deliver the Plan of Measures and the report referred to in paragraphs 1 and 2 of this Article to the Ministry in charge of gender equality; and 4. Contents and method of delivery of Plan of Measures and report referred to in paragraphs 1 and 2 of this Article shall be prescribed by the Minister in charge of gender equality.

The procedure is further regulated in greater detail by the Rulebook on the Contents and Method of Delivery of the Plan of Measures for elimination or mitigation of unbalanced representation of sexes and of the annual report on the implementation thereof from 2010. The Labour Inspectorate was entrusted with the direct supervision of the implementation of these measures. Depending on the facts determined, the labour inspectors are obliged to immediately, in compliance with their authorizations, submit requests for filing of misdemeanour procedures against the employer (against the legal person and against the responsible person, i.e. against the entrepreneur) and to order the employer, by means of a relevant decision, to take measures and activities, through the implementation and realization of which equal opportunities in the realization of rights and obligations on the basis of employment and labour shall be realized, i.e. whereby the gender-based discrimination at work shall be prevented. In the period from January until December 2015, the labour inspectors conducted 3,157 inspections of the implementation of the Law on Gender Equality and passed 2 decisions on the removal of deficiencies. In their decisions, the labour inspectors ordered the employers to adopt a Plan of Measures for the removal of unbalanced representation of sexes, as well as to systematize the records on the structure of their employees as per their sexes. In 2015, one request, i.e. complaint was submitted to the Labour Inspectorate, based on the breach of the Law on Gender Equality.

• Strategy Documents

In the previous period, work on the strategy documents was marked by the adoption of completely new ones, as well as of the strategies and action plans establishing continuity in the implementation of strategy documents with the expired term.

Strategy for Prevention and Protection from Discrimination, which was adopted by the Government of the Republic of Serbia in June 2013, is the first strategy document dedicated to anti-discrimination, it treats this issue in a comprehensive manner and comprises activities for the reduction of the general level of discrimination in the society. Women make up one of nine vulnerable social groups to which this document is dedicated in respect of the improvement of their position and reduction of discrimination. Implementation of the Action Plan for the Implementation of Strategy for Prevention and Protection from Discrimination for the period from 2014 until 2018 (adopted in October 2014) and the implementation of envisaged measures shall contribute to the progress in the field of respect and improvement of human rights, as well as to the promotion of tolerance in the society, accepting differences, respect for the principle of equality, but also to conflict prevention, all with the aim of reducing the general level of discrimination in the Republic of Serbia. In a separate segment of the Action Plan entitled “Labour and Employment”, with the aim of significant reduction in the number of discrimination cases through the amendments to the legal framework and laying down of affirmative measures for vulnerable groups, in cases pertaining to women’s rights the measures envisaged pertain to the amendments and addenda to the Labour Law relating to the parent’s return to the same post after maternity leave. In addition to that, it has been envisaged to broaden the scope of the right to time off to care for a child and to introduce the obligation for employers as regards the development of the principle of equal pay for men and women and determining sanctions for a failure to act so. Concrete measures included in the Action Plan for the Implementation of the Strategy for Prevention and Protection from Discrimination that pertain to women comprise of the revision and implementation of all the strategy documents pertaining to the position of women. It has been envisaged to harmonize the legal regulations with the aim of bringing the legal framework of the Republic of Serbia in line with the international standards of anti-discrimination and of achieving consistent implementation of relevant international documents, ratified international treaties and adopted laws, by-laws and strategies and action plans that pertain to nine vulnerable social groups, among which are women as well. In August 2015, the Council of the Republic of Serbia Government for monitoring of the implementation of the Action Plan for the Implementation of Strategy for Prevention and Protection from Discrimination for period from 2014 until 2018 was established as well, which comprise of the representatives of state authorities, authorities of the Autonomous Province of Vojvodina and of the local self-governments, representatives of civil society organizations and other participants in the realization of measures. The task of the Council is to monitor the progress made in the realization of measures, the implementation of activities, compliance with the envisaged deadlines, as well as to warn of any challenges in execution thereof in a timely manner. Drafting of the Third Report on the monitoring of implementation of this Action Plan, which includes the measures and activities for the first half of 2016, is underway.

The National Employment Strategy for 2011-2020 and the annual National Action Plan for Employment, in which women are defined as less employable persons with priority status in respect of their inclusion in the measures of active employment policy, envisage promotion of equal opportunities’ policy in the labour market and promotion of employment of women.

All the activities envisaged in the strategic documents in the field of gender equality were supported through the activities within the National Employment Action Plan (NEAP) on the annual level. For a number of years now, support for the employment of sensitive – vulnerable categories of women is planned through the NEAP as well. In addition to that, support to female entrepreneurship is provided as well, through training courses for the development of entrepreneurship, allocation of subsidies for self-employment and mentoring services in the first year of business. The NES has gender-categorized data at their disposal and it maintains the register of the unemployed persons as per the categories of their vulnerability and low employability (in the end of June 2016, there was a total of 706,611 unemployed persons in the NES register, out of which 364,133 or 51.5% were women). 79,631 of women were included in the NEAP measures in 2015 (52.75% of the total number of persons included in these measures).

After the expiry of the initial umbrella documents – the National Strategy for Improvement of the Position of Women and Improvement of Gender Equality and the accompanying Action Plan for the period from 2010 until 2015 and conducted evaluations of the fulfilment of six strategic objectives, drawing of a new Strategy and accompanying Action Plan was undertaken. The National Strategy for Gender Equality for the period from 2016 until 2020 was adopted by the Republic of Serbia Government in January 2016. In order to achieve progress within the agreed deadline, the accompanying Action Plan envisages measures and activity leads in point 2.3 thereof – Improved Economic Position of Women and Status of Women in the Labour Market, especially of the members of vulnerable groups, and specifically:

1) Monitoring and promotion of the development of women’s entrepreneurship through: development of a system of gender-sensitive records in the Business Registers Agency; provision of grants intended for entrepreneurs for starting of business and support in the initial 3 years of business (activity lead: National Employment Service and Serbian Chamber of Commerce); provision of mentorship work with entrepreneurs within the program of the Standardized Set of Services through the National Agency for Regional Development; initiative for special purpose loans for female micro entrepreneurs (included in the work program of the Republic of Serbia Development Fund); approval of special incentive means for female entrepreneurs in the sector of green economy, (activity lead: the Ministry in charge of the environment);

2) Increase in the formal employment levels of women, especially of older women and members of vulnerable groups through: determining quotas for participation of a minimum 50% of women among the beneficiaries of subsidies, training and other programs aimed at employment (the National Employment Service and the Ministry in charge of labour and social policy); increased availability and utilization of life-long learning and retraining programs (the Ministry in charge of labour and social policy);

3) Promotion of female social entrepreneurship in rural and urban environments: determining quotas for women in programs for financing and incentives for social enterprises and informing of women in populated places and towns on the possibilities for social entrepreneurship (state authorities in cooperation with local women’s networks and organizations).

• Gender-Based Budgeting

In the Republic of Serbia, pursuant to the Law on Budget System, gradual introduction of a program budget model for the beneficiaries of budget means of the Republic of Serbia was prescribed, which was then introduced in its entirety by the Law on Budget of the Republic of Serbia for 2015 and by the Decision on Budgets of Local Authorities for 2015, with the Instruction for drawing up of a program budget. The budget of the AP of Vojvodina for 2015 was the pioneer in introduction of gender indicators, and starting from 2016, gender budgeting was introduced in the budget of the Republic of Serbia specifically for the Program Activity: Active Employment Policy, Objective 1: Inclusion of unemployed men and women in programs and measures of the NEAP with the aim of increasing their potentials for employment.

• Statistical Data

Statistical Office of the Republic of Serbia stated in their latest research that the unemployment rate of men (50%) was significantly higher than the unemployment rate of women (35%). The rate of working activity of males comprising active population (aged 15 to 64) is also higher (69.90%) than the rare of working activity of females (53.80%). Employment rate of women aged 25 to 54 years of age is by 14 percentage points lower compared with the employment rate of men of the same age group (56% to 70%). Employed women predominantly work in the service sector (76%). Women make the majority of employees in the field of education, medical and social protection, while the male workforce is predominantly concentrated in the field of construction industry, transport, agriculture, mining and processing industry. There are two times more men (57,568) than women (25,772) in managerial and officials’ positions. There are two times more males than females among the self-employed (in the age group of 15 to 64 years of age, there are 29% of men and 14% of women). Women are more often than men working in the informal economy. The rate of informal employment of women is 23.50%, compared with 20.90%, which is the rate of informal employment of men. There are more informally employed women and men among the self-employed persons than among employed men and women in all age groups. The largest number of informally employed persons is found in the age group between 25 and 54 years of age. In 2014, the unemployment rate of men comprising active population (aged 15 to 64) was 19.20% and 20.40% for women.