



REPUBLIC OF SERBIA

346-444/19  
Belgrade



Protector of Citizens  
Ombudsman

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Ref.No.24809 Date: 30.August 2019.

INPUTS FROM THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA  
FOR THE REPORT OF THE UN WORKING GROUP ON DISCRIMINATION AGAINST  
WOMEN AND GIRLS ON  
"WOMEN'S HUMAN RIGHTS IN THE CHANGING WORLD OF WORK"

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- **What are the main trends influencing women's human rights in the world of work in your national context and their impact:**
  - **on the types of and quantity work available to women, and the quality and conditions of work (including access to social protection and equal pay)?**
  - **for women's safety (including violence and sexual harassment) at work?**

1a

The activity rate of women with higher education is slightly higher than the activity rate of men of the same level of education (70.9% and 69.5% respectively), while the activity rate of women without school and with lower levels of education is 23.6% and is lower than the activity rate men of the same level of education by as much as 20.4 percentage points (p. p.). The female employment rate is 38.1%, which is 14.7 p. p. less than the male employment rate (52.8%). When it comes to women and men who are married, the gender gap is much smaller, in favor of women – the employment rate for married women is 68% and for married men 64%. The largest gender gap in the labor market in terms of employment was recorded in the 55-64 age group, where the employment rate for women is 32.5% and the employment rate for men is 52.8%. The employment rate of women aged 25-54 is 11.3 p. p. lower than the employment rate of men of the same age (63.6% vs. 74.8% respectively). Unemployment is most prevalent among young women, ages 15-24, where the unemployment rate reaches 39.5%. Young men are not in a much better position when it comes to unemployment. They have an unemployment rate of 32.2%. Self-employment is twice as high for men as it is for women – 28% of men and 13% of women between the ages of 15 and 64 are self-employed. There are more informally employed women and men among self-employed persons than among employed workers in all age groups. The largest number of informally employed people is in the 15-24 age group (67.4% women and 54.5% men). The female inactivity rate is 16.3 p. p. higher than men's inactivity rate (54.6% and 38.2% respectively). The largest gender gap in terms of inactivity in the labor market was observed in the age group 55-64, where the inactivity rate of women is 64.8%, as opposed to the inactivity rate of men, which is much lower and amounts to 40.4%.<sup>1</sup>

According to official data from the Statistical Office of the Republic of Serbia, **the unemployment rate in Serbia in the first quarter of this year was 12.1 percent and the employment rate was 47 percent.**

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<sup>1</sup>The publication of the Statistical Office of the Republic of Serbia "Women and Men in the Republic of Serbia" from 2017, available at <http://publikacije.stat.gov.rs/G2017/Pdf/G20176008.pdf>.

According to the Labor Force Survey, there were 387,100 unemployed persons and 2,810,500 employees in the mentioned period.

The rate of informal employment in the first quarter of 2019 was 17 percent, and in the field of agriculture alone about 57 percent. The results of the survey from the first quarter of 2018 and the first quarter of 2019 show that mostly women found jobs, as the number of employed women increased by 94,000 and the number of men by 28,300.

In the second quarter of 2019, the total number of employees was 2,161,533 persons. Out of the total number, 1,715,436 are employed in legal entities, 373,444 are entrepreneurs, persons employed by them and self-employed persons, and 72,653 persons are registered individual farmers. Compared to the second quarter of 2018, the total number of employees increased by 1.6%, with the number of employees in legal entities increased by 1.9%, the number of entrepreneurs, their employees and self-employed persons increased by 2.8%, while the number of registered individual farmers decreased by 8.7%. Compared to the previous quarter, the total number of employees increased by 0.6%, and the number of employees in legal entities increased by 0.7%, the number of entrepreneurs, their employees and self-employed persons increased by 0.8 %, while the number of registered individual farmers decreased by 2.4%.<sup>2</sup>

In July 2019, the total number of unemployed persons was 519,808, of which 283,579 were women.<sup>3</sup>

In 2017, the Protector of Citizens, with the support of the OSCE Mission to Serbia, conducted a survey aimed at gathering data on the implementation of equal opportunities policies and measures, that is, the implementation of laws and practices in the field of gender equality at the local level. The aim of the research was to determine the current situation and opportunities for improving the institutional framework and practices, and thus the gender equality and position of women and men. The results of the survey showed that there are 5 men and 7 women with disabilities among the councilors in the municipalities and cities in Serbia. There are 5 men with disabilities and one woman appointee, while 90 women and 97 men are employed in executive positions. In Serbia, there are only 2 Roma women councilors and 10 Roma men who are councilors in local assemblies. Among the employees in executive positions there are 25 Roma men and 13 Roma women, while in local self-governments in Serbia 1 Roma male person was appointed and no Roma women. This data indicates the exclusion of Roma nationals and persons with disabilities, as well as the lack and/or non-implementation of adequate instruments and the lack of institutional framework for their participation at all levels. Apart from the local community councils, the under-representation of women in the bodies of local self-government units is not seen as problematic, and one of the arguments is that they are represented through the positions of directors of public enterprises and institutions, mostly cultural and educational institutions.

Data on representation of women are monitored and updated, and local mechanisms recognize their role in increasing the participation of women in decision-making. However, while there is a strong need for more active monitoring of the representation of the under-represented sex, especially members of multiple marginalized groups, the empowerment of women and civil society organizations, and above all the change of policies at the local level so as to ensure more meaningful and greater involvement of women and members of marginalized groups in the processes of policy-making and decision-making, apart from advocating for the establishment of quotas at the local level – for executive bodies, there are no significant activities in this area.

## 1b

The Law on the Prevention of Harassment at the Workplace<sup>4</sup> explicitly prohibits any form of abuse at work and in connection with the work of employees and other persons engaged without an

<sup>2</sup>Available at:<http://publikacije.stat.gov.rs/G2019/Pdf/G20191204.pdf>.

<sup>3</sup>Available at:[http://www.nsz.gov.rs/live/digitalAssets/13/13260\\_bilten\\_nsz\\_07\\_2019\\_-\\_broj\\_203.pdf](http://www.nsz.gov.rs/live/digitalAssets/13/13260_bilten_nsz_07_2019_-_broj_203.pdf).

<sup>4</sup>"Official Gazette of the RS", no. 36/10.

employment contract (persons performing temporary and occasional work or work under a work contract, persons in vocational training at the employer without an employment contract, volunteers and any other persons participating in the work with the employer, on any grounds). The Minister of Labour, Employment, Veteran and Social Affairs has adopted the Rulebook on the rules of conduct of employers and employees regarding the prevention and protection against abuse at work<sup>5</sup> which prescribes the rules of conduct of employers and employees, or other workers and employees in connection with prevention and protection from harassment at the workplace, or sexual harassment. The employer is obliged to act preventively, to inform the employees in writing that the Law prohibits and sanctions abuse, sexual harassment, as well as the abuse of the right to protection from such behavior, to clarify those institutes and to inform the employees about the types and procedures of protection as well as the consequences for the victim and the abuser. Protection from harassment at work can be achieved in two ways: through a procedure for protection against harassment at the employer and in court.

Article 21 of the Labour Law<sup>6</sup> prohibits harassment and sexual harassment. Harassment, within the meaning of this Law, is any unwanted conduct caused by any of the grounds referred to in Article 18 of this Law (direct and indirect discrimination against persons seeking employment, as well as employees, is prohibited with respect to sex, birth, language, race, skin color, age, pregnancy, health or disability, nationality, religion, marital status, family responsibilities, sexual orientation, political or other beliefs, social background, property status, membership in political organizations, trade unions or any other organizations in personal capacity), which is aimed at or represents violation of the dignity of the person seeking a job or an employee, and which causes fear or a hostile, degrading or offensive environment. Sexual harassment, in the sense of this Law, is any verbal, non-verbal or physical conduct that seeks to violate or represents a violation of the dignity of the person seeking employment, as well as of an employee in the area of sex life, and which causes fear or creates a hostile, degrading or abusive environment.

Article 182a of the Criminal Code<sup>7</sup> provides for a fine or imprisonment of up to six months for any sexual harassment of another person, and if done to a minor, the offender shall be sentenced to prison from three months to three years.

**2) What are the promising practices emerging from your country to ensure the realization of women's rights to work and women's rights at work, in the context of technological and demographic change, as well as continuing globalization and the shift towards sustainability? (laws; economic, labour market and social policies; programmes).**

Through the Employment and Social Policy Reform Program<sup>8</sup> specific measures and programs are planned aimed at increasing the employability and employment of women, especially those in a vulnerable position.

The 2018 National Employment Action Plan<sup>9</sup> provides for programs and measures of active employment policy, which, in accordance with the recommendations of the Protector of Citizens from the Special Report on the implementation of the General and Special Protocols for the protection of women from violence, prescribe subsidies for the employment of unemployed persons from the category of hard-to-employ people, including victims of domestic violence who also have the status of hard-to-employ persons in 2018. They will, in line with the employability assessment, have the advantage of being involved in measures of employment policy activities.

<sup>5</sup>Official Gazette of the RS", no. 62/10.

<sup>6</sup>Official Gazette of the RS", no. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 - Constitutional Court decision, 113/17 and 95/18 - authentic interpretation.

<sup>7</sup>Official Gazette of the RS", no. 85/05, 88/05 - rev., 107/05 - rev., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19.

<sup>8</sup>Program available at: <http://www.minrzs.gov.rs/cir/aktuelno/item/5781-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-employment-and-social-reform-programme>.

<sup>9</sup>Available at: <https://www.srbija.gov.rs/dokument/45678/strategije.php>.

The Strategy for social inclusion of Roma men and women for the period 2016-2025<sup>10</sup> especially highlights the differences in the social and economic situation of Roma men and women, citing data that show that Roma women are at a bigger disadvantage. The Strategy contains measures to facilitate the advancement of the position of Roma women and to achieve the principle of gender equality.

Acting on the proposals of the Protector of Citizens and the Commissioner for the protection of equality, after assessing the constitutionality of the provision of Article 20 of the Law on the method of determining the maximum number of employees in the public sector, according to which the employment of women in the public sector is legally terminated earlier than that of men, the Constitutional Court issued a decision in 2016 declaring that the provisions of the mentioned Article were not in accordance with the Constitution<sup>11</sup>.

By adopting the Law on financial support for families with children<sup>12</sup> in 2017, a significant step forward was made in the exercise of women's rights based on pregnancy, birth and child care, which was done in accordance with the recommendation of the Protector of Citizens from the 2016 Annual Report<sup>13</sup> and the opinion of the Protector of Citizens.<sup>14</sup> The fact that the Law now contains provisions that stipulate that earnings during maternity leave and leave for the care and special care of children are paid out of the budget directly into the current accounts of mothers is extremely important. However, a number of problems in this area have also been noticed during 2018, as the Law still contains shortcomings that make it impossible to fully exercise these rights. Employed women, women entrepreneurs, farmers and women engaged in temporary and occasional jobs are not in the same legal position when exercising the right to remuneration, which the Protector of Citizens drew attention to during the preparation of the Law.<sup>15</sup> The Protector of Citizens specifically pointed to the illegality, irregularities against children and families, and the special incorrectness and multiple detriment of the provision stipulating that the right to remuneration during absence from work for the special care of a child cannot be exercised for a child for whom the right to an allowance for assistance and care of another person has been exercised.<sup>16</sup> Although in 2013 he made recommendations regarding failures to act by the authorities in situations where the employer does not fulfill the legal obligation to calculate and pay maternity benefits, the Protector of Citizens continued to receive complaints from citizens indicating similar problems. The Protector of Citizens has found that there are omissions in the work of the competent authorities that make it impossible and difficult to exercise the right to remuneration during maternity leave due to pregnancy, childbirth, child care and special child care and exercise and protect the right to social security, but also that the regulations do not provide a fully adequate protection of employment and social security rights. Recognizing that there are systemic shortcomings and individual failures in the work of the competent authorities, the Protector of Citizens resent recommendations to the competent authorities with the aim of protecting the women who gave birth in situations where employers do not calculate and pay benefits during their maternity and childcare leave; when employers avoid and are unable to provide the necessary documentation to the competent authorities in order for the women to achieve their right to a compensation; when the employer exists only *de jure*, it is not deleted from the Register, but no longer does business, and it has no authorized person who would sign the documentation necessary for the mother to exercise her rights, or when the employer remains inaccessible to the competent authorities.<sup>17</sup>

<sup>10</sup>Available at: <https://ljudskaprava.gov.rs/sh/node/19980->

<sup>11</sup>Constitutional Court decision number IY3-244/2015 of 4 October 2016

<sup>12</sup>"Official Gazette of the RS", number 113/17.

<sup>13</sup>Available at: <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>.

<sup>14</sup>Opinion of the Protector of Citizens no. 183-25/2017 ref. no. 37867 of 13 October 2017.

<sup>15</sup>Opinion of the Protector of Citizens no. 183-25/2017 ref. no. 37867 of 13. October 2017.

<sup>16</sup>Opinion of the Protector of Citizens no. 183-25/2017 ref. no. 37867 of 13. October 2017.

<sup>17</sup>Available at: <https://www.ombudsman.rs/index.php/2012-02-07-14-03-33/5977-n-dl-zni-rg-ni-d-b-zb-d-ispl-u-n-n-d-z-r-d-pri-uzi-lj-sh-uv-s-v-ru-u-pr-v-n-n-n-du-z-r-d-zb-g-rudnic-g-b-l-v-nj-i-dsus-v-s-r-d-zb-g-p-r-d-n-g-d-i-p-s-bn-n-g-d>.

The Protector of Citizens found that due to the shortcomings in the regulatory framework, pregnant women and mothers – entrepreneurs could not fully claim their right to income compensation due to illness or complications related to pregnancy, as well as the compensation during maternity and childcare leave. Therefore, the Protector of Citizens sent to the competent bodies the opinion<sup>18</sup> that it is necessary to regulate, by law and regulations based on the law, the position of women entrepreneurs in the area of health.

In accordance with the Opinion of the Protector of Citizens on the Draft Law on employees in public services<sup>19</sup>, the Law on employees in public services<sup>20</sup> prescribes affirmative measures when selecting candidates so that the proclaimed principle of equal availability of jobs is fully realized. This Law stipulates that if more than one candidate has fulfilled the criteria prescribed for selection with the same best result, the advantage for employment goes to the candidate belonging to a group of persons which are in an unequal position, such as victims of domestic violence and abuse in an intimate relationship, persons with disabilities, members of the Roma national minority, and also, other groups of persons in unequal positions may be designated by the law governing the work of the public service or by a collective agreement<sup>21</sup>.

## **2. What measures are necessary to ensure that women benefit equally from the transition to sustainability in your national context?**

As already mentioned, the Protector of Citizens has drawn up a Special Report on "Representation of women in decision-making positions and the position and activities of local gender equality mechanisms in local self-government units in Serbia"<sup>22</sup>. The report points to the under-representation of women, especially women from vulnerable groups, in decision-making positions in local self-government units, as well as the inefficiency of gender equality mechanisms in local self-governments. The Protector of Citizens recognizes as the cause of this situation the lack of a comprehensive Law on Gender Equality, but also the shortcomings in the existing Law on Gender Equality. The Law on Gender Equality has not adequately regulated the area of gender equality and is not in line with the international commitments made in the field of gender equality and subsidiary legislation. There are also a number of shortcomings in the way gender equality mechanisms are regulated and in the way they are established and implemented. The law, among other things, lacks enforcement mechanisms and sanctions for non-implementation of legal provisions, and mechanisms for achieving gender equality are insufficiently regulated.

Therefore, the Protector of Citizens initiated the drafting of the Model Law on Gender Equality and submitted it to the Coordination Body for Gender Equality. The Draft Law on Equality between Women and Men, drafted by the Coordination Body for Gender Equality, entered the parliamentary procedure in early 2016, but was withdrawn, primarily due to civil society organizations who opposed the solutions contained in the mentioned Draft.

In addition to everything mentioned, in his regular annual reports, the Protector of Citizens points to the necessity of adopting laws regulating issues of importance for the field of gender equality, which will ensure the inclusion of a gender perspective in all areas of society and the respect for international standards of gender equality and the principles of equal opportunities, and which will prescribe specific measures to achieve the principle of gender equality, including measures of protection against gender based violence;

<sup>18</sup>Available at: [https://www.rodnaravnopravnost.rs/index.php?option=com\\_content&view=featured&Itemid=2](https://www.rodnaravnopravnost.rs/index.php?option=com_content&view=featured&Itemid=2).

<sup>19</sup> Opinion available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5501-ishlj-nj-z-sh-i-ni-gr-d-n-n-s-n-cr-z-n-z-p-sl-ni-u-vni-sluzb>.

<sup>20</sup> "Official Gazette of the RS", number 113/17.

<sup>21</sup> Article 58. of the Law on employees in public services, "Official Gazette of the RS", number 113/17.

<sup>22</sup>Available at: <https://www.ombudsman.rs/attachments/article/5902/Zastitnik%20gradjana%20engleski.pdf>.

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The United Nations Human Rights Committee also expressed its concern over lack of the Law on Gender Equality.<sup>23</sup>

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<sup>23</sup>Concluding observations on the third periodic report of Serbia on the Implementation of the International Covenant on Civil and Political Rights, available at:  
[http://www.ljudskaprava.gov.rs/sites/default/files/dokument\\_file/zakljucna\\_zapazanja\\_komitetaccpr\\_c\\_srb\\_co\\_3\\_27\\_019\\_e\\_srp.pdf](http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitetaccpr_c_srb_co_3_27_019_e_srp.pdf).