***NGO ATINA input – for the report of the Special Rapporteur on violence against women and girls to the Human Rights Council on prostitution and violence against women and girls in 2024***

*This input refers to more than one key question listed in the Call for input*

*If the Government had only adopted one recommendation from the CEDAW committee since 2019, 897 women and girls in Serbia would not have been punished with imprisonment and fines.*

Having perennial experience in combating human trafficking and supporting the victims, NGO Atina, founded in 2003 in Serbia, is aware that most of the trafficking victims who are beneficiaries of the comprehensive support program have survived sexual exploitation. Through its practical work in providing necessary services to victims of sexual exploitation, Atina has come to know not only that essential services for victims are missing or inadequate and insufficient but also that the professional and more comprehensive public is not sufficiently aware of the problem of sexual exploitation and prostitution in Serbia nor of the models of its regulation.

Prostitution is defined in the legislation of the Republic of Serbia as an offense against public order and peace. It is regulated by Article 16 of the Law on Public Order and Peace, which has been in force since 2016. This article recognizes three types of actions and, in terms of sanctions, treats them equally: engaging in prostitution, using prostitution services, and providing premises for prostitution. These actions are subject to the same penalty - a fine ranging from 400 to around 1200 euros or a prison sentence of 30 to 60 days. For the assignment of premises to a minor for prostitution, only a prison sentence of the same duration is prescribed by this Article.

And yet, although all involved parties in this offense are equal under the law, its application, i.e., the punishment for this misdemeanor, was for many years a source of discrimination against women in prostitution compared to men. Namely, according to data from the Serbian Ministry of Interior, of the total number of misdemeanor reports filed by the police based on this article of the law in the period 2019-2022, 68.14% of them were filed against women, while significantly fewer, 31.86%, were filed against men. This ratio is approximately the same for every year in the observed period. The change in practice occurred in 2023 when the police filed a significantly higher number of misdemeanor reports against men - 72.4% and against women - 27.6%. However, this change may appear incidental and short-term since it does not result from a change in the law but exclusively refers to an internal shift in police behavior.

Women in prostitution mostly come from deprived economic environments and marginalized communities; they are primarily uneducated or poorly educated; over 95% are unemployed[[1]](#footnote-1), and many of them have a previous history of domestic violence. Roma women, refugees, and migrants are at particular risk of prostitution and sexual exploitation – for instance, out of 6 refugee and migrant women identified as victims of human trafficking in Serbia in 2022, 57% of them were victims of sexual exploitation[[2]](#footnote-2). In numerous verdicts against them, it is stated that the women ask the court to reduce their sentence, to allow them to pay it in several installments, or to sentence them to prison because they have no money to pay the fine. Further on, what is of particular concern in such circumstances is the decrease in the average age of women in prostitution in Serbia, that is, the increase in the number of girls in prostitution. And yet, many of these girls are identified as victims of human trafficking for sexual exploitation. The data of the State Center for the Protection of Victims of Human Trafficking, which is the only one with the mandate to identify victims of human trafficking formally, clearly speaks of this. In 2020, girls accounted for 33.33% of all victims of sexual exploitation in Serbia; in 2021 – 35.29%; in 2022 – 38.23%; and 2023 – 38.46%[[3]](#footnote-3), which means that this number has been continuously growing in the last four years.

Moreover, in its annual report for 2023, this Center explicitly stated that sexual exploitation in 87% of cases involved commercial sexual exploitation[[4]](#footnote-4), and forced prostitution. At the same time, it is essential to emphasize that the number of victims of sexual exploitation represents a significant share of the total number of identified victims of human trafficking in Serbia and that it sometimes exceeds 50% on an annual basis. This indicates how deep is the problem of human trafficking for sexual exploitation in Serbia.

Women who are victims of forced prostitution and sexual exploitation also have limited access to justice and compensation. Namely, in long-term practice, it has been observed that the police/prosecutor's office, in the phase of gathering evidence, often does not bring charges for human trafficking but for the criminal offense of mediation in prostitution, which is a less punishable crime. Moreover, it happens that in many cases brought before courts, the prosecutors or judges decided to requalify human trafficking into mediation in prostitution. Although various actors, including civil society organizations such as Atina that provide support to victims of human trafficking, have been pointing this out for years and asking for this practice to change, such cases were recorded in the judiciary also in 2023.

At the same time, “mediation in prostitution” is punishable by Article 184 of the Criminal Code, which states that whoever leads or incites another to prostitution or participates in handing over a person to another for prostitution or who propagates or advertises prostitution through public information and other similar means, be punished by imprisonment from six months to five years and a fine. However, this criminal offense in court practice in previous years was often an excuse for abandoning the criminal prosecution of human trafficking for sexual exploitation. The informal reason for this is that mediation in prostitution is a more straightforward crime to prove than human trafficking. However, in this way, an ominous message is sent that human trafficking is unpunished and even profitable since the penalty for mediation in prostitution is less than the penalty prescribed for human trafficking.

The expert group of the Council of Europe, GRETA, noted this problematic practice, and in its report for Serbia from June 2023 (point 96), stated that it "was informed that in some cases police officers, prosecutors, and judges failed to take into account indicators that the accused may have been a victim of trafficking, especially in cases where possible THB was (re)qualified as a lesser offense (e.g., mediation in prostitution)." At the same time, in the US TIP 2023 report for Serbia, it was stated that prosecutors "often charged or offered plea deals in sex trafficking cases for "mediating prostitution," including cases with child victims," as well as that "prosecutors charged trafficking victims with 'engaging in prostitution' and used it as evidence to prosecute the trafficker under 'mediation of prostitution.'

The reasoning of court decisions does not justify this requalification but contributes to the further victimization of women. Instead of protecting them, the court, through prequalification, creates a precondition to punish them for engaging in prostitution, thus labeling them as criminals, which later prevents them from finding other jobs and integrating into the community. This can be seen from the fact that those convicted of human trafficking or mediation in prostitution felt encouraged after the trial to write, publish, and promote books about their criminal activities, to appear in the national media, and to use them to affirm their activity as something positive and desirable, as it is happening in Serbia daily at the TV with the national frequency. Although the advertising of prostitution is prohibited and treated as a criminal offense, state authorities do not react to such events, nor do they bring charges, thereby further ruining the possibility for these women to leave prostitution.

In such a situation, the public has created the idea that prostitution is not an abuse of women but quite the opposite, a source of enormous income for these women. In this regard, work on raising awareness among the public (including the professional public) about the harmfulness of prostitution, as well as on providing necessary support to victims of sexual exploitation and prostitution in Serbia, including children, remains challenging. For instance, the state authorities often misinterpret that the prostitution to which children aged 14-18 are exposed is voluntary since the age of consent for entering into sexual relations is 14 years, so these children are not recognized as victims and are denied the necessary support. Furthermore, there is a lack of a comprehensive approach to the protection and support of all victims and survivors of prostitution to meet their basic needs in a satisfactory and adapted manner. Specialized civil society organizations that provide support to victims of human trafficking do not receive any financial assistance from the state and are often left to fend for themselves and, thus, the victims they work with.

On the other hand, there is no effective detection and recognition of sexual exploitation in the digital space nor a standardized penal policy for this type of abuse, especially when it comes to children. This is particularly significant in the context of the spread of digitalization to all spheres of life and the unfathomable scope of abuses that can occur in that space. According to a study by NGO Atina, every third female victim of human trafficking was recruited in the digital space, and 65% of them experienced digital threats after being exploited.[[5]](#footnote-5) In recent years, the so-called cyber lairs, rooms that traffickers use to broadcast scenes of sexual exploitation of their victims (including children), were also discovered. Finally, different digital platforms are increasingly being used to advertise and organize prostitution and exploitation of women, which makes it more difficult to detect and reach the victims.

Bearing all this in mind, the UN CEDAW Committee sent a recommendation to the Republic of Serbia on two occasions (2019 and 2021) in which it requested that Article 16 of the Law on Public Order and Peace be repealed to ensure the decriminalization of women in prostitution, and also that the state provides exit programs and alternative income-generating opportunities for women who wish to leave prostitution. Moreover, on this track, NGO Atina, together with the Commissioner for the Protection of Equality, submitted a legislative initiative at the end of 2022 in which it proposed to amend this law to ensure the decriminalization of women in prostitution. However, the competent state authorities remained silent on the recommendations of the UN CEDAW Committee and this legislative initiative. Therefore, even after five years since receiving these UN recommendations, Serbia has not done anything to implement them and protect women in prostitution but has continued to punish them. During that period, the police filed misdemeanor charges against 897 women, and almost all of them, instead of receiving support, were punished by the Serbian courts, either with imprisonment or a fine. In this way, the state directly participated in the deterioration of the position of women in prostitution and further increased the vulnerability of this already vulnerable group.

**Recommendations for the prevention of prostitution and ensuring support for women in prostitution:**

* Create a comprehensive national policy of protection and support for women in prostitution;
* Completely decriminalize women in prostitution through the amendment of the legislation and consequently through the actions of the police and the judiciary;
* Explicitly recognize women forced in prostitution as victims of sexual exploitation;
* Suppress the practice of reclassifying the criminal offense of human trafficking into a lesser crime;
* Delete from the police register of criminal offenders those women who have been punished for engaging in prostitution;
* Develop exit strategies and economic programs, including active employment measures for women who wish to leave prostitution;
* Design measures for the prevention of prostitution in the digital space and regulate and standardize penal policy;
* Prohibit the advertising of prostitution and punish the media or other actors who facilitate the advertising of prostitution;
* Sensitize the media and the public about the fact that prostitution could be a severe violation of the human right to life, physical and psychological integrity, freedom, and dignity.

1. Molim sud, AŽC, <https://www.womenngo.org.rs/images/publikacije-nasilje/Molim_sud.pdf>, p.11 [↑](#footnote-ref-1)
2. https://centarzztlj.rs/planovi-i-izvestaji-o-radu/ , Izveštaj o radu za 2022. [↑](#footnote-ref-2)
3. Data from the annual reports of the Center for the protection of human trafficking victims. [↑](#footnote-ref-3)
4. <https://centarzztlj.rs/%d1%81%d1%82%d0%b0%d1%82%d0%b8%d1%81%d1%82%d0%b8%d1%87%d0%ba%d0%b8-%d0%b8%d0%b7%d0%b2%d0%b5%d1%88%d1%82%d0%b0%d1%98-%d1%86%d0%b5%d0%bd%d1%82%d1%80%d0%b0-%d0%b7%d0%b0-2023-%d0%b3%d0%be%d0%b4%d0%b8/> [↑](#footnote-ref-4)
5. <http://www.atina.org.rs/sr/iza-ekrana-analiza-zloupotreba-%C5%BErtava-trgovine-ljudima-u-digitalnom-okru%C5%BEenju> [↑](#footnote-ref-5)