

ANNEX 1

PROVISIONS RELATED TO GENDER-BASED VIOLENCE IN SERBIAN LEGISLATION

(Note: since some provisions were changed in recent years, both OLD and CURRENT provisions will be quoted)

DOMESTIC VIOLENCE:

Domestic violence was criminalized for the first time *as a specific criminal act* in Art. 118a of the Criminal Code, which came into effect in March 2002.

The Criminal Code was amended in 2005 and came into force on January 1st, 2006.

Note: translation of old provisions on domestic violence and sexual harassment was prepared by OSCE Mission to Serbia and Montenegro. Translation of other provisions in this ANNEX is unofficial, i.e., provided by the author of this study (official translation was not available to us).

Therefore, provisions in the OLD Criminal Code (2002) were as follows (source: Official Gazzette of the Republic of Serbia, 26/77):

- Para. 1: „Whoever by use of force or serious threat against life and limb violates or endangers physical or mental integrity of a family member shall be fined or punished with imprisonment up to three years.
- Para 2: If a weapon, dangerous instrument or an implement suitable to cause serious bodily harm or seriously impair health is used in committing the offence specified in paragraph 1 of this Article, the perpetrator shall be punished with six months to five years imprisonment.
- Para 3: If serious bodily harm or permanent and serious impairment of health of a family member results due to the offence specified in paragraphs 1 and 2 of this Article, or if the offence is committed against a minor, the perpetrator shall be punished with two to ten years imprisonment.
- Para 4: If the offence specified in paragraphs 1 and 2 of this Article results in death of a family member, the perpetrator shall be punished with minimum ten years imprisonment.”

(Besides these provisions, acts of family violence were punishable under the general conditions prescribed to physical assaults)

Some of these provisions related to domestic violence were changed recently – NEW provisions on domestic violence in the Criminal Code of Serbia (that came into effect on January 1st, 2006) are as follows:

Domestic violence is explicitly defined in the Art. 194 of the Criminal Code (source: Official Gazzete of the Republic of Serbia, 85/05), but prescribed senteces are lower in comparison to those imposed by the previous provisions (Art. 118a; 2002).

According to these newly-adopted provisions:

- „Perpetrator who by the use of force, threat against life and body, impertinent or insolent behavior endangers serenity, physical integrity or mental state of a member of its family shall be fined or punished with imprisonment to one year (Art. 194 of the Criminal Code, para. 1).
- If a weapon, dangerous instrument or an implement suitable to cause serious bodily harm or seriously impair health is used in committing the offence, the perpetrator shall be punished with three months to three years imprisonment (para 2).
- If serious bodily harm or serious impairment of health of a family member results due to the offence, or if the offence is committed against a minor, the perpetrator shall be punished with one to eight years imprisonment (para 3), while in case that domestic violence results in a death of a family member, prescribed sentence is three to twelve years imprisonment (para 4).

Explicit definition of domestic violence is provided in the newly-adopted Family Law, which came into force on July 1st, 2005. This Law also defined who should be considered “a family member”, which should be viewed as an improvement in legislation (previously, in court practice, a narrow interpretation of the term “family member” led to a significant narrowing of legal protection from domestic violence, as elaborated above in the analysis/study of Konstantinovic-Vilic and Petrusic, 2004).

PROTECTIVE MEASURES AGAINST DOMESTIC VIOLENCE IN THE FAMILY LAW :

Protective measures are defined in the Family Law, Art. 198 (this law came into force on July 1st, 2005). It is specified that court could impose one or several protective measures against the family member who has committed violence, i.e., the court could temporarily ban or restrict relations with other family member (Family Law, Art 198, para 1; Official Gazette of RS 18/05).

One or more of the following protective measures could be imposed by the court:

- 1) issuing court order for removal of a perpetrator from family apartment or house, regardless of the property rights or rental agreement,
- 2) issuing a court order for moving into family apartment or house, regardless of the property rights or rental agreement,
- 3) restraining order (banning approach to a family member on defined reach),
- 4) banning approach into place of residing or place of work of the family member,
- 5) banning further harassment of the family member (Art. 198, para 2).

The procedure is particularly urgent (Art. 285), the charges do not have to be referred to the accused for obligatory response (Art. 204 para. 2), the court must carry out the proceedings in two scheduled hearings at most (Art. 204, para.3), the first scheduled hearing should be held within 8 days from the day charges are received by the court (Art. 285, para. 2) and a second-instance verdict is to be delivered within 15 days from the day when the charges are referred to the court of second instance (Art. 285, para. 3).

Protective measure(s) from domestic violence can last up to one year (Art 198, para 3), but they could be also prolonged until reasons for their imposing cease to exist (Art. 199)

Punishment for violation of protective measures is prescribed in the Criminal Code (Art. 194, para. 5). This Article prescribes that whoever violates protective measures determined by the court, shall be fined or sentenced to six months imprisonment. Reps. of women's NGOs regard this provision as **highly important**.

INCEST:

Incest is penalized in Art. 197 of the newly-adopted Criminal Code of Serbia, which came into force on January 1st, 2006. It is prescribed that if adult who commits sexual intercourse or equivalent sexual act with under-aged direct blood relative or with under-aged sibling (brother or sister) shall be punished by up to three years imprisonment. The same punishment was prescribed by previous legal provisions, and many representatives of women's NGOs protested against it, insisting that punishment was too mild. Some legal experts (Aleksic and Lukic, 2000) questioned the legal definition of incest, explaining that "there is no specific difference between voluntary and forced sexual intercourse, or between blood relatives, regardless of whether they are adults or minors. By taking a vague attitude toward acts committed by an adult blood relative, the law has left this issue to court interpretation - there is no real and well-rooted protection of children from sexual abuse".

DIFFERENT FORMS OF SEXUAL OFFENCES:

Rape:

Art. 178 of the new Criminal Code, prescribes that whoever coerces another person to sexual intercourse or equivalent act, by the use of force, or threat against life or body (or threat against other close persons) shall be punished with imprisonment from two to ten years (para 1). Gender (of either a perpetrator or a victim) is not explicitly mentioned.

There are also more severe forms of rape (rape committed by severe threats, in a particularly cruel or humiliating way, rape that resulted in heavy bodily injury, pregnancy or a death of a victim, rape against a minor, rape by several offenders, etc.), for which more severe punishment is prescribed.

If rape has been committed by a threat of disclosure of something that could be harmful to honour or reputation of another person (or other persons close to him/her), or by threat of other serious harm/damage, prescribed sentence is one to eight years (para 2).

If the act described in para 1 or para 2 had resulted in heavy bodily injury of the victim, if the act have been committed by several offenders, or in a particularly cruel or humiliating way, or against a minor, if the act had resulted in victim's pregnancy, sentence is three to fifteen years imprisonment (para 3). If the act referred to in para 1 and 2 had resulted in a death of a victim or if it has been committed against a child, prescribed sentence is five to eighteen years imprisonment.

Marital rape:

Until recently, marital rape was not criminalized; this act became incriminated by amendment to Criminal Code in 2002 (previous provision defined rape as forced sexual intercourse outside matrimony, but the amendment dropped the latter part "outside matrimony")

Other forms of sexual offences:

1. Art. 179 of the new Criminal Code of Serbia refers to **sexual intercourse with a defenseless/helpless person**. This act is defined as sexual intercourse or equivalent act by abusing mental illness, impaired mental development, other mental disturbance, helplessness of another person, or any other condition/state of another person due to which that person is not able to provide resistance. Prescribed sentence for such offence is one to ten years imprisonment (para 1). If such act results in heavy bodily injury or pregnancy of the helpless person, if the act has been committed by several offenders or in a particularly cruel or humiliating way, if the act has been committed against a minor – perpetrator shall be punished with two to twelve years imprisonment (para 2). If act referred to in para 1 and 2 results in a death of the victim, or if the act has been committed against a child, prescribed punishment is five to eighteen years.

2. Art. 180 of the new Criminal Code of Serbia refers to **statutory rape**, which is defined as sexual intercourse or equivalent act with a child, and punishable by one to ten years (para 1), but it is also stipulated that a perpetrator shall not be punished for such act if there is no significant difference in mental and physical maturity between a perpetrator and a victim. Aggravated forms of this act exist if the act results in heavy bodily injury or pregnancy of a victim; or if the act has been committed by several offenders (prescribed sentence: two to twelve years; para 2), also, if the act referred to in para 1 and 2 results in a death of a victim, prescribed sentence is five to eighteen years (para 3).

3. Art. 181 of the new Criminal Code of Serbia defines a criminal act - **sexual intercourse by abuse of authority**. This act is defined as sexual intercourse of equivalent act by abuse of authority/office with another person who is in a subordinate position or in a position of dependence, and it is punishable by imprisonment from three months to three years.

4. Art. 182 of the new Criminal Code of Serbia is related to **prohibited sexual acts** stipulates that whoever under conditions prescribed in Art. 179, para 1 and 2; Art. 179, para 1; Art. 180 para 1; and Art. 181 para 1 and 3 commits some other sexual act, shall be fined or sentenced to three years imprisonment. Aggravated forms are: if the act results in heavy bodily injury, or if the act has been committed by several offenders or in a particularly cruel/humiliating way (para 2, punishment: two to ten years imprisonment), and if the act results in a death of a victim (para 3, punishment: three to fifteen years).

5. Art. 183 of the new Criminal Code of Serbia prohibits **pimping and enabling sexual intercourse** of minors. It stipulates that whoever pimps a minor for a purpose of sexual intercourse, other equivalent act or other sexual act shall be punished with imprisonment from three months to five years (para 1), and whoever enables sexual intercourse, equivalent act or other sexual act with a minor, shall be punished with three years imprisonment (para 2).

6. Art. 184 prohibits **acting as intermediary in prostitution**, defining that whoever induces or encourages another person to prostitution; or participate in a surrender of a person to another person for a purpose of prostitution; or through mass-media or other similar means advocates or advertises prostitution, shall be fined or sentenced to up to three years imprisonment (para 1). If the act has been committed against a minor, prescribed sentence is one to ten years imprisonment.

7. Art. 185 prohibits **exposure of children to pornography or using children for pornography**, and it stipulates that whoever sells, exposes, displays in public or in other way makes available to a child texts, photos, audio-visual or other subjects of pornographic nature, or shows him/her pornographic performance, shall be fined or sentenced to up to six months imprisonment (para 1). If a child is used for producing photos, audio-visual or other subjects/matters of pornographic nature, or for a pornographic performance, a perpetrator shall be sentenced to six months to five years imprisonment (para 2). Whoever sells, displays, exposes in public or makes available in an electronic format or in other manner photos, audio-visual materials of pornographic nature produced by the act specified in para 2, shall be punished with imprisonment of up to two years.

TRAFFICKING IN HUMAN BEINGS:

OLD provisions will be described first, in order to provide an insight into legislative changes.

Although our country signed the UN Convention against Transnational Organized Crime in 2000, domestic legislation did not recognize trafficking in women as a specific criminal offence until April

2003, when, after the amendments, the article 111b (Trafficking in Human Beings) was introduced to the Criminal Law of the Republic of Serbia. Art. 111b of the Criminal Code of the Republic of Serbia prescribed:

Para. 1: Whoever by use of force or means of threat, by deception or perpetuation of deception, the abuse of power, trust or of a position of subordination or vulnerability of another person: recruits, transports, transfers, surrenders, sells, buys, acts as an intermediary in transfer or sale, conceals or keeps another person for the purpose of obtaining some gain, exploitation of labour, criminal activities, prostitution or begging, for pornographic purposes, removal of organs for transplantation or exploitation in armed conflicts, shall be punished with imprisonment from one to ten years.

Para. 2: If the offence referred to in paragraph 1 of this Article has been committed against several persons, by kidnapping, while performing official duty, within a criminal organization, in a particularly cruel or humiliating way or causing a severe bodily harm, the perpetrator shall be punished with imprisonment of minimum three years.

Para. 3: If the offence referred to in paragraph 1 of this Article has been committed against a minor or resulted in death of the injured party, the perpetrator shall be punished with imprisonment of minimum five years.

Para. 4.: The perpetrator of the offence referred to in paragraph 1 of this Article which has been committed against a person under the age of 14 shall be punished as provided for such offence even if he/she does not use force, means of threat or other method referred to in paragraph 1 of this Article.

Until the introduction of this criminal offence, trafficking in women for the purpose of sexual exploitation could have been prosecuted under one of the following laws: **establishment of a slavery-like relationship and transportation of persons in a slavery-like relationship** (Art.155 of Criminal Code of SFRY/FRY), **illicit crossing of the state border** (Art.249 of Criminal Code of SFRY/FRY), **mediation in practicing prostitution** (Art. 251 of Criminal Code of SFRY/FRY), and similar. Note: these were laws of the former federal state SFRY/FRY and as such they were part of Criminal Law of SFRY/FRY, however, they became accepted at the level of Republic of Serbia under the name Basic Criminal Law; Official Gazette of Republic of Serbia, No. 39/2003 of April 11, 2003. The latter provision (Art. 251) in para. 1 and 2 hereof allowed for prosecution in the case of forced prostitution - this act was most often used as a substitute for trafficking in human beings before it was introduced as a criminal act.

Currently, trafficking in human beings is regulated by the NEW Criminal Code of Serbia, which came into effect on January 1st, 2006. Article 388 of the Criminal Code – Trafficking in human beings, prescribes:

Para. 1: Whoever by use of force or means of threat, by deception or perpetuation of deception, the abuse of authority, trust or of a position of subordination or difficult position/vulnerability of another person, by detaining personal documents or giving and taking money or other gain: recruits, transports,

transfers, surrenders, sells, buys, acts as an intermediary in transfer or sale, conceals or keeps another person for the purpose of exploitation of labour, forced labour, criminal activities, prostitution or other forms of sexual exploitation, begging, use for pornographic purposes, establishment of a slavery-like or similar relationship, removal of organs or bodily parts or exploitation in armed conflicts, shall be punished with imprisonment from two to ten years.

Para. 2: The perpetrator of the offence referred to in paragraph 1 of this Article which has been committed against a minor shall be punished as provided for such offence even if he/she does not use force, means of threat or other method referred to above

Para. 3: If the offence referred to in paragraph 1 of this Article has been committed against minor, the perpetrator shall be punished with imprisonment of minimum five years.

Para. 4: If the offence referred to in paragraph 1 and 3 of this Article resulted in heavy bodily injury of another person, the perpetrator shall be punished with imprisonment of three to fifteen years.

Para. 5: If the offence referred to in paragraph 1 and 3 of this Article resulted in death of one or more persons, the perpetrator shall be punished with imprisonment of minimum ten years.

Para. 6: Whoever has been committing the criminal offence referred to in paragraph 1 to 3 of this Article, or if the offence is committed by an organized group, shall be punished with imprisonment of minimum five years.

The new Criminal Code of the Republic of Serbia also prescribes punishment for criminal offence: **establishment of a slavery-like relationship and transportation of persons in a slavery-like relationship** (Art. 390).

Para. 1 of this Article prescribes that whoever, by violating regulations of international law, places another person into slavery-like or similar relationship, or keeps him/her in such relationship, sells, buys, surrenders to other person or acts as an intermediary in buying, sale or transfer, or incites another person to sell his/her freedom (or a freedom of the person whom he/she supports or take care of) shall be punished by imprisonment from one to ten years. By para. 2 of this Article, it is prescribed that who transports other persons in slavery-like or similar relationship from one country to another shall be punished with imprisonment from six months to five years. Para. 3 of this Article prescribes that if the offence referred to in para. 1 and 2 of this Article has been committed against a minor, the perpetrator shall be punished by imprisonment from five to fifteen years.

SEXUAL HARASSMENT:

Sexual harassment was criminalized in the OLD Criminal Code (amendments were made in 2003).

Note : this is an official translation of OSCE Mission to Serbia and Montenegro) :

Article 102a of the OLD Criminal Code stipulated (source : Official Gazzete of the Republic of Serbia, 26/77):

Para 1 : Whoever sexually harasses or otherwise offends the dignity of another person by conduct of a sexual nature shall be punished with a fine or imprisonment not to exceed six months.

Para 2 : Whoever commits the act specified in paragraph 1 of this Article through the abuse of his/her position over a person in a subordinate or dependent position, shall be punished with a term of imprisonment not to exceed one year.

Para 3 : Criminal offences referred to in paragraph 1 and 2 of this Article shall be subject to private prosecution.

NOTE : The provision quoted above was excluded from the NEW Criminal Code that came into force in 2006 (**sexual harassment is no longer a criminal offence**).

However, there are provisions **in civil law (Labor Law)** related to harassment and sexual harassment.

Labor Law stipulates that harassment and sexual harassment are prohibited (Labor Law, (source: Official Gazzette of the Republic of Serbia, 24/05).

In Art. 21 of the Labor Law, sexual harassment is defined as follows:

„any verbal, non-verbal or physical behavior which is aimed at, or represented in, violation of dignity of a person who seeks job, or an employed person in a realm of sexual life, and which results in fear or creation of hostile, humiliating or offensive environment”.

Hence, in Labor Law, sexual harassment is not defined as gender based discrimination; there is no act on prohibition of sexual blackmail, and internal procedures are not prescribed. Victims of sexual blackmail could seek protection in court only against lesser offence: harassment. Burden of proof is on victim.