

# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN **SERBIA**

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# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN SERBIA

## INTRODUCTION

Serbia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, IC) on the 21<sup>st</sup> of November 2013, while the document entered into force on the 1<sup>st</sup> of August 2014<sup>1</sup>. However, Serbia expressed the following reservations until the national criminal law is harmonized with the Convention, which remain valid until August 1<sup>st</sup> 2019, regarding:

- compensation to victims<sup>2</sup> by the State (Article 30, paragraph 2),
- jurisdiction to implement measures when the offence in accordance to the Convention is committed by a person

with habitual residence in Serbia (Article 44, paragraph 1e),

- Jurisdiction for prosecution of the offences of sexual violence (Art 36), forced marriage (Art 37), female genital mutilation (Art 38), and forced abortion and forced sterilisation (Art 39) (Article 44, paragraph 3 and 4).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was ratified by Serbia by automatism as a legal successor to the Socialist Federal Republic of Yugoslavia (which ratified CEDAW in 1981<sup>3</sup>), and later on successor of Federal Republic of Yugoslavia and The State Union of Serbia and Montenegro<sup>4</sup>.

<sup>1</sup> CoE, [2018] <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>

The Law on ratifying the Istanbul Convention was published at the Serbian National Assembly's official web site on the 31<sup>st</sup> of October 2013, while the Law itself does not contain information about the ratification date (<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakon/2013/2246-13Lat.pdf>). Local information sources, such as NGOs and media, refer to the National Assembly's web-site publishing date as the official ratification date, while information at the CoE's database varies.

[NOTE: Footnotes contain short references. For full reference list, please see the full Reference / Bibliography list at the end of the analysis.]

<sup>2</sup> The term 'violence victim' is used throughout the analysis only when legislation or other desk research references are used. The affirmative term 'violence survivor' is used instead to express the feminist position towards the women who experienced violence in their lives.

<sup>3</sup> [https://www.paragraf.rs/propisi/zakon\\_o\\_ratifikaciji\\_konvencije\\_o\\_eliminisanju\\_svih\\_oblika\\_diskriminacije\\_zena.html](https://www.paragraf.rs/propisi/zakon_o_ratifikaciji_konvencije_o_eliminisanju_svih_oblika_diskriminacije_zena.html)

<sup>4</sup> UNTC, [no date] [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#7](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#7)

The Gender Equality Coordinating Body (GECB), under the presidency of the Deputy Prime Minister Zorana Mihajlović, is the government body responsible for the implementation and reporting about the IC performance at the national level. So far, there has been no IC budget allocations, implementation or national action plan provided by the Serbian public administration which is not in line with Art 7 of the IC. However, the Republic of Serbia has submitted the first report to GREVIO Committee in July 2018 (Official GR) which is publicly available in English at the CoE's website<sup>5</sup>.

The National strategy for prevention and suppression of violence against women in family and partnership relations expired in 2015<sup>6</sup>, while Serbia never introduced a comprehensive national action plan (NAP) regarding violence against women and girls (VAWG). The current National Gender Equality Strategy (NGES)<sup>7</sup> defines VAWG as a violation of women's human rights and manifestation of historically unequal power relations between women and men, in line with the IC. However, it is not a VAWG referent policy document since VAWG is addressed among a variety of other topics and goals—the economy of care, distribution of time, participation in political and public life, gender equality in economics, formal education system and in the media sphere, gender policy and programs mainstreaming, institutional mechanisms of gender equality, etc. NGES tackles the subject matter only slightly by suggesting new policy improvements without providing any specific measures to combat

VAWG. Finally, regarding budgeting, the only project presented aimed at suppression of VAWG is the “Integrated response to VAWG II” funded by foreign donors<sup>8</sup>.

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<sup>5</sup> OfficialGR, (2018) – The Republic of Serbia comments on GREVIO's final report on the implementation of the IC (Baseline Report) <https://rm.coe.int/grevioinf-2018-9/16808c1a4e>

<sup>6</sup> The original document is available here: <https://www.minrzs.gov.rs/files/doc/podrocna/strategije/Nacionalna%20strategija%20-%20nasilje%20nad%20zenama.pdf>

<sup>7</sup> The original document is available here: <http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-2016-do-2020-godine-sa-akcionim>

<sup>8</sup> GECB, (no date) <https://www.rodnaravnopravnost.gov.rs/sr-Latn/projekti>

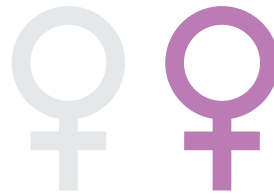
# INTIMATE PARTNER VIOLENCE (IPV)

**DATA AND OFFICIAL STATISTICS** ● The scarcity of official statistics related to general IPV<sup>9</sup> prevalence in Serbia is endemic. There is no nationwide research on the prevalence of IPV carried out by the Serbian public institutions, as stipulated by the IC Art 11, and Art 34b of CEDAW Rec 35. According to the last extensive research by UNDP, every second woman in central Serbia has experienced some form of domestic violence (DV) during her lifetime<sup>10</sup>. Growth in officially registered DV cases is evident, with the number of reported cases increasing almost three times in the observed period of seven years – from approximately 3,500 cases in 2006 to about 10,000 cases in 2013<sup>11</sup>. Official statistics related to DV segregated by gender, as stipulated by the IC Art 11, and Art 34b of CEDAW Rec 35, are not issued by the Serbian public administration. The Judiciary issues annual statistics<sup>12</sup> related to criminal acts whereby violence in the family<sup>13</sup> makes a portion among all criminal acts referred to as ‘Criminal acts against marriage and family’, but the data is not segregated by gender. Hence, it is not possible to know how many reports, accusations or convictions were made for IPV against women in Serbia. Finally, *the dark number*, regarding unreported and unprosecuted IPV cases, remains very high<sup>14</sup>.

Available data is alarming. According to Women Against Violence Network in Serbia (WAVN Serbia) report for 2017, at least 26 women lost their lives in the family-partnership context in Serbia during the last year<sup>15</sup>. Almost every second case was already known to public service providers.

In the last three years (2015-2017) in Serbia, about one hundred women were murdered by their partner or family member<sup>16</sup>.

According to the last extensive research by UNDP, every second woman in central Serbia has experienced some form of domestic violence (DV) during her lifetime.



Growth in officially registered DV cases is evident.

	The number of reported DV cases
2006	<b>3,500</b>
2013	<b>10,000</b>

According to WAVN Serbia report for 2017, at least 26 women lost their lives in the family-partnership context in Serbia during the last year.



<sup>9</sup> Also called domestic violence – DV, throughout the analysis as both terms refer to gender aspect of the violence.  
<sup>10</sup> Babović et al., (2010) [http://www.rs.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/UNDP\\_SRB\\_Mapiranje\\_porodnog\\_nasilja\\_prema\\_zenama\\_u\\_Centralnoj\\_Srbiji.pdf?download](http://www.rs.undp.org/content/dam/serbia/Publications%20and%20reports/Serbian/UNDP_SRB_Mapiranje_porodnog_nasilja_prema_zenama_u_Centralnoj_Srbiji.pdf?download)  
<sup>11</sup> UNDP, (2016) [http://www.rs.undp.org/content/dam/serbia/docs/Our%20Projects/SocialInclusion/UNDP\\_SRB\\_PRODUC\\_UN%20JP%20VaW%20prodoc%20FINAL.pdf](http://www.rs.undp.org/content/dam/serbia/docs/Our%20Projects/SocialInclusion/UNDP_SRB_PRODUC_UN%20JP%20VaW%20prodoc%20FINAL.pdf)  
<sup>12</sup> RZS, (2017) [http://webzrs.stat.gov.rs/WebSite/repository/documents/00/02/54/03/SK12\\_194-srb-punoletni-2016.pdf](http://webzrs.stat.gov.rs/WebSite/repository/documents/00/02/54/03/SK12_194-srb-punoletni-2016.pdf)  
<sup>13</sup> Serbian legislation uses the term ‘violence in the family’ without direct recognition of gender aspect of the phenomenon. Therefore, ‘violence in the family’ or ‘domestic violence’ (DV) will be used throughout the analysis whenever it is referred to Serbian legal framework.  
<sup>14</sup> Fenomena Association, (2015) *Fostering the cooperation among CSOs and Institutions on the subject of protection and security in domestic violence cases*, [Project] Unpublished.  
<sup>15</sup> Lacmanović, (2018) [https://www.zeneprotivnasilja.net/images/pdf/FEMICID\\_Kvantitativno-narativni\\_izvestaj\\_z\\_2017\\_godinu.pdf](https://www.zeneprotivnasilja.net/images/pdf/FEMICID_Kvantitativno-narativni_izvestaj_z_2017_godinu.pdf)  
<sup>16</sup> WAVN Serbia, 2018 <https://www.zeneprotivnasilja.net/femicid-u-srbiji>

**LEGISLATIVE FRAMEWORK** ● In the last decade of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century, IPV became a public matter in Serbia. The change was the result of persistent political engagement of the feminist and human rights activists – which is reiterated by the Official GREVIO Report submitted by the Republic of Serbia (OfficialGR). The state was expected to intervene to ensure human rights for women in the private sphere<sup>17</sup>. However, the state actions producing the most effective legislation are due to alignment with EU *acquis*<sup>18</sup>. International actors such as United Nations and Organisation for European Security and Cooperation facilitated said process<sup>19</sup>.

*“I could not say that things are not changing, they are, but deeply rooted patriarchal attitudes and personal fears related to violence are still present. Because of this, women still stay in violent situation or hardly go out from it. Especially women with disabilities. The social awareness is at a higher level than before, however, there are other factors that additionally complicate the situation such as retraditionalisation or a basic misunderstanding of the social model of disability,”*<sup>20</sup> shares one of the interviewed CSO professionals working with women with disabilities, Sjetlana Timotić.

The law regulating IPV is only one-year-old, hence it is expected that it will bring improvements. Therefore, the desk research looked at older IPV related legislation in Serbia. The literature review indicates that the obstacles to higher legal efficiency are demonstrated in a prosecutor’s insistence on victim’s testimony and negligence of other potential evidence<sup>21</sup>. Problems in implementation imply cultural limitations including low institutional understanding of the misuse of patriarchal power aspect and related post-traumatic stress disorder challenges, blurred borders between the public and private sphere, and the dichotomy of family and individual rights. Additionally, ‘institutional sexism’, public professionals’ attitudes based on gender stereotypes and prejudices, prevents adequate protection of DV survivors<sup>22</sup>. The system’s functionality is disputed due to institutions’ low capacities, whereby professionals complain of work overload and dissatisfaction with working conditions<sup>23</sup>.



*“I could not say that things are not changing, they are, but deeply rooted patriarchal attitudes and personal fears related to violence are still present.”*

17 Dimovski, D. (2015) ‘Restorativnapravda u funkcijizaštite od nasilja u porodici’ [The Role of the Restorative Justice in the Protection Against Domestic Violence], *ZbornikradovaPravnogfakulteta u Nišu*, Vol. 70, pp. 423-438.

18 Ignjatovic, S., & A. Boskovic, (2013) ‘Are we there yet? Citizens of Serbia and public policy on gender equality within the EU accession context’, *European Journal of Women’s Studies*, Vol. 20(4), pp. 425-440.

Samardzic, S., (2014) ‘Criminal Law Aspects of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’, *ZbornikradovaPravnogfakulteta u NovomSadu*, Vol. 4 (2014), pp. 375-390.

19 Jaric, V., (2015) ‘Contribution of United Nations in Serbia to Protection of Women Survivors of Violence in Family and in Intimate Partner Relationships: From International Law to Practice’, *Temida – Journal on Victimization, Human Rights and Gender*, Vol. 1 (year 18, March/2015), pp. 55-74.

OSCE, (2014) <http://www.osce.org/serbia/126982>

20 All quotations used in the analysis to support the desk research are coming from women’s CSOs advocates and specialized direct service providers in Serbia, who were interviewed during the research.

21 Kovacek-Stanic, G., & S. Samardzic, (2014) ‘Novelties Introduced by the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’, *ZbornikradovaPravnogfakulteta u NovomSadu*, Vol. 2, pp. 93-115.

22 Petrusic, N., S. KostantinovicVilic, & N. Zunic, (2015) ‘Institutional Sexism: An Obstacle to an Effective Protection Against Domestic Violence’, *Temida – Journal on Victimization, Human Rights and Gender*, Vol. 1 (year 18, March/2015), pp. 31-53.

23 Ignjatovic et al., (2015) [http://www.womenngo.org.rs/images/publikacije-dp/2015/Delotvornost\\_sistemskih\\_mehanizama\\_za\\_sprecavanje\\_nasilja\\_prema\\_zenama\\_i\\_nasilja\\_u\\_porodici.pdf](http://www.womenngo.org.rs/images/publikacije-dp/2015/Delotvornost_sistemskih_mehanizama_za_sprecavanje_nasilja_prema_zenama_i_nasilja_u_porodici.pdf)

As confirmed by interviewed women's CSO's professionals, survivors' safety does not seem to be a top priority to institutions. In most cases, women first separately give statements to police or Centre for Social Work (CSW), while during the further proceeding they testify in front of the perpetrator. *"Prosecutor's office and courts say they do not have enough free space or technical capacities to provide separate premises or video link so that a survivor can be separated from perpetrator when testifying,"* says Biljana Stepanov, the Coordinator of "Centre for support to women". Finally, institutions have no obligation to inform the survivor when the perpetrator has been released or escaped from prison.

Thus, solutions enacted by policy and decision makers, during the continuous period, did not give intended results. The Ombudsman's reports<sup>24</sup> reveal systemic inaction and severe professional misconducts regarding DV prevention and survivor's protection. Consequently, a series of femicides across the country and one mass murder in the family that happened in May 2015<sup>25</sup> resulted in the introduction of *Lex specialis* in 2017 – the new Law on Prevention of Domestic Violence (LPDV). Still, the public officials proposed policy changes as the only solution, expecting that the available institutional resources at the national and local level will automatically implement the new legal stipulations without a comprehensive plan and implementation capacities.

Meanwhile, in the mainstream policy arena, IPV was inverted from a social protection to human security issue; instead of the CSW, the Prosecutor's office became the main policy actor. Considering the Serbian legislative hierarchy, the said change and the introduction of the new LPDV should be considered as a good practice. However, as the Independent GREVIO Report prepared by women's CSOs (Shadow GR) points out, the implementation of the international commitments that are inserted into the domestic legislation, continues to be a policy challenge: "...one unimplemented regulation being substituted by another regulation which also has a great chance of not being implemented in created atmosphere of normativity erosion, continues to be the long-term practice."<sup>26</sup>

**A series of femicides across the country and one mass murder in the family that happened in May 2015 resulted in the introduction of *Lex specialis* in 2017 – the new Law on Prevention of Domestic Violence (LPDV).**



<sup>24</sup> <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/3710-2015-02-24-13-35-38>  
<http://ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

<sup>25</sup> RFE, [2015] <https://www.slobodnaevropa.org/a/vesna-stanojevic-drzava-ne-reaguje-na-porodicno-nasilje/27022955.html>

<sup>26</sup> ShadowGR, [2018], pp. 6 (unpublished).

As stipulated by both the IC (Art 18) and CEDAW (Art 29a Rec 35), DV is now criminalized in the Republic of Serbia. Different aspects of protection and prosecution of DV are treated through the Family Law, the Criminal Code (CC) and the LPDV.

Legislation is combined and the Prosecutor defines under which law the specific act will be treated. The following table provides basic information on the main Serbian IPV related legislation.

LAW	DEFINITIONS	MEASURES AND SANCTIONS
<b>FAMILY LAW<sup>27</sup>, ART 197</b>	DV as the act of a family member by which the other family member's physical integrity, mental health or serenity are endangered – especially physical injury, provoking fear by death threats or physical injury, forcing sexual intercourse, persuasion to sexual intercourse of a minor under 14 years old or a person with disability, restricting freedom of movement or communication, insults or other malicious behaviour.	Protection measures to be provided, alone or in combination, to the violence victim that can last up to one year, including: <ul style="list-style-type: none"> <li>- eviction and housing orders,</li> <li>- restraining order (according to distance and location),</li> <li>- prohibition of further harassment.</li> </ul>
<b>CRIMINAL CODE<sup>28</sup>, ART 194</b>	The use of violence, threat to attack the life or body, or impudent and negligent behaviour jeopardizing the serenity, physical integrity or mental condition of a family member.	Depending on a specific situation, DV acts are classified as petty offences, minor criminal offences or serious criminal offences. <ul style="list-style-type: none"> <li>- Basic jail sentence is from 3 months to 3 years.</li> <li>- Acts involving weapon or tools – prison sentence 6 months to 5 years.</li> <li>- Severe bodily injury or minor is a victim – prison 2 to 10 years.</li> <li>- When victim dies – 3 to 15 years of jail.</li> </ul>
<b>THE LAW ON PREVENTION FROM DOMESTIC VIOLENCE</b>	Physical, sexual, psychological and economic violent acts are recognized, while the domestic context means that the perpetrator and the victim are currently or were previously married, in extramarital or partner relationship. Including a wide range of family and adoptive relationships.	Sanctions related to the violation of emergency measures sentenced by the judge: <ul style="list-style-type: none"> <li>- 60 days in jail who violates emergency measure, and</li> <li>- 1000 euro average fine for the responsible party at an institution who does not report or obstructs the DV reporting process.</li> </ul>

**Table 1** – The main IPV related legislation in the Republic of Serbia

<sup>27</sup> Available at: <https://www.minrzs.gov.rs/files/doc/porodica/Porodichni%20zakon.pdf>

<sup>28</sup> Available at: <http://www.fb.bg.ac.rs/download/Pitanja/Krivicni%20zakonik%20RS.pdf>



In general, the definitions provided in Serbian legislation are in line with the IC definitions. However, the gender aspect of violence against women is invisible and the system is not sensitive to known IPV characteristics whereby the empowerment of the survivor, safety and diversity should be at the centre of the policy solution<sup>29</sup>. The complexity of Serbian policy system is proven by women's specialized CSOs through interviews. The field practice shows that incomprehension of the complex legal system is among the greatest challenges for women survivors of IPV. They lack the information about each institution's mandate and obligations and find it hard to follow which law regulates different situations. The various institutional procedures have not been harmonized so it's unclear, even to the public servants working in the multi-agency context, what the exact rules and procedures are, especially regarding the other institutions' jurisdictions.

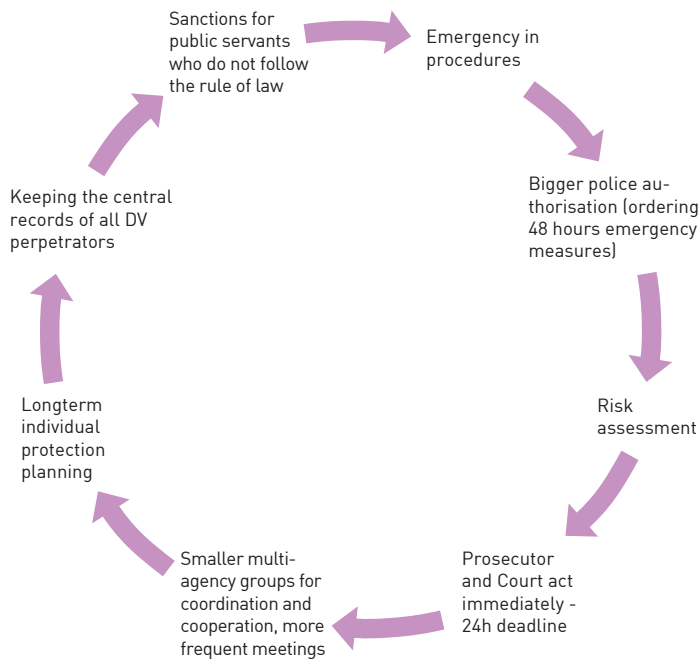
*"Women are often not informed about the procedures of mandatory institutions, if the emergency measures are being issued to the perpetrator and what will be the next steps. Women do not have enough knowledge about procedures and institutions use this fact and send them from one institution to another to ask for their rights. The law implementation is still very complicated"* says one of the interviewed CSO professionals working with Roma women, Ana Saćipović, adding that: *"This is especially hard for Roma women because the system discriminates them additionally whereby for them the whole procedure of implementation of the law is more complicated."* Biljana Stepanov confirms what was previously said by asserting: *"The implementation relies on informed survivor and individual capacities – knowledge, readiness and motivation of a specific public servant; the system is not functional until all cases are approached with due diligence."*

Biljana also adds that *"traditionally seen as institutions of repression – police, the public prosecutor and the court – are assigned as DV prevention agents."* The **Group for Coordination and Cooperation (GCC)** (public prosecutor, police, and CSW) must work closely and in coordination with the prosecutor's office. The new LPDV promotes efficiency and public administration's responsibility, but it narrows the multi-agency concept. For example, specialized women's CSOs that provide services to women IPV survivors are not recognized and involved as policy implementing agents – previous policy concept implied participation of specialized organizations in multi-agency teams, while the new LPDV does not include women's CSOs as part of local GCCs (Art 26). Moreover, there are 27 networked specialized women's CSOs in Serbia whereas *"women's CSOs are called sometimes by the state institutions to participate in various processes but only to fulfill the form; essentially, CSOs' participation is not real in policymaking. Women representing minorities are often called so that the international community and donors are shown that all stakeholders are involved. But, this is just a mask, our proposals are never adopted. Also, organisations from Belgrade are mostly participating in these processes because they are most visible and closest,"* says Ana Saćipović. The fact that only one women's CSO working in capital was involved in a working group while the new LPDV was prepared is confirmed by the Official GR<sup>30</sup>.

**Specialized women's CSOs that provide services to women IPV survivors are not recognized and involved as policy implementing agents.**

<sup>29</sup> Kelly, (2007) [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF\[2007\]Study%20rev.en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-CONF[2007]Study%20rev.en.pdf) and EWL, [2010] <https://www.womenlobby.org/Towards-a-Europe-Free-from-All-Forms-of-Male-Violence-against-Women-December>

<sup>30</sup> OfficialGR, [2018], pp. 13.



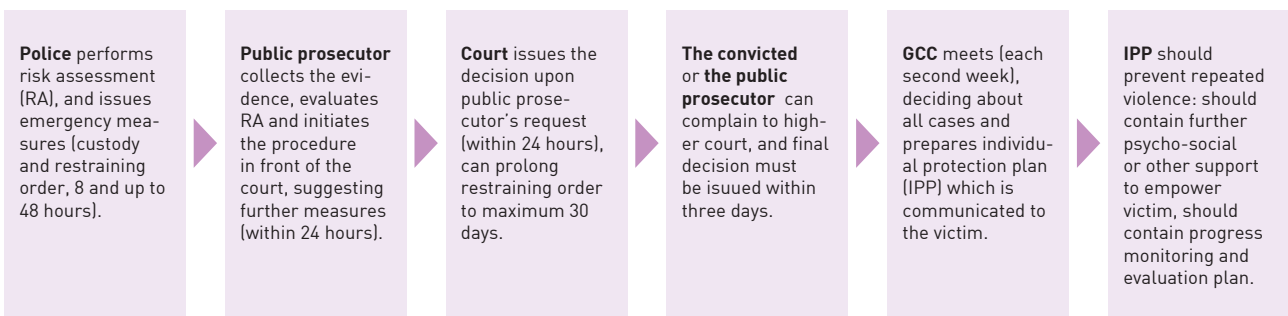
Graph 1 – The cycle of the LPDV novelties

The Individual Protection and Security Plan (IPSP) must stipulate the responsible entities to provide the support measures, the implementation deadlines, as well as the implemented measures monitoring and effectiveness assessment. All criminal cases must be followed by the IPSP. However, the LPDV monitoring reports show that IPSPs are done in every second case, while the women participated in IPSP creation in only 1% of cases<sup>31</sup>.

The following graph explains the GCC obligations procedure when a DV complaint is received by the police.

According to the last available Judiciary statistics report for 2016<sup>32</sup>, out of 3,139 reported cases of violence, there were 2,065 convictions. Jail was imposed in only 30% cases (620), while 63% of cases (1,301) ended with a suspended sentence, and 7% in other types of sentences including house arrest. After the introduction of the new LPDV, in 2017, women’s CSO Autonomous Women’s Centre (AWC) initiated continuous monitoring of its implementation. According to AWC’s most recent quarterly report (Jan-Mar 2018)<sup>33</sup>, out of 4,000 reviewed cases, 550 cases ended in criminal proceedings related to DV crimes. 1,500 emergency measures (EM) of temporary restraining order and 690 of temporary removal of the perpetrator from the family were ordered. Out of 1,450 survivors’ requests for extension of EMs, 1,400 were granted by the court (97%). However, only 36 lawsuits for protection measures were initiated *ex officio* by the prosecutor’s office, indicating the lack of possible long-term prevention whereby the system is still based on the survivors’ capacities to start and last through long-lasting court processes.

Given that the data from Judiciary’s 2016 report and AWC’s 2017 reports are tracking different laws, the data is not comparable. However, the trend after the new LPDV was introduced provides a positive example, as improvements are noticed regarding policy implementation. Unfortunately, it cannot be concluded that IPV survivors are provided with adequate support, as policy



Graph 2 – Immediate response process of the Group for Coordination and Cooperation (GCC) to DV complaint

31 AWC, (2018) <https://www.womenngo.org.rs/vesti/1206-peti-nezavisni-izvestaj-o-primeni-zakona-o-sprecanju-nasilja-u-porodici>  
 32 RZS, (2017).  
 33 Ibid.

effectiveness evaluation is missing and still many IC and CEDAW requirements as well as national legislation stipulations are not being implemented.

**DIVORCE CASES** ● Family Law does not explicitly prohibit mediation during divorce in case of IPV. However, mediation is not applied if one side does not agree to mediation, as proscribed by the law (Art 230). Likewise, there are no specific legal measures dedicated to protect women and children from perpetrator of violence during the divorce. Only the general violence-related restraining orders, as explained previously in the analysis, are available in IPV-related legal proceedings.

Both IC (Art 31) and CEDAW (31 i. and ii., Rec 35) put priority to the right of women and children to safety rather than to the perpetrator's right to child contact. The practice in Serbia is opposite to said provisions. *"This practice is particularly present in families with underage children. The social servants justify the process of spouses reconciliation with the opinion that children should grow up in the whole family. Centre for social work does not care if there is an ongoing criminal proceeding. Also, the court does not require additional information from prosecutors if there are parallel violence-related proceedings, so custody is assigned to both parents even when the man is violent towards both wife and children,"* explains the long-term CSO service professional, Biljana Stepanov. Information from the practice leads to the conclusion that the courts prioritise the father's parental right over the right of children to live free of violence. *"The practice indicates that during the court procedures it may often be heard that the victim is not 'convincing' enough, that she caused the violence; it is the victim-blaming approach. The attitude that the children are not victims but witnesses of violence are ever more common in welfare centers, and the situation in the courts is similar, especially*

*when it is ruled that children should visit their father who is a violence perpetrator",* shares another CSO service professional, Sijetlana Timotić.

**SERVICES** ● According to Women Against Violence Europe (WAVE) annual report, Serbia does not meet the minimum standards regarding provision of shelter to women who survived violence<sup>34</sup>. There are currently twelve state run shelters with 257 beds available, providing only 35% of requirement at the national level. Shelters are, in majority of cases (86%), run by CSWs<sup>35</sup> and funded by the public budget. The quality monitoring of service delivery is not performed in any of the shelters in Serbia. Moreover, there is no national helpline as required by the IC (Art 24), but there are 25 local helplines run by specialized women CSOs and covering most of the country<sup>36</sup>. Local helplines are not supported by the state in great majority of cases, with few examples of cases in which public funds are used to run such services. "Free legal aid is not generally available, and the strict requirements to qualify excludes many victims where it does exist. Although the new Law on Prevention of Domestic Violence, states that victims of domestic violence have the right to free legal aid under a special law, the Law on Free Legal Aid has not yet been adopted by the government."<sup>37</sup> Specialized services for minority women, women with disabilities and non-heterosexual women are not provided by the state; local helplines within Women Against Violence network in Serbia provide specialised support to Roma and women with disabilities.

**Both IC (Art 31) and CEDAW (31 i. and ii., Rec 35) put priority to the right of women and children to safety rather than to the perpetrator's right to child contact.**

<sup>34</sup> WAVE, [2017] [http://files.wave-network.org/researchreports/WAVE\\_CR\\_2017.pdf](http://files.wave-network.org/researchreports/WAVE_CR_2017.pdf)

<sup>35</sup> ŽPN, [2018] <https://www.zeneprotivnasilja.net/usluge-u-zajednici/srbija/sigurne-kuce>

<sup>36</sup> ŽPN, [2018a] <https://www.zeneprotivnasilja.net/o-nama/spisak-organizacija>

<sup>37</sup> AWC-ADOCATES, [2017:14] [https://www.theadvocatesforhumanrights.org/uploads/serbia\\_report\\_final.pdf](https://www.theadvocatesforhumanrights.org/uploads/serbia_report_final.pdf)

## SEXUAL VIOLENCE

**DATA AND RESEARCH** ● As noted previously in the report, the Judiciary issues annual statistics<sup>38</sup> related to criminal acts whereby sexual violence acts are listed as ‘criminal acts against sexual freedom’ without referring to gender of the perpetrator or the survivor. According to the last available data from 2016, the Judiciary registered 367 reports for criminal acts against sexual freedom, resulting in 266 criminal charges and 204 convictions. The same report differentiates a list of criminal acts referred to as ‘acts against sexual freedom’ including rape, sexual assault against children or vulnerable adults, mediation in prostitution, using ICT against sexual freedom against minors, owning and displaying pornographic material and using minors for pornography.

**LEGISLATIVE FRAMEWORK** ● The absence of free will and consent are crucial in understanding sexual violence. The Istanbul Convention (Art 36) definition considers any non-consensual act of sexual nature as sexual violence. Sexual violence is criminalized in Serbia under the Criminal Code, but it is not aligned with the IC since it requires the use of force for an act to constitute rape, and not the absence of consent. The sanctions are between 2 and 15 years (maximum penalty is in case of severe physical injuries, in case the minor has been raped, or if the rape caused pregnancy). The CC has been amended, with limited improvements, most significantly with the introduction of new criminal acts – stalking, forced marriage, genital mutilation and sexual harassment (the latter has defined punishment from financial fine or 6 months in jail, or up to three years if the victim is a minor). Alongside this, penalties have been increased for some criminal ‘acts against sexual freedom’ – for rape, sexual assault against children and vulnerable adults, and sexual assault against a child by abusing of position.

Sexual violence is criminalized in Serbia under the Criminal Code, but it is not aligned with the IC since it requires the use of force for an act to constitute rape, and not the absence of consent.



The CC does not explicitly criminalize marital rape, but it can be prosecuted if the requirement for the use of force exists. The Family Law defines ‘forced sexual intercourse’ as a form of violence in the family (Art 197), while the new LPDV refers to rape in CC as a form of violence in the family. Therefore, all protection measures are available to women survivors of sexual violence, but without any specific treatments that would regard the distinct support needs of the survivors.

## CASE STUDY

A woman who is 32 years old who got very ill was received at the hospital to be installed a catheter. She is also disabled – she does not hear, she does not see and she can not speak. She is completely dependent on her father who is her guardian and was all the time with her during the stay in the hospital. The nurse noticed that the father touches the daughter inappropriately while she tried to defend herself by making screams. To the nurse, it was obvious that it is a sexual violence which she reported to the head of the department in writing. At the center for social work they referred her to the police while stating that the father is very caring and that without him the daughter couldn't live. The aunt went to the police to check if the hospital filed the report, but they did nothing. The doctor did call the police but the police told him to do nothing, and the next day the woman was released from the hospital. The women's CSO filed the complaint against responsible persons in institutions. Later, the doctor tried to fix the situation but it was too late as the criminal procedure was already initiated.<sup>39</sup>

The Code of Criminal Procedure does not explicitly prohibit the collection and presentation of evidence regarding sexual history and conduct of the survivor so the court freely decides if this kind of evidence will be used, which is contrary to IC art 54. The statute of limitation regarding adult sexual survivors is within the general deadlines of Criminal Code – about two times longer than prescribed sanction. For minors, criminal prosecution is not limited.

Services Signatory countries are obliged to establish crisis centres, medical examinations and counselling for victims (IC, Art 25). Interviews with women CSO professionals working with women survivors provided valuable information regarding services for sexual violence survivors and the institutional approach to this problem. Namely, in Vojvodina province there are 7 health service centres working within public hospitals and gynaecology clinics.

However, the centres are coordinated by a specialized women's CSO and funded by international funds until 2019, whereby there is still no clear response from the state if it will carry on with funding from the public budget after the project is finished.

**In Vojvodina province there are 7 health service centres working within public hospitals and gynaecology clinics.**

<sup>39</sup> Description of case provided by the Center for Support of Women.

## VIOLENCE AGAINST MIGRANT AND REFUGEE WOMEN



In 2015 and the beginning of 2016 – more than 920,000 refugees and migrants (from Syria, Afghanistan and Iraq) used Serbia as a transit country.

grave circumstances such as violence, or in case of losing her residence status because of the forced marriage that took her away from the country of origin.”<sup>42</sup>

There are several laws and by-laws in the Republic of Serbia regarding migrants and refugees, as well as a list of strategy documents, regulations and action plans<sup>43</sup>. The Law on Asylum and Temporary Protection anticipate the gender equality principle in general terms (Art 16) while gender-based violence is recognized as oppression (Art 28), therefore as a basis for seeking asylum. Special guarantees (Art 17) are provided with this law to survivors of sexual violence and genital mutilation. However, the Law on Refugees and the Law on Migration Management are not gender sensitive and do not recognize GBV.

The last available report regarding the refugees’ needs (internally displaced persons)<sup>44</sup>, provided by the Commissariat for Refugees and Migrations of the Republic of Serbia, does not tackle gender-based violence issues, while the Activities report for 2017 state that mostly used services

According to the available data provided by the EC<sup>40</sup>, in 2015 and the beginning of 2016 – more than 920,000 refugees and migrants (from Syria, Afghanistan and Iraq) used Serbia as a transit country. Currently, there are about 3,300 refugees and migrants in the country. The EC fact-sheet does not, however, refer to refugee and migrant women’s needs and gender-based violence, whereby no other entity is collecting nor publishing prevalence data on violence against migrant and refugee women in Serbia<sup>41</sup>. Finally, “there is no data about the number of women who were granted the right to stay in the country in case of divorce or break-up of a relationship, on the grounds of particularly

<sup>40</sup> EC, (2018) [http://ec.europa.eu/echo/where/europe-and-central-asia/serbia\\_en](http://ec.europa.eu/echo/where/europe-and-central-asia/serbia_en)

<sup>41</sup> UN Women, (2016) [http://rs.one.un.org/content/dam/unct/serbia/docs/Publications/Gender\\_Assessment\\_of\\_the\\_Refugee\\_and\\_Migration\\_Crisis\\_in\\_Serbia.pdf](http://rs.one.un.org/content/dam/unct/serbia/docs/Publications/Gender_Assessment_of_the_Refugee_and_Migration_Crisis_in_Serbia.pdf) and ATINA, (2017) <https://serbia.unfpa.org/sites/default/files/pub-pdf/Vilence%20against%20women%20and%20girls.pdf>

<sup>42</sup> OfficialGR, (2018).

<sup>43</sup> <http://www.kirs.gov.rs/articles/navigate.php?type1=13&lang=SER&date=0>


<sup>44</sup> <http://www.kirs.gov.rs/docs/izvestaji/Stanje%20i%20potrebe%20IURL%20septembar%202017%20-%20SR.pdf>

are of legal and financial nature<sup>45</sup>. The Government's *Response Plan in Case of Mass Influx of Migrants*, as a referent document, does not include a gender-sensitive approach nor does it reference gender-based violence issues<sup>46</sup>.

Almost 90% of refugees and migrants are sheltered in some of the 18 crisis centres where food, hygiene and basic medical services are provided. Besides the aforementioned reception, transit and asylum centres funded from public budget and providing urgent assistance, no specialized gender-based violence related services are provided by Serbian public administration<sup>47</sup>. 'Woman's Corner' project (medical and psychosocial support, workshops and courses) funded by foreign donors, is reported by Official GREVIO Report. A UN funded program, within the community centre in Belgrade 'Adra'<sup>48</sup>, for informal education and creative activities of migrant and refugee women, as well as for psycho-social and legal support, was also identified during the research. Only one NGO, Atina from Belgrade, provides safe shelter for migrant and refugee women and children survivors of gender-based violence<sup>49</sup>.

Nevertheless, refugee and migrant women in Serbia are exposed to higher risk of trafficking, multiple discrimination and mistreatment<sup>50</sup>. Work exploitation, sexual and physical violence are among other forms of violence many of them experience, in particular: "survival sex (for food, shelter, protection), forced prostitution,

forced and child marriage, sexual assault, coerced pornography, nude touching, beating, kidnapping, and physical assaults"<sup>51</sup>. The same research notes that in majority of cases women do not report violence because of embarrassment. When reported, perpetrators mostly remain unsanctioned since, as noted in the cited report, it is hard for the Serbian authorities to collect evidence due to the fluctuation of people<sup>52</sup>. Serbian officials claim that IPV is not an issue regarding migrants and refugees since "no cases have been reported", while due to challenges related to transition nature "there was little that could be done"<sup>53</sup>.



**In majority of cases women do not report violence because of embarrassment. When reported, perpetrators mostly remain unsanctioned since, as noted in the cited report, it is hard for the Serbian authorities to collect evidence due to the fluctuation of people.**

<sup>45</sup> [http://www.kirs.gov.rs/docs/informatori/informator\\_KIRS.pdf](http://www.kirs.gov.rs/docs/informatori/informator_KIRS.pdf)

<sup>46</sup> UN Women, [2016].

<sup>47</sup> Ibid.

<sup>48</sup> <https://adra.org.rs/wp-content/uploads/2018/06/Brosura-Community-centre-ADRA.pdf>

<sup>49</sup> ShadowGR, [2018].

<sup>50</sup> UN Gender, [2017] [http://rs.one.un.org/content/dam/unct/serbia/docs/GB\\_07\\_03.pdf](http://rs.one.un.org/content/dam/unct/serbia/docs/GB_07_03.pdf)

<sup>51</sup> ATINA, [2017].

<sup>52</sup> Ibid.

<sup>53</sup> UN Women, [2016:30].

## WOMEN'S CSOS

*"We should build upon experience of women's organisations, accumulated for many years. Nothing is here as of yesterday. We must recognize the greater value in this rich experience and continue further,"* urges Svjetlana Timotić, women's CSO leader working with women with disabilities.

Women's CSOs are the most significant promoters of women's human right to live free from violence and policy implementation evaluators. The importance of women's CSOs role in putting IPV on the mainstream policy agenda is generally recognized by public administration, as well as the capacities of CSOs to provide both the policy solutions and direct services. The Official GREVIO Report<sup>54</sup> acknowledges existing capacities of the wide women's CSOs network in Serbia, women's CSOs knowledge and initiative which is evaluated as of "immeasurable importance in the building of the legal and strategic framework to prevent and eliminate violence". Nevertheless, the same report notes the absence of support and funding to local SOS services: "...there is no data if the municipalities allocate any funds for the work of local SOS hotlines operated by women's NGOs, or if they do, how much. The majority of SOS hotlines face serious challenges in terms of sustainability of financing"<sup>55</sup>.

Women CSOs mainly receive funding for annual projects from limited foreign funds, without limitations imposed by the state, say interviewed CSOs. They further note that national public funds are usually not available while the state introduced costly licensing requirements. Existing public calls for project funding are described as controversial regarding their legal correctness<sup>56</sup>. Even the public funds collected by fining violence perpetrators are not distributed to prevent IPV<sup>57</sup>.

The level of financial support is rated with lowest mark 1.5 (scale 1-5) by interviewed women's CSOs. *"We are struggling with difficulty and it is a question of survival,"* concludes one of the interviewed activists, Jelena Hrnjak from CSO Atina, working with migrant women.

Women's CSOs who participated in the research unanimously say that there are no regular consultations with women's CSOs regarding VAW legislation and implementation, while level of cooperation is rated very low with 2.25 (scale 1-5). The previously noted Official GR elaborates various events and projects where CSOs in general participated and women were part of targeted beneficiaries, however, only one CSO from the national Women against Violence Network was involved in developing the new LPDV. The trend of exclusion of women's CSOs from government working groups and public administrative bodies was recently recorded by South-Western regional consortium of CSOs. Women CSOs, who significantly contributed to combating VAW at the local level in the past and who were active members of Gender Equality Councils, Security Councils and other multi-agency teams, are now unable to monitor the policy and funding processes or support developments in the field since they are excluded from said bodies<sup>58</sup>.

**Women's CSOs are the most significant promoters of women's human right to live free from violence and policy implementation evaluators.**

<sup>54</sup> OfficialGR, [2018:13].

<sup>55</sup> Ibid. [2018:38].

<sup>56</sup> <https://www.womenngo.org.rs/prakticne-politike/zagovaranje/1130-ministarstvo-povuklo-sporan-konkurs>

<sup>57</sup> <https://www.womenngo.org.rs/prakticne-politike/zagovaranje/875-saopstenje-za-javnost-povodom-rezultata-konkursa-ministarstva-pravde-za-dodelu-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja>

<sup>58</sup> <http://foruminfo.rs/mreza-jugozapadne-srbije-zene-protiv-nasilja-trazimo-ukljucivanje-zenskih-nvo-u-savete-tela-za-suzbijanje-nasilja/>



The autonomy of work is positively evaluated by women's CSOs as they openly speak about the issues of their concern. In some cases, they are "*silently ignored*" by public administration and other organisations. However, what is most disturbing is the fact that half of interviewed women reported attacks and safety risks from perpetrators of violence, traffickers or even public servants. The following quotations illustrate the level of reported jeopardy.

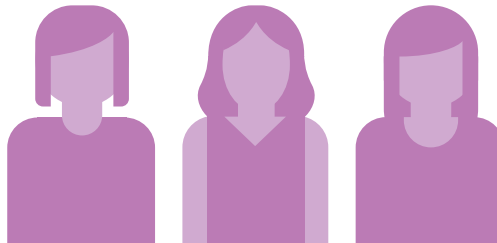
*"The Special Prosecutor for Organized Crime ordered that Police Agency for Combating Organized Crime (SBPOK) question me regarding the interview I gave to one newspaper, where I said: 'Yes, among refugees and migrants there are trafficking survivors.' They questioned who am I to talk about it and why I said it. After ten years of working in this field as a professional, it felt like pressure and unnecessary censorship."* (Jelena Hrnjak, "Atina" CSO)

*"More than several times we were verbally threatened and humiliated when we conducted public actions. But we also had the official meeting where the policeman talked to us with these words: the EU will collapse, the Russians will get advantage, no one will fund you and you will no longer be able to print your material and to make influence."* (Rada Gujaničić, "Women's Centre Užice")

*"The Criminal police chief said about us: I will get them, they're nothing but tramps collected on the street."* (Rada Gujaničić, "Women's Centre Užice")

As noted previously, women's CSOs are the most significant promoters of women's human right to live free from violence. Furthermore, women's CSOs monitor the quality of policy implementation. Hence, the following recommendations summarize the gaps identified by the analysis but also comprise suggestions for as given by interviewed women's rights activists who do not only follow the rule of law but who push all limits, personal and policy, to impact the betterment.

*"More than several times we were verbally threatened and humiliated when we conducted public actions."*



## RECOMMENDATIONS<sup>59</sup>



### TO PUBLIC ADMINISTRATION

- Align national legal framework with Istanbul Convention to fully reflect the treaty intentions and legal commitments as a signatory. Base the alignment process on existing evidence and studies.
- Produce a realistic and formal action plan on combating VAW that includes detailed public budget allocations. Involve all policy stakeholders in action plan design, including women's CSOs.
- Produce a plan to support and fund the local licensed services provided by women CSOs.
- Introduce gender-based violence subjects in pre-school and primary school curriculum.
- Make gender budgeting compulsory of program budgeting for all institutions that are public budget users.
- Introduce annual prevalence studies on VAW, based on comprehensive data collected from all involved institutions and organisations. Distribute comprehensive information on the prevalence of VAW to all involved actors, including education system at all levels and media.
- Allocate resources for human resource capacity development at the local policy implementation level – including servants' formal and informal education, hiring and promotion based on merit.
- Restore full multi-agency and multi-sectorial approach to combating VAW – e.g. recognize and utilize existing non-governmental sector resources, most particularly anti-VAW advocates and specialized women's organisations for gender-based violence.
- Increase the production of Individual support and protection plans, as part of the new LPDV requirement, and adequately involve survivors of violence in individual protection planning process.
- Provide funding and other resources for specialized local support services working directly with survivors of VAW (to ensure policy-related information and empowerment programs are delivered to survivors continuously).
- Ensure independent anti-VAW policy evaluation is produced annually, compatible with GREVIO reporting. Ensure service beneficiaries' participation in evaluation.

<sup>59</sup> All recommendations imply the requirement of adequate reflection of the needs of multiply discriminated and marginalized groups of survivors (e.g. women: living in rural areas, from Roma community, from Muslim community and other national or religions minority, with mental or physical disability, with low education level or incomes, belong to sexual minorities, migrant or refugee, human trafficking survivors, etc.).

## TO SUPRA-NATIONAL ORGANISATIONS

- Ensure to have planned and funded IC and CEDAW monitoring programs for at least 5 years period.
- Collect and consolidate best international IC and CEDAW implementation practices and disseminate information at the national level.
- Support national evidence-based campaigns for IC and CEDAW promotion.
- Advocate towards national governments and supra-national donors for the establishment of specific anti-VAW funds related to IC implementation and for the support of work of specialized feminist CSOs working with survivors of VAW.
- Establish clear and transparent rules and guidelines for distributing the public funds to CSOs to ensure that the most relevant programmes and projects are funded.
- In planning and implementing anti-VAW related programs – consider local women's CSOs as partners and not competition. Support women's CSOs with fundraising.



EUROPEAN WOMEN'S  
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