

Parallel report concerning Serbia To

**The Committee on the Elimination of All
Forms of Discrimination against Women
(CEDAW)**

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With the contribution of ERRC



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INTRODUCTION

Since the first report of the Republic of Serbia to CEDAW, the authorities have adopted a number of new laws and strategic documents aimed at improving gender equality providing protection against discrimination and ultimately improving the position of women in Serbia. However, there are still many obstacles to effective implementation.

Most of the relevant strategic documents of the Republic of Serbia recognise women survivors of domestic violence, displaced (refugees, internally displaced persons) and Roma women as particularly vulnerable groups of women.¹ Their position is even worse if they are both survivors of domestic violence and members of the displaced or the Roma group, or not rarely, members of all three groups at the same time. This significantly extends the scope of the problems they are facing (such as the lack of personal documents, difficult financial position, lack of durable solution of their housing needs, unemployment and lack of education due to the tradition that female children and women should stay at home and take care of household, etc.) and puts them in a position of multiple vulnerability.

In June 2007, CEDAW stated in its Concluding Comments for Serbia² that the report of Republic of Serbia was lacking in information and statistics about particularly vulnerable groups of women. The 2011 National Strategy for Prevention and Suppression of the Violence of Women in the Family and Intimate Partner Relationships also recognised that there is little quantitative data on violence against Roma women and girls, as well as very little research focused on violence against women belonging to different vulnerable groups and those facing multiple discrimination.

This report will address the issue of domestic violence in general as well as the problems that displaced and Roma women have in accessing basic rights, both as survivors of the domestic violence and members of their specific groups. Praxis presents the following data on the basis of their years of work with women who are survivors of domestic violence and/or members of these specific groups. The European Roma Rights Centre has also contributed to the submission with content on forced evictions and their impact on Romani women.

DOMESTIC VIOLENCE

Follow-up with regard to the Concluding comments of the Committee, paragraphs 21 and 22

Domestic violence was recognised as a criminal act in Serbian criminal law in 2006, while Family Law established a system of protection against domestic violence in 2005. The laws and by-laws which regulate the sanctioning of domestic violence and the protection of women exposed to violence set out in detail the obligations of all parties involved in the detection and suppression of domestic violence and provision of protection and support to persons suffering domestic violence, as well as the necessity of cooperation among the competent institutions, bodies and organisations involved. However, in providing the assistance to the

¹ Some of the most important are: 2009 National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality, 2011 National Strategy for Prevention and Suppression of the Violence of Women in the Family and Intimate Partner Relationships, 2009 Strategy for Improvement of the Status of Roma in the Republic of Serbia, 2011 National Strategy on Resolving the Issue of Refugees and Internally Displaced Persons for Period 2011-2014, 2003 Poverty Reduction Strategy, etc. All documents are available in Serbian at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678

² Concluding comments of the Committee on the Elimination of Discrimination against Women: Serbia, para 37, June 2007, available at: http://www.bayefsky.com/docs.php/area/conclobs/treaty/cedaw/opt/0/state/100004/node/3/filename/serbia_t4_cedaw_38.

women survivors of the domestic violence, Praxis has identified a lot of deficiencies that the system of protection is still facing.

Lengthy procedures and exceeding of deadlines

The relevant law prescribes that all procedures for the protection of the survivors of domestic violence are urgent. However, based on Praxis' experience³ of representing survivors, from pressing criminal charges to the moment when the public prosecutor begins his investigations there is an average gap of approximately six months. The same goes for civil procedures for determining protective measures against domestic violence, where it also takes an average of six months to pass an effective decision from the moment of filing a lawsuit.⁴

In one case where Praxis represented a survivor of domestic violence, the court's constant postponement of the hearing and failure to deliver a decision in due time, meant that the court finally ended the procedure due to the obsolescence of the criminal prosecution. Praxis filed a constitutional appeal for the violation of the right to fair trial, i.e. trial within a reasonable time.

In practice, perpetrators often go to Kosovo, so the court is not able to serve them a summons for a hearing. Therefore, the hearing must be postponed, which further prolongs the procedure.

Enforcement of court decisions on maintenance of parent/child contact

Enforcement of court decisions defining the model of parent/child contact is most frequently inefficient, lengthy and painful for the mothers - survivors of domestic violence, especially in cases where the child has remained living with the father (perpetrator).⁵ According to the Law on Enforcement and Security⁶, the enforcement is an urgent procedure. In practice, the principle of urgency in these cases is not respected, which can cause irreparable damage to family relationships. This is especially sensitive in cases of domestic violence when the child remains living with the perpetrator, who may try to negatively influence the child against the mother who has left the home because of domestic violence.

The failure to comply with the principle of urgency is important to be addressed, as the European Court of Human Rights (ECtHR) in the case *V.A.M. v. Serbia*⁷ determined that "*special attention shall be paid to the possible consequences that the duration of the procedure may have, primarily in terms of the possibility to exercise family life and that passage of time may cause irreparable consequences in the relations between the children and the parent that the child does not live with in the same household.*"

Mild penal policy of courts

Despite the fact that the Criminal Code of Republic of Serbia prescribes a wide scope of penalties for perpetrators depending on the gravity of the criminal act, Praxis has observed that perpetrators are most often granted criminal probation and do not serve prison time.⁸ Imprisonment can reasonably be expected only if the perpetrator commits the act repeatedly or commits any of the more aggravated forms of the criminal act. On the other hand, a survivor does not have the opportunity to lodge a complaint against the verdict, if the public prosecutor decides that a complaint is not necessary, due to the fact that a survivor in the

³ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=251&Itemid=66 pages 11-13

⁴ During 2011, Praxis represented 48 women from refugee and displaced populations who suffered domestic violence, in a total of 84 procedures (29 criminal, 45 civil, 4 executive, 1 misdemeanour and 5 administrative procedures).

⁵ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=251&Itemid=66 pages 24-27

⁶ Official Gazette of Republic of Serbia No 31/2011

⁷ *V. A. M. v Serbia*, case number 39177/05.

⁸ Praxis has represented survivors of domestic violence in 54 criminal procedures. From all the cases, only one perpetrator was sentenced to a prison term, because the violence was against both his wife and children. This decision was annulled by the Court of Appeal which eventually led to a statute of limitations of criminal charges against the perpetrator.

criminal procedure usually appears as the injured party. That means that the survivor has no way to affect the sentence if the minimum sentence is imposed or replaced by a probation sentence.⁹

If they are not satisfied with the sentence in the criminal procedure, the survivors of domestic violence are referred to civil procedures for the recovery of damage caused by physical injuries, pain and emotional distress, which they have to initiate on their own. This procedure is usually lengthy because of the legal expertise required, and as a result it costs significantly more. Praxis is representing one beneficiary in the procedure for damages. The case started in December 2010 and is still ongoing.

Domestic violence – criminal act or offence, public or private matter

Although the Criminal Code of Republic of Serbia qualifies domestic violence as a criminal act, in practice, the reporting of domestic violence to police may have two outcomes.¹⁰ One is the filing of criminal charges by the prosecutor which, if they are not rejected, will lead to a criminal procedure for domestic violence being initiated. The experience of Praxis indicates that the police, in agreement with the prosecutor, will most often file misdemeanour charges if a woman has lighter bodily injuries or even if she is running away from serious threats of being killed.

In 2012, Praxis addressed the Ministry of Interior with a request for an opinion on which cases of domestic violence should be qualified as a criminal act and which as misdemeanour, and whether police officers are granted discretionary authority to decide whether they are going to file criminal charges or charges for a misdemeanour. The Ministry quoted the relevant article of the Criminal Code (Article 281), which regulates the filing of criminal charges, but without any further explanation which could clarify the confusion.¹¹

However, during public debates organised by Praxis,¹² Praxis obtained information from serving police officers that when domestic violence is reported, they first consult, usually by the phone, the public prosecutor on duty. The prosecutor qualifies the act as a misdemeanour or a criminal act on the basis of a description of the situation from official notes, e.g. whether the blow was made with an open or a closed fist. When domestic violence is qualified as a misdemeanour, its significance is in fact minimised and it is seen as a private or family matter.

The police most often base criminal charges upon the victim's statement, and if there is no statement despite evident violations, the police usually don't press criminal charges but warn the perpetrator against committing further violence or, at most, press misdemeanour charges against the perpetrator. The survivors of domestic violence often do not want to file criminal charges for fear of not having the support of their primary family, the lack of shelter for survivors of domestic violence in their place of living or because they are economically dependent on the perpetrator. Police can detain a perpetrator for up to 48 hours, although this is not common, while longer detention requires a judge's decision. In situations when survivors of domestic violence assess that they cannot be protected by the system, they give up on criminal charges and violence remains unpunished.

In addition, when police do act upon reports of domestic violence, they rarely investigate the full risk factors for the victim, such as whether the perpetrator is in possession of a weapon. This is a special problem when the perpetrator has fled from conflict areas, such as is the case with refugees and IDPs, who may have participated in conflict and often possess some kind of weapon. According to a statement of the then State Secretary of the Ministry of Labour and Social Policy given during a conference held in Belgrade, in November 2011, a total of 29 women were murdered in domestic violence incidents, as well as two police

⁹ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=251&Itemid=66 pages 18-20

¹⁰ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=251&Itemid=66 pages 28-30

¹¹ Ministry of Interior of the Republic of Serbia response on request for opinion, 4 June 2012.

¹² Praxis' Public Forums within 16 Days of Activism against Gender-Based Violence, December 2011. The forums were organised in Kragujevac, Prokuplje and Vrnjacka banja.

officers who responded to reported violence in 2011. Some women are murdered by different weapons, some were beaten to death and some were strangled. Almost all the victims had been reporting the domestic violence to the competent bodies and some perpetrators had a restraining order against them¹³.

The case of *Opuz v. Turkey* the ECtHR¹⁴ found that the State has a responsibility to ensure criminal prosecution and prevent the impunity for the perpetrator. In cases where the survivor withdraws her complaints, due to threats to her safety, the Public Prosecutor should continue with the criminal prosecution. State intervention into private and family life *might be necessary in order to protect the health and rights of others or to prevent committing of criminal acts*. However, in practice, when a woman decides to give up on criminal prosecution, the public prosecutor does the same.

The problem of child support collection

Numerous international and national acts impose an obligation of providing a child support on both parents.¹⁵ The Criminal Code (Art. 195) prescribes the criminal act of evading the payment of child support. However, the preventive function of this act is jeopardised by imposing weak punishments consisting of a fine or a prison sentence lasting up to two years.

In practice, it often happens that despite the final court decision setting out the obligation to provide support and the final court decision on the criminal act of evading the support, women are forced to initiate the procedure of enforcement of the court decision and bear any additional costs.¹⁶ If a survivor is granted cash social welfare, the amount is reduced by the amount of alimony determined by the court decision, regardless of whether the perpetrator pays or does not pay alimony. The survivor can only exercise the right to receive the full amount of cash social welfare after a court procedure for the enforcement of the court decision or a criminal procedure for non-payment of the alimony is finished.

For IDPs sometimes the only source of income is temporary compensation.¹⁷ The perpetrator is usually the one who exercises the right to this compensation, and so survivors of domestic violence may be economically dependent on the perpetrator. The compensation cannot be subject to execution, due to the fact that it represents a kind of social benefit.

All these situations expose women to a kind of economic violence. Finally, even with a final and enforceable court decision, if the defendant is unemployed or has insufficient income, the collection of support will be practically impossible. In addition, the relevant bodies often lack awareness of the specific procedures related to the payment of child support which requires urgent action, bearing in mind that their purpose is to ensure someone's existence.¹⁸

¹³Newspaper articles, available in Serbian, online: <http://www.novosti.rs/vesti/naslovna/aktuelno.291.html:386557-Ubijaju-zene-i-pred-decom> and <http://www.novosti.rs/vesti/naslovna/aktuelno.290.html:354361-Ove-godine-44-zene-ubijene-u-porodicnom-nasilju>

¹⁴ See *Opuz v. Turkey*, case No. 33401/02

¹⁵ The Convention on the Elimination of Discrimination against Women (Art. 16), Convention on the Rights of the Child (Art. 18 and 27), the Constitution (Art. 65) and the Family Law (Art. 154 and 155) of the Republic of Serbia.

¹⁶ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&gid=251&Itemid=66 pages 8-10

¹⁷ This compensation is a kind of temporary allowance granted to the IDPs who were employed in the territory of Kosovo and Metohija in 1999 in state-owned and public institutions and companies, pursuant to the Conclusion of the Republic of Serbia of July 17, 2003 on acceptance of the information regarding the status of certain organs, organizations and services from the region of AP KM (5 No: 02-4586/2003-001).

¹⁸ The preliminary draft of the Civil Code dated June 2011 gives the solution of this problem by stipulating the establishment of an alimony fund, whose resources would be used to cover the payment of outstanding child support when the payment of the child support is late for three consecutive months or for six months cumulatively. The fund would subsequently reimburse the amounts from the debtor. Still, before such solution is adopted, women who are facing the previously described problem are forced to undertake long-lasting procedures with unsure outcomes.

Insensitivity among staff in state institutions

Survivors are often questioned regarding the circumstances of domestic violence in every procedure initiated – be it a civil or a criminal procedure. The survivors, and sometimes even any children involved, are forced to repeatedly present their experience of violence before the different bodies - the police and the staff of the Social Welfare Centre (SWC), then before the court - in each individual procedure, repeatedly, in the presence of the perpetrator. Such a procedure leads to secondary victimisation and unnecessary exposure to additional suffering.¹⁹ Unlike the practice in neighbouring countries, the testimony of the survivor is not recorded and subsequently used in different procedures.

Despite the fact that there is a general political will in Serbia to promote gender equality and suppress the domestic violence, the features of a male-dominated system are still visible and even among those who are supposed to play a significant role in protection of women against violence. After one seminar Praxis held in the south of Serbia in 2010, the Director of the SWC stated in an informal conversation with the Praxis representatives that a woman should sometimes be physically punished in order to know her place. This notion was also supported by some male representatives of local bodies who were present.

According to the 2009 National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality²⁰ and 2011 National Strategy for Prevention and Suppression of the Violence of Women in the Family and Intimate Partner Relationships,²¹ the special protocols on conduct in cases of violence against women should be adopted by the Ministry of Labour and Social Policy, Ministry of Interior, Ministry of Justice and Public Administration and Ministry of Health. However, only the Ministry of Health adopted the Special Protocol for Protection and Treatment of Women Exposed to Violence, but the implementation of this protocol is lacking.

The social protection and the role of the Social Welfare Centre

Women survivors of domestic violence are often in need of different aspects of social support. For example, if they are unemployed and especially if they have children cash social welfare, immediate cash assistance and child allowance may be their only sources of their incomes. Access to soup kitchens provides them at least one meal per day. The SWC is one of the first institutions which needs to undertake active measures for the protection and support of survivors.

However, the lack of personal documents, permanent/temporary residence registration and complicated and lengthy administrative procedures constitute significant impediments to exercise of the right to social protection. The majority of SWCs do not obtain evidence *ex officio* and do not observe the principle of assistance to undereducated clients, but only present them with the list of necessary documents they need to obtain, with no thorough explanation as to how and which institutions to contact.

The lack of funds in the budgets of local governments additionally complicates the exercise of the right to social protection. Even when a SWC approves a request for certain cash assistance, payments are often delayed due to lack of funds.

There is no unique practice of SWCs regarding the activities they conduct in cases of reported domestic violence. In order to find out what kind of activities they conduct regarding domestic violence, Praxis did research in 13 municipalities in Serbia²² and obtained some information from the Ministry of Labour and

¹⁹ Praxis' report *Weaknesses of the Domestic Violence Protection System in Seven Stories*, Belgrade, 2012, available in English at http://www.praxis.org.rs/index.php?option=com_docman&task=doc_view&qid=251&Itemid=66 page 18

²⁰ Available only in Serbian, more information online:

<http://sqdatabase.unwomen.org/searchDetail.action?measureId=24624&baseHREF=country&baseHREFId=1151>

²¹ Available only in Serbian, more information online: <http://www.gendernet.rs/rpage.php?chapter=24>

²² The research was carried out from March to June 2012 in 13 cities and municipalities: Belgrade, Novi Sad, Subotica, Nis, Vranje, Bor, Vladicin Han, Sremska Mitrovica, Ruma, Kraljevo, Krusevac, Smederevo, Zrenjanin

Social Policy. Only three of these 13 SWCs provide in-court representation of the survivors. Other SWCs take an active role in court, but where they are asked to do so by the court and only if there is a need to provide a professional opinion. Generally, when it comes to legal support, the role of SWCs is mainly advisory.

Six of the 13 SWCs provide counselling services related to marriage and family issues (according to the information of the Ministry of Labour and Social Policy, only thirteen SWCs in the whole territory of Serbia provide these counselling services). There are seven programmes of the Republic Institute for Social Protection concerning the survivors of domestic violence which are implemented in Serbia. They have still not implemented the programme in each municipality. Only four SWCs from the above mentioned 13 implement some of the programmes specially designed for the survivors of domestic violence.

Six of the above municipalities have safe houses in their territory. Other SWCs accommodate the survivors in the closest safe houses in other municipalities and some of them provide accommodation in foster families for immediate accommodation in urgent situations. SWCs bear the costs of the accommodation in safe houses in other municipalities if there are enough funds in the local budget. Women from poorer municipalities, e.g. municipalities in the south of Serbia, where there are no safe houses, find it harder to get a place in a safe house in a closer municipality. In these cases, SWCs accommodate the women, together with their children, in safe houses in Belgrade or Zrenjanin where the accommodation in safe houses is free of charge. Women are forced to leave their job and look for another one, children have to change school, and in the case of refugees and IDPs this means that they need to completely change their environment once again.

Accommodation in safe houses is temporary; survivors and their children may stay for a maximum of three months. This causes huge problems for displaced women who cannot usually solve their housing problem in this period of time. The active engagement of SWCs and other governmental and non-governmental institutions is necessary to resolve this issue. If such assistance fails, as it very often does in practice, at the time of leaving the safe house the survivor has no other option but to go back to the perpetrator.

According to information obtained from the Ministry of Labour and Social Policy,²³ the Republic of Serbia has special funds for providing the services of urgent intervention, especially for survivors of domestic violence, human trafficking and other maltreated persons. Urgent services are guaranteed for 24 hours a day. These funds are transferred to SWCs, upon the request of the SWC and with enclosed reports on conducted intervention. The SWCs which Praxis addressed indicated that they usually receive the funds from the local government budgets. The problem occurs when there are not enough funds in these budgets, which is not uncommon.

The protection of survivors of domestic violence in collective centres

The strategic documents of the Republic of Serbia emphasise that special attention should be paid when defining measures for the protection and improvement of the position of refugees and internally displaced women – survivors of domestic violence. Still, women, who are living in collective centres and suffering the domestic violence, are provided with insignificant assistance in their protection. According to information from the Commissariat for Refugees,²⁴ this government body does not have special evidence of cases of domestic violence which occurred in collective centres, due to the fact that this has been a rare phenomenon. However, the number of cases of domestic violence is not expected to increase, as Serbia is currently closing collective centres. There are no special rules of procedure or guidelines for directors of collective centres on what measures should be taken in cases of domestic violence, but the director is expected to inform the SWC and the police about any such case. The survivors of the violence are moved together with

²³ Ministry of Labour and Social Policy of the Republic of Serbia response on request for access to information of public interest, 1 June 2012.

²⁴ Commissariat for Refugees of the Republic of Serbia response on request for access to information of public interest, 8 June 2012.

the children to other collective centres, so that perpetrators don't know where they are accommodated. The perpetrator remains living in the collective centre.

However, the experience of Praxis shows that domestic violence in collective centres is not a rare phenomenon²⁵ and directors of collective centres sometimes ignore violence and fail to report it to the competent bodies. During six years of providing assistance to survivors of domestic violence, not a single director of a collective centre has reported the violence. In only one case, the director moved the survivor of the violence in another collective centre, but only after UNHCR expressed its concern about this case.²⁶

During workshops which Praxis held for survivors of domestic violence, some women IDPs from collective centres confessed that as well as suffering a lot of physical pain, they suffered even more because they were physically, psychologically and even sexually abused in front of other family members.

MECHANISMS FOR ACHIVING GENDER EQUALITY AT THE LOCAL LEVEL (Article 3)

Follow-up with regard to the concluding comments of the Committee, paragraphs 16 and 22

According to the 2009 National Strategy for the Improvement of the Position of Women and Promotion of Gender Equality,²⁷ the mechanisms for gender equality should be established at national, provincial and local level within electoral and executive bodies. Commissions for Gender Equality are established as such mechanisms at the local level with the purpose of considering the decisions and other general acts of the municipality from a gender equality perspective, as well as to improve the policies on gender equality in different areas in the territory of the municipality and policies considering the suppression of the domestic violence against women. Out of 174 local self-government units of the Republic of Serbia, only 70 have established these commissions.²⁸

In 2012, Praxis did research in 13 municipalities which had established the commissions,²⁹ in order to find out what kind of activities they had conducted to achieve gender equality at the local level. The data obtained was discouraging. The commissions in all these municipalities do not have their own working premises or guaranteed funds to undertake any activity, so they are using the premises of the municipal buildings and depend on the funds from the local budget. Although most of them stated that they had been holding meetings over the last two to three years, none of them could provide Praxis with more detailed information on activities they had undertaken. Most of these municipalities had not yet adopted the local action plans to improve the position of women, or the local protocols on conduct and cooperation of the institutions, bodies and organisations in cases of domestic violence. The commissions are supposed to formulate these documents and initiate their adoption.

The fact that only 40% of local self-governments have established a commission for gender equality, and that it remains unknown what the actual activities of these commissions are and what has been done so far in the field of gender equality at the local level, suggests that the State has failed to take all appropriate measures

²⁵ 28 % of the women represented by Praxis reported they were survivors of violence that had happened in the collective centres.

²⁶ Praxis documentation

²⁷ Available only in Serbian, more information online:

<http://sgdatabase.unwomen.org/searchDetail.action?measureId=24624&baseHREF=country&baseHREFId=1151> page 5

²⁸ According to the information obtained from Ministry of Labour and Social Policy and Ministry of Justice and Public Administration

²⁹ Belgrade, Novi Sad, Nis, Vranje, Vladicin Han, Sremska Mitrovica, Kraljevo, Krusevac, Zrenjanin

to establish the mechanisms for achieving gender equality at the local level which will ensure the full development and advancement of women in their own environment.

ACCESS TO OTHER RIGHTS (Articles 9 – 13 and Article 15 (4))

The complete protection of the survivors of domestic violence and enhancing their independence depends not only on adequate legal protection from the violence itself and punishment of the perpetrator, but also on the economic, social and health support which is provided to survivors and their undisturbed enjoyment of their basic rights. This is especially important in case where survivors are displaced women who face different problems regarding the access to their basic rights already caused by displacement, as well as Roma women already living on the margin of the society.

Personal documents and registration of permanent and temporary residence

Women IDPs may find themselves in a situation that their registry books were destroyed or went missing during the conflict in Kosovo, when the procedures of re-registration of the fact of birth, marriage or citizenship into registry books or of determination of citizenship status need to be initiated. The lack of necessary documents, inconsistent appraisal of legal validity of evidence, avoidance of the competent authorities to collect evidence *ex officio*, impede and make it almost impossible to successfully complete procedures of re-registration of birth, marriage or citizenship into registry books or of determination of citizenship status need to be initiated

For Roma women, problems may arise if they have never been registered into the registry books of the Republic of Serbia. In such situations, they need to initiate an administrative procedure of subsequent registration which is not adequately legally regulated in the Republic of Serbia, despite numerous recommendations from the international community.³⁰

However, some improvement has been made. On 31 August 2012 the Republic of Serbia finally adopted the Law on Amendments to the Law on Non-Contentious Procedure³¹ which prescribed a court procedure for the determination of the date and place of birth of persons who cannot register through the administrative procedure for subsequent registration in birth registry books. The Law came into the force at the beginning of September 2012 so it is yet to be seen how it will be implemented. Women who are not registered into birth registry books cannot register their children either. Such women, and therefore such children, are at a higher risk of becoming victims of violence, exploitation and human trafficking.³²

Besides possessing personal documents, registration of residence is another prerequisite for anyone to obtain an ID card and to exercise their rights in the territory of a given municipality. Persons who settle in the

³⁰ European Commission against Racism and Intolerance (ECRI) stated in its first report on Serbia in 2007 (para. 66): "ECRI strongly recommends that the Serbian authorities take urgent measures to provide identity documents to Roma who do not have them..."

The European Commission in its Progress Reports on Serbia for 2009 and 2010 stated: "There is still a problem with civil registration, particularly for Roma IDPs. A special law to regulate the procedure for recognition of legal subjectivity and allow subsequent inclusion in citizens' registries has not been adopted." Progress report for 2009, p.19 and Progress report for 2010, p.17

In 2011, both, UN Human Rights Committee and UN Committee on the Elimination of Racial Discrimination express their concern about the problem of legally invisible persons. Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Republic of Serbia, para. 19, CCPR/C/SRB/CO/2 and Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding Observations of the Committee on the Elimination of Racial Discrimination: Republic of Serbia, para. 19, CERD/C/SRB/CO/1

³¹ Official Gazette of Republic of Serbia No 85/2012

³² The Draft Law on Amendments to the Law on Non-contentious Procedure, which provides the suitable solution for unregistered persons, is at the moment before the Ministry of Justice and Public Administration and it is planned to be in parliamentary procedure.

housing unit without an address, such as unofficial collective centres or informal Roma settlements, are unable to register their permanent/temporary residence. The new Law on Permanent and Temporary Residence of Citizens,³³ which was adopted in November 2011, allows for one person who cannot register his/her residence in the place where he/she actually resides (e.g. a person resides in the informal settlement) to register the residence at the address of the SWC competent for the territory of his/her factual residence. However, the bylaws governing the procedure of registration of the residence according to this Law have not yet been adopted, although the deadline for their adoption expired on 29 February 2012. Even when they are adopted, it has yet to be seen how this registration will be conducted in practice.

Woman survivors of domestic violence accommodated in safe houses also cannot register their residence there. When these women leave the safe house and manage to rent an apartment, the problem of residence registration will occur if the owner of the apartment does not want to allow her to register at the rental address, which often happens.³⁴ The only solution is for women to exercise their rights in the place of their registered residence, where they were moved from because of domestic violence.

Some municipalities, e.g. Belgrade, provide special cash assistance for the survivors of domestic violence living in their territory. However, one of the preconditions for granting this assistance is that the survivor has had permanent or temporary residence registered in the territory of that municipality for at least one year.

Education

Follow-up with regard to the concluding comments of the Committee, paragraphs 29 and 30

Women IDPs sometimes face the problem of a lack of certificates and diplomas showing their level of education, as a significant number of school and student files were destroyed or went missing during the conflict in Kosovo. In such situations, the women must prove their level of education in a non-contentious court procedure. The competent court in these cases is the one in whose territory the seat of the educational institution is, i.e. in Kosovo.³⁵ The women displaced to Serbia therefore has to travel hundreds of kilometres to Kosovo in order to conduct this procedure. In addition, they need to enclose the certificate on destroyed archives of the educational institution in question, and find witnesses who can confirm that they were enrolled in that educational institution. Collecting evidence usually represents a significant burden for women who are IDPs and survivors of domestic violence and are extremely economically disadvantaged so they are often discouraged from initiating the procedure. In addition, when they register as unemployed persons with the National Employment Service, due to the lack of certificates/diplomas, they register themselves as persons without qualifications.

Roma girls are at the highest risk of leaving school in the lower grades of primary school, due to the fact that they often get married and give birth while very young or they need to stay at home and assist their mothers in household chores and looking after younger children. At least 70% of the total illiterate persons among Roma are women.³⁶ Although the parents are mostly aware that primary education is mandatory, they are usually not aware of the necessity for their children to enrol in school to ensure the better future for the children. The reason for this lies in the fact that some Roma have been living in total social exclusion and neglect for decades, and thus are not aware of information vital to access the right to education. The State should pay more attention to awareness raising and sensitisation of parents on this matter.

³³ Official Gazette of Republic of Serbia No 87/2011.

³⁴ The Law on Permanent and Temporary Residence of Citizens prescribes penalties for landlords who do not want to register permanent or temporary residence of their subtenants. However, there is no data on the number of pronounced penalties, while the subtenants who would potentially report the owners would find themselves at risk of landlords forcing them to move out of the apartment.

³⁵ According to the Law on the Seats and Territorial Jurisdictions of the Courts and Public Prosecutors' Offices that is the Basic Court in Kosovska Mitrovica, *Official Gazette of the Republic of Serbia*, No.116/08 of 27 December 2008.

³⁶ 2009 Strategy for Improvement of the Status of Roma in the Republic of Serbia.

Employment

Follow-up with regard to the concluding comments of the Committee, paragraphs 31 and 32

Having a regular income is one of the main preconditions for the economic independence of women survivors of domestic violence, which prevents them from returning to the perpetrator, especially when it comes to displaced and Roma women. Most of the women who addressed Praxis have never been employed and have no work experience. Their only job was to raise children and maintain the household.

In addition, women IDPs sometimes face the problem of lacking the necessary documents to gain employment such as a school diploma and/or employment booklet. In case of issuing the new employment booklet, another problem occurs. According to the Rules of Procedure on Working Booklet³⁷, a request for issuance of an employment booklet is submitted to the general administration department of the municipality of permanent residence/employment along with the employment certificate issued by the employer. Women IDPs with registered temporary residence in Serbia cannot obtain an employment booklet, unless they are employed first. The possession of the employment booklet is a prerequisite for the registration of the unemployed person in the registries of the National Employment Service (NES). Women who are unable to find a job on their own will remain deprived of NES assistance they are entitled to when looking for a job, as well as other services the NES provides. Registration with the NES is also a precondition for exercising the right of unemployed person to cash social welfare.

In 2011, the unemployment rate of women in Serbia was 17.8 % which is higher than the unemployment rate of man amounting to 14.8 %.³⁸ Roma are generally recognised as the most disadvantaged group in the labour market. The position of Romani women is even worse. Women mostly stay at home and take care of their children and they even rarely register with the NES. In 2010, out of 13,429 Roma registered with the NES, 5,530 were Roma women.³⁹ From February to June 2012, Praxis conducted research on the access of the Roma to the right to employment. The total number of people interviewed in Praxis' offices and informal settlements amounted to 324, of which 121 were women. Only two of the interviewed women were employed and one was retired. Forty-five women had never gone to school and 39 had finished only few grades, but had not completed their primary education. Thirty-one of them have finished only primary education and six of them have finished the secondary education as well.

Health care

Follow-up with regard to the concluding comments of the Committee, paragraphs 33 and 34

One of the most significant proofs in the criminal procedure for domestic violence is a medical certificate on injuries suffered by the survivor of violence. According to the Special Protocol for Protection and Treatment of Women Exposed to Violence adopted by the Ministry of Health of the Republic of Serbia, the form for recording and documenting violence should contain complete data on the survivor, the description of the violent event and injuries in detail, the type and the history of violence. However, in practice it often happens that doctors issue certificates containing just the type of injury and ascertainment that it was caused by the person who the survivor knows. This certificate costs 1,700 RSD (around 15 EUR) and the survivor must pay it by herself, which often presents a significant financial burden.

³⁷ Official Gazette of Republic of Serbia No 17/97.

³⁸ Data obtained from the Statistical Office of the Republic of Serbia and available at <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d240103IND01%2c240103IND02%2c240103IND03%2c240103IND04%2c240103IND05%2c240103IND06%2c240103IND07%2c240103IND08%2623%3d0%2c1%2c2%2635%3d6%262%3d%23all%23%26sAreaId%3d240103%26dType%3dName%26lType%3dSerbianCyrillic>.

³⁹ Research of the Ombudsperson of the Republic of Serbia on Implementation of the Strategy for the Improvement of Status of Roma in Serbia, available in Serbian at <http://www.ombudsman.rs>.

Residence registration is a precondition for registration for mandatory health insurance and issuance of a health booklet. According to the Law on Health Insurance and the accompanying Rulebook⁴⁰ Roma, who do not have permanent/temporary residence registered in the territory of the municipality they actually live in, may register health insurance by giving a statement with the address where they live and a statement of belonging to the Roma minority group. However, in March 2012 the branch offices of the Republic Fund of Health Insurance (RFHI) stopped issuing the health booklet in accordance with the Rulebook. The explanation of the employees in the RFHI branch offices was that they now applied the Regulation⁴¹ which stipulates that besides the personal statement on nationality, the Roma need to enclose evidence on permanent residence registration or the ID card Roma who are not registered into birth registry books cannot obtain health booklets and therefore exercise the right to health care, except in an emergency.

These problems especially affect pregnant women. A health institution may not refuse to assist women without health booklets in child delivery, since birth is considered an emergency, but the women and their children will lack health care in the pre and post-natal period. Praxis identified some cases where child-bearing women and members of their families were threatened that they would not be allowed to take the new-born from the maternity ward until all hospital bills were paid, although according to the Law on Health Care the medical assistance in such cases are paid from the budget of the Republic of Serbia. Praxis also identified some cases where mothers, who did not possess a health booklet, or any other personal document, borrowed a health booklet from a female relative or friend, for fear of not being received in hospital to give birth, or that the child would be taken from her. Hospitals have a legal obligation to report the birth of the child to the registry offices using any known data on the mother and the child. If the mother has borrowed a health booklet, the registry offices will use the data from this health booklet to register an individual as the mother of the child. Later, when the mother obtains her documents, in order to correct the data in the registry book of her child, she will need to initiate a long and complicated procedure to contest and determine maternity before the court.

New Civil Procedure Code – difficulties in accessing the court for marginalized population groups

In 2011, Serbia adopted the new Civil Procedure Code⁴² with changes in some of the key provisions in accessing the courts. Article 85 of the Civil Procedure Code introduced mandatory in-court representation by attorneys at law for all parties which undertake actions before the court through the legal representative. This solution was presented as one which will speed up lengthy court procedures and help in reaching dignity of court proceedings. However, these changes to the Civil Procedure Code aggravated the access to justice for marginalised groups – Roma, IDPs, survivors of domestic violence, victims of discrimination, etc. As Serbia has not yet adopted the Law on Free Legal Aid, the solution in the Civil Procedure Code lowers the level of human rights guaranteed by the Constitution of the Republic of Serbia and is contrary to constitutional and international human rights standards. In cases of domestic violence, it means that survivors have to provide in-court representation through attorneys-at-law, regardless of their economic situation. This could happen also in cases such as the procedure for determination of protective measures against domestic violence, which is considered an urgent procedure, but also in some other cases such as the procedure for entrusting a child to the custody of the mother and the procedure for providing child support against the father of the child. Article 85 disregards the especially vulnerable position of the survivors and prevents them from exercising the right to a fair trial in case they cannot afford to pay the services of an attorney-at-law. In this new legal reality, the other option for survivors of domestic violence is to represent themselves in court and expose themselves to the secondary victimisation by having to give a statement on violence again.

During the procedure for the adoption of the new Civil Procedure Code, 67 NGOs, the Association of Judges, the Prosecutors Association of Serbia as well as the Ombudsperson of the Republic of Serbia and Commissioner for Protection of Equality expressed their concern about the new regulation which exclude

⁴⁰ Rulebook on Amendments to the Rulebook on the Method and Procedure of Exercise of Rights from Mandatory Health Insurance adopted in July 2010.

⁴¹ Regulation on Content, Form and Method of Submitting the Unique Request for Registration in the System of Mandatory Social Insurance, Official Gazette of the Republic of Serbia, No. 54/10 .

⁴² Official Gazette of the Republic of Serbia No 72/2011.

professional lawyers, NGO representatives and other professionals from representing the marginalised population groups in courts and thus impedes access to justice for marginalised groups.

In addition, not all municipalities have free legal aid services, and the level of their services is often below the professional standards that are required for proper protection of the interests of survivors of domestic violence or other marginalised population groups. These services do not provide in-court representation. During the research conducted before the preparation for this submission, Praxis concluded that only around one quarter of Social Welfare Centres (SWC) provided in-court representation for survivors of domestic violence. Taking into account all of the above we consider that the Republic of Serbia needs to urgently adopt amendments to these regulations in order to provide access to justice for the whole population, especially vulnerable groups – survivors of domestic violence, IDPs, Roma, victims of human trafficking, discrimination or other grave human rights violations.

FORCED EVICTIONS OF ROMA IN SERBIA⁴³

Serbia has failed to ensure the right to adequate housing and protection from forced evictions for Romani women and children. From 2009 the ERRC has monitored an increase in forced evictions of Roma in Serbia, the vast majority of which have been carried out in Belgrade. Since April 2009, the ERRC, Praxis and other international and local NGOs have registered at least 17 cases of collective evictions of Romani women, children and men in Belgrade.⁴⁴ According to ERRC documentation and information from other organisations, during this period around 2,500 Roma women, children and men have been forcibly evicted. Most of the forced evictions conducted in recent years are marked by the same human rights violations, notably the failure to provide evictees with adequate (or indeed any) alternative accommodation. The vast majority of the forced evictions took place in the absence of other safeguards required under international law such as genuine advance consultation with the people affected, failure to provide compensation or legal remedies, and failure to comply with both local and international due process requirements. Evictions also took place while legal action was pending.

The biggest eviction in 2012 took place in New Belgrade's Belvil settlement on 26 April 2012, in which 257 Romani families (974 persons) were evicted. Out of 257 families, 124 families (487 persons) had registered residence in Belgrade or were IDP families. As alternative accommodation the City of Belgrade offered metal containers in five Belgrade Municipalities: Makiš, Jabučki Rit, Dren, Kijevo and Lipovica. The remaining families were forcibly returned to their last officially registered place of residence: 117 Romani families were forcibly returned to 13 municipalities and cities in southern Serbia; 10 families were returned to six municipalities and cities in Vojvodina; and six families were returned to five municipalities and cities in central Serbia.⁴⁵

In June 2012 the ERRC conducted a survey on the impact of Belvil eviction among 45 Romani women who were resettled to metal containers, focusing on their evaluated of their enjoyment of human rights before and after the eviction.

According to their responses, 15% of the Romani women surveyed tried to improve their security of tenure by applying for social flats in Belgrade before the Belvil eviction took place. The women surveyed reported that authorities refused each of their requests. As a consequence, all of them were forcibly relocated to metal containers providing substandard housing conditions following the eviction.

⁴³ The section was contributed by the European Roma Rights Centre, an international public interest law organisation working to combat anti-Romani racism and human rights abuse of Roma through strategic litigation, research and policy development, advocacy and human rights education.

⁴⁴ ERRC research on file.

⁴⁵ ERRC research on file.

The metal containers provided by Belgrade authorities to the Romani families evicted from Belgrade are approximately 15 square meters and the number of persons living in one room has increased since their eviction. Three-quarters of the women surveyed (75.5%) reported that they sleep in the same room as five others, while before the eviction that was the case for only 46.6% of them.

More than half of the women (62.2%) that participated in the survey reported engaging in informal employment. Almost all 45 Romani women interviewed stated that they lost their job due to their forced eviction from Belvil and relocation to distant settlements: 95.5% of the interviewed Romani women have been unemployed since the eviction. As a result of their new unemployment, survey respondents reported that their household income had decreased by approximately 200 EUR per month.

All the women reported that before the eviction their home was located close to public transportation, a school, a grocery store, and friends. After the eviction this was not the case. All of women that participated in the survey reported that they regularly visited their relatives before the eviction but in the two months following their forced eviction and relocation, 84.4% of the women had not been able to visit their relatives due to the lower availability of public transportation.

Survey respondents noted that they lost many household belongings during the eviction from Belvil because they were not given adequate time to remove them: 100% of survey respondents who previously owned vacuum cleaners and washing machines lost those appliances, 35.4% lost their radio and 96.7% lost their television.

Women participating in the survey also reported that the eviction and its aftermath have also influenced their health, with 15.5% reporting that their health condition had deteriorated since the eviction.

RECOMMENDATIONS

Praxis and the ERRC submit the following recommendations to Serbian authorities:

Domestic violence

- The Republic of Serbia should ensure that relevant stakeholders respect the legal deadlines and the principle of urgency in all procedures for the protection of the survivors of domestic violence;
- In order to ensure the best interests of the child, the enforcement of court decisions on maintenance of parent/child contact should be more efficient, conducted with respect to deadlines;
- The Republic of Serbia must avoid the secondary victimisation of the survivors of domestic violence
- Disciplinary procedures must be regularly conducted against all civil servants who do not respect the rules of their profession in their work with the survivors;
- Special protocols on conduct in cases of violence against women should be adopted and fully implemented;
- An alimony fund should be established as soon as possible in order to ensure the economic independence of the women and children;
- Counselling services related to marriage and family issues, as well as the programmes specially designed for the survivors of domestic violence should be included in activities of social welfare centres as well as civil society organisations that are providing assistance to survivors of domestic violence;
- The Republic of Serbia should allow that survivors of domestic violence enjoy the right to social welfare and health care, the right to employment, education and other basic human rights;
- Local governments should adopt local protocols on action and cooperation of the institutions, bodies and organisations in cases of domestic violence; and

- The Republic of Serbia should ensure the full and effective implementation of the Law on Gender Equality, particularly the part referring to forming a permanent working body or engaging an employee for gender equality and performing tasks relating to equal opportunities in the field of gender equality.

The right to adequate housing

- The Republic of Serbia should stop the practice of forced evictions; resettlements should only occur when no other options are available;
- National and local authorities should ensure respect for due process in the conduct of evictions of Romani communities;
- National and local authorities should ensure the provision of adequate alternative accommodation for forcibly evicted Roma, and adopt a policy that metal containers do not constitute adequate accommodation in any circumstance;
- There should be access to free legal aid, advice and representation related to housing rights to ensure that individuals can protect and defend their rights or seek effective remedy, including judicial redress; and
- National authorities should provide a legal framework to regulate the procedure for eviction from informal settlements.

Access to other rights

- The Republic of Serbia should ensure the effective implementation of the Law on Amendments to the Law on Non-Contentious Procedure; The Republic of Serbia should adopt bylaws necessary for the implementation of the new Law on Permanent and Temporary Residence of Citizens as soon as possible;
- The Republic of Serbia should revoke all the administrative procedures which pose obstacles in exercising the right to nationality and the right to recognition of a person before the law;
- The Republic of Serbia should amend the Rules of Procedure on Employment Booklet to allow employment booklet to be issued in the place of temporary residence of a person;
- Access to health care and social protection of the residents of informal settlements and persons without permanent/temporary residence should be fully enabled;
- The Republic of Serbia should ensure that the pregnant women enjoy full medical care during the pregnancy and at least in the first year of the post-natal period, together with their new born children, regardless of the possession of personal documents and health booklets;
- The Republic of Serbia should amend legal framework in order to revoke obstacles in accessing justice, and
- The Republic of Serbia should review any official policies for non-discrimination and compliance with international human rights standards.