

On the Road to the EU

*Monitoring Equal Opportunities
for Women and Men
in South Eastern Europe*

Overview

ALBANIA
BOSNIA AND
HERZEGOVINA
CROATIA
KOSOVO
MACEDONIA
MONTENEGRO
SERBIA

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international gender policy network



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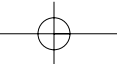
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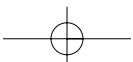


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Preface

This monitoring report – “On the Road to the EU” – was prepared as part of the Open Society Institute’s Network Women’s Program (NWP) “Bringing the EU Home” Project. It is a three-year project (2004–2006) that aims to promote awareness, advocacy, and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level gender equality mechanisms effectively. The project further aims to help increase the importance of equal opportunities on the European agenda.

The “Bringing the EU Home” Project stemmed from OSI’s EU Monitoring and Advocacy Program’s efforts to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and to ensure that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anticorruption. This independent project was developed to evaluate the status of accession countries from the perspective of the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with.

In 2005, a new phase of the project – “On the Road to the EU” – was started. After concentrating on new member states of and acceding countries to the EU,¹ we started to focus on the candidate and potential candidate countries from South Eastern Europe. Albania, Bosnia and Herzegovina, Serbia and Montenegro, including Kosovo, are potential candidate countries to the EU, while Croatia and Macedonia are already candidates. To use their preparation period for EU membership effectively, NWP invited seven South Eastern European nongovernmental organizations to join the “Bringing the EU Home” Project. With this phase, the project aims to help raise the significance of equal opportunities within the process of new and future accession negotiations, creating a unique platform for candidate and potential candidate countries.

An assessment of the status of equal opportunities between women and men, *de jure* and *de facto*, was carried out in the above seven entities. The EU directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions, and practices. The project focused on the directives related to the principle of equal pay for work of equal value; equal treatment as regards employment;

¹ See the publications of the previous monitoring phases: *Monitoring the EU Accession Process: Equal Opportunities for Women and Men*, Budapest: OSI, 2002; and *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries of the European Union*, Budapest: OSI, 2005.

protection of pregnant women, breastfeeding women, and women who have recently given birth; and the situation of self-employed workers.

As a result of the assessment, seven monitoring reports were prepared. In this publication you can find the summary of the results, while the full reports themselves are available online.² To provide effective tools for advocacy at national and EU levels, the reports outline specific areas of concern and issue clear recommendations to governments on legislation, institutional mechanisms, policies, programs, and research initiatives. The recommendations focus on how laws and their implementation in participating countries should be in line with EU standards, to ensure that gender equality becomes a reality in the countries monitored.

The Network Women's Program worked in cooperation with the relevant members of the International Gender Policy Network (IGPN) in this new phase of the project.

We would like to thank all individuals and partner organizations who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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² See www.soros.org/women.

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Introduction

To introduce this serious and substantial monitoring endeavour on the state of equal opportunities and preconditions for gender equality in South Eastern Europe (nowadays often called the Western Balkans¹ in international political circles), I must start with a tribute to a group of feminist women who in 1978 in Belgrade organized the first feminist conference ever in a communist country.² These women, who braved the harsh criticism of the official communist party-controlled women's organization, believed that the gradual opening of the Yugoslav party state was a unique window of opportunity to demand much more substantial equality for women in each and every field of political and public life.

At this historical moment, the women of the former Yugoslavia were closer to Europe than any of their "sisters" from other communist countries. Almost 30 years later, however, many of those countries are already members of the European Union or are very close to joining (Bulgaria and Romania), while women of the Western Balkans are still struggling against the legacies of the wars of the 1990s in former Yugoslavia – poverty, resurgent patriarchy, chauvinist nationalism, and even fundamentalisms of various kinds. This is not to say that women in other postcommunist countries that joined the EU, or that are on the threshold of joining, are not faced with some of the same challenges to achieving gender equality in full. But, at least, these countries had to introduce all the mechanisms ensuring equal opportunities and basic women's rights required by the EU at the state and other levels of public life, and are able to use the European institutions and funds as well as the support of European women and feminist networks to struggle for the implementation of those basic standards and rights.

The other paradox women from postcommunist countries are permanently faced with is how to achieve and implement all the positive European standards and, at the same time, protect some of the inherited rights from the previous system, which provided

¹ The Western Balkans consist of the countries of the former Yugoslavia, minus Slovenia plus Albania. These countries are in various statuses regarding EU admission: Croatia with candidate status has entered the process of negotiations; Macedonia with candidate status has not yet opened negotiations; Albania has signed the Stabilization and Association Agreement; Bosnia and Herzegovina and Serbia are in the process of negotiations to sign the same agreement; Kosovo is still a de facto UN protectorate.

² The Conference was organized by Zarana Papic with the participation of Lydia Sklevicky, Rada Ivekovic, Slavenka Drakulic, and many other feminist theoreticians and activists. The majority of participants came from Belgrade, Zagreb, and Ljubljana.

them with basic security in the fields of employment, health and child care, and even some ideologically limited but still real political participation. They are again and again reminded by their “older” European “sisters” that they should more forcefully resist the neo-liberal attempts to annul all those rights, especially those related to economic and social security.

The results of living with this paradox in the Western Balkans are even more visible since most of the newly founded states are very weak; the rule of law is not yet established; privatization has been done in a quite haphazard way, thus adding to the criminalization of the economy and the whole society; and corruption is still very high. These circumstances make the position of all citizens, especially the more vulnerable ones, very uncertain. The great majority of women’s inherited rights and even some of their basic human rights are not recognized or adequately protected.

Women from Western Balkan countries are living with these paradoxes and major difficulties due to the extremely turbulent times they experienced with the disintegration of Yugoslavia – conflicts and wars lasting for a whole decade. Although Albania was not directly part of these wars, it experienced a major crisis in 1997, with the collapse of the “pyramid schemes” and a huge flow of refugees from Kosovo in 1999. Despite the fact that in all of these countries women are faced with major economic hardships, poorly represented in governments, parliaments, and other high decision-making bodies, exposed to high levels of violence and trafficking, and struggling with misogynist cultural stereotypes,³ they have achieved more than anybody could expect in similar conditions. This is clear from the reports in front of us. The fact that in most of these countries gender equality mechanisms have been adopted not only because of international obligations, but also due to pressure from their own societies, can be almost completely subscribed to the activity of autonomous women’s organizations.

The development of the women’s movement during the 1990s throughout the Balkan countries was, in fact, one of the positive miracles of this dark period of recent history. Women became a cornerstone of an emerging civil society through their activism – their active resistance against wars and warmongering, nationalist political elites, and often a large part of a nation’s intellectual elites; their courage in facing the dangers of crossing the fault lines between conflicting parties and/or the hostile majority in their own societies; and their empathy with victims as embodied in their relentless humanitarian work.

³ In the research conducted for the European Parliament “Women’s Situation in the Balkan Countries: Comparative Perspective,” Women’s Rights Series, FEMM 113 EN, 09-2003, the author Dr. Marina Blagojevic and her team gave a full description and developed a genuine holistic approach to women’s human condition in the Balkans.

However, the emergence and development of civil society in these countries was not only influenced by women working in the women's movement. The great majority of other civic organizations dealing with the protection of human and minority rights, culture and education, media, social policy, and humanitarian work – issues heavily neglected or marginalized by the official authorities – were established and very often run by women. Thus, in those dark times women proved to carry a very special creative energy and courage. We are still waiting for an author who would devote a book to *women in dark times*, to paraphrase one of the greatest and wisest women of the 20th century – Hannah Arendt.

It has to be stressed here that even Romani women, who were traditionally more subjugated than any other group of women living in these societies, succeeded in rising from anonymity and creating their own initiatives and organizations, including, with support from OSI's Network Women's Program, a network of Romani women in South Eastern Europe.⁴ They not only organized themselves and started entering universities but also addressed some of the taboos their own community imposed on them, such as the cult of virginity.⁵

Women's organizations in general proved to be quite successful in the fight against taboos. They introduced – I would say even imposed – topics such as the trafficking in human beings (especially women and children), violence against women and children, and sexual harassment and incest onto the public agenda. All these topics used to be taboo just a decade ago. They are not any more. And this can be only subscribed to the relentless activism of women's organizations.

There is no doubt that the "16 Days Campaign against Gender Violence" played a great role in not only breaking those taboos but also in developing, at the least, a relative sensibility for these topics in the mainstream media.

In summarizing the impressive results of women's activism in Western Balkan countries, it is important to stress that it was accompanied by outstanding academic, research, and publishing work. Women's studies centers, after the first one was established in Belgrade in the beginning of the 1990s, spread all over the region and became places of alternative education, research, and policy thinking as well as incubators of new activism.

⁴ This network presented itself in an impressive way at the *Roma Women's Forum* held a day before the Roma Conference in July 2003 in Budapest, organized by the World Bank and Open Society Institute and with the support of the European Commission. This conference announced and started the preparations for the *Decade of Roma Inclusion, 2005–2015*.

⁵ The first breakthrough on this topic was achieved by a group of young Romani women from Macedonia who started the "Virginity Project," and after a while it spread throughout the whole region, thanks to the activity of the Romani women's network of SEE.

All these various forms of civic engagement were crucial in developing both the civil society as a whole and the women's scene in particular. Yet, in order to make these societies and states genuinely gender aware and sensitive, it is absolutely necessary to build much broader coalitions of women, including women from political parties, trade unions, professional organizations, state administration, academia, media, and business. Unfortunately, the long years of solitude that women's organizations survived have, for many, left behind a ghettoized way of thinking, and the ever decreasing number and interest of donors is generating a growing uncertainty and lack of solidarity.

To complete the building of gender equality mechanisms in all these countries and especially to assure their full implementation, it is absolutely necessary that all women of positive energy and creativity join forces and open up their coalitions to the support of their male counterparts. This will happen only if the process of emancipation and democratization of these societies continues, and if the prospect of joining EU remains real and within reach.

Sonja Licht
Belgrade Fund for Political Excellence

Overview

1. TOWARDS THE EU ACCESSION PROCESS: THE ADOPTION OF THE *ACQUIS COMMUNAUTAIRE*. EUROPEAN UNION STANDARDS OF GENDER EQUALITY

South Eastern European countries'¹ relations with the European Union (EU) are developing and progressing within the framework of the Stabilization and Association Process (SAP), which represents a major step toward EU membership.² *Macedonia* and *Croatia* signed Stabilization and Association Agreements (SAA) with the EU in 2001. SAA negotiations with *Albania* were officially launched in January 2003, followed in 2004 by the European Council's decision on the principles of a European Partnership for Albania. Further, the European Commission's Annual Progress Report on Albania was released in November 2005. In 2003 preparations began for a feasibility study to pave the way to an SAA for *Serbia and Montenegro*, and in April 2005 the Commission endorsed the feasibility study report concluding that *Serbia and Montenegro* were ready for SAA negotiations. The feasibility study for *Bosnia and Herzegovina* was finalized in November 2003, and in November 2005 the European Council approved the opening of SAA negotiations.³ In 2002, the Commission and *Kosovo* entered into the Stabilization and Association Process Tracking Mechanism with the purpose of providing technical assistance so that Kosovo can implement EU-compatible legislation and practices.

The EU commitment toward the region of South Eastern Europe (SEE) received a boost in 2003 via a European Council decision to introduce European Partnerships aimed at "identifying priorities for action in supporting efforts to move closer to the European Union."⁴ Since 2001, assistance provided under CARDS⁵ to the countries of

¹ Croatia and Macedonia hold the status of candidate countries. Albania, Bosnia and Herzegovina, Kosovo, Serbia, and Montenegro hold the status of potential candidate countries.

² The Stabilisation and Association Process comprises two major phases: the establishment of the Stabilisation and Association Agreement (SAA), and the negotiations for and implementation of SAA.

³ Bosnia and Herzegovina commenced negotiations with the EU on a Stabilisation and Association Agreement at a two-day meeting in Sarajevo on January 25-26, 2006; <http://www.euractiv.com/Article?tcaturi=tcm:29-151918-16&type=News>.

⁴ "The Western Balkans in Transition" January 5, 2004. Brussels: Directorate-General for Economic and Financial Affairs, European Commission. The Western Balkans comprise Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, and Kosovo.

South Eastern Europe has paralleled the Stabilization and Association Process, especially through institutional capacity building and rapprochement *vis-à-vis* the *acquis communautaire*.⁶

A major milestone must be noted for Croatia, which submitted an application for EU membership in February 2003. On October 3, 2005, the EU formally opened membership talks with Croatia and the screening process therefore commenced on October 20, 2005.⁷ On December 17, 2005, the European Council granted Macedonia candidate country status.⁸

1.1 Toward the EU Accession Process: The Adoption of the *Acquis Communautaire*

Once a country holds the status of a candidate country, it must intensify efforts to harmonize its national laws with EU legislation and to build the necessary administrative capacity for implementing these laws. The country begins to achieve this goal with a bilateral review of legislation. The aim of the review is to establish the status of the *approximation process*⁹ and to identify issues that must be addressed in order to adopt and implement the *acquis communautaire*. As an important phase in this reviewing process, the candidate country becomes acquainted with relevant *acquis* provisions under each negotiation chapter, in continuous dialogue with the European Commission. During the negotiation process, the candidate country's team of experts drafts position papers on each negotiation chapter. The *member states' draft joint position* prepared by the European Commission constitutes the basis for negotiations *vis-à-vis* the EU.

⁵ Community Assistance for Reconstruction, Development and Stabilization. The main priorities for CARDS assistance are justice and home affairs, administrative capacity building, economic and social development, and democratic stabilization.

⁶ The *acquis communautaire* represents the set of principles, policies, legislation, practices, obligations, and objectives agreed upon within the framework of the European Union.

⁷ Cf., <http://www.euractiv.com/Article?tcmuri=tcm:29-129605-16&type=LinksDossier>.

⁸ At the time this report goes to press no date has yet been specified for commencing membership talks. Cf., <http://www.euractiv.com/Article?tcmuri=tcm:29-129607-16&type=LinksDossier>.

⁹ The *approximation process* signifies efforts to harmonize candidate countries' national legislation with European Union law. The approximation process is based on three elements: the *incorporation element* which means incorporating EU legal norms into national legislation, the *implementation element* which requires providing institutional capacity to enforce the laws on the books, and *a system of specific tools for monitoring* the adequate functioning of institutional capacities in making legal provisions functional.

The European Commission regularly submits to the European Council progress reports on candidate countries' and potential candidate countries' path to EU membership, focusing on the adoption, implementation, and enforcement of EU standards. Besides assessing a country's potential to meet the EU's Political and Economic Criteria, the EU will look at the extent to which a country aspiring to membership has succeeded in harmonizing its legal order with the 31 chapters of the *acquis*. Accordingly, the *acquis* must be incorporated into the national legal framework, including the gender equality component set forth in Chapter 13 on Social Policy and Employment.

1.2 A General Overview of EU Standards of Gender Equality

The European Union has produced an important body of gender equality legislation, since equality between women and men has been a fundamental principle of the European Union from the very beginning. The principle of equal treatment of women and men has been incorporated into European Community Treaties since the establishment of the European Economic Community in 1957 and has been implemented in a number of specific areas via European Community legislation over the past 30 years. Article 2 of the EC Treaty stipulates that promotion of equality between women and men constitutes a European Community responsibility. Article 3(2) of the EC Treaty highlights the Community's aim to eliminate inequalities and promote equality between women and men in all the activities provided for in the first paragraph of Article 3. Three provisions in the EC Treaty serve as a legal foundation for EU legislation on equal treatment for women and men. Accordingly, Article 141(3) provides for equality in employment and occupation, including the principle of equal pay for work of equal value. Article 13(1) provides for equality outside of employment, and Article 137 provides for equality in the promotion of employment and improved living and working conditions. The draft EU Constitution¹⁰ comprises similar provisions to those set forth by the EC Treaty *vis-à-vis* equality between women and men, but it also contains in Article I-2 references to equality and nondiscrimination as EU values. The draft EU Constitution will replace the EC Treaty once it has been ratified by all member states.

The *principle of equal pay for equal work or work of equal value* represents a core principle of the EU, laid down in the Treaty of Rome as the European Community's first legal provision on gender equality. The first equal treatment Council Directive 75/117/EC was adopted in 1975,¹¹ followed one year later by Council Directive

¹⁰ Signed by the heads of states and governments in Rome, October 29, 2004.

¹¹ *Council Directive of February 10, 1975 on the approximation of laws of the Member States relating to the application of the principle of equal pay for men and women.*

76/207/EC on *equal treatment in employment and occupation*.¹² Two years later, in 1979, Council Directive 79/7/EC¹³ was adopted on implementing the *principle of equal treatment in social security*. In 1986 two directives were adopted on the *equal treatment for women and men in occupational social security schemes*¹⁴ and on *equal treatment for self-employed women and men engaged in an activity, including agriculture*.¹⁵ In 1992, Council Directive 92/85/EEC on the *protection of pregnant workers* was enacted. Prior to entry into force of this Council Directive, the pregnant workers' rights were governed by national law. This Council Directive applies to pregnant workers, workers who have recently given birth, and workers who are breastfeeding in all fields and occupations, with no exceptions.

1.3 The Role of the European Court of Justice

The European Court of Justice (ECJ) and the Commission represent the main engines for dynamic development and completion of European Community legislative standards on gender equality. Extensive case law developed by the ECJ has clarified and further developed the concept of *equality*. The principles of the direct effect of council directives under certain conditions,¹⁶ the supremacy of European Community law,¹⁷ and the state's liability in cases of breach of European Community law¹⁸ constitute the main accomplishments of the court's interpretative activity in developing general principles of European Community law. In relation to equal opportunity issues, the court has mainly used the construct of direct and indirect discrimination in its attempts to effectively apply equal treatment legislation. Clearly, however, the court has determined that protection against sex discrimination also applies to men. The case law shaped by ECJ complements

¹² *Council Directive of February 9, 1976* on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, February 14, 1976).

¹³ *Council Directive of December 19, 1979* on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, January 10, 1979).

¹⁴ *Council Directive of July 24, 1986* on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ L 225, August 12, 1986).

¹⁵ *Council Directive of December 11, 1986* on the application of the principle of equal treatment for men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood (OJ L 359, December 19, 1986).

¹⁶ Harz/Tradax, C-79/83, [1984] ECR 1921.

¹⁷ Costa v ENEL, C-6/64, [1964] ECR 585.

¹⁸ Brasserie du Pêcheur, C-46/93 and C-48/93.

EC legislation on equal treatment by providing member states with interpretations of EC law. Consequently, legislative changes in member states have become possible and new concepts in equality have been incorporated into member states' legal framework.

1.4 The Main Objective of the Current Monitoring Project

Considering that South Eastern European countries have already embarked on the path to EU integration, and adding to that the experience of nongovernmental women's organizations of former EU candidate and acceding countries promoting the gender equality agenda during the membership negotiation process, the main objective of the current monitoring project is to draw early attention to gender equality standards as an integral part of the *acquis communautaire* to be incorporated into the national legal framework.

2. A COMPARATIVE OVERVIEW OF SOUTH EAST EUROPEAN COUNTRIES' AND EU STANDARDS OF GENDER EQUALITY

2.1 Equal Pay

The *principle of equal pay for work of equal value* constitutes a pivotal EU standard in the area of equal treatment between women and men, and as such is one of the first requirements that candidate countries must meet in the process of aligning their national legislation with standards set forth in the EU *acquis communautaire* on gender equality.

Standards set forth by EU legislation for the equal pay principle

Article 141 of the Amsterdam Treaty, stipulating the guarantees for equal pay for work of equal value, and Council Directive 75/117/EEC represent the main legal instruments set forth in the *acquis communautaire* in the area of equal pay for women and men, further reinforced by provisions of Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex. To determine whether EU legal standards *vis-à-vis* the equal pay principle have been incorporated into national legislation, the following elements must be present:

- The specific formulation of the principle of equal pay in the national legal framework;¹⁹
- Where a job classification is used to set rates of pay, it must be based on the same criteria for both men and women, and thus drawn up so as to exclude any discrimination on the grounds of sex;
- Protective measures against violation of the equal pay principle and availability of redress via judicial process after out-of-court options have been exhausted;
- Mechanisms to invalidate or amend provisions of collective bargaining agreements, wage scales, and individual work contracts in contravention of the equal pay principle;
- Effective guarantees for the application of the principle of equal pay;
- Legal mechanisms to compel employers to inform employees of their rights to equal pay for work of equal value and of available complaint procedures.

National legal framework for the equal pay principle in South Eastern European countries

Some South Eastern European (SEE) countries have used their constitutions to set forth a legal foundation for the equal pay principle in the form of a guarantee of nondiscrimination, *inter alia*, on the grounds of sex. All of the countries under review have ratified the basic human rights instruments related to equal pay, such as the International Covenant on Economic, Social, and Cultural Rights and ILO Conventions 100 and 111. Most of the countries in the region have also ratified the European Social Charter. Further, according to the national monitoring reports, the principal acts of law governing employment and labor relations contain specific provisions on the principle of equal pay for work of equal value. The only exception is the Montenegro report, which indicates explicitly that integration of the equal pay principle into the national legal framework is necessary and remains to be accomplished.

As the national monitoring reports highlight, none of the countries in the region have discriminatory legal provisions in regard to the principle of equal pay for work of equal value. Most SEE countries that participated in this monitoring project have a job classification system for government employees (Albania, Kosovo, Montenegro, Serbia); Croatia's job classification system is outdated. Bosnia and Herzegovina reports that there is no job classification system at the state level. In Macedonia, the Labor Relations Act does not provide for a special job classification system to set workers'

¹⁹ According to Article 1, paragraph 1, *Council Directive 75/117/EEC* of February 10, 1975, the principle of equal pay for women and men means: "(...) for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration."

rates of pay. Public administration employees are civil servants, and are subject to a job classification system and additional payments specified by the Civil Servants Act are applicable. These provisions are not specific to the employee's sex.

The ECJ has specifically ruled that the equal pay principle means that equal work of equal value performed by a woman or by a man must be remunerated in the same way. In order for the principle to be applicable, working men and women must be in comparable situations, based on the demands upon the workers in carrying out duties, such as skills, effort, and responsibility.²⁰ The court has therefore developed criteria of comparability with regard to the principle of equal pay for women and men. However, special mention must go to the fact that the equal pay directive's standards *vis-à-vis* a job classification system are not simply met by the existence at the national level of a general, functionally unstructured job classification system. Recently, ECJ clarified that²¹ the fact that a female employee who claims to be a victim of discrimination on the grounds of sex and a comparative male employee are classified in the same job category under the collective bargaining agreement governing their employment, is not in itself sufficient for concluding that the two employees in question are in fact performing the same work or work to which equal value is attributed within the meaning of Article 141 of the EC Treaty and Article 1 of Council Directive 75/117/EEC, since this fact is only one indication among others that this criteria has been met.

National institutional structures for monitoring the application of the equal pay principle

Across the region, different mechanisms have been set in motion to establish institutional structures responsible for monitoring the application of the equal pay principle. In Albania, the 2004 Gender Equality Act stipulates that the minister for labor and social affairs holds the public authority responsible for enforcing and monitoring the principle of equal pay for work of equal value. In Bosnia and Herzegovina, the State Agency for Gender Equality, the Gender Center of the Federation of B&H, and the Gender Center of Republika Srpska are responsible for monitoring and overseeing the implementation of the Gender Equality Act, which explicitly sets forth the principle of equal pay for women and men. Additionally, the labor inspectorates are in charge of addressing complaints arising from the breach of this principle. In Kosovo, Macedonia, Serbia, and Montenegro, the labor inspectorates

²⁰ Proposal for a directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities for and equal treatment of men and women in matters of employment and occupation, COM(2004) 279 final, April 21, 2004, Brussels.

²¹ Judgment of June 26, 2001, in Case C-381/99, Brunnhofer, ECR I 2001. 4961.

wield the authority to ensure implementation of the legal provisions governing workplace conditions, including equal pay.

National legal procedures available for implementing of the equal pay principle

All the national legal frameworks studied provide employees who feel they have been discriminated against due to a violation of the equal pay principle with the right to seek legal redress by filing a lawsuit under labor law provisions. However, the Macedonian report mentions that the national legal framework does not provide any legal means by which workers can exercise their right to expect employers to comply with the equal pay principle. The national legal frameworks of these countries do not meet the standard provided in Council Directive 75/117/EEC for necessary measures to protect employees against dismissal by the employer as a reaction to a complaint aimed at enforcing compliance with the principle of equal pay. Regarding the means of informing employees of their right to equal pay, the legal frameworks of Macedonia, Montenegro, Bosnia and Herzegovina, Croatia, and Kosovo do not contain specific provisions aimed at meeting the standard set forth by Council Directive 75/117/EEC.

2.2 Equal Treatment in Employment, Training, and Working Conditions

Standards set forth by EU legislation vis-à-vis the principle of equal treatment for women and men regarding access to employment, vocational training and promotion, and working conditions

Considering the new provisions of the Amsterdam Treaty and the significant case law developed by ECJ, the 1976 Council Directive on equal treatment in employment was substantially amended in 2002 by Council Directive 2002/73.²² The 2002 directive, for the first time, set a broader definition of *indirect discrimination*, and also defined the concepts of *harassment* and *sexual harassment*. It also significantly broadened the scope of the nondiscrimination principle by including the instruction to discriminate as well. Additionally, the directive decreed the less favorable treatment of working women due to pregnancy or maternity leave as discrimination.

Measures on preventing sexual harassment in the workplace

For the first time at the EU level, the social reality of sexual harassment has a legal definition, as a situation where “any form of unwanted verbal, nonverbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of

²² Council Directive of September 23, 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

a person, in particular when creating an intimidating, hostile, degrading, or offensive environment.”²³ According to the legal wording of Council Directive 2002/73/EC, sexual harassment within the meaning of this directive constitutes a form of sex-based discrimination. As regards proactive measures to prevent sexual harassment at the workplace and according to Article 1.2 (5) of the revised directive, based on the national law, collective bargaining agreements, or practice, the member states must encourage “employers and those responsible for access to vocational training to take measures to prevent all forms of discrimination on grounds of sex, in particular harassment and sexual harassment at the workplace.” In this regard, the member states are required to introduce measures to prevent sexual harassment in the workplace by encouraging employers to promote equal treatment for women and men in a planned and systematic way, and to also draft equality plans on regular basis. In accordance with their national legislation, member states must take measures to promote social dialogue in order to enhance the equal treatment enforcement aspects, “including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences, and good practices.”²⁴

Reinforcement of the protection of women on maternity leave and extending protection to adoptive parents among member states that recognize such rights²⁵ constitute additional innovative provisions set forth under Council Directive 2002/73/EC. As for legal provisions on maternity leave, the links with Council Directive 92/85/EC²⁶ have been clarified, by reinforcing the right of women who have given birth to return to their jobs, or to an equivalent position with working conditions that are not less favorable. Further, the women who return to their jobs after maternity leave have to benefit from any improvement in working conditions to which they would have been entitled during their absence.

National bodies to promote equal treatment for women and men

The legal provisions of the 2002 directive made mandatory the establishment of independent bodies to address gender equality.²⁷ Council Directive 2002/73/EC provides the legal framework for setting up an independent body or bodies at the national level to contribute to the “promotion, analysis, monitoring, and support of

²³ Article 1.2 (2), *Council Directive 2002/73/EC*.

²⁴ Article 1.2 (2), *Council Directive 2002/73/EC*.

²⁵ Article 1.2 (7-8b), *Council Directive 2002/73/EC*.

²⁶ *Council Directive 92/85/EEC* of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, *Official Journal L 348*, November 28, 1992.

²⁷ Article 8a, *Council Directive 2002/73/EC*.

the equal treatment of all persons without discrimination on the grounds of sex.”²⁸ The minimum requirements set forth by Council Directive 2002/73/EC for independent body/bodies designed to promote the principle of equal treatment focus on:

- pursuing claims on behalf of victims of discrimination through an administrative or judicial procedure;
- conducting independent surveys concerning discrimination; and
- publishing independent reports and making recommendations on any issues relating discrimination.

Additionally, the directive enforces the recommendation to create equality plans,²⁹ as well as the right of NGOs to bring a complaint to court on the behalf of employees’ and with their consent.

National legal framework vis-à-vis the principle of equal treatment for women and men regarding access to employment, vocational training and promotion, and working conditions in SEE countries

Besides the constitutions of SEE countries, their national legal frameworks also incorporate *the principle of equal treatment for women and men*. While in Albania and Macedonia the principle of nondiscrimination on the grounds of sex is stipulated in these countries’ labor codes, in Bosnia and Herzegovina the Gender Equality Act explicitly provides for equal treatment for women and men in access to employment, vocational training, and promotion. In Kosovo, the Gender Equality Act likewise provides for the principle of equal treatment for women and men. It must be noted that in Macedonia the equal treatment principle as set forth by the Equal Treatment Directive is barely operational in the national legislation, which introduces the equal opportunities principle via prohibition of discrimination.

The concept of discrimination based on sex. Concepts of direct and indirect discrimination

The concept of *discrimination based on sex* is not a separate legal provision in Albania’s legal framework. Bosnia and Herzegovina and Croatia report that the concept of discrimination based on sex is explicitly defined in the Gender Equality Act. In Kosovo, the 2001 Essential Labor Act prohibits all forms of discrimination, including based on sex. The Constitution of Montenegro and the Labor Code provide only for a general nondiscrimination principle regarding working conditions, including gender-based discrimination. In Serbia, prohibition of sex-based discrimination has been incorporated into general antidiscrimination legislation.

²⁸ Article 1.7 (8a), *Council Directive 2002/73/EC*.

²⁹ Article 8b, paragraphs 3 and 4, *Council Directive 2002/73/EC*.

The concepts of *direct discrimination* and *indirect discrimination* on the basis of sex are present in most of the national legal frameworks of the countries in the region, except for Albania and Montenegro, which do not set forth separate legal provisions to define them. Further, in Macedonia the less favorable treatment of pregnant workers and workers in motherhood situations is not legally decreed as discrimination based on sex.

Legal status of harassment and sexual harassment

The concepts of *harassment* and *sexual harassment* have been incorporated into most of the national legal frameworks of the countries monitored for this report. However, Montenegro has not integrated these concepts into its national legal framework. All SEE countries except Serbia and Montenegro define sexual harassment explicitly as a form of discrimination on the grounds of sex in their legal order. Bosnia and Herzegovina reports that legal action is seldom taken in cases of sexual harassment, while in Serbia legal mechanisms for protection against sexual harassment “still stay vague and unclear.”

Available legal procedures in cases involving the violation of the principle of equal treatment for women and men. Prohibition of dismissal

Albania’s legal framework makes judicial and administrative procedures available to all persons who consider themselves wronged by failure to apply the principle of equal treatment for women and men. According to the national report, legal provisions are available for ensuring compensation for the loss and damage caused to a person as a result of discrimination on the grounds of sex. However, the national report does not report whether or not there is a set legal cap on the amount of such compensation that the courts can award to claimants.

Bosnia and Herzegovina’s national report also highlights that judicial and administrative procedures are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment for women and men. However, it must be noted that “it is hardly possible that the injured party will get real and effective compensation for the damage incurred by discrimination.”

According to the Croatian legal framework, the person who was discriminated against in employment or at the workplace has the right to seek compensation for damages, but there is no mention of the nature of the damages. Court action in conjunction with the violation of the equal treatment principle is regarded as a labor dispute which might take up to several years to resolve. Therefore, to date there are no relevant court decisions on issues of protection against discrimination and the amount of compensation granted.

In Kosovo, persons who consider themselves wronged due to lack of compliance with the principle of equal treatment must substantiate their claim before a court of law or other competent authority. No evidence of a conciliation procedure is detailed in the national report and no reference is made to measures guaranteeing effective and real compensation

for loss or damage sustained by a person wronged as a result of discrimination on grounds of sex.

The Macedonian report notes that if an employee believes that his/her rights were violated by noncompliance with the equal treatment principle, he/she can submit a written request to the employer demanding cessation of the violation. A job applicant has the right to demand compensation for damages for discrimination of up to five times the average pay, a provision in contravention of the standard required by Council Directive 2002/73, which stipulates that such compensation may not be limited by setting a prior upper limit. In Montenegro, any type of labor dispute can be taken to a court of first instance where the procedure is subject to the Code of Civil Procedure. In Serbia, the Criminal Code establishes violation of equality as a ground for legal action. Additionally, companies and responsible persons who have perpetrated acts of discrimination can be fined in misdemeanor procedures, legal penalties being set forth by labor legislation.

Protective measures with regard to women's participation in the labor market

In most SEE countries, a woman on maternity leave is entitled to return to her job after maternity leave, except in Macedonia and Serbia. The national reports point out that while the labor codes of Macedonia and Serbia protect women against termination of the work contract during pregnancy, there are, however, no legal guarantees for their return to their previous jobs or to equivalent positions. An important legal nuance is proffered by the fact that the national legal framework of Macedonia explicitly stipulates that a woman can return to her job after maternity leave on terms and conditions that are no less favorable to her than her prior situation. Except for Croatia, the national legal frameworks of other SEE countries do not provide for the right of a woman on maternity leave to return to an equivalent working position on terms and conditions that are no less favorable to her than her prior position.

Gender Equality Bodies

Council Directive 2002/73 provides for the establishment of a gender equality body or bodies to promote, analyze, monitor, and support equal treatment of all persons without discrimination on the grounds of sex. A major task of such bodies is to provide independent assistance to victims of discrimination in pursuing their claims.

SEE countries must set up a combination of institutional mechanisms to ensure promotion and monitoring of the implementation of the principle of equal treatment for women and men. At the national level, institutions responsible for gender equality issues operate under the auspices of governments and legislatures. A general assessment of the performance in SEE countries of national institutions in charge of gender equality issues indicates that they *do not have the level of independence and decision*

making, nor the necessary infrastructure and financial capacity, to give a fresh and consistent impetus to putting gender equality into practice.

Gender equality bodies across the region lack independence and decision-making authority. Except for Croatia, neither do they have adequate operational budgets, a fact that also significantly jeopardizes the effectiveness of the gender equality bodies. Although the mandate and specific tasks of the gender equality bodies are well defined *de jure*, their concrete capacities for carrying out these tasks lag behind the *de facto* situation. Very little information is available about staffing levels at these bodies or about training opportunities. However, in Montenegro, such information is available: the Office for Gender Equality is currently working with two employees. In short, there is a formidable rift between the assigned mandate of the Office for Gender Equality and the effective means and resources available for fulfilling it.

Bosnia and Herzegovina reports that an appropriate independent body for providing direct support, protection, and representation to victims of gender-based discrimination has not yet been established. In this regard, nongovernmental women's organizations draw attention to the fact that currently there are too many institutional mechanisms with a mandate to address gender issues and they are too bureaucratic, the end result being that they lack focus on discrimination against women.

According to information in the Macedonian national report, the country's Gender Equality Unit was established by means of a government decision, thereby rendering the mandate of this body disputable. The unit does not have a separate subcommittee (comprising representatives of nongovernmental organizations and other stakeholders) that would allow for successful coordination of efforts to promote gender equality. Hence the conclusion that, in addition to the absence of a legal mandate, the unit does not have a mandate from its own constituency, the stakeholders in society active in the field, which to a certain extent explains the absence of specific activities against discrimination. The unit's projects are quite limited due to an inadequate staffing level (only two employees), and are based on a national action plan adopted back in 2000.

2.3 From Special Protections To Affirmative Action: Pregnancy and Motherhood Protection

Council Directive 92/85/EEC³⁰ was adopted in 1992 as a health and safety measure, and focuses on work conditions and hazardous substances likely to harm a worker who is pregnant or breastfeeding. The directive's objective is to ensure minimal measures to protect the health and safety of pregnant workers, workers who have recently given birth, or who are breastfeeding, by designating them a special risk group. It must be emphasized that implementation of this directive may not lead to a lowering of already existing protection standards in SEE countries' national legal order for these categories of workers at the time they adopted or will adopt the directive.

Measures to facilitate improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Standards set forth by EU legislation for pregnancy and motherhood protection

Definitions of the terms "pregnant worker," "worker who has recently given birth," and "worker who is breastfeeding" are set forth in Article 2 of the directive and refer to all pregnant workers, those who have recently given birth, and those who are breastfeeding, who duly notify their employer of their condition in accordance with national legal provisions.

Principal standards for the assessment of hazardous agents, processes, working conditions, and employer's obligations. Cases when exposure to a hazardous working environment is prohibited

- For all activities that involve a specific risk of exposure to hazardous agents, processes, or working conditions (a nonexhaustive list is provided in Annex I of the directive), the employer's obligation is to assess the nature, degree, and duration of exposure of workers to health hazards within the meaning of Article 2, either directly or by way of protective and preventive measures.
- Assessment must extend to the identification of health and safety risks, or any possible effect on pregnant or breastfeeding workers, and must include a decision about what measures should be taken.
- Workers must be informed of the results of such an assessment and all measures to be taken concerning health and safety at work. If the results of the assessment reveal a risk to the safety or health or any detrimental effect on the

³⁰ Council Directive 92/85/EEC of October 19, 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

pregnancy or breastfeeding of a worker within the meaning of Article 2 of the directive, the employer must take the necessary measures to ensure that, by temporarily adjusting the working conditions and/or the working hours of the worker concerned, the exposure of that worker to such risks is avoided. In case the adjustment of the worker's working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer must take the necessary measures to move the worker concerned to another job.

- If moving her to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned must be granted leave of absence in accordance with national legislation and/or national practice for the entire period of time necessary to protect her safety or health.
- In cases where exposure is prohibited, in addition to the general provisions concerning the protection of workers, pregnant workers and workers who are breastfeeding may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure, which would jeopardize safety or health, to the hazardous agents and working conditions listed in Annex II, Sections A and B of the directive.

Night work

Article 7 of the directive sets forth the necessary measures to ensure that workers referred to in Article 2 are not obliged to perform night work during their pregnancy and for a period following childbirth, which must be determined by the competent national authority for safety and health, subject to submission of a medical certificate stating that this is necessary for the safety or health of the worker concerned. Such measures must entail the possibility, in accordance with national legislation and/or national practice, of either transfer to daytime work or leave from work, or extension of maternity leave, in those cases where such a transfer is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds.

Principal standards for maternity leave and time off for prenatal examinations

- Member states must introduce the necessary measures to ensure that workers within the meaning of Article 2 are entitled to a *continuous period of maternity leave of at least 14 weeks before and/or after confinement*, in accordance with national legislation and/or practice.
- The maternity leave must include compulsory maternity leave of at least two weeks before and/or after confinement, in accordance with national legislation and/or practice.

- Member states must take the necessary measures to ensure that pregnant workers within the meaning of Article 2(a) are entitled to, in accordance with national legislation and/or practice, time off, without loss of pay, to attend prenatal examinations, if such examinations have to take place during working hours.

Prohibition of dismissal and defense of rights

- To guarantee workers, within the meaning of Article 2, the exercising of their rights to health and safety protection as recognized under this article, member states must introduce necessary measures to prohibit the dismissal of workers from the beginning of their pregnancy to the end of the maternity leave.
- If a worker, within the meaning of Article 2, is dismissed during the aforementioned period, the employer must cite duly substantiated grounds for her dismissal in writing. Member states must take necessary measures to protect workers, within the meaning of Article 2, from consequences of unlawful dismissal.
- To ensure employment rights and to guarantee workers, within the meaning of Article 2, the exercise of their rights to health and safety protection, member states must take several measures. Regarding assessment of working conditions, as well as in cases of night work, employment rights under the work contract – including the maintenance of a payment to, and/or entitlement to an adequate allowance for, workers within the meaning of Article 2 – must be ensured in accordance with national legislation and/or national practice.

As regards defense of rights, member states must introduce into their national legal systems such measures as are needed to enable all workers who consider themselves wronged by the employer's failure to comply with obligations arising from this directive to pursue their claims by judicial process and/or, in accordance with national laws and/or practices, by recourse to other competent authorities.

National legal framework related to pregnancy and motherhood protection in SEE countries

Assessment of hazardous agents, processes and working conditions, and employer's obligations. Cases in which exposure to a hazardous work environment is prohibited

The Albania, Bosnia and Herzegovina, Macedonia, and Serbia reports do not provide information on any list of agents and working conditions that may pose a risk to the safety or health of pregnant workers and workers who are breastfeeding and under which such workers may not be obliged to perform work duties. Under a provision in the Albanian legal framework, an employer who becomes suspicious about the veracity of the medical certificate accompanying a pregnant employee's request for motherhood protection may require the employee to undergo a second examination by a medical doctor appointed by the employer. In the event of conflicting results, the employee

must undergo yet another examination by a medical doctor appointed by the State Work Inspectorate.

In Montenegro and Serbia, the Occupational Safety and Health Act contains general protective measures and does not make specific reference to pregnant workers and workers who are breastfeeding. According to information provided by the national reports, there are differences in employers' obligations to assess the nature, degree, and duration of exposure to agents, processes, and working conditions involving specific risk to the safety and health of pregnant workers and workers who are breastfeeding.

In Albania, Croatia, Serbia, and Kosovo, the employer is obliged to conduct an assessment of health and safety risks. The Kosovo report does not, however, mention the measures the employer must take if the assessment reveals a risk to the safety and health of pregnant and breastfeeding workers. In Bosnia and Herzegovina, a woman during pregnancy or breastfeeding may be transferred to another job if such a transfer is in the interest of her health condition, as determined by a physician. In Macedonia, Montenegro, and Serbia, the employer is not obliged by law to assess working conditions in light of risk to the safety and health of pregnant workers and workers who are breastfeeding. Under the Serbian Labor Code, in case of inappropriate working conditions, there is no employer's obligation to transfer the pregnant woman to another job.

Night work

Protection from night work of pregnant workers and workers who have recently given birth is regulated very differently across SEE. Night work is prohibited for pregnant women in Albania and Macedonia. Consequently, measures such as transfer to daytime work, going on leave, or extension of maternity leave when a transfer is not feasible are not provided for by law. Specific rules are applicable for night work for women who are breastfeeding. In Bosnia and Herzegovina, night work is prohibited for all working women employed in industry. Croatia has not ratified ILO conventions No. 89 and No. 171 concerning night work legal standards. The Croatian Labor Code includes a partial ban on night work of women employed in industry. Kosovo's legal framework does not provide for the transfer of women working night shifts prior to their pregnancy to a daytime job during pregnancy or when they are breastfeeding. In Serbia, night work is strictly prohibited in the last eight weeks of pregnancy.

Maternity leave and time off for prenatal examinations

According to the Albanian legal framework, employed women, regardless of the term of the individual work contract, are entitled to maternity leave and to an income from the social insurance fund during and after pregnancy. A maternity leave of 77 days, 35 of which are prenatal leave and 42 days are leave after childbirth, is considered mandatory; during this time period pregnant and breastfeeding women are not entitled to work. In

Bosnia and Herzegovina, a woman may start her maternity leave 45 days prior to her due date, and must commence a mandatory 28 days of leave prior to the expected date of delivery. The Labor Code of Bosnia and Herzegovina does not stipulate a pregnant woman's right to paid absence from work for prenatal examinations. Breastfeeding women do, however, have the right to a break twice a day, one hour each time, to feed their babies without loss of pay. Under the Croatian legal framework, women are entitled to a maternity leave of a minimum 28 days before the due date and 42 days after delivery. As the national report of Croatia notes, taking into consideration the high level of legal protection for pregnancy and motherhood, provisions on mandatory leave do not constitute a part of collective bargaining agreements, as the right to maternity leave is guaranteed by Croatian national legislation.

In Kosovo, women workers are entitled to a maternity leave of 12 weeks. While in the public sector women can take time off from work for prenatal checkups at full pay, in the private sector they are entitled to do the same with at least two-thirds pay. According to information provided by the Macedonian report, during pregnancy, childbirth, or taking care of a child, working women have the right to paid leave for a continuous period of up to nine months, or for a year if the worker should give birth to more than one child at the same time (twins, triples, or more). Working women have the right to start taking maternity leave, based on the report of a competent medical authority, within 45 days of the expected due date, and must stop working within 28 days prior to the due date.³¹ Macedonian law does not require employers to incorporate the right to a maternity leave into the work contract. A worker taking leave from work due to pregnancy, childbirth, or taking care of a child has the right to receive continued pay. The Labor Relations Act does not give pregnant workers the right to take time off for prenatal examinations without loss of pay, should such examinations occur during working hours.

Under Montenegro's Labor Act, working women are entitled to 365 days of maternity leave, with a minimum of 28 days to be taken before the expected due date and a minimum of 45 days to be taken after childbirth. There is no special legal provision on time off for prenatal examinations. In Serbia, an employed woman has a right to take leave from work on the grounds of pregnancy and childbirth (maternity leave) and leave for child care thereafter for a total of 365 days for the first and second child, and two years for a third and fourth child. The employed woman has a right to commence maternity leave 45 days prior to her expected due date at the earliest, and 28 days before the same on a mandatory basis. Maternity leave can last for up to three months after childbirth. Child care leave is granted after the maternity leave and it is voluntary. No specific legal provision is established for time off for prenatal examinations.

³¹ Cf., Article 165, Paragraphs 1 and 2, the *Labor Relations Act*, the *Official Gazette* No.62, July 28, 2005.

Equal treatment of self-employed persons and assisting spouses, including the protection of self-employed women during pregnancy and motherhood.

Council Directive 86/613/EEC applies to self-employed workers and their assisting spouses. Under this directive, member states are required to take actions to eliminate discrimination on the grounds of sex in relation to a set of issues, such as starting a business, forming a company, and enrolling spouses of the self-employed in social insurance schemes. These provisions complement separate legislation on equal treatment for women and men in employment and occupation, and on pregnancy and motherhood protection.

Standards set forth by EU legislation on self-employed persons and assisting spouses, including the protection of self-employed women during pregnancy and motherhood

The main standards on equal treatment in self-employment relate to:

- guaranteeing the principle of equal treatment for self-employed workers and their spouses who are not employees;
- ensuring the elimination of all provisions in contravention of the principle of equal treatment *vis-à-vis* the establishment, equipping, or expansion of a business, or the starting or expansion of any other form of self-employed activity, including financial institutions;
- ensuring that conditions for forming a company between spouses are not more restrictive than those for unmarried persons;
- enabling the spouses of self-employed workers who are not protected under the self-employed worker's social insurance scheme to join the contributory social insurance scheme voluntarily;
- encouraging the recognition of the work of the spouses of self-employed workers;
- examining the conditions for protecting female self-employed workers and the wives of self-employed workers during pregnancy and motherhood in order for them to benefit from services supplying a temporary replacement or existing national social services, or from cash benefits under a social insurance scheme or other public social protection system; and
- bringing relevant provisions in this area to the attention of bodies representing self-employed workers and vocational training centers.

National legal framework vis-à-vis self-employed persons and assisting spouses, including protection of self-employed women during pregnancy and motherhood in SEE countries

Generally speaking, in SEE countries it is possible for spouses to form a company together. Most countries in the region grant only limited social insurance rights, with the exception of Kosovo, where self-employed women do not have access to social insurance coverage. Albanian legislation stipulates *expressis verbis* that self-employed persons must be enrolled in social and health insurance schemes. They also have the right to supplement their mandatory social insurance coverage by additional voluntary insurance coverage. In their capacity as family members, the spouses of self-employed persons receive mandatory protections and insurance coverage, albeit only for health care. The Bosnia and Herzegovina report highlights the fact that apart from a generally worded prohibition of discrimination, there are no clear and precise provisions within the labor and commercial legislative framework specifically applying to self-employed women. Accordingly, the mechanisms to enforce equal opportunities for them comply with the enforcing mechanisms of already existing equal opportunities protections. Self-employed workers and their coworker spouses are included in the general social insurance system on a registration basis.

As a unique example of the recognition of the work of spouses, Kosovo's Gender Equality Act provides explicitly that the unpaid work of women and men will be considered as a contribution to the growth of family and society in the following situations: care for family welfare, care for children, care for other members of the family, work in agriculture.

The rights of self-employed workers whose work activity is interrupted due to pregnancy and motherhood

Under Albania's legal framework, since self-employed women are subject to compulsory insurance coverage for the social risk of pregnancy or the birth of a child, they receive pregnancy-related benefits during the interruption of their work duties. Since self-employed workers do not benefit from a fixed salary, their benefits are in relation to the minimum wage. Albanian legislation does not allow workers to contribute to voluntary insurance schemes that would bolster their income during pregnancy or after childbirth.

In the case of Bosnia and Herzegovina, social and health protections set forth a special legal status for women in relation to motherhood, and embrace employed and unemployed women alike, regardless of the type of employment. In the case of unemployed women who are mothers, this type of protection includes financial aid during pregnancy and at birth, one-time assistance for the needs of the newborn baby, food assistance for infants during their first six months, and additional food assistance

for breastfeeding mothers. Further, it must be noted that this protection is also extended to self-employed workers.

The Croatian national report mentions that self-employed workers make mandatory contributions to the social insurance system and have the same rights during pregnancy and motherhood as any other employees. Women engaged in their own businesses, entrepreneurs, and agricultural workers with compulsory pension and health insurance coverage are entitled to maternity leave just like any other working mother. However, in Croatia, as well as in Serbia, the wives of self-employed persons who are not officially employed are not entitled to maternity leave or motherhood-related rights since they are only covered by the health insurance schemes of their spouses. Kosovo's national legislation provides no specific statutory provision for self-employed women whose work activities have been interrupted due to pregnancy and birth.

Labor legislation in Macedonia does not set forth the concept of "self-employment," that is, it does not differentiate between employed and self-employed persons. There are no separate social protection schemes for self-employed persons, wherein they could join a voluntary contribution scheme. Consequently, self-employed working women and spouses of self-employed working men have no access to any national contributory social services or benefits during interruption of their professional work due to pregnancy or motherhood. Under the Montenegro legal framework, all persons are entitled to social insurance coverage under the same conditions, without a special or additional social insurance system for self-employed workers. Self-employed female workers are entitled, according to the Social and Child Protection Act, to a benefit during maternity leave in the amount for which all necessary contributions have been duly paid. Payment of such a benefit is conditional on prior fulfillment of tax obligations and payment of all due insurance premiums during self-employment work.

3. A DECALOGUE FOR CHANGE: BROADENING NATIONAL STANDARDS OF GENDER EQUALITY IN SEE COUNTRIES

Equal treatment for women and men constitutes a prerequisite for a society in reaching sustainable growth and development. Following numerous national legislative changes in the past three years, especially with regard to labor-related legislation, the current set of equal opportunities monitoring reports for SEE countries reveals an increased level of compliance with the standards of EU gender equality legislation. However, much still remains to be done, especially in terms of guaranteeing that legal mechanisms are available to all persons who consider themselves wronged via another party's failure to comply with standards set forth by legislation aimed at combating sex-based discrimination. Although some might deem the SEE countries' laws on pregnancy and

motherhood overprotective, especially in terms of child care leave, nevertheless supplementary protections governing working conditions for pregnant workers and workers who are breastfeeding are still a necessary addition to general protective provisions for workers. Such provisions need to focus on standards set forth in EU directives to guarantee the right of pregnant workers to return to their previously held jobs after maternity leave and their right to take time off for prenatal examinations.

The Open Society Institute's current monitoring reports underline that compliance with the EU directives implies the following conclusions for the SEE countries' national legal frameworks on gender equality:

1. The implementation of commitments made during the negotiation process for current and future candidate countries must be monitored both at the governmental and nongovernmental level with a special focus on gender equality.
2. Intensified national legislative efforts are required in order to adequately incorporate the standards of the gender equality *acquis communautaire* in regard to pregnancy and motherhood protection.
3. Special legal mechanisms for gender equality must be introduced to ensure that gender equality is not "lost" in broader nondiscrimination rules and regulations.
4. The SEE countries must provide adequate funding, infrastructure, and staffing levels to ensure that national gender equality bodies can accomplish their legally mandated mission effectively.
5. Special efforts must be made to eliminate gender stereotypes via extensive public education campaigns, especially in cases where gender equality bodies have a generous legal mandate to carry out such campaigns.
6. Financial resources must be made available to raise gender equality awareness *vis-à-vis* implementation of EU gender equality standards throughout the negotiation process.
7. Dialogue, including the establishment of formal mechanisms for consultation, must be strongly encouraged between civil society representatives and the governments of candidate countries and potential candidate countries.
8. SEE countries must provide funding at the national level for NGO projects and programs as well as for governmental programs developed with NGO assistance in the area of research and awareness raising regarding the EU standards on gender equality, training of professionals, gender equality legislation, and pilot initiatives to support the fulfillment *de jure* and *de facto* of the *acquis communautaire*.

9. National strategies on gender equality must be adopted and monitoring mechanisms must be set up to annually assess fulfillment of objectives set forth by national strategies on gender equality.
10. Gender responsive budgeting must be agreed on and adopted at the national level as a tool for determining the impact of government revenue and expenditure policies on women and men.

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Executive Summary for Albania

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

Albania's Constitution and national legal framework enshrine the fundamental principle of equal rights for the country's citizens. However, the Albanian Constitution does not provide specifically for the principle of equal pay for work of equal value. The 1995 Labor Code is the principal law governing labor relationships between employees and employers, including obligations *vis-à-vis* equal treatment of employees in all aspects of labor relations. The Labor Code does specifically contain the principle of equal pay for work of equal value. Additionally, the 2004 Gender Equality Act provides that employers must render equal pay for work of equal value. Albania has ratified all major international treaties guaranteeing women's right to equal pay for equal work.¹

Albanian legislation contains no discriminatory legal provision in contravention of the principle of equal pay for men and women. All acts and work contracts in violation of the Labor Code and other acts of law will be null and void, and persons in breach thereof are punishable pursuant to administrative, civil, and criminal law provisions. The 1995 Labor Code and the 2004 Gender Equality Act are fully applicable to all employers and employees, both in the public and private sector. The Albanian government employs a job classification system to determine rates of pay, but it is applicable only to the public sector.

Under the Albanian Constitution everyone is entitled to bring a case before an independent and impartial court of law to defend his/her constitutional rights, liberties, and interests. Under the 1995 Labor Code everyone has the right to seek legal redress in the event that he/she believes his/her rights have been violated. The 2004 Gender Equality Act provides that every citizen who believes that the principle of equal pay for work of equal value has been violated in his/her situation on grounds of his/her sex is entitled to demand restoration. In terms of out-of-court alternatives, Chapter VII

¹ The *Convention on the Elimination of All Forms of Discrimination against Women*, the *International Covenant on Economic, Social and Cultural Rights*, and the *European Social Charter*.

of the 1995 Labor Code stipulates that all collective labor disputes be resolved through conciliation. A significant out-of-court alternative to redress acts of discrimination perpetrated by a public administration organ is the office of the Ombudsperson.

Article 38 of the Labor Code obliges employers to inform employees of their employment rights and obligations and to acquaint them with the Labor Code, thus bringing to their attention relevant legal provisions and enforcement measures *vis-à-vis* the equal pay principle and available complaint mechanisms.

Both the 1995 Labor Code and the 2004 Gender Equality Act provide explicitly for the principle of equal treatment for women and men. The 1995 Labor Code sets forth the concept of *discrimination*,² by stipulating that employment discrimination based on a number of grounds, including sex, will be prohibited. Though the concept of *discrimination based on sex* does not constitute a separate provision, it is nevertheless an offense under Albanian law. In such cases the court may rule that the perpetrators cease discriminatory behavior and pay the victim of discrimination moral damages for pain and suffering and material damages for loss of income. The 2004 Gender Equality Act does not specifically provide for the concepts of *direct discrimination* and *indirect discrimination*, but it does stipulate that the aim of the act is to eliminate direct and indirect discrimination. Sexual harassment is defined under the legal provisions of the 2004 Gender Equality Act as a form of discrimination based on sex and therefore prohibited.

The Labor Code specifies and details the general rules applied to cases and situations in which an employer has the right to terminate the work contract and the procedures he/she must follow before terminating the employment relationship. Dismissal will be considered null and void in the event that the employer fails to comply with the required legal procedures. Article 146 of the Labor Code stipulates that if the work contract is terminated on unreasonable grounds, the employee has the right to file a suit in court. The 1991 Trade Union Act is another guarantee for protecting employees or employees' representatives against dismissal or any other retaliatory act from employers when employees take legal action to enforce compliance with legal principles on equal treatment. There is no statutory provision in Albania's legal order for classifying jobs based specifically on the sex of the workers performing them.

As regards pregnancy and motherhood protection, the Albanian legal framework does not provide definitions for the concepts of *pregnant worker*, *worker who has recently given*

² Article 9, paragraph 2 of the 1995 *Labor Code* defines discrimination as “any differential treatment, exclusion, or preferences based on grounds of race, color, sex, age, beliefs, political opinions, nationality, social origin, marital and family status and physical or mental handicap, resulting in the restriction of the recognition of rights in the field of the employment relationship”.

birth, or worker who is breastfeeding. Albanian labor legislation on working conditions accords special protective measures for pregnant and breastfeeding workers over and above the general protective measures legally in force for all workers. There exists no list of hazardous agents and working conditions under which pregnant and breastfeeding workers may under no circumstances be obliged to perform duties. According to Decision No. 397/1996 of the Council of Ministers, the employer must make an assessment of the workplace and the working conditions of pregnant workers, workers who are breastfeeding, and workers who have recently given birth in order to identify and evaluate the nature, extent, and level of exposure to agents, processes, and working conditions detrimental to the health of the workers under discussion. If the results of the assessment reveal a risk to the safety and health of the worker, or her pregnancy or breastfeeding child, the employer must take all reasonable measures to ensure that the risk is avoided. The measures include a temporary adjustment of the affected workers' working conditions and work schedule. In cases when the adjustment of working conditions and work schedules is not technically or objectively possible, the employer must ensure the transfer of the worker to another workplace. If the transfer is not technically or objectively possible, the worker under discussion must be granted a leave of absence for the period of time necessary for the protection of the worker's health.

In regard to the role of trade unions in gender equality issues, the 1991 Trade Union Act does not explicitly grant trade unions the right to initiate proceedings in matters involving gender equality. However, since the act stipulates that trade unions are entitled to institute proceedings to protect the interests of their members, and to ensure compliance with labor legislation, collective bargaining agreements, and individual work contracts,³ and since *equality* is one of the most important principles set forth in employment legislation, it may therefore be inferred that trade unions should also be able to institute legal action in matters involving gender equality. Article 182 of the Labor Code provides that trade unions may take legal action not only on behalf of a group of employees, but also on behalf of an individual employee who is a trade union member. However, labor legislation does not provide for *pro bono* legal aid to workers who want to pursue their claims.

Practice

In recent years, significant progress has been made in developing national legislation to promote the protection of women's rights as basic human rights, and foster equality between men and women in the economy and in public life. The Albanian government has legally sanctioned equality between men and women by enacting the appropriate legislation. However, lack of political mechanisms to effectively enforce these new laws has preserved gender inequality, which in turn has slowed the process of economic

³ Article 182, the *Labor Code*. 1995.

development, democratization, and political stability. Without effective enforcement, gender stereotypes and traditional attitudes persist, and men and women continue to be treated unequally.

Wage differentials are quite evident in the incomes of women and men in Albania. Men are usually dominant in managerial positions, making their average remuneration much higher than that of women. Also, women are heavily employed in the education and health sectors, which invariably provide lower paid jobs. Data from the Institute of Statistics of Albania (INSTAT) shows that women hold a mere 26.7 percent of managerial positions. INSTAT data shows that women's average monthly pay is lower than that of men's in all economic sectors.⁴ The differential is greater for employees in the nonagricultural private sector and it affects women of all ages. On the other hand, the average wage differential between men and women is rather small in the public sector where the job classification system mandates equal pay for work of equal value. Indeed, in some branches of the public sector the wage differential does not even exist.⁵

Besides gender discrimination, discrimination based on age also impacts employment opportunities for women. The likelihood of pregnancy makes certain women of reproductive age undesirable employees. Likewise, women over the age of 35 are not preferred. Despite existing legal protections, job advertisements in the daily press reveal signs of gender and age discrimination. Most advertisements for private-sector job openings seek young women under 25, mainly for secretarial, assistant, or sales positions. Listings for vacant managerial positions show preference for male jobseekers. Even when women hold identical qualifications with men, they are seldom hired to fill managerial positions either in the private or the public sector. Women's participation in the labor market is one of the main indicators of women's empowerment. Data collected by INSTAT demonstrates a considerable inequality between women and men regarding their labor market participation. In 2004, 38.3 percent of women were employed versus 60.1 percent of men.

2. Gender Equality Institutional Mechanisms

The main bodies responsible in Albania for gender equality are the Committee for Gender Equality (CGE) and the Inter-Ministerial Committee for Gender Equality (IMCGE). Based on the recommendation of the Inter-Ministerial Committee, the prime minister nominates the chairperson of the Committee for Gender Equality. The CGE is overseen by the Ministry of Labor and Social Affairs and benefits and operates on a very small budget. Accordingly, it is unrealistic to expect that the CGE fulfill its

⁴ INSTAT, *Women and Men in Albania 2003*. 2004. Tirana: INSTAT, 14.

⁵ Ibid.

mission of proposing legal initiatives in the field of gender equality and enforcing the gender equality legislation under the present circumstances. IMCGE is an entity established under the 2004 Gender Equality Act and Decision No.184 of the Council of Ministers. The composition, organization, and functions of IMCGE are defined by an order of the prime minister. Members of IMCGE have a four-year nonrenewable mandate, and the committee convenes twice a year. The mission of IMCGE is to monitor the implementation of programs approved by CGE, as well as to analyze the gender equality situation in Albania.

Working shoulder to shoulder with the two aforementioned gender equality institutions, the People's Advocate defends the rights, freedoms, and legitimate interests of individuals from unlawful or improper action, or failure to act, of organs of public administration. However, it must be noted that the People's Advocate has no mandate to enforce either the equal pay principle, or the principle of equal treatment for women and men in the workplace.

3. Programs and Policies Aiming at Gender Equality

The Albanian National Report does not provide information on specific research or reports compiled in Albania *vis-à-vis* the gender pay gap as no such research has been carried out so far. In terms of women's access to and presence in the labor market, besides official INSTAT and Ministry of Labor and Social Affairs data, other sources of information are the 2001 Nationwide Population and Habitation Registration and the Living Standard Measurement Survey (LSMS) for 2002 and 2003, which reveal alarming facts regarding women's presence in the labor force versus that of men's.⁶ According to LSMS 2002 and 2003, women's participation in the labor market, namely the percentage of women working and not working does not show progress, in comparison with the percentage of men working and not working, showing a marked increase.⁷ In Albania, no research is being conducted specifically on working condition issues.

Based on the Albanian Government's Decision No.632 of 2003, a special program has been developed to promote employment opportunities for women job seekers. Employers who employ women (especially women from the Romani community, women over 35, divorced women with social problems, and women with disabilities)

⁶ Ministry of Labor and Social Affairs, *Përkatësia gjinore dhe punësimi në Shqipëri—Çështje të Integritimit Gjinator në Politikën e Punësimit në Shqipëri* (Gender and Employment in Albania—Gender Mainstreaming Issues in Employment Policies in Albania) 2005. Tirana: United Nations Development Program, 26.

⁷ Ibid.

will receive financial incentives under this program.⁸ Additionally, the Albanian government is taking other positive steps to support job seekers by offering vocational training and mediation to facilitate access to jobs. Although a considerable number of individuals have successfully completed their training and obtained jobs, their numbers have not been disaggregated by sex. Yet disaggregated data would facilitate gender analysis and assessment of the effectiveness of this kind of vocational training to women job seekers.

There is no available data on women who return to work after childbirth. Some research has been conducted on discriminatory job advertisements, mainly by different local and international NGOs working on gender issues in Albania. A recently published report (2004)⁹ highlights the fact that traditional attitudes toward women and the disparagement of their abilities and status in the labor market still persist in Albania. In relation to research focusing on sexual harassment, findings of a research project carried out by the Women's Center in 1999¹⁰ reveal that 30.13 percent of women interviewed say they have been victims of different types of sexual harassment in the workplace, e.g., provocation, seduction, or even attempts by colleagues or directors to establish a sexual relationship with them. Sexual harassment in the workplace is still considered an unacknowledged and typical phenomenon due to persisting stereotypes and to gender inequality in Albanian society.

Since there is no research regarding the status and rights of self-employed women, it is difficult to estimate whether they are being discriminated against or whether self-employment is more or less favorable for women than other forms of work.

⁸ More specifically these measures are the following:

1. A person, who employs a woman (on the Employment Office waiting list) under a regular working contract, with an extension of minimum one year receives a monthly subsidy equivalent to 70 percent of the employer's mandatory insurance contribution in respect of the worker in question.
2. In the event that the above contract is extended for two years, the employer receives a monthly subsidy equivalent to 85 percent of the employer's mandatory insurance contribution, and 100 percent of the same should the formal work contract be extended for 3 years.
3. If trafficked women, Roma women, women with limited abilities, single mothers, divorced women, and women with social and financial problems are employed (in accordance with the above conditions), the employer will receive a subsidy equivalent to 4, 6, and 8 times, respectively of the monthly pay of the employed woman.

⁹ Karaj, Theodhori ed. *Diskriminimi i gruas në tregun e punës* (Discriminating against Women in the Workplace) 2004. Tirana: Open Society Foundation for Albania.

¹⁰ Miria, Silvana ed. *Diskriminimi i gruas në vendin e punës*. (Discriminating against Women in the Workplace – A Social Survey) 1999. Tirana: Women's Center.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- There must be public oversight and frequent monitoring of the private sector to ensure that international standards and domestic norms alike prevail in implementing the principle of equal pay for work of equal value.
- An organized effort must be made to make women aware and informed about their economic and legal rights. Such efforts should be as closely geared to rural women's needs and realities as possible, breaking away from the stereotypes and the narrow outlook generally espoused by NGOs in their work.
- The level of women's participation in decision-making processes and bodies must be increased to pave the way to women's greater contribution to gender-sensitive policy and strategy design.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- The awareness of policymakers must be raised on gender equality issues and the importance of gender mainstreaming as a tool for achieving gender equality.
- Members of the judiciary and other responsible actors need training and qualifications on gender equality issues to increase their gender sensitivity during implementation and application of various acts of law.
- The Gender Equality Act needs to be improved to fully ensure the efficiency of the structures it has established.
- Women returning from maternity leave must be provided with further training and qualifications to help them meet labor market requirements.
- Legal changes need to be considered to embrace paternity leave as an important factor of reconciling work and family life in Albania.

3. Pregnancy and Motherhood Protection

- There is a need for programs, policies, and projects to promote the economic empowerment of women.
- It is important to conduct more qualitative and quantitative research, which would establish the basis upon which social policies must be built.
- Legislation should be passed to improve the situation of spouses of self-employed persons regarding access to contributory social insurance schemes.
- Programs of positive discrimination should be designed to encourage women's participation and involvement in the self-employment sector.

Executive Summary for Bosnia and Herzegovina

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

Since the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Peace Accords), international human rights standards have been adopted by the respective representative bodies of Bosnia and Herzegovina and grounded in its constitutional provisions. Bosnia and Herzegovina (B&H) consists of three political entities: the Federation of Bosnia and Herzegovina (FB&H), the Republika Srpska (R.S.), and the Brcko District (B.D.), each with its own legal order, including a constitution. The legal framework for equal opportunities for women and men is in place at both state and entity level.

The passing of the Gender Equality Act in 2003 was part and parcel of the ongoing process to incorporate the general principle of nondiscrimination into Bosnia and Herzegovina's legal order. The act was one of the first of its kind in the region of South Eastern Europe. Article 1 of the Gender Equality Act provides for the promotion and protection of gender equality, prohibition of sex-based discrimination, and sets forth the guarantee of equal opportunities in both the public and private domain.

Despite progress made at the legislative level, backed by the institutional mechanisms at state, entity, and local level, compliance with these new statutory provisions remains unsatisfactory. Traditional perceptions of women's and men's roles in the home and on the job persist, and current implementing mechanisms and policies are incapable of aligning the *de facto* situation with the law.

The Constitution of Bosnia and Herzegovina sets high standards for human rights protections and incorporates the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW) as part and parcel of its statutory provisions. Together with the Gender Equality Act, this framework establishes a quality base for direct application of equal opportunities principles.

The Gender Equality Act, as *lex specialis*, harmonizes gender equality principles with existing labor legislation, particularly with labor acts in the Federation of Bosnia and Herzegovina, Republika Srpska, and Brcko District. Lack of measures to enforce the

adopted provisions together with a gender biased society creates an enormous rift between the *de facto* and *de jure* situation.

The principle of equal pay for work of equal value is explicitly introduced in the Gender Equality Act and, due to the direct incorporation of International Labor Organization Convention 100 into B&H labor legislation, is also set forth that law.

Prohibition of sex-based discrimination in employment, professional training, working conditions, and promotion in career is set forth explicitly in the Gender Equality Act and the labor acts of all three entities.

The Gender Equality Act, for the first time in B&H law, defines and prohibits both direct and indirect discrimination, as well as harassment and sexual harassment. The act also prohibits dismissal of an employee who seeks to legally enforce his/her rights, and provides for the prohibition of gender-based discrimination.

The Gender Equality Act¹ explicitly prohibits different treatment on the grounds of pregnancy, and this prohibition is additionally backed by provisions of labor legislation.² These statutory measures stipulate that employers transfer workers to another job should their health and safety so require, and to pay them compensation in the event that they are unable to provide a transfer arrangement. Guarantees of equal treatment for pregnant workers in access to employment and contract security have also been incorporated into the labor legislation of the respective entities.

As regards exemptions, the prohibition of night work applies to all women in industry, and does not specifically refer to pregnant or breastfeeding workers. Working women are entitled to a one-year paid maternity leave, and an additional two years off without pay under guaranteed parental leave for employees set forth by the Labor Act of the Federation of Bosnia and Herzegovina. Legislation at both state and entity levels lacks provisions for time off for prenatal checkups for pregnant workers without loss of pay. Labor legislation does, however, provide for time off for breastfeeding during the workday.

Although the Gender Equality Act incorporates the equal treatment principle *vis-à-vis* self-employed women and men and provides for the elimination of discrimination against women in rural areas, the legal framework is unsatisfactory in regard to the spouses of the self-employed workers and their social rights. Additionally, there is no assessment and/or response to self-employed women and the wives of self-employed workers regarding provision of temporary replacements or access to national

¹ Article 8(5).

² The *Labor Act of the Federation of Bosnia and Herzegovina*, the *Labor Act of R.S.*, and the *Labor Act of the Brcko District*.

contributory social security schemes during interruptions in their occupational activity due to pregnancy or motherhood.

Practice

The statutory measures and precise definitions described above attest to a high level of development in Bosnia and Herzegovina with regard to conceptual protection of equal opportunities principles. There are, however, substantial shortcomings in terms of the real situation for women in the country's labor market, which is marked by a gender pay gap and women's disadvantaged status therein. One of the highest unemployment rates in the world (47.7 percent of women, 34.7 percent of men)³ establishes Bosnia and Herzegovina as a country with a formidable grey economy without legal protections, including the statutory provisions for equal treatment. Horizontal segregation of the labor market in Bosnia and Herzegovina is significant; women are a major force in education, culture, and health care, but are largely absent in decision-making and managerial positions. The low ratio of self-employed women is related to their limited access to resources, and while poverty is an important constraint for both women and men, women have significantly fewer employment and entrepreneurial options than men.

Many factors, including the prohibitive cost of legal action, lack of public awareness, and the staunch persistence of gender stereotypes in all walks of life in Bosnia and Herzegovina, prevent workers from taking advantage of existing laws on nondiscrimination and equal treatment guarantees for women and men. Although civil judicial procedure has been amended, and the principle of burden of proof adopted for sex-based discrimination cases, there are no recorded cases of gender-based discrimination claims and/or proceedings coming before a court of law or the ombudsperson. Moreover, as nongovernmental organizations in Bosnia and Herzegovina have found, such discrimination is generally accepted as the social norm.

2. Gender Equality Institutional Mechanisms

Since 2003, when the Gender Equality Act was adopted, several bodies have been established to promote, guarantee, and monitor the implementation of the principle of equal opportunities for women and men. The obligation of the Council of Ministers of the State of Bosnia and Herzegovina to take all the appropriate steps to enforce the

³ Bakšić Muftić, Jasna, Ler Sofronić, Nada, et al, *Zato što smo žene – Socio-ekonomski status žena u BiH* (Socio-Economic Status of Women in B&H – Because We Are Women) 2002. Sarajevo: STAR World Learning, 76.

provisions stipulated by the Gender Equality Act provides a framework for institutional guarantees.

Institutional mechanisms regarding gender equality for women and men have been established at state, entity, and local levels. Their authorization is restricted to monitoring, drafting reports, and initiating and facilitating discussions in respective areas of interest. Any of the established bodies is entitled to actively and independently assist victims of gender discrimination, or to remedy lack of legal provisions, or assign tasks to other public bodies.

The Commission on Gender Equality within the Parliamentary Assembly of Bosnia and Herzegovina was established in 2002, and its main functions relate to the implementation, or, rather, monitoring and discussion of tasks and reports on the Platform for Action of the Beijing Declaration.

The Gender Equality Agency of Bosnia and Herzegovina, with major national policy-setting powers – currently drafting the State Action Plan to promote equal treatment for women and men – was established in February 2004 within the Ministry for Human Rights and Refugees of the State of Bosnia and Herzegovina. It is the main body with the authority to review and enforce the Gender Equality Act and to review acts of law and draft legislation with regard to gender equality principles. It is too early to assess its performance. The agency is dependent on the state budget and governmental funding.

Similar commissions and gender centers were established at the state, cantonal, and municipal levels. These bodies have been criticized for bureaucracy, ineffectiveness, and, because of their excessive numbers, lack of accountability.

3. Programs and Policies Aiming at Gender Equality

Bearing in mind the institutional framework's shortcomings to guarantee and protect gender equality principles, a major concern regarding programs and policies toward gender equality is the absence of an empowered, comprehensive, and professionally developed gender equality policy in Bosnia and Herzegovina. This national monitoring report shows a consistent strategy in the legal guarantees, but they are severely lacking a concrete enforcement mechanism, in terms of programs and supportive measures, and progress is not guaranteed. Strategic planning to bolster women's labor market presence and eliminate current, verifiable horizontal and vertical labor market segregation is painfully absent.

Gender disaggregated data is not available in Bosnia and Herzegovina. Currently available statistics reveal a high unemployment ratio among the population, a factor that affects the breach of social security regulations, including statutory measures

governing gender equality. A great number of unemployed women work in the informal economy where the social security regulations are not applicable.

Trade unions have a legally established status as a social partner, as set forth in the Gender Equality Act, to guarantee equal protection of men and women in the labor market. Their own nondiscriminatory policy is also governed by the act's provisions.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- Although the legislation to support the principle of equal pay for women and men is satisfactory in principle, it is necessary to improve the mechanisms for ensuring its enforcement in practice.
- Effective mechanisms need to be developed to institutionally support and protect workers when bringing cases of violation of the equal pay principle before a court of law.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- Effective measures need to be developed to institutionally support women to increase their participation in better paid and more profitable positions.
- Workers' awareness needs to be raised regarding rights and obligations arising from relevant provisions of labor and gender equality legislation, and proper compliance therewith ensured.
- Working women need to be informed about their specific rights in writing and have easy access to such information.
- Institutional mechanisms, including gender agencies and centers at local, regional, and national level as well as commissions established to promote gender equality need to act to improve the inclusion of women in the labor market.
- Institutional mechanisms, including agencies, centers, and commissions established to promote gender equality need to play a more active role in calling for the implementation of the Gender Equality Act and its principles.
- The overall legal framework needs to be revised and its provisions harmonized with the principles and requirements of the Gender Equality Act.

- Independent experts on gender issues need to be included in the working bodies together with nongovernmental organizations working to promote women's human rights.
- An independent monitoring body should be established, which would critically evaluate the implementation of the Gender Equality Act and related acts of law and statutory provisions.
- An independent body should be established to evaluate the impact and effects of gender mainstreaming and institutional mechanisms for gender equality.
- Men should be encouraged to take an active part in raising and taking care of their children.
- Positive programs and campaigns encouraging both parents to care for their children are needed to eliminate gender bias in work and parental leave policies.

3. **Pregnancy and Motherhood Protection**

- It is necessary to provide appropriate protection via labor, social welfare, and health care laws for self-employed women and the spouses of self-employed workers during pregnancy and motherhood.
- It is necessary to harmonize all labor, social welfare, and health care laws with the provisions of the Gender Equality Act *vis-à-vis* employment, work, and access to resources concerning the social welfare and health of self-employed women and the spouses of self-employed workers.

Executive Summary for Croatia

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

The Constitution of Croatia grants all citizens equality and prohibits discrimination on any grounds. In 2001, gender equality became one of the highest constitutional values.¹ The constitution does not set forth the principle of equal pay for equal work or for work of equal value per se, but it does ensure the right to “fair remuneration.”² The Labor Code and the Gender Equality Act prohibit discrimination on the ground of sex in relation to work conditions and all employment rights, including equal pay.³

An outdated national classification of professions exists on paper. It bears no connection to setting rates of pay and is not implemented in practice. As of this writing, a new job classification system is being prepared by the Croatian Statistical Bureau and it will include professions in both the public and private sector.

The law does not require that the employer inform workers about their rights regarding equal pay; in practice, responsibility for providing this information lies with trade unions.

There are no effective legal means to monitor, oversee and enforce compliance with the equal pay principle and the penal provisions of the Labor Code do not set forth legal retribution for the employer who violates the principle. The labor inspector has no legal mandate to monitor compliance with the equal treatment principle. In case of discrimination – including violation of the equal pay principle – all have the right to court protection and the burden of proof lies with the employer. In labor disputes, workers are exempted from paying court costs. In case of violation of the equal pay principle, it is also possible to request that the Gender Equality Ombudsman take action. The ombudsman has the right to initiate conciliation procedures and has the

¹ Article 3, the *Constitution of the Republic of Croatia* (revised text), the *Official Gazette*, No.41/2001.

² *Ibid.*, Article 55.

³ Article 2, paragraph 4, the *Labor Code*, the *Official Gazette*, No.758/95; Article 13, paragraph 4, the *Gender Equality Act*, the *Official Gazette*, No.116/2003.

authority to warn, suggest, and issue recommendations. The Labor Code and Gender Equality Act provide for compensation of damages in cases of discrimination.

The state does not provide pro bono legal aid in equal treatment matters. Trade union members have the right to pro bono legal aid and representation in court by the trade union legal representative in all labor disputes, including those dealing with the violation of the principle of gender equality. NGOs also provide free legal advice and counseling, but are not entitled to represent employees in court procedures.

The constitution guarantees everyone the right to and freedom of work, and to choose their vocation and occupation.⁴ The Gender Equality Act and the Labor Code – following the provisions of the respective directives – contain the definitions of direct and indirect discrimination, applicable on the ground of sex⁵ and legal penalties for violating the prohibition of discrimination. These provisions are applicable to the process of selection for employment and during employment alike. The Labor Code contains provisions regarding affirmative action. The Gender Equality Act prohibits discrimination on the grounds of marital or family status and sexual orientation.

Employees are legally protected from unlawful dismissal when initiating a complaint or court procedure against the employer, in case the latter violates their rights.⁶

The Gender Equality Act and the Labor Code both provide legal definitions of harassment and sexual harassment, in accordance with Council Directive 2002/73/EC.

Croatian legislation sets forth well structured legal protections for pregnant women and women who have recently given birth, likewise in compliance with EU Directives. The Labor Code has a separate chapter on protection of motherhood.⁷

Employers cannot refuse to employ a woman because of her pregnancy. During pregnancy and maternity leave, the employee cannot be dismissed on any grounds. However, this ban does not apply to employees with nonpermanent employment contracts. After maternity leave, the employee is entitled to return to her previous job and if this position no longer exists, she has to be offered another equivalent position.

The Labor Code prohibits a woman – including a pregnant or breastfeeding woman – from performing jobs endangering the life and health of the woman and her baby. This general provision is elaborated in greater detail in the Jobs Not to Be Performed by a

⁴ Article 54.

⁵ While in the Gender Equality Act the definitions refer only to sex-based discrimination, the concept in the Labor Code applies all other discrimination grounds as well. Article 2, the *Labor Code*; and Article 7, the *Gender Equality Act*.

⁶ Article 115, the *Labor Code*.

⁷ Articles 63-79, the *Labor Code*, “The protection of motherhood.”

Woman Act. The act also provides special protections for pregnant and breastfeeding women, including listing the jobs they are not allowed to perform.

Employers are legally obliged to assess the fact and nature of exposure to hazardous occupational health and safety conditions and transfer a pregnant or breastfeeding woman to another job if she is assigned to work that poses a threat to the life and health of the woman and her baby. The transfer must not result in a loss of pay.

The Labor Code includes a partial ban on night work for women employed in industry. The employer cannot order pregnant women, mothers with children younger than two years old, and single mothers with a child younger than three years old to work at night, unless they themselves request so. The code also requires employers to transfer pregnant women and mothers with small children to day shifts.

Croatian law guarantees the right to maternity leave. A female worker may take maternity leave 45 days before the expected date of childbirth and may remain on such leave until her child is one year of age. For twins, the third or any subsequent child, maternity leave can last up until the child(ren) is (are) three years of age. A female worker is obliged to take maternity leave in the period from 28 days before the childbirth until the child is six months of age (“mandatory maternity leave”). As an exception, a woman may, at her own request, begin to work before her child is six months of age, but not before 42 days have elapsed since the childbirth. After this date, fathers are also entitled to the leave. The law provides for compensation during maternity leave, for whichever parent takes this leave.

The principle of equal treatment and nondiscrimination in Croatian law also applies to self-employed persons. The definition of a self-employed person, as set forth in the Council Directive, does not exist – instead, various forms of self-employment are defined in different laws.

Spouses of self-employed persons who are enrolled in compulsory social, health, and retirement pension insurance schemes have the same social rights as spouses of employees, both private and public (health insurance, right to family pension).⁸ Under Croatian law, the requirements for starting a private business/company are the same for all, regardless of marital status.

Self-employed workers contribute to the compulsory social security system. They have the same rights during pregnancy and motherhood as workers employed by the state or private sector companies. Women with their own businesses, entrepreneurs, and agricultural workers enrolled in compulsory retirement pension, and health insurance are entitled to maternity leave just like any other working woman. However, the wives

⁸ In Croatia, both public and private employees are treated equally under the law, that means they have the same social, health and pension rights.

of self-employed persons who are not officially employed are not entitled to maternity leave or motherhood rights. They are only covered by the health insurance of their spouses. If they register at the Employment Service, self-employed persons are granted all rights regarding unemployment – with the exception of monetary compensation during insolvency or bankruptcy.

Practice

Employees and employers alike fail to truly understand the principle of equal pay – and equal treatment between women and men generally. The same holds true for trade unions, government officials, and policymakers. Workers are not aware of their rights and do not acknowledge and understand the wage gap as arising from gender discrimination. There are no updated gender sensitive/disaggregated statistics. There is no reliable system for job description, classification, and evaluation and hence measuring pay is difficult. To date, there have been no court decisions based on the equal pay principle. Additionally, there is no systematic court practice of awarding compensation for damages in equal treatment law suits.

Women rarely report sexual harassment in the workplace. When deciding to do so, they usually request trade union intervention and refuse to use the redress mechanisms of the Labor Code and the Gender Equality Act.

Despite it being a distinct legal option, employers refuse to introduce flexible and nonstandard forms of work that could stimulate women's greater participation in the labor market.

The number of unemployed women has shown a steady upward trend in recent years. In 2000, women accounted for 52.6 percent of the unemployed versus 59 percent in 2005.⁹ Women constitute a disproportionate majority among part-time employees (67.8 percent in 2004), and can expect slower career advancement than men (only 6 percent of women are top managers). Almost half of all employed women (47.8 percent) work in four generally undervalued and underpaid sectors: retail trade, education, health care, and social welfare.¹⁰ There are very few women in senior managerial positions, suggesting a well-established glass ceiling that limits the promotion of women. The average net pay for women in 2003 was 11.5 percent lower than for men. The greatest pay differential exists in the manufacturing industry (22 percent).

There are very few lawsuits related to pregnancy and motherhood protections. The majority of newly employed persons enter into nonpermanent work contracts,^l and

⁹ Data from the Croatian Unemployment Bureau.

¹⁰ Nada Kerovec, "(In)equality of Women in the Labor Market," *Bread and Roses*, Br/No.26/2005.

according to the law the women with such contracts are not protected from dismissal if they become pregnant. Moreover, child care services and facilities are not widely accessible: only one third of preschoolers in Croatia can be accommodated in kindergartens, and the capacity is even lower for infants 6 to 12 months old. A growing number of well-paid women employees use only the obligatory amount of their allotted maternity leave. It could be assumed that the fast changing working environment, which does not allow women to stay away for a long time, if they want to be competitive, imposes them to pursue their careers and return to their jobs quickly.

Women can start their own business, regardless of their marital status. There is no data or research on the tendency of spouses to jointly start and run their own businesses. There is no exact or up-to-date statistical data and research on the problems and status of self-employed women and women in agriculture. The position and problems of self-employed women do not receive enough public debate and attention from government authorities. These issues are occasionally addressed by women's nongovernmental organizations that have contributed more than official government agencies to develop programs and to raise public awareness and debate in this field.

The effects of new legal norms regarding gender equality issues are not yet apparent. The implementation in future court practice will be difficult, especially in lawsuits related to indirect discrimination. So far court practice has not provided a common consensus on its interpretation, particularly in cases of vulnerable groups, such as women in the labor market, so it is difficult to see how it works in practice or what lessons can be learned.

2. Gender Equality Institutional Mechanisms

The Gender Equality Act serves as the basis of functioning of the Gender Equality Ombudsman and the Office for Gender Equality. The ombudsman was appointed by the Croatian Parliament in 2003, and the office was established by the government in 2004.

The Gender Equality Office is an expert body of the government for performing administrative tasks and coordinating work aimed at achieving gender equality. It suggests new laws and amendments; develops a national policy for the promotion of gender equality and monitors its implementation; conducts research and analysis; monitors the implementation of laws and other regulations concerning gender equality. The office is also supposed to cooperate with NGOs as well as promote awareness of gender equality.

The Gender Equality Ombudsman monitors the implementation of the Gender Equality Act and other related regulations. The ombudsman considers cases of violation of the

principle of gender equality, committed by public authority bodies. He/she is authorized to admonish, suggest and give recommendations; and has the right to submit proposals for initiating changes of regulations concerning the violation of the gender equality principle. As a state official, the ombudsman is appointed and dismissed by parliament upon the initiative of the government. The ombudsman acts independently and autonomously and submits annual written reports of his/her work to the parliament.

Both the gender equality office and ombudsman are financed from the state budget. The scope of their work encompasses equal participation of women and men in all arenas of public life. In conclusion, the role of the ombudsman and the office is to raise public awareness and influence changes to the patriarchal status quo, cultural patterns, and social practices.

3. Programs and Policies Aiming at Gender Equality

The second National Policy for the Promotion of Gender Equality was implemented in 2001–2005 and the Governmental Office for Gender Equality is preparing a third document of its kind for the next four years. The Policy was effective in raising awareness about gender issues, such as violence against women and creating local bodies for gender equality. However, it was not successful enough in improving women's position in the labor market, since they are generally more vulnerable than men and their position still remains comparatively precarious. There are no special measures to support participation of women in the labor market. The National Action Plan for Employment for 2006 is in the process of adoption, but the budget has been reduced.

Research on problems related to gender equality and different aspects of discriminatory practices is lacking. Statistical data is one of the areas where there is still much room for improvement. Labor market statistics are not harmonized with EUROSTAT. Existing data about equality status, for example in employment and unemployment, is insufficient, not gender-sensitive enough, and not accessible to the public; while data about the gender gap in wages remains outdated. Existing statistics need to be more detailed and new areas such as agriculture and health insurance should be investigated and analyzed.

The work and lobbying activities of women NGOs and women's trade unions continue to be extremely important in helping gain recognition for women's issues by bringing them to the public's attention, and making them part of the political agenda. Since the 1990s, NGOs and trade unions have helped establish institutions, mechanisms, legal reforms, and governmental policies for gender equality. Moreover, these groups have played a unique role in providing legal aid and representation for those who are discriminated against.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- Trade unions, NGOs, and the government should join forces to set up a new, reliable system of job descriptions, classification, and evaluation that could constitute a basis for setting rates of pay. To this end, a common state-funded project could be launched.
- The mandate of the Labor Inspectorate should be broadened to include cases of equal pay. The inspectorate should be legally empowered to mediate in cases of discrimination.
- Government agencies, especially state statistical bureau, and civil society groups should collect and analyze gender sensitive statistics systematically on wages and labor issues in general.
- Trade unions, civil society groups, and government agencies should launch information/awareness raising campaigns to promote the equal pay principle, as well as *vis-à-vis* gender based discrimination generally, as part of larger efforts to educate the public about national legislation and EU requirements, as well as inform the public about available legal measures and institutions.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- The gender equality institutional mechanisms should be strengthened so that these bodies have the authority to act legally in cases of discrimination, secure sufficient funds, and reform the judicial system, by, for instance, educating judges to be more gender sensitive.
- Public policies and accessible social services need to be introduced and created to help women reconcile professional and family obligations and facilitate their return to work after maternity leave.
- Government agencies, education authorities, and the private sector should come together and discuss ways of developing and promoting forms of flexible education (life-long learning) that will empower women in the labor market.
- Government agencies, education authorities, and the private sector should come together and develop programs for integrating women into nontraditional women's professions.

3. Pregnancy and Motherhood Protection

- Through a combination of efforts including bolstering the competency of public agencies, increasing labor inspections, providing education and training to health protection officers representing workers, and improving cooperation with labor medicine professionals, compliance and enforcement with the health and safety measures to protect pregnant and breastfeeding women should be dramatically improved.
- An initiative to amend the Labor Code provisions on nonpermanent employment and social rights of nonpermanent employees, especially pregnant women and mothers with small children, should be undertaken.
- A campaign should be initiated that would introduce special measures to reintegrate women into the labor market after maternity leave; these measures could be incorporated into the National Action Plan for Employment as well.
- Increased support should be provided for research efforts investigating issues such as women and agriculture, obstacles to women's entrepreneurship, and self-employment.

Executive Summary for Kosovo

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

The Constitutional Framework of Kosovo ensures that “All persons in Kosovo shall enjoy human rights and fundamental freedoms without discrimination on any grounds and under full equality.”¹ However, the Constitutional Framework does not include any specific norms *vis-à-vis* the principle of equal pay for work of equal value. Article 12.5 of the Gender Equality Act (GEA) stipulates that “*The employer shall provide equal pay to women and men for equal work and for work of equal value, and shall provide equal employment and work conditions, and equal rights of work.*”² UNMIK Regulation No. 2001/27 of October 8, 2001, on the Essential Labor Act regulates employment in Kosovo, including terms of employment under which work or services are performed. Article 13 provides that “*An employer shall pay equal remuneration, which includes the basic pay and all additional entitlements or remuneration payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value.*” Kosovo’s Essential Labor Act stipulates that labor inspectors are responsible for ensuring compliance with this statutory measure, as well as other relevant provisions of applicable law governing workplace conditions, working time, pay, safety, and health.³

There is a job classification system to set rates of pay for the Kosovo Civil Service, but no comparable system exists in the private sector. Article 16 of Administrative Directive 2003/2 implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service provides that the Ministry of Public Services, “following consultations with the Ministry of Finance & Economy, recommends to the Government, and upon approval from the Government, shall issue the classification standards and rates of pay

¹ Article 3.1, *UNMIK Regulation 2001/9 on the Constitutional Framework of Self-Government in Kosovo*.

² Article 12.5, *UNMIK Regulation 2004/18 on the Promulgation of the Gender Equality Act of Kosovo*, adopted by the Kosovo Assembly. *Kosovo Assembly Act No. 2004/2 on Gender Equality*.

³ Article 24.4, *UNMIK Regulation 2001/27 on the Essential Labor Act of Kosovo*.

applicable Civil Service employees. ... Classification standards shall be reviewed from time to time, and at least every five years.”⁴

Article 16.1 of the Gender Equality Act stipulates that in the event that the employer violates paragraph 12.5 of the Act, which sets forth that the employer provide equal pay to women and men for equal work and for work of equal value, and guarantees equal conditions of employment and work and equal rights of work for all, he/she will be punishable with a fine from EUR 1,000 to EUR 5,000. The Antidiscrimination Act stipulates that complaints on the grounds of discrimination be handled in compliance with applicable law by administrative bodies and competent courts of law with legal authority to rule on specific cases involved in the complaint. Both the aforesaid administrative bodies and the courts must act in compliance with provisions of the Antidiscrimination Act in rendering a decision. Under Article 25.1 of Regulation 2001/27 on the Essential Labor Act, when a labor inspector deems an employer to be in violation of a provision of the Regulation, he/she has the right to serve the employer in question with a written warning, or impose a fine as set forth in Articles 25.2 and 25.3. The Labor Inspectorate has the right to advise and to inform employees and their organizations, the security services at the workplace, as well as trade unions, on issues such as work, safety at work, implementation and termination of the Collective Bargaining Agreement. Workers who institute court proceedings in cases involving violation of the equal pay principle do not receive any legal assistance from the state. Citizens qualify for such aid only in criminal, but not civil cases.

Article 1.1 of the GEA protects, addresses, and establishes gender equality as a fundamental value for the democratic development of Kosovar society, providing equal opportunities for both men and women in Kosovo’s political, economic, social, and cultural life. Article 2.2 of the GEA provides that equal treatment means the elimination of all forms of direct and indirect gender discrimination.

Article 2 of the Essential Labor Act prohibits all forms of discrimination and provides that discrimination in employment and occupation is prohibited. The meaning of the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Article 2 provides that the concept of discrimination “includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, age, family status, political opinion, national or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.”

⁴ Article 16, *Administrative Direction 2003/2 Implementing UNMIK Regulation 2001/36 on the Kosovo Civil Service*.

Article 2.3 and 2.4 of Kosovo's GEA defines *direct gender discrimination* as "the unequal treatment of an individual compared to another individual of the opposite sex in the same or similar conditions." On the other hand, "*Indirect gender discrimination* shall mean the placing of a certain individual in an unequal position with the neutral provisions, the standards or unequal treatment under the same or similar conditions, except in cases where such provisions, standards or treatment are indispensable and, furthermore, provided that such treatment can be justified by objective facts not based on any particular gender."⁵ Additionally, Article 2.5. of the GEA regards incitement of a person to engage in gender discrimination as an act of discrimination. Article 2.6 of the Gender Equality Act provides that "Harassment and sexual harassment constitute gender discrimination," while Article 2.7 goes into greater detail and stipulates that "Harassment shall include all forms of behavior that aims or constitutes a threat to personal dignity." The GEA defines sexual harassment as "any form of sexual, verbal, nonverbal, physical or symbolic behavior that constitutes a threat to personal dignity."

Kosovo's national legal framework incorporates women's right to keep their jobs and return to the same position after maternity leave. Article 13.13 of the Gender Equality Act stipulates that dismissal from work, temporary suspension, unfair treatment involving work safety, working conditions, or the recognition of the employee's work due to his/her complaint for sexual harassment, or gender-based discrimination is prohibited. Furthermore, article 13.8 of the Gender Equality Act sets forth that "Employers shall provide equal treatment for women and men in the labor force, and shall take measures to ensure that vacancies or positions are not classified specifically for women or men."

In Kosovo's legal order there exist no statutory provisions in conformity with council directives to define the concepts of *pregnant worker*, *worker who has recently given birth* or *worker who is breastfeeding*. Besides general provisions that regulate safety and health at work, Kosovo's legal order does not set forth specific provisions to guarantee occupational safety and health for pregnant or breastfeeding women. Women in Kosovo are entitled to a maternity leave of 12 weeks in both the public and private sector. While in the public sector women can take off time for prenatal checkups at full pay, in the private sector they are entitled to at least two-thirds pay. International organizations present in Kosovo have their own regulations on work and employment. Labor laws on the books in Kosovo do not currently provide for paternal leave for a male employee to take care, either at birth or subsequently, of his baby. Pregnant employees have the right to regular prenatal checkups without any loss of pay if doctor visits must take place during working hours. Kosovo's legal order does not provide clear-cut legislative norms to prevent termination of the work contract of a pregnant woman, or of a mother with a child under three years old.

⁵ Article 2.3, the *Gender Equality Act*.

Kosovo's national legislation does not clearly define the term *self-employed person*. Provisions in Kosovo's national legislation for setting up and registering a business enterprise apply to all, regardless of marital status. Kosovo's national legislation provides no specific statutory provision for self-employed women whose operational activities have been interrupted due to pregnancy and birth. Self-employed women do not have social insurance coverage and Kosovo's social legislation does not comply with the provisions of equivalent EU council directives.

Practice

Although Kosovo's legal order embraces the equal pay principle, women are at a disadvantage in the country's labor market, where they receive lower average pay than men. One of several reasons for such pay inequity is that women are hardly ever employed in managerial positions. Employees do not have access to information about their rights, and specifically regarding their social rights. Public education campaigns to raise awareness and inform workers regarding their rights *vis-à-vis* equal pay for work of equal value are noticeably absent.

Even though trade unions could protect employee rights in Kosovo, including in cases involving the equal pay principle, and unions could ask employers to revoke decisions violating the work-related rights (economic and social) of their members in compliance with applicable law, unions in Kosovo have not yet understood their real value, and have failed to use the means available to them to protect employee interests. There are areas of work with no union representation at all, while others are served by more than one union.

There are major pay differences between women and men in Kosovo. Men make four times more money than women do (EUR 134 versus EUR 42 per month).⁶ Economic data shows that 13 percent of women and 41 percent of men live primarily on the personal incomes they make from their jobs. Economic dependence is twice as high among women as among men: 77 percent of women and 33 percent of men live on funds they receive from a third party.⁷

The Gender Equality Act and other legislation in force do not differentiate between positions classified as female or male. However, employers sometimes specify their preference regarding the sex of the worker they prefer to hire. In some cases the gender

⁶ *Ngritja e qytetarit: Sfidat dhe mundësitë: Raporti i Zhvillimit Njerëzor Kosova* (Citizen Enhancement: Challenges and Opportunities: Report of Human Development in Kosovo) 2004. Pristina: The United Nations Development Program, 20.

⁷ Office of Gender Affairs-UNMIK/Zyra për Çështje gjinore-UNMIK/Kancelarija za pitanja polova-UNMIK, *Women and men in Kosovo/Gratë dhe Burrat në Kosovë/Žene i muškarci na Kosovu*. 2003. Pristina: The Office of Gender Affairs-UNMIK, 108.

suffix used in the Albanian language amounts to a tacit allusion to the sex of the worker desired for a specific position without actually articulating it directly. Due to stereotyping and traditional attitudes, specific positions and professions are associated with women (e.g., domestic help, nursing, teaching, assistants, etc.). To avoid misunderstandings arising out of the above-mentioned practices, it is recommended that job vacancy listings be confined to a person's education and professional skills and experience.

Sixty percent of women are unemployed, which means that about twice as many women are out of work as are formally employed (about 30 percent).⁸ While the postwar situation and the high level of unemployment have affected Kosovar society in its entirety, the situation of women and men differs considerably in terms of labor market opportunities. Women generally are not present in economic decision-making processes, including the crafting of economic policies and programs. Women's needs and problems are not faithfully represented in the drafting and implementing of initiatives. In consequence, women are poorly represented among beneficiaries of economic development.⁹

2. Gender Equality Institutional Mechanisms

A number of institutions in Kosovo are already working to safeguard and promote gender equality. Under Kosovo's Gender Equality Act, the principal responsibility rests with the Office for Gender Equality. The Office for Gender Equality in Kosovo was established pursuant to Decision No. 5/31 of February 1, 2005, of the Kosovo government. Despite the impressive list of tasks provided for by the law, the Office for Gender Equality does not provide any assistance to the victims of discrimination. The Office for Gender Equality is an executive body of the government of Kosovo.¹⁰ Striving to establish efficient operations to better perform its activities and responsibilities, a chief executive officer is at the helm to oversee three directorates: the Directorate for Legislation, the Directorate for Cooperation, and the Directorate for Monitoring and Reporting. The chief executive officer of the Office for Gender Equality is appointed by the Senior Public Appointments Committee and reports directly to Kosovo's prime minister.¹¹ The Office for Gender Equality is financed by the Kosovo Consolidated

⁸ Ibid.

⁹ *National Action Plan for the Achievement of Gender Equality 2004*. Pristina: The Kosovo Government-Office on Good Governance, 27.

¹⁰ Article 2, *Government Regulation No.2/2005 on the Establishment and Internal Organization of the Office for Gender Equality*.

¹¹ Cf., Article 5.2, *Government Regulation No.2/2005 on the Establishment and Internal Organization of the Office for Gender Equality*.

Budget within the Prime Minister's Office and avails itself of the administrative services of this office. Since the Office for Gender Equality has only recently been established no precise figures are available about its current financing.

3. Programs and Policies Aiming at Gender Equality

According to the information provided by the national monitoring report, except for the 2004 United Nations Development Program (UNDP) Report on Human Development, there is no research in Kosovo on the gender pay gap. No research is available on the phenomenon of gender segregation in Kosovo's labor market. There is no research in Kosovo on the status of women in the labor market once they reenter the labor force after maternity leave. The absence of an institutionally organized child care system, in particular the lack of kindergartens for children over 40 weeks old, has a detrimental effect on women's decisions to return to work, often compelling them to choose between their jobs and taking care of their children.

No research is being conducted to map the issue of sexual harassment in Kosovo, and no information on the subject is available to the public, whose awareness of the issue is inadequate.

There is no research on the status and rights of Kosovo's self-employed women. Kosovar women working in the public sector have more rights than women working in the private sector or self-employed women. Self-employed women and unemployed women do not have access to contributory social protection schemes. Kosovo's legal order is thus incompatible with EU directives for this category of workers.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- Implement the Collective Bargaining Agreement signed by the Tripartite Council – the Kosovo Government, the Kosovo Independent Trade Union, and the Kosovo Chamber of Commerce –, and specifically incorporate the principle of equal pay for work of equal value.
- Ensure that the principle of equal pay for work of equal value explicitly constitutes the basis of new labor legislation to be adopted both in the public and private sectors.

- Prepare and better organize unions to undertake and influence agreements relating to working conditions, social security, and implementation of the principle of equal pay for work of equal value.
- Initiate and implement research and the monitoring of compliance with applicable laws, specifically the enforcement of the principle of equal pay for work of equal value.
- Provide for trade union involvement in the signing and termination of work contracts in Kosovo's national legislation.
- Publish the final official texts of legislation adopted by the Kosovo Assembly and promulgated by SRSB in the Official Gazette of PISG.
- Implement information campaigns educating the public about employee rights, particularly about the principle of equal pay for work of equal value.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- Implement the Gender Equality Act and the Antidiscrimination Act, and adopt appropriate statutory measures.
- Explicitly incorporate into Kosovo's new Labor Code, currently being drafted, the principle of equal treatment for women and men.
- Explicitly apply the principle of equal treatment for women and men to guarantee equal access to employment, vocational training and promotion, and working conditions.
- Conduct research and collect statistical data on a continual basis with a view to monitoring equal access to professional training and educational opportunities, equal access to the labor market (both the private and public sector), as well as equal access to continuous job promotion.
- Make it a specific legal obligation of employers that they inform employees about the principle of equal opportunities for women and men.

3. Pregnancy and Motherhood Protection

- Pass specific legislation to improve working conditions for pregnant workers, working women who have recently given birth, and workers who are breastfeeding. Pregnant workers, working women who have recently given birth, and workers who are breastfeeding must be considered a specific risk group, and measures must be taken with regard to their safety and health.

- Grant the right to maternity leave of at least 14 continuous weeks, allocated before and/or after confinement, for pregnant workers, working women who have recently given birth, and workers who are breastfeeding, containing a compulsory maternity leave of at least two weeks, allocated before and/or after confinement.
- Harmonize Kosovo's national legislation with EU legal standards in the area of self-employment.

Executive Summary for Montenegro

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

The existing legal framework in Montenegro does not provide sufficient protection from sex-based discrimination in the labor market. The protection of women's rights is still very far from being either a well-known concept or practice, with the recent criminal code recodification, recognizing family violence as the only exception. A great deal of work remains to be done on gender equity legislation and its enforcement, including raising awareness *vis-à-vis* the principles of equality between women and men.

Montenegro and Serbia, the two constituent countries of the State Union of Serbia and Montenegro, provide for the supremacy of international agreements and laws¹ over domestic legislation in the entity's State Constitutional Charter of the State Union, and the Charter on Human and Minority Rights stipulates direct implementation of these laws.² But when it comes to equal opportunities, the important provisions that guarantee gender equality are barely applied.

Admittedly, Montenegro is a country where traditional societal roles and gender stereotypes continue to persist, yet the positive steps that the government of Montenegro has taken in the right direction must be mentioned. Preparatory work has commenced to draft several legal texts related to equal treatment,³ which certainly reflects an intention on the part of the Montenegro government to fulfill and implement the standards required by the long-term and demanding process of stabilization and association, and – at a later stage – integration with the European Union.

The Constitution of Montenegro and the Labor Act provide only a general nondiscrimination formula regarding working conditions, including gender-based discrimination, with no further specific definition thereof, or, for that matter, of the concept of *direct* or *indirect discrimination*. Sexual harassment is not recognized by the

¹ Article 16, the *Constitutional Charter*, the *Official Gazette* SCG, 1/2003.

² Article 7, the *Charter on Human and Minority Rights*, the *Official Gazette* SCG, 6/2003.

³ The *Gender Equality Act*, the new *Family Code*, the *Domestic Violence Act*; it is expected that drafting of a “National Action Plan on Gender Equality” is to begin shortly.

legal order of Montenegro and discriminatory advertising is not explicitly prohibited by Montenegrin legislation.

The principle of equal pay for work of equal value is not explicitly stipulated in Montenegrin legislation, except for the already mentioned general principle of nondiscrimination.

Montenegrin law does not prohibit special treatment of pregnant or breastfeeding women as discrimination on the grounds of gender; dismissal or refusal by the employer to hire pregnant women and women on maternity leave is prohibited.⁴ The Labor Act stipulates that the employer is obliged, if necessary, to transfer pregnant or breastfeeding workers or, if such transfer is not available, to provide paid leave based on medical opinion,⁵ and prohibits night shifts for pregnant workers.⁶

The Labor Act does not set forth a definition of *self-employed worker*, nor does it provide for the social rights of spouses of the self-employed workers. In Montenegro's legal order, statutory measures for starting a business make no distinction based on marital status of the person who wants to set up a company. Under Montenegrin law,⁷ self-employed women workers are entitled to social security benefits during their maternity leave if they have paid all their taxes and social and health insurance contributions in relation to their economic activity while self-employed.

Although a Gender Equality Act, initiated by the Office for Gender Equality of the government of Montenegro, is currently being drafted, its adoption and enforcement will take some time.

Practice

An inadequate legal framework coupled with traditional societal values signifies inadequate implementation of gender equality principles.

Significant aspects of judicial procedure involving labor disputes – including that there is no obligation to pay court fees for the proceedings related to labor disputes or priority hearing principle applied for labor disputes, and a criminal code provision stipulating two years maximum imprisonment for violation of labor rights specific to women – would suggest ample incentive for women to take legal action on grounds of gender-based discrimination. This is not, however, the case. To date, no antidiscrimination case has come before the courts of Montenegro. Likewise, the ombudsperson's office has not made a single ruling in defense of human rights and freedoms since its founding in late 2003.

⁴ Article 79, the *Labor Act*, the *OG RoM*, No.43/03.

⁵ Article 80, the *Labor Act*.

⁶ Article 81, the *Labor Act*.

⁷ Article 54, the *Social and Child Protection Act*, the *OG RoM* 79/04.

The findings of a 2004 household survey conducted by the Institute for Strategic Studies and Prognosis clearly demonstrate the existence of a gender pay gap: EUR 185 for male workers compared to EUR 131 for female workers, among workers who have not graduated high school (a 29 percent difference); EUR 274 for men and EUR 190 for women, among workers who have graduated high school (a 30.6 percent difference); and EUR 329 for men compared to EUR 263 for women, among workers who have pursued education after high school (a 20 percent difference).

Despite lack of specific research data, both horizontal and vertical labor market segregation evidently exist, since women tend to be employed in lower paid jobs in the social welfare, health, and education sectors, with only 20 percent of women in decision-making positions as managers or business owners.⁸

Basic information on the employment of women and men is provided by the Republican Bureau of Statistics,⁹ showing the under-representation of women in the labor market (63,300 women workers versus 79,875 men in 2004.) Vast numbers of people are employed in the informal economy thereby increasing the likelihood that the principle of nondiscrimination, including that of gender-based nondiscrimination, will be violated. (According to trade union data, there are between 64,000 and 80,000 people working in the black market in Montenegro, with women accounting for a large percentage of the workers.)

2. Gender Equality Institutional Mechanisms

The Office for Gender Equality was established in 2003 as a part of the Government Secretariat pursuant to Governmental Decree OG RoM 20/03. The office coordinates the government's implementation of the equality principle, the implementation of international agreements and conventions, and the fulfillment of government requirements. The office is also responsible for initiating changes to current and new legislation aiming to improve women's position in family, economy, and politics and has the authority to launch campaigns that raise awareness about issues of gender equality. The office is not, however, authorized to assist and support victims of gender-based discrimination.

The Office for Gender Equality receives its funding in part from Montenegro's national budget and in part from independent agencies and intergovernmental organizations. To date, the office has successfully raised funds from the Italian

⁸ Center for Entrepreneurship and Economic Development, *Research on Discrimination Against Women in the Employment Process*. 2002.

⁹ www.montstat.cg.yu.

Government, the Stability Pact Funds, and various UN agencies. During its two year existence, the office has completed several projects and initiated and jointly organized several important events, among them an educational project to increase women's IT literacy. Additionally, it has made information accessible to women who are starting their own businesses, and has organized a basic seminar on gender equality for representatives of the Montenegrin government.

Despite its enormous efforts, the office's impact on public awareness of gender equality principles remains insignificant. Shortage of staff is a major hurdle for the office, which is unable to effectively fulfill its mission, including fundraising for specific projects, with a permanent staff of only two people.

3. Programs and Policies Aiming at Gender Equality

The absence of a solid legal framework to guarantee equal treatment for women and men and to safeguard these rights is coupled with the lack of a comprehensive gender policy. At the end of 2004, the Office for Gender Equality launched an important initiative when it signed a Memorandum of Understanding aimed at the drafting of a National Action Plan for Achieving Gender Equality in Montenegro. Women's NGOs collected data and defined priorities through workshops, roundtables, and interviews, and put forth recommendations for efficient solutions. Currently, the office is in the midst of drafting the document.

Besides efforts made by the Office for Gender Equality, there are neither governmental programs nor measures to increase women's participation in the labor market. The sole government-initiated program to eliminate inequalities arising from socioeconomic conditions related to privatization was a program that provides assistance to women workers who have lost their jobs due to privatization and have remained out of work shortly before retirement.

Over the past four years, several research projects were conducted on Montenegrin women's economic status, mostly by independent agencies and companies, albeit under pressure from the Office for Gender Equality. The Bureau of Statistics of the Republic of Montenegro provides only general data on women's employment.

Women's rights organizations in Montenegro are not, like trade unions, entitled to act on behalf of possible victims of gender-based discrimination. Their role in protecting women's rights is played out mostly in providing public information – the book *Labor and Social Rights of Women in Montenegro* was published in 2005 – although they have the authority to also provide legal assistance and representation.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- It is necessary to adopt legislation to explicitly incorporate the principle of equal pay.
- Thereafter, measures have to be instituted to enforce equal pay legislation.
- Pursuant to such legislation, institutional bodies have to be given the authority to monitor compliance with the equal pay principle.
- Campaigns must be organized to educate employers and employees about the current gender pay gap between men and women and the internationally recognized principle of equal pay for work of equal value.
- Officials of competent administrative bodies (Labor Inspectorate, courts of law, and state administration) have to be educated about the internationally recognized principle of equal pay for work of equal value.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- A Gender Equality Act embracing the principles of gender equality, including the definition of *gender based discrimination* and of *direct* and *indirect discrimination*, has to be adopted and enforced.
- Once the principle of equal treatment for women and men enters the legal system in Montenegro, a special body should be established to monitor violations of it.
- Representatives of decision-making public bodies have to be educated about gender equality issues to acquire a nuanced understanding and recognition of gender discrimination.
- The trade unions should provide the necessary assistance and training as part of their public education campaigns.
- Programs and measures have to be developed and encouraged by Montenegro's government to increase the number of women in executive positions.
- The government should step up its effort to provide measures and actions to legalize the workforce currently in the informal economy.

3. **Pregnancy and Motherhood Protection**

- Through the aforementioned effort, guarantees of legal protections for pregnant workers, workers who have recently given birth, or workers who are breastfeeding should be given more teeth.
- Self-employed women workers must obtain access to funds and credit.
- Additional vocational training and education in entrepreneurship should be provided for women to expand their opportunities and participation in self-employment.
- Social security and health insurance schemes must provide stronger protection for self-employed workers, including the adoption of gender equality principle.

Executive Summary for Serbia

I. INTRODUCTION

1. Legal Framework and Practice with Regard to the Equal Pay Principle, Equal Treatment for Women and Men at the Workplace, and Pregnancy and Motherhood Protection

Legal framework

Neither the Constitution of the Republic of Serbia nor the Charter for Human and Minority Rights for Serbia and Montenegro mention the equal pay principle. The Labor Code incorporated the principle of equal pay for equal work or for work of equal value for the first time in 2001. It was subsequently further developed in the new 2005 Labor Code.¹

According to Article 24 of the Labor Code, employers with six or more employees have to set up job classification systems in their companies.

The Labor Inspectorate and the Ministry of Labor are the bodies responsible for monitoring implementation of labor regulations, including provisions regarding equal treatment between women and men. Noncompliance with or infringement of the labor inspector's order is ground for penal charges. Under Serbia's Criminal Code, violation of the equality principle constitutes grounds for legal action and is punishable with imprisonment.

Court procedure is available for workers who consider themselves wronged by an employer's failure to comply with the principle of equal pay, as well as with the general principle of nondiscrimination.² Except for court tax relief, litigants in all labor disputes must bear all other legal costs. In civil procedures, the petitioner who considers himself/herself wronged bears the burden of proof. The petitioner has the right to file a claim for pecuniary damages. The Code of Civil Procedure ensures pro bono legal representation for low income litigants if such legal aid is necessary for the conduct of the suit. It is, however, rarely provided in practice.

¹ Article 104, the *Labor Code*, the *Official Gazette*, No.24/05. The principle was introduced as the result of successful lobbying efforts by women's groups.

² Recent legislative changes include mediation and specific procedures of reconciliation in labor disputes. (The *Mediation for Labor Disputes Act*, the *Official Gazette*, No.125/04). However, the respective Agency takes action in cases involving termination of the work contract and the minimum wage, but not in equal pay matters.

Articles 13 and 16 of the Labor Code set forth the workers' right to be informed and the employers' obligation to inform workers about work-related rights and duties.

The Constitution guarantees equal rights and equal protection for Serbia's citizens, the right to work and freedom of work, free choice of profession, as well as equality and equal access to jobs and positions.³ The Serbian legal framework provides no specific definition of direct and indirect sex-based discrimination, though the general definition and prohibition of discrimination are applicable in case of this discrimination ground as well. Article 3 of the Charter of Human and Minority Rights prohibits direct and indirect discrimination, including on the ground of sex, and contains affirmative action measures. The new Labor Code defines the grounds for discrimination – including sex, pregnancy, marital, and family status – as well as direct and indirect discrimination, and it also develops the concept of legitimate discrimination.⁴ The Labor Code covers all phases of the employment relationship, both in the public and private sector. The Employment and Social Security Code in Cases of Unemployment is Serbia's first legal measure to embrace affirmative action for women in the labor market, while specifically mentioning equal treatment between men and women.⁵

Nongovernmental organizations and experts have recently started to draft an Antidiscrimination Act and a Gender Equality Act. The draft Gender Equality Act covers all pivotal aspects of discrimination: in employment, social policy, and public life. It provides a basis for institutional change and new procedures against discrimination before civil courts. Shifting the burden of proof to the defendant side is an important provision of the draft act.

The Labor Code ensures protection against harassment and sexual harassment in the workplace. Sexual harassment has not been defined as discrimination related to the sex of a person. Further, the law has failed to prohibit the *quid pro quo* form of it. In cases of harassment and sexual harassment no internal complaints procedure is available under the Labor Code.

The Labor Code offers general protection against dismissal or other retribution for a worker's involvement in collective or individual labor disputes.

There are no legal provisions that curtail the right of spouses to set up a company or make it more difficult for unmarried persons to start their own business.

³ Article 35, paragraphs 1-3, the *Constitution of the Republic of Serbia*, the *Official Gazette*, No.1/90.

⁴ Articles 18-19.

⁵ Article 8, the *Code on Employment and Social Security in the cases of Unemployment*, the *Official Gazette*, No.71/2003.

The Labor Code follows EU recommendations in introducing flexible types of employment. It makes mention of performing work off the employer's premises, including at home. The Labor Code allows employees to involve other people in the performance of their work, but does not recognize it as work.⁶

The Labor Code guarantees special protection to women during pregnancy and childbirth, and to parents on parental leave. Hiring cannot be made conditional on the job applicant submitting to a pregnancy test, unless the job in question is associated with significant risk to a pregnant woman or her child.⁷ The Labor Code does not set forth the terms *breastfeeding woman*, and *worker who has recently given birth*. Protective measures are focused on pregnancy and the entire duration of maternity and/or parental leave, without providing the option for working mothers to reconcile work and family responsibilities.

During pregnancy working women may not work at jobs that could pose a threat to their health or to the health of their baby. There exists no list of specific hazardous agents and working conditions under which pregnant workers and workers who are breastfeeding may not perform duties under any circumstances. The employer has a general obligation to provide a safe working environment and create conditions at the workplace that guarantee occupational health and safety.⁸

Serbian labor legislation does not set forth the mandatory obligation for the employer to transfer the pregnant woman or parent raising a young child to another, more suitable position.

The Labor Code protects pregnant women and parents on child care leave against dismissal.⁹ There is no specific legal provision for granting pregnant women time off for prenatal examinations. Lacking are provisions for time off work for breastfeeding women and women with small children, as well as provisions for part-time work to help such women reconcile their professional and family responsibilities. Serbian labor legislation does not guarantee working women access to their former jobs or equivalent positions after returning from maternity leave, or to benefit from improvements in working conditions to which mothers would be entitled during their absence.

⁶ Article 43.

⁷ Articles 12 and 26.

⁸ Article 16, the *Labor Code*.

⁹ Article 187.

Night work is strictly prohibited in the last eight weeks of pregnancy. In the first 32 weeks, night work is prohibited when it is harmful for the health of the mother and her child.¹⁰

Serbian law guarantees maternity leave and one or two years of child care leave thereafter.¹¹ A pregnant worker must commence maternity leave 28 days prior to her due date. Maternity leave lasts for up to three months after childbirth. The father of the child can also take child care leave after the first three months of maternity leave. Maternity leave and absence from work because of child care are paid leaves.

The Labor Code does not specifically deal with the category of self-employed worker. Labor rights, including the antidiscrimination provision, are minimum required standards equally applicable to employed and self-employed persons alike. All employees have to be enrolled in social insurance schemes irrespective of the nature of their work contract or labor relationship. Serbia's social insurance legislation provides a specific definition of self-employment.¹²

The law guarantees health care for the self-employed worker;¹³ health insurance covers family members as well. The maternity/parental leave benefit is granted for the self-employed, too.

The work of rural women as well as housewives has not been recognized and valued. However, the draft Gender Equality Act aims to recognize work done in the home as well as other "invisible" work done by women.

In social insurance matters the only legal means of redress is administrative and then court procedure. Even court protection is limited: in an administrative dispute before it, the court will not rule on the merits of the case, but will determine whether or not all administrative procedural rules had been followed.

Practice

The responsible state institutions – the Labor Inspectorate and the Ministry of Labor – do not systematically search for and collect cases of unequal pay, nor cases of any other type of discrimination. Violation of the equal pay principle has not been recognized as

¹⁰ Article 90, the *Labor Code*.

¹¹ Article 94, the *Labor Code*.

¹² The law states that people who must be enrolled in the mandatory pension scheme are employees, self-employed persons, and farmers. Article 11, the *Code of Retirement and Disability Scheme Insurance*, the *Official Gazette* RS, Nos.34/2003, 64/2994, and 84/2004. Article 12 also sets forth provisions governing the insurance of the self-employed.

¹³ Article 8, the *Health Insurance Act*, the *Official Gazette* RS, Nos.18/92, 26/93, 25/96, 46/98, 55/99, 29/2001, 18/2002, and 18/2005.

sex-based discrimination. Mechanisms for protection are expensive and inefficient. Few cases of discrimination involving unequal pay come to light.

Implementing right of workers to be informed is lacking in respect to equal pay and discrimination generally. Neither workers and employers nor the institutions with the authority to monitor implementation of the equal pay principle are even fully aware of these concepts in the first place.

Although the Labor Code provides for the prevention of discrimination in all phases of the employment relationship, it establishes no effective enforcement mechanism, and protections for those who consider themselves wronged are weak. The system of legal aid in Serbia is fragmented, dysfunctional, and not guaranteed by the state. Workers can find legal information and consultation in municipal offices of legal aid. However, not all municipalities provide these services, and the lawyers are not specially trained. Serbia's two biggest trade unions provide legal aid for labor disputes, and offer free consultations and representation before courts of law. The government has started to draft legislation on legal aid, with a particular focus on labor disputes.

There is no effective state response to sexual harassment. Mechanisms for protection are vague and unclear. The option for civil litigation under Serbia's Labor Code is still new and not well known to employees or employers.

Workers find themselves in a very precarious situation when they want to return to work after maternity and child care leave. Protracted child care leave leads to a disconnect from the world of work for the majority of women. There are no policies regarding breastfeeding workers and those who have recently given birth to ease their gradual return to work. There is no statistical or other research on the factual situation regarding maternity leave. Women tend to use the longest period possible for pregnancy and maternity leave. There have been about 15 men per year in Serbia who have taken child care leave since the country's new Labor Code entered into force.

The labor market is still horizontally and vertically sex-segregated. Women still constitute the majority of the workforce in the public sector in jobs like health care, social welfare, and education. Women's average income is some 20 percent lower than men's.¹⁴

In August 2005, women accounted for 54 percent of the unemployed. In 2004, women accounted for 65 percent of those who were actively seeking jobs. This shows that women are more engaged in looking for a job than men, but still represent the majority of unemployed.¹⁵

¹⁴ Data from the Federal Bureau of Statistics.

¹⁵ Data from the National Employment Agency.

In 2004, there were 659,427 registered self-employed persons, 163,197 of whom were women.¹⁶ A survey form 2004 shows that those who work as “assisting” members of households are predominantly women – 154,630 out of 212,002.¹⁷ One area where research has commenced, but is still fragmentary, is the situation of rural women. No data is available on rural, self-employed persons and “assisting family members,” as well as on flexible types of employment.

2. Gender Equality Institutional Mechanisms

Since 2002, equal treatment bodies have been established on the local, regional, and national level. Those with broad authority to promote and monitor equality policies are the Secretariat for Labor, Employment, and Equality between Men and Women on the regional level, the Parliamentarian Committee for Equality between Men and Women, and the governmental Council for Equality between Men and Women nationwide.

The Secretariat in the Autonomous Province of Vojvodina has a mandate to observe and initiate new policies regarding equality between men and women. This was the first state mechanism for gender mainstreaming Vojvodina’s government policies, particularly in the social policy field.

One of the most influential bodies in the public policy arena has been the 15-member Committee for Equality between Men and Women, established by the Parliament in 2004. The committee performs analysis on draft/proposed legislation, and assesses policies and implementation of acts of law from the perspective of compliance with gender equality principles. The committee does not have decision-making powers, but it is closest to legislative authority. Its effective lobbying has made a significant impact on recently adopted legislation.

The Council for Equality between Men and Women was established in 2003 as an intergovernmental mechanism. It monitors and analyzes implementation of laws and initiates and supports programs. The council comprises 18 members.¹⁸ It is not an independent, decision-making body and has no secure funding.

All established bodies for gender equality have the mandate to monitor and come forth with initiatives at the policy level. All register individuals’ requests and claims of

¹⁶ Ibid.

¹⁷ *Survey on Labor force in Serbia*, Federal Bureau of Statistics, October, 2004. Anketa o radnoj snazi, 2004. www.statserb.sr.gov.yu.

¹⁸ Nine from governmental bodies, five experts, and four NGO representatives.

discrimination, but none of them have binding decision-making power or the mandate to deal with individual cases.

3. Programs and Policies toward Gender Equality

Serbia's government is currently preparing a National Action Plan for Women. New governmental policies are being built on the principle of protecting vulnerable groups, including women. The Employment Code, albeit in a very limited way, establishes affirmative action for some disadvantaged categories, including women. The National Employment Agency – through pilot programs and internal reconstruction – is set to monitor the gender impact of new measures in active employment policy.

With the recent reforms of data collection of the Employment Agency and Statistical Agency of the Republic of Serbia, state statistics with gender-disaggregated data have recently significantly improved. Nonetheless, the institutions dealing with discrimination cases in the first place do not have any data. There are no statistics or systematically collected data on the forms, causes, and effects of discrimination. This prevents any effective mechanisms and monitoring changes in the field of employment and social policy.

Women NGOs are still the principal resource for information and data on discrimination. Despite a major effort to conduct representative surveys and monitor the status of women, there are few organizations that deal with this on a long-term basis. Women's sections of trade unions or trade unions themselves are frequently the only or first resources of legal aid for those who are discriminated against, especially on the ground of sex. To participate in legal procedures they have to prove legal interest. Women's sections of trade unions are most active in educating and promoting women's labor rights among their members. However, they are not as active or visible in the public domain.

II. RECOMMENDATIONS

1. The Principle of Equal Pay for Work of Equal Value

- The equal pay principle should be defined within the meaning and language of antidiscrimination provisions.
- It is important to incorporate into legislation mechanisms for implementation and protection of the equal pay principle. The state should provide legal aid in all labor cases. Employees in financial need should be provided legal representation. The role of trade unions in mediation and legal aid delivery should be strengthened.
- The Labor Inspectorate and the Ministry for Employment should establish a system for locating, collecting, and analyzing all cases of noncompliance with the equal pay principle, enabling the crafting of preventive policies.
- Segregation in the labor market calls for a systematic and coordinated state and social approach. This phenomenon should be further explored and analyzed.
- There should be public education campaigns to inform employees about their rights *vis-à-vis* the equal pay principle. Professionals, representatives of state bodies, as well as trade unions should be involved in training programs, and be educated about all aspects of this principle.

2. The Principle of Equal Treatment for Women and Men at the Workplace

- It is important to adopt, after extensive and comprehensive public discussion, the Gender Equality Act and the Antidiscrimination Act. These laws should set in place monitoring mechanisms and ongoing research on the status of women in Serbia.
- Sexual harassment should be defined as sex-based discrimination, covering its *quid pro quo* variety as well. Protection for sexual harassment should begin at the workplace, based on the employers' own internal procedures.
- State equality bodies involving experts and NGOs should organize and follow-up training programs for officials of institutions dealing with sex-based discrimination, as well as for legal professionals and governmental officials.
- It is important to enable institutions that will be responsible for executing and monitoring implementation of equal opportunity legislation to collect data and make it available to the public and for further analysis.

3. Pregnancy and Motherhood Protection

- The law should oblige the employer to try to find a suitable placement for pregnant and breastfeeding workers.
- Agents and working conditions that are hazardous to the health of a pregnant or breastfeeding woman and her child should be defined.
- It is important to give teeth to provisions to help reconcile work and family responsibilities, by, among other things, providing time off for breastfeeding, and part-time work when returning to work after maternity leave.
- The provisions for long maternity/parental leave can lead to loss of connection with the world of work for the majority of women, therefore should be reconsidered and shortened. At the same time, state programs should be developed to boost institutional and social care support for families with children.
- It is important to monitor and make adjustments regarding the status of contributing family members of self-employed spouses and recognize their social insurance rights.
- Proactive measures should be introduced to support women's enterprises, and other self-employed activities. Research should be conducted on the causes of and contributing factors to the low number of self-employed women, enabling policymakers to develop effective strategies for the inclusion of women in this sector.
- It is important to support the recent registration process of farms in Serbia, which should be accompanied by advocacy campaigns and monitoring to get rural women in Serbia's social insurance schemes.