

VIOLENCE AGAINST WOMEN

In the past few years, significant efforts have been made, particularly due to the activities of women's non-governmental organizations and agencies, to address in a more organized way the problem of domestic violence in Serbia and Montenegro. In addition to modification of the legislation in both of the member States, a number of projects have been implemented towards reduction and prevention of violence.

1. The Republic of Serbia has amended its Criminal Code, in particular in the section dealing with sanctions against violence in the home. Amendments to the Criminal Code of the Republic of Serbia ("Official Gazette of the Republic of Serbia No. 10/2002) have added a new Article 118 a), introducing a new offence of "domestic violence". This article reads as follows:

- 1) He who, by using force or seriously threatening the life or body, has injured or threatens to violate the physical or mental integrity of a family member, shall be fined or imprisoned for up to three years.
- 2) If, in the commission of the offence referred to in paragraph 1 of this article, a weapon, a dangerous tool or means was used, capable of injuring the body or impairing health seriously, the perpetrator shall be imprisoned for six months to five years.
- 3) If, as a result of the offences referred to in paragraphs 1 and 2 of this article, serious bodily harm has been inflicted or the health of a family member has been permanently or seriously impaired, or if these offences have been committed against a minor, the perpetrator shall be imprisoned from two to ten years.
- 4) If, as a result of the offence referred to in paragraphs 1 and 2 of this article, a family member dies, the perpetrator shall be imprisoned at least for ten years.

Numerous women's NGOs have focused their activities on achieving gender equality, including campaigns aimed at action against domestic violence, violence against women in particular.

Over the last three years, with the support of the Ministry for Social Affairs of the Republic of Serbia, in cooperation with UNICEF and OSCE, many projects have been implemented with a view to eliminating violence in the home. NGOs have taken an active part in these projects, as well as centres for social services. The projects included training for the professionals working in the social services or centres for social services (social workers, psychologists, lawyers and educationalists). The purpose was to achieve greater efficiency in their activities, acquire skills and properly act against domestic violence. Within these projects, a shelter for domestic violence has been established. A relevant media campaign has been launched in support of these projects.

The Law amending the Criminal Code of the Republic of Serbia provided for a group of offences against the dignity and morals of a person which includes, as a separate offence or as more serious forms of basic offences, also various forms of sexual abuse and sexual violence against children. Protection of minors against sexual violence has been

particularly provided through qualified forms of general sexual acts where the need for enhanced criminal law protection of minors against such acts has been signled out.

Under Article 103 of the Criminal Code of the Republic of Serbia, the penalty for the basic act of *rape* is at least five years in prison for the perpetrator of the act, if the act was committed against a female person by using force or threat to life or body, against a minor, or if the commission of the act has resulted in death. Protection against this act has been provided only for female minors.

Forced sex or unnatural carnal acts (Article 104 of the Criminal Code) is qualified as a criminal offence of sex (against a female person) and of unnatural carnal acts (against female and male persons) and is described as an offence committed by more than one person or in a particularly cruel or degrading manner or against a minor person of 14 years of age or if the act has resulted in impregnation or serious communicable disease; it carries the punishment of at least three years in prison.

Sex or unnatural carnal acts with a helpless person (Article 105 of the Criminal Code) includes an offence committed by more than one person or in a particularly cruel or degrading manner or against a person of 14 years of age, where the fact that the person is mentally ill or temporarily incapacitated by mental illness or a similar condition is exploited; it is punishable by at least five years in prison.

Sex or unnatural carnal acts with a person under 14 years of age (Article 106 of the Criminal Code) includes penalties ranging from one to ten years in prison, and in case of death of a minor, at least ten years in prison.

Sex or unnatural carnal acts by abuse of position (Article 107 of the Criminal Code) are offences intended to protect minors against sexual abuse by teachers, educators, guardians, adoptive parents, step parents or any other persons (of a paraincestal type) who, by abusing their position, commit a sexual act or unnatural carnal acts with a minor over 14 years of age who has been put into his/her care for the purpose of education or guardianship. The penalty for the perpetrator of this offence is ten years' imprisonment.

Seduction (Article 109 of the Criminal Code) is an offence designed to protect female minors over 14 years of age against inducing them by a false promise of marriage to perform sexual acts; such acts are punishable by upto three years in prison.

Unnatural carnal acts (Article 110 of the Criminal Code), if committed against a minor of over 14 years of age or if its commission results in the death of the forced person, constitutes a qualified form of this offence carrying the punishment of at least five years in prison. The perpetrator of unnatural carnal acts with a male minor of 14 years of age shall be imposed a sentence of upto one year in prison.

Procuring or enabling sexual acts (Article 111 of the Criminal Code) with a minor is punishable by five years' imprisonment (paragraph 1). A punishment of three

years in prison shall be imposed on a perpetrator who enables performance of sexual acts with a minor (paragraph 2), as well as on the perpetrator who, for a reward, procures a female person or who enables sexual acts for a personal gain (paragraph 3).

Criminal legislation also sanctions *extramarital cohabitation with a minor*. Sanctions shall be imposed on a person who cohabits with another person who has turned 14, and on parents, adopters or guardians of the minor person who has turned 14, who allow that person to cohabit with the other person, or who induce him/her to do so. Such sanctions shall be tightened if this offence is committed for personal gain (Article 115 of the Criminal Code).

Also, this group of offences includes the offence of *incest* or intercourse with first removed cousin or brother or sister (Article 121 of the CC).

The most significant progress in respect of changing the existing stereotypes related to marriage and family relations was made in February 2002, when substantial changes were made in the CC by introducing a new incrimination or offence of *domestic violence (Article 118 a) and amendment to Article 103 of the same Code (rape)*, which also criminalizes marital rape.

In respect of domestic violence, legislation until March 2002, when the CC introduced the above mentioned Article 118 a) which incriminates *domestic violence*, did not contain a separate provision regulating the question of responsibility of persons putting in any way at risk other family members. Before the introduction of this legal provision, violence in the home was sanctioned under Article 6 of the Law on Public Peace and Order of the Republic of Serbia (noisy arguments, impairment of the safety of another person by threats, insults or abuse, violence against another person). Otherwise, family problems were resolved with the help of a social worker.

In addition, amendments to the CC made in April 2003 incriminated the offence of *sexual abuse (Article 102 a) and the offence of trafficking in human beings (Article 111 b)*, taking into account that acts involved in the commission of this offence were targeting mainly women.

The new Family Law of the Republic of Serbia, adopted in March 2005, contains new provisions of a civil-legal nature on domestic violence. The provisions of the draft addressing family legal protection measures against domestic violence are placed under a separate heading entitled: Legal protection against domestic violence. The draft defines domestic violence as any behaviour of a family member putting at risk the physical integrity, mental health or tranquility of another family member. Violence is taken to denote, in particular: the deliberate or conscious infliction of a physical injury on a family member; any attempt at inflicting bodily harm; deliberate or conscious provocation of fear that a physical injury may be inflicted; the use of force or threat of use of force in order to prevail upon a family member to have undesired sex; the limitation of the freedom of movement or communication with third persons; verbal abuse.

The measures of protection against domestic violence provided for by the draft are the following:

- 1) to ban temporarily or restrict maintenance of personal relations with other family members;
- 2) to issue an order for eviction from the family apartment or house without regard to the right to property or rental of real estate;
- 3) to issue an order for moving into a family apartment or house without regard to the right to property or rental of real estate;
- 4) to ban a family member from getting within a certain distance (from the family);
- 5) to ban access to the area around the place of residence or workplace of a family member;
- 6) to ban further harassment of a family member;
- 7) to order compulsory treatment to cure alcohol abuse and other addictions;
- 8) to request compulsory counseling or commit to psychiatric treatment.

These measures may last up to a year, at the maximum. A possibility of their extension in case of persistence of reasons that have led to them, or earlier revocation in case of cessation of reasons that have led to them, has been provided as well. The proposed measures should objectively prevent appearance or prolongation of domestic violence or prevent the perpetrator from acting violently again and thus protect physical integrity, mental health and peace of the family members.

As this would be an entirely new institution in our legislation, a special court procedure for pronouncing decisions preventing domestic violence has been envisaged. For this protection to be effective, regulations amending the Law on Executive Proceedings have also been drafted.

Despite the criminalization of domestic violence, in particular sexual violence, the number of such criminal offences is still high. The victims of this type of violence and the persons knowing of such violence, seldom come forward to report it to the authorities as it would be an intrusion upon family privacy or for fear of revenge, or due to the lack of appropriate accommodation for victims (economic dependency, housing shortage, etc.).

According to the Ministry of Interior of the Republic of Serbia (hereinafter MUP of the Republic of Serbia), between 1992 and June 2003, a total of 241,094 offences were committed against women in the Republic of Serbia, which is 17.5 per cent of all general offences committed in the same period. Most of these offences were committed in 1992

(25,844) and least of them in 1999 (15,087). The sharpest fall in criminal offences against women was recorded in 2002, when 17,227 criminal offences were registered against women or 24.2 per cent less than in the previous year (22,730).

The majority of offences against women belong to the group of offences against property (78 per cent), among which most frequent were aggravated types of theft – 93,145 or theft – 56,593. There followed offences related to the safety of transport (13.4 per cent), offences against life and body (3 per cent) including 2,486 offences involving grave bodily harm and 1,139 murders or attempted murders. Offences against the dignity of the person and morals account for 2.2 per cent, among which the largest number are rapes or attempted rapes – 2,763.

In the period from the entry into force of amendments to the Criminal Code of the Republic of Serbia in February 2002 through the end of June 2003, 831 offences of domestic violence, defined in Article 118 a) of the CC, were reported.

In all cases involving criminal offences against women, particularly the most serious offences against life, body, dignity of the person and morals, the MUP of the Republic of Serbia has taken resolute action to investigate, identify and locate their perpetrators. From 1992 to June 2003, a measure of deprivation of liberty was imposed on 3,901 offenders. A measure of detention (lifted in 2001) was imposed on 6,588 offenders, while a measure of holding in custody, introduced by the CC (which entered into force in March 2002), was imposed on 640 such offenders.

For the purpose of fighting more effectively all kinds of sexual violence and abuse of women, the MUP of the Republic of Serbia has clearly defined action against sex crimes which are dealt with by the organizational units responsible for suppression of homicide. Action taken by MUP is characterized by equal treatment of all women victims of criminal offences, including domestic violence, sexual violence and abuse of women. Police authorities see to it that appropriate action is taken to investigate each reported and uncovered criminal offence where women are victims.

With regard to violent and sexually abusive films and magazines, the criminal legislation of Serbia has criminalized *screening of pornographic material* in Article 252 of the Criminal Code of the Federal Republic of Yugoslavia, whereas the provisions of Article 111 a) of the CC of the Republic of Serbia, as amended in April 2003, criminalizes *exploitation of minors for pornography*.

2. The Law on Amendments to the Criminal Code of the Republic of Montenegro (July 2002) criminalizes marital rape and introduces Article 100 a), defining a new criminal offence "violence in the family or family union" in conjunction with Article 220 of the CC. Article 220 of the CC defines a criminal offence of "violence in the family or family union" if a person who, by use of force, insolent and reckless behavior, disturbs the peace, bodily integrity and state of mind of members of his/her family or family union.

Numerous women non-governmental organizations have focused their activities on the equality of women and on fighting family violence, particularly violence against women and children. Protection of children from sexual exploitation is provided through criminal legislation. The CC defines the criminal offence of mediation in prostitution, which is attributed to a person who forces or encourages women into prostitution or who takes part in transferring a person to another person for prostitution. Also punishable by law is any act by which a person sells, shows or presents to the public or otherwise makes accessible a document, picture, audio-visual or other material which contains pornography, or stages a pornographic act for a person under 14 (Article 221).

The Law on Public Order and Peace defines as an offender any person who engages in prostitution or prompts another person into prostitution, rents an apartment or premises for such purposes, or otherwise mediates in prostitution. The sanction for that is 60 days in prison, which also applies to the offence of prostitution that involves a minor, if an apartment is rented to a minor or to an offender who otherwise mediates in prostitution.

The CC defines a group of criminal acts against sexual freedom, which includes separate criminal offences and more serious types of criminal offences, as well as various sexual abuse and sexual violence against women. Protection of minors from sexual violence has been particularly emphasized through qualified, general sexual offences. In this connection, awareness should be raised of the need to enhance protection of minors under criminal law.

Article 204 of the CC defines a criminal offence of "rape" as an act of forcing another person to intercourse, or any similar act by use of force or threat that his/her life or body or those of another person may be harmed. Article 205 of the CC defines the criminal offence of *rape of a helpless person* as an act in which an individual rapes or commits a similar act by abusing another person's mental illness, developmental incapacity, other mental handicap, helplessness or any other condition which makes that person defenceless. Article 206 of the CC defines the criminal offence of *rape of a child* as an act of raping a child or a similar act. A perpetrator who does not significantly differ from a child in terms of his/her mental or physical maturity will not be punished for such offence. Article 207 of the CC prescribes the criminal offence of *rape with abuse of authority* as an act committed by a person who abuses his/her position of authority to force another person, his/her subordinate or dependant, into intercourse or a similar act. A teacher, educationalist, custodian, adoptive parent, parent, step-father, step-mother or any other person who abuses his/her position or authority to rape or commit a similar act with a minor, who has been given to him/her for learning, upbringing, custody or care, shall be punished. Article 208 of the CC defines the criminal offence of an *illegitimate sexual act* as an act of a person who commits another sexual act. Article 209 of the CC defines the criminal act of *procuring and enabling intercourse* for a person who procures a minor for the purpose of intercourse or a similar act, or some other sexual act as well as for a person who enables intercourse or a similar act, or other sexual act with a minor.

Criminal legislation also sanctions *extramatrimonial union with a minor* and it prescribes sanctions for an adult who lives in extramatrimonial union with a minor. A parent, adoptive parent or a custodian, who enables a minor to live in extramatrimonial union with another person or prompts him/her to do so, shall also be punished. Such a person will also be punished if he/she has done that for a material gain. However, if the persons concerned get married, he/she will not be prosecuted and, if prosecution is underway, it will be dropped. Criminal offence of *incest* is punishable, too, and it involves intercourse of an adult with a minor blood, first removed, relative.

The Law on Execution of Criminal Sanctions, in its Article 27, specially protects women by stipulating that a punishment can be delayed if it is imposed on a woman whose child is under one year old or on a pregnant woman less than three months before delivery or whose pregnancy is at risk.

Procedural legislation (Criminal Procedure Code, Civil Procedure Code, Law on Executive Proceedings) provides for full equality of women in the proceedings according to the major principle that everyone is equal before the law, and that everyone can undertake any action in the course of the proceedings, men and women alike, depending on their position in the proceedings.

Despite the incrimination of family violence, victims and persons knowing of violence are reluctant to report it to law enforcement agencies. The reason probably lies in inadequate means of sheltering the victims, fear of revenge and stigmatization of the family by the community.

In a survey conducted by SCAN, out of all interviewed women, 12% had been exposed to physical abuse at home and almost one in three said that knew of several such cases. The total of 41% of women and 26% of men who replied that they knew of cases of physical abuse in the family indicates high occurrence of abuse in families.

For the purpose of improving action against all kinds of violence, the Government of Montenegro has developed a project on violence prevention. A team of sociologists from the Faculty of Philosophy conducted in April 2001, a sociological survey of attitudes of students of the University of Montenegro on the current and future position of women in science, politics and culture. The students believed that the participation of women in the process of development of cultural values and standards in our society (63.11%) was insufficient and that higher cultural level and education implied more power within the division of authority and more power in the family and society as a whole (66.24%). This sociological survey has produced a scale of features of successful women in Montenegro. Female students said that a successful woman is educated, very motherly, economically independent, and they put her involvement in public life at the bottom of the list. Male students said that a successful woman is committed to her family, educated and motherly, attractive and, at the very bottom of the list, economically independent.