



REPUBLIC OF SERBIA
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Protector of Citizens
Ombudsman

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SECRETARIAT OF THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE
AGAINST WOMEN AND DOMESTIC VIOLENCE
(GREVIO)

Council of Europe
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Dear Members of GREVIO,

In response to the invitation by the Secretariat of the Group of Experts on Action Against Violence Against Women and Domestic Violence I hereby enclose the answers of the Protector of Citizens (Ombudsman) on Questionnaire on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), where Protector of Citizens has jurisdiction to answer.

I hope that information provided will prove to be useful, especially having in mind the unique position of national institution for the protection and promotion of human rights.

I am looking forward to cooperating with the Secretariat.

Sincerely yours,

DEPUTY PROTECTOR OF CITIZENS

Gordana Stevanović

**QUESTIONNAIRE ON LEGISLATIVE AND OTHER MEASURES
GIVING EFFECT TO THE PROVISIONS OF THE COUNCIL OF EUROPE
CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN
AND DOMESTIC VIOLENCE
(ISTANBUL CONVENTION)**

II. Integrated policies and data collection

(Chapter II of the Convention, Articles 7 to 11)

E.

1. Please specify the entities collecting relevant **data** and the type of data collected by each of them.
2. With regard to each type of data, please indicate if the data is disaggregated by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location, and any other factors deemed relevant, for example disability.
3. How is this data collated and made public at national level?

Answer of the Protector of Citizens: The Protector of Citizens, during the monitoring of the implementation of the General and Special Protocols for the Protection of Women against Violence by the competent authorities from March to October 2014, the findings of which are in the Special Report on the application of the General and Special Protocols for the Protection of Women against Violence, inter alia, found that:

- When recording, documenting and reporting cases of violence against women in family and partner relations, the shortcomings are the following: the lack of unique records, incompatibility and mismatch of records conducted by different systems, as well as different criteria used for collecting. Therefore, checking and comparing data is almost impossible. The problem is systemic and its solution does not depend on an individual authority or an official.
- The social and health care systems collect and analyze the data on women suffering from partner or family violence and belong to multiple marginalized social groups (women with disabilities, Roma women, immigrant women, refugee women and internally displaced women, women from rural areas), but the police and judicial systems do not do it. Where the records are available, they point to the fact that the number of women from marginalized groups reporting violence is disproportionately low in relation to the total number of reported violence cases.
- In more than 10% of cases, health institutions identify violence, but they do not report it and in some cases neither do they record violence or inform other authorities and institutions about it.
- Certain health providers charge victims of violence the issuance of certificates of injuries which they suffered due to domestic or intimate partner violence.

In accordance with the above mentioned situation, the Protector of Citizens sent the following recommendations to the competent authorities in 2014:

- The records on the cases of domestic and intimate partner violence and internal rules on documentation, as well as on the reporting on these cases need to be improved, and record and rules need to be mutually coordinated, in accordance with the General and Special Protocols.
- Police stations and administrations, social welfare centres, public prosecutors' offices, courts and health care institutions should regularly and promptly keep their records and submit

them to competent authorities.

- It is necessary that health care institutions record violence against women every time when health professionals learn or suspect that the injuries are the result of violence, and issue the certificates to the victims on health consequences of suffered violence free of charge.

F. Please give information on any research supported by your government in relation to Article 11 paragraph 1b in the years 2011-2015.

Answer of the Protector of Citizens: Based on the results of the conducted research, the Protector of Citizens prepared Special Reports with recommendations:

- Special Report of the Protector of Citizens on the Implementation of the General and Special Protocols on Protection of Women Against Violence from 2014¹
- Special Report of the Protector of Citizens on Training For Acquisition And Improvement of Knowledge and Competencies in the Prevention and Suppression of Domestic and Intimate Partner Violence from 2015²

The Protector of Citizens recommended, inter alia:

1. Systemic aggregated recommendation to the Ministry of Interior, Ministry of Labour, Employment, Veteran and Social Policy, Ministry of Health and the Provincial Secretariat for Social Policy, Demography and Gender due to the omissions in the work of competent authorities in the system of protection of women against domestic and intimate partner violence and abuse and neglect of children (25 August 2016)³.
2. Systemic aggregated recommendation to the Ministry of Interior, Ministry of Labour, Employment, Vetrean and Social Policy, Ministry of Health and the Provincial Secretariat for Social Policy, Demography and Gender due to the omissions in the work of competent authorities in the system of protection of women against domestic and intimate partner violence in 12 femicide cases (27 July 2016)⁴.

In the procedures of monitoring the work of the competent authorities, as well as through two Special Reports in 2014 and 2015, the Protector of Citizens established multiple omissions in the system of protection of women against domestic or intimate partner violence. To start with, there is no single record on the cases of violence against women, but each system keeps its own record which makes checking and comparing data almost impossible. Caseworkers insufficiently recognize violence and forms of violence and insufficiently understand the situation of the woman who suffers violence, the

¹Available at: <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3711-special-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence>

² Available at: <http://www.ombudsman.rs/attachments/article/4613/Special%20Report%20of%20Protector%20of%20Citizens%20on%20Trainings%20ENG.pdf>.

³ Available at: <http://www.ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20Intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

⁴ Available at: <http://www.ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20Intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

imbalance of power between the victim and the perpetrator of violence, violence which occurred for the first time is often interpreted as a domestic or intimate partner conflict which does not require a response from the authorities, except for counselling or warning. Insufficient attention is given to the fact that the murder of women in the family or in intimate partner relations is most frequently a final result of a long term violence against victim; cooperation and exchange of information between competent authorities is insufficient, measures are not taken efficiently and promptly which leads to violence not being sanctioned or being inadequately sanctioned. In support of this, the data from our research from 2014 indicates that the number of criminal charges filed for domestic violence is several times lower than the number of reported cases, and only 25 % of criminal charges reach the indictment phase, and more than two thirds of verdicts on violence against women are suspended convictions.

Having in mind the fact that the caseworkers have the first contact with the victim of violence and that their timely and proper treatment significantly influences further work with the victim of violence, in 2015, we investigated how the trainings on the protection of women against domestic and intimate partner violence are being conducted and how the efficacy of the training and the application of newly acquired knowledge in the work is monitored. The assessment of the situation is that there is imbalance in the number of trainings of caseworkers in different systems, the number of trainings is insufficient, multidisciplinary trainings are insufficiently organized, there are no records on who is being trained, the acquired knowledge and its application in practice are not checked and these are only some of the omissions we identified in our report.

Findings of the Protector of Citizens in the procedure on controlling regularity and legality in the work of authorities in the system of the protection of women against domestic and intimate partner violence initiated by citizens' complaints or on their own initiative, inter alia, in 14 cases of women murder (femicide), by their (former) partners, or the members of their family, in 12 cases of femicide, as well as in 46 cases of domestic violence and intimate partner relations established (in 2016 only directed 141 recommendations⁵ after the procedure of control in 63 cases) confirm all previously stated facts, point to the relativization of the phenomenon of domestic violence by the caseworkers, which springs from not understanding, i.e. interpreting the reported violence as a marital or intimate partner conflict.

Namely, although General⁶ and Special⁷ Protocols for the protection of women in the Systems of Healthcare, Social Welfare, Internal Affairs and Judiciary are adopted, and contain explanation what domestic violence is and how it is expressed, the caseworkers in practice still insufficiently recognize and understand domestic and intimate partner relations and victims' reaction to violence, thus minimizing the effect of all forms of violence against a woman in family and intimate partner relations. This results in inappropriate decisions by the authorities, not taking appropriate measures and inadequate and untimely selection of measures to protect women from violence. It was noted that, especially in the cases of verbal violence, the victim is directed to conduct investigations before the competent authorities, regardless of the authorities' obligation to take measures for which they are competent. Victims are not provided with expert and other help and support. It is not always checked whether the reported person possesses weapon. Although the obligation of all the bodies in the system of protection of woman against domestic violence and the protection of children from

⁵ Systemic recommendation available at:

<http://www.ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

⁶ General Protocol for Action and Cooperation of Institutions, Bodies and Organizations in Situations of Violence against Women within Family and Intimate Partner Relations

⁷ Special Protocol for Action of Social Welfare Centres/Guardianship Authorities in Cases of Domestic and Intimate Partner Violence against Women; Special Protocol on Conduct of Police Officers in Cases of Domestic and Intimate Partner Relation; Special Protocol of the Ministry of Health of the Republic of Serbia for the Protection and Treatment of Women Victims of Violence; Special Protocol for Judiciary in the Cases of Violence Against Women within the family and in Intimate Partner Relations

abuse and neglect is the cooperation and regular exchange of all information, we have found that it often lacks or is not implemented timely, and that due attention is not given to the violence related information which affects the efficiency of the work of the authorities and the choice of measures to protect the victim. The key role in preventing and protecting the women from violence should be played by the bodies at the local level, where the support to a potential victim, or to a woman who has already suffered violence, is the most important and where it can be obtained.

Furthermore, the Protector of Citizens has established identical or parallel omissions of police officers, experts in the guardianship bodies and health care workers which point to the necessity of assessing immediately the reasons which led to these omissions, non implementation or inadequate implementation of the existing omission, establishing the responsibility of acting officials, their sanctioning, as well as planning the activities to rectify them and to reduce the risk of repeating them in future. On 27 July and 28 August 2016, the Protector of Citizens directed a number of systemic recommendations to rectify the identified shortcomings that are clearly repeating and to improve the acting of the police, the guardianship bodies and health care institution in the cases of domestic and intimate partner violence and prevent similar omissions in the future.

The first and biggest institutional problem related to domestic violence is that in specific cases the competent bodies and services do not apply the existing regulations and standards of work effectively and timely, as well as the fact that there is no responsibility for it. We believe that these omissions result from not applying the existing regulations and standards, rather than from the shortcomings in legal and expert framework.

III. Prevention

(Chapter III of the Convention, Articles 12 to 17)

A. What campaigns and programmes on any of the forms of violence covered by the Convention have your authorities promoted or conducted in accordance with Article 13, paragraph 1?

Answer of the Protector of Citizens: The Protector of Citizens, during the monitoring of the implementation of the General and Special Protocols for the Protection of Women against Violence by the competent authorities from March to October 2014, the findings of which are in the Special Report on the Implementation of the General and Special Protocols for the Protection of Women against Violence⁸, inter alia, found that:

- Preventive measures at the national, local and regional levels are organized periodically, haphazardly, and they are mostly directed at raising the employees' awareness, stimulating interconnectedness between bodies and developing an interdisciplinary approach to response to violence. Due to insufficient resources available to bodies and institutions competent for preventing and protecting women from violence and the insufficient promotion of the use of existing resources in local communities, the resources are used for (limited) response, while preventive activities are missing from the agendas of state and other bodies responsible for policy making and strategies for preventing and protecting women from violence. Measures directed at changing the society's relationship to violence against women are sporadic and invisible to a wider circle of citizens.
- In accordance with the above mentioned assessment of the situation, the Protector of Citizens directed a recommendation to the competent authorities that it is necessary to develop

⁸Special Report available at <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/3711-special-report-of-the-protector-of-citizens-on-the-implementation-of-the-general-and-special-protocols-on-protection-of-women-against-violence>.

preventive measures and activities directed at raising the public awareness about the frequency and dangers of violence against women, its impermissibility and zero tolerance to violence.

In the regular annual reports⁹, the Protector of Citizens directs a recommendation that the Government should continuously take measures and activities committed to raising awareness of the public about gender equality and measures for improving the status of women, but this recommendation is only partly implemented. The Protector of Citizens pointed to this problem both in the annex to the EC Progress Report and in the annex for the Third Cycle of Universal Periodic Review, indicating that the state should, inter alia, prepare and commence national campaigns for raising awareness on gender equality, which is in accordance with the Recommendations of the UN Human Rights Committee in the Concluding Observations on Third Periodic Report on the implementation of International Covenant on Civil and Political Rights¹⁰, that the state should continue to work on raising awareness about the equality of women with the aim of combating all stereotypes and prejudices about women.

The systemic campaigns on the impermissibility of violence lack as well as any continuing activities to adopting zero tolerance towards violence against women and children. Thus, we consider important the adoption of the Decision on establishing the Day of Remembrance for Women Victims of Violence¹¹, celebrated on May 18th, in accordance with the recommendations of the Protector of Citizens in the Special Report on Implementation of the General and Special Protocols on Protection of Women Against Violence¹².

In the period from March 24th to April 28th 2017 the Protector of Citizens organized round table discussions with the topic "Protecting Women against domestic and intimate partner violence and protecting children against abuse and neglect". Round table discussions, organized with the support of the OSCE mission, are devoted to exchanging experiences in the work of competent authorities in the system of protecting women against domestic and intimate partner violence and protecting children against abuse and neglect, recognizing problems and shortcomings in the functioning of the protection systems and recommending measures to rectify them, with reference to Special Reports by the Protector of Citizens on the Protection of Women Against Violence and 104 systemic recommendations which the Protector of Citizens directed to the authorities in 2016¹³, after investigating dozens of cases, but the competent authorities acted only partly on these recommendations. Potential problems singled out by the representatives of the institutions are related to the implementation of the Law on Preventing Domestic Violence and refer to very tight deadlines for acting of the bodies, the lack of appropriate, organized training for expert workers of the authorities and institutions in the system of protection against domestic and intimate partner

⁹ Available at: <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>.

¹⁰ Human Rights Committee je on 3364 meeting held on 23rd March 2017 adopted these Concluding Observations on Third periodic Report on the implementation of International Covenant on Civil and Political Rights ; Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komitetaccpr_c_srb_co_3_27019_e_srp.pdf.

¹¹ "Official Gazette RS", No. 53/2017.

¹² Special Report available at:

<http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

¹³ Recommendations

available

at:

http://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=229:%D0%B7%D0%B0%D1%88%D1%82%D0%B8%D1%82%D0%BD%D0%B8%D0%BA-%D0%B3%D1%80%D0%B0%D1%92%D0%B0%D0%BD%D0%B0-%D0%BF%D1%80%D0%B5%D0%BF%D0%BE%D0%B7%D0%BD%D0%B0%D1%82%D0%B8-%D0%BD%D0%B0%D1%81%D0%B8%D1%99%D0%B5-%D1%83-%D0%BF%D0%BE%D1%80%D0%BE%D0%B4%D0%B8%D1%86%D0%B8&catid=21:2012-12-13-11-09-16&Itemid=26; и

[http://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=214:2016-08-12-08-16-56&catid=21:2012-12-13-11-09-16&Itemid=26.](http://www.rodnaravnopravnost.rs/index.php?option=com_content&view=article&id=214:2016-08-12-08-16-56&catid=21:2012-12-13-11-09-16&Itemid=26)

violence, the need to include here workers from social welfare and healthcare centres, and they expressed doubt in the ability and expertise of the police which are necessary for imposing the urgent measures, and for which they are competent pursuant to the new law. The representatives of the Social Welfare Centres particularly singled out the problem of the lack of resources in the social welfare institutions, the need to provide more Safe Houses, as well as taking other measures aimed at their economic empowerment and self-reliance, which was pointed out by the Protector of Citizens in the Special Report on the Implementation of General and Special Protocols on the Protection of Women against Violence¹⁴. The round table discussions were held in Novi Sad, Petrovac on Mlava, Užice, Kraljevo and Vranje.

B. What steps have your authorities taken to include teaching material⁹ in formal education curricula at all levels of education, and/or in non-formal education, as required by Article 14, paragraph 1?

Answer of the Protector of Citizens: There is no formal sexual education of children and youth in Serbia, including the education on the topic of LGBTI persons and their rights, and systemic informing has not been provided. The deadline stipulated in the Action plan for implementing the National Strategy for Gender Equality for the period 2016-2020¹⁵ for introducing the materials on the reproductive health and sexual education, has expired, and this activity was not realized. The fact that this situation is unsustainable is supported by the data on a widespread intolerance towards LGBTI persons among learners, and experts' estimate that 21 abortions are carried out on 100 births¹⁶ among adolescent population, and in 2017 one out of 20 girls aged 15-19 has already had one termination of pregnancy¹⁷.

C. Please indicate (using Table 1 in the Appendix) the categories of professionals who receive initial training (education or professional training) as required by Article 15. Additional information which you consider relevant in this context may be provided in narrative format.

Answer of the Protector of Citizens: Although the adequate training of caseworkers is necessary for making the appropriate decisions of the bodies in cases of violence against women, as well as for the selection of measures to protect women from violence, during the supervision of implementation of the General and Special Protocols for the Protection of Women Against Violence, in 2014, the conclusions of which can be found in a Special Report on the Implementation of the General and Special Protocols for the Protection of Women Against Violence, the Protector of Citizens established, inter alia, that:

- The caseworkers¹⁸ are not fully informed about the existence or the content of General and Special Protocols¹⁹; there are bodies and institutions where the employees still do not know that the Protocols have been adopted, or what their purpose is.
- The caseworkers insufficiently recognize and understand the position of women suffering

¹⁴ Special Report available at:

<http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

¹⁵ Available at: http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹⁶ The assessment of the quality of the available services on the field of planning a family in the Republic of Serbia, 2013, Serbian Association for Sexual and Reproductive Rights (SRH Serbia) available at:

<http://safersexresurs.org/userfiles/files/Procena%20kvaliteta%20planiranje%20porodice%20Srbija.pdf>

¹⁷Data from the "Institute for Health Protection of Mother and Child of Serbia "Dr. Vukan Cupic" available at: <https://zena.blic.rs/zdravlje/sokantni-podaci-svaka-cetvrta-devojica-u-srbiji-u-seksualne-odnose-stupa-pre-16/n9k304h>

¹⁸This expression is used to denote staff in the police, social welfare centers, courts, public prosecutor's offices, health care providers, bodies of local self-government units and other agencies and public services, whose competences include acting in case of reports of violence against women in the family and intimate partner relationships.

¹⁹A significant effort to inform and train its officer was undertaken by the MOI in 2014 which prepared a "pocket edition" of the Special Protocol and trained 2000 police officers for its application.

domestic and intimate partner violence, power imbalance between the victim and the perpetrator of violence, the cyclical nature of violence and its consequences on the victim. Not understanding and non recognition of violence and victims' response to violence result in inadequate beliefs and expectations which competent bodies have in relation to them and inadequate selection of measures for the protection of women against violence.

- There is an insufficient number of specialized trainings for the implementation of General and Special Protocols and trainings about the violence against women, its causes and the dynamics and measures which should be taken. The number of caseworkers who participated in the trainings is low and disproportionate to the frequency of violence which they are faced with in their work. In some bodies no employee has participated in any training related to the protection of women from violence, while in others a significant number of employees have participated in training. The outcome is inconsistent action of different bodies in the system for protection and, consequently, low efficiency and functionality of the entire system
- Bodies competent for protecting the women against violence do not have adequate data on the needs of their employees for trainings, trainings in which their employees participated, effects of training and the way how the applied knowledge is used in practice, or the plan of training in accordance with the needs of the body and work.
- Violence occurring for the first time is often interpreted as family or intimate partner conflict which does not require any reaction from the authorities, except for advisory work or warning, overlooking the fact it also calls for urgent response by the competent authorities in accordance with law and operating standards²⁰.
- The system of protecting women against violence does not pay enough attention to the fact that the murders of the women in the family or intimate partner relations are most frequently a final result of a long standing violence against victim. Femicide is almost without exception preceded by multiple incidents of violence against the victim, and often against other family members and third parties outside the family environment as well, who remained without an adequate and timely response from the competent authorities.
- As a rule, competent authorities do not check the history of (domestic/ intimate partner) violence in cases of femicide. The history of violence frequently does not form a part of the Reports and decisions of the competent bodies in the investigations which are conducted after the murder, nor it has an impact on the final decisions on the perpetrator's guilt and when imposing the sanctions.

In accordance with the mentioned appraisal of the situation, the Protector of Citizens directed the following recommendations to the competent authorities:

1. It is necessary to inform and organize trainings of caseworkers in police administrations, guardianship bodies, courts, public prosecutors' offices and healthcare institutions on the content and obligations from the General and Special Protocols in a regular, planned, coordinated, monitored and continuous manner.

²⁰ Decision of the Court of Appeal in Belgrade, Kž2 1400/13, from 4 April 2013 and the Decision of the Court of Appeal in Kragujevac Kž1 5922/10 from 29 December 2010.

2. During the trainings, it is necessary to develop understanding for the position of women suffering violence, the imbalance of power between the victim and the perpetrator of violence, and the cyclicity of violence and its consequences.
3. It is necessary to ensure that the violence is responded to pursuant to the Protocols when it happens for the first time.
4. It is necessary that police officers, when filing criminal charges or reports to the public Prosecutor's Office, or a motion to initiate a misdemeanor procedure, inform fully the competent authorities on the existence of earlier incidents, complaints or convictions related to domestic, intimate partner or other violence on the part of the alleged offender i.e. the suspect. The history of domestic/intimate partner violence should be given attention in all the proceedings before the competent authorities.

During 2015, the Protector of Citizens conducted an analysis on planning and conducting trainings with the aim of developing capacities, knowledge and skills of employees in the systems of social welfare, *internal affairs, justice and judiciary, healthcare and state administration and local self-government* for the prevention, suppression and protection of women against domestic and intimate partner violence.

The results of this study can be found in Special Report of the Protector of Citizens on Training for Acquisition and Improvement of Knowledge and Competencies in the Prevention and Suppression of Domestic and Intimate Partner Violence²¹.

The results of the research, inter alia, indicate that: an insufficient number of trainings has been provided in the institutions and bodies that participate in protection of women against violence; not all the employees participating in this process attended the trainings; only 14% of healthcare workers attended the trainings; the biggest number of trainings was organized in the system of social welfare and internal affairs; very few trainings are interdisciplinary and targeted to anyone participating in the process of protecting women against violence; there is a significant difference in the number of trainings for the employees in different systems; uneven number of trained employees in different systems; as a rule, the authorities do not plan trainings and professional development on the protection of women against violence (MOI is the only body which directly assesses the needs of its employees' plans and conducts trainings and directly evaluates their effectiveness; aside from MOI and RISIP no other bodies have data on the participants of the trainings classified by sex; there are no (comparable) data on the content of the trainings, aims of the trainings, number of employees who attended the trainings, cumulation of the training; the authorities and training providers do not assess the knowledge and skills of employees, or the way in which the trained employees use the acquired knowledge in their work. In Special Report, the Protector of Citizens directed 19 recommendations to the competent authorities in order to rectify the identified shortcomings.

1. Pursuant to the above mentioned, the Protector of Citizens in the regular annual reports repeats the recommendation that the Government should ensure acting on the recommendations directed by Special Report of the Protector of Citizens on Training for Acquisition and Improvement of Knowledge and Competencies in the Prevention and Suppression of Domestic and Intimate Partner Violence.

The Protector of Citizens in the regular annual report in 2017 directed a recommendation to the Ministry of Labour, Employment, Veteran and Social Policy, the Ministry of Justice, the Ministry of the Interior, the Ministry of Health, judiciary authorities, bodies of territorial autonomy units and

²¹ Available at:

<http://www.ombudsman.rs/attachments/article/4613/Special%20Report%20of%20Protector%20of%20Citizens%20on%20Trainings%20ENG.pdf>

bodies of local self-government units that they should provide more effective measures for the protection of women against domestic and intimate partner violence and appropriate trainings of the employees on the protection of women against domestic and intimate partner violence and on the application of General and Special Protocols on protecting women from violence, pursuant to the recommendations of the Protector of Citizens. Apart from the above mentioned, the Protector of Citizens directed a recommendation to the Ministry of Labour, Employment, Veteran and Social Policy in the same report that it should ensure trainings for the employees in Social Welfare Centres on the appropriate implementation of the new Law on the Prevention of Domestic Violence, on the content and application of the General and Special Protocols on Protecting Women against Violence, as well as the full implementation of existing regulations and the responsibility of the officials in the event of their non-application.²²

D. Please indicate (using Table 2 in the Appendix) the number of professionals per year who have benefitted from **in-service training** on violence against women. Additional information which you consider relevant in this context may be provided in narrative format.

Answer of the Protector of Citizens: See the previous response.

H. Please specify which self-regulatory standards such as codes of conduct for the ICT sector and the media, including social media, exist in the area of violence against women and/or gender equality (for example to refrain from harmful gender stereotyping and spreading degrading images of women or imagery which associates violence and sex).

Answer of the Protector of Citizens: In 2014, the Republic of Serbia adopted new laws regulating the media and media space²³, which significantly improved the protection of children in the media. In 2015, bylaws on protection of juvenile rights and the protection of human rights in the media were adopted²⁴. Although the adoption of these Regulations improved the normative framework protecting children rights in the media, reporting of the media about women is burdened with sensationalism and gender stereotypes²⁵, with no respect to woman's privacy, her dignity and integrity. Systemic measures are not taken to eradicate gender stereotypes, which are very widespread, including speech by public figures and media reporting. The media often endanger children's privacy, expose the child to additional traumas, while the children are exposed to harmful and inappropriate content and expressed gender stereotypes as viewers. Taking measures by the competent authorities - the Ministry of Culture and Information and Regulatory Authority of Electronic Media - lacks, regarding numerous cases of sensationalism and reporting that do not respect the privacy, dignity and integrity of women and children, despite numerous recommendations by the Protector of Citizens. Regulatory Authority of Electronic Media (REM) and Ministry of Culture and Information rarely launch own-initiative investigations after learning about the violations of child's rights in the media. The investigations handled by REM are very long, pronounced measures are often inconsistent with the gravity of the violation of rights (reminders and orders) and the media failing to act upon the imposed measures the REM does not receive the

²² Initiative available at: <http://www.zastitnik.rs/index.php/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>, Available at: <http://www.zastitnik.rs/index.php/izvestaji/godisnji-izvestaji>, <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>, <http://www.rodnaravnopravnost.rs/attachments/article/230/Poseban%20izvestaj%20Zastitnika%20gradana%20%D0%BE%20obukama.pdf>, системске препоруке Заштитника грађана у вези са насиљем у породици и злостављањем и занемаривањем деце,

<http://www.rodnaravnopravnost.rs/attachments/article/229/preporuka%20nasilje%20zbirna.doc>.

²³ The Law on Public Information and Media, The Law on Electronic Media and The Law on Public Media Service

²⁴ The Rulebook on the Protection of Minors in the Field of Media Services and The Rulebook on the Protection of Human Rights in the Field of Media Services.

²⁵ the Broadcasting Agency of the Republic of Serbia, Gender equality and gender stereotypes on the First Channel of Serbian Radio-television", Belgrade, June 2014, available at:

<http://rem.rs/uploads/files/izvestaji-o-nadzoru/Rodna-ravnopravnost-RTS-1.pdf>.

right answer. The Protector of Citizens in regular annual reports²⁶ directs a recommendation that the government should continuously implement measures and activities aimed at raising the awareness of the public on gender equality and measures for improving the position of the women, but this Recommendation is implemented only partly. These and other problems in the realization of principles of gender equality were pointed out by the protector of citizens in the annex to the EC Progress Report and in the annex to the Third Cycle of Universal Periodic Review (UPR), indicating that the state should, inter alia, prepare and commence national campaigns for raising awareness on gender equality, and Human Rights Committees recommended that the state should continue to work on raising awareness on the women equality, with the aim of fighting these stereotypes and prejudices about women²⁷.

I. What measures have been taken to encourage the establishment of protocols or guidelines, for example, on how to deal with sexual harassment in the workplace; and to raise awareness of human resources staff on issues of violence against women, including domestic violence?

Answer of the Protector of Citizens: The Labour Law stipulates the prohibition of harassment and sexual harassment. The Law specifies that the sexual harassment is any verbal, non-verbal and physical conduct which aims or constitutes a violation of the dignity of the person seeking employment or the employee in the field of sex life which causes fear or creates a hostile, humiliating or offensive environment.

The Law on Civil Servants stipulates that any form of mobbing at work or related to work as well as the abuse of the right to protection from mobbing is prohibited. A civil servant is entitled to the working conditions which will not endanger his/her life or health, to the technical and other conditions necessary for work and protection against threats, attacks and any threats to the safety at the workplace.

The Law on the Prevention of Mobbing defines the prohibition of mobbing at work and related to work; measures for preventing mobbing and improving work relations; the procedure for the protection of persons exposed to abuse at work and related to work and other issues of importance for the prevention and protection against mobbing at work or related to work. The Provisions of this Law are applicable to cases of sexual harassment in accordance with the Law defining the area of work. With the aim of creating healthy and safe working conditions, the employer shall organize work in a manner which prevents the occurrence of mobbing at work or related to work and the employees are provided with working conditions where they will not be exposed to mobbing at work or related to work by the employer i.e. the person in charge or the employees.

The Rulebook on the Rules of Conduct of Employers and Employees Concerning Prevention and Protection from Harassment at the Workplace stipulates that in order to create healthy and safe working conditions, the employer is obliged to organize work in a manner which prevents the occurrence of mobbing at work or related to work and the employees are provided with working conditions where they will not be exposed to mobbing at work or related to work by the employer i.e. the person in charge or the employees. In order to identify, prevent and impede mobbing, the employer is obliged to implement measures of informing and training of employees and their representatives to recognize the causes, forms and consequences of the mobbing. The employer may provide training, i.e. enabling certain employee or employees for mediation, as a way of resolving disputable relations regarding mobbing. The employer is obliged to inform the employee before the commencement of the employment on the prohibition of mobbing and on the rights, duties and responsibilities of the employer and the employee related to the protection of mobbing. This notice should particularly contain the following data:

²⁶ Available at: <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>.

²⁷ Concluding Observations regarding Third Periodical Report on the application of International Covenant on Civil and Political Rights; Available at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_komiteta_cpr_c_srb_co_3_27_019_e_srp.pdf.

- that it is forbidden by law, with determined sanctions, to perform harassment, sexual harassment, as well as to abuse the right to be protected from such behaviour;
- what is considered as harassment, sexual harassment, and the abuse of the right to be protected from such behaviour (definitions of terms)
- that the protection from harassment and sexual harassment is realized at the employer's premises and by the employer (in the mediation process and the process of determining employee responsibility), and before the competent Court;
- that an employee who believes or suspects that he/she is subjected to harassment or sexual harassment, before turning to Court, should turn to the person or persons in charge at the employer for protection from such behaviour, and an employee who believes that he/she is subjected to harassment or sexual harassment by the employer him/herself, may turn directly to the Courts for protection from such behaviour;
- that the employer will make available the information about the persons authorized to initiate the procedure for the protection from harassment, the person to whom the claim for protection from harassment is to be submitted, and about other persons who may be included in the procedure for protection from harassment, and in which way;

In order to prevent mobbing and to recognize mobbing, an employer may identify a support person who can be contacted by the employee who believes that he/she is subject to mobbing to provide advice and support. An employer may seek the opinion of the union on the appointing the support persons.

An employee who believes that he/she is exposed to mobbing may exercise his/her rights before the he National Agency for Peaceful Resolution of Labor Disputes or the competent Court.

After the initiative of the Protector of Citizens, sexual harassment was defined in the ammendments to the Criminal Code, as a criminal act Sexual harassment

IV. Protection and support

(Chapter IV of the Convention, Articles 18 to 28)

B.

1. Please provide a short description of the measures taken to ensure that the following **general support services**¹⁴ (as referred to in Article 20, paragraph 1) take the situation of women victims systematically into account, employ measures and interventions to ensure their safety, and are equipped to meet their specific needs and to refer them to the appropriate specialist services:

- a. financial support services;
- b. housing services;
- c. legal counselling services;
- d. psychological support services;
- e. education and training services;
- f. employment services; and
- g. any other relevant service.

Answer of the Protector of Citizens: During the supervision over implementation of the General and Special Protocols on the Protection of Women Against Violence, in 2014, the conclusions of which can be found in a Special Report on the Implementation of the General and Special Protocols for the Protection of Women Against Violence, the Protector of Citizens established, inter alia, that:

The resources at the disposal of bodies and institutions responsible for prevention and protection of women against violence are insufficient, and the use of already existing resources in local communities is insufficiently encouraged. The introduction of new models of acting, organization of adequate training for staff, provision of new services to victims, are mainly project-based activities which are of limited duration, and therefore do not produce long-term effects.

Due to the insufficient number of "safe houses", shelters and any other type of assistance, women are forced to return to place where they suffered violence. In case that there is no accommodation in cities where women suffer violence, and in cases where the intervention cannot be delayed, the victims are accommodated in other cities. A special problem is financing the service, some social welfare centres can pay for renting apartments where a woman is accommodated until the end of court proceedings, or until she acquires the right to financial support, but not for a longer period of time. Lack of financial means is a significant limiting circumstance for providing support to women victims of violence²⁸. Local self-government units mostly do not finance special services for the victims of violence, with the exception of "safe houses" and shelters, where appropriate, but a whole series of other services is financed and they can be used by the women victims of violence too.²⁹ Women organizations that provide specialized service of SOS phone line and have multiannual experience, are mostly not identified and recognized as subjects for cooperation in local community, nor they are financed as service providers, except rarely.³⁰ Resources of civil society organizations are used in rare cases, for preventive purposes.³¹

In combating violence against women, the potential of civil society is not fully tapped into. The agreement on cooperation is provided for by the General Protocol as a document that will also include the prevention and protection of women against violence citizens and/or representatives of civil society apart from the representatives of public authorities (government bodies, bodies of local self-government units, institutions, organizations in the territory of a local self-government unit). However, there are few agreements which have included individuals and organizations outside the government system into these activities. As a consequence, certain resources at the disposal of the local community have been ruled out, and this has reduced the possibility to influence public awareness in the local community about violence against women, its consequences and its impermissibility.

Services for rehabilitation of women victims of domestic and intimate partner violence have not been established or developed in a planned manner, and the resources of local communities are insufficiently used. Victims are mostly offered to be relocated from their homes, for a short period of time, with few (pilot) programs for economic, social and psychological emancipation of women and their empowerment to become self-reliant.

In accordance with the abovementioned assessment of the situation, the Protector of Citizens directed the following recommendations to the competent authorities:

1. It is necessary to provide victims of domestic and intimate partner violence with accessible safe houses and programs for economic, social and psychological emancipation of women and for their empowerment to become self-reliant.
2. It is necessary to develop services of protection and rehabilitation of victims of domestic and intimate partner violence; services of psychosocial treatment of perpetrators of domestic and intimate partner violence, in the cooperation with the programs for protection and support of victims and with the full security of victims; preventive measures and activities aimed at raising public awareness about the prevalence and harmful effects of violence against women, its impermissibility and zero tolerance to violence; new services to help and support victims, especially those that can ensure that the victim does not have to leave her home.

²⁸ Data from the interview with the representative of Social Welfare Center in Mali Zvornik.

²⁹ Special Report of the Protector of Citizens on the Implementation of the General and Special Protocols on Protection of Women Against Violence p.38.

³⁰ Exceptions are services in Vranje, Novi Sad and Ada.

³¹ Special Report of the Protector of Citizens on the Implementation of the General and Special Protocols on Protection of Women Against Violence p.40

The Law on the Employees in the Public Sector³², pursuant to the Opinion of the Protector of Citizens on the Draft Law on Employees in the Public Sector³³ stipulates affirmative measures when selecting candidates in order for the proclaimed principle of equal access to work places to be fully realized. This Law specifies that if more than one candidates fulfilled the requirements for the election with the same best result, the advantage for employment belongs to the candidate from a group of persons who are in an unequal position, such as the victims of domestic and intimate partner violence, the disabled persons, members of the Roma national minority population, and the law governing the work of the public service or a collective agreement may also determine other groups of persons who are in an unequal position³⁴.

This law specifies equal availability of working places to candidates for employment in public services³⁵, as well as the protection from mobbing and discrimination at work to the employee, or a person engaged on an outside employment contract in a public service, which the employer must ensure pursuant to the laws governing the prohibition of mobbing and the prohibition of discrimination³⁶. The Government adopted the National Employment Action Plan for 2018³⁷ which specifies activities directed to equalising the position of man and women on the labour market i.e. eliminating and preventing unequal position and achieving equal gender opportunities, through the priority inclusion of women, especially from vulnerable categories in active employment policy measures, as well as encouraging women's entrepreneurship. AP specifies subsidies for the employment of the unemployed persons from the category of persons who are more difficult to be employed, including, inter alia, victims of domestic violence, which is in accordance with the recommendations of the Protector of Citizens in the Special Report on the Implementation of the General and Special Protocols on Protection of Women Against Violence³⁸.

2. Please provide information on measures taken in relation to Article 20, paragraph 2, to ensure women victims benefit from appropriate health care and social services. Please also provide information on protocols and guidelines for staff assisting women victims and for their referral to additional appropriate services.

Answer of the Protector of Citizens: Regarding the information on protocols and guidelines for employees assisting the victims, and their referral to further competent services, see previous response of the Protector of Citizens.

D.

Please provide a description of the measures taken in relation to Articles 22, 23 and 25 to provide or arrange for **specialist women's support services**¹⁶ for all women victims and their children. For each category of service (women's shelter, rape crisis and sexual assault centre, women's counselling centre, etc.), please provide information broken down by individual women's shelter/rape crisis centre/counselling centre/other service on:

2. the number of paid staff per service;

³² "Official Gazette of the Republic of Serbia", no. 113/2017.

³³ The Opinion of the Protector of Citizens No. 183-29/2017 ref. no. 37873 from 16 October 2017.

Available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5501-ishlj-nj-z-sh-i-ni-gr-d-n-n-s-n-cr-z-n-z-p-sl-ni-u-vni-sluzb>.

³⁴ Art. 58 of the Law on Employees in Public Services, "Official Gazette of the Republic of Serbia", no. 113/2017.

³⁵ Art. 10 of the Law on Employees in Public Services, "Official Gazette of the Republic of Serbia", no. 113/2017.

³⁶ Art. 17 of the Law on Employees in Public Services, "Official Gazette of the Republic of Serbia", no. 113/2017.

³⁷ Available at: http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

³⁸ Special Report available at:

<http://www.zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji/3710-2015-02-24-13-35-38>.

Answer: As far as in 2015, the Protector of Citizens established the negative consequences of employment restriction pointing out that it suspended the application of regulations that regulate standards and norms in the institutions that provide services and it influenced that number of employees in health, social welfare and education be lower than necessary and lessened the quality of their work³⁹. According to the data of the Republic Institute for Social Protection, the number of employees in social welfare centres, the key role of which is the protection against violence, on 31 December 2015, a total of 3860 workers were engaged in Social Welfare Centres, 1934 of them were expert workers. It is noticeable that the total number of these workers is reduced by about 2% compared to the previous year. A great number of social welfare centres states that current employment restriction limits them in engaging additional staff, as well as in filling vacant places. In the age structure of permanently employed staff, employees aged 50-59 are dominant with 37.9%. The inflow of younger staff is reduced compared to last year, which a consequence of the employment restriction in the public sector. The Republic Institute believes that "if this trend continues in the long term, it will result in jeopardizing the efficiency and quality of expert work..."⁴⁰. Social Welfare Centres started 2017 with an additionally reduced number of expert workers for around 7.5% and with 10% lower number of case managers compared to the previous year⁴¹. Insufficient number of employees significantly affects the quality of work and level of protection which Social Welfare Centres provide victims of the violence.

The number of healthcare workers, including pediatricians and other childcare specialists, is decreasing every year⁴². Medical associations' data and state data show that the number of pediatricians in the Republic of Serbia is constantly decreasing and the age structure is unfavourable. In 2013 it was estimated that in five years' time there will be a lack of 380, and in ten years' time 650 (associations data), or 538 pediatricians (state data).

In Serbia, there are not enough counseling units for children and adolescents, which are much needed to this population. In its Report to the Committee on the Rights of Child the state specified that young people have a youth counselling unit in only 40 health centres. There are even fewer developmental counselling units (for pre-school and pre-adolescent children) -they are established only in 36 municipalities⁴³. Bearing in mind that the total number of healthcare centres in Serbia is 151⁴⁴, it follows that youth counselling units exist only in 26.5% healthcare centres, and developmental counselling units in only 24% of healthcare centres

F. Please provide information on action taken to ensure that, in the provision of the above-mentioned general and specialist support services to victims, due account is taken of the rights and needs of **child witnesses** of all forms of violence against women as specified in Article 26, including age-appropriate counselling.

Answer of the Protector of Citizens: At this moment, the victims of the violence do not enjoy full, effective and timely protection directed at effective rehabilitation, rapid prevention of abuse, prevention of its repetition. The key causes can be found in the shortcomings of the legal framework and in practice which were pointed out by the Protector of Citizen on multiple occasions through directing adequate initiatives, opinions and recommendations to competent authorities:

- The level of criminal protection of the victim varies according to the age. An adult person has a lower level of protection than the person older than 14, and person over 14 has a lower level of

³⁹ Annual Report available at <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>

⁴⁰ <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

⁴¹ Report on the Work of Social Welfare Centers for 2016 available at:

http://www.zavodsz.gov.rs/PDF/izvestaj2017/CSR%202016_final.pdf.

⁴² Annex 1 of the Second and Third Periodic Reports on the Implementation of the Convention on the Rights of the Child in the Republic of Serbia, p. 90, F2 (17) j.

⁴³ Annex 1 of the Second and Third Periodic Reports on the Implementation of the Convention on the Rights of the Child in the Republic of Serbia, p. 94.

⁴⁴Data from the National Health Insurance Fund, <http://www.rfzo.rs/index.php/linkovi/zdravstvene-ustanove>.

criminal protection than the person under 14. Criminal code for children (persons under the age of 18) uses three terms: *a minor* is a person aged 0 to 18; *a child* is a person aged 0 to 14; *juvenile is a person* over 14 and under 18. The imposed penalties and the manner of prosecution are different depending on the age of the victim.

- mild penal policy and low imposed fines result in the fact that the perpetrator of some forms of sexual abuse or coercion (for example illegal sexual behaviour, child molestation) can be on a probation, the institute for the postponement of criminal prosecution may also be applied (criminal prosecution is not undertaken if the perpetrator performs some of the prescribed obligations)⁴⁵.
- Criminal acts of incest and extramarital community with the minor – although essentially they mean sexual activity with a child (minor) – in the Criminal Code they are not under the Chapter dealing with criminal acts against sexual freedom⁴⁶. Thus, the possibility of implementation of the Law on Special Measures for the Prevention of Crimes against Sexual Freedom Involving Minors ⁴⁷ was denied since it states that it is applied “against the perpetrators of criminal offences against the sexual freedom committed against the minors”.
- The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles⁴⁸ stipulates that a minor victim of a criminal offense may be interrogated two times, *and exceptionally more than that* if it is necessary for realizing the purpose of the criminal procedure. From that point on, the Law specifies that the judge may decide to interrogate the minor victim via the use of technical means for the transmission of sound and image, with no parties or other participants in the procedure present, in the room where the witness is, so that the parties and entitled persons ask the questions via the judge, psychologist, guidance counselor, social worker or other competent person⁴⁹. Minors, as the witness-aggrieved, *can be heard* in their own apartment or any other room, or authorized institution-organization, professionally capable for interrogating minors. Finally, it is prohibited to confront minor victim and the accused, if the minor is „*due to the nature of criminal act, consequences and other circumstances, particularly vulnerable, or in a particularly difficult emotional state*“⁵⁰, which means that children victims who are not assessed as “particularly vulnerable” or “in a particularly difficult emotional state”⁵¹ will be faced with the accused. It is evident from the provisions that the judges and the Prosecutors are authorized to decide whether they will implement the measures for protecting the child victim (using video and sound recordings and hearing the child outside the courtroom, limiting the number of hearing to two) and assessing the state of the child when deciding on performing the procedural action of confrontation. In practice, the children are most frequently interrogated more than two times, in the courtroom, and cross-examination may occur as well. 66% of judges interrogates the child victim in the courtroom, 10,6% in the office and around 3% in the room specially adjusted to the child (in and outside the courtroom). None of the judges interrogated

⁴⁵ Art 283 of the Code on Criminal Proceeding (“Official Gazette of the Republic of Serbia” No. 72/11, 101/11, 121/12, 32/13, 45/13 и 55/14)

⁴⁶ Criminal act of incest is proscribed in the Art. 197, extra marital community with a minor in the Art. 190, and criminal acts against sexual freedom include the Provisions of the Articles 178-186 of the Criminal Code.

⁴⁷ Art. 3 of the Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors, Official Gazette RS.

⁴⁸ “Official Gazette of RS” No. 85/05.

⁴⁹ Art. 152 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

⁵⁰ Art 153 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

⁵¹ Art 152 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles.

the child in child's home, school or other institutions for children. The prosecutors behave similarly⁵². Using audio and video recordings is extremely rare as well as using specialized screen room where they exist and are appropriately equipped⁵³.

The development of the new Law on the Juvenile Criminal Offenders and the Protection of Juveniles in the Criminal Procedures is underway which lowers the already low standards on protection of child victims from secondary traumatisation. The draft law does not foresee the appointment of an attorney (legal aid) to the child victim, who does not have an engaged attorney, as an obligation but rather as a possibility which is based on the assessment of the court or the prosecutor that the appointment of the attorney is necessary; it allows for the possibility that the child victim is not interrogated with the assistance of or via the expert (psychologist, guidance counselor); it excludes the obligation that in criminal proceedings of affected children judges and prosecutors have special knowledge on the right of the child, even when dealing with criminal offences such as incest, taking minors from parents, a change of family status, enabling the use of narcotic drugs and the establishment of slavery relations and the transport of persons in a slavery relationship, for which such an obligation exists in the current Law on Juvenile Offenders and Criminal Protection of Juveniles.

G. Please indicate any **other measures**, including measures taken with regard to reporting as provided for in Articles 27 and 28, taken or planned to provide protection and support to victims of violence against women.

Answer of the Protector of Citizens: In cases of domestic and intimate partner violence and abuse and neglect of children in the family, the protector of Citizens for several years now determines the same omissions by the police, Social Welfare Centres and Health Care Institutions, which were pointed out through numerous recommendations, opinions and initiatives over the recent years. Violence is minimized, relativized and often qualified as a family problem or marital conflict, thus it is not investigated and the risk of violence is not assessed. Measures in the case of reported domestic and intimate partner violence are not taken or it is done in inadequate and untimely manner. The police, Social Welfare Centres and Health Care Institutions do not exchange information and some of it is vital for the protection of the victim, and notifications on the reporting of violence of other bodies in the system (guardianship authorities, police, public prosecution and courts) are also lacking. Often, it is not checked whether the reported person is in possession of the weapons, and a child witnessing domestic violence against a family member is not treated as victim of violence, abuse and neglect. It is not rare that the victim is referred to conduct proceeding on their own. In 2016, the Protector of Citizens directed 104 systemic recommendations to the Ministry of Interior, Ministry of Labour, Employment Veteran and Social Policy, the Ministry of Health and The Provincial Secretariat for Social Policy, Demography and Gender Equality which were only partly acted upon by the bodies. After directing Recommendations of the Protector of Citizens, a new Law on Prevention of Domestic Violence was adopted

V. Substantive law

(Chapter V of the Convention, Articles 29 to 48)

⁵² "How to fit the Judiciary to the Child – protecting child victims in criminal proceedings and the situation in practice in the Republic of Serbia", Child Rights Centre 2015.

⁵³ The Protector of Citizens directed opinion to the courts in Belgrade, Kruševac, Niš and Novi Sad upon establishing that out of the courts in these cities, where the rooms were provided, equipped and adjusted to children for taking statements, only three courts used this possibility.

A. 1. Please provide information on the relevant **legal framework** in place (for example criminal law, civil law, administrative law) which gives effect to the provisions of the Convention, including action taken to avoid legislative gaps.

Answer of the Protector of Citizens: The Protector of Citizens has launched and given:

Legal Initiatives:

1. Initiative for Amending the Criminal Code in the field of criminal legal protection of victims of domestic violence and sexual abuse (October 13th, 2011)⁵⁴

Opinion:

1. Opinion with Recommendation by the Protector of Citizens on the importance of adopting separate protocols on the operation of and co-operation among the institutions, bodies and organisations in the situation of violence against women within the family and intimate partner relationships in order to achieve more efficient inter-sectoral co-operation in implementing protection of women against violence (December 11th, 2012)⁵⁵.

Link: <http://zastitnik.rs/index.php/2011-12-11-11-34-45/2643-m-26432643>

1. Opinion by the Protector of Citizens on the Draft Law on Employees in Public Administration⁵⁶, according to which the Law on the Employees in Public administration⁵⁷ prescribes affirmative measures during selection of candidates in order to fully implement the equal employment opportunity principle. This law stipulates that if a number of candidates meeting the prescribed requirements get equal best results, the advantage shall be given to the candidate belonging to a group of persons having an unequal status, such as victims of violence within the family and intimate partner relationships, people with disabilities, members of the Roma national minority. Also, the Law that regulates operation of civil service and the collective labour agreements may identify other groups of people having an unequal status⁵⁸ as well.
2. Opinion of the Protector of Citizens on the protection of children against secondary victimisation which draws attention of the basic and higher courts in Belgrade, Niš, Novi Sad and Kruševac, as well of the Ministry of Justice, the Ministry of Public Administration, the Ministry of Labour, Employment and Veteran and Social Affairs, and the Ministry of Health to the need to utilise the existing and available specially equipped children-friendly rooms (screen rooms) and technical devices for video and audio broadcasting and recording, and to consistently implement the regulations prescribed to protect child victims against repeated victimisation and trauma.
3. Publications by the Protector of Citizens on the protection of children against sexual abuse and protection of children against violence, abuse and neglect.

⁵⁴ Available on: <http://zastitnik.rs/index.php/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>.

⁵⁵ Available on: <http://zastitnik.rs/index.php/2011-12-11-11-34-45/2643-m-26432643>.

⁵⁶ Opinion of the Protector of Citizens No. 183-29/2017 ref. no. 37873 dated October 16th, 2017

Available on: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/5501-ishlj-nj-z-sh-i-ni-gr-d-n-n-s-n-cr-z-n-z-p-sl-ni-u-vni-sluzb>.

⁵⁷ "Official Gazette of RS", Issue No. 113/2017.

⁵⁸ Article 58, Law on Employees in Public Administration, "Official Gazette of RS", Issue No. 113/2017.

Recommendations:

3. Systemic aggregated recommendation submitted to the Ministry of Interior, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health and the Provincial Secretariat for Social Policy, Demography and Gender Equality because of misconduct of competent authorities within the system of protection of women against violence within the family and in partner relationships in 47 cases of violence in the family and in partner relationships, and abuse and neglect of children (August 25th, 2016)⁵⁹.
4. Systemic aggregated recommendation submitted to the Ministry of Interior, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health, and the Provincial Secretariat for Social Policy, Demography and Gender Equality (July 27th, 2016) because of misconduct of competent authorities within the system of protection of women against violence within the family and in partner relationships in 12 cases of femicide (July 27th, 2016)⁶⁰.
5. A larger number of individual and aggregate recommendations to guardianship bodies, the Ministry of Interior, the Ministry of Labour, Employment, Veteran and Social Affairs, the Ministry of Health due to violation of children's right to protection against violence, abuse and neglect within the family, and children's right to care by both parents and the right to establish a personal relationship with the parent they are not living with.

Amendments and Supplements to the Criminal Code adopted in 2016 resulted to a large extent from the Initiative by the Protector of Citizens for Amending the Criminal Code in the field of criminal legal protection of victims of domestic violence and sexual abuse, which the Protector of Citizens submitted to the Ministry of Justice in 2011, and again in 2012⁶¹, and from the recommendations given in its regular annual reports that the Criminal Code should be harmonised with the **Council of Europe Convention on preventing and combating violence against women and domestic violence**. Amendments and Supplements to the Criminal Code introduced new criminal offences (female genital mutilation, stalking and sexual harassment); more severe punishment was prescribed for the following criminal offences: rape, sexual intercourse with a helpless person, sexual intercourse with a child, sexual intercourse through abuse of position, inducing a minor to attend sexual act; ex-officio prosecution has been introduced for some forms of criminal offences such as rape, sexual intercourse with a helpless person and prohibited sexual acts instead of the existing prosecution upon the victim's motion. Amendments and Supplements to the Criminal Law also introduced a new criminal offence, forced marriage, which is in compliance with the Concluding Comments of the Committee on the Elimination of Discrimination against Women following the review of the Periodical Report of the Republic of Serbia.

The Law on Preventing Domestic Violence which was passed in 2016 contains norms which may contribute to better protection of the victims of domestic violence and elimination of misconduct of competent authorities which exist in today's system of protection of women against violence within the family and in partner relationships. The Law is the result of many recommendations, opinions,

⁵⁹ Available on:

<http://www.ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

⁶⁰ Available on:

<http://www.ombudsman.rs/attachments/article/5032/Protection%20of%20women%20against%20domestic%20and%20intimate%20partnership%20violence%20Selected%20recommendations%20of%20the%20Protector%20of%20Citizens.pdf>

⁶¹The Initiative is available on:

<http://www.zastitnik.rs/index.php/zakonske-i-druge-inicijative/1529-2011-10-14-09-40-39>.

initiatives and proposals by the Protector of Citizens from previous years which identified failures in the system of protection both in terms of regulations and practice. In compliance with the proposals and stances of the Protector of Citizens, three urgent measures have been introduced to prevent domestic violence (the measure of *temporary removal of the perpetrator from a residence and the measure of temporary prohibition to contact or approach the victim*); the law stipulates that all competent state authorities within the system of prevention and protection of women against violence in the family and in partner relationships are obliged to implement co-ordination and co-operation activities; competent authorities are also obliged to exchange notifications and data on a daily basis vital for the prevention of domestic violence and prosecution of the perpetrator, and to provide protection and support to the victim. The law also stipulates the formation of the co-ordination and co-operation groups which are formed in the area of competence of each basic public prosecutor's office, consisting of representatives of the prosecutor's office, the police and centres for social work. In compliance with the recommendations by the Protector of Citizens from its special reports, the Law stipulates that competent police officers, public prosecutors and judges applying this Law are obliged to complete special training; it also stipulates the establishment of Central Electronic Records on the cases of domestic violence. In compliance with the recommendations by the Protector of Citizens from its special and regular annual reports, the Law stipulates that the victim of domestic violence is entitled to free legal aid, but the Law refers to the separate law which has not been passed yet, despite repeated recommendation by the Protector of Citizens.

In its regular annual reports, the Protector of Citizens points out that the Criminal Code is not fully harmonised with the **Council of Europe Convention on preventing and combating violence against women and domestic violence** and it repeats its recommendation that the Government should propose, and that the National Assembly should pass the amendments and supplements to the Criminal Code to make it fully compliant with the Council of Europe Convention on preventing and combating violence against women and domestic violence.

C. Please detail the procedures available to women victims to provide them with **civil remedies**:
2. where applicable, **against state authorities** which have failed in their duty to take the necessary preventive or protective measures within the scope of their powers (Article 29, paragraph 2).

Answer of the Protector of Citizens: The Protector of Citizens of the Republic of Serbia is an independent and autonomous body introduced in the legal order of the Republic of Serbia in 2005 by the Law on the Protector of Citizens.⁶² The position of the institution is significantly strengthened by the Constitution of the Republic of Serbia⁶³ adopted in 2006, when the Protector of Citizens became a constitutional category in compliance with the international best practice. According to the Law on the Amendments and Supplements on the Law on Ratification of *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁶⁴ the Protector of Citizens is designated to perform the operations of the National Mechanism for Prevention of Torture.

The majority of standards contained in key international documents which regulate and/or promote and propose the standards for ombudsmen and National Human Rights Institutions⁶⁵

⁶² Law on the Protector of Citizens - hereinafter LPC (3o3I) („Official Gazette of RS“, Issue Nos. 79/05 and 54/07).

⁶³ The Decision on the Proclamation of the Constitution of the Republic of Serbia was published in the „Official Gazette of RS“, Issue Nos. 83/06 and 98/06 (Part Five - Organisation of Government, Section 5. „Civic Defender“, Article 138).

⁶⁴ „Official Gazette of RS - International Agreements“, Issue No. 07/11.

⁶⁵ Resolution by the UN General Assembly 48/134, the so called „Paris Principles“, available on:
<http://www.un.org/documents/ga/res/48/a48r134.htm>;

Resolution by the UN General Assembly 66/169 on national institutions for the protection and promotion of human rights, available on: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/N11/468/96/PDF/N1146896.pdf?OpenElement>;

Resolution by the UN General Assembly 67/163 on the role of ombudsmen, mediators and other national institutions for the protection and promotion of human rights, available on:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/488/38/PDF/N1248838.pdf?OpenElement>;

are woven into the Constitution and the Law on the Protector of Citizens.

The competences of the Protector of Citizens have been stipulated by the Constitution and the Law on the Protector of Citizens: the Protector of Citizens protects and promotes human and minority freedoms and citizens' rights, and controls the legality and regularity of the work of administrative bodies and public institutions which have been delegated public authority. There is no right or freedom of the citizens which is exempt from the protective, control and promotional role of the Protector of Citizens.

The Protector of Citizens acts in accordance with the Constitution, laws and other regulations and general acts, as well as with the ratified international agreements and generally accepted rules from the international law. The Protector of Citizens controls legality, but also the regularity of the work of the administrative bodies and public institutions. In its practical work, the Protector of Citizens is guided by the principle of fairness within the positive law.

The Protector of Citizens controls the work of the state administrative body authorised for legal protection of property rights and interests of the Republic of Serbia, and other bodies and organisations, enterprises and institutions which have been delegated public authority (administrative authorities and public institutions). According to the provisions of the Constitution and the Law on the Protector of Citizens, the Protector of Citizens has not the power to control the work of the National Assembly, President of Republic, Government of Serbia, Constitutional Court, courts and public prosecutor's offices.

The Protector of Citizens has the power to propose new laws with the National Assembly. Also, it has the power to launch the initiative for the amendment of laws, other regulations and general acts, as well as to launch the initiative for new laws, other regulations and general acts. And the Government, or the competent Committee of the National Assembly, is obliged to consider the initiatives of the Protector of Citizens. In the process of drafting the regulations, the Protector of Citizens has the power to give his opinion to the Government and National Assembly on draft laws and regulations. The Protector of Citizens has four deputies, one of which is specialised in the field of gender equality.

In cases of domestic violence, the Protector of Citizens initiates and runs procedures in order to control the legality and regularity of the work of the administrative bodies, upon its own initiative or upon citizens' complaints. Except for courts and public prosecutor's offices all other administrative organs involved in the procedure regarding domestic violence are subject to control by the Protector of Citizens (police, social protection centres, health care centres, educational and pedagogical institutions, bodies of the local self-government units, Republic authorities, institutions rendering services, etc.).

E. Please detail the procedures in place to ensure that:

1. incidents of violence against women are taken into account in the **determination of custody and visitation rights of children** (Article 31, paragraph 1) as a superseding concern;
2. women victims and their children remain safe from any further harm in the **exercise of any visitation or custody rights** (Article 31, paragraph 2).

Please provide examples of how these procedures have been implemented.

Resolution by the Parliamentary Assembly 1959/13 on strengthening the institution of ombudsman in Europe, available on <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20232&lang=en>;

Recommendation by the Parliamentary Assembly 1615/03 on the institution of ombudsman, available on: <http://assembly.coe.int/main.asp?link=/documents/adoptedtext/ta03/erec1615.htm>;

Venice Commission of the Council of Europe, Compilation of documents on the institution of ombudsman, available on: [http://www.venice.coe.int/webforms/documents/CDL\(2011\)079-e.aspx](http://www.venice.coe.int/webforms/documents/CDL(2011)079-e.aspx).

Resolution by the UN General Assembly YH48/134, the so called „Paris Principals“, available at: <http://www.un.org/documents/ga/res/48/a48r134.htm>.

Answer: Although in its numerous control procedures and other activities the Protector of Citizens pointed out that the very exposure of children to domestic violence makes a child a victim of abuse and neglect, the competent bodies do not attach necessary weight to domestic violence when evaluating the best interests of children. By not recognising the victim-of-violence status to children, who suffer grave and often unmendable consequences regarding their welfare and development, the competent bodies and institutions fail to provide them urgent protection and to undertake all available measures to recover the children from the experienced violence and to rehabilitate and reintegrate them. There are not few cases in which the custody and guardianship bodies recommend that children should be placed in the custody of the parent-violence perpetrator without previous thorough evaluation of the best child's interests and ignoring all the facts proving domestic violence, and even court decisions. Not enough importance has been attached to violence neither in making proposals or decisions on the way of organising personal relationships, so the contacts of children with the parent-violence perpetrator are carried out in a way which does not protect the parent-victim of domestic violence. In 2017, in two cases victims of violence were murdered in the premises of the custody and guardianship bodies during the contact between a child and the parent-violence perpetrator, and in one case the violence perpetrator also killed the child.

When evaluating the best interests of children, the aspect of children's exposure to (emotional and other forms of) abuse and neglect is often ignored. Evaluations of risk from transferring the violent behavioural pattern, and violence itself, to the parent-child relationship have not been carried out either.

F. Please indicate how your internal law criminalises the following forms of violence:

1. **psychological violence**, as defined in Article 33;
2. **stalking**, as defined in Article 34;
3. **physical violence**, as defined in Article 35;
4. **sexual violence, including rape**, as defined in Article 36, paragraph 1, having due regard to the definition of consent under Article 36, paragraph 2.

Answer of the Protector of Citizens: The Criminal Code is not fully compliant with the international standards. The criminal offence of rape is not precisely defined and it does not include penetration of other part of male body which is not male sexual organ or penetration of an object. In cases of penetration of other part of male body, or an object, court and prosecutor's office practice had a stance that such activity of the perpetrator represents a prohibited sexual act and not sexual intercourse or an act equal to sexual intercourse, regardless of the fact that – except for the body part/object used – this act contained all the elements of sexual intercourse and its consequences.

In its Initiative for Amending the Criminal Code in the field of criminal legal protection of victims of domestic violence and sexual abuse, submitted on two occasions (in 2011 and 2012), the Protector of Citizens proposed that this criminal offence should be redefined in compliance with the provisions of Convention on Preventing and Combating Violence against Women and Domestic Violence. This Initiative by the protector of Citizens has not been adopted to date, and the criminal offence of rape and other criminal offences against sexual freedom are not harmonised with article 36 of the Convention.

In 2013, the Republic of Serbia adopted the Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors, which stipulated a separate and more rigorous legal regime to be applied to acts against sexual freedom carried out against minors. Thus, the Initiative by the Protector of Citizens for Amending the Criminal Code was partly implemented. By introducing the criminal offences of stalking, sexual harassment and Female genital mutilation this Initiative by the Protector of Citizens has also been adopted.

However, the Criminal Code stipulates that criminal offences of *incest* and *marital union with a minor*, although in their essence they represent sexual activities with a child (a minor), they are not criminal offences against sexual freedom⁶⁶, so there is no possibility to apply the *Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors*, because it stipulates that it shall be applied „to the perpetrators of the criminal offence against sexual freedom committed against minors“⁶⁷.

The criminal offence *prohibited sexual acts* is still punishable by fines and a short-term imprisonment sentence, and is therefore eligible for release on parole and delayed criminal prosecution (criminal prosecution has not been launched if the perpetrator carries out some of the prescribed obligations)⁶⁸. This is also the case when this criminal offence was carried out against a child. Prohibited sexual acts are very frequent, if not the most frequent form of sexual abuse against a child.

In its Initiative submitted in 2011 and 2012, the Protector of Citizens requested that adequate amendments of the Criminal Code be made regarding these criminal offences, but the Initiative has not been adopted in this part to date.

Please also indicate how your internal law criminalises acts of sexual violence, including rape, committed against former or current spouses or partners (Article 36, paragraph 3).

Please specify the age, under your internal law, at which a person is considered to be legally competent to consent to sexual acts;

5. **forced marriage**, as defined in Article 37;

6. **female genital mutilation** as defined in Article 38;

Answer of the Protector of Citizens: The Initiative launched by the Protector of Citizens to extend by the amendments and supplements to the Civil Code the term 'family member' is partially adopted by extending it to the wider circle of relatives, former spouses and their children and parents. However, the Criminal Code set the condition for these persons to live together in the same household.

The Protector of Citizens proposed in the above mentioned Initiative that the term 'family member' also includes spouses, former spouses, children, parents and other blood relatives, parents-in-law, adoptive parents and adopted children, foster parents and foster children, persons who live or have lived together in the same household, common-law partners, former common-law partners, persons who have been or still are in an emotional or sexual relationship, or who have a child together or the child is going to be born, although they have never lived together in the same household, starting from the fact that these are the very persons who in practice appear to be the perpetrators of domestic violence, or the victims of domestic violence. The Protector of Citizens pointed out that the violence in the family often does not imply that the victim and the perpetrator live together in the same household, but that they are in a family relation and a specific personal relation instead. International and national research and practice show that violence continues, even intensifies when the victim files for divorce, or divorces the perpetrator or leaves the same household, which has not been recognised by the existing definition of the term 'family member' in the Criminal Code.

G. How does your internal law criminalise or otherwise address sexual harassment, as defined in Article 40?

⁶⁶ Criminal offence of incest described in Article 197, common-law marriage with a minor, Article 190, and criminal offences against sexual freedom included by the provisions of Articles 178-1856 of the Criminal Code.

⁶⁷ Article 3 of the Law on Special Measures for Preventing Criminal Offences against Sexual Freedom toward Minors

⁶⁸ Article 283 of the Code of Criminal Procedure („Official Gazette of RS“ Issue Nos. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14).

Answer of the Protector of Citizens: See the previous reply of the Protector of Citizens.

L. For each form of violence covered by the Convention, please specify:

b. the withdrawal of parental rights, if the best interests of the child, which may include the safety of the woman victim, cannot be guaranteed in any other way (Article 45, paragraph 2).

Answer of the Protector of Citizens: Stated in a previous reply.

VI. Investigation, prosecution and procedural law and protective measures

(Chapter VI of the Convention, Articles 49 to 58)

J. Please provide details on the availability of **free legal aid for women victims**, as required by Article 57, including eligibility criteria.

Answer of the Protector of Citizens: The Protector of Citizens in its regular annual reports points out that equal access to justice has not been provided for all people and that the citizens' right to free legal aid has not yet been regulated; it repeats the recommendation that the Government should propose, and the national Assembly should pass the law which regulates rendering of free legal aid, whereby they should keep in mind the following categories of beneficiaries: persons in vulnerable position, in particular women and children, LGBTI people and victims of violence and human trafficking.

VII. Migration and asylum

(Chapter VII of the Convention, Articles 59 to 61)

C. Please indicate steps taken to develop:

- a. gender-sensitive reception procedures and support services for asylum seekers;
- b. gender guidelines;

Answer of the Protector of Citizens: The Protector of Citizens took part in the preparation of the Standard Operational Procedures for the prevention of and response to gender-based violence in the asylum centres and/or in reception centres, in co-ordination with the United Nations Population Fund (UNFPA)