

HUMAN RIGHTS IN SERBIA

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HUMAN RIGHTS IN SERBIA 2016
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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Belgrade, 2017



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Abbreviations

- 2008–2015 Reports* – BCHR Annual Reports on Human Rights in the Serbia
- Action Plan – for the Realisation of National Minority Rights
- ADA – Administrative Disputes Act
- AEAD – Act on the Election of Assembly Deputies
- ANEM – Association of Independent Electronic Media
- SROP – At-risk-of-poverty rate
- APV – Autonomous Province of Vojvodina
- Belgrade Waterfront – Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project
- BFPE – Belgrade Fund for Political Excellence
- BiH – Bosnia and Herzegovina
- BIRN – Balkan Investigative Reporting Network
- BPS – Belgrade Border Police Station
- CaT – UN Committee against Torture
- CC – Criminal Code
- CCA – Constitutional Court Act
- CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
- CINS – Centre of Investigative Journalism of Serbia
- CEPRIS – Centre for Legal Research
- CESCR – Committee for Economic, Social and Cultural Rights
- Chapter 23 Action Plan – Action Plan for Chapter 23, Republic of Serbia Negotiation Group for Chapter 23
- CINS – Centre of Investigative Journalism of Serbia
- CoE – Council of Europe
- CoE Framework – Council of Europe Framework Convention for the Protection of National Minorities CoE Framework Convention
- CPA – Civil Procedure Act
- Commissioner – Commissioner for Information of Public Importance and Personal Data Protection

- CPC – Criminal Procedure Code
- CPRD – UN Convention on the Rights of Persons with Disabilities
- CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CRTA-GnS – Citizens on Watch
- Concluding Observations – Concluding Observations on the initial report of Serbia on the implementation of the CRPD
- CSM – Community of Serb majority municipalities
- CUPS – Centre for Advanced Legal Studies
- DEVD – Decision on the Election of AP Vojvodina Assembly Deputies
- doc. UN – UN document
- DS – Democratic Party
- DSS – Democratic Party of Serbia
- EC – European Commission
- ECHR – European Convention for Human Rights
- ECmHR – European Commission of Human Rights
- ECRI – CoE Commission against Racism and Intolerance
- ECtHR/ECHR – European Court of Human Rights
- EMRA – Electronic Media Regulatory Authority
- ESC – Revised European Social Charter
- ESPR – Employment and Social Reform
- EU – European Union
- FA – Family Act
- FAIPIA – Free Access to Information of Public Importance Act
- Fee Collection Act – Act on the Temporary Regulation of Public Media Service Licence Fee Collection
- FNRJ – Federal People’s Republic of Yugoslavia
- FREN – Foundation for the Advancement of Economics
- FRY – The Federal Republic of Yugoslavia
- FYROM – Former Yugoslav Republic of Macedonia
- GAPA – General Administrative Procedure Act
- GDP – Gross Domestic Product
- GSA – Gay Straight Alliance

- HCA – Health Care Act
HIA – Health Insurance Act
HJC – High Judicial Council
HLC – Humanitarian Law Centre
Housing Act – Housing and Maintenance of Residential Buildings Act
HRA – UN Human Rights Adviser
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICTY – International Criminal Tribunal for the Former Yugoslavia
IEP – Individual Education Plan
IJAS/NUNS – Independent Journalists’ Association of Serbia
ILO – International Labor Organization
IMF – International Monetary Fund
JASU/UNS – Journalists’ Association of Serbia
LA – Labour Act
LDP – Liberal Democratic Party
LEA – Local Elections Act
LGBTI – Lesbian, gay, bisexual, transgender and intersex persons
LSV – League of Socialists of Vojvodina
LSGs – Local self-governments
MDRI-S – Mental Disability Rights Initiative – Serbia
Media Strategy – Strategy for the Development of the Public Information System in the Republic of Serbia until 2016
MIA – Ministry of Internal Affairs
Minority Protection – Act on the Protection of Rights and Freedoms of National Minorities
MSPALSG – Ministry of State Administration and Local Self-Governments
NCNMA – National Councils of National Minorities Act
NCPA – Non-Contentious Procedure Act
NCS Professional Council – Professional Council of the Notary Chamber of Serbia
NES – National Employment Service

- NGO – Non-government organisation
- NHEC – National Higher Education Council
- NJRS – National Judicial Reform Strategy
- NPM – National Preventive Mechanism against Torture
- NQFS – National Qualifications Framework in Serbia
- NVAEC – National Vocational and Adult Education Council
- ODIHR – Office for Democratic Institutions and Human Rights
- OSCE – Organization for Security and Cooperation in Europe
- OSCE LEOM – OSCE Limited Election Observation Mission
- PDPA – Personal Data Protection Act
- Property Act – The Act on the Bases of Ownership and Proprietary Relations
- PSEA – Penal Sanctions Enforcement Act
- RBA – Republican Broadcasting Agency
- RHIF – Republican Health Insurance Fund
- RS – Republic of Serbia
- REC – Republican Election Commission
- Refugee Convention – Convention relating to the Status of Refugees
- Restitution Act – Restitution and Compensation Act
- RHIF – Republican Health Insurance Fund
- RPP – Republican Public Prosecutor
- RTS – Radio Television of Serbia
- RTV – Radio Television of Vojvodina
- RTSA – Road Traffic Safety Act
- SAI – State Audit Institution
- SaM – Serbia and Montenegro
- SDP – Socialist Democratic Party
- SFRJ/SFRY – Socialist Federal Republic of Yugoslavia
- Sl. glasnik – Official Gazette (of the SRS and, subsequently, the RS)
- Sl. list – Official Herald (of the SFRY and, subsequently, SaM)
- SIA – Security Intelligence Agency
- SIAA – Security Information Agency Act
- SIPRU – Social Inclusion and Poverty Reduction Unit

- SIS – Secret Intelligence Service
SNS – Serbian Progressive Party
SORS – Statistical Office of the Republic of Serbia
SPS – Socialist Party of Serbia
SPC – State Prosecutorial Council
SRJ/FRY – Federal Republic of Yugoslavia
SRS – Socialist Republic of Serbia
SRS – Serbian Radical Party
UN – United Nations
UNESCO – United Nations Educational, Scientific and Cultural Organization
UN OHCHR – United Nations Office of High Commissioner for Human Rights
UNESCO – United Nations Educational, Scientific and Cultural Organization
UNHCR – United Nations High Commissioner for Refugees
VBA – Military Security Agency
VOA – Military Intelligence Agency
Venice Commission – European Commission for Democracy through Law of the Council of Europe
WHO – World Health Organisation
YIHR – Initiative for Human Rights
YUCOM – Committee of Human Rights Lawyers

Preface

We would like to express our gratitude in this Preface to all BCHR associates involved in the timely preparation of this Report, who ensured that it comprise enough data and information relevant to a comprehensive analysis of the state of human rights in Serbia. This Report is the product of team work of all BCHR's associates, notably Milan Antonijević, Nikola Kovačević, Bogdan Krsić, Nikolina Milić, Nevena Nikolić, Nataša Nikolić, Gojko Pantović, Lena Petrović, Vesna Petrović, Vida Petrović Škero, Dušan Pokuševski, Dragan Popović, Ivan Protić, Aleksa Radonjić, Bojan Stojanović, Miloš Stojković, Anja Stefanović, Duška Tomanović, Ana Trifunović, Ana Trkulja and Sonja Tošković.

We would also like to express our gratitude to our many friends in the NGO sector, whose press releases and reactions to specific developments alerted both us and the public at large to the improvements and oversights of the state authorities regarding the respect for human rights. The information they shared with us was extremely useful for our analysis of the human rights situation in Serbia.

We would also like to express our gratitude to the independent regulatory authorities, our natural allies, whose annual reports and press releases we extensively perused during the preparation of this Report.

Our partners in state authorities also helped us take stock of the difficulties they encountered in their endeavours to fully enforce national law and international standards. We were also greatly assisted by some judicial and media professionals, as well as private individuals, whose advice and actions helped deepen our understanding of the problems Serbia has faced regarding the respect for human rights and consolidation of democracy during the years-long transition of the national institutions and society on the whole.

We also enjoyed the understanding and assistance of international organisations with offices in Serbia, the representatives of which have always been willing to help us and provide us with information relevant to our mission.

Finally, we would like to express our gratitude to the OSCE Mission to Serbia for financially supporting the translation of this Report into English for the third consecutive year and thus helping us make it available to foreign readers. We perceive this support as appreciation of our years-long endeavours to regularly monitor the human rights situation in Serbia and contribute to its advancement. The views expressed in this Report are those of its authors and do not necessarily reflect the views of the OSCE Mission to Serbia.

Please note that the masculine pronoun is used in the Report to refer to an antecedent that designates a person of either gender unless the Report specifically refers to a female. Both the authors of the Report and the BCHR advocate gender equality and in principle support gender neutral language.

Editor
Vesna Petrović

Research Methodology

The BCHR has applied the same methodology in the preparation of all its Annual Reports since 1998, adjusting it where necessary. The methodology is based on the analysis of all available sources shedding light on the state of human rights in Serbia.

In its Annual Reports, the BCHR has first and foremost been analysing in detail the valid and draft national law and its compliance with international instruments ratified by Serbia. Its analyses of the draft regulations are aimed at alerting experts to any shortcomings or inconsistencies in them with a view to improving them before they are enacted by the National Assembly.

In addition to systematically and continuously monitoring legislative activities and the conformity of national legislation with international standards, BCHR's associates have also been regularly monitoring news and information relating to human rights and reports by national and international human rights NGOs.

Since we believe that the independent regulatory authorities – the Protector of Citizens, the Commissioner for Access to Information of Public Importance and Personal Data Protection, the Commissioner for the Protection of Equality and the Anti-Corruption Agency – have been pursuing the mission they were established to fulfil – to improve the state of human rights in Serbia, we have also been regularly monitoring their reports, press releases and recommendations and analysing their impact on the practices of the public authorities.

With a view to comprehensively reviewing the human rights situation in Serbia, we have been perusing all available sources indicating the degree in which human rights are respected in practice. A large part of our research was based on information forwarded by public authorities in response to our requests for access to information of public importance and on our analysis of the practices of administrative authorities and courts. The reports and press releases of Serbian and international NGOs also proved to be valuable sources of information in our research. BCHR also perused information and press releases of professional associations.

The laws, which are still in force but were adopted before 2016, were analysed in the prior BCHR Annual Reports and are referenced for further perusal. Rather than providing final assessments, the Report mostly cites the information that appeared in the media or NGO reports and press releases during the reporting period.

The authors of this year's Report abandoned the prior practice of relying on media reports and monitoring the relevant information in five dailies and two

weeklies because most (but not all) of the print media were tabloid in character and published unverified information. BCHR's associates thus limited themselves to perusing verified information, more precisely, information of indisputable accuracy. Hence, this is the first BCHR Human Rights Report in nearly two decades that does not analyse the selected texts that appeared in the press.

Realisation of Human Rights in Serbia 2016 – Social and Political Setting

The social and political stage in Serbia in 2016 continued to be dominated by talks on Serbia's accession to the European Union (EU) and opening of talks on the *acquis* negotiating chapters, the Belgrade-Priština talks and the enforcement of the Brussels Agreement, relations in the Western Balkan region, the refugee crisis and responses to the challenges it brought, as well as the foreign policies of the political actors. The political and expert stakeholders and the media also showed interest in the economic, judicial and state administration reforms, which are crucial to Serbia's further progress and modernisation.

The April 2016 early parliamentary elections, scheduled to coincide with the regular local and provincial elections, were the third general elections held in Serbia in just five years. The Prime Minister explained that the decision to call the early parliamentary elections was taken because the Government needed full stability and a full four-year term in office, after which "there would be no turning back into the past". Many analysts were of the view that the early parliamentary elections were unnecessary as the ruling coalition already boasted a convincing majority in the National Assembly (the Prime Minister's Serbian Progressive Party (SNS) was in the majority both by itself and together with the other parties it ran with in 2014 – 135 and 158 out of 250 seats respectively). The decision to call early parliamentary elections was also attributed to SNS' wish to score well at the local and provincial elections, extend its rule for another two years and further weaken the opposition.

Numerous claims of irregularities were voiced during the election process. Observers assessed that the parties were not equally represented in the media and that the ruling party's senior officials abused their government offices to promote their parties. A number of irregularities were identified on election-day as well. News of assaults on political opponents were confirmed. Some opposition parties sharply criticised the work of the Republican Election Commission and alerted to irregularities during the counting of the votes.

The breakdown of deputies in the National Assembly changed after the elections. SNS won 27 votes less than in 2014. Two parties opposing Serbia's accession to the EU entered the parliament. The first, the Serbian Radical Party (SRS), led by Vojislav Šešelj, who was found not guilty by the International Criminal Tribunal for the Former Yugoslavia (ICTY) a month before the elections, won 8% of the votes. The nationalist and anti-European Democratic Party of Serbia (DSS) won 5% of the votes in coalition with *Dveri*. Serbia, therefore, again has a strong anti-EU opposition in parliament, for the first time since 2008. The opposition parties rallied in two coalitions and supporting Serbia's EU membership (the Democratic Party (DS), the Liberal

Democratic Party (LDP), the Socialist Democratic Party (SDP) and the League of Socialists of Vojvodina (LSV)) won slightly over 17% of the votes. The Enough is Enough movement, which won 6% of the votes, made its debut in parliament.

The Assembly deputies, both those before and those after the early parliamentary elections, adopted a total of 88 laws in 2016 – 23 new laws, 36 laws amending the existing laws and 29 laws ratifying international agreements and treaties. As many as 51 (59%) of these laws were adopted in an urgent procedure, i.e. in the absence of a proper public debate, although this legislative practice has been criticised for several years now. Another practice that persisted in 2016 was that only laws submitted for adoption by the Government were included in the Assembly agenda (the only two laws enacted in 2016 that were not proposed by the Government were submitted by the deputies of the ruling coalition). Sixty-seven of the 130 draft laws submitted to parliament for adoption since the new deputies took oath in June 2016 were proposed by opposition deputies; none of them were included in the Assembly agenda by the end of the reporting period.

Some of the laws adopted in 2016 that affect the enjoyment of human rights, e.g. the Act Amending the Act on Financing of Local Self-Governments, the new Housing Act, the Domestic Violence Prevention Act, et al, had been criticised before they were adopted. The effects of their enforcement could not, however, be analysed or measured because they were enacted at the end of the year. On the other hand, the Assembly Rules of Procedure, under which Assembly Committee sessions have to be called at least three days in advance and plenary Assembly sessions at least seven days in advance, were rarely complied with. The deputies often first saw the session agenda at the beginning of the session, and in some cases, were not distributed the material prerequisite for making an informed decision even at the beginning of the session, let alone beforehand.

The 26 penalties imposed on 17 deputies for disrupting order in the Assembly in 2016 (two of which were imposed against the deputies of the ruling majority and 24 against opposition deputies), reflected the ferocity of the Assembly debates since June 2016, often unbecomingly the highest legislature. The events at the session of the EU Accession Committee, to which the head of the EU Delegation to Serbia, Ambassador Michael Davenport, had been invited to present the European Commission's Serbia 2016 Report, perhaps best illustrate how the deputies perceive the important office they hold. At the very start, the session was interrupted by representatives of the Serbian Radical Party, headed by its leader Vojislav Šešelj, and *Dveri*, who, amongst other things, complained because a Serbian translation of the Report was unavailable. The session had to be adjourned because of the deputies' appalling behaviour. Although Assembly Speaker Maja Gojković said that the events had incurred damage to the parliament and confirmed that Davenport said he was willing to come to the Assembly again when the conditions were in place and the deputies were willing to discuss the Report, he was not invited again to the Assembly.

Euro-scepticism and resistance to radical reforms had existed earlier as well, but were never as obvious in the National Assembly as in 2016. Several reasons led to a change in the public opinion on the EU: serious disagreements within the EU, primarily over the migrant crisis, which it lacks a clear and common response to and the turmoil that ensued after Brexit, and the slowdown in EU enlargement to the Western Balkan countries. The increasingly strong anti-European propaganda in pro-government media and rising Russian influence in the Western Balkans in 2016, also played a role in cooling public enthusiasm for joining the EU.

The Prime Minister's repeated public vows that Serbia would not abandon either its goal of joining the EU or its friendly ties with Russia indicate that Serbia's foreign policy orientation is not absolutely clear yet. The West's support to Aleksandar Vučić has been based on the belief that he is capable of stabilising the relations in the region, notably Serbia's relations with Kosovo. He reassures them that is the case in an extremely conciliatory language he uses in communication with international stakeholders. He, however, does not mince his words on the domestic stage, often resorting to firebrand rhetoric and even insults against journalists asking him questions he does not want to answer.

On the other hand, the relations in the region were quite tense in 2016. The relations between Serbia and Croatia were aggravated by the fierce election campaign rhetoric in both countries, which did not abate after the ballots were cast, as had been expected. Tensions again grew in August, during the commemoration of the 21st anniversary of the Storm campaign. Croatia celebrates that day as its victory and a national holiday, while Serbia marks it as a Day of Remembrance of the Suffering and Persecution of Serbs. Aleksandar Vučić, the Prime Minister Designate at the time, and Bosnian Serb President Milorad Dodik were the keynote speakers at the central event held in the Busije settlement at Belgrade. Serbian politicians and media warned of the rise of Fascism and Ustasha feelings in Croatia, citing in illustration the rehabilitation of Catholic Cardinal Alojzije Stepinac, convicted for collaboration with the Nazis in WWII, the overturning of the judgment against General Branimir Glavaš for crimes against Serbs in Osijek in the 1990s, and the erection of a monument to Ustasha terrorist Miro Barešić. Their counterparts in Croatia retorted that Serbia should focus on the future, reminding it Croatia was a NATO member and would not let Serbia preach to it.

Serbia's relations with Bosnia and Herzegovina (BiH) were not smooth in 2016 either. Tensions again grew as the anniversary of the Srebrenica genocide in July drew closer, as well as in the run-up to the referendum in the Bosnian Serb Republic on whether 9 January should be a state holiday, Republika Srpska Day, although the BiH Constitutional Court found the decision unconstitutional. The referendum greatly exacerbated the already fragile relations in BiH.

The talks between Belgrade and Priština have been going on for several years now, but the two sides have been taking a long time reaching agreement on various issues. Their dialogue is burdened by huge mutual mistrust and nearly irreconcilable views. The establishment of the Association/Community of Serb majority mu-

nicipalities (CSM) was the main bone of contention in 2016. Tensions in relations between Belgrade and Priština deepened as no headway was made in implementing the 2015 agreement on the general principles of establishing the CSM. Aware of the fact that the full normalisation of relations between Serbia and Kosovo is an important prerequisite for Serbia's accession to the EU, as well as for Priština's relations with Brussels, officials in both capitals confirmed that they would continue their dialogue.

Serbia and the EU opened talks on four new negotiating chapters in 2016. Negotiations on Chapter 23 (judiciary and fundamental rights) and Chapter 24 (justice, freedom and security) opened in July. The talks on Chapter 5 (public procurement) and Chapter 25 (science and research) opened in December at the intergovernmental conference in Brussels, at which the talks on Chapter 25 were immediately closed. In sum, six negotiating chapters were opened by the end of 2016 since the process of harmonisation with EU norms and standards was launched in December 2015, when talks were opened on two chapters – Chapter 35 (normalisation of relations with Priština) and Chapter 32 (financial control).

There is, however, no doubt that the transition process is not over and that the state needs to implement radical reforms in many areas as soon as possible, not only in light of Serbia's ambition to join the EU, but also to improve the social, economic and political prerequisites for the realisation of the principles of the rule of law and respect for human rights, and to advance its fight against poverty and improve the social and economic status of its citizens.

Living standards of Serbia's citizens did not improve in 2016, despite praises sung to the state's economic moves. All surveys reflect the citizens' disgruntlement with the lack of jobs and extremely low wages that cannot satisfy their basic needs. While the Labour Force Survey results indicate extremely high employment growth, much higher than the growth of production, which is the result of the changes in the survey methodology, the data of the Central Mandatory Social Insurance Register show a much lower employment rate. Wages rose negligibly in 2016 (by 2.5–3%) and the trend is expected to continue in 2017.

Statistical data indicate that Serbia achieved relatively good economic results in 2016. Economic activity and employment grew, fiscal deficit was reduced and inflation was low. The 2.7% GDP growth rate, although relatively satisfactory, lagged behind the average in the region and was much lower than in the 2002–2008 period, when it stood at around 6%. Specific Government measures led to economic growth, which can also be attributed to favourable international circumstances, the growth of imports of EU countries, the global drop in the prices of petrol and low interest rates on EUR loans.

Economists, however, warned that international circumstances might change easily and quickly and that the Government had to continue implementing a responsible fiscal policy. Economic analysts continued warning that Serbia's public debt was still excessive (standing at around 75% GDP) and that no time should be wasted in addressing the structural problems in the coming years. They also stressed that

the implementation of the reforms nearly halted in 2016, that hardly any headway had been made in improving the efficiency of the public sector and that the huge debts of non-privatised state companies were burdening the budget and generating fiscal risks. Reforms of the judiciary and the health and education systems also slowed down and the shadow economy was not countered.

Serbia's economic growth lagged behind that of the other countries in the region, mostly due to fiscal consolidation, wherefore an increase in investments in 2017 is crucial, as Serbia also ranks last in the region when it comes to the share of investment in its GDP. The economy will grow in the long term if the Government improves the investment environment and increases the share of investment in the GDP.

To achieve this Serbia will not only have to take the legal and economic measures, but fiercely fight against corruption at all levels as well. However, there are no data demonstrating that major headway in combatting corruption was achieved in 2016. On the contrary, the state missed numerous opportunities to improve the laws comprising corruptive elements. The opportunity to penalise corruption more efficiently was missed when the Criminal Code was amended, the institutions charged with enforcing anti-corruption measures were not strengthened and corruption cases were prosecuted extremely rarely due to the insufficient activity on part of the prosecutors and the ineffectiveness of the judiciary. The situation was exacerbated by the politicians' frequent comments about the ongoing investigations, publicly perceived as strong political influence on the police, prosecutors and even on the judges.

Warnings about the huge political influence on appointments to senior offices have gone unheeded for years now and the public sector has not been depoliticised yet, greatly undermining trust in the seriousness of the Government's declared commitment to reform and professionalization of the public services. On the other hand, pressures on independent regulatory authorities, especially the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, continued and even increased in 2016. Every criticism they voiced about the work of the state authorities was described as a power struggle or an attack on the state. Such views were mostly articulated by the tabloids, but also by some senior government officials and National Assembly deputies. Increasing public trust in these institutions, despite the authorities' attitude, is corroborated not only by views stated in public opinion polls but also by the fact that the number of citizens reporting discrimination or corruption and complaining about violations of their rights to the independent regulatory authorities has steadily been growing every year.

Serbia is also to launch a constitutional reform, given that the Chapter 23 Action Plan provides for the amendment of the valid Constitution or the adoption of a new one in 2017. The constitutional reform is not only necessary to align Serbia's law with EU standards. It is also requisite for numerous reasons directly impacting on the protection of the constitutionally guaranteed rights of Serbia's citizens. Serbia, notably, needs to improve the constitutional provisions on judicial independ-

ence, as the constitutional framework leaves room for strong political influence on the election and appointment of judges and prosecutors. The constitutional reform must be approached seriously. It has to entail the involvement of all the relevant stakeholders in the drafting of the amendments to the valid Constitution or the text of the new one, consultations with experts and a broad public debate. This is particularly important if one recalls that practically no public debate preceded the adoption of the 2006 Constitution and that the Assembly deputies first saw the draft two hours before they voted on it, as well as the fact that the Venice Commission said that the way in which the 2006 Constitution was adopted raised questions of the legitimacy of the text with respect to the general public.

Finally, it should be borne in mind that media freedoms and free access to information are prerequisite for building free and critical thinking. These freedoms were vitally endangered in Serbia, according to most of the public, Serbian press associations and international organisations focusing on these freedoms, as well as EU officials. The analysis of the situation in the media leads to the conclusion that the negative years-long trends further deteriorated in 2016. Despite the declared commitment to withdraw from the media, political and economic power centres practically increased their influence on them, resorting to increasingly crass methods. The economic status of the media was worse than in 2015, despite the introduction of media project co-funding. Loyalty and servility to the ruling coalition and its leader were practically the only way to access the funds. The situation, exacerbated by greater censorship and self-censorship, has led to the rapid demise of journalistic professionalism.

All this gives rise to concerns, especially when one bears in mind that presidential elections are due in 2017 and talk of simultaneously holding yet another round of parliamentary elections. Experience has shown that the media are even more abused during election campaigns and that pro-Government newspapers and TV stations are used to wage negative campaigns against political opponents. Furthermore, the citizens are less and less convinced that changes can be effected at elections; there is hardly any room for genuine public debates, the principles of democratic pluralism have dissipated in the news imposed by the government on a daily basis, increasing popular disappointment in the outcome of the democratic changes. The building of democratic institutions has been brought into question in the past few years and the government's successful propaganda has resulted in the weakening of both political and all other opposition in the country.

The impression, remains that politicians in Serbia, primarily Aleksandar Vučić, fulfilled only a few of the huge promises they made during the election campaign in the spring of 2016. There is no reason to doubt that the 2017 campaign will be any different and that many promises will be made. It remains to be seen whether most of Serbia's voters are prepared to wait for the promised results and for how long. It will be particularly dangerous if the candidates, both those in power and in the opposition, resort to nationalist rhetoric, like their counterparts in the region did in 2016.

SUMMARY

International Human Rights Bodies and Serbia

1. All major universal human rights treaties are binding on Serbia. In April 2016, Serbia's delegation presented its initial report on the implementation of the Convention on the Rights of Persons with Disabilities and also submitted its second and third period report to the Committee on the Elimination of All Forms of Racial Discrimination, which will review it at its November 2017 session. Serbia's second and third periodic reports on the Convention on the Rights of the Child are to be submitted January 2017. The Human Rights Committee is to review Serbia's report and its replies to the list of questions in March 2017. At its November 2017 session, the Committee against Torture will review Serbia's replies to a list of questions. Serbia is under the obligation to submit its report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women to the relevant Committee in July 2017.

2. Serbia has been a member of the Council of Europe since 2003 and it ratified the European Convention on Human Rights (ECHR) in 2004. The European Court of Human Rights (ECtHR) in 2016 ruled on 66 applications against Serbia and declared inadmissible or struck out 1,220 of them. The ECtHR delivered 21 judgments with respect to Serbia and found Serbia in violation of at least one right under the Convention in 19 of them. The European Court adopted six interim measures with respect to Serbia in 2016, two of them regarding the return of aliens to FYROM. An expert mission of the CoE Commission against Racism and Intolerance (ECRI) paid a visit to Serbia from 26 to 30 September 2016. In May 2016, Serbia notified the ECRI Secretariat of the implementation of ECRI's 2011 recommendations.

Human Rights in National Legislation

1. Articles 18–81 of the Constitution of the Republic of Serbia are devoted to human rights. That section of the Constitution is divided into three parts: fundamental principles (Arts. 18–22), fundamental human rights and freedoms (Arts. 23–74) and rights of persons belonging to national minorities (Arts. 75–81).

2. The Constitution lays down conditions under which human and minority rights may be restricted, but does not allow such restrictions to impinge on their essence and sets out lays down the obligation of the state authorities to take into account the essence of the right subject to restriction, the importance of the pur-

pose of restriction, the nature and scope of the restriction, the proportionality of the restriction vis-à-vis its purpose, as well as consider the possibility of fulfilling this purpose by a lesser restriction of the right.

3. The Constitution lays down that the exercise of individual rights and freedoms may be prescribed by law when so expressly envisaged by the Constitution and necessary to ensure the exercise of an individual right owing to its character. Derogations of specific human rights during a state of war or emergency are in accordance with Article 4 of the ICCPR and Article 15 of the ECHR, which allow derogations in time of a public emergency threatening the life of the nation.

4. Everyone claiming protection of all human rights enshrined in the Constitution may file a constitutional appeal with the Constitutional Court provided they have exhausted all other legal remedies or such remedies do not exist.

Constitutional reform

1. Under the Chapter 23 Action Plan, a new Constitution is to be adopted in the last quarter of 2017. The hitherto activities lead to the impression that this deadline will be missed since the authorities did not send the draft text to the Venice Commission for comment in the third quarter of 2016, as specified in the Chapter 23 Action Plan, or by the end of the year, for that matter.

2. The changes that will crucially affect human rights safeguards regard the judiciary; a new constitutional framework guaranteeing its independence, impartiality and efficiency has to be put in place. This calls for the amendment of the constitutional provisions on judicial appointment and termination as soon as possible because the National Assembly plays an important role in the election of judges and prosecutors, which facilitates political influence on appointments.

3. This will require changing the composition of the High Judicial Council and the State Prosecutorial Council, charged with judicial and prosecutorial appointments. The autonomy of the public prosecution services is undermined by the current procedure for appointing the Republican Public Prosecutor, who is nominated by the Government and elected by the National Assembly, provided the relevant Assembly committee endorses his candidacy.

4. The office of Supreme Court of Cassation President is politicised also by the procedure for his election. The Court President is elected by the National Assembly. He is nominated by the High Judicial Council (all the members of which are directly or indirectly elected by the National Assembly) and his candidacy must be endorsed by the Supreme Court of Cassation plenary session and the relevant National Assembly Committee.

5. The prohibition of the freedom of assembly, one of the chief political freedoms, needs to be defined more precisely in the new Constitution. Notably, the latter needs to specify which authority is charged with prohibiting assemblies and

how the prohibition is regulated. Constitution guarantees the freedom of assembly only to nationals, but not to non-nationals. Most European Constitutions guarantee the freedom of assembly to everyone.

6. The constitutional provisions on the right to legal aid need to be aligned with the situation on the ground due to the fact that legal aid is provided by civic associations, law school legal clinics and trade unions. The Constitution specifies that it shall be extended only by attorneydom, as an independent and autonomous service, and legal aid offices established in local self-government units in accordance with the law.

7. One of the issues likely to arise during the debate on the Constitution is its Preamble, in which Kosovo and Metohija is defined as an integral part of the Republic of Serbia enjoying substantial autonomy. Kosovo declared independence in 2008 and Belgrade and Priština have for several years now been negotiating the resolution of a number of outstanding issues.

8. The Constitution does not envisage transfer of powers to international organisations. Serbia's accession to the EU will require of it to amend its Constitution like many EU Member States have, i.e. to introduce a new provision allowing transfer of part of its sovereign powers to international or supranational organisations i.e. giving EU law supremacy over national law.

Legal Remedies Provided by the Serbian Legal System

1. All Serbian procedural laws provide for ordinary and extraordinary legal remedies. Citizens are guaranteed the right to appeal any decision of a first-instance civil court according to the Civil Procedure Act (CPA), under which a motion for the review of a final judgment is an extraordinary legal remedy. The CPA exceptionally allows a review on points of law of a judgment that cannot be challenged in a review if, in the view of the Supreme Court of Cassation, such a review is necessary to rule on view legal issues of general interest or in the interest of equality of the citizens, to align case law, and in case of the need to reinterpret the law (special review).

2. Under the provisions of procedural laws, an ECtHR judgment may be grounds for retrial. The CPA provides for a retrial of a case in which a final decision has been rendered upon the motion of a party in the event it acquires the opportunity to invoke an ECtHR judgment establishing a human rights violation and which may result in the adoption of a decision more favourable for that party.

3. The Criminal Procedure Code (CPC) envisages the right of appeal, but does not include a provision under which an international court decision may be grounds for a retrial. CPC Code provides for the submission of a motion for the protection of legality in the event it is established by a decision of the ECtHR or the Constitutional Court that a human right or freedom of the defendant or another

participant in the proceedings enshrined in the Constitution or the ECHR and the Protocols thereto had been violated or denied by the final judgment or a prior decision rendered in the course of the proceedings.

4. Provisions governing the right of appeal can be found in the General Administrative Procedure Act, the Non-Contentious Procedure Act and the Act on the Enforcement and Security of Claims.

5. Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations vested with public powers and violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have been exhausted or do not exist.

6. The Constitutional Court may overturn decisions of lower courts when it finds them in violation of human rights. The Constitutional Court is entitled to award compensation for damages in its decisions finding violations of human rights in the event the appellants had claimed compensation in their constitutional appeals.

Activities of State and Independent Authorities Charged with Protecting Constitutionality and Human Rights

1. The Constitutional Court of Serbia is charged with the judicial control of the compliance of Serbia's law with its international obligations. Under Article 167 of the Constitutional Court Act, this Court shall rule on "compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties" and "compliance of ratified international treaties with the Constitution".

2. The Constitutional Court shall have fifteen judges appointed to nine-year terms of office. The terms in office of nine Constitutional Court judges expired on 12 December. On 16 December, the National Assembly elected four judges from among the candidates nominated by the Serbian President, while the President elected five judges from among the Assembly list of candidates put together in an urgent procedure. The nine new judges were sworn into office on 23 December.

3. Elections of Constitutional Court judges were conducted in the absence of clearly defined rules and criteria transparently demonstrating that the successful candidates were eminent legal professionals, and the Venice Commission's recommendation that the procedure for electing and appointing Constitutional Court judges had to secure guarantees of independence went unheeded.

4. When the Constitutional Court finds that the challenged individual enactment or action violated or denied a human or minority right or freedom enshrined in the Constitution, it is entitled to repeal the individual enactment, prohibit the further commission of the action or order another measure to reverse the negative effects of the violation or denial of the guaranteed rights and freedoms, and award just satisfaction to the applicant.

5. The Constitutional Court is practically assuming the role of the court of last instance by applying this provision since it rules on whether the law was properly applied and issues orders not related merely to the elimination of the human rights violations it finds. The case law of the Constitutional Court, which has been overturning numerous court decisions, demonstrates that its jurisdiction has expanded, wherefore Constitutional Court judges must also be secured guarantees of judicial independence.

Judiciary and Human Rights Protection – Reach of the Judicial Reform

1. Serbia opened talks on Chapter 23 in July 2016. The EC said that Serbia should, in the coming year, in particular, implement and consolidate the ongoing justice reform process, tackling issues related to the independence, accountability and effectiveness of the judicial system; establish an initial track record of investigation, prosecution and final convictions in corruption cases, particularly in high-level ones; and ensure conditions for the full exercise of freedom of expression.

2. The Constitution establishes the High Judicial Council (HJC) charged with nominating judges to be elected on permanent tenure. Judges shall be elected to their first three-year terms in office by the National Assembly at the proposal of the HJC, The HJC in November adopted the Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Judges on Three-Year Tenure and the Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Judges on Permanent Tenure to be Appointed to Other or Higher Courts and Criteria for Nominating Candidates for the Office of Court President.

3. The sustainability of the court network calls for continuous analyses of its efficiency and access to justice. A mid-term assessment of the new court network, in terms of costs, state of the infrastructure, efficiency and access to justice was not completed in 2016 as planned. The courts in the territory of the City of Belgrade moved for the third time in seven years in 2016.

4. The Anti-Corruption Council concluded that the gap between the number of cases and the number of judges and prosecutors indicated that the latter had not been set on the basis of objective criteria. The Council warned that the prosecutors' independence had to be secured, especially in view of the fact that they had assumed some of the courts' powers when prosecutorial investigation was introduced.

5. The Council found that the judicial institutions, on the one hand, lacked funding to regularly perform their duties, while, on the other, the costs sustained by citizens seeking justice were excessive considering the standard of living. The Council noted that the number of administrative staff in courts and prosecution services was insufficient and affected the efficiency of the judges and prosecutors.

6. The disciplinary liability of judges is regulated by Chapter VII of the Act on Judges. According to the HJC's 2015 Annual Report, it ruled on 13 appeals of Disciplinary Commission decisions; in seven cases, it upheld the appeals and reversed the Disciplinary Commission's rulings, while, in the remaining six cases, it dismissed the appeals and upheld the Disciplinary Commission's rulings.

7. Financial dependence on other branches of government definitely affects judicial independence. Under the Chapter 23 Action Plan, the Ministry of Justice is to transfer full responsibility for the management of the judicial budget to the HJC and State Prosecutorial Council (SPC) in the second quarter of 2016. but the transfer of all powers was postponed to 1 January 2018.

8. Under the Constitution, the public prosecution services shall be autonomous state authorities charged with prosecuting the perpetrators of criminal and other punishable offences and taking measures to protect constitutionality and legality. Experts have repeatedly warned that the constitutional provisions governing the status of public prosecutors were weak and that they had to be amended during the revision of the Constitution. The autonomy of the prosecutors can clearly be secured through the prosecutorial appointment procedure, which needs to be changed. Under the valid regulation on the election of public prosecutors and deputy public prosecutors, the Government, which nominates them, is unfortunately under no obligation to nominate candidates from the list the State Prosecutorial Council qualified as the best ones, or to explain why it endorsed those who were more poorly ranked, thus relativising the SPC's appraisal of the candidates and rendering senseless its role in the election process.

9. The Constitution provides for the autonomy of public prosecutors, but not their independence. The authors of the forthcoming constitutional amendments might wish to consider approximating the status of prosecutors to that of judges, given that, under the changes in the criminal procedure system, the role of prosecutors in specific segments entails also the performance of specific procedural actions *de facto* approximating them to the performance of judicial powers.

10. The relationship between the public prosecution offices and the police also needs to be regulated more thoroughly to ensure that the prosecutors perform their duties more efficiently. Public prosecutors may order the police to take specific steps to uncover crimes and find the suspects. The police are under the duty to fulfil the prosecutors' orders and regularly notify them of the steps they have taken. The powers vested in the public prosecutors, however, do not facilitate their full performance of their executive duties in the initial stages of the proceedings and they do not have enough mechanisms to influence the work of the police.

11. The public prosecutors of the Basic and Higher Public Prosecution Services, who were not elected in 2015, were not elected by end November 2016 either. In September 2016, the SPC forwarded to the Government the list of candidates for prosecutorial offices in 25 Basic and Higher Prosecution Offices and for the post of War Crimes Prosecutor, asking it to review the list at its next session.

12. The National Assembly has not elected the new War Crimes Prosecutor for two years now. It did not even include this item in its agenda, after none of the candidates won a majority vote at its session in December 2016 although the relevant ministers had claimed that this would be one of the priorities after the National Assembly was constituted and the Government elected and despite the fact that the SPC forwarded the list of candidates to the Government in late September and called on it to elect the prosecutors as soon as possible.

13. The Analysis of the Requisite Number of Deputy Public Prosecutors in Public Prosecution Services in Serbia was prepared by a working group formed by the SPC. Entry into force of the new CPC and the transfer of the entire investigation proceedings to the public prosecutors had led to a substantial increase in their workloads. The conclusion is that public prosecution services at the moment lack 114 deputy public prosecutors. The public prosecution services were staggering under their workloads; in 53% of the Basic Public Prosecution Services, the deputy public prosecutors were handling over 1,000 cases altogether.

14. The improvement of the dismal situation and working conditions in the public prosecution services calls for amending the Act on the Organisation of Courts, the Public Prosecution Services Act, the rulebooks on public prosecution service administration and determining how much staff they need, and for increasing the number of prosecutorial assistants in services with large backlogs. The authorities also have to adopt a backlog reduction programme and a new staffing regulation providing for more deputy public prosecutors, fill the current vacancies and facilitate the secondment and transfer of deputy public prosecutors. Thirty-six vacancies in the Basic and Higher Public Prosecution Services in Serbia need to be filled urgently and 58 new deputy prosecutorial posts have to be opened.

15. Professional and civic associations, as well as the media, have been alerting to political influence on the judiciary for years. However, although state officials have frequently vowed that they did not want to interfere in the work of the judicial authorities, 2016, too, was marked by a large number of instances when officials at various levels of government indirectly, and often even directly, commented specific events in a way that can be interpreted as pressure on the courts and prosecutors.

16. The HJC in October adopted a Decision amending its Rules of Procedure setting out the procedure of HJC's public reactions to political influence on the work of the judiciary. The HJC has not, however, always reacted as befits the supreme judicial authority.

17. The libel trial against the weekly NiN initiated by Interior Minister Nebojša Stefanović also gave rise to doubts about political pressures on the judiciary. Public gatherings supporting a member of the executive government and plaintiff, who enjoys the public support of the leading city and republican officials, do not contribute to a climate in which judges can adjudicate cases impartially and amount to manifest pressures on the judiciary.

18. The integrity and independence of the judiciary is sometimes brought into question by rash, and some illegal actions by the representatives of the executive authorities. Announcements of arrests, outcomes of trials, violations of the presumption of innocence are commonplace. Such conduct by politicians undermines public trust in the judiciary and creates the impression that the judiciary is dependent on the executive.

19. According to a Judges' Association of Serbia survey, nearly half (44%) of the respondents said they had been subjected to some form of pressure, mostly to dispose of their cases more rapidly. Forty-three percent of them were of the view that a climate of general pressure was present in the judiciary. The following findings – that as many as 27% of them said they were directly or indirectly pressured by senior government and parliamentary officials, that 22% of them said such pressures were made on them by court presidents, while 8% said such pressures were exerted by their colleague – are extremely concerning.

Suspension of the Rule of Law and Serbia's Legal Order – the Savamala Case

1. An organised motorised group of several dozen people in black uniforms and balaclavas, equipped with telescopic batons and strong flashlights, and using heavy machinery and demolition equipment, assumed actual control over the part of Belgrade called Savamala, the site of the future Belgrade Waterfront, in the early morning hours on 25 April 2016. Hercegovačka Street was blocked by two construction machines and the masked individuals applied physical force and threats to remove the citizens from the buildings and vehicles in the area. They seized their cell phones, restricted their movement, searched the buildings and vehicles, took away two handguns and a hunting rifle they found in an office, and the security camera video tapes, threatening the citizens not to tell anyone what was happening. They used the machinery to demolish a number of buildings. Two hours later, their work done, they left the site of the incident.

2. A number of citizens called the Belgrade City police unit on duty and went to the Savski venac Police Station to report the events with the elements of crimes prosecuted *ex officio*. Eleven days later, on 5 May 2016, the Belgrade Higher Public Prosecution Service ordered the police to investigate the demolition in Savamala and report their findings of fact. Soon after the order was issued, the Belgrade public utility companies charged with road maintenance and waste disposal went to the site and cleared the rubble, on the order of the Communal Police, thus compromising the evidence. It took the Commercial Court a month to uphold a motion to secure the evidence, filed by the company *Iskra doo*, whose building was demolished. The city public utility companies had cleared most of the site in the meantime.

3. Acting on numerous complaints filed by citizens, the Protector of Citizens performed oversight of the lawfulness of the MIA's work and found that the Bel-

grade City Police Directorate had not acted promptly and efficiently on reports by citizens that an organised group of people had committed a series of crimes.

4. Since the illegal demolition had caused a public uproar, the Higher Public Prosecution Office received a request to disclose the name of the acting prosecutor, but ultimately revealed her identity only after the Commissioner for Free Access to Information of Public Importance intervened.

5. The Savamala case is an illustration of both a grave violation of the right to peaceful enjoyment of possessions and the suspension of the rule of law. The incident in which an unidentified group of people assumed actual control over a part of Belgrade and suspended the validity of the Serbian Constitution and law in it, enforcing new rules jeopardising the safety and personal property of the citizens, had not moved beyond the preliminary investigation stage by the end of 2016. Interior Minister Nebojša Stefanović said in October that it was still under way and that he would publicly disclose all the information about the case and the police activities during the night the buildings were demolished.

Independent Regulatory Authorities

1. The supervisory role of these authorities has not always been properly understood. In 2016, again, there were instances in which the executive or legislative authorities failed to recognise that independent regulatory authorities are tasked with protecting civil rights and that they should pursue the improvement of these rights in concert with them.

2. The ruling majority still does not understand that these authorities are not the representatives of the opposition, but mechanisms overseeing its work. This misunderstanding of the independent regulatory authorities' role has often resulted in problems they have faced in their endeavours to ensure the full exercise and protection of civil rights. On the other hand, the citizens' trust in the independent regulatory authorities has been growing. In 2016, the Protector of Citizens performed a number of checks of the work of the administrative bodies in response to complaints filed by citizens and published his findings in most of these cases.

3. The Protector of Citizens in 2016 issued his opinion on the Draft Police Act, and called on the National Assembly to review the Draft General Administrative Procedure Act because some of its provisions risked to undermine the transparent and professional work of the administration. The Protector of Citizens also filed a motion for the review of the constitutionality and legality of the decision defining the features of holders of pension and disability insurance and the obligation to pay pension and disability insurance contributions and he submitted amendments to the Draft Housing Act. The draft amendments to the Protector of Citizens Act the Serbian Ombudsman submitted to the Ministry of State Administration and Local Self-Governments back in 2012 were still pending.

4. Senior government officials have frequently attacked Protector of Citizens Saša Janković in the past few years. The situation in 2016 was similar, if not worse. Public criticisms of his work increased in August, after he issued his statement on the Savamala case following after his checks of the work of individual state authorities.

5. The Protector of Citizens to be appointed once Janković's term in office expires in May 2017 will hopefully preserve the independence of this authority, the activities of which are of crucial importance for the functioning of a democratic society. The outgoing Protector of Citizens has not brought into question his impartiality and independence once during his ten-year term in office and his successor will hopefully follow suit.

6. The Commissioner for Information of Public Importance and Personal Data Protection was extremely active and frequently publicly alerted to the deficiencies in the work of the public authorities in 2016 as well. The public acknowledgement of the Commissioner's work is corroborated by the fact that he received a total of 8,255 cases in 2016: 5,496 regarded the right of free access to information of public importance and 2,743 personal data protection. The Commissioner and his office reviewed 5,381 of the cases, 2,707 of which were related to personal data protection.

7. No action plan for the implementation of the 2010 Personal Data Protection Strategy action plan has been adopted yet. The adoption of a new Personal Data Protection Act has been pending for four years. The Serbian Government still had not formed the body to monitor the implementation of the Strategy and the action plan.

8. In 2016, the Commissioner frequently reacted to violations of the Personal Data Protection Act. However, the Commissioner's diligence in 2016 again provoked a number of lawsuits against him filed by the relevant authorities.

9. In 2016, the Commissioner for the Protection of Equality reacted to several grave violations of equality and cases of discrimination. During an international conference on the rights of the child, the Commissioner singled out the problems faced by Roma children and children with disabilities, who were the most discriminated against in Serbian kindergartens and schools. She also cited good practice examples of local self-governments that acted on her recommendations and secured transportation or personal escorts for children with special needs.

Right to Life

1. Thirty-two women lost their lives in domestic violence incidents in 2016. At least three of them were girls. Seven women were killed by their abusers in just three days, from 16 to 18 May. In November 2016, the Serbian National Assembly adopted the Domestic Violence Act. The Act *inter alia*, normatively unravels the problem of coordination among the relevant state authorities and institutions in combating and responding to domestic violence. The legislator appears to have enacted a law envisaging the prerequisite institutes for efficiently combating and suppressing domestic violence. It remains to be seen how it will be enforced and

to what extent and at what speed the relevant state authorities and institutions will succeed in assuming their obligations and exercising their powers.

2. The numerous crimes committed during the armed conflicts in Croatia, Bosnia and Herzegovina and Kosovo have not been investigated or prosecuted yet. The War Crimes Prosecution Service in 2016 filed seven indictments against 14 defendants for war crimes against 1,336 victims. The Srebrenica case trial opened before the Belgrade Higher Court War Crimes Department.

3. The Serbian Government adopted the 2016–2020 National War Crimes Prosecution Strategy in February 2016. The implementation of a number of Strategy activities is impossible until the adoption of the Prosecutorial War Crimes Investigation and Prosecution Strategy.

4. No headway was made in the Karaš case regarding the death of two soldiers, Dragan Jakovljević and Dražen Milanović in the Belgrade military facility twelve years ago. In December 2016, the Serbian Government adopted a decision to form a commission to establish the facts regarding their deaths. The investigation of the murder of Dada Vujasinović was still ongoing in 2016, although 22 years have passed since this Belgrade journalist was killed. The killers of journalist Milan Pantić and unsuccessful assassins of journalist Dejan Anastasijević have neither been identified nor prosecuted yet. The case of the death of Belgrade District Court judge Nebojša Simeunović was still in the preliminary investigation stage although he was killed sixteen years ago.

5. On 30 June 2016, the Belgrade Higher Prosecution Service decided to close its criminal investigation of an Army of Serbia helicopter crash that left seven people dead on 13 March 2015. The prosecutors did not find reason to initiate criminal proceedings against individuals, who had participated in the preparation and implementation of the mission. They said that there had been oversights that carried no criminal weight. The criminal case was thus closed, but the public has not been provided with an answer to the following question: how come no-one is liable for the accident given that the then Defence Minister Branislav Gašić disrespected the strict procedures and that the decisions to launch the rescue mission despite the inclement weather not fulfilling the minimal safety standards and to land at Belgrade Airport Nikola Tesla were not taken by the pilots themselves, as the relevant Commissions ascertained.

6. Three people were killed and 11 injured when a fire broke out in an illegal old people's home in Pančevo in October 2016.

Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty

1. Serbia's law still lacks adequate definitions of torture and other forms of ill-treatment (inhuman and degrading treatment). The definitions of these offences, incriminated in Articles 136 (extortion of confessions) and 137 (ill-treatment and torture) of the Criminal Code (CC), is still inadequate, as CAT noted in its 2015 Concluding observations on the second periodic report of the Republic of Serbia.

2. Another problem regarding the substantive provisions of the CC governing torture concerns the inadequacy of the penalties in view of CAT's case law. Not only are the penalties for torture and inhuman treatment in Serbian criminal law lenient, as the UN treaty bodies noted. So is the penal policy of the Serbian courts that ruled on torture and ill-treatment cases. In the 2010–2015 period, they delivered only 31 judgments finding (48) public officials guilty of these crimes.

3. The statute of limitations still applies to torture, ill-treatment and extortion of confessions despite numerous recommendations by UN and CoE treaty bodies to make them non-prescriptible offences. Seven criminal proceedings against 19 public officials (police officers and prison guards) were discontinued in the 2010–2015 period because the statute of limitations had expired.

4. An adequate prosecutorial infrastructure had not been put in place before the CPC came into effect – or since – wherefore the prosecutors have been forced to delegate most of their powers to the police. This has in practice led to situations in which the prosecutors are forced to *rely* on the actions taken by the police, even in cases in which police officers are the suspects/defendants.

5. The BCHR in 2016 also analysed numerous torture, ill-treatment and extortion of a confession cases that made it to the main hearing stage. One of the most alarming problems it identified was the excessively long duration of trials of police and prison guards charged with these offences.

6. The BCHR was forced to ask the ECtHR six times to issue interim measures to prevent the violation of the *non-refoulement* principle by the Belgrade Border Police Station (BPS) and the Aliens Shelter from November 2013 to the end of 2016. The ECtHR upheld all six applications and thus prevented the return of the aliens to Greece, Somalia, Montenegro, Libya, FYROM and Turkey.

Right to Liberty and Security of Person

1. The Republic of Serbia is a signatory of international treaties protecting the right to liberty and security of people from unlawful and arbitrary deprivation of liberty, notably the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). The right to liberty and security of person is enshrined in Articles 27–31 of the Serbian Constitution. An entire set of criminal law regulations, as well as those governing the work of the Ministry of Internal Affairs, lay down various grounds for restricting the right to liberty.

2. During its 2016 visits, the National Preventive Mechanism against Torture (NPM) again noted that the police departments did not fully comply with the law because of the way they interpreted the concept of deprivation of liberty.

3. Contrary to the practice of the ECtHR, Belgrade BPS officers in 2016 continued with their practice of not treating as deprivation of liberty the confinement of aliens not fulfilling the requirements to enter Serbia and to be returned to their countries of origin or third countries at the expense of the airlines that flew them in.

4. Statistical data indicate that courts continued ordering pre-trial detention to ensure the presence of defendants and unhindered criminal proceedings in 2016. However, the courts very rarely ordered bail or prohibited the defendants from leaving their places of residence.

5. The Damages Commission received 8,172 damage claims over wrongful detention from 1 January 2005 to 31 December 2016 and it reviewed 3,974 (46%) of them but reached settlements with only 1,219 (14%) claimants. Therefore, 6,953 (85%) of the injured parties have presumably filed civil lawsuits against the Republic of Serbia, in which higher amounts of damages are generally awarded.

6. The number of days of unlawful detention cannot be established precisely. According to the Damages Commission data on the claims it reviewed in the 1 January 2005 – 1 October 2013 period, the number of days of wrongful detention in those claims amounted to 180,139. The Damages Commission in 2014 stopped keeping records of the number of days of unlawful detention in the claims it has reviewed and on the number of days covered by the settlements it has reached.

7. Discounting the incomplete data supplied by the Solicitor General's Offices in Niš, Zaječar, Novi Sad and Subotica, the Serbian courts awarded damages amounting to 553,346,496 RSD (circa 4,567,000 EUR) in civil proceedings over unlawful detention from 1 November 2013 to 31 December 2016.

8. The Serbian penitentiaries were still overcrowded in 2016. The reason for this situation could be explained by the judiciary's ongoing practice of sentencing convicted offenders to short-term prison sentences rather than penalties alternative to imprisonment, despite the lack of capacity of the penal establishments.

Equality before the Court and Fair Trial

1. Even though the Constitution guarantees everyone the right to equal legal protection, without discrimination (Art. 21), this right is not accessible to everyone in Serbia. The adoption of the law on free legal aid was still pending at the end of the 2016. Although the text of the 2015 draft had in principle been agreed on, the irreconcilable views of lawyers and CSOs on who was entitled to extend legal aid led to delays in the finalisation of the text to be submitted to the Government.

2. Court inefficiency remained a problem in 2016. According to Anti-Corruption Council's report on the state of the judiciary, the establishment of the new court network had not yielded results as it neither improved court efficiency nor cut the costs of justice, both those sustained by the citizens and those sustained by the state. One of the reasons was that no analysis about the optimal number of courts was conducted either before the 2009 or the 2014 court network reforms.

3. The amended Court Rules of Procedure in 2016 include provisions aimed at ensuring the efficient implementation of the Backlog Reduction Programme.

4. Under the Enforcement and Security of Claims Act, enforcement creditors were to declare whether they wished to have their claims enforced by courts or enforcement agents in the 1 May-1 July 2016 period; otherwise the enforcement proceedings would be terminated. The closure of a large number of cases was, in fact, due to the fact that a substantial number of creditors did not state their preference by 1 July.

5. Although the Act on the Protection of the Right to a Trial within a Reasonable Time entered into force on 1 January 2016, no data on its enforcement were available at the end of the reporting period, wherefore no assessments could be made of the extent to which it has responded to one of the greatest challenges regarding respect for the right to a fair trial. The HJC's data for the first nine months of the year show that Serbia paid 141.5 million RSD in damages for violations of the right to a fair trial. The damages were paid pursuant to the provisions of the Act on the Organisation of Courts, which applied until the Act on the Protection of the Right to a Trial within a Reasonable Time came into force.

6. Expiry of the statute of limitations has been one of the problems constantly plaguing the Serbian judiciary. The criminal proceedings against Bogoljub Karić became statute-barred in 2016. Ten years after initiating the criminal proceedings in the so-called "*Indeks Scandal*", not even first-instance judgments have been delivered; proceedings against 44 of the 88 indictees had in the meantime been terminated because the statute of limitations expired. Expiry of the statute of limitations is also reason why no-one will be found guilty of the death of Jelica Radović, who died of sepsis after a bunion operation at the private Decedra Clinic in September 2006. In all these cases, the courts are under the obligation to compensate the costs and expenses the defendants suffered during the trial. Given the duration of this trial and the gravity of the crimes the defendants had been charged with, the state will have to pay millions just to cover the costs of their legal counsels.

7. The work of the notaries public did not provoke any major polemics in 2016, as opposed to the past few years when the impugned provisions of the Act and related laws resulted in a months-long strike of the attorneys and, consequently, the blockade of the judicial system. Pursuant to the legal provisions, the courts in 2016 started entrusting to notaries public specific non-contentious proceedings, including on inheritance, which should lead to their faster and more efficient completion.

8. The courts' electronic case management system is not uniform because three different systems for electronic registration of data and case management are in use.

9. In January 2016, the Serbian Government issued a conclusion adopting the Code of Conduct of the members of government regulating the commenting of court decisions and proceedings. The Code provisions were violated virtually on a daily basis by the Prime Minister and members of his cabinet in 2016.

Right to Privacy and Confidentiality of Correspondence

1. A judgment the ECtHR delivered in early 2016 in the case of *Burbulescu v. Romania* is relevant to the workers' privacy at the workplace. The Court found that the employer had not violated the applicant's right to respect for his private and family life enshrined in Article 8 of the Convention.

2. Despite the enhanced supervision of the execution of the judgment in the case of *Zorica Jovanović v. Serbia* by the CoE Committee of Ministers and the state's assurances that the Act on the Procedure for Establishing Facts about the Status of New-Borns Suspected to Have Gone Missing in the Maternity Wards in the Republic of Serbia would be adopted by the end of 2016 at the latest, Serbia neither enforced the part of the decision on the forming of a mechanism to establish the fate of the new-borns believed to have gone missing from maternity wards in Serbia nor adopted the law by the end of the reporting period.

3. Although more than two years have passed since the European Court of Justice invalidated the Data Retention Directive, Serbia still has not taken into account its views on the retention of the users' data and the realisation of the right to privacy and confidentiality of correspondence.

4. The enforcement of these provisions has led to problems in practice. The amendments to the Electronic Communications Act introduced the obligation of electronic communication operators to retain the communication data and the obligation of the competent state authorities accessing them to keep records of requests to access them during the calendar year and their obligation to forward those annual records to the Commissioner by 31 January of the following calendar year at the latest. The state authorities with access to the retained data (the Security Information Agency, the Ministry of Internal Affairs and the Military Security Agency) fulfilled their legal obligation in 2016. However, only 34 of approximately 187 electronic communication operators retaining communication data forwarded the annual records to the Commissioner in accordance with the law. In February 2016, the Commissioner for Information of Public Importance and Personal Data Protection wrote to the Ministry of Trade, Tourism and Telecommunications, asking it to perform a check of the operators which had defaulted on their obligation under the law and to ascertain whether they kept any records of requests for access to the retained data.

Personal Data Protection and Protection of Privacy

1. The realisation of the right to personal data protection was brought into question ever since the PDPA was adopted in 2009, wherefore it may be concluded that the state is not interested in governing the field of personal data protection in a systemic manner that would provide allow for the enjoyment of this right enshrined in the Constitution.

2. In March 2016, the Commissioner qualified Serbia's Chapter 23 negotiating position regarding personal data protection as inferior to Serbia's real needs. He said the Chapter 23 Action Plan ignored the need to adopt an action plan for the implementation of the Personal Data Protection Strategy, enacted nearly seven years ago, and warned that the adoption of a new personal data protection law was put off yet again.

3. No substantial headway in implementing Chapter 23 Action Plan activities regarding personal data protection was made in 2016.

4. Having realised that rapid technological developments and globalisation have brought new challenges for the protection of personal data, the European Parliament adopted Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data in April 2016. The Regulation repeals Directive 95/46/EC. The Chapter 23 Action Plan states that the legislator shall ensure that the new personal data protection law is in compliance with Regulation 2016/679, since a number of provisions in the current Preliminary Draft Act are not in compliance with the Regulation.

5. In late April 2016, the Serbian Government enacted amendments to the Decree on Office Operations of Public Administration Authorities, introducing a new degree of confidentiality: "official" for "documents that are sensitive in character and warrant limited distribution". The Anti-Corruption Council said in its Report that by amending the Decree, the Government "went beyond the uniform data confidentiality system prescribed by the law and introduced another degree of confidentiality – 'official', albeit in the absence of criteria for identifying information that is 'sensitive in character and warrants limited distribution' and without specifying to whom such information may be distributed. The Council held that the provision amounted to a gross violation of the Classified Information Act and the Constitution and filed an initiative with the Constitutional Court seeking a review of the constitutionality and legality of the Decree.

6. The trend of publishing the personal data of citizens for daily politicking reasons continued in 2016. For instance, National Assembly deputy Marijan Rističević, who also sits on the Republican Health Insurance Fund (RHIF) Management Board, on 16 November published on his Twitter account how much money the RHIF paid for the medical treatment of DS deputy Dejan Nikolić's daughter abroad. The Tweet prompted a debate on the issue in the National Assembly, which continued the next day.

7. The Commissioner in May 2016 issued a press release alerting to the increasing disclosure of data on people's state of health, categorised as particularly sensitive data, by the media. He appealed to them to comply with their own Press Code of Conduct and refrain from publishing information violating the privacy of the citizens and warned state authorities and medical institutions of their liability for such violations under the law.

Freedom of Thought, Conscience and Religion

1. The Constitution guarantees the equality of all religious communities, the freedom of religious organisation and collective manifestation of religion and the autonomy of religious communities. The registration procedure however still suffers from non-transparency and inconsistencies, preventing some religious communities from exercising their rights. The provisions on the Register of Churches and Religious Communities remained unchanged. Use of minority languages in religious services is not guaranteed in all of Serbia.

2. Slightly less than one billion RSD were allocated in Serbia's 2017 budget to the Directorate for Cooperation with Churches and Religious Communities; 62 million RSD are to be spent on support to the work of priests and clerical officers and 260 million RSD to subsidise their pension, disability and health insurance, while 279 million RSD are designated for the protection of cultural heritage and support to the Serbian Orthodox Church and its cultural activities in Kosovo.

3. In accordance with the Act on the Restitution of Property to Churches and Religious Communities, the state started returning property to the religious communities once this law was adopted. Some data indicate that 73,150 hectares of land have been restituted to the Serbian Orthodox Church and 3,889 hectares of land to the Roman Catholic Church.

4. Under the Value Added Tax Act, registered churches and religious communities are exempted from paying taxes on services religious in character. They are also exempted from paying taxes on their main religious activities and are entitled to reclaim VAT on the goods they use in religious services. Whereas both traditional and other confessional and registered churches and religious communities are exempted from paying property tax, only traditional churches and religious communities are exempted from paying VAT. Serbian Patriarch Irinej said in early 2017 that the Serbian Orthodox Church would start paying taxes once the state returned to it all its property

5. An incident broke out in late 2016 over the unlawful construction of a building in the heart of Novi Pazar. The MIA did not act on the request to assist the demolition of the illegal building, quoting "security reasons". The Prime Minister justified the failure of the police to act by the wish to avoid a bloodbath between the Moslems and the Christian Orthodox, but the Protector of Citizens said that the non-enforcement of the law in this illegal construction case was destroying the rule of law, legal certainty, the right to property and the equality of all before the law.

6. A *Demostat* public opinion survey published in December 2016, showed that three quarters of the respondents aged between 18 and 29 were for the restoration of mandatory military service. Defence Minister Zoran Đorđević said an additional 70 billion RSD would have to be earmarked in the annual budget the first year to cover the accommodation, clothes, equipment and other needs of the

conscripts if mandatory military service were restored. No official initiatives to introduce mandatory military service were launched by the end of 2016.

Freedom of Expression

1. The privatisation of publicly-owned media in Serbia was officially completed on 31 October 2015. The company Politika, which publishes the daily by the same name, was among the 17 companies declared to be of “strategic importance for the Republic of Serbia” and exempted from privatisation under a Government decision. Although the privatisation of Politika was put off until 1 June 2016, the state did not sell its stock in it by the end of the reporting period. Thirty-six percent of the state’s share in the publisher of the daily *Večernje novosti* and 51% of the shares in the company HD-WIN of Telekom Serbia (telecommunications operator with a majority public stake) were not put up for sale either.

2. The state-owned national news agency *Tanjug* ceased to exist as such pursuant to Article 146 of the Public Information and Media Act on 31 October 2015, after two unsuccessful attempts to sell it. The Government decision to dissolve it entered into force on 5 November 2015. *Tanjug*, however, continued working thanks to state funding. Eyebrows were also raised when Minister of Culture and Information Vladan Vukosavljević gave a statement indicating that the authorities were attempting to “legalise” *Tanjug*’s unlawful status *a posteriori*.

3. Purchase of outlets by individuals, who had previously not been engaged in media activities, is one of the alarming features characterising the 2015 privatisation of the media. It may thus be concluded with a high degree of certainty that the media privatisation process in Serbia was a disguised process of strengthening state and party influence on the media and their editorial policies. *TV Vranje* is an example of an outlet that has successfully resisted machinations during privatisation and pressures by the authorities.

4. Regulations on project co-funding were completed with the adoption of the Public Information and Media Act and the relevant rulebooks. The allocation of funding through public calls for media project proposals was accompanied by numerous irregularities and abuse.

5. The procurement of advertising services by public entities (national, provincial and local governments and all their authorities, public companies and institutions and other organisations vested with public powers at all government levels) i.e. public service advertising is still inadequately regulated although a new Advertising Act was adopted in 2016.

6. The integrity and independence of the Electronic Media Regulatory Authority (EMRA) were seriously brought into question in 2016. EMRA’s authority was significantly shaken in 2016 by the disgraceful conduct of the National Assembly, which clearly broke the law when it refused to elect one of the two candidates

nominated by civil society organisations focusing on freedom of expression and child rights to the EMRA Council. There were serious indications that the sole reason why it refused to vote on one of the two candidates was that neither of them was “to the liking” of the Assembly majority.

7. Nothing changed in the way the public media services were funded in 2016. Most of their funding still came from the state budget rather than other sources of revenue stipulated by the Public Media Services Act, including licence fees. In the absence of adequate guarantees, this reliance on state funding may lead to influence on their editorial policies in the long term. The dismissal of the editors of the Vojvodina public service broadcaster after the change of government in the province was another step away from ensuring the full independence of the public media services, corroborating that the authorities’ commitment to the principle of their independence was merely declaratory, that they essentially still treated these institutions as state media and that their transformation into genuine public service media was far from over.

8. Although most media were well-disposed to the ruling coalition and positively reported on the Government’s and Prime Minister’s activities throughout 2016, the authorities qualified nearly all criticisms voiced in the media or at news conferences as attempts to topple the Prime Minister or his Government, often deriding the reporters in extremely insulting terms. The authorities and other power wielders seemed to perceive the media as a tool for their personal promotion and attacks on their political opponents, and often resorted to inappropriate and indecent language and populist argumentation and gross stigmatisation of all those who criticised their work.

9. Suing reporters is one way of pressuring the media. A number of lawsuits and trials against reporters and outlets marked 2016. Minister of Internal Affairs Nebojša Stefanović, for instance, sued the Belgrade weekly *NiN* for violating his professional reputation and honour and sought damages. The court expressly scheduled the trial for late November and completed the hearing the same day. Although trials in Serbia ordinarily last a long time, the court delivered its judgment in this case in record time. On 4 January 2017, the court ruled *NiN* and its Chief Editor were to pay the Police Minister 300,000 RSD in damages. Stefanović had also filed a lawsuit against sociologist Vesna Pešić and the *Peščanik* editors, who published her column on the Savamala demolition case on 14 May 2016. Žarko Rakić, the Acting Chief Editor of the daily *Politika*, suddenly broke off cooperation with political caricaturist Dušan Petričić, whose caricatures sharply criticising the Serbian authorities were front-paged in the daily on Sundays.

10. The information department of Prime Minister Aleksandar Vučić’s Serbian Progressive Party staged an exhibition entitled “Uncensored Lies” in the summer of 2016, at which it displayed over 2,500 reports, caricatures and front pages of newspapers and TV shows critical of the Prime Minister and his Government,

which were published or aired in the past two years. Vučić said that the exhibition was staged to prove that there was no censorship in Serbia.

11. The financial status of the media, seriously undermined by the years-long economic crisis, has been further aggravated by the consequences of the media privatisation and visibly negative results of budgetary co-funding of media projects of public interest. The salaries of journalists have for years now been lower than the national average. Over 1,000 journalists lost their jobs during the 2015 media privatisation round, joining 1,149 of their colleagues already registered as unemployed with the National Employment Service in 2014. Many journalists have to work overtime but hardly any are paid for the long hours they put in. They rarely attempt to associate in trade unions as their employers are generally ill-disposed to such endeavours.

12. No major progress was made in 2016 in the cases of journalists murdered decades ago. The few trials dragged on and no major breakthrough was made in the investigations under way. The trial of the assassins of editor and journalist Slavko Ćuruvija not completed in 2016. The investigation into the 2001 liquidation of journalist Milan Pantić did not progress beyond indications of who may have killed him. The investigation in the case of journalist Dada Vujasinović, who lost her life in 1994, practically went back to square one. No headway was made in investigating and prosecuting the attempted murder of *Vreme* journalist Dejan Anastasijević in 2007.

13. The Independent Journalists' Association of Serbia (*IJAS*) said its records showed that as many as 128 assaults on journalists had occurred since 2014; 27 of the assaults were physical. The stable trend of frequent physical and verbal attacks on media and journalists continued in the year behind us, as corroborated by *IJAS* data, according to which 69 journalists were assaulted in 2016: nine physically and 26 verbally; 33 reporters were subject to pressures and the property of one journalist was attacked.

14. Analysts and media associations have for several years now been alerting to the tabloidisation of the Serbian press, which has been undermining the professionalism and the reputation of journalists and the media. The situation did not improve in 2016 either. The journalists of the most popular tabloids continued presenting assumptions, conjectures and impressions as facts, showering their readers with sensationalist news, violating the rights of the child, the right to privacy and presumption of innocence and the basic moral code.

Freedom of Peaceful Assembly

1. The Serbian National Assembly adopted the new Public Assembly Act in January 2016. The new Act, however, does not eliminate all the deficiencies that had rendered its predecessor unconstitutional in its entirety. Nor is it in compliance with international standards. The Republic of Serbia merely formally fulfilled the

Chapter 23 Action Plan obligation. The Act provides the police with broad discretionary powers because it lays down many *in abstracto* grounds for prohibiting assemblies and does not prescribe that restrictions of the freedom of assembly must be proportionate to the aim and justified in a democratic society. Furthermore, the police are entitled to prevent or disperse assemblies before they begin or during them in case circumstances constituting grounds for their prohibition occur. The Act does not specify that dispersal of assemblies should be a measure of last resort or that the police are to apply all reasonable measures to ensure the safety of assemblies before dispersing the participants (e.g. by taking into custody individuals threatening to employ violence) in case of an imminent threat of violence. Furthermore, the Act does not provide for effective legal remedies.

2. The Public Assembly Act lays down extremely stringent penalties for public assembly organisers and leaders who do not comply with their legal obligations. In addition to assembly organisers, the Act recognises other categories of persons liable for the security of the assemblies, notably, the assembly leaders, who may be designated as such by the organisers, and the stewards. In his Opinion on the Draft Act, the Protector of Citizens noted that the high fines and possibility of levying cumulative fines against the organisers, legal persons and their responsible persons, as well as assembly leaders, may deter citizens from organising public assemblies and that the misdemeanour penalties might constitute a disproportionate reaction in individual cases, especially when “less significant” violations of the law that have not resulted in adverse consequences are at issue.

3. The Act does not govern the issue of dissenting and simultaneous assemblies at all. The state authorities have in practice demonstrated lack of will to take the necessary measures to enable the holding of simultaneous assemblies. The consistent enforcement of this law may, on the other hand, result in the prohibition of e.g. traditional school performances, such as the celebrations of the school St. Sava day. YUCOM, which monitored the enforcement of the Act in the first half of 2016 in coalition with other NGOs, noted that the Act was applied selectively, resulting in legal insecurity, and that the high fines prescribed by the Act constituted a real threat to the survival of political parties, trade unions and other organisations and risked to actually deter the citizens from enjoying the freedom of peaceful assembly.

4. A total of 43,345 public assemblies, 42,805 notified and 540 not notified to the relevant police authorities, were held across Serbia from January to November 2016.

5. On 21 April 2016, the Constitutional Court rendered a decision upholding the constitutional appeal of the Belgrade Pride Parade association, in which it found a violation of the right to judicial protection, the right to a legal remedy and the freedom of assembly by the Savski venac Police Station, which issued a ruling prohibiting the holding of the Pride Parade in 2013. Pride of Serbia, rallying around 150 members of the LGBTI community, was organised as a protest in procession in Belgrade on 25 June 2016. The September 2016 Pride Parade, which was also

organised as a procession, was safeguarded by strong police forces. No incidents occurred during the events.

6. The police need to be proactive in securing public assemblies and communicate actively with their organisers to remain updated about any threats or escalation of any conflicts. Furthermore, the police should designate liaison officers the organisers can contact before and during the assemblies, whose names and contact details need to be publicly available. The Serbian police applied such a practice during the organisation of the assemblies promoting LGBTI rights.

Freedom of Association

1. The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations. The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Constitution also prohibits political party membership of Constitutional Court judges, public prosecutors, the Protector of Citizens and army and police staff, but not their membership of professional associations.

2. As regards the freedom of association, the European Commission said in its Serbia 2016 Report that Serbia had made some progress towards establishing an enabling environment for the development and financing of civil society, but that further efforts were needed to ensure systematic inclusion of civil society in policy dialogue and help develop its full potential.

3. In the past two years, the state appeared to have been more willing to involve the civil sector in various working groups and public debates and to take on board its opinions and suggestions on specific regulations. An IPSOS survey, however, indicated that CSOs were of the view that the Government's capacity for cooperating with the civil sector was lower; 36% of the respondents qualified the level of cooperation as worse and 14.6% as better than the previous year.

4. In cooperation with Civic Initiatives and the Trag Foundation, the representatives of the Office for Cooperation with Civil Society organised a meeting with the Civil Code Drafting Commission on 11 July 2016, at which they presented the CSOs' views, proposals and suggestions regarding the provisions on the status of associations, endowments and foundations, endorsed by 247 CSOs in 57 cities. The representatives of CSOs submitted to the Commission their analysis of the relevant Draft Civil Code provisions and the amendments they proposed. The CSOs, notably, criticised the definition of associations, the requirements to be fulfilled by founders of associations, the relationship between the associations' Articles of Association and the Code, the work and powers of association Assemblies, the Assembly members' voting rights and membership termination and expulsion.

5. The *Fatherland Movement Obraz* association, which the Constitutional Court banned in 2012, continued displaying its symbols and insignia at the public

rallies it organised and on its official website. This association continued implementing its programme as an informal movement called *Srbski obraz*, which uses the visual identity of the prohibited *Fatherland Movement Obraz*. Furthermore, the organisation *Srbski obraz* has been operating its official website available to the public. Together with another rightist organisation, *Naši*, this association organised numerous events in 2016. The organisation *Stormfront* features the activities of ‘White Nationalists of Serbia and South-East Europe’ on its website.

6. The Constitutional Court of Serbia did not render any decisions prohibiting the work of an association or review any claims of violations of the freedom of association, enshrined in Article 55 of the Constitution, in the January-December 2016 period.

7. The tabloid *Telegraf* in 2016 published a list of NGOs ‘funded by American tycoon George Soros’ with a view to branding them as pro-American, enemies and as spies. Such discourse prevailed in the 1990s, during Slobodan Milošević’s rule.

8. In 2016, the HJC was asked to rule on the compatibility between the holding of a judicial office and membership of an NGO, the Judicial Research Centre, which was founded by judges, prosecutors and attorneys with a view to improving the judiciary. Judge Aleksandar Trešnjev was recused from a trial because he and the defendant’s attorney were both members of this association; in BCHR’s view, Trešnjev’s recusal is a flagrant violation of the freedom of association.

9. In November 2016, the Military Trade Union staged a protest to alert to the social and financial difficulties Army members were facing. The procession ended in front of the Presidency building, where the Trade Union representatives left a letter with the Union’s demands for the head of state. The Trade Union leader accused the General Staff of attempting to sabotage Army members’ participation in the protest in Belgrade and that the soldiers were read a notice that the protest was directed against the state; he also claimed that many members of this trade union had received orders to report for duty on the day of the protest.

Elections in 2016

1. Parliamentary elections, the eleventh since the multi-party system was introduced in Serbia in 1990, were held on 24 April 2016. This was the third time parliamentary elections were held in the past four years and the second time they were held before the parliament’s term in office expired. The elections were monitored by the OSCE Limited Election Observation Mission (OSCE LEOM) and a coalition of NGOs CRTA – Citizens on Watch (CRTA-GnS).

2. The ruling coalition, rallied round the Serbian Progressive Party (SNS), again won the majority at the national level. It also won the most seats in the Vojvodina Assembly and in most of the local self-governments (LSGs). The turnout was greater than at the previous parliamentary elections as 188,206 more voters went to the polls on 24 April than in 2014.

3. A number of shortcomings were identified during the updating of the registers and inspectorial oversight exercises. Estimates were that around 150,000 voters had been registered twice and that the size of Serbia's electorate stood at 7,058,683, while the personal identification numbers of 600,000 voters had been registered incorrectly. Under the new Act on Ministries, the single voter register is within the remit of the Ministry of Justice and State Administration.

4. Despite previous OSCE/ODIHR recommendations, voter lists were not displayed for public scrutiny. Although the law provides for lists to be disclosed at the municipal level, the relevant ministry issued an instruction that allowed only individual checking of records using one's personal identification number.

5. The elections were characterised by the unequal presentation of the parties in the media, with nearly all the relevant dailies and TV stations giving huge advantage to the Serbian Progressive Party. The OSCE LEOM said that "...the government and the ruling party activities dominated campaign coverage in the news and current affairs programmes. The analytical and critical reporting on the influential nationwide television channels was narrow, partly due to widespread self-censorship resulting from political influence over the media sector." The LEOM particularly alerted to the increased misuse of state resources and offices in the campaign to additionally promote the representatives of the ruling parties.

6. Serbia lacks clear regulations on what activities public officials may and may not engage in during election campaigns, with a view to precluding unequal treatment of the contestants and ensuring prompt response to any misuse. The Electronic Media Regulatory Authority (EMRA) is to play an important role in monitoring the electronic media during election periods, but its control has not yielded major results to date. Namely, the EMRA is of the view that its monitoring role is fulfilled by its submission of a report on political advertising, but EMRA did not produce a electronic media monitoring report for the period covering the parliamentary election campaign and elections.

7. The gravest identified irregularity was the large-scale resort to forgery of signatures of citizens supporting election tickets. Over 15,000 signatures in support of six election tickets were counterfeit. Although forging signatures is a grave criminal offence, no information was publicly available on whether anyone was prosecuted for it by the end of the reporting period.

8. The results at some polling stations were recognised after the REC *itself corrected* what it claimed were obviously arithmetical errors. After a lot of debate, the REC decided to recount the votes in the sacks although the sacks had already been unsealed. The procedure laid down in the law was thus violated since the REC is not legally authorised to perform the work of the polling station committees and count the votes. All this resulted in overall confusion and numerous doubts among the public.

Right to Peaceful Enjoyment of Possessions

1. The Restitution Agency data (excluding restitution of church property) show that by the end of 2016, over 394,000m² of commercial and residential property was returned to their former owners. The Restitution Agency ruled on 43,850 (58%) of the claims by the end of 2016, i.e. it returned 5,593 pieces of real estate property (4,033 commercial real estate, 754 apartments and 806 buildings).

2. The National Assembly adopted the Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project (hereinafter: Belgrade Waterfront Act). Even the Government admitted that expropriation to facilitate the construction of the Belgrade Waterfront complex would be unlawful under the Expropriation Act, which is why it opted for enacting a separate law declaring the Belgrade Waterfront a public interest.

3. Such actions may lead to the adoption of other *lex specialis* by their obedient parliamentary majority and result in total disregard of the public interest concept and in the expropriation of private property in pursuit of achieving private interests, which are declared public interests under individual laws. Also, exclusion of persons, whose legalisation requests are still pending, from the expropriation procedure may amount to their deprivation of the right to possessions, without compensation, i.e. violations of their property rights.

4. The area in which the Waterfront will be built is in Zone 1 where, under a ruling on average rates per square metre of real estate in Belgrade City zones for the purpose of determining the 2015 property tax rates, a square metre of construction land stood at 49,500 RSD, a square metre of residential space at 160,500 RSD and a square metre of office space at 271,600 RSD.

5. In his comments of the Belgrade Waterfront expropriation costs, the Finance Minister said that the authorities were paying 19.24 EUR per square metre, which is not even close to the market rates. If this is true, there is no doubt that the right to peaceful enjoyment of possessions has been violated as far as compensation rate for expropriated property is concerned. Especially because the constitutional provision and the Belgrade Waterfront Act lay down that compensation for expropriated real estate may not be less than its market value.

Right to Work

1. The European Commission said that Serbia was moderately prepared in the area of social policy and employment. It said that some progress had been made on employment policy, Roma inclusion, non-discrimination and equality between women and men. The adoption of the first national ESRP was an important step in addressing policy challenges in the employment and social areas, which continued to be affected by scarce public finances and limited institutional capacity.

2. The EC also found Serbia insufficiently prepared for opening talks on Chapter 19 wherefore it could not recommend the launch of these negotiations. The negotiations on this Chapter could open once Serbia fulfilled the Action Plan on the Gradual Transposition of the *Acquis* and built the requisite capacities for implementing and enforcing the *acquis* in all areas covered by the Chapter on Social Policy and Employment. Additionally, the EC expected of Serbia to adopt a new labour law by the end of 2016.

3. According to the Statistical Office of the Republic of Serbia Labour Force Survey for the 3rd quarter of 2016, a total of 2,022,788 of Serbia's 7.14 million population were registered as employed in the reporting period; 619,601 of them were working in the public sector. The unemployment rate stood at 13.8%: 12.6% among men and 15.2% among women.

4. There is, however, a major discrepancy between what the man in the street and official statistics consider employment (SORS has been applying the ILO methodology to measure employment and unemployment in Serbia). According to this methodology, anyone who worked even for one hour in the week in which the survey is conducted is considered employed and the number of employed people includes all workers, both those working full and part time and those employed for definite and indefinite periods of time. The LFS, therefore, does not take into account whether the respondents generated any income, but it does take into account everyone working either formally or informally, be they remunerated financially or in kind, as well as workers on sick, annual or unpaid leave, and those who have not been paid for months for the jobs they do. The situation is different in real life and demonstrates that only around 22% of the working-age population (around 14% of the entire population) is employed. Four out of five persons of working age are jobless, informally employed or working under service contracts.

5. According to the SORS methodology, unemployed persons are those who are of working age (between 15 and 64 years old) and are actively looking for a job. "Actively" means that they are registered with the National Employment Service (NES) and report to their NES advisers at specific intervals, on a particular day every month. They are deleted from the NES records and lose the status of unemployed if they report either before or after that day. This is why the number of registered unemployed people has been falling. The picture of labour market trends painted by this methodology is much rosier than reality. Analyses and statements persistently highlighting the drop in the unemployment rate and the rise in employment on the basis of such statistics can only be interpreted as abuse of statistics for political purposes.

6. Around 360,000 workers, i.e. 36% of them, are employed in the public non-manufacturing sector, i.e. in state administration, social insurance, health and educational institutions. Over 100,000 people are working in public companies alone, which practically means that the state is the employer of most of those holding a job in Serbia.

7. The SORS Q3 2016 Labour Force Survey data showed that the unemployment rate of the 15–24 age category stood at 28.5% and that the employment rate of this category stood at 22.5%. Serbia ranked sixth on the Trading Economics list of countries with the highest youth unemployment rates. It put the youth unemployment rate at 38.1% in July 2016. The youth unemployment rate broken down by education shows that it is the highest among youths who completed only primary school (40.7%), followed by youths with college diplomas (32.9%), and that it is the lowest among youths with secondary education (29.9%). The problem of long-term youth unemployment in Serbia is extremely grave: more than 50.9% of them have been looking for a job for over a year.

8. The labour market situation has prompted many young and well-educated youths to emigrate from Serbia, who quote the lack of job opportunities as the main reason for leaving Serbia. A record high number of people, 58,000, emigrated to OECD countries in 2015, more than double the annual average between 2004 and 2013; around 9,000 of them had Bachelor's or higher university degrees or professional titles.

9. The World Economic Forum's 2016/17 Global Competitiveness Report ranked Serbia 137th out of 138 countries for "capacity to retain talent". Serbia is estimated to have lost 12 billion EUR since the early 1990s due to the departure of well-educated young people, particularly scientists and technical engineers, according to local media.

10. The 2016 budget allocation for active employment measures stood at 3.35 billion RSD, 2.8 billion RSD of which were designated for active employment measures and 550 million RSD for the employment of persons with disabilities. The subsidies for employers hiring welfare beneficiaries of working age were increased from 10,000 to 15,000 RSD.

11. The Serbian authorities in 2016 continued subsidising foreign investors to the detriment of national companies. The effectiveness of subsidising foreign companies has been publicly questioned for several years now. A number of reports were published in 2016, claiming that the foreign investors granted subsidies were defaulting on their contractual obligations and not hiring as many workers as claimed by the national and local authorities. For example, according to the available information, the state has concluded contracts with around 30 foreign companies, under which the latter were to open 20,767 jobs in total; they have, however, hired only 11,000 workers so far.

Right to Just and Favourable Conditions of Work

1. The 2016 net minimum cost of labour in Serbia at 121 RSD per hour. The trade unions proposed that the minimum cost of labour for 2017 be raised to 143.55 RSD, and the employers were willing to raise it to between 125 and 127 RSD. After lengthy negotiations, the minimum cost of labour for 2017 was raised to 130 RSD

per hour. With a minimum monthly wage of 174 EUR, Serbia is at the bottom of the list in the region; the minimum wages are lower only in the Former Yugoslav Republic of Macedonia and Albania.

2. Around 58,000 workers in Serbia are paid salaries lower than the minimum wage (gross salaries under 25,000 RSD). Furthermore, around 141,000 workers are in the minimum wage zone (earning gross salaries ranging from 25 to 35 thousand RSD). The average gross wage stood at around 51,000 RSD in March 2016; most of the workers in Serbia fall into this income category (over 281,000 of them earned between 45,000 and 65,000 RSD a month). There were 624,000 (around 62% of all workers in Serbia) earning average or above average wages in Serbia.

3. On the other hand, the average consumer basket cost around 67,000 RSD and the minimum consumer basket around 35,000 RSD in March 2016, meaning that 1.5 wages were needed to cover the average consumer basket. It was out of reach of many pensioners, given that the average pension standing at slightly over 25,000 RSD in March 2016, as well as of the 389,340 workers, who received between 0 and 45,000 gross wages that month. Comparison of the data shows that less than 3% of Serbia's population can afford the average consumer basket every month.

4. Around 85,000 workers in Serbia have for years been waiting for the state to pay them their salary arrears. The state owes them over 40 billion RSD. The state has owed salaries since 2005 to many of the workers, who had sued their companies, most of which have already been liquidated or gone bankrupt; in many cases, the debts now stand at millions of RSD, as the courts have been ordering the payment of the statutory default late payment interest rate. A large share of these 85,000 workers do not fulfil the retirement requirements and are unable to find new jobs. This is why many of them, to whom the state owes millions, are on the "welfare list" of the Ministry of Labour, Employment and Social and Veteran Affairs and receive just several thousand RSD of welfare a month.

5. The status of trade unions in Serbia is extremely unfavourable. Apart from all the difficulties in determining which of them are representative and eligible to partake in social dialogue, they also face other obstacles, including, notably, discrimination on grounds of union membership and prohibition of their work by the employers. On the other hand, the trade unions themselves are unable to rise to the challenges, while all the larger trade unions have become bureaucratized and inefficient and do not fight for the workers' rights effectively, undermining the workers' trust in them.

6. The Strike Act was adopted two decades ago and has undergone only a few changes in the meantime. Draft versions of the new Strike Act were published in 2016, but the final text of this law was neither published nor submitted to the Government for endorsement by the end of the reporting period.

7. Furthermore, the workers' rights are seriously jeopardised by the economic situation and workers are increasingly going on strike. Staff working in the judiciary, schools, the Army and the police, all of them employed by the state, threatened to go on strike in 2016. A number of strikes were staged in the reporting period by workers of companies undergoing restructuring and bankrupt companies, as well as private and privatised companies.

Right to Social Security

1. Adoption of amendments to the social welfare law, the family law and the draft law on financial support for families with children was still pending. The system of social services, including those for elderly and socially disadvantaged persons, was still largely institutionalised. Exercise of social services at the local level should contribute to developing non-institutional forms of care, developing a range of service providers and integrated social services, and improving service accessibility, efficiency and quality.

2. The EC also noted that the Survey on Income and Living Conditions was conducted for the third time in 2015. The at-risk-of-poverty (AROP) rate in Serbia decreased slightly to 25.4 %, with the highest rates among young people aged 18–24 and those under 18, unemployed persons, and households with two adults and three or more dependent children. The current system of social benefits did not effectively help to reduce poverty, the pension system continued to show a high deficit and the ratio of insured persons to pensioners was low and undermined the long-term sustainability of the system.

3. The results of a set of poverty maps for Serbia, reflecting variability in welfare across the country by combining two sources – the 2011 Census of the Population and the 2013 Survey on Income and Living Conditions – to estimate the poverty rates for small geographic areas, show that a number of municipalities in the southern part of Serbia have high poverty incidence. The estimated AROP rate ranges from 4.8 percent in Novi Beograd in the Belgrade Region, to 66.1 percent in Tutin in the region of Šumadija and Western Serbia.

4. Welfare beneficiaries in Serbia are individuals whose income from work, rent of property or other sources is lower than the amount of welfare laid down in the law. This amount, which initially stood at around 7,890 RSD (app. 64 EUR), is aligned with the consumer price index twice a year. The vehemently criticised Decree on the Social Inclusion Measures for Welfare Beneficiaries adopted in 2014 is still in force. The Government is of the view that the welfare beneficiaries have to earn the welfare on which the state is spending the tax-payers' money. The Ministry of Labour, Employment and Veteran and Social Affairs State Secretary went a step further and said that a so-called Hungarian model law would be introduced in 2017, under which welfare beneficiaries would have to work for their welfare.

Right to Education

1. The PISA test scores showing that around one-third of the population was functionally illiterate. Serbia ranked below all EU Member States on the 2016 World Economic Forum Human Capital Index, with particularly weak results in the 15–24 age group. It noted that, although the country had a relatively good scientific base, the level of investment in research was less than 1% of GDP and that cooperation between the public and private sectors was weak and not systematically supported.

2. The National Qualifications Framework for lifelong learning had been developed on the basis of existing qualifications framework for vocational and higher education and was under consultation with the relevant national bodies, but that it should be linked with steps for a progressive reform of the education system at all levels, improving the level of basic skills acquired by students.

3. The education system in Serbia mostly boils down to formal education at the moment, while informal education and lifelong learning, despite the praiseworthy initiatives launched by the Ministry of Youth and Sports, are still insufficiently recognised or applied as an instrument for the development of human capital and skills. Education at all levels mostly concentrates on the transfer of academic knowledge and devotes hardly any attention to critical thinking.

4. There are no precise data on school dropout rates, particularly among children from vulnerable groups. The secondary school dropout rate is much higher because secondary education is not mandatory; only 15% of Roma children attend secondary schools.

5. In his 2015 Annual Report, the Protector of Citizens said that one quarter of Serbia's population was between 20 and 29 years old and that only 14% have completed tertiary education, while over 50% of them had only secondary school. The unemployment rate of this age group exceeds 40% and youths on the whole account for over one-third of the jobless.

6. The 2016 amendments to the Higher Education Act did not put in place an honour code, although the European Parliament, in its resolution on Serbia of March 2015, expressed concern over the failure of Serbia's state institutions and academic community to address the problem of plagiarised theses.

Health Care

1. Access to healthcare is the main problem in Serbia. The sustainability of the health sector was endangered by the poor financial situation of the RHIF, aggravated by the lowering of the health insurance contribution in 2014. The health spending is failing to cover essential care, so that out-of-pocket (OOP) payments make a large contribution to overall spending. Given the impact of corruption and other private co-payments, OOP spending accounts for almost 40% of total health

expenditure in Serbia. Overall, private health expenditure in Serbia, expressed as a percentage of GDP, has risen in recent years and is the highest in the region.

2. Serbia faces a number of challenges in modernising its health system, including budgetary constraints and problems accessing innovative healthcare solutions, principally owing to the absence of a sustainable, comprehensive and transparent way to evaluate and procure new health technology.

3. Employee- and employer-financed social health insurance (SHI) covers most general medical services, with uninsured groups covered by state budget funds. Co-payments officially exist for certain medicines and are informally required to access many others, making many drugs unaffordable and out of reach for large segments of the population.

4. The deficits are evident in some of the most vital but costly medicines. For example, out of more than 2,000 who are potentially eligible, only 200–300 new patients are getting the prescribed treatment for hepatitis C each year. The situation in oncology is even worse, due to the shortage of funds collected by the RHIF that has limited the resources available for high-cost medicines because not only is the RHIF decreasing the number of reimbursed indications, but even those patients are not getting it because the RHIF has only enough medicine to treat a small number of patients and has to agree on who they will be.

5. Shortages of medical staff in primary healthcare remained problematic, and greater organisational capacity was needed. The national plan for human resources in the health sector should be implemented and new programmes for specialisation and professional development developed.

National Minorities and Minority Rights

1. The Preliminary Draft Act Amending the Minority Protection Act was presented on 22 December 2016. The CSOs had not been involved in the drafting of these amendments. However, the Preliminary Draft, although an improvement over the valid law, suffers from specific deficiencies. For instance, it does not concretise the valid definition of national minorities. Namely, concepts such as “sufficiently representative” and “a firm bond with the territory” are vague. The Preliminary Draft includes several declaratory provisions, the practical scope of which is questionable and immeasurable. It does not deal at all with the direct participation of national minorities in decision-making, it also fails to specify how persons belonging to national minorities shall directly take part in decisions or decide on specific issues related to their culture.

2. In its 2014 decision, the Constitutional Court declared unconstitutional, in whole or in part, 10 Articles of the National Councils of National Minorities Act (NCNMA). However, the Constitutional Court failed to deal with numerous problems that arose in the enforcement of this law, due to the vagueness of the

legal norms or their non-conformity with other laws. The working group tasked with drafting a new law on national minority councils was formed in late 2015. The group, however, did not meet even once in 2016, wherefore it is quite unlikely that either a new law will be adopted or the valid one amended in the first quarter of 2017, as envisaged by the Action Plan.

3. In March 2016, the Government of the Republic of Serbia adopted the Action Plan for the Realisation of National Minority Rights which envisages numerous activities, divided into 11 chapters: personal status, prohibition of discrimination, culture and media, freedom of religion, use of scripts and languages; education, democratic participation, adequate representation of persons belonging to national minorities in the public sector and and public companies, national minority councils, economic status of persons belonging to national minorities and international cooperation.

4. The Serbian Government in 2016 adopted a Decree on the National Minorities Budget Fund Disbursement Procedure. The funds shall be disbursed via public calls for proposals. Institutions, associations, foundations, companies and other organisations founded by national minority councils and CSOs registered in the relevant registers and pursuing the protection and advancement of the rights and status of persons belonging to national minorities are eligible to apply. The state has earmarked 1,800,000 RSD for the Budget Fund, which are in the Ministry of State Administration and Local Self-Governments budget group. The funding was not disbursed because the programme of priority areas to be funded from the Fund had not been endorsed.

5. The media reported on the establishment of the National Council of the Russian National Minority in late December 2016. The Council was formed at an event in the Russian Centre in the presence of 35 delegates – representatives of 300 citizens of Russian ethnicity and was soon to submit its application for registration and initiate the procedure for the forming of a separate election roll of the Russian national minority in Serbia. Assuming that the media accurately reported the news, the establishment of the Russian NMC is not in compliance with the provisions on the election of NMC members. Under the Act, an NMC may be formed if at least 5% of the persons belonging to that minority under the latest Census, provided their number exceeds 300, support the request for the establishment of the NMC. The question therefore arises how the Russian NMC was formed, how its Chairwoman was elected and how it adopted its Statute when the requirements laid down in the NCNMA have not been fulfilled.

6. Only five parties representing the minorities won seats in the 2016 parliamentary elections: The Alliance of Vojvodina Hungarians is represented by four deputies. The Bosniak national minority is represented by two parties: the Bosniak Democratic Community, headed by Muamer Zukorlić and the Sandžak Party of Democratic Action (SDA), led by Sulejman Ugljanin. Each of them won two seats in parliament. In addition to these two parties, registered as national minority par-

ties, part of the Bosniak electorate is represented also by the Social Democratic Party of Serbia (SDPS) headed by Rasim Ljajić, which is not registered as a minority party and which ran in the coalition formed by the winner of the elections, the Serbian Progressive Party (SNS). The ethnic Albanian Party for Democratic Action (PDD) won one seat, as did the Green Party, which made it into parliament because it was granted the status of a minority party.

Status of Roma

1. According to the last Census, conducted by the Statistical Office of the Republic of Serbia in 2011, 147,604 (2%) of Serbia's nationals declared themselves as Roma. Roma are one of the most vulnerable categories of the population in Serbia.

2. In March 2016, the Serbian Government adopted the national 2016–2025 Strategy for the Social Inclusion of Roma Men and Women, which covers five priority areas: education, housing, employment, health and social protection. The Council for Improving the Status of Roma and the Implementation of the Decade of Roma Inclusion, the Human and Minority Rights Office, the Social Inclusion and Poverty Reduction Unit and the relevant ministries are charged with the development and implementation of the Roma Social Inclusion Strategy.

3. The European Union said it planned to earmark an additional 14 million EUR for new projects to improve the status of Roma and that it has already allocated 15.4 million EUR for ongoing projects. Two EU-funded projects have been successfully completed: Let's Build a Home Together, worth 3.6 million EUR and secured from IPA funding, which was implemented in cooperation with UNOPS Serbia and the Belgrade city authorities and within which social housing was secured for socially vulnerable Roma, and EU Support for Roma Employment project, worth 1.6 million EUR.

4. The NGO Praxis concluded that most of the problems in exercising the rights to birth, citizenship and residence registration persisted in 2016. It noted a substantial increase in the number of returnees, whose children were born abroad and were not registered in the Serbian birth registers, in 2016. Praxis commended the announced introduction of the electronic birth registration system, which could finally solve the systemic problem it had been alerting to for years.

5. The Office of the Commissioner for the Protection of Equality and the Protector of Citizens contributed to the prevention of and protection from discrimination. The latter concluded that Roma were one of the most vulnerable groups in Serbia and that the adoption of by-laws systematically governing affirmative measures, including measures for enrolling Roma pupils in secondary schools, substantially facilitated the establishment of procedures that would pursue to aim of such measures.

6. The construction of a 120-meter long and two-meter high wall between a road and the Roma settlement Marko Orlović in Kruševac, home of 2,500 people,

provoked caused a lot of attention. Some minority rights protection associations condemned the erection of the wall, specifying that they most sharply condemned such an “attempt to create a ghetto”. The public company building the wall, said that the wall was to serve as a sound barrier. Unfortunately, some Kruševac residents supported the erection of the concrete barrier.

7. Roma returnees from Western Europe, who failed to obtain asylum, are a particularly vulnerable group. Serbian Chamber of Commerce data indicate Roma account for 65% of the returnees. Returnees have encountered problems obtaining personal documents, exercising their rights to welfare and finding jobs.

8. The introduction of additional assistants and health mediators has been proposed to deal with the high shares of early school leavers and poor access to health care, identified as major problems plaguing the Roma community.

9. Roma Language lessons have been introduced in 15 schools in Serbia. They were attended by 2,264 pupils in 2016. Pupils in large cities, such as Belgrade, have shown the least interest in the course, as opposed to their peers in smaller communities. Roma Language is taught by Belgrade University School of Languages graduates and students with teaching certificates. The absence of Roma textbooks and the schools’ lack of interest were described as the greatest problems. A total of 121 scholarships were awarded to 58 students attending health colleges at universities in Belgrade, Novi Sad, Niš and Kragujevac through the Roma Health Scholarship Programme in the past six years.

10. UNHCR data showed that some 80,000 Roma were living in around 600 informal settlements with over 100 residents in Serbia that were yet to be legalised. Thirty percent of these settlements did not have water supply, 33% were not connected to the public electricity grid and 40% were not connected to the sewage system. Only 85% of Roma children regularly attended primary school and only 22% attended secondary school.

11. According to a UNICEF survey, 57% of Roma women aged 20–49 were married before the age of 18, compared to 6.8% of women in the general population. The percentages are dramatically different in case of women aged 20 to 24 who gave birth before the age of 18: 38.3% for Roma woman and 1.4% for women in the general population.

LGBTI Rights

1. A survey conducted by the Commissioner for the Protection of Equality in 2016 showed that Serbia’s citizens still felt the greatest social distance towards LGBT persons, although its results indicated that it was slightly lesser than in 2013, when the previous survey was conducted. The 2016 survey showed that a quarter of the respondents would not like to work alongside LGBT persons, that a third of them did not want to socialise with them, that half of them did not want their chil-

dren to have LGBT kindergarten teachers and that some 60% of them would not want their children to marry an LGBT person.

2. The Pride Parade, held in Belgrade in 2016 for the third consecutive year, passed in a somewhat more relaxed atmosphere than the previous ones, but under strong police security again. No incidents occurred.

3. Although the Criminal Code was amended in 2012 and now includes Article 54a, under which courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity, no final court decisions finding the perpetrators guilty of the committing this crime under aggravating circumstances were delivered in the reporting period. Nor have the police, prosecutors or courts issued any official data on the hate crimes they processed.

4. Serbian law does not entitle same-sex partners to marry, or register as civil partners. Nor does it regulate their other rights, wherefore they are discriminated against with respect to a number of rights (alimony, joint adoption of children, joint property, special protection from domestic violence, succession of a surviving partner to the deceased's tenancy rights, the right to refuse to testify, to legal inheritance, to pension survivor benefits, et al).

5. The Serbian legal system does not recognise trans persons. The health system recognises only transgender, which it categorises as a mental disorder. In 2012, the Constitutional Court issued a decision on a constitutional appeal, finding violations of the rights to dignity and free development of the personality and the right to respect for private and family life. The Court notified the National Assembly and Protector of Citizens, in their capacity of legislators, of the need to regulate the legal consequences of sex change. The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism in 2012 and the Model Gender Identity Act in 2016.

6. The Anti-Discrimination Strategy Action Plan envisages two measures addressing this issue: 1) the drafting of a law on gender identity to improve the status of transgender persons until mid-2016 and 2) the implementation of the Constitutional Court's above-mentioned decision, i.e. the preparation of a draft sex change law, which would subsequently serve as grounds for amending other relevant laws; the latter measure, however, does not need to be implemented until the last quarter of 2017. There were no indications that the implementation of these Action Plan measures had begun by the end of the reporting period.

7. The HIV infection is one the chief health challenges faced by gay people. Young men, born between 1985 and 1995, are at present the group at greatest risk of contracting HIV. The Dr Milan Jovanović Batut Public Health Institute said that the number of people newly diagnosed with HIV had soared in 2015 to 178, compared to 130 in 2014. Most of the newly diagnosed cases of HIV – 73 percent – belonged to the MSM (men who have sex with men) category. The National Strategy

for Combatting HIV/AIDS has expired. Its action plan was never adopted. Nor was funding for the activities to prevent and suppress the epidemic secured.

8. There are no specific regulations in Serbian law or publicly available data on intersex persons and their quality of life. Estimates are that between six and eight intersex babies are born in Serbia every year. Intersex variations are still considered medical disorders. No data were available on the number of “corrective” operations performed on intersex children in Serbia.

Human Rights of Persons with Disabilities

1. According to 2011 Census in Serbia, the first to include a set of questions on disabilities, 7.96% (571,780) of Serbia’s citizens suffer from some kind of disability. As many as 60.3% of them were over 65 and 1.2% under 15 years of age in 2011. The Census showed that most suffered from physical and sensory disabilities (59.5% and 41.9% respectively) and that 16.2% of all persons with disabilities suffered from three or more of the listed disabilities.

2. Although Serbia has committed to deinstitutionalisation in principle, the number of institutionalised persons has been increasing every year and the Government still lacks a clear deinstitutionalisation plan. The successful process of deinstitutionalisation has to be accompanied by comprehensive changes in the systems of education, social policy, health protection, employment, accessibility, participation and the overall development of local support services. According to the Republican Social Protection Institute 2015 Annual Report, 89% of 14,663 beneficiaries in 2015 were institutionalised and only 11% were living with their families. The overwhelming share of institutionalised persons can be ascribed to the fact that specialised foster care and system of local services supporting children and adults with disabilities are not developed, a problem identified also by the Institute. Like in the past, institutionalisation was in most cases terminated due to the death of the beneficiaries.

3. Rather than falling, the number of adults appointed guardians rose in 2015, by around two thousand over the previous year, and totalled 12,493. Of them, 93% were fully and 7% partly deprived of legal capacity. Comparison of the data over the past three-year period shows that the number of adults appointed guardians increased by 20% every year. Although it proclaims the principle of full respect for the dignity of persons with mental disabilities, the Act on the Protection of Persons with Mental Disabilities permits deprivation of liberty on the basis of impairment and involuntary placement of children and adults with disabilities in health and residential institutions. The 2014 amendments to the Non-Contentious Procedure Act commendably impose upon the courts the obligation to periodically review their decisions depriving persons of their legal capacity.

4. Persons with physical disabilities face obstacles hindering their use of public transport, home appliances, electronic and digital systems, services and products,

and access to public and private buildings in everyday life. Persons with mental disabilities, on the other hand, face an insufficiently inclusive education system and segregation in school, lack of individual or group support in local communities and other problems in everyday life.

5. Inclusive education was introduced by the new Education System Act in 2009. This Act guarantees persons with disabilities the right to education in the mainstream education system, which recognises their needs, and provides for additional, both individual and group, support. Under the Act, school principals shall form professional inclusive education teams.

6. Republican Social Protection Institute data show that only 28% of the institutionalised children are covered by some type of education; furthermore, they indicate that none of them attend mainstream schools. Children attending school, however, face major obstacles in practice arising from lack of resources, difficulties in planning additional educational support services, lack of tailored textbooks and teaching aids, lack of transport to and from school, physical inaccessibility, the work of the inter-sectoral commissions, underdeveloped professional competences of teaching staff, etc.

7. Given the substandard social inclusion and employment of persons with disabilities, the data of the Ministry of Labour, Employment and Social and Veteran Affairs indicating that 70% of persons with disabilities in Serbia are poor and that over half of them are on some kind of welfare come as no surprise. The Ministry said that 4,778 persons with disabilities found jobs via the National Employment Service by October 2016, i.e. 45% more than in 2015.

8. The public's attention refocussed on the deplorable conditions in residential institutions when a horrific fire, claiming the life of one ward, broke out in the Novi Sad Home for Children and Youths "Veternik" in May 2016. The ward had been locked up in a 2-square meter isolation room. Isolation, as a coercive measure, indisputably constitutes an act of ill-treatment and torture that has to be prohibited and eradicated.

9. The 2015–2017 Mental Health Protection Strategy was adopted with a view to humanising treatment and improving mental health and the prevention of mental health diseases. Under the Strategy, mental health services shall provide modern, comprehensive community-based treatment, involving a bio-psycho-social approach, which is to be extended as close as possible to the patients' families. Professional organisations and the Protector of Citizens criticised the inconsistent implementation of this approach.

Gender Equality and Special Protection of Women

1. The Gender Equality Act is not aligned with international standards or the subsequently adopted by-laws, does not envisage instruments for its implementation and fails to elaborate thoroughly the establishment and enforcement of a mechanism

for the protection of gender equality. “Additional consultations” were quoted as the reason for withdrawing from the parliament pipeline the new Gender Equality Act, which was to have been adopted in an urgent procedure in February 2016. This law was not adopted until the end of the reporting period.

2. The main framework for the gender equality policy until 2020 is laid out in the National Gender Equality Strategy for the 2016–2020 Period and its 2016–2018 Action Plan, which were adopted in January 2016, and in the new Gender Equality Act, the enactment of which is pending. The 2015 amendments to the Budget System Act envisage the gradual introduction of gender responsive budgeting, a legal obligation all institutions funded from the state budget, national and local alike, are to fulfil by 2020.

3. The first Gender Equality Index for Serbia (for 2014) was presented in February 2016. It covers a number of main gender equality domains: work, money, knowledge, time, power, health, et al. Serbia scored 40.6 of 100 points on the Index, i.e. 12.3 less than the EU average. Serbia lags behind the EU average the most in the work and money domains and the least in the health domain. On the other hand, it scored better than the EU average in the domain of power, i.e. the participation of women in decision-making and management structures.

4. In the National Assembly, gender equality issues are reviewed by the Committee for Human and Minority Rights and Gender Equality. Most of its members are women MPs. The Committee held nine sessions in 2016. The Women’s Parliamentary Network was established in 2013 as an informal group of all National Assembly women MPs, regardless of their political affiliation, with a view to empowering women and advancing gender equality. Women deputies have been submitting amendments to laws and raising issues of relevance to improving gender equality and developing the equal opportunities policy through this mechanism.

5. Violence against women is the most widespread form of violation of women’s human rights. Serbia does not ensure efficient protection of women from domestic violence. Comprehensive consideration of this problem is additionally undermined by the non-existence of nationwide records of various authorities dealing with domestic and intimate partner violence cases. The most recent national data indicate that young people account for nearly half of the victims of violent crimes against life and body and that young women account for 49% of the rape victims. The Serbian Government declared 2016 the Anti-Gender Violence Year, thus committing to zero tolerance for domestic and intimate partner violence. On the other hand, none of the projects aimed at preventing violence against women or supporting victims of violence were granted funding by the Ministry of Justice through its Call for Proposals, within which three million EUR were disbursed.

6. At its session in July 2016, the Gender Equality Council decided to form a working group to fight domestic violence. Furthermore with a view to empowering victims of domestic and intimate partner violence, the Vojvodina Secretariat for Social Policy, Demography and Gender Equality published a Call for Proposals in Oc-

tober offering grants totalling five million RSD to employers offering full-time one-year jobs to women victims of domestic and intimate partner violence in Vojvodina.

7. The crucial gaps in the legislation on domestic violence concern the absence of provisions on stalking, the different definitions of a family member in the Criminal Code and the Family Act, lack of provisions on urgent criminal proceedings in domestic violence cases, absence of a programme for violent males, of an effective mechanism for protecting victims of violence and on legal aid. Furthermore, domestic violence offenders are criminally prosecuted only if they incurred grave physical injuries to their victims. The trials last a long time and the victims are not provided with protection either when they report the offenders or later, during the trials.

Status of the Elderly

1. The ratio of people over the age of 60 stood at 24.4% in 2015 and estimates are it will reach 32.3% by 2050, which is in line with European projections. (HelpAge International, GAWI, 2015). The Serbian Government adopted in June 2016 the Employment and Social Reform Programme, which includes explicit objectives, measures and activities targeting older people directly or indirectly.

2. The Republican Pension and Disability Insurance Fund data show that Serbia has around 1.7 million pensioners. Sixty percent of them receive pensions under 25,000 RSD, while only 10% receive pensions exceeding 40,000 RSD. The following data – that the average pension slightly exceeded 23,000 RSD and that the minimum consumer basket cost around 35,000 RSD (while the average consumer basket cost around 67,000 RSD) in 2016 – lead to the devastating conclusion that pensioners in Serbia cannot satisfy even their minimum needs to lead a normal life in dignity.

3. The status of older people in rural areas is further aggravated by lack of access to healthcare, poor road infrastructure and lack of public transport. Most rural households (73%), covered by a survey conducted by the Red Cross of Serbia and the Commissioner for the Protection of Equality, have only one source of income. As many as 61% of them said they had trouble or could hardly make ends meet with their income. Loneliness and social exclusion are widespread problems among the rural population, in view of the fact that over 30% of the rural households are one-member households and that most of them cannot participate in community life. Many of them are not visited regularly or assisted systematically by health, social or humanitarian organisations.

4. The issue of efficient supervision of whether the private and state homes for the elderly fulfil the legal requirements again made the headlines when a fire broke out in an unregistered private old people's home in Pančevo, leaving three residents dead and eleven injured. The police arrested two people under the suspicion of committing and aiding and abetting a crime against general safety. It tran-

spired that the owner of the illegal home in Pančevo had twice been prohibited from running such an establishment.

Migrants, Refugees and Asylum Seekers – Migrant Crisis and Its Effects on Serbia

1. In 2016, a total of 12,821 aliens expressed the intention to seek asylum and/or were registered as asylum seekers in Serbia, 5,390 of them were minors (177 unaccompanied). The Serbian authorities issued 94,756 certificates of entry into the Republic of Serbia (the so-called transit certificates) to migrants in the first three months of the year, but halted this form of registration in March 2016. The Asylum Office registered 830 aliens in 2016; 574 of them applied for asylum and 160 were interviewed. The Office upheld 42 and dismissed 40 applications on the merits. Overall, the Asylum Office granted asylum to 41 people and subsidiary protection to 49 people from 2008, when the Asylum Act entered into force, to the end of 2016. A total of 6,505 aliens were accommodated in Serbia's Asylum Centres in 2016; 5,491 of them left them of their own accord.

2. The work of the Aliens Shelter in 2016 is a good practice example of facilitating access to the asylum procedure. On the other hand the Serbian authorities continued the practice of penalising *prima facie* refugees for illegally entering or staying in Serbia. The number of aliens found guilty of these misdemeanours, however, plunged in the first ten months of the year (2,144 until November 2016).

3. The Asylum Office in 2016 issued the greatest number of positive decisions on asylum applications since the Asylum Act came into force in 2008. The quality of the first-instance decisions improved in 2016. Appeals of Asylum Office decisions are reviewed by the Asylum Commission. The terms in office of the Asylum Commission members expired on 16 September 2016 and the Serbian Government failed to appoint the new members by the end of the year. Thus, the second-instance asylum authority was not operational until the end of the year.

4. The state's treatment of migrants in 2016 was primarily influenced by the policies of the neighbouring countries and decisions taken at the EU level. In September 2016, the Serbian Government Working Group on Mixed Migration Flows adopted the Response Plan in Case of Increased Inflow of Migrants to the Republic of Serbia in the October 2016 – March 2017 Period. The Plan envisaged the expansion of the accommodation capacities for migrants in Serbia, extension of health care and provision of access to the asylum procedure to aliens who wanted to apply for asylum.

5. The MIA and the Commissariat for Refugees and Migration (CRM) intensively worked on the draft law on asylum and temporary protection within an EU-funded twinning project. This law is to ensure compliance of the Serbian legal framework with EU regulations in this field. The Preliminary Draft was presented

at public debates held throughout Serbia. The MIA also drafted a new Aliens Act. Despite the intensive work on the two texts, neither law was adopted by the end of the 2016.

6. Reception and Transit Centres were successively opened along Serbia's borders with Croatia, Hungary, FYROM and Bulgaria. Some of the Centres operated under the jurisdiction of the CRM, others under the jurisdiction of the Ministry of Labour, Employment and Veteran and Social Affairs. Reception Centres were opened in Preševo, Miratovac and Bujanovac, near the border with FYROM, in Bosilegrad, Dimitrovgrad and Pirot, near the border with Bulgaria, in Sombor, Šid, Principovac and Adaševci, at the border with Croatia, and in Subotica and Kanjiža, at the border with Hungary. The CRM said at the end of the year that the 11 open Centres for migrants and refugees could take in over 4,000 people altogether.

7. The Serbian Government at long last adopted the Decree on the Integration of Aliens Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia on 24 December 2016. It may be concluded that substantial headway was made in the field of integration in 2016 in terms of norms, but that the relevant institutions did not coordinate amongst themselves and that systemic regulation and coordination will be the key challenge in 2017.

I. HUMAN RIGHTS IN SERBIA'S LAW AND WORK OF ITS INSTITUTIONS

1. International Human Rights Treaties and Serbia

1.1. Universal Human Rights Treaties

All major universal human rights treaties are binding on Serbia, including the International Covenant on Civil and Political Rights and its two Protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination against Women and its Protocol, the Convention on the Rights of the Child and its two Protocols (on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol and the Convention on the Rights of Persons with Disabilities and its Protocol and Convention for the Protection of All Persons from Enforced Disappearance. The only UN human rights convention Serbia has not ratified yet is the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which it had signed back in 2004. Serbia in 2010 ratified the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.¹

1 In the view of the Human Rights Committee, all states that emerged from the former Yugoslavia would in any case be bound by the ICCPR since, "once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the ICCPR". See paragraph 4, General Comment No. 26 on continuity of obligations under the ICCPR, Committee on Human Rights, UN doc. CCPR/C/21/Rev.1/Add.8, 8 December 1997. The Federal Republic of Yugoslavia (FRY) deposited notification of succession of the former SFRY on 26 April 2001 and

Serbia has the obligation to submit periodic reports to the Committee for the Rights of the Child, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities in 2016. In April 2016, Serbia's delegation presented its initial report on the implementation of the Convention on the Rights of Persons with Disabilities.² Serbia in 2016 also submitted its second and third period report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination to the Committee on the Elimination of All Forms of Racial Discrimination, which will review it at its November 2017 session.³ Serbia's second and third periodic reports on the Convention on the Rights of the Child are to be submitted to the relevant UN Committee in January 2017. The Human Rights Committee is to review Serbia's report on the implementation of the International Covenant on Civil and Political Rights and its replies to the list of questions in March 2017.⁴ At its November 2017 session, the Committee against Torture will review Serbia's replies to a list of questions. Serbia is under the obligation to submit its report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women to the relevant Committee in July 2017.

Serbian nationals are entitled to file individual complaints to all the UN Committees charged with monitoring the implementation of human rights conventions and considering such submissions with the exception of the Committee on Economic, Social and Cultural Rights, given that Serbia has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child because Serbia has not ratified Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

In December 2014, the Government of the Republic of Serbia enacted a decision forming a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms.⁵ The Council members are appointed by the Government. The Council is charge with proposing measures to be taken for the implementation of the recommendations; voicing its opinions on the progress made in the field of human rights during the reporting period and providing expert explanations of the state of human rights and of the results achieved by implementing the recommendations. The Council held its constituent session in March 2015. The mechanism was presented at the OSCE Human Dimension Implementation meeting in Warsaw in September 2016 by the Acting Director of the

continued membership in international treaties. The Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro (SaM), did the same pursuant to a Decision of the National Assembly of the Republic of Serbia of 5 June 2006.

2 See: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19785&LangID=E>.

3 The report is available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2f2-5&Lang=en.

4 See the Human and Minority Right Office press release, available in Serbian at: <http://www.ljudskaprava.gov.rs/sr/node/141>.

5 *Sl. glasnik RS*, 140/14.

Human and Minority Rights Office Suzana Paunović.⁶ Human rights organisations applauded the establishment of this body, but hardly an information about its work has been made public. The Human and Minority Rights Office website does not have any information about the work of this body.

1.2. Council of Europe Regional Treaties

The Framework Convention for the Protection of National Minorities was ratified back in 1998 by the then FRY. The SaM Assembly on 26 December 2003 also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Assembly of Serbia and Montenegro ratified the European Charter for Regional and Minority Languages.

Serbia ratified the Revised European Social Charter (ESC) in 2009. The nationals of Serbia are not entitled to file collective complaints to the European Committee of Social Rights under the ESC because Serbia has not agreed to the filing of this type of complaints. Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The National Assembly ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society and European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

An expert mission of the CoE Commission against Racism and Intolerance (ECRI) paid a visit to Serbia from 26 to 30 September 2016, during which it held meetings in Belgrade, Preševo and Bujanovac with the National Assembly deputies, independent regulatory authorities, ministries, public institutions, local governments and civil society, with a view to gaining a comprehensive picture of the situation in the country in the fight against racism and intolerance. In May 2016, Serbia notified the ECRI Secretariat of the implementation of ECRI's 2011 recommendations.⁷

The European Commissioner for Human Rights Nils Muižnieks sent a letter to Minister of Labour, Employment and Social and Veteran Affairs Aleksandar Vulin, in which he expressed concern over the delay in the adoption of a law on veterans, disabled veterans, civilian disabled war victims and members of their fam-

6 See the Human and Minority Right Office press release, available in Serbian at: <http://www.ljudskaprava.gov.rs/sr/press/vest/srbija-predstavila-sistem-za-pratshenje-primene-preporuka-mehanizama-un-za-ljudska-prava>.

7 In its 2011 report after the fourth cycle of monitoring conducted in Serbia in 2010, ECRI issued recommendations to Serbia, inter alia, to strengthen the institution of the Commissioner for the Protection of Equality and training on issues of racism and racial discrimination of the judiciary and take urgent measures to provide identity papers to Roma, Ashkali and Egyptians. The ECRI 2011 Report is available at: <http://hudoc.fnm.coe.int/ecri/document.asp?item=3>.

ilies. He also voiced concern that the Belgrade court's decision finding Belgrade weekly NiN guilty of defamation and fining it might have a chilling effect on media freedoms.⁸

1.3. Applications against Serbia before the European Court of Human Rights in 2016

1.3.1. Statistics

The European Court of Human Rights (ECtHR) in 2016 ruled on 66 applications against Serbia and declared inadmissible or struck out 1,220 of them, much less than in the past.⁹ The ECtHR delivered 21 judgments with respect to Serbia and found Serbia in violation of at least one right under the Convention in 19 of them.¹⁰ The Court found Serbia in violation of the right to a fair trial under Article 6 of the Convention in 16 cases; the state was found in breach of that article in nine cases due to the non-enforcement of the domestic courts' decisions and in four cases due to the length of proceedings. The Court found Serbia in violation of the right to free enjoyment of possessions enshrined in Article 1 of Protocol 1 in eight judgments. In the remaining cases, it found Serbia in violation of the procedural limb of Article 2 protecting the right to life, the right to a private and family life under Article 8, the right to an effective legal remedy under Article 13, the right to free election under Article 3 of Protocol 1 and the violation of the right not to be tried or punished twice for the same offence enshrined in Article 4 of Protocol 7.

The European Court adopted six interim measures with respect to Serbia in 2016, two of them regarding the return of aliens to FYROM.¹¹

1.3.2. Selected ECtHR Judgments with Respect to Serbia Delivered in 2016

Milojević and Others v. Serbia¹² – the three applicants, all police officers, were dismissed from their jobs because they were charged with the commission of various criminal offences; they were subsequently acquitted. The first and second applicants were charged with abuse of post in 2004 and the third applicant with unauthorised possession of weapons and ammunition in 1999. Disciplinary proceed-

8 See: <http://www.coe.int/en/web/commissioner/country-report/serbia/>.

9 This number stood at 2,491 in 2015 and at 11,427 in 2014, see the ECtHR Analysis of Statistics 2016, p. 51, available at: http://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf.

10 ECtHR, Violations by Article and by State 2016, p. 2, available at: http://www.echr.coe.int/Documents/Stats_violation_2016_ENG.pdf.

11 ECtHR, Interim measures accepted by respondent State and destination (if applicable) from 1 January to 31 December 2016, available at: http://www.echr.coe.int/Documents/Stats_art_39_02_ENG.pdf.

12 Application Nos. 43519/07, 43524/07 and 45247/07, judgment of 12 January 2016.

ings were instituted against them but were terminated without any decision on the merits because they had already been dismissed. They were dismissed under Article 45 of the 1991 Ministry of Internal Affairs Act, in force at the time. They unsuccessfully challenged their dismissals in civil proceedings before the national courts.

The applicants claimed violations of their right to private and family life enshrined in Article 8 of the ECHR, because the dismissals affected their families' reputation and material well-being, especially since they lived in small towns. They also claimed that the MIA's discretionary power to terminate the employment of police officers was excessive and not applied consistently. The Government acknowledged that the formulation of the provision, pursuant to which they had been dismissed, was imprecise. The ECtHR held that this provision left to the complete discretion of the Ministry the decision about the dismissal of the officers against whom criminal proceedings were under way. It provided no guidance as to the exercise of this discretionary power. It also provided no instruction as to the consequences of the acquittal of the police officers. And it was arbitrarily applied by the Ministry. Furthermore, there were no procedural safeguards extending protection during the application of this deficient legal provision. The ECtHR found that the impugned provision did not satisfy the requirement of foreseeability and that, consequently, the dismissals were not "in accordance with the law". It thus found a violation of Article 8 in respect of the first two applicants. The ECtHR found the complaint of the third applicant inadmissible *ratione temporis* because he had been dismissed before the ECHR came into force in respect of Serbia. It reiterated that dismissal was, in principle, an instantaneous act, which did not give rise to any possible continuous situation of a violation of the Convention.

The applicants also complained, under Article 6(1) of the ECHR, that the decisions of the domestic authorities in civil proceedings regarding their dismissal were arbitrary and lacked sufficient reasons, as they simply reiterated the legal provisions on the basis of which they were dismissed. The ECtHR found the third applicant's complaint under Article 6(1) admissible *ratione temporis* as it was raised against the proceedings in which the legality of his dismissal was challenged and these proceedings both commenced and were finalised after the Convention came into force in respect of Serbia. The ECtHR relied on the finding of the Constitutional Court of Serbia, which, back in 2008, ruled on two cases raising substantially identical issues to those brought by the applicants and concluded that both the law on the basis of which the applicants had been dismissed and the judicial decisions which were identical to those rendered in the applicants' cases had been arbitrary in violation of the right to a fair trial. It saw no reason to depart from the reasoning of the Constitutional Court and found that the three applicants' right under Article 6(1) had been violated. The ECtHR awarded 5,800 EUR to the second applicant and 2,400 EUR to the third applicant in respect of non-pecuniary damage. The first applicant had not filed a claim for just satisfaction.

Milenković v. Serbia¹³ – The applicant had been involved in a physical altercation with another man, whom he punched in the head several times. He was charged and convicted twice for the same offence. He complained to the ECtHR about the violation of the *ne bis in idem* principle. He was first found guilty in misdemeanour proceedings for injuring the man he had clashed with and imposed a fine. He was subsequently convicted to three months' imprisonment in criminal proceedings for inflicting grievous bodily harm during the incident. The applicant appealed the decision, but the Serbian appeals court upheld the first-instance judgment. As regards the principle of *ne bis in idem*, that court held that the applicant had been found guilty of a misdemeanour against public order and peace in the misdemeanour proceedings, whereas he had been convicted for inflicting grievous bodily harm in the criminal proceedings. According to the appeals court, the descriptions of the acts sanctioned therefore clearly differed. In 2013, the Constitutional Court dismissed as ill-founded the applicant's constitutional appeal claiming violation of the *ne bis in idem* principle. The applicant was subsequently pardoned. The ECtHR considered that it was clear that both sets of proceedings were to be regarded as criminal for the purposes of Article 4 of Protocol No. 7 to the Convention as they both concerned the same event, the applicant's infliction of injuries to the man he had punched. The ECtHR found that the domestic authorities permitted the duplication of criminal proceedings to be conducted in the full knowledge of the applicant's previous conviction for the same offence and that the Constitutional Court had failed to bring its case-law in line with the ECtHR's approach to this issue, wherefore it found that the applicant's right under Article 4 of Protocol No.7 had been breached and awarded him 1,000 EUR in respect of non-pecuniary damage and 2,000 EUR in respect of costs and expenses.

Paunović and Milivojević v. Serbia¹⁴ – the applicants were elected National Assembly deputies for a political party called G17PLUS on 2003. Before the elections, all candidates, including the applicants, had been required by their party to sign undated letters of resignation and hand them in to the party. The documents also authorised the party to appoint other candidates in their place if necessary. Following political differences between the applicants and their party, in May 2006, the first applicant signed a separate, officially certified statement, in which he declared his prior resignation letter to be null and void. The first applicant informed G17PLUS, the National Assembly and its Administrative Affairs Committee of this statement and made it public. The second applicant followed suit. The G17PLUS chief whip dated the resignation letters and submitted them to the National Assembly, which acknowledged the resignations and appointed the two other candidates proposed by the party in their stead. The applicants' appeals to the Supreme and Constitutional Courts were dismissed.

13 Application No. 50124/13, judgment of 1 June 2016.

14 Application No. 41683/06, judgment of 24 May 2016. The Court reviewed only Mr. Paunović's application after applicant Milivojević withdrew her application in 2015.

Having reviewed the applicant's claim that the termination of his parliamentary mandate by the National Assembly had been unlawful and had therefore given rise to an unjustified interference with his rights under Article 3 of Protocol No.1 to the Convention, the Court concluded that the termination of the applicant's mandate was in breach of the law on the election of National Assembly deputies and the Assembly Rules of Procedure, which required the resignation of an MP to be submitted in person, in accordance with his genuine will and at the time he held the mandate in question. It found that the entire process of revoking the applicant's mandate was conducted outside the applicable legal framework and was therefore unlawful and, accordingly, amounted to a violation of Article 3 of Protocol No. 1.

The Court also found that the applicant had had no effective remedy by which to challenge the authorities' breach of his passive electoral rights and, accordingly, a violation of Article 13 taken in conjunction with Article 3 of Protocol No. 1.

The ECtHR held that that the finding of a violation of Article 3 of Protocol No. 1 constituted sufficient just satisfaction in respect of non-pecuniary damage and accordingly made no award under this head. It awarded the applicant 4,600 EUR in respect of pecuniary damage and 5,400 EUR in respect of costs and expenses.

Dimović v. Serbia¹⁵ – the applicants, Ivica Dimović and Jožef Dimović, and their friend S.K. were indicted for allegedly having stolen a wine press in 2007. They claimed that they had found the press abandoned. In 2009, the applicants were found guilty in a judgment mostly relying on S.K.'s confession of January 2006 that he had stolen the press together with the applicants; S.K. later revoked the confession, claiming he had given the statement under the influence of alcohol. S.K. died soon after giving the statement, before the end of the trial. The first applicant was sentenced to an effective prison term of six months while the second applicant was sentenced to six months' imprisonment, suspended for a period of two years. The judgment was upheld by the appeals court and the applicants challenged it, albeit unsuccessfully, before the Supreme and Constitutional Courts.

With a view to ascertaining whether the proceedings as a whole, including the way in which evidence was taken, were fair, the ECtHR examined whether there was a good reason for admitting the evidence of an absent witness, keeping in mind that witnesses should as a general rule give evidence during the trial and that all reasonable efforts should be made to secure their attendance, the evidence of the absent witness was the sole or decisive basis for the defendant's conviction, and, finally, whether there were sufficient counterbalancing factors, including strong procedural safeguards, to compensate for the handicaps caused to the defence as a result of the admission of the untested evidence and to ensure that the trial, judged as a whole, was fair. The Court found that S.K.'s statement was the decisive basis for the applicants' conviction and that no sufficient counterbalancing factors were in place to compensate for the handicaps under which the defence laboured. The Court

15 Application No. 24463/11, judgment of 28 June 2016.

also attached significant weight to the fact that the lack of diligence on the part of the domestic authorities was the primary reason for the admission of the S.K.'s statement as evidence only after his death and, consequently, the inability of the defence to cross-examine him at the hearing. It therefore found a violation of Article 6, paragraphs 1 and 3 (d) of the Convention.

The ECtHR awarded Ivica Dimović 3,000 EUR and Jožef Dimović 2,000 EUR in respect of non-pecuniary damage and 5,282.30 EUR in respect of their costs under all heads.

Cupara v. Serbia¹⁶ – The applicant had been receiving unemployment benefits, the amount of which was reduced after the methodology for calculating such benefits was changed under the amendments to the Act on Employment and Rights of Unemployed Persons in 2001. In 2007, he brought a civil claim against the National Employment Service, seeking payment of the difference between the benefits he had received and those he had been granted by the Employment Office and which had been due, plus statutory interest and legal costs, but the court did not rule in his favour. The applicant complained under Article 6(1) of the Convention about the rejection of his civil claims by the domestic courts and the simultaneous acceptance by the same courts of identical claims filed by other plaintiffs.

The ECtHR noted that the parties did not dispute the fact that there were inconsistencies in the adjudication of civil claims brought by many persons who were in identical or similar situations. It noted that domestic law provided for machinery capable of remedying the case-law inconsistencies and that the Constitutional Court was at the relevant time a part of that mechanism. It said that, even though the applicant was not required to have exhausted that avenue of redress in terms of admissibility of the application, the mechanism provided by the Constitutional Court, which was available to the applicant, was nevertheless an important consideration when looking at the system as a whole. The ECtHR thus found no violation of Article 6(1) of the Convention.

Mučibabić v. Serbia¹⁷ – The applicant complained under Article 2 of the Convention, claiming a violation of the right to life due to the ineffective investigation into the death of his son. The applicant's 22-year-old son and 10 other people were killed in an explosion in the Grmeč plant during the covert production of rocket fuel on the order of the Secret Intelligence Service (SIS) in 1995. The investigating judge and police immediately arrived at the scene of the accident. The Belgrade police formed a commission to establish the immediate cause of the explosion; it comprised officers of the Security Institute and the two co-owners of the company JPL Systems, who, while sitting in private, published the report eight months later. Two more reports were later produced and an investigation was launched against unidentified persons. Relying on the evidence and information classified as confi-

16 Application No. 34683/08, judgment of 12 October 2016.

17 Application No. 34661/07, judgment of 12 July 2016.

dential, the prosecutor decided not to prosecute in 2000, summarily dismissing the applicant's criminal report on the grounds that there were no elements of crimes prosecuted *ex officio*.

The applicant instituted subsidiary prosecution, by lodging a request that a criminal investigation be opened into breaches of safety regulations, but the investigating judge rejected the request as it was established that the rocket fuel had been produced on the orders of the then Serbian President Slobodan Milošević and the SIS. After the Supreme Court referred the case back to the Belgrade District Court for additional investigation, the investigating judge reopened the case, heard five witnesses and closed the investigation. In 2003, the applicant filed an indictment against four former executives of Grmeč and JPL, which had been involved in the production of rocket fuel, and the SIS Deputy Head for failing to enforce the requisite safety measures to prevent the lives of the applicant's son and others from being avoidably put at risk. The first-instance court acquitted the defendants in 2013 due to insufficient evidence after a long trial during which 9 hearings were held and 21 were cancelled or adjourned for various procedural reasons. The criminal proceedings had been ongoing over 11 years, during which the relevant authorities failed to clarify the circumstances in which the applicant's son lost his life; these proceedings were still pending. The applicant in the meantime lodged an appeal with the Constitutional Court, which found that the investigation was deficient and that the applicant was entitled to non-pecuniary damage, the amount of which was not specified in a final decision.

The ECtHR noted that lives were lost as a result of the undoubtedly dangerous activities, known to and occurring under the responsibility of the public authorities, but that the domestic authorities still have not ascertained whether the state officials or bodies bore any responsibility for the accident. The Court examined whether the measures taken during the criminal proceedings within its temporal jurisdiction were satisfactory in terms of the procedural obligation of Article 2 of the Convention; for reasons of context, the Court also took note of all relevant events prior to the date the Convention entered into force in respect of Serbia. The criminal proceedings were still pending, 20 years after the accident in which the applicant's son lost his life and 13 years after the indictment was filed. There were several long periods of unexplained inactivity and the trial recommenced before new chambers on six occasions either because of changes on the bench or because such delays in proceedings called for a fresh trial. The ECtHR stressed that the Government had failed to *show* any reason justifying such lengthy proceedings following the ratification date. It concluded that, whatever the individual responsibility, or lack of responsibility, of those public officials involved in the investigation process, these delays could not be regarded as compatible with the State's obligation under Article 2 to ensure the effectiveness of investigations, in the sense that the investigative process, including subsidiary prosecution, must be carried out with reasonable expedition. It held that the respondent State and its legal system as a whole, faced with

an arguable case of negligence causing lethal injuries, failed to provide a prompt, due diligent and effective response consonant with Serbia's obligations flowing from Article 2 of the Convention in its procedural aspect.

The ECtHR awarded the applicant 12,000 EUR in respect of non-pecuniary damage and 3,000 EUR in respect of costs and expenses.

Krgović v. Serbia¹⁸ – A civil court ruled in favour of the applicant, who had sued the basketball club Vojvodina BFC he had played for, and ordered it to pay him around 10,000 EUR. The judgment became final in October 1998. The first part of the debt was paid in 2012, under a restructuring plan following the institution of insolvency proceedings in respect of the debtor. The rest of the debt has not been collected. The ECtHR noted that the period of debt recovery in the applicant's case had so far lasted more than twelve years since the Serbian ratification of the Convention, that the applicant was active throughout the enforcement proceedings and that, although the debt was restructured in the context of insolvency proceedings, the debtor had not complied with that plan, and that it did not appear that the domestic authorities have taken any measures in this regard to date. It also found that, regardless of whether a debtor was private or State-controlled, the State should, as the possessor of public authority, act diligently in order to assist the applicant with the execution of the judgment in question. The ECtHR thus found Serbia in violation of the right to a fair trial enshrined in Article 6(1) of the ECHR. It awarded the applicant 4,700 EUR in respect of non-pecuniary damage and dismissed his claim in respect of pecuniary damage.

2. Correlation between National and International Law

The 2006 Constitution of the Republic of Serbia¹⁹ includes provisions defining the correlation between international and national law. Under Article 16(2) of the Constitution, the generally accepted rules of international law and ratified international treaties shall be an integral part of the national legal system and applied directly. The Constitution uses the term "ratified international treaties", which covers the international treaties the Serbian National Assembly ratified by law. It is, however, unclear what the authors of the Constitution imply under "generally accepted rules of international law" – just the rules of international customary law or the general international law principles as well.

The constitutional provisions dealing with the hierarchy of legislation stipulate the compliance of the ratified international treaties with the Constitution (Art. 194 (4)) and the compliance of laws and general enactments with ratified interna-

18 Application No. 29430/06, judgment of 13 September 2016.

19 *Sl. glasnik RS*, 98/06.

tional treaties and generally accepted rules of international law (Art. 194(5)), which means that the hierarchy of the international legal norms differs. International customs and general international law principles (“generally accepted rules of international law”) have the same legal force as the Constitution, while the Constitution is hierarchically above the ratified international treaties. Laws and other general enactments are hierarchically below ratified international treaties, customs and general legal principles and have to be in compliance with them. Consequently, international law shall prevail in the event of a conflict between Serbian and international law, unless the ratified international treaty is in contravention of the Constitution.

This provision may raise the issue of Serbia’s international accountability in the event it is not fulfilling its obligations under an international treaty because the latter is not in compliance with the Constitution. It is also disputable in view of Serbia’s ambition to join the EU, as participants in expert debates on constitutional amendments have frequently noted. A similar view was taken also by the European Commission for Democracy through Law (Venice Commission), which alerted to this risk in its Opinion on the 2006 Constitution,²⁰ in which it stated that the Constitution should be interpreted so as to avoid the collision of national regulations and international law rules binding on the state.²¹

The Constitution does not envisage transfer of powers to international organisations. Serbia’s accession to the EU will require of it to amend its Constitution like many EU Member States have, i.e. to introduce a new provision allowing transfer of part of its sovereign powers to international or supranational organisations i.e. giving EU law supremacy over national law.

3. Human Rights in the National Legislation

3.1. *Human Rights in the Serbian Constitution and Room for Improvement*

Section II of the 2006 Constitution of Serbia, comprising human and minority rights and freedoms (Arts. 18–81), is divided into three parts: I. Fundamental Principles (Arts. 18–22), II. Human Rights and Freedoms (Arts. 23–74) and III. Rights of Persons Belonging to National Minorities (Arts. 75–81).²² Under the Con-

20 See the Venice Commission Opinion on the Constitution of Serbia, opinion No. 405/2006, adopted by the Commission at its 70th plenary session (Venice, 17–18 March 2007), paragraphs 15–17, (available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdf-file=CDL-AD\(2007\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdf-file=CDL-AD(2007)004-e)).

21 The 1969 Vienna Convention on the Law of Treaties, which Serbia is a party to, clearly states that a contracting State may not invoke the provisions of its internal law as justification for its failure to perform a treaty, which means that the non-fulfilment of an international obligation gives rise to a state’s international accountability regardless of its national regulations.

22 More on each right in Chapter II.

stitution, provisions on human and minority rights shall be interpreted in accordance with the valid international standards and practices of international institutions monitoring their implementation (Art. 18 (3)) and the courts shall rule pursuant to the Constitution, the law and other general enactments when so provided for by the law, generally recognised rules of international law and ratified international treaties (Art. 142). The practice of applying international treaties and customs before national courts, has not, however, been embraced. This is also the consequence of the discrepancies between the constitutional provisions, notably the one in Article 145(2) specifying what court decisions shall be based on, but not mentioning generally recognised rules of international law. As per judicial independence, the Constitution lays down out that judges shall be subject only to the Constitution and the law (Art. 149(1)).

The Constitution contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. Under the Chapter 23 Action Plan, a new Constitution is to be adopted in the last quarter of 2017.²³ Experts have criticised some constitutional provisions on the protection of human rights ever since the valid Constitution was adopted. They have been alerting to the fact that its authors did not retain the provisions that had existed in the Charter of Human Rights of the State Union of Serbia and Montenegro (SaM) and thus practically reduced the achieved level of human rights under the Charter.

The changes that will crucially affect human rights safeguards regard the judiciary; a new constitutional framework guaranteeing its independence, impartiality and efficiency has to be put in place. Article 4 of the Constitution comprises provisions on the separation of powers and independence of the judiciary. A closer look at paragraphs 3 and 4 of this Article shows that they are mutually contradictory. Whereas paragraph 3 lays down that the relationship between the three branches shall be based on balance and mutual control, paragraph 4 explicitly states that the judiciary shall be independent. Furthermore, as noted in the Analysis of the Constitution,²⁴ performed by the working group charged with analysing the changes of the constitutional framework, paragraph 3 of Article 4 is not in compliance with paragraph 3 of Article 145 of the Constitution, under which “[C]ourt decisions shall be binding on everyone and may not be subject to extrajudicial control”.

This calls for the amendment of the constitutional provisions on judicial appointment and termination as soon as possible. Given that the National Assembly plays an important role in the election of judges and prosecutors, which facilitates political influence on appointments, the new provisions have to eliminate all opportunities for exerting such influence. This will require changing the composition

23 The activities conducted to date lead to the impression that this deadline will not be met, because, under the Action Plan, the draft of the new Constitution was to have been submitted to the Venice Commission for comment in the third quarter of 2016.

24 Available at: <http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-ustav-nog-okvira.php>.

of the High Judicial Council²⁵ and the State Prosecutorial Council,²⁶ charged with judicial and prosecutorial appointments. The autonomy of the public prosecution services is undermined by the current procedure for appointing the Republican Public Prosecutor, who is nominated by the Government and elected by the National Assembly provided the relevant Assembly committee endorses his candidacy.²⁷ The office of Supreme Court of Cassation President is politicised also by the procedure for his election. The Court President is elected by the National Assembly. He is nominated by the High Judicial Council (all the members of which are directly or indirectly elected by the National Assembly) and his candidacy must be endorsed by the Supreme Court of Cassation plenary session and the relevant National Assembly Committee (Art. 144(1)).

Some constitutional provisions on human rights protection are vague and allow different interpretations. Article 25, for instance, prescribes that “[N]obody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent.” This provision may be interpreted as allowing such actions as long as those subjected to them freely consent to them. The Constitution protects only individual aspects of the right to a private life (Arts. 40–42) and does not follow the standard introduced by Article 8 of the ECHR.

The Constitution does not guarantee the rights to adequate housing, food or water, or, for that matter, a number of rights to adequate living standards enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Constitution’s guarantees of human rights are in line with international standards but it does not address the issue of gender equality or deal adequately with discrimination against women. Article 21 of the Constitution prohibits discrimination in a gender neutral manner rather than in compliance with Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women.

Furthermore, under Article 63 of the Constitution, *everyone* shall have the freedom to decide whether they shall procreate or not. This provision should, instead, specify that women are entitled to freely decide whether or not to have children.²⁸ The provision prohibiting slavery, status akin to slavery and forced labour in

25 The High Judicial Council comprises 11 members: three are *ex officio* members (President of the Supreme Court of Cassation, Minister of Justice and Chair of the relevant National Assembly Committee) and eight are elected members: one attorney at law, one law school professor and six judges (one of whom comes from the autonomous provinces). All these members are, however, directly or indirectly elected by the National Assembly, wherefore the judicial appointment procedure is under dual control of the parliament. More in: I.5.2.3 and I.5.2.4.

26 The State Prosecutorial Council has 11 members: the Republican Public Prosecutor, the Justice Minister and the Chairman of the relevant National Assembly Committee (*ex officio* members), six representatives of prosecutors (at least one of whom is from Vojvodina), one attorney and one law school professor.

27 More on potential amendments of the constitutional provisions on the status of judges and prosecutors in I.5.2.

28 ‘*Everyone*’ can be interpreted also as the church, the state or another institution and as depriving women of the right to freely decide whether or not to have children.

Article 26 of the Constitution needs also to include an explicit prohibition of debt bondage and sexual slavery in order to improve the efficiency of protection of the potential victims.

The prohibition of the freedom of assembly, one of the chief political freedoms, needs to be defined more precisely in the new Constitution. Notably, the latter needs to specify which authority is charged with prohibiting assemblies and how the prohibition is regulated. Furthermore, the valid Constitution guarantees the freedom of assembly only to nationals, but not to non-nationals. Most European Constitutions guarantee the freedom of assembly to everyone.²⁹

The constitutional provisions on the right to legal aid (Art. 67) need to be aligned with the situation on the ground. Namely, legal aid (primarily free legal aid) is extended by civic associations, law school legal clinics and trade unions. The Constitution specifies that it shall be extended only by attorneydom, as an independent and autonomous service, and legal aid offices established in local self-government units in accordance with the law.” In addition, the valid Constitution does not specify who is entitled to exercise this right.³⁰

In addition to the rights guaranteed to all citizens by the Constitution, persons belonging to national minorities shall be guaranteed special individual and collective rights which they may exercise individually and together with others. Some issues regarding the constitutional status of national minorities are, however, disputable or unregulated.

The Constitution defines the Republic of Serbia as the state of Serbian people and all citizens who live in it (Art. 1), whereby it gives the majority population precedence over the national minorities. On the other hand, the Constitution somewhat rectifies the ethnic definition of the state, by laying down that sovereignty shall be vested in the citizens (Art. 2(1)). The Constitution should have mentioned multiculturalism as a value characterising Serbia as a political community in view of the fact that the 2011 Census³¹ confirmed that over 20 ethnic groups live in Serbia.

The words “take part in decisions or decide ... themselves” in Article 75 of the Constitution on the essence of the right to minority self-governance need to be defined more precisely as the issue of the substance and quality of these rights remains open due to their vagueness and the failure of the authors of the Constitution to specify that they will be regulated by law.

One of the issues likely to arise during the debate on the Constitution is its Preamble, in which Kosovo and Metohija is defined as an integral part of the Republic of Serbia enjoying substantial autonomy. Kosovo declared independence in

29 More under: II.9.

30 See II.4.1.

31 The 2011 Census data on the ethnic breakdown of Serbia’s population were published by the Statistical Office of the Republic of Serbia on 29 November 2012 and are available at <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

2008 and Belgrade and Priština have for several years now been negotiating the resolution of a number of outstanding issues.

3.2. Restrictions and Derogations of Human Rights

When imposing restrictions on human and minority rights and interpreting these restrictions, all state agencies, courts in particular, are obliged to take into account the essence of the right subject to restriction, the importance of the purpose of restriction, the nature and scope of the restriction, the relationship between the restriction and its purpose, as well as consider the possibility of fulfilling this purpose by a lesser restriction of the right, while the restrictions should never infringe on the essence of the guaranteed right (Art. 20), but the Constitution does not explicitly state that the aim of the restriction must be legitimate.³² This shortcoming can be partly overcome by a general interpretation clause in Article 18, under which “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards on human and minority rights, as well as the practices of international institutions which supervise their implementation”. Given the ECtHR’s case law, a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.

The Constitution does not explicitly prohibit restrictions of human and minority rights guaranteed by the generally accepted rules of international law, international treaties, as well as laws and other regulations in force, but it comprises only a general provision prescribing that the achieved level of human and minority rights may not be reduced.

Pursuant to Article 18(2) of the Constitution, the manner of exercising certain freedoms and human rights may be prescribed by law – when so explicitly envisaged by the Constitution and when necessary to ensure the exercise of a specific right owing to its nature. This provision provides for the regulation by law of specific rights, which are not directly implementable in the view of the authors of the Constitution. This does not necessarily imply a restriction of rights, although the fact that the Constitution leaves it to laws to elaborate how specific rights are exercised allows for limiting the scope of the enjoyment of such rights.

Article 20 of the Constitution clearly and strictly defines the principle of proportionality, as well as the standards which courts in particular must adhere to when interpreting restrictions of human and minority rights. The standards for

32 In its *Opinion on the Constitution of Serbia*, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (paras. 28–30 of the Opinion). Apart from criticising this provision for not requiring the existence of a legitimate aim for the restrictions to be allowed, the Commission also opined that the excessively complicated drafting of these Articles risked leading to many issues of interpretation. See European Commission for Democracy through Law (Venice Commission), *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD(2007)004, 19 March 2007.

evaluating proportionality are in keeping with the case law of the European Court of Human Rights.³³

Derogations of specific human rights during a state of war or emergency are in accordance with Article 4 of the ICCPR and Article 15 of the ECHR, which allow for derogations in time of public emergency which threatens the life of the nation. According to the Constitution of Serbia derogation measures shall be temporary in character and shall cease to be in effect when the state of emergency or war ends (Art. 202(3)). A state of war or emergency shall be declared by the National Assembly. In the event the National Assembly is unable to convene, a decision to declare a state of war or emergency shall be taken jointly by the President of the Republic, the National Assembly Speaker and the Prime Minister and the National Assembly shall verify all the prescribed measures (Arts. 201 and 200).

The Constitution allows derogations of constitutionally guaranteed human and minority rights upon the proclamation of a state of war or a state of emergency (formal requirement) but only to the extent deemed necessary (substantive requirement).³⁴ This wording provides more leeway for derogations of human rights than the European Convention on Human Rights, which allows derogations “to the extent strictly required by the exigencies of the situation“. There are also some gaps in the list of rights that may not be derogated from in the Constitution (Art. 202(4)).³⁵

The existence of a public danger threatening the survival of a state or its citizens is prerequisite for the declaration of a state of emergency under the Constitution (Art. 200 (1)). Therefore, this prerequisite also has to be fulfilled for derogations from human rights in accordance with the Constitution, albeit only with respect to states of emergency and not in case a state of war is declared.

4. Legal Remedies Provided by the Serbian Legal System

Article 2(3) of the ICCPR, Article 13 of the ECHR and provisions of some other international treaties impose upon the state the obligation to ensure legal remedies. Article 22 of the Constitution of Serbia sets out that everyone shall have the right to judicial protection in case any of their human or minority rights guaranteed by the Constitution have been violated or denied and the right to the elimination of the consequences of such a violation. It also provides everyone with the right

33 See *Handyside v. United Kingdom*, ECmHR, App. No. 5493/72 (1976); *Informationsverein Lentia v. Austria*, ECtHR, App. Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90 (1993); *Lehideux and Isorni v. France*, ECtHR, App. No. 24662/94 (1998); *A., B. and C. v. Ireland*, ECtHR, App. No. 25579/05 (2010).

34 Article 202(1) of the Constitution.

35 See the Venice Commission, *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD(2007)004, 19 March 2007, paragraphs 97–98.

to seek protection of their human rights and freedoms before international human rights protection bodies. Under international standards, states shall provide both effective remedies and the right to compensation or some specific legal remedies.³⁶ The Constitution guarantees the right to rehabilitation and compensation of damages to persons unlawfully or groundlessly deprived of liberty, detained or convicted for a punishable offence and compensation to persons who had suffered pecuniary or non-pecuniary damages inflicted on them by the unlawful or inappropriate work of the state authorities (Art. 35). Article 36 guarantees everyone the right to file an appeal or apply another legal remedy against any decisions on their rights. Apart from the Constitution, several other laws also envisage the rights to reparations, rehabilitation and compensation of damages.

4.1. Ordinary and Extraordinary Legal Remedies in Serbia's Legal System

Citizens are guaranteed the right to appeal any decision of a first-instance civil court according to the Civil Procedure Act (hereinafter: CPA).³⁷ Article 367 of the CPA deals with appeals of judgments and Article 399 governs appeals of decisions. An appeal of a civil judgment must be lodged within 15 days from the day a copy of the judgment is delivered, with the exception of cases regarding promissory notes and checks, where the appeals have to be filed within eight days (Art. 367(1)). Article 368 of CPA lays down that an appeal of a first-instance judgment ordering a natural person to pay a claim where the principal does not exceed the equivalent value of 300 EUR in RSD, i.e. an entrepreneur or legal person to pay a claim where the principal does not exceed the equivalent value of 1000 EUR in RSD shall not stay the enforcement of the judgment. Although this provision does not infringe on the right to a legal remedy per se, it appears to prejudice the outcome of the appeals proceedings and to unnecessarily complicate the enforcement of the final court decisions in the event the appeals are upheld and the first-instance judgments are modified or overturned. The most drastic restriction of the right of appeal in the CPA is the prohibition of raising procedural legal objections in the appeals (Art. 372(2)). Civil appeals are reviewed by the next higher courts with real and territorial jurisdiction.

A motion for the review of a final judgment is an extraordinary legal remedy envisaged by the CPA (Art. 403). International human rights protection bodies generally treat such reviews as effective and ordinary legal remedies. Reviews are always allowed if so prescribed by another law; in the event the second-instance court modified the judgement and ruled on the parties' claims; in the event the second-instance court upheld the appeal, overturned the judgement and ruled on the parties' claims. The right to file a motion for a review, however, is limited by the CPA. The

36 For example, Article 39 of the Convention on the Rights of the Child obliges states to take all appropriate measures to promote the recovery and social reintegration of a child victim.

37 *Sl. glasnik RS*, 72/11, 49/13 – CC Decision and 74/13 – CC Decision.

Act does not allow reviews of final judgments in property disputes in which the value of the claim of the subject matter of the dispute at issue does not exceed the equivalent value of 40,000 EUR at the average exchange rate of the National Bank of Serbia on the day the claim is filed (Article. 403(2 and 3)). Furthermore, a motion for a review may only be filed by a litigant's representative from among the ranks of lawyers (Art. 410 (2(2))). Finally, a motion for a review may be filed only on points of law or procedure (Art. 407). Such motions may not in principle be filed with respect to incorrect findings of fact (Art. 407(2)). The motions for review are reviewed by the Supreme Court of Cassation.

The CPA exceptionally allows a review on points of law of a judgment that cannot be challenged in a review if, in the view of the Supreme Court of Cassation, such a review is necessary to rule on legal issues of general interest or in the interest of equality of the citizens, to align case law, and in case of the need to reinterpret the law (special review). A five-member judicial panel of the Supreme Court of Cassation rules on the admissibility of special reviews (Art. 405). This provision should minimise the already huge problem of discrepant case law, amounting to a violation of the right to a fair trial.

Under the provisions of procedural laws, an ECtHR judgment may be grounds for retrial. Article 426(1(11)) of the CPA provides for a retrial of a case in which a final decision has been rendered upon the motion of a party in the event it acquires the opportunity to invoke an ECtHR judgment establishing a human rights violation and which may result in the adoption of a decision more favourable for that party.

The Criminal Procedure Code (CPC)³⁸ envisages the right of appeal (Art. 432 of the CPC). An appeal may be lodged within 15 days from the day a copy of the judgment is delivered on the parties. The deadline may be extended at the request of the parties (Art. 432(2)). The appellants may claim substantive violations of the criminal procedure, violations of substantive criminal law, incorrect and insufficient findings of fact or challenge the penalties. The CPC also allows for retrials and the submission of motions for the protection of legality. The latter remedy primarily serves to reverse human rights violations in criminal proceedings established by the Constitutional Court of Serbia or the ECtHR. The CPC allows for initiating criminal proceedings regarding specific crimes by private citizens, whereas the proceedings related to other criminal offences prosecuted *ex officio* may be launched only by the public prosecutor. Only if the public prosecutor establishes no grounds for criminal prosecution may the injured party undertake prosecution (Art. 52 CPC). Although this has in practice led to situations in which the injured parties are deprived of the right to launch criminal proceedings due to the negligence or ill-will of the public prosecutor, restrictions of the private citizens' right to access criminal courts in the capacity of prosecutors are not considered a violation of the right to an effective legal remedy.

The CPC does not include a provision under which an international court decision may be grounds for a retrial. Article 485 of the CPC provides for the sub-

38 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

mission of a motion for the protection of legality in the event it is established by a decision of the ECtHR or the Constitutional Court that a human right or freedom of the defendant or another participant in the proceedings enshrined in the Constitution or the ECHR and the Protocols thereto had been violated or denied by the final judgment or a prior decision rendered in the course of the proceedings. This extraordinary legal remedy may be filed by the defendants via their legal counsels or by the Republican State Prosecutor and it is ruled on by the Supreme Court of Cassation.

Provisions governing the right of appeal can be found both in the new General Administrative Procedure Act (GAPA)³⁹ and the Non-Contentious Procedure Act (NCPA),⁴⁰ under which parties to proceedings shall not be precluded from pursuing their claims, on which a final decision was rendered in a non-contentious procedure, in civil or administrative proceedings when such a right is recognised under this or another law.⁴¹ Legal remedies may be filed against rulings issued by notaries public, in their capacity of court trustees, under the same circumstances and rules as court rulings.⁴²

The Act on the Enforcement and Security of Claims⁴³ also envisages legal remedies. The parties to the proceedings may file an appeal and a complaint, within eight days from the day of service of the ruling. The filed appeal or complaint shall stay the enforcement of the ruling only in cases specified by the law. The court ruling on the appeal or complaint may not overturn the first-instance ruling and order a retrial. Reviews of final decisions are not allowed either.

4.2. Constitutional Appeals

Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations vested with public powers and violating or denying human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have been exhausted or do not exist (Art. 170). The CCA also permits the filing of a constitutional appeal in the event the appellant's right to a fair trial was violated or in the event the law excluded the right to the judicial protection of his human and minority rights and freedoms (Art. 82)). This provision provides for filing of constitutional appeals after the exhaustion of all other effective legal remedies. The ECtHR emphasised that the constitutional appeal should be considered an effective remedy as of 7 August 2008, that being the

39 *Sl. glasnik RS*, 18/16. This law came into force on 9 March and has been applied since 1 June 2017.

40 *Sl. glasnik SRS*, 25/82 and 48/88 and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 85/12, 45/13 – other law, 55/14, 6/15 and 106/15 – other law.

41 Article 27.

42 Article 30z.

43 *Sl. glasnik RS*, 106/16.

date when the Constitutional Court's first decisions on the merits of the appeals had been published.⁴⁴

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia.⁴⁵ Interpretation of the Constitutional Court's case law, however, leads to the conclusion that victims of legal lacunae or the failure of the National Assembly, as the legislator, to legally regulate a particular field, cannot file constitutional appeals and seek the Court's protection on those grounds.⁴⁶

All natural and legal domestic or foreign persons who are holders of the constitutionally guaranteed human rights and freedoms are entitled to file a constitutional appeal.⁴⁷ A constitutional appeal is not an *actio popularis*, and it needs to be noted that the potential appellant must have personally been the victim of a breach of a constitutionally guaranteed human right or freedom. Other persons (natural persons, state authorities or organisations charged with the monitoring and realisation of human rights) may file a constitutional appeal on behalf of a person whose right or freedom was violated only with his written consent.

A constitutional appeal must be filed within 30 days from the day of receipt of the individual enactment or performance of the action violating or denying a constitutionally guaranteed right or freedom (Art. 84(1), CCA). In the event an appellant has failed to file the constitutional appeal within the set deadline for justified reasons, the Constitutional Court shall allow *restitutio in integrum* if the appellant applies for *restitutio in integrum* at the same time he lodges the constitutional appeal, within 15 days from the day the justified reasons ended (Art. 84(2)). A person may not apply for *restitutio in integrum* in the event more than three months have elapsed since the expiry of the deadline (Art. 84(3)). In the event the constitutional appeal regards the failure to undertake appropriate action, the deadline shall be set

44 *Vinčić and Others v. Serbia*, ECtHR, App. No. 44698/06, judgment of 1 December 2009, see also *Milunović and Čekrlić v. Serbia*, ECtHR, App. Nos. 3716/09 and 38051/09, admissibility decision of 17 May 2011, and *Ferizović v. Serbia*, ECtHR, App. No. 65713/13, decision of 26 November 2013.

45 See the Constitutional Court's views on the reviews of and rulings on constitutional appeals, available in Serbian at: http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Ставови_Уставног_суда_у_поштуку_испитивања_и_одлучивања.doc.

46 See the Constitutional Court's decision of 8 March 2012, on a constitutional appeal in the case UŽ-3238/2011 (published in *Sl. glasnik RS*, 25/12) and BCHR's comment of the decision, available in Serbian at: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/12/Odluka_o_ustavnoj_%C5%BEalbi_podnosioca_X.pdf.

47 In 2013, the Constitutional Court dismissed a constitutional appeal, submitted by natural persons, filed over the 2012 Pride Parade (Court Decision in the case of UŽ-8463/12). The Court held that only the Belgrade Pride Parade Association, which had formally convened the assembly, was entitled to submit the constitutional appeal. This is not in compliance with ECtHR's case law. See the cases of *Bączkowski et al v. Poland*, App. No. 1543/06, judgment of 3 May 2007; *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, App. Nos. 29221/95; 29225/95, judgment of 29 June 1998; *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08 and 14599/09, of 21 October 2010.

in each individual case, depending on the conduct of the defaulting authority and the conduct of the appellant.

The Constitutional Court has broad powers in the event it upholds the constitutional appeal. They are defined in Article 89(2) of the Constitutional Court Act and include the annulment of an individual enactment, the prohibition of the further performance of an action, an order to perform a specific action and an order to reverse the harmful consequences within a specified deadline. In the event an individual enactment or action violates or denies the rights of more than one person and only one or some of them filed a constitutional appeal, the Constitutional Court decision shall apply to all persons in the same legal situation (Art. 87, CCA).

The Criminal Procedure Code (CPC) provides for the submission of a motion for the protection of legality in the event the Constitutional Court found that a defendant's right had been violated during the criminal proceedings and that the violation affected the lawful and proper adjudication of the matter or that a constitutionally guaranteed human right or freedom of the defendant or another participant in the proceedings had been violated or denied. Under the Civil Procedure Act, the trial of a case in which a final decision had been delivered may be reopened on the motion of the party in the event the Constitutional Court found in its review of the constitutional appeal that the party's human or minority rights or freedoms enshrined in the Constitution had been violated in the civil proceedings, wherefore a decision more favourable for that party had not been delivered. Moving for retrial in such cases is not time-barred.

The Constitutional Court may overturn decisions of lower courts when it finds them in violation of human rights.⁴⁸ The Constitutional Court is entitled to award compensation for damages in its decisions finding violations of human rights in the event the appellants had claimed compensation in their constitutional appeals.⁴⁹

5. Activities of State and Independent Authorities Charged with Protecting Constitutionality and Human Rights

5.1. *Role of the Constitutional Court of Serbia in Protecting Constitutionality, Legality and Human Rights*

5.1.1. *Composition and Election of Its Judges*

The Constitutional Court shall have fifteen judges appointed to nine-year terms of office. Under the Constitution, the President of the Republic shall appoint five judges from a list of ten candidates nominated by the National Assembly; the

48 The Constitutional Court in 2012 rendered a decision (Už-97/2012) declaring unconstitutional the provision in the Constitutional Court Act exempting court decisions from annulment. More in the 2013 *Report*, I.4.3.

49 See Article 33(3) of the Act Amending the CCA Act and Article 89(3) of the CCA.

National Assembly shall elect five judges from a list of ten candidates nominated by the President of the Republic. The remaining five judges shall be elected at a plenary session of the Supreme Court of Cassation from a list of candidates nominated jointly by the High Judicial Council and the State Prosecutorial Council (Art. 172).

Under the Constitution, at least one judge appointed from each of the three lists of candidates must be from the territory of the autonomous provinces (Art. 172 (4)). The Act prohibits the Constitutional Court judges from discharging “another public or professional function or job with the exception of professorship at a law college in the Republic of Serbia” (Art. 16 (1)).

The Constitution and the Constitutional Court Act (hereinafter: CCA)⁵⁰ failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court’s independence. These deficiencies were not rectified by the Act Amending the Constitutional Court Act either.

Experts had warned for months that the terms in office of nine Constitutional Court judges were expiring on 12 December and that the procedure for electing new ones had to be launched as soon as possible to preclude the blockade of the Court. The judges new were ultimately elected at the last moment, on 16 December. The National Assembly elected four judges from among the candidates nominated by the Serbian President⁵¹, while the President elected five judges from among the Assembly list of candidates put together in an urgent procedure.⁵² The nine new judges were sworn into office on 23 December. The election of the judges was preceded by a debate during which the opposition parties, as well as experts, criticised the appointment procedure, alerting to the candidates’ familial and other ties with ruling party and senior government officials, et al.⁵³

Like the previous elections of Constitutional Court judges, these, too, were conducted in the absence of clearly defined rules and criteria transparently demonstrating that the successful candidates were eminent legal professionals over 40 years of age and with 15 years of relevant professional experience (Art. 172(5)) and boasting superior professional and personal integrity. Nor was the Venice Commission’s recommendation that the procedure for electing and appointing Constitutional Court judges had to secure guarantees of independence heeded.

This is particularly important in view of the Constitutional Court’s jurisdiction. Although it is not part of the regular court system, in the event it finds that the challenged individual enactment or action violated or denied a human or minority right or freedom enshrined in the Constitution, it is entitled to repeal the individual enactment,

50 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 103/15 and 40/15 – other law.

51 Snežana Marković, Milan Škulić, Miroslav Nikolić and Jovan Ćirić.

52 Crime Police Academy professors Dragana Kolarić and Tijana Šurlan, Constitutional Court president Vesna Ilić Predić, Anti-Corruption Agency Director Tatjana Babić and Legal and Business Studies College Professor Tamaš Korhec.

53 More is available in Serbian at: <http://www.blic.rs/vesti/politika/rodjaci-prijateljji-supruznici-ovo-je-lista-spornih-imena-kandidata-za-sudije-ustavnog/ldb8jfw>.

prohibit the further commission of the action or order another measure to reverse the negative effects of the violation or denial of the guaranteed rights and freedoms, and award just satisfaction to the applicant (Art. 89, Constitutional Court Act).

The Constitutional Court is practically assuming the role of the court of last instance by applying this provision since it rules on whether the law was properly applied and issues orders not related merely to the elimination of the human rights violations it finds. The case law of the Constitutional Court, which has been overturning numerous court decisions, demonstrates that its jurisdiction has expanded, wherefore Constitutional Court judges must also be secured guarantees of judicial independence.

On the other hand, procedural laws provide for retrials in the event the Constitutional Court or the European Court of Human Rights finds a human rights violation. These provisions secure the separation of powers prescribed by the Constitution.

A Constitutional Court judge shall be dismissed in the event he joined a political party, violated the prohibition of conflict of interests, permanently lost the ability to work, was convicted to a prison sentence or convicted for an offence rendering him unfit for discharging the duty of a Constitutional Court judge (Art. 15(1), CCA). The Constitutional Court shall assess whether any of these conditions have been fulfilled in a procedure initiated by the bodies authorised to nominate the Court judges or by the Constitutional Court itself (Art. 15(2 and 3)). A decision on the dismissal of a Constitutional Court judge shall be taken by the National Assembly, i.e. even when that judge had been appointed/elected by the President or the Supreme Court of Cassation.⁵⁴

5.1.2. Reviews of Constitutionality and Legality

The Constitutional Court of Serbia is charged with the judicial control of the compliance of Serbia's law with its international obligations. Under Article 167 (1(1 and 2)), this Court shall rule on "compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties" and "compliance of ratified international treaties with the Constitution". Article 169 of the Constitution allows the Constitutional Court to review the constitutionality of a law ratifying an international treaty before it comes into effect, which will help avoid situations of Serbia violating its obligations under a treaty it has ratified.

All natural and legal persons are also entitled to initiate a constitutionality or legality review procedure. The procedure for reviewing constitutionality or legality may be launched by the Constitutional Court, state authorities, provincial and local authorities or at least 25 National Assembly deputies (Art. 168(1)). At the request of at least one-third of the National Assembly deputies, the Constitutional Court may also rule on the constitutionality of a law that has been adopted but not yet prom-

⁵⁴ More on the work of the Constitutional Court in BCHR's prior Annual Reports.

ulgated (Art. 169). This Article is the first to introduce the ex ante control of the constitutionality of laws in Serbian constitutional law. It, however, allows the promulgation of such laws before the Constitutional Court rules on their constitutionality, thereby rendering meaningless this institute, the purpose of which is to prevent such laws from coming into force,

The review procedure is governed in detail by the CCA, under which the Court is not constrained by the submitted initiative and may continue the review even if the initiator abandons the initiative, in the event it deems that there are grounds for the review. At the request of the authority that adopted the impugned enactment, the Constitutional Court may adjourn the review and allow it to eliminate the grounds on which the enactment may be declared unconstitutional or unlawful. The Court is also entitled to suspend the enforcement of an individual enactment or action rendered pursuant to the enactment under review in the event it finds that its enforcement may cause irreparable adverse effects (Art. 56(1)), CCA). A law, provincial or local self-government statute, another general enactment or collective agreement found not to be in compliance with generally accepted rules of international law and ratified international treaties shall cease to be effective on the day the relevant Court decision is published in the Official Gazette of the Republic of Serbia. Furthermore, the Constitutional Court may postpone the publication of a decision finding an enactment unconstitutional for a specific period of time to allow the authority that adopted it to deal with the impugned issues in a manner that is in compliance with the Constitution.

The Court may notify the National Assembly of the situation and problems regarding the realisation of constitutionality and legality, render its opinions and alert to the necessity of adopting new or amending existing laws. The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a constitutional right. The National Assembly has, unfortunately, in most cases not taken further steps to have the disputed provisions amended. Neither has the Government, which has tabled nearly all the laws subject to this procedure before the Constitutional Court.⁵⁵

5.2. Judiciary and Human Rights Protection – Reach of the Judicial Reform

5.2.1. (Un)Successful Judicial Reform – Status of the Judiciary

Article 3 of the Serbian Constitution proclaims the principle of the rule of law, which shall be achieved, inter alia, through separation of powers, the independent judiciary and the authorities' observance of the Constitution and the law. Under Article 4 of the Constitution, the government system shall be based on the separa-

⁵⁵ More on the National Assembly's (non-)responsiveness to Constitutional Court decisions in the *2013 Report*, I.3.2.

tion of powers into the legislative, executive and judiciary and the relations between the three branches shall be based on balance and mutual control. The same Article proclaims that the judiciary shall be independent.

For the exercise of these principles, the main prerequisite is that the courts render decisions independently, impartially and efficiently in order to enable access to justice. The full exercise of this right, however, requires a thorough reform of the Serbian judiciary, which was launched in December 2009 with the general (re) appointment of the judges⁵⁶ and was still ongoing.

The National Judicial Reform Strategy for the 2013–2018 Period (hereinafter: NJRS)⁵⁷ and the Action Plan for its implementation (hereinafter: NJRS Action Plan)⁵⁸ were adopted in 2013 and the NJRS Implementation Commission was established in September 2013.⁵⁹

The Serbian Government adopted the Chapter 23 Action Plan in April 2016. The Action Plan activities regarding the judiciary are divided into four large groups: independence, impartiality and accountability; professionalism; competence and efficiency; and war crimes. As stated in the narrative part of the Action Plan, its authors endeavoured, in particular, to include and sublime the key activities envisaged by the NJRS Action Plan with a view to ensuring the coherence of these documents and facilitating the implementation of the reform. The NJRS Action Plan will have to be revised once the Chapter 23 Action Plan is adopted, to ensure maximum complementarity of these documents and align the deadlines in the former with those laid down in the latter.

In December 2015, the Serbian Government formed the Chapter 23 Action Plan Implementation Council to extend expert support to the Chapter 23 Negotiating Team. The Council is charged with monitoring the implementation of the Action Plan activities on a daily basis, alerting to any delays or problems in its implementation and coordinating the reporting process. In practice, it collects information from over 50 institutions implementing the Action Plan. The Council published two quarterly reports in 2016.

The Council, however, does not have the capacity to check the accuracy of the data submitted by the institutions and published in its quarterly implementation reports posted on the Ministry of Justice website. CSOs in the Chapter 23 Working

56 More on the problems that arose during the judicial reform and judicial (re)appointment procedures in BCHR's previous annual human rights reports, available at: <http://www.bgcentar.org.rs/bgcentar/eng-lat/publikacije/izvestaji-o-stanju-ljudskih-prava-3/>.

57 Available at: <http://www.seio.gov.rs/upload/documents/ekspertske%20misije/njrs.pdf>.

58 The Action Plan is available at: http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_Eng.pdf and the Report on the Implementation of the Action Plan is available in English at: http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_English%20version.pdf.

59 The Strategy Implementation Commission, headed by the Ministry of Justice and comprising 15 representatives of the major stakeholders, was established to monitor and measure the headway in its implementation.

Group of the National Convention on the EU questioned the accuracy of claims in the Council reports on the full implementation of specific measures and the lack of data confirming their fulfilment, noting that the assessments in the reports did not reflect the actual state of affairs and the CSOs' observations about the practices of some institutions.⁶⁰

Serbia opened talks on Chapter 23 in July 2016. In its Serbia 2016 Report, the European Commission noted that Serbia had achieved some level of preparation for the *acquis* and European standards in this area and that some progress had been made by partially addressing the 2015 recommendations, and in particular in standardising court practice. It noted that there was still scope for political influence over judicial appointments and that this issue remained to be addressed. The EC said that Serbia should, in the coming year, in particular, implement and consolidate the ongoing justice reform process, tackling issues related to the independence, accountability and effectiveness of the judicial system; establish an initial track record of investigation, prosecution and final convictions in corruption cases, particularly in high-level ones; and ensure conditions for the full exercise of freedom of expression.⁶¹

SNS MP Aleksandar Martinović filed a constitutionality review initiative with the Constitutional Court, in which he challenged the constitutional grounds of all the provisions of the Act on the Organisation of Courts on the transfer of the Ministry's powers to the HJC. The initiator asked the Constitutional Court to rule on whether or not judicial administration affairs were within the remit and jurisdiction of the HJC and, if not, whether the transfer of the jurisdiction for judicial administration from the Ministry to the HJC was unconstitutional. In its ruling No. IUz-34/2016 of 24 November 2016, the Constitutional Court initiated the review of the constitutionality and legality of the provisions of the Act on the Organisation of Courts and the amendments to the Act on the transfer of jurisdiction from the Ministry to the HJC.

In late December 2016, the National Assembly adopted amendments to the Act on the Organisation of Courts,⁶² postponing the enforcement of these provisions for a year, until 1 January 2018.⁶³ The amendments constitute provisions transferring the powers of the Ministry of Justice to the High Judicial Council.⁶⁴ The initiator of

60 See, e.g. the EU Convent Chapter 23 Working Group report available in Serbian at: <http://eukonvent.org/wp-content/uploads/2016/11/Poglavlje-23-Akcioni-plan.pdf>.

61 European Commission Serbia 2016 Report, p. 54, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf.

62 The adopted Act is available in Serbian at: <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2016/3210-16%20lat.pdf>.

63 In February 2016, the National Assembly adopted the Act Amending the Act on the Organisation of Courts, which postponed, from 1 June 2016 to 1 January 2017.

64 These powers concern: setting criteria for determining the number of requisite court staff; judicial administration affairs in the jurisdiction of the Ministry under the law; administration of capital expenditure for the performance of these affairs; adoption of the Court Rules of

the amendments explained he was proposing them in view of the change in the concept of judicial administration and jurisdiction for performing it. The initiator relied on Constitutional Court Decision No. IUz-92/2014⁶⁵ rendering ineffective Article 41(2) of the Act of Judges and Article 16 of the Act Amending the Act on Judges, and this Court's Decision No. IUz-80/2014⁶⁶ of 21 April 2016, rendering ineffective paragraphs 2, 5 and 6 of Article 73 of the Public Prosecution Services Act.

5.2.2. Organisation of Courts

Under the Act on the Seats and Jurisdictions of Courts and Public Prosecution Services, Serbia's court network is comprised of 66 Basic Courts ruling in the first instance, 25 Higher Courts ruling in the first instance and on appeal, and four Appellate Courts. The network also includes the Supreme Court of Cassation, which has contentious and non-contentious jurisdiction. Within its contentious jurisdiction, the Court shall rule on extraordinary legal remedies against decisions taken by Serbian courts and other matters envisaged by the law, on conflicts of jurisdiction between courts unless such decisions are within the jurisdiction of another court, and on transfers of jurisdiction to other courts to facilitate proceedings or for other relevant reasons. Within its non-contentious jurisdiction, the Court shall ensure uniform application of the law by the courts and the equality of arms in court proceedings, review the application of the law and other regulations and the work of courts; appoint Constitutional Court judges, render opinions on the candidates for the post of Supreme Court of Cassation President and exercise other powers envisaged by the law (Art. 31).⁶⁷

In addition to courts of general jurisdiction, Serbia also has 45 Misdemeanour Courts.

Procedure and oversight of their enforcement and setting criteria for determining the number of requisite court staff; judicial administration affairs in the jurisdiction of the Ministry under the law; administration of capital expenditure for the performance of these affairs; adoption of the Court Rules of Procedure and oversight of their enforcement.

65 In its decision, the Constitutional Court concluded that there was no constitutional law framework to entitle the High Judicial Council to adopt enactments directly governing the remuneration and other revenues of judges, in view of the fact that the Act on Judges did not include provisions identifying the conditions, procedure and method for the realisation of the right to remuneration and other revenues of judges and that the law did not explicitly entitle the High Judicial Council to regulate issues regarding the remuneration and other revenues of judges whilst in office.

66 The Constitutional Court, *inter alia*, held that the remit of the State Prosecutorial Council to set the remuneration and other revenues of deputy public prosecutors transferred or seconded to other public prosecution services, the ministry in charge of justice, institutions or international organisations was not in compliance with the constitutional provisions defining the legislative powers of the National Assembly concerning the regulation of relations within the jurisdiction of the Republic of Serbia and defining the constitutional status and jurisdiction of the State Prosecutorial Council.

67 The jurisdiction of the Supreme Court of Cassation is set out in the Act on the Organisation of Courts (*Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16 and 108/16).

Organised crime, war crime and cyber crime proceedings are conducted before special departments of the Belgrade Higher Court, while appeals of their decisions are reviewed by the Appellate Court in Belgrade.

The High Judicial Council in 2016 adopted a Decision Amending the Decision on the Number of Judges,⁶⁸ under which Serbian courts are to be staffed by 2,975 judges. According to the HJC's official records as of 22 November 2016, 2,792 judicial offices were filled and 183 were vacant. Herewith the breakdown of judges by court: Supreme Court of Cassation – 38⁶⁹; Administrative Court – 41; Commercial Appellate Court – 40; Misdemeanour Appellate Court – 65; the four Appellate Courts – 237; Higher Courts – 368; Basic Courts – 1,472; Commercial Courts – 178; and, Misdemeanour Courts – 536. The Administrative Court was the only court at its full judicial complement.⁷⁰

The sustainability of the court network calls for continuous analyses of its efficiency and access to justice to pre-empt any problems, such as further slowdowns in the work of the courts due to the transfers of large numbers of pending cases to the courts now charged with them and changes of the trial judges. A mid-term assessment of the new court network, in terms of costs, state of the infrastructure, efficiency and access to justice was not completed in 2016 as planned.⁷¹ The assessment has been drafted by the working group formed for that purpose by the NJRS Implementation Commission.

The courts in the territory of the City of Belgrade moved for the third time in seven years in 2016.⁷² Namely, the Criminal Departments of the three Belgrade Basic Courts, the Belgrade Higher Court, the three Basic Public Prosecution Services, the Higher Public Prosecution Service and the Appellate Public Prosecution Service were relocated in July and August 2016 due to the reconstruction of the Palace of Justice, in which they were headquartered.⁷³ The Ministry of Justice

68 Decision No. 021-02-13/2016-01 of 5 February 2016, available in Serbian at: http://vss.sud.rs/sites/default/files/attachments/Odluka%20o%20izmeni%20Odluke%20o%20broju%20sudija%20u%20sudovima%2005.02.2016_2.pdf.

69 The number of judges was increased to 40 under a December 2016 decision by the HJC.

70 Records of the number of judges per court as of 22 November 2016, available in Serbian at: the web site of the HJC.

71 Under the Chapter 23 Action Plan, the mid-term assessment was to have been performed in the 2nd and 3rd quarters of 2016.

72 "Judges Association: Pre-Empt Adverse Effects of Courts' Relocation," *RTV*, available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/drustvo-sudija-preduprediti-posledice-preseljenja-sudova_740410.html.

73 The Criminal Department of the First Basic Court and the First Basic Prosecution Service were moved to the former HQ of the Security Information Agency (SIA); the Criminal and Civil Departments of the Second Basic Court and the Second Basic Prosecution Service, the Higher Public Prosecution Service, the Appellate Public Prosecution Service and the Misdemeanour Appellate Court were moved to the renovated building of the Military-Technical Institute in Katanićeva Street, while the Criminal Department of the Third Basic Court and Public Prosecution Service were relocated to the building that housed the former Fourth Municipal Court in

said that the Palace of Justice reconstruction would take two years and that it would be funded from a European Investment Bank loan.⁷⁴ The Civil Department of the Belgrade Second Basic Court and the Misdemeanour Appellate Court were also relocated. The need to reconstruct the Palace of Justice building is, indeed, justified,⁷⁵ but the public was not initially notified where some of the courts and prosecution services would be relocated; the information on their relocation changed, sowing confusion and legal uncertainty.⁷⁶ Despite vows that the courts' work would not be impeded and would proceed as scheduled, the trials started with a week's delay and, a month later, many hearings were adjourned due to lack of courtrooms and technical difficulties.⁷⁷

The Anti-Corruption Council also addressed the situation in the judiciary in its report published in March 2016.⁷⁸ The Council noted that the competent state authorities had not set clear and objective criteria for determining the number of courts to ensure all citizens equal access to justice during the reform process. Given the substantial impact the number of judges and prosecutors has on access to justice, the Council concluded that the gap between the number of cases and the number of judges and prosecutors indicated that the latter had not been set on the basis of objective criteria, which is why representatives of the judiciary have frequently publicly ascribed the delays in adjudicating cases to the lack of judges, prosecutors and deputy prosecutors. The Council warned that the prosecutors' independence had to be secured, especially in view of the fact that they had assumed some of the courts' powers when prosecutorial investigation was introduced.

The Council wondered why the already elected and appointed judges and prosecutors were being seconded to the Ministry of Justice, given the substantial number of vacancies in the courts. It also alerted to the fact that such secondments gave rise to conflicts of interest between the performance of judicial duties within the judiciary and work in the Ministry, which is part of the executive, and to the detriment of the judiciary.

New Belgrade, more is available in Serbian at: <http://www.mpravde.gov.rs/obavestjenje/13382/nove-adrese-privremeno-preseljenje-pravosudnih-organa-u-beogradu.php>.

74 Nikola Radišić, "Judiciary Temporarily Subletting," *NI*, available in Serbian at: <http://rs.n1info.com/a186395/Vesti/Vesti/Rekonstrukcija-Palate-pravde-Preseljenje-sudova.html>.

75 This is the first time the Palace of Justice is being thoroughly reconstructed since it was built and opened its doors in 1971.

76 Some media reported that the Civil Departments of the Second and Third Basic Courts would relocate into the Beograđanka high-rise, more is available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=323617&title=%20Beogra%C4%91anka%20postaje%20zgrada%20suda.

77 Miroslava Derikonjić, "Two Judges per Courtroom," *Politika*, available in Serbian at: <http://www.politika.rs/scc/clanak/>.

78 The "Report on the Current State in the Judiciary" is available at: <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/REPORT%20ON%20THE%20CURRENT%20STATE%20IN%20THE%20JUDICIARY.pdf>.

The Council performed an analysis of the reasons for the major discrepancies in the performance of judges in Serbia and elsewhere⁷⁹ and concluded that they were manifold, including the major influence of the executive on the judiciary; prolonged transition in all walks of society in Serbia; economic difficulties and widespread poverty, preventing the citizens from engaging legal representatives; a huge number of cases pending since the wars, sanctions and air strikes in the 1990s, when the courts and prosecution services were limited in their work; poor quality of legislation difficult to apply; ineffective Judicial Academy incapable of extending continuous professional training in specific fields; lack of good case law; non-transparency; substandard and ineffective statistical records; problematic auxiliary services (ineffective service of writs, court expertise), court experts without adequate certificates and education (unprofessional expertise), etc. The Council also highlighted the paralysis of the judiciary during the attorneys' strike, which had lasted over eight months.

The Council found that the judicial institutions, on the one hand, lacked funding to regularly perform their duties, while, on the other, the costs sustained by citizens seeking justice were excessive considering the standard of living. The Council noted that the number of administrative staff in courts and prosecution services was insufficient and affected the efficiency of the judges and prosecutors. It also noted that the work of the judicial administration was insufficiently appreciated, which was also reflected in their low salaries. The Council set out that no analysis had been conducted and that no criteria had been set to identify how many administrative staff were actually needed given the workloads and the numbers of judges and prosecutors.

5.2.3. Independence and Impartiality of Courts

Judicial independence is the key prerequisite and the most critical steps Serbia has to make in the EU accession process. The Act on the Organisation of Courts includes a provision explicitly prohibiting any use of public office, media or any public appearances to affect the outcome of court proceedings or any other influence on the court (Art. 6).

The NJRS and its Action Plan envisage preparatory activities for amending the Constitution to exclude the National Assembly from the process of electing court presidents, judges, public prosecutors and deputy public prosecutors, as well as members of the High Judicial and State Prosecutorial Councils. Representatives of the executive and legislative authorities are no longer to sit on the HJC and SPC. Under the Action Plan, Judicial Academy attendance will no longer be a mandatory requirement to be fulfilled to be appointed judge for the first time. With a view to fulfilling these tasks, the NJRS Implementation Commission formed a working group tasked with analysing the constitutional framework.

⁷⁹ At the time the Council conducted its research, each Serbian judge had around 350 new cases in his docket, while the European judges had an average caseload of around 840 cases.

The working group drafted the legal analysis of the constitutional framework on the judiciary in the Republic of Serbia.⁸⁰ In its view, there are two ways to consistently implement the constitutional principle on the separation of powers (Article 4 of the Constitution): one is to delete paragraph 3 of Article 4⁸¹ and the other is to rephrase it⁸². The working group underlined that, in addition to constitutional guarantees, it was necessary to "...simultaneously review the systemic guarantees of judicial independence and the rules on the responsibility of the political authorities for creating a social setting in which the judiciary will act independently". The group found that individual constitutional provisions regarding the judiciary were unsystematic, inconsistent or excessively regulated; that there was a lack of mechanisms for establishing judicial independence and prosecutorial autonomy; and the presence of the political factor (National Assembly) and its decisive influence on the definition of all elements of the status of judges and public prosecutors under constitutional law. The working group proposed that all judges and court presidents, including the President of the Supreme Court of Cassation, be elected by the HJC. In the working group's view, by declaring the Supreme Court of Cassation the highest court in the country, the authors of the Constitution blended two apparently incompatible models, wherefore it proposes the restoration of this court's former name (Supreme Court of Serbia) and the precise definition of its jurisdiction.

Given the major influence the composition of the HJC has on judicial independence, the working group suggests that the Minister of Justice continue to sit on it, but with limited capacity, without the power to vote on decisions on transfers of judges and imposition of disciplinary measures. In its view, the chair of the relevant Assembly committee should not sit on the HJC at all. The working group recommends that the Chairman of the HJC be elected by its members. It is of the opinion that the balanced composition of the HJC requires a balanced way of electing its members, and suggests that the members from the ranks of judges are elected by judges and the others by the National Assembly from among the ranks of eminent legal professionals nominated by professional and expert organisations. These members should be voted in by a qualified majority, that would require that the ruling majority and the opposition arrive at a compromise on the candidates.

5.2.4. Election and Appointment of Judges

The Constitution establishes the High Judicial Council charged with nominating judges to be elected on permanent tenure. Judges shall be elected to their first three-year terms in office by the National Assembly at the proposal of the High

80 The draft is available in Serbian at: [http://www.mpravde.gov.rs/files/analiza%20Ustava%20\(2\).doc](http://www.mpravde.gov.rs/files/analiza%20Ustava%20(2).doc).

81 "The relationship between the three branches of government [legislative, executive and judicial] shall be based on balance and mutual control."

82 "The relationship between the legislative and executive branches of government shall be based on balance and mutual control."

Judicial Council, while their appointments on permanent tenure shall be made by the High Judicial Council (Art. 147, Constitution).

The chief problem arises from the fact that the procedure for recruiting and promoting judges does not guarantee independence from other government branches. Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity become the main drivers in the appointment process, while the nomination procedure should be transparent and merit based. The role of the National Assembly in the election and dismissal of judges, court presidents, the President of the Supreme Court of Cassation is a direct risk to judicial independence. This role of the National Assembly is one of the main shortcomings identified in the Screening Report. The political influence of the National Assembly on the judiciary arises from the very composition of the HJC defined in Article 153 of the Constitution and the judicial appointment procedure laid out in Article 154 of the Constitution. The Screening Report underlines that the HJC should have at least 50% of members stemming from the judiciary and that their elected members should be selected by their peers.

At present, eight of the 11 HJC members are elected by the National Assembly. The HJC's other three members include the President of the Supreme Court of Cassation, the Justice Minister and the chairperson of the Assembly committee charged with the judiciary, who are members *ex officio*. The eight members comprise six judges on permanent tenure and two eminent legal professionals with at least 15 years of professional experience, notably an attorney at law and a law school professor (Art. 153 of the Constitution). With the exception of *ex officio* members, the other HJC members are appointed to five-year terms in office.

The influence of the National Assembly is thus dominant, because it elects eight of the eleven members directly and the *ex officio* members (the Justice Minister, the President of the Supreme Court of Cassation and the Chairperson of the Assembly judiciary committee) indirectly given that they had previously been elected to office.

The election of the HJC member from among Appellate Court judges was held in November 2016. Aleksandar Pantić, a judge of the Appellate Court in Niš, won the most votes.⁸³ Two candidates had earlier pulled out of the election.⁸⁴ According to information obtained by candidate Dragana Boljević, a judge of the Belgrade Appellate Court, one day before the election, the judges of the Novi Sad Appellate Court were forwarded candidate Pantić's programme via the Courts' In-

83 HJC Election Commission Report, available in Serbian at: <http://vss.sud.rs/sites/default/files/attachments/Preliminarni%20rezultati%20glasanja%20za%20clana%20VSS%20iz%20reda%20sudija%20apelacionih%20sudova.pdf>.

84 According to media reports, Novi Sad Appellate Court judge Miroslav Alimpić withdrew his candidacy because he had been appointed President of the Higher Court in Šabac. The reason for the withdrawal of the other candidate, Ilija Zindović, a Kragujevac Appellate Court judge, remained unknown. More is available in Serbian at: <http://www.politika.rs/scc/clanak/>.

tranet, in contravention of the prescribed procedure, which led the recipients to the implicit conclusion that this candidate was preferred to others.⁸⁵ Pantić had been an attorney until 2009, when he was elected judge of the Appellate Court in Niš.⁸⁶ His views on the status of the judiciary and the situation in courts are indicative.⁸⁷

The Constitution retained the principle of permanent judicial tenure, but introduced the rule that judges shall first be elected to three-year probation periods and shall thereupon be appointed to permanent judicial offices. The Screening Report suggests the review of this provision as its authors are of the opinion that the probation period is very long.

The problems that arose during the general (re) appointment of all judges pursuant to the Constitutional Act for the Implementation of the Constitution⁸⁸ were analysed in the prior BCHR Reports. The Constitutional Court rendered a series of decisions upholding all the criticisms of the judicial (re)appointment procedure.⁸⁹ Consequently, the judges and prosecutors, who had not been reappointed in 2009, were reinstated in 2012, although no clear criteria for their reintegration had been set.

The 2012 Act Amending the Act on Judges⁹⁰ includes Article 100a, under which there is no need to appraise the performance of first-time judges upon the expiry of their three-year probation period although this obligation had been set out in Article 52 of the Act on Judges. That provision allowing the High Judicial Council to appoint on a permanent tenure probationary judges without appraising their performance.

The HJC in May 2015 adopted amendments to its 2014 Rulebook on the Criteria, Standards and Procedure for Appraising the Performance of Judges and Court Presidents and on the Authorities Performing the Appraisal Procedure.⁹¹ The Rulebook was amended again in 2016.

A rulebook on the criteria, standards and procedure for appraising the performance of judicial assistants, ensuring a fair and transparent system for evaluating their work, was not adopted by the end of 2015, as planned by the authors of the Chapter 23 Action Plan. This Rulebook was at long last adopted in late March and entered into force on 1 June 2016.

85 Judge Boljević's complaint and the reply by the HJC Election Commission Chair are available in Serbian at: <http://vss.sud.rs/sites/default/files/attachments/Prituzba%20Dragane%20Boljevic%20od%2001-11-2016%20i%20odgovor%20Izborne%20komisije%20VSS.pdf>.

86 Pantić's CV is available in Serbian at the web site HJC.

87 In his programme, Pantić, inter alia, said that the "situation in the courts is very good and the judiciary is the best and most auspicious part of our society" and that "our judiciary is in an enviable situation thanks to the exceptional work and commitment of the judges, judicial assistants and court administration staff," the programme is available in Serbian at: <http://vss.sud.rs/sites/default/files/attachments/Program%20sudije%20Aleksandra%20Pantica.pdf>.

88 *Sl. glasnik RS*, 98/06.

89 See the 2012 Report, II.5.3.1.

90 *Sl. glasnik RS*, 121/12.

91 *Sl. glasnik RS*, 81/14, 142/14 and 41/15.

The National Assembly elected 43 first-time judges at its 12 February session⁹² while another eight first-time judges took office in June 2016.⁹³ The HJC published a call for the election of 58 first-time judges in September 2016. The HJC did not envisage a test to determine the candidates' qualifications and competences, as provided for by the amendments to the Act on Judges.⁹⁴ The call was, however, voided as it was published on 2 and 9 September, and the amendments entered into force on 1 September and the HJC had not adopted a Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Judges to be Elected on Three-Year Tenure.⁹⁵ Sixty judges were sworn in in October 2016⁹⁶ and two more were elected in December 2016.⁹⁷

The HJC in November 2016 adopted the Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Judges on Three-Year Tenure⁹⁸ and the Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Judges on Permanent Tenure to be Appointed to Other or Higher Courts and Criteria for Nominating Candidates for the Office of Court President.⁹⁹ Under both Rulebooks, members of the public are allowed to attend the HJC Commission's interviews with the candidates and the interviews must be audio-taped; these provisions provide for the much needed transparency of the oral part of the evaluation of the candidates' qualifications and competence.¹⁰⁰ On the other hand, the Rulebook on Criteria and Stand-

92 The Assembly elected 29 judges of the Basic Courts in Loznica, Aleksinac, Negotin, Pirot, Vranje, Kraljevo, Čačak, Priboj, Kruševac, Prijepolje, Kragujevac and Ivanjica and 14 judges of Misdemeanour Courts in Šabac, Zrenjanin, Vranje, Niš, Požarevac, Kragujevac and Gornji Milanovac. The National Assembly decisions are available in Serbian at the web site of Serbian Parliament.

93 The Assembly elected four first-time judges of the Belgrade Commercial Court, two judges of the Pančevo Basic Court and two judges of the Pančevo Misdemeanour Court, more is available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/osam-novih-sudija-polozilo-zakletvu-u-skupstini_732113.html.

94 The criteria and standards for evaluating the qualifications, competence and worthiness shall be laid down by the HJC pursuant to the law. The qualifications and competence of candidates for the office of judge elected on three-year tenure shall be tested in an exam organised by the HJC (Arts. 45(6) and 45a(1) of the Act on Judges).

95 More is available in Serbian at the web site HJC.

96 The Assembly elected first-time judges of Basic Courts in Lazarevac, Obrenovac, Velika Plana, Niš, Kragujevac, Kraljevo, Kuršumlija, Novi Pazar and Čačak and of the First, Second and Third Basic Courts in Belgrade, the Zrenjanin, Novi Sad and Čačak Commercial Courts, the Administrative Court, and the Misdemeanour Courts in Novi Pazar and Čačak. The decisions are available in Serbian on the National Assembly website: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2016/RS37-16.pdf.

97 The National Assembly Decision of 16 December electing judges to the Basic Courts in Ub and Gornji Milanovac is available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2016/RS68-16.pdf.

98 *Sl. glasnik RS*, 94/16.

99 *Ibid.*

100 Articles 24 and 16 of the respective Rulebooks.

ards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Judges on Three-Year Tenure sets the final grade received after the completion of the initial training at the Judicial Academy as one of the standards for evaluating the competence and qualifications of candidates for first-time judges in Basic and Misdemeanour Courts, thus giving advantage to candidates who completed such training over those who did not.

5.2.5. Termination of Judicial Office and Disciplinary Proceedings

Under the Constitution, the tenure of a judge shall terminate at his own request, upon the fulfilment of the legal retirement requirements, by dismissal or non-appointment on permanent tenure (Arts. 148 (1) and 57, Act on Judges). The decision shall be taken by the High Judicial Council (Art. 57). The Constitution does not list grounds for the dismissal of judges, leaving the regulation of this issue to law, whereby it reduces the constitutional protection of judges from the legislative branch. The Act on Judges lists the following grounds for dismissal: a) in the event he had been convicted to a prison sentence of minimum 6 months for a punishable offence rendering him unworthy of judgeship, b) in the event he had discharged his duties incompetently or committed a grave disciplinary offence (Art. 62). Incompetence shall denote insufficiently successful discharge of judicial duties, if a judge's performance is appraised as "unsatisfactory" in accordance with the criteria for appraising the performance of judges (Art. 63). Anyone may file an initiative for the dismissal of a judge. The dismissal procedure shall be launched at the proposal filed by the court president, the president of the next higher court, the President of the Supreme Court of Cassation, the authorities charged with appraising the performance of judges or the Disciplinary Commission. The High Judicial Council shall establish whether there are grounds for dismissal (Art. 64). Article 151 of the Constitution and Article 5 of the Act on Judges guarantee immunity to judges, wherefore they may not be held liable for opinions they voiced or their votes on a decision, unless they committed a criminal offence in violation of the law.

The disciplinary liability of judges is regulated by Chapter VII of the Act on Judges. The Disciplinary Commission shall initiate dismissal proceedings against a judge when it establishes that the judge had committed a grave disciplinary offence. The Disciplinary Prosecutor and the judge against whom the disciplinary proceedings were launched may appeal the Disciplinary Commission decision with the High Judicial Council. A judge may file a complaint with the High Judicial Council over a violation of any right which the Act on Judges does not provide a particular remedy for. If the High Judicial Council finds the complaint well-founded, it shall undertake measures to protect the judge's right.

According to the HJC's 2015 Annual Report,¹⁰¹ published in March 2016, the HJC ruled on 13 appeals of Disciplinary Commission decisions; in seven cases,

101 The HJC 2015 Annual Report is available at: <http://vss.sud.rs/en/reports>.

it upheld the appeals and reversed the Disciplinary Commission's rulings, while, in the remaining six cases, it dismissed the appeals and upheld the Disciplinary Commission's rulings. In four of the cases, the HJC upheld the judges' appeals and rejected the Disciplinary Prosecutor's motions to institute disciplinary proceedings against them and in the other nine cases it found the judges had committed disciplinary offences and imposed disciplinary penalties against them – public reprimand in three cases and salary reduction in four cases; in two cases, the HJC found that the judges had committed grave disciplinary offences; it launched proceedings to dismiss one of them, but not the other, who was on maternity leave.

In May 2015, the HJC adopted the Rulebook on Disciplinary Proceedings for Establishing the Disciplinary Liability of Judges and Court Presidents¹⁰² in place of the prior Judicial Disciplinary Liability Rulebook. The new Rulebook defines the duties of the Disciplinary Prosecutor and his Deputies and the members of the Disciplinary Commission more thoroughly and governs the disciplinary liability of court presidents, which its predecessor did not.

5.2.6. Guarantees of Judicial Independence

The Constitution guarantees the so-called principle of non-transferability of judges (Art. 150) and this principle is consistently elaborated in the Act on Judges (Arts. 2(2) and 18). A judge may be reassigned or seconded to another court only if he consents to the transfer. Exceptionally, the consent of the judge shall not be required if the court he has been appointed to or most of its jurisdiction has ceased to exist. Judicial transfers became a certainty after the changes of the court network, which is why the adopted amendments to the Act on Judges elaborate the provisions on transfers. The law now allows transfers of judges only to courts of the same instance that have assumed the jurisdiction of the abolished courts.¹⁰³

Judicial impartiality is guaranteed by Serbian law in the provisions specifying a number of reasons when a judge may be recused from a proceeding. Recusal may be sought by the judges themselves or by the parties to the proceedings. The court presidents rule on the motions for recusal. Grounds for recusal mostly regard conflict of interests and are laid down in the procedural laws. However, in addition to the specific grounds for recusal, Article 37(2) of the Civil Procedure Act (CPA) also allows the recusal of a judge or lay judge in a particular case if circumstances give rise to doubts about his impartiality. This provision, however, may be abused given that the CPA does not specify what those circumstances are.

Under Article 22 of the Act on Judges, a judge is not obliged to justify his legal views and findings of fact to anyone, including the court president and the other judges, except in the reasoning of the decisions and in instances explicitly stipulated by the law.

102 *Sl. glasnik RS*, 41/15.

103 Article 6.

The Act on Judges prescribes the allocation of cases solely on the basis of the designation and case file number in an order set in advance for each calendar year. The Act explicitly lays down that the order of the files shall not depend on who the parties to the proceeding are or what the case concerns. No one may establish judicial panels or allocate cases disregarding the work schedule or the order in which they were filed (Art. 24). In accordance with the Court Rules of Procedure, a case may be taken from a judge only in case of prolonged absence or in the event a final disciplinary sanction has been pronounced against him for committing a disciplinary offence of undue dilatoriness (Art. 25(2)).

Not all courts in Serbia use the automated random case allocation system. Some of them allocate cases to judges in alphabetical order and pursuant to the annual schedules adopted by the court presidents. This approach is particularly problematic in courts with very small numbers of judges, where it is extremely easy to predict which judge will rule on which case. This particularly applies to situations in which the court presidents exercise their power to assign cases to judicial officials other than those other assigned by the automated system. The Chapter 23 Action Plan envisages a series of activities aimed at improving the court electronic case management systems and software

Financial dependence on other branches of government definitely affects judicial independence. Under the Chapter 23 Action Plan, the Ministry of Justice is to transfer full responsibility for the management of the judicial budget to the HJC and State Prosecutorial Council (SPC) in the second quarter of 2016. but the transfer of all powers was postponed to 1 January 2018.¹⁰⁴

5.2.7. Constitutional Status of the Public Prosecution Services in Serbia

Under the Constitution, the public prosecution services shall be autonomous state authorities charged with prosecuting the perpetrators of criminal and other punishable offences and taking measures in order to protect constitutionality and legality.¹⁰⁵ There are 58 Basic and 25 Higher Public Prosecution Services. The duties of the public prosecution services are discharged by the public prosecutors and their deputies acting on their instructions. The public prosecution services comprise the Republican Public Prosecution Service and the Appellate, Higher and Basic Public Prosecution Services.

An Analysis of the constitutional status of public prosecution services in the Republic of Serbia, including recommendations on how to improve it, was performed in light of the repeated warnings by experts that the constitutional provisions governing the status of public prosecutors were weak and that they had to be

104 See I.5.2.1.

105 Constitution, Articles 156–165.

amended during the revision of the Constitution.¹⁰⁶ As the authors of the Analysis note, the prosecution services' role is clearly very specific and the autonomy of this extremely important judicial authority has to be ensured.

The autonomy of the prosecutors, enshrined in Article 156 of the Constitution, can clearly be secured through the prosecutorial appointment procedure, which needs to be changed. According to the Analysis, the Republican Public Prosecutor (RPP) nominated by the SPC after the completed call for applications should be elected by a two-thirds majority of the National Assembly¹⁰⁷ or by a two-thirds majority of the SPC, a professional and independent prosecutorial authority.¹⁰⁸ As per the election of public prosecutors and deputy public prosecutors, the Government, which nominates them, is unfortunately under no obligation to nominate candidates from the list the SPC qualified as the best ones, or to explain why it endorsed those who were more poorly ranked, thus relativising the SPC's appraisal of the candidates and rendering senseless its role in the election process. These deficiencies can be rectified by transferring to the SPC the entire process of appointing public prosecutors.

According to the Analysis, one of the ways to eliminate the legislature's major influence on the work of the prosecution services is to elect the Republican Public Prosecutor to a longer term in office than that of the National Assembly and the Government¹⁰⁹ and to repeal the constitutional provision allowing the re-election of the Republican Public Prosecutor. The grounds for terminating the mandate of the Republican Public Prosecutor before the expiry of his term in office, especially the grounds for his dismissal, need to be regulated by the Constitution and the law.¹¹⁰

106 The Analysis was produced by the BCHR, with the support of the OSCE Mission to Serbia. It was authored by Constitutional Court judge Dr Bosa Nenadić, Belgrade Appellate Court, judge Dr Miodrag Majić and Deputy Republican Public Prosecutor Dr Goran Ilić. The Analysis is available in Serbian at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2016/12/Analiza-ustavnog-polozaja-book.pdf>.

107 The nomination of candidates for the office of Republican Public Prosecutor is at the moment within the remit of the Government and the suggested procedure would reduce and limit the influence of the political majority on the election of the chief state prosecutor.

108 Arguments in favour of this view cite the fact that, in countries with strong corruption close to the government, the entire public prosecution service, starting with the chief prosecutor, cannot and may not be under the influence of any political body, which the government and parliament definitely are.

109 Some are of the view that the six-year term in office of the Republican Public Prosecutor is acceptable and need not be changed. Others think that the Republican Public Prosecutor's term in office should be extended to nine years.

110 The legislator, notably the political majority in the National Assembly, would thus be deprived of the opportunity to itself identify the conditions and grounds for terminating the Republican Public Prosecutor's mandate, primarily for dismissing him. This would eliminate the opportunity the political authorities now indisputably have: to influence the execution of prosecutorial duties by amending and extending the conditions under which the Republican Public Prosecutor may be relieved of duty.

As these changes would provide the SPC with greater influence on the election, re-election and dismissal of prosecutors, provisions need to be put in place to eliminate, or, at the very least, minimise political influence on the SPC. That would require that the minister in charge of justice and the chairman of the relevant National Assembly committee no longer sit on the SPC (they ought to be replaced by eminent legal experts) and that the SPC members from among the ranks of public prosecutors are elected by a secret vote of the public prosecutors and deputy public prosecutors at direct elections and pursuant to precise criteria.¹¹¹

The Constitution provides for the autonomy of public prosecutors, but not their independence. The authors of the forthcoming constitutional amendments might wish to consider approximating the status of prosecutors to that of judges, given that, under the 2011 changes in the criminal procedure system, the role of prosecutors in specific segments entails also the performance of specific procedural actions *de facto* approximating them to the performance of judicial powers. According to the advocates of this idea, the extension of the prosecutors' powers and responsibilities and the transfer of some of the powers previously reserved for courts to them also call for ensuring they enjoy a higher degree of independence.¹¹² In their opinion, there are risks in delegating to the public prosecutors increasing procedural powers and providing them with a broader possibility to interfere in individual rights and freedoms, on the one hand, while, on the other, keeping them in a state of dependence on the political authorities, as well as retaining the extremely strict internal hierarchical structure they are operating in.

The arguments against this idea depart from the view that it is conceptually groundless and, moreover, that any simplified and rash equation of the status of the prosecution services and that of the courts might adversely affect the role of the courts and their independence, especially given the circumstances in Serbia.

The relationship between the public prosecution offices and the police also needs to be regulated more thoroughly to ensure that the prosecutors perform their duties more efficiently. Public prosecutors may order the police to take specific steps to uncover crimes and find the suspects. The police are under the duty to fulfil the prosecutors' orders and regularly notify them of the steps they have taken.¹¹³

111 According to the authors of the Analysis, the SPC would comprise the following members: the Republican Public Prosecutor as an *ex officio* member, six public prosecutors, two attorneys and two eminent law professors with at least 15 years of professional experience. They would be elected by a two-thirds majority in the National Assembly. Alternatively, the four latter members would be elected by the Bar Association of Serbia (two members) and the Conference of law Schools of Serbia (two members) respectively.

112 Prosecutors autonomously decide on initiating investigations and deferring criminal prosecution. The possibility of the injured parties to control the prosecutors' dismissal of criminal reports and decisions to terminate prosecution has been reduced. Furthermore, prosecutors may conclude plea bargains which, although subject to court control, essentially define the final outcome of the proceedings.

113 During the preliminary investigation proceedings, public prosecutors may take over the performance of actions the police had autonomously undertaken pursuant to the law (Art. 285, CPC).

The powers vested in the public prosecutors, however, do not facilitate their full performance of their executive duties in the initial stages of the proceedings and they do not have enough mechanisms to influence the work of the police.

The Analysis devotes a chapter to the relationship between the public prosecutors and the police. Its authors recognise that the listed powers of public prosecutors do not facilitate their full performance of their executive duties in the initial stages of the proceedings.¹¹⁴ The prosecutors' role would be strengthened if specific parts of the criminal police were annexed to the public prosecution offices, i.e. if a judiciary police were formed as a separate detachment under the jurisdiction of the Ministry of Justice. The model of investigators, public prosecution service officials with specific police powers, could also be applied. On the other hand, the legislator should consider vesting public prosecutors with the power to conduct (not only initiate) disciplinary proceedings against police officers who refuse to act on their orders, and to have a genuine and effective say on MIA personnel issues.¹¹⁵

5.2.8. Election of Public Prosecutors and Deputy Public Prosecutors

The State Prosecutorial Council (hereinafter SPC) is established under Article 147 of the Constitution as one of the bodies charged with the appointment of public prosecutors and their deputies.

The appointment of prosecutors is governed by Article 74 of the Public Prosecution Services Act.¹¹⁶ The National Assembly elects public prosecutors from among the candidates on the list proposed by the Government. This list is composed by the SPC, which forwards it to the Government for endorsement. In the event the SPC nominates only one candidate to the Government, the Government may send the list back to the SPC. First-time deputy public prosecutors are elected by the National Assembly from among the candidates nominated by the SPC; the SPC appoints deputy public prosecutors on permanent tenure (Art. 159, paras. 5–8).

The SPC assesses the candidates against the following three criteria: competence, qualifications and worthiness. The fulfilment of these requirements is reviewed in a procedure laid down in the Rulebook on the Criteria and Standards for

114 Public prosecutors may immediately notify the heads of the police departments and, if necessary, the relevant minister, Government or the relevant committee of the National Assembly, of the police's failure to act on their orders. In the event the police do not act on the public prosecutors' orders within 24 hours from the moment of communication of the notice, the heads of the police departments and, if necessary, the relevant minister, Government or the relevant committee of the National Assembly may require the initiation of disciplinary proceedings against officers considered to be responsible for the failure to act.

115 The model applied with respect to prosecution services with special jurisdiction (such as the one prosecuting war crimes) may be taken into consideration: the head of the police department dealing with war crimes may not be appointed or dismissed without obtaining the opinion of the War Crimes Prosecutor beforehand.

116 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – CC Decision, 121/12, 101/13, 111/14 – CC Decision, 117/14 and 106/15.

Evaluating the Competence, Qualifications and Worthiness of Candidates for Public Prosecutorial Offices, which was adopted on 14 May 2015.¹¹⁷ The degree in which the candidates fulfil these requirements is established by appraising their competence and qualifications, and their presentations of the organisation programme and improvement of the work of public prosecution services and by taking into account their results at the SPC written test. Candidates holding prosecutorial or judicial office do not need to take this test.

The provisions in Chapter II of the Rulebook on the criteria and standards for nominating candidates running for deputy public prosecutorial office for the first time ceased to be valid on 1 October 2016, when the Rulebook on the Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates Running for Deputy Public Prosecutorial Office for the First Time.¹¹⁸

The public prosecutors of the Basic and Higher Public Prosecution Services, who were not elected in 2015, were not elected by end November 2016 either.¹¹⁹ In September 2016, the SPC forwarded to the Government the list of candidates for prosecutorial offices in 25 Basic and Higher Prosecution Offices and for the post of War Crimes Prosecutor, asking it to review the list at its next session.¹²⁰

The National Assembly has not elected the new War Crimes Prosecutor for two years now. It did not even include this item in its agenda, after none of the candidates won a majority vote at its session in December 2015. In June 2016, the candidates for this office presented their programmes to the SPC Commission charged with preparing and grading the written test and evaluating the candidates' organisation programmes and measures they propose to improve the work of the public prosecution services (hereinafter: Commission). The Commission proceeded to evaluate the candidates pursuant to Article 20 of the Rulebook on Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Public Prosecutorial Offices (hereinafter: Rulebook).¹²¹ It awarded 9.2 points to candidate Milorad Trošić's programme, 10.8 points to candidate Đorđe Ostojić's programme, 11.6 points to candidate Dejan Terzić's programme, 13.6 points to candidate Milan Petrović's programme and 19.6 points to candidate Snežana Stanojković's programme. Experts publicly voiced their concern with these

117 *Sl. glasnik RS*, 43/15.

118 *Sl. glasnik RS*, 80/16.

119 After completing the call to fill the vacancies for the offices of Organised Crime Prosecutor, War Crimes Prosecutor and for offices in 25 Higher and 58 Basic Public Prosecution Services, i.e. 85 prosecution services in all, the SPC forwarded a list of candidates applying for office in only 55 prosecution services to the Government for endorsement in September 2015, but did not explain why the list was missing 30 candidates. More in the *2015 Report*, III.2.5.

120 See the *Politika* article at: http://www.uts.org.rs/index.php?option=com_content&view=article&id=1249:ko-koci-izbor-tuzilaca&catid=65:press-clipping&Itemid=732.

121 *Sl. glasnik RS*, 43/15.

results.¹²² Terzić won the most votes in the National Assembly in 2015, but not enough to be appointed War Crimes Prosecutor.

Twenty-two first-time deputy public prosecutors were sworn in in October 2016.¹²³ The Analysis of the Requisite Number of Deputy Public Prosecutors in Public Prosecution Services in Serbia was prepared by a working group formed by the SPC in May to identify the real needs of public prosecution services in Serbia.¹²⁴ According to the valid staffing regulation, adopted in 2009 and partly amended in 2012, 2013 and 2015, Serbia is to have 741 deputy public prosecutors.¹²⁵ The authors of the Analysis said that the entry into force of the new CPC in 2013 and the transfer of the entire investigation proceedings to the public prosecutors had led to a substantial increase in their workloads. The inability of the prosecutors to handle such workloads became apparent as soon the new CPC came into force; the number of cases in the prosecution services doubled after the courts returned a huge number of pending investigations to the prosecution services.¹²⁶ The increased workloads

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- 122 Candidate Stanojković suggested more extensive enforcement of the institute of trials in absentia. Although this criminal law institute is laid down in the Criminal Procedure Code, its more extensive application would be in contravention of CoE Committee of Ministers Resolution (75)11 on the criteria governing proceedings held in the absence of the accused, under which the accused must not be tried in his absence, if it is possible and desirable to transfer the proceedings to another state or to apply for extradition. On the other hand, the 2016–2020 National War Crimes Prosecution Strategy, adopted in February 2016, states that the Government of the Republic of Serbia fully supports the practice of avoiding trials in absentia and includes among the criteria for identifying priority cases that the War Crimes Prosecutor should bear in mind the availability of evidence, suspect(s) and victims when deciding whether to issue an indictment against certain individual(s) or refer the case to a fellow prosecutor in the region. The Strategy goes on to say that, when making that decision, the Prosecutor should also bear in mind the need to preserve good neighbourly relations with other states and regional stability in general, based on his awareness of whether or not the individual concerned is being prosecuted for or has already been convicted of the same or similar crimes in the region. Given that the application of the institute primarily regards the prosecution of the nationals of the Republic of Croatia and Bosnia and Herzegovina, the introduction of this practice would impede the cooperation of the prosecutorial authorities and have negative and long-term adverse effects on Serbia's relations with these countries, which could, in turn, slow down, if not halt, Serbia's accession to the EU.
- 123 The National Assembly on 7 October 2016 issued a Decision electing deputy public prosecutors of the First, Second and Third Basic Public Prosecution Offices in Belgrade, and the Basic Public Prosecution Offices in Bečej, Brus, Raška, Čačak, Gornji Milanovac and Lebane. Its decision is available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2016/RS36-16.pdf.
- 124 The Analysis is available in Serbian at: <http://www.uts.org.rs/images/2016/analiza.dvt.doc>.
- 125 Under the valid staffing regulation, the 58 Basic Public Prosecution Services are to be staffed by 442 deputy public prosecutors, the 25 Higher Public Prosecution Services by 183 deputy public prosecutors, the four Appellate Public Prosecution Services by 68 deputy public prosecutors, the Republican Public Prosecution Service by 15 deputy public prosecutors, the Organised Crime Prosecution Service by 25 and the War Crimes Prosecution Service by eight deputy public prosecutors.
- 126 According to the Analysis, the courts transferred over 38,000 cases to the Basic Public Prosecution Services alone.

and caseloads have not been accompanied by changes in the regulation on the services' staffing or an increase in the number of prosecutors.

Another problem arises from the fact that not even all the offices envisaged by the valid staffing regulation– which has not been aligned with the new role and powers of public prosecutors – have been filled; the public prosecution services at the moment lack 114 deputy public prosecutors.¹²⁷ The authors of the Analysis, inter alia, found that the public prosecution services were staggering under their workloads; in 53% of the Basic Public Prosecution Services, the deputy public prosecutors were handling over 1,000 cases altogether. In their view, the improvement of the dismal situation and working conditions in the public prosecution services calls for amending the Act on the Organisation of Courts, the Public Prosecution Services Act, the rulebooks on public prosecution service administration and determining how much staff they need, and for increasing the number of prosecutorial assistants in services with large backlogs. They also recommend the adoption of a backlog reduction programme, the secondment and transfer of deputy public prosecutors, the filling of the current vacancies and the adoption of a new staffing regulation providing for more deputy public prosecutors. Thirty-six vacancies in the Basic and Higher Public Prosecution Services in Serbia need to be filled urgently and 58 new deputy prosecutorial posts have to be opened.

5.2.9. Pressures on the Judiciary

Pursuant to the Chapter 23 Action Plan, the HJC in October adopted a Decision amending its Rules of Procedure¹²⁸ setting out the procedure of HJC's public reactions to political influence on the work of the judiciary. Under the new provisions, judges, who believe they are subject to political pressures, may write a complaint to the HJC. The HJC Chairman shall call an HJC session to discuss the complaint on his own initiative, the initiative of another HJC member or on the basis of the judge's complaint. Such a session will be called without delay and the Chairman shall set the session agenda in advance. The draft agenda shall not be subject to vote or change. The session may be held even in the absence of the majority of the HJC members, in which case the absent members shall vote by phone, e-mail or fax. After the session, the HJC shall hold a news conference, issue a press release or publish the session conclusion(s) on its website.

Professional and civic associations, as well as the media, have been alerting to political influence on the judiciary for years. However, although state officials have frequently vowed that they did not want to interfere in the work of the judicial authorities, 2016, too, was marked by a large number of instances when officials at

127 A total of 71 deputy public prosecutorial offices in Basic, nine in Higher, 14 in Appellate, 13 in Organised Crime, three in War Crimes and four in the Republican Public Prosecution Services are still vacant.

128 *Sl. glasnik RS*, 91/16. The text of the decision is available in Serbian at: http://www.paragraf.rs/izmene_i_dopune/101116-odluka_o_dopuni_poslovnika_o_radu_visokog_saveta_sudstva.html.

various levels of government indirectly, and often even directly, commented specific events in a way that can be interpreted as pressure on the courts and prosecutors.

According to a Judges' Association of Serbia survey of 1,585 judges, nearly half (44%) of the respondents said they had been subjected to some form of pressure, mostly to dispose of their cases more rapidly. Forty-three percent of them were of the view that a climate of general pressure was present in the judiciary. The following findings – that as many as 27% of them said they were directly or indirectly pressured by senior government and parliamentary officials, that 22% of them said such pressures were made on them by court presidents, while 8% said such pressures were exerted by their colleague – are extremely concerning.

As is the finding that less than 25% of the judges of how they could protect themselves from pressures and over 20% them did not seek protection because they thought it was insufficient or were afraid to. The judges also complained of low salaries, frequent changes of the laws and their inconsistency, lack of training, the design of the court network and the way the judiciary was downsized.¹²⁹

The integrity and independence of the judiciary is sometimes brought into question by rash, and some illegal actions by the representatives of the executive authorities. Announcements of arrests, outcomes of trials, violations of the presumption of innocence are commonplace. Such conduct by politicians undermines public trust in the judiciary and creates the impression that the judiciary is dependent on the executive. Guarantees of judicial independence were violated a number of times in 2016; some of them elicited a lot of public attention and criticisms by the experts.

The HJC has not, however, always reacted as befits the supreme judicial authority, which should protect the independence of judges, as corroborated by the case of Aleksandar Trešnjev, a judge of the Special Organised Crime Department. Belgrade Higher Court President Aleksandar Stepanović on 16 June recused him from the judicial panel deliberating case K-Po1 36/2015. Stepanovic explained that Trešnjev was being recused because he was a member of the NGO Centre for Legal Research (CEPRIS), which the defendant's attorney Vladimir Beljanski was also a member of and which was chaired by Beljanski's father, Slobodan, also a lawyer.¹³⁰ Stepanović said in his decision that these circumstances gave rise to doubts about judge Trešnjev's impartiality. Judge Trešnjev's complaint against the deci-

129 More is available in Serbian at: <http://rs.n1info.com/a224632/Vesti/Vesti/Drustvo-sudija-Srbije-44-odsto-sudija-trpelo-pritisak.html> and <http://www.mc.rs/predstavljanje-rezultata-istrazivanja-u-okviru-projekta.4.html?eventId=10423>.

130 CEPRIS' Articles of Association define it as an independent, voluntary, non-profit, non-government organisation involved in researching, studying and improving the judiciary in a democratic society based on the rule of law and separation of powers, formed with a view to creating conditions for the independent or autonomous status and professional, impartial and efficient work of the judiciary in a democratic society based on the rule of law and separation of powers. CEPRIS shall study the substance and enforcement of regulations in the field of the judiciary, research problems arising in judicial practice and propose and undertake measures to eliminate them.

sion to recuse him was dismissed.¹³¹ Stepanović asked the HJC to rule whether judge Trešnjev's office was compatible with membership of CEPRIS¹³² For his part, judge Trešnjev filed a complaint with the HJC, claiming violations of his right to perform judicial duties, the right to preserve trust in judicial independence and impartiality, his right to freedom of association¹³³ the right to random allocation of cases and the right to be notified of decisions of relevance to the execution of his duties.¹³⁴ HJC Chairman Dragomir Milojević called a regular session on 1 July, with a 12-point agenda; compatibility of judicial office and membership of CEPRIS was item 10. In its decision of 13 September 2016, the HJC dismissed the judge's complaint, declaring it did not have the jurisdiction to rule on it.¹³⁵ On the same day, the HJC sent a letter to the Court President notifying him that the HJC did not have the jurisdiction to issue its opinion on the compatibility of an office or job with the office of a judge in specific cases.¹³⁶

The very fact that judges and attorneys are members of a professional association aiming to improve the status and work of the judiciary cannot and should not be interpreted as circumstances giving rise to doubts about a judge's impartiality. The interpretation of the term "professional associations" mentioned in the Act on Judges as associations comprising only judges is inadmissible. The thesis that "joint advocacy of the impartiality, independence and autonomy of courts and judges by judges and attorneys or by judges and public prosecutors is impossible" is unsustainable and damages the reputation of the public prosecutors and attorneys, to say the least. Furthermore, CEPRIS in no way differs from other associations rallying both judges, attorneys and prosecutors (such as, e.g., the Association of Legal Professionals of Serbia or the Serbian Association for Criminal Law Theory and Practice).

The libel trial against the weekly NiN initiated by Interior Minister Nebojša Stefanović,¹³⁷ which was held 29 November, also gave rise to doubts about political pressures on the judiciary, because a large number of people gathered in front of

131 The complaint and the decision dismissing it are available in Serbian at: <http://www.cepris.org/wp-content/uploads/2016/07/prigovor.pdf> and: <http://www.cepris.org/wp-content/uploads/2016/07/resenje-2.pdf>.

132 Available in Serbian at: <http://www.cepris.org/wp-content/uploads/2016/09/Inicijativa-2.pdf>.

133 The Serbian Constitution guarantees the freedom of association, but sets limits for judges, prohibiting their membership of political parties. It specifies that the law will regulate which offices, affairs and private interests are incompatible with judicial offices (Articles 55 and 152). Under Article 7 of the Act on Judges, judges may associate in professional associations to protect their interests and preserve their independence and autonomy.

134 The complaint is available in Serbian at: <http://www.cepris.org/wp-content/uploads/2016/07/prituzba.pdf>.

135 The HJC Decision is available in Serbian at: <http://www.cepris.org/>.

136 The letter is available in Serbian at: <http://www.cepris.org/slucaj-cepris>.

137 NiN on 16 June front-paged an article qualifying Nebojša Stefanović as the "main phantom from Savamala". The article said that a number of state and non-state structures at different levels of government had been involved in the Savamala demolition, that the liability of the

the Higher Court in Belgrade to greet the Minister with ovations. The topmost Belgrade city officials, Mayor Siniša Mali, City Manager Goran Vesić and MIA State Secretary Jana Ljubičić, were present as well. A small group of activists protesting against the libel suit was physically assaulted.¹³⁸ Such actions, mass public gatherings supporting a member of the executive government and plaintiff, who enjoys the public support of the leading city and republican officials, do not contribute to a climate in which judges can adjudicate cases impartially and amount to manifest pressures on the judiciary.¹³⁹

5.2.10. *Suspension of the Rule of Law and Serbia's Legal Order – the Savamala Case*¹⁴⁰

An organised motorised group of several dozen people in black uniforms and balaclavas, equipped with telescopic batons and strong flashlights, and using heavy machinery and demolition equipment, assumed actual control over the part of Belgrade called Savamala, the site of the future Belgrade Waterfront, in the early morning hours on 25 April 2016, the day after the elections.¹⁴¹ Hercegovačka Street was blocked by two construction machines and the masked individuals applied physical force and threats to remove the citizens from the buildings and vehicles in the area. They seized their cell phones, restricted their movement, searched the buildings and vehicles, took away two handguns and a hunting rifle they found in an office, and the security camera video tapes, threatening the citizens not to tell anyone what was happening, all with the goal of dispersing all the people from the area, after which they used the machinery to demolish a number of buildings. Two hours later, their work done, they left the site of the incident.

A number of citizens called the Belgrade City police unit on duty and went to the Savski venac Police Station to report the events with the elements of crimes prosecuted *ex officio*. Eleven days later, on 5 May 2016, the Belgrade Higher Public Prosecution Service ordered the police to investigate the demolition in Savamala and report their findings of fact. Soon after the order was issued, the Belgrade public utility companies charged with road maintenance and waste disposal went to the site and cleared the rubble, on the order of the Communal Police. On 11

city authorities was indisputable but insufficient, since such an endeavour would not have been possible without the knowledge and help of the police minister.

138 Sena Todorović, “Minister without ID,” *Danas*, http://www.danas.rs/licni_stavovi/licni_stavovi.1148.html?news_id=333498&title=Ministar+bez+li%C4%8Dne+karte.

139 More about this in II.8.7.

140 More on the violations of the right to property in the Savamala case in: II.12.4.

141 The block in question is surrounded by the following streets: Hercegovačka, Braće Krsmanović, Travnička and Mostarska; most of the block is within the so called “pilot real estate area”, defined in the Contract on Joint Investments in the Belgrade Waterfront Project, signed in April 2015. Under this Contract, the Republic of Serbia shall “lawfully and physically clear” the pilot real estate area by 30 June 2016. More is available in Serbian at: <http://www.vreme.co.rs/cms/view.php?id=1393732>.

May, the Higher Public Prosecution Service said that the preliminary investigation proceedings were under way. On 14 May, it requested of the MIA Internal Audit Sector to perform checks regarding the events in Hercegovačka Street and police involvement in them. Slobodan Tanasković, who worked as a security guard in one of the buildings in Hercegovačka Street and witnessed the demolition, and whom the masked assailants tied up, after seizing his cell phone and personal documents, died at the Military Medical Academy on 24 May 2016.¹⁴²

Acting on numerous complaints filed by citizens, the Protector of Citizens performed oversight of the lawfulness of the MIA's work and found that the Belgrade City Police Directorate had not acted promptly and efficiently on reports by citizens that an organised group of people had committed a series of crimes, violating their right to lawful work of the public authorities charged with ensuring and improving the safety of people and property, supporting the rule of law and ensuring the realisation of human and minority rights and freedoms guaranteed by the Constitution and the law. Rather than urgently taking all the legal measures and performing their duties and obligations, the operators of the Belgrade police unit on duty, after consultations with their superiors, referred the citizens to the Communal Police and other city administration authorities without any jurisdiction for the matter. The Savski venac Police Station sent a police patrol with an injured party back to the site, but the former failed to perform the regular and requisite police duties and tasks. The Protector of Citizens found in his report that the deficiencies in the work of police authorities and officers had been organised and implemented as part of a previously prepared plan and pursuant to the issued orders. Police officers and their superiors, including the head of the Belgrade City Police Directorate and the Acting Police Director, did not know or did not dare disclose to the Protector of Citizens the identity of the individuals who had issued the orders.¹⁴³

It took the Commercial Court a month to uphold a motion to secure the evidence, filed by the company *Iskra doo*, whose building was demolished. The city public utility companies cleared most of the site in the meantime.¹⁴⁴ On 8 May, the Prosecution Office issued a press release saying it had no new information about the incident. At a press conference several hours later, the Prime Minister said that the topmost Belgrade city authorities were responsible for the demolition.¹⁴⁵

142 "Security Guard from Hercegovačka Street Passed Away," *Danas*, available in Serbian at: http://www.danas.rs/danasrs/drustvo/preminuo_cuvar_iz_hercegovacke_.55.html?news_id=321159.

143 Enactment No. 13–32–2147/2016 of 9 May 2016, available in Serbian at: <http://www.ombudsman.rs/attachments/article/4723/savamala.pdf>.

144 "Commercial Court Approves Performance of Court Expertise on Hercegovačka Street," *Danas*, available in Serbian at: http://www.danas.rs/danasrs/drustvo/privredni_sud_odobrio_vestacenje_za_hercegovacku_.55.html?news_id=321070.

145 The relationship between the executive authorities and the judiciary is sufficiently illustrated by the fact that the Prime Minister said he had knowledge about the incident, which he shared with the public on the same day the Higher Public Prosecution Service, the only authority authorised to conduct and oversee the investigation into this case, said it had no new information about

Since the illegal demolition had caused a public uproar, the Higher Public Prosecution Office received a request to disclose the name of the acting prosecutor, but it revealed her identity only after the Commissioner for Free Access to Information of Public Importance intervened.¹⁴⁶ The deputy prosecutor handling the case required of the police to collect information about the critical event four times. It took the Prosecution Service five and a half months to send a request to the police to expedite the fulfilment of its orders.¹⁴⁷

The incident in which an unidentified group of people assumed actual control over a part of Belgrade and suspended the validity of the Serbian Constitution and law in it, enforcing new rules jeopardising the safety and personal property of the citizens, had not moved beyond the preliminary investigation stage by the end of 2016.¹⁴⁸

5.3. Independent Regulatory Authorities¹⁴⁹

Independent regulatory authorities, which have played a major role in overseeing the work of state authorities, have had major impact on the state of human rights in Serbia. The supervisory role of these authorities has not always been properly understood. In 2016, again, there were instances in which the executive or legislative authorities failed to recognise that independent regulatory authorities are tasked with protecting civil rights and that they should pursue the improvement of these rights in concert with them.

In September 2016, the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for the

this specific criminal case. At that press conference, the Prime Minister also said he was sure that the people responsible for the demolition had been guided by the purest motives, because they wanted that part of Belgrade to be much more beautiful and proceeded to act as both prosecutor and judge, qualifying the owners of the demolished buildings as criminals that had abused the land by illegally building their buildings on it.

146 The case was filed in the Higher Public Prosecution Service as Case No. KTN-60/16 and assigned to deputy public prosecutor Sanja Đurić. More is available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=10&dd=05&nav_category=12&nav_id=1184510 and <http://rs.n1info.com/a199196/Vesti/Vesti/Sanja-Djuric-tuzilac-u-slucaju-Savamala.html>.

147 This illustrates the lack of mechanisms and legal means at the disposal of the prosecutors to influence and steer the actions of the police, which are legally under the obligation to act on the prosecutors' orders, and to penalise the defaulting police officers.

148 As noted by J. Gligorijević, the author of the article entitled "Civil Society's Pair of Quarterbacks," *Vreme*, and M. Rudić, "Looking for a Total Idiot," *Vreme*, available in Serbian at: <http://www.vreme.co.rs/cms/view.php?id=1400324> and <http://www.vreme.co.rs/cms/view.php?id=1450854>.

149 This section analyses only the status of the authorities, the work of which is directly related to the respect for human rights in the Republic of Serbia. The section will provide an overview of only some of the many activities of the independent regulatory authorities, while detailed descriptions of their work and the recommendations they issue to the public authorities are provided in the annual reports they submit to the National Assembly every March and publish on their websites.

Protection of Equality, the State Audit Institution and the Anti-Corruption Agency presented their 2015 Annual Reports at the sessions of the relevant National Assembly Committees: for the Judiciary; State Administration and Local Self-Governments; Human and Minority Rights and Gender Equality; and for Finance, the State Budget and Public Spending Control. Their Reports, however, were not included in the Assembly plenary session agenda until the end of the year.

An analysis of the authorities' reactions to the activities of independent institutions protecting human rights leads to the impression that the representatives of the ruling majority still do not understand that these authorities are not the representatives of the opposition, but mechanisms overseeing their work. This misunderstanding of the independent regulatory authorities' role has often resulted in problems they have faced in their endeavours to ensure the full exercise and protection of civil rights.

On the other hand, the citizens' trust in the independent regulatory authorities has been growing, as the European Commission, too, recognised in its Serbia 2016 Report, in which it said that there was a need to improve within the public administration the understanding and acknowledgement of the essential role played by the Protector of Citizens' Office and other independent authorities and regulatory bodies in ensuring that the executive is accountable. The EC also said that the relevant state bodies, parliamentary committees, the Protector of Citizens and civil society organisations have carried out awareness-raising activities on human rights, tolerance and non-discrimination and enforcement mechanisms.

5.3.1. Protector of Citizens of the Republic of Serbia

Under the Constitution and the Protector of Citizens Act¹⁵⁰ the Protector of Citizens shall be an autonomous and independent state authority charged with protecting and improving civil rights and freedoms and overseeing the work of state administration authorities, the authority charged with the legal protection of the property rights and interests of the Republic of Serbia and other authorities and organisations, and companies and institutions vested with public powers.¹⁵¹ The Protector of Citizens shall account for his work to and be elected and relieved of duty by the National Assembly. In 2016, the duties of Protector of Citizens were performed by Saša Janković, whose second five-year term in office expires in May 2017.¹⁵² The Ombudsman institute also exists at the provincial level. The Vojvodina Assembly elected Zoran Pavlović the new Provincial Ombudsman in November 2016.

150 *Sl. glasnik RS*, 79/05 and 54/07.

151 The Protector of Citizens is not entitled to monitor the work of the National Assembly, the Serbian President and Government, the Constitutional Court and other courts and public prosecution services.

152 The Protector of Citizens has four Deputies, specialised in the protection of the rights of the child, persons with disabilities, persons deprived of liberty, national minorities and gender equality. The Deputies are nominated by the Protector of Citizens and elected by the National Assembly.

The Protector of Citizens shall cooperate with the provincial and local self-government ombudspersons with a view to exchanging information on identified problems in the work and actions of the administrative bodies, with a view to advancing the exercise of fundamental human rights and freedoms.¹⁵³ The Protector of Citizens has opened offices in Preševo, Bujanovac and Medveđa and formed a network of on duty legal professionals in 15 Serbian LSGs, whom the citizens may contact by e-mail.¹⁵⁴

Under Article 18 of the Protector of Citizens Act, the Protector of Citizens is entitled to propose laws within his remit to the Government and National Assembly, as well as initiatives to amend laws, other regulations or general enactments he deems are relevant to the realisation and protection of civil rights. The Protector of Citizens launched a number of initiatives to improve civil rights in 2016, like he has during the past decade.

For example, the Protector of Citizens in 2016 issued his opinion on the Draft Police Act, alerting to its incompatibility with regard to its title and subject matter and the need to improve the provisions on the rights of the child, security checks, lie detector tests, et al.¹⁵⁵ The Protector of Citizens called on the National Assembly to review the Draft General Administrative Procedure Act because some of its provisions risked to undermine the transparent and professional work of the administration.¹⁵⁶ The Protector of Citizens also exercised his powers under the law and filed a motion for the review of the constitutionality and legality of the decision defining the features of holders of pension and disability insurance and the obligation to pay pension and disability insurance contributions and he submitted amendments to the Draft Housing Act. In October 2016, he recalled that the draft amendments to the Protector of Citizens Act he had submitted to the Ministry of State Administration and Local Self-Governments back in 2012, with a view to regulating the relationship and improving the division of powers between the ombudsmen at the state and local levels, were still pending.¹⁵⁷

153 Protector of Citizens Act, Article 34.

154 The Protector of Citizens Information Booklet is available in Serbian at: <http://www.zastitnik.rs/index.php/142-2010-10-20-09-17-51/2010-10-20-09-18-27/132-1>.

155 More in the Protector of Citizens Opinion on the Draft Police Act, 18 January 2016, available in Serbian at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-11-11-34-45/4545-2016-01-18-10-55-26>.

156 The Draft includes a number of new institutes aimed at improving the protection of the citizens' rights in their dealings with the administration and the administration's efficiency. The Protector of Citizens, however, said in his opinion that the change of the way in which decisions are taken in administrative proceedings may result in a number of problems in practice and create room for corruption, which certainly was not the legislator's intention. The proposed method would improve the efficiency of the administration only in highly depoliticised and professional administrative systems, still not in place in Serbia. More in the Protector of Citizens view on the Draft General Administrative Procedure Act of 26 February 2016, available in Serbian at: <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4616-2016-02-26-16-03-59>.

157 "Janković: Draft Amendments to the Protector of Citizens Act Forwarded to the Relevant Ministry in 2012," *Dijalog.net*, 7 October 2016, available in Serbian at: <http://www.dijalog.net/jankovic-nadleznom-ministarstvu-2012-dostavljen-predlog-izmena-zakona-o-zastitniku-gradjana/>.

The legislature's reactions to the work of the independent regulatory authorities, including the Protector of Citizens, leaves a lot to be desired. The parliament has for two years running defaulted on its obligation to review the Protector of Citizens' annual reports, in which he provides information on the work of his Office, the number of complaints it received and how they were dealt with, but also voices his assessments of the state of human, minority and civil rights in Serbia in the reporting period, alerts to the problems and omissions of the public authorities and provides suggestions and recommendations on how to improve the status of the citizens. The Protector of Citizens submitted both his 2014 and 2015 annual reports to the National Assembly on time, but only they were reviewed only by the relevant committees, not by the plenary Assembly sessions.

In 2016, the Protector of Citizens performed a number of checks of the work of the administrative bodies in response to complaints filed by citizens and published his findings in most of these cases. In July, he published his report after checking 14 lethal domestic violence cases in which he identified the mistakes made by the relevant authorities; in as many as 12 of these cases, the relevant authorities were aware that the women were victims of violence, but either did not take the measures prescribed by law on time or at all. The Protector of Citizens thus issued his recommendations to the Ministry of Internal Affairs, the Ministry of Labour, Employment and Veteran and Social Affairs, the Ministry of Health and the Vojvodina Social Policy, Demography and Gender Equality Secretariat.¹⁵⁸

Senior government officials have frequently attacked Protector of Citizens Saša Janković in the past few years.¹⁵⁹ The situation in 2016 was similar, if not worse. Public criticisms of his work increased in August, after he issued his statement on the Savamala case following his checks of the work of individual state authorities.¹⁶⁰ He said that the Ministry of Internal Affairs violated the law because it did not act on his recommendations even after he extended the deadline. The media quoted MIA State Secretary Jana Ljubičić's reaction to the statement, in which she qualified the Protector of Citizens as a "political player abusing his office".¹⁶¹

The attacks by senior government and party officials increased in frequency when talk of Saša Janković running for president in 2017 started. The pro-government tabloids negatively commented nearly every move he made in accordance with his powers.¹⁶² Saša Janković refused to answer questions about his potential

158 Institutions as Accomplices in Domestic Violence, *Vreme*, 6 August 2016, available in Serbian at: <http://www.vreme.com/cms/view.php?id=1417288>.

159 More in the *2014 Report II.4.4.2* and the *2015 Report III.3.3.2*.

160 More in I.5.2.10 and II.12.4.

161 "Instead of Replying, MIA Trying to Discredit Janković," *KRIK*, 10 August 2016, available in Serbian at: <https://www.krik.rs/umesto-da-odgovori-mup-pokusava-da-diskredituje-jankovica/>

162 "ARROGANT SAŠA JANKOVIĆ'S CAMPAIGN WELL UNDER WAY! Protector Breaking the Law and Involving Himself in Politics More and More Openly," *Informer*, 1 August 2016, available in Serbian at: <http://informer.rs/vesti/politika/84473/BAHATI-SASA-JANKOVIC-UVELIKO-KAMPANJI-Zastitnik-krsi-zakon-SVE-OTVORENIJE-BAVI-POLITIKOM>.

candidacy for a long time, until 26 December, when he confirmed he would run for president once the elections were called and that he would in the meantime perform his office of Protector of Citizens in accordance with the Constitution and the law, without fear or backing down.¹⁶³ The media and some regime tabloids did not spare the Protector of Citizens from sensationalist cover stories and comments that he finally admitted what they had been saying all along, that he was abusing the responsible office he was entrusted with for political campaigning and self-promotion and that he should resign.¹⁶⁴ On the other hand, a group of public figures and intellectuals signed a petition in November 2016, appealing to the Protector of Citizens to run as a non-party candidate at the upcoming presidential elections.¹⁶⁵

The Protector of Citizens responded to the attacks in most cases, defending the institution he was heading. He said that the Serbian authorities did not want to listen to the criticisms of those charged with overseeing the work of the public authorities and that anyone who criticised the authorities' unlawful actions was declared a foreign mercenary, a traitor or the opposition. He also concluded that the results of his work were recognised to a much greater extent by the European Commission than by the Serbian Government and that the Government would/ do well to refer to his reports in its documents, strategies and action plans and act on his recommendations, rather than wait for the European Commission to state them in its documents.¹⁶⁶

In its Serbia 2016 Report, the European Commission said the practice of regular meetings with the Prime Minister needed to be built upon with a view to improving within the public administration the understanding and acknowledgement of the essential role played by the Protector of Citizens Office and other independent authorities and regulatory bodies in ensuring that the executive was accountable. In this respect, it highlighted the importance of responding to, as appropriate, to all their recommendations, and in particular those related to issues of significant public concern.

The Protector of Citizens to be appointed once Janković's term in office expires in May 2017 will hopefully preserve the independence of this authority, the activities of which are of crucial importance for the functioning of a democratic

163 More is available in Serbian at: <http://www.021.rs/story/Info/Srbija/152259/Sasa-Jankovic-potvrдио-da-ce-se-kandidovati-za-predsednika.html>.

164 "Janković: I'll Run for President," *Danas*, 26 December 2016, available in Serbian at: http://www.danas.rs/politika.56.html?news_id=335295&title=Jankovi%C4%87%3a+Kandidova%C4%87u+se+za+predsednika.

165 "100 Public Figures Call on Saša Janković to Run for President," *NI*, 25 November 2016, available in Serbian at: <http://rs.n1info.com/a210392/Vesti/Vesti/Apel-100-javnih-licnosti-Sasi-Jankovicu-da-se-kandiduje.html>.

166 "Government Does Not Want to be Controlled," Saša Janković's interview to news agency *FoNet*, 11 December 2016. The integral version of the interview is available in Serbian at: <http://www.zastitnik.rs/index.php/2011-12-25-10-17-15/2011-12-25-10-19-19/5046-vl-s-n-z-li-n-r-lu-in-rv-u-s-sh-n-vic-f-n-u>.

society. The outgoing Protector of Citizens has not brought into question his impartiality and independence once during his ten-year term in office and his successor will hopefully follow suit.

5.3.2. Commissioner for Information of Public Importance and Personal Data Protection

The Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) is an independent regulatory authority exercising his remit in accordance with the Free Access to Information of Public Importance Act (FAIPIA)¹⁶⁷ and the Personal Data Protection Act¹⁶⁸. Rodoljub Šabić was first elected Commissioner in 2004 and re-elected to a seven-year term in office in 2011.

Under the FAIPIA, the Commissioner is, *inter alia*, charged with monitoring the public authorities' fulfilment of the obligations set out in that law and reporting to the public and the National Assembly thereof, initiating the adoption or amendment of regulations to ensure the implementation and improvement of the right of access to information of public importance, proposing measures to public authorities with a view to improving their work, and reviewing complaints against the public authorities' decisions violating the rights governed by this law. Under the Personal Data Protection Act, the Commissioner shall oversee the implementation of personal data protection, rule on complaints, keep the Central Register of personal data filing systems, monitor and permit the transfer of personal data outside the Republic of Serbia, alert to abuse during personal data collection, render opinions on the establishment of new data filing systems and introduction of new data processing IT, monitor the enforcement of data protection measures and propose improvements of such measures, render opinions on whether proposed data processing methods constitute specific risks to civil rights and freedoms, et al.

The Commissioner was extremely active and frequently publicly alerted to the deficiencies in the work of the public authorities in 2016 as well. In his 2015 Annual Report¹⁶⁹, the Commissioner said that the situation in the area of free access to information had improved over the previous period, since public authorities were themselves offering access to specific information, but that it was still unsatisfactory. He singled out the lack of transparency of the public companies and absolute lack of accountability of the authorities violating the law as the greatest deficiencies. Breaches of the Personal Data Protection Act can in most cases be ascribed to lack of awareness, wherefore, in his opinion, the regulations governing this area needed to be amended.¹⁷⁰

167 *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.

168 *Sl. glasnik RS*, 97/08, 104/09 – other law 68/12 – CC Decision and 107/12.

169 See: <http://www.poverenik.rs/en/commissioners-report/2328-izvestaj-poverenika-za-2015-godinu.html>.

170 *Blic*, 14 September 2016, p. 5. Available also at: <http://www.blic.rs/vesti/drustvo/godisnji-izvestaj-sabic-problem-potpuno-odsustvo-odgovornosti-za-krsenje-zakona/02n1p46>.

The public acknowledgement of the Commissioner's work is corroborated by the fact that he received a total of 8,255 cases in 2016: 5,496 regarded the right of free access to information of public importance and 2,743 personal data protection. The Commissioner and his office reviewed 5,381 of the cases, 2,707 of which were related to personal data protection.

The Commissioner corroborated his conclusion that Serbia was still in the initial stage of personal data protection by reiterating that a new personal data protection law had been pending for four years, that an action plan for the implementation of the Personal Data Protection Strategy, enacted six years earlier, had not been adopted yet and that the Serbian Government still had not formed the body to monitor the implementation of the Strategy and the action plan and report to the relevant authorities about their implementation and the identified problems.¹⁷¹ He said this was the logical consequence of the absence of a series of requisite normative enactments and activities. The European Commission also warned in its Serbia 2016 Report that the Government had not responded to the Commissioner's recommendations.

The Commissioner also commented the part of Serbia's Chapter 23 Negotiating Position regarding personal data protection, warning that it made absolutely no mention of the adoption of the long-awaited action plan for the implementation of the Personal Data Protection Strategy.¹⁷² He also noted that the Government had for seven years been delaying the adoption of a decree on the archiving of and special measures to protect particularly sensitive data, the enactment of which he had for years been calling for.¹⁷³

In 2016, the Commissioner frequently reacted to violations of the Personal Data Protection Act. For instance, in July, he issued a warning to the company "Perutnina Ptuj – Topiko" in Bačka Topola for unlawfully processing the personal data of its 17 staff members it ordered to take the lie detector test, warning that there were no legal grounds for such processing.¹⁷⁴ In September, he issued a warning to the Ministry of Internal Affairs, requiring of it to eliminate the irregularities in processing the personal data of driving school students, instructors, teachers and examiners in contravention of the Personal Data Protection Act. The Commissioner

171 Under the Chapter 23 Action Plan, the new law, based on the model drafted by the Commissioner, was to have been adopted by the end of 2015. Since the law was still pending, the Commissioner warned that the Chapter 23 Action Plan, agreed on with the EU, had been violated even before the talks on that Chapter opened.

172 "Personal Data Protection Šabić: Negotiating Position Inferior to Serbia's Needs," *Blic*, 18 March 2016, available in Serbian at: <http://www.blic.rs/vesti/politika/zastita-podataka-o-licnosti-sabic-pregovaracka-pozicija-inferiorna-u-odnosu-na/97b3nzf>.

173 "Personal Data Protection Strategy Remains a Dead Letter Six Years on," 25 August 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2425-strategija-zastite-podataka-o-licnosti-i-posle-sest-godina-qmrtvo-slovo-na-papiriuq.html>.

174 "Šabić Warns Employers May not Impersonate Police," *Blic*, 19 July 2016, more is available in Serbian at: <http://www.blic.rs/vesti/drustvo/kod-sefa-na-poligraf-sabic-upzorava-da-poslodavci-ne-smenju-da-glume-policaice/3l6s65m>.

initiated the oversight exercise after the Protector of Citizens forwarded him the complaint filed by the Driving School Staff Trade Union.¹⁷⁵

In September, the Commissioner found that the Belgrade City Assembly decision authorising public transport ticket inspectors to issue electronic misdemeanour fees to passengers without tickets was unlawful and unconstitutional. The decision authorised ticket inspectors to verify the identity of the passengers even in the absence of regular or communal police officers and lay down the obligation of the passengers to provide the information requested.¹⁷⁶

After an oversight exercise initiated after he received an anonymous complaint alleging that the MIA disclosed in its daily updates to other state authorities the personal data of persons in contact with the police, specifying their dates of birth, addresses, and in some cases, their personal identification numbers, the Commissioner warned that such a practice was unlawful and required of the MIA to halt it.¹⁷⁷ He reacted in a similar vein when the Mayor of Niš suggested the forming of a database of citizens who have sued the city administration. The Mayor abandoned his idea when the Commissioner warned him that such a database would amount to unlawful processing of personal data and a punishable offence.¹⁷⁸ The Commissioner wrote a letter to Serbian Prime Minister Aleksandar Vučić alerting him to the inadmissible personal data processing envisaged in the section on security clearance checks of the National Aviation Security Programme, adopted by the Serbian Government, and calling for the abrogation of the section since it undermined legal certainty and violated the constitutional personal data protection safeguards.¹⁷⁹

The Commissioner filed a criminal report against an unidentified local tax administration employee with the Belgrade Higher Prosecution Service after acting

175 “Šabić Gives MIA 15 Days to Eliminate Irregularities in Processing Data of Driving School Students,” *Blic*, 1 September 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/sabic-dao-15-dana-mup-u-da-otkloni-neppravilnosti-u-obradi-podataka-polaznika-auto/7dfcnfg>.

176 By-Law Cannot Authorise Public Transport Ticket Inspectors to Verify Citizens’ Identity,” 9 September 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2435-kontrolori-u-gradskom-prevozu-ne-mogu-podzakonskim-aktom-dobiti-ovlasčenja-da-legitimisu-gradjane.html><http://www.poverenik.rs/ysaopstenja-i-aktuelnosti/2435-kontrolori-u-gradskom-prevozu-ne-mogu-podzakonskim-aktom-dobiti-ovlasčenja-da-legitimisu-gradjane.html>.

177 Personal data were thus forwarded to Serbian President Tomislav Nikolić, Prime Minister Aleksandar Vučić, Assembly Speaker Maja Gojković, First Deputy Prime Minister Ivica Dačić, the Supreme Court of Cassation, the Assembly Security and Defence Committee, the Republican Public Prosecutor, the Security Information Agency (SIA). More is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2432-upozorenje-mup-u-nezakonita-obrada-licnih-podataka-iz-auto-skola.html>.

178 Commissioner Warns the City of Niš of its Duty to Comply with the Personal Data Protection Act, 23 August 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2424-poverenik-upozorio-grad-nis-na-nuznost-postovanja-zakona-o-zastiti-podataka-o-licnosti.html>.

179 Commissioner’s Letter to Prime Minister, 28 August 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2427-pismo-poverenika-premijeru.html>.

on a complaint and performing an oversight exercise in the Ministry of Finance Tax Administration and the Belgrade City Finance Secretariat Local Tax Administration Public Revenue Administration. He commended the Tax Administration Director, who, even as the oversight exercise was in progress, ordered the immediate change of the passwords used by the staff to access local tax administration data and to form a new Register of staff authorised to access those data.¹⁸⁰

Although the Commissioner said that the situation in the area of access to information of public importance had improved, a lot of citizens and media were critical of the public authorities' behaviour. The Commissioner best expressed his view by deciding against awarding the main award – a special prize and a statuette for the greatest contribution to affirmation of the right of access to information and transparency – on International Right to Know Day on 28 September 2016. He explained that the enforcement of the FAIPIA was continuously improving, but that it was still marred by problems, as corroborated by the large number of complaints filed during the year.¹⁸¹

The Savamala case was the most striking example of the authorities' disregard for the citizens' right to know in 2016. The Let's not Give/Drown Belgrade initiative asked the Belgrade Higher Public Prosecution Service to disclose the Savamala case file number and the name of the prosecutor handling the case, but the name of the acting prosecutor was released to it with a great delay, only after the Commissioner intervened on its behalf.¹⁸²

The Commissioner's diligence in 2016 again provoked a number of lawsuits against him filed by the relevant authorities. The Republican Public Prosecution Office, for instance filed a lawsuit against the Commissioner with the Administrative Court in Belgrade in May, because he required of the Ministry of Defence to release to the Humanitarian Law Centre (HLC) information which, as it claimed, would "undermine the defence of the country, national and public security, as well as the personal safety of officers and non-commissioned officers". The HLC qualified the Republican Public Prosecution Service's move as abuse of its legal powers in order to protect individuals and institutions from liability for past crimes, at the expense of the public's right to know, and that such lawsuits were actually an open

180 Criminal Charges for Abuse of Personal Data Contained in Tax Documentation, 6 September 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2434-krivica-na-prijava-zbog-zloupotrebe-licnih-podataka-iz-poreske-dokumentacije.html>.

181 "Commissioner Did Not Award the Main Prize for Affirmation of the Right of Access to Information This Year," *Blic*, 28 September 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/poverenik-ove-godine-nije-dodelio-glavnu-nagradu-za-afirmisanje-prava-na-pristup/5r-byw8b>. The Commissioner's press release is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2442-dan-prava-javnosti-da-zna-28septembar-2016.html>.

182 See the Commissioner's reaction to the Prime Minister's and Assembly Speaker's fierce reaction to his disclosure of the information sought by the initiative, in his press release entitled Public Office Holders Cannot Be "Nameless", 7 October 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2456-javne-funkcije-ne-mogu-vrsiti-qbezimeniq-judi.html>.

attack on the Commissioner's Office. In March 2016, the Commissioner issued a ruling ordering the Ministry of Defence to provide HLC access to information, i.e. copies of documents revealing when a Goran Jeftović was appointed staff officer of the Army of Yugoslavia Priština Corps during the 1999 clashes in Kosovo, until what time he had held that post and what rank he had held.¹⁸³ This is merely one of the authorities' reactions to the Commissioner's decisions, because, as his Office told the portal *Insajder*, the Ministry of Defence filed nine lawsuits against the Commissioner in 2016 alone, challenging his rulings ordering it to provide HLC with access to information, and all the cases were pending before the Administrative Court.¹⁸⁴

5.3.3. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality was established pursuant to the Anti-Discrimination Act¹⁸⁵ to oversee the enforcement of anti-discrimination law, prevent all forms of discrimination and improve the realisation and protection of equality, receive and review complaints alleging violations of the Act and provide information to the complainants. The Commissioner, who is elected to a five-year term in office, is also authorised to file lawsuits and misdemeanour and criminal reports, with the consent of the individuals at issue. The Commissioner may also issue recommendations and opinions on specific cases of discrimination, impose measures prescribed by law and alert the public to grave cases of discrimination, as well as monitor the enforcement of the law and other regulations within his remit. The Commissioner is also authorised to initiate the adoption or amendments of regulations and issue opinions on preliminary drafts of laws and other regulations related to the prohibition of discrimination, as well as recommend measures ensuring equality to public authorities and others.

The National Assembly elected Brankica Janković Commissioner for the Protection of Equality in May 2015. In 2016, the Commissioner reacted to several grave violations of equality and cases of discrimination. For instance, she said that the medical certificate confirming the applicants for the Ministry of Education, Science and Technological Development "World in Serbia" scholarships did not suffer from any communicable diseases, including HIV, amounted to a direct violation of the Anti-Discrimination Act and that she issued a recommendation to the Ministry to delete the discriminatory eligibility requirement.¹⁸⁶

183 "Šabić: I Wouldn't Dream of Undermining Security," *Blic*, 26 July 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/tuzilastvo-protiv-poverenika-sabic-taman-posla-da-ugrozavam-bezbednost/6pgrks6>.

184 Available in Serbian at: <https://insajder.net/sr/sajt/tema/1360/>.

185 *Sl. glasnik RS*, 22/09.

186 "Unwelcome! This is What Foreigners with HIV Who Want to Study in Serbia Get," *Blic*, 24 May 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/nepozeljni-kad-stranci-sahiv-om-zele-da-uce-u-srbiji-saceka-ih-ovo/kb322qw>.

In July 2016, the Commissioner and the Journalists' Association of Serbia (JAS) fiercely condemned an article entitled "Women's Darkest Secrets" published in the daily *Informer*, warning it spread misogyny and discriminated against women. The Commissioner said that the consequences of media reports encouraging prejudices and stereotypes against women were serious and harmful in a community in which discrimination, abuse and violence against women were burning issues.¹⁸⁷

In the reporting period, the Commissioner issued two rulings requiring of the Director of the Novi Sad Environmental Protection Movement Nikola Aleksić to apologise to businessman Stanko Krstin for discriminating against him. Aleksić said that Krstin was on the payroll of the Croatian intelligence agency and had come to Novi Sad "on a mission" to "poison" the citizens of Novi Sad and the pigeons and dogs with his production plant.¹⁸⁸

During an international conference on the rights of the child, the Commissioner singled out the problems faced by Roma children and children with disabilities, who were the most discriminated against in Serbian kindergartens and schools. She also cited good practice examples of local self-governments that acted on her recommendations and secured transportation or personal escorts for children with special needs.¹⁸⁹

The Commissioner for the Protection of Equality did not face major problems in her relations with the executive in 2016, as opposed to the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection, who were often criticised by the authorities.

The Commissioner for the Protection of Equality continued cooperating with her partners in other countries. The representatives of regional equality bodies, who attended the "First Regional Forum of Equality Bodies of South-East Europe" held in Belgrade in November 2016, signed a joint statement on cooperation, with the aim of suppressing discrimination and facilitating the implementation of full equality of all members of society.¹⁹⁰

187 "Commissioner and JAS: Condemn *Informer* Report on Women," *NI*, 4 July 2016, available in Serbian at: <http://rs.n1info.com/a174068/Vesti/Vesti/Osude-teksta-o-zenama-u-Informeru.html>.

188 In late September 2016, the Novi Sad Appellate Court fined the Director of the Novi Sad Environmental Protection Movement Nikola Aleksića 100,000 RSD for discriminating against Stanko Krstin. More is available in Serbian at: Euractiv 2 November 2016.

189 See the Commissioner's press release of 12 September 2016, available at: <http://ravnopravnost.gov.rs/en/conference-on-child-rights/>.

190 In addition to the Commissioner for the Protection of Equality, the statement was signed by eight institutions in the following five South-East European countries: Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia and Montenegro. More in "Regional Cooperation in Protection from Discrimination," *Večernje novosti*, 20 November 2016, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:635921-Regionalna-saradnja-u-oblasti-zastite-od-diskriminacije>. The Commissioner's statement is available at: <http://ravnopravnost.gov.rs/en/statement-on-cooperation-of-equality-bodies-in-south-east-europe/>.

II. INDIVIDUAL RIGHTS

1. Right to Life

1.1. Protection of the Right to Life in Serbian Law

The right to life is enshrined in Article 6 of the ICCPR and Article 2 of the ECHR, and their Protocols abolishing capital punishment. The right to life entails the state's obligation to take appropriate measures to protect life, which, above all, includes the adoption and effective enforcement of laws and the obligation to conduct effective investigations into deaths caused by use of force or the state's failure to protect the right to life.

The Constitution of the Republic of Serbia¹ affords protection to the right to life in Article 24, which lays down that human life is inviolable and that there shall be no death penalty in Serbia. Neither the relevant international treaties nor the Constitution (Art. 202) allow derogations from the right to life. The Criminal Code² includes a chapter on crimes against life and body (Chapter XIII), incriminating various forms of violent deaths as well as numerous categories of other offences that may threaten human lives and health. It incriminates offences against human health (Chapter XXIII), the environment (Chapter XXIV), general safety of people and property (Chapter XXV) and public traffic safety (Chapter XXVI). Crimes resulting in the deprivation of or threat to life warrant up to 40 years' imprisonment.

In November 2016, the Serbian parliament adopted the Act Amending the Criminal Code³, which now incriminates forced marriage⁴, female genital muti-

1 *Sl. glasnik RS*, 98/06.

2 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13 and 108/14.

3 *Sl. glasnik RS*, 94/16.

4 Under Article 187a of the Criminal Code, a sentence of imprisonment ranging from three months to three years shall be imposed against anyone who uses coercion or threats for the purpose of causing another person to enter into the marriage. Up to two years of imprisonment shall be imposed against perpetrators who commit the offence by transferring the victims to another country or inducing them to go to another country to enter into a forced marriage.

lation⁵, persecution⁶, sexual harassment⁷ and inducing children to witness sexual acts.⁸ Chapter XXII of the Criminal Code now also incriminates economic fraud and embezzlement and abuse in the privatisation process.⁹ The Act also amended the articles incriminating abduction of minors and change of family status, thus extending criminal law protection to newborns.¹⁰ It also imposed harsher penalties for human smuggling, incriminated in Article 350. None of the crimes introduced or amended by the Act warrant life imprisonment.

1.2. Use of Firearms

The police and Security Information Agency (SIA) officers may use means of coercion, including firearms, under the conditions and in the manner laid down in the Police Act¹¹ and the Rulebook on the Technical Features and Manner of Use of Means of Coercion.¹²

5 Under Article 121a of the Criminal Code, whoever perpetrates female genital mutilation shall be punished by imprisonment ranging from one to eight years; the crime warrants imprisonment ranging from three months to three years in case of particular mitigating circumstances; whoever forces a female to subject herself to genital mutilation or aids and abets the offence shall be punished by imprisonment ranging from six months to five years. Perpetrators of female genital mutilation resulting in the death of the victims shall be punished by imprisonment ranging from two to twelve years.

6 Under Article 138a of the Criminal Code, a fine or maximum three years' imprisonment shall be imposed upon anyone who 1) stalks or performs other actions to physically approach persons against their will; 2) attempts to establish contact with persons against their will directly, by proxy or any means of communication; 3) abuses the personal data of persons or persons close to them for the purpose of soliciting goods or services, 4) threatens to impinge on the life, body or freedom of other persons or persons close to them; or 5) takes other similar actions that may substantially endanger the personal life of the persons they are directed at. In the event the offence endangered the life, health or body of the persons or persons close to them, the perpetrators shall be punished by imprisonment ranging from three months to five years. Perpetrators of this offence resulting in the death of the persons or persons close to them shall be punished by imprisonment ranging from one to ten years.

7 Under Article 182a, whoever sexually harasses another person shall be punished by a fine or maximum six months' imprisonment. Imprisonment ranging between three months and three years shall be imposed against perpetrators of this offence committed against minors. Sexual harassment denotes all verbal, non-verbal or physical behaviour aimed at or amounting to a violation of a person's dignity in the sphere of sexual life and causing fear or creating a hostile, degrading or offensive environment. The offence shall be prosecuted on the initiative of the prosecutor.

8 Under Article 185a, whoever induces children to witness a rape, engagement in a non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person an equivalent or another sexual act shall be punished by imprisonment ranging one and eight years, Imprisonment ranging from two to ten years shall be imposed against perpetrators who applied force or threat in inducing the children to witness the commission of the offence.

9 Offences incriminated in Articles 223, 224 and 228a.

10 Articles 191 and 192.

11 *Sl. glasnik RS*, 6/16.

12 *Sl. glasnik RS*, 19/07, 112/08 and 115/14.

The Police Act lays down when firearms may be used only if the legitimate aim of the assignment cannot be achieved by use of other means of coercion and if absolutely necessary to repel a simultaneous unlawful assault jeopardising the officer's life or the life of another person (Art. 124).

The Rulebook on the Technical Features and Manner of Use of Means of Coercion sets out that the police will prepare an action plan before they exercise their powers against a person in the event they have information indicating that the person will offer armed resistance (Art. 16).¹³ Article 25 of the Rulebook prescribes a special internal audit procedure for reviewing whether the use of means of coercion was justified and lawful; such a procedure is conducted whenever firearms were used or when the application of the means of coercion resulted in grave physical injuries or death (Art. 25). In such cases, the Police Director or the head of the relevant regional police directorate in which the police officer who used the means of coercion works, sets up a commission, which reviews the circumstances in which the means of coercion were used, makes a record of the review and renders its opinion on whether the use of means of coercion was lawful and professional.¹⁴ An authorised officer shall "propose to the Police Director to take the measures prescribed by the law" in the event he concludes that the use of means of coercion was unjustified or unlawful (Art. 25(3)). The Rulebook, however, only lays down that "information on cases of unjustified or unlawful use of the means of coercion" shall be an integral part of the MIA annual reports to the National Assembly and "publicly available" (Art. 25(4)), which does not rule out the possibility that data on unjustified or unlawful use of means of coercion are left out of the annual reports. The law is silent on the role of the injured parties in the procedure, i.e. whether they can take any part in the review or propose measures to protect their interests.

Under Article 12 of the Security Information Agency Act (SIAA),¹⁵ specific Agency officers "engaged in uncovering, monitoring, documenting, preventing, suppressing and breaking up activities of organisations and individuals involved in organised crime and criminal offences with elements of foreign, domestic and international terrorism and the severest forms of crimes against humanity and international law, and the constitutional order and security of the Republic, shall exercise the powers laid down in the law and other regulations applied by authorised officers and MIA staff charged with specific duties pursuant to the regulations on internal affairs."

13 This provision aims to prevent violations of the right to life due to the lack of a plan or an inadequate police operation plan, like e.g. in the above-mentioned case of *McCann and Others v. the United Kingdom*. See paragraphs 212 and 213 of the judgment.

14 The opinion of such a commission, which cannot be deemed independent since it may comprise police officers working in the same unit as the policeman whose actions are under review, or even officers directly subordinated to him, is forwarded to the police officer charged by the Minister of Internal Affairs with assessing whether the use of means of coercion was justified and lawful.

15 *Sl. glasnik RS*, 42/02, 111/09, 65/14– CC Decision and 66/14.

When so required by particular security reasons, the SIA may directly take over the performance of duties within the remit of the MIA (Art. 16, SIAA). The decisions on assuming these activities shall be taken by mutual consent of SIA Director and the Minister of Internal Affairs (Art. 16(2)). In such situations, SIA officers shall perform the duties “under the conditions and in accordance with the powers laid down in the law and other regulations exercised by the authorised officers and MIA staff assigned specific duties within the ministry charged with internal affairs, pursuant to regulations on internal affairs” (Art. 16(4)).

The Penal Sanctions Enforcement Act (hereinafter: PSEA)¹⁶ and the Rulebook on Measures for Maintaining Order and Security in Penal Institutions¹⁷ specify under which conditions means of coercion may be used in penitentiaries. Regulations governing the use of lethal weapons by the staff of penal institutions are somewhat more detailed than those applying to the police. The Rulebook on Measures for Maintaining Order and Security in Penal Institutions explicitly lays down that the purpose of using firearms is to incapacitate the assailant and that the authorised officer shall endeavour not to injure the convict’s vital organs, i.e. that he will aim at the convict’s legs (Art. 36(4)). The Rulebook distinguishes between the lethal use of firearms, permitted only if human lives are in danger (Art. 36(5)) and the non-lethal use of firearms, permitted also when human lives are not in danger.¹⁸

Under the Private Security Act,¹⁹ private security guards may use firearms only in self-defence and when strictly necessary (Art. 55(1)). The law stipulates that any use of means of coercion must be in accordance with the principle of proportionality (Art. 46(4 and 5)). A security guard who used means of coercion must immediately notify the competent police administration thereof (Art. 56(2)) and shall submit his report on the use of the means of coercion to the responsible person in the private security company within 12 hours (Art. 56(3)). The latter shall forward the “report with his opinion” to the police administration within 48 hours (Art. 56(4)). Some rulebooks were adopted during 2015. Under the amendments to the Private Security Act, companies and entrepreneurs extending private security services on the day the Act comes into force shall bring their work into compliance with the provisions of this law by 1 January 2017.²⁰

16 *Sl. glasnik RS*, 55/14.

17 *Sl. glasnik RS*, 105/06.

18 Under Article 145 of the PSEA, firearms may be used only if it is impossible to otherwise repel a concurrent and imminent unlawful attack endangering human life; prevent the escape of a prisoner from a high security prison; prevent the escape of specific categories of convicted or remanded prisoners during their transfer.

19 *Sl. glasnik RS*, 104/13 and 42/15.

20 The amendments are available in Serbian at: <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2015/1124-15%20lat.pdf>.

1.3. Penal Policy and Protection of the Right to Life

As far as the state's obligation to take the relevant measures to protect human life is concerned, it may be concluded that Serbia's legislation adequately protects the right to life. Serious problems have, however, arisen in the practical enforcement of legislation aimed at protecting the right to life. No headway was made in protecting women from domestic violence, despite the activities undertaken by the state authorities.

Domestic violence claimed the lives of 32 women in Serbia in 2016. At least three of them were girls.²¹ Seven women were killed by their abusers in just three days, from 16 to 18 May.²²

In November 2016, the Serbian National Assembly adopted the Domestic Violence Act²³, drafted by the Ministry of Justice. This law lays down a number of new powers, mechanisms and obligations with a view to improving the efficiency of combating this problem. Domestic violence is defined more extensively than in the Family Act and, in addition to physical, psychological and sexual violence, includes economic violence, pursuant to Article 3 of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The law also specifies more thoroughly who may be victim of domestic violence.²⁴

Under the Act, the police shall respond to domestic violence reports, prevent such violence and assess the risk of its escalation. Depending on their assessment, the police may impose the following urgent measures: order the immediate temporary removal of the perpetrator from the home and issue restraining orders. These urgent police measures shall remain in effect 48 hours and the court may extend their duration to 30 days on the motion of the prosecutor (Art. 20).²⁵

21 "Domestic Violence Claims Lives of Twenty Women and Three Girls," *Danas*, 30 August 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=326634&title=Ubijeno%2020%20C5%BEena%20i%20tri%20devojk%20u%20porodi%20C4%8D-nom%20nasilju.

22 M. M. Stevanović, "Between 30 and 40 Women Killed by Abusive Partners Every Year," *Danas*, 6 December 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=333889&title=Izme%20C4%91u+30+i+40+%20C5%BEena+godu%20C5%A1nje+strada+u+porodi%20C4%8D-nom+nasilju; Women against Violence Network: Call to Action "No More Dead Women," available in Serbian at: <http://www.zeneprotivnasilja.net/vesti/635-poziv-na-akciju-nijedna-zena-manje-nijedna-mrtva-vise>, "NGO: Nine Women Killed in Domestic Violence in Serbia in 2016," *FoNet, NI*, 17 May 2016, available in Serbian at: <http://rs.n1info.com/a161060/Vesti/Vesti/U-Srbiji-u-2016.-devet-ubijenih-zena-u-porodici-u-sredu-protest-u-Beogradu.html>.

23 *Sl. glasnik RS*, 94/16.

24 Victims of domestic violence shall denote the perpetrators' current or former spouses or civil or intimate partners, consanguineous lineal or lateral kin to the second degree, relatives by affinity to the second degree, adoptive or foster parents or children, and all other persons the perpetrators have been sharing the residence with, Article 3(3) of the Act.

25 Articles 14–23. The competent police officers shall immediately notify the public prosecutors of the imposed urgent measures. In the event the latter establish imminent risk of domestic violence during their risk assessment, they shall file a motion with a court seeking the exten-

The Act does not apply to juvenile perpetrators of domestic violence, as their liability and penalties for domestic violence are governed by other laws (the Juvenile Justice Act, the Misdemeanour Act and the Family Act).

The Act normatively unravels the knot of problems in combating and responding to domestic violence that has plagued the coordination among the relevant state authorities and institutions. Article 24 introduces liaison officers in each of the relevant authorities and institutions (police, basic and higher public prosecution services, basic and higher courts and social work centres) to facilitate their exchange of information and coordination. Liaison officers are under the obligation to exchange data and information of relevance to preventing, identifying, prosecuting and trying domestic violence and other criminal offences under the Act on a daily basis and with extending support and protection to victims of domestic violence and other criminal offences under the Act. Coordination and Cooperation Groups, to be formed in the jurisdictions of all the basic public prosecution services, shall review all domestic violence criminal or civil proceedings in which a final decision is pending, cases in which the victims of domestic violence and other criminal offences under the Act are in need of support and protection, prepare individual support and protection plans for the victims and suggest measures to the public prosecution services to bring the court proceedings to a close.²⁶

The Act governs the extension of support and protection to victims of domestic violence and other criminal offences under the Act, who are entitled to right of notice,²⁷ right to legal aid²⁸ and individual victim support and protection

sion of the measures within 24 hours. The public prosecutors may propose the extension of the measures within 24 hours from the moment of arrest of the abusers and the courts shall rule on such motions within the following 24 hours, i.e. prior to the expiry of the 48-hour police custody of the perpetrators. In the event the court does not detain the abuser on remand and he violates one of the imposed measures on release, i.e. returns to the home, from which he has been temporarily removed or violates the restraining order, the police may re-arrest him and bring him before a misdemeanour judge. The misdemeanour judge may sentence the abuser to 60 days' imprisonment, effective immediately, which means that the abuser's appeal of the sentence shall not stay its enforcement.

- 26 The Groups shall meet at least every fortnight. They shall be comprised of the representatives of the basic public prosecution services, police directorates and social work centres in the areas for which they are formed. The Group members shall be named by the managers of these authorities and institutions, from among the basic deputy public prosecutors, who completed specialised training, and the competent police officers and social welfare staff charged with domestic violence cases. The ministers of justice and internal affairs and the minister in charge of family protection shall enact a rulebook on cooperation, governing in detail their mutual rights and obligations and cooperation among state authorities and institutions tasked with the enforcement of the Act with respect to preventing domestic violence and extending support to victims of domestic violence and other criminal offences under the Act.
- 27 Under Article 29 of the Act, during their initial contact with the victims of domestic violence or other criminal offences under the Act, the relevant state authorities and institutions shall fully notify them of the authorities, legal persons and associations extending support and protection to victims, in a manner and language the victims understand.
- 28 Under Article 30 of the Act, victims of domestic violence or other criminal offences under the Act are entitled to legal aid, pursuant to a separate law.

plans.²⁹ Police, prosecution services, courts and social work centres are under the obligation to keep records of domestic violence cases. A Central Register of such cases shall be kept by the Republican Public Prosecutor.³⁰

Abusers, who violate initial or extended urgent measures or anti-domestic violence measures under the Family Act imposed against them, shall be sentenced to 60 days' imprisonment, effective immediately. Furthermore, the Act lays down misdemeanour fines, ranging between 50,000 and 150,000 RSD, to be levied against responsible persons in state and other authorities, organisations or institutions who fail to immediately notify the police or public prosecutors of any information about domestic violence or imminent risk of it occurring.

The legislator appears to have enacted a comprehensive law envisaging the prerequisite institutes for efficiently combating and suppressing domestic violence. It remains to be seen how it will be enforced and to what extent and at what speed the relevant state authorities and institutions will succeed in assuming their obligations and exercising their powers, as well as how well they will actually coordinate amongst themselves on the ground.

Measures to protect people whose lives may be at risk are set out also in the Criminal Procedure Code, which provides for the protection of witnesses and in the Police Act, under which „if and as long as any justified grounds exist”, the police shall take adequate measures “to protect a witness or another person, who has or may provide information of relevance to a criminal proceeding, or a person in connection with them in the event they are at risk from the perpetrator of the crime or other persons” (Art. 73).

1.4. Obligation to Effectively Investigate Violations of the Right to Life

The state is under the obligation to conduct effective investigations into all deprivations of life or grave risks to people's lives if there are reasons to believe that they cannot be attributed to natural causes with a view to establishing all the

29 Under Article 31 of the Act, upon receipt of assessment risks alerting to immediate risks of domestic violence, the Coordination and Cooperation Groups shall develop individual victim support and protection plans, comprising comprehensive and effective measures supporting and protecting both the victims and other family members in need of support. If they wish, the victims may take part in the development of the plans, their emotional and physical state of health permitting. The protection measures shall aim to ensure the victims' safety, halt the violence, prevent its recurrence and protect the victims' rights. The support measures shall entail the extension of psycho-social and other support to the victims to facilitate their recovery, empowerment and acquisition of independence. The plans shall define the implementers of the specific measures and the deadlines by which they are to be taken, and shall include plans for monitoring and evaluating the effectiveness of the planned and undertaken measures.

30 Articles 32–34. These provisions also govern access to the records and personal data protection.

circumstances and identifying and punishing those responsible. An investigation into a potential breach of the right to life is deemed effective in the event it fulfils the following requirements: an investigation cannot hinge on the initiative of the injured party, i.e. the competent authorities must launch it *ex officio*, as soon as they become aware of an event that needs to be investigated; the investigation must be independent from those involved in the event, both *de iure* and *de facto* (this is particularly pertinent in situations in which state agents are involved in someone's death, e.g., in the event that a person was shot dead by the police); the investigation must be capable of resulting in the identification and adequate punishment of those responsible for the offence; the investigation must be conducted without delay; the investigation must be subject to sufficient public scrutiny; the investigation must be conducted in a way ensuring that the injured parties or close relatives of the victims are involved in the procedure to the extent necessary to protect their legitimate interests.³¹ In principle, Serbia's Criminal Procedure Code provides for effective investigations as they are defined in the ECtHR's case law.

Given that the state is responsible for the treatment of people deprived of liberty, it is also under the duty to provide a reasonable explanation of the circumstances of their death. Therefore, the state is in principle under the obligation to investigate the cause of death of people deprived of liberty even when there are no *prima facie* indications that they had not died of natural causes. The Criminal Procedure Code³² sets out that a public prosecutor or court must order an examination and an autopsy of a person who died whilst deprived of liberty by a forensic medical specialist (Art. 129).

Although Serbian criminal law put in place all the prerequisites for conducting effective investigations of crimes endangering human life, there are still serious problems in investigating events resulting in deaths or serious threats to human life. Serbia was found in violation of the ECHR in 2016 because it has failed to effectively investigate the death of Vojislav Mučibabić, who was killed in an explosion in the Grmeč plant in 1995.³³

31 See, e.g. the ECtHR judgment in the case of *Kelly v. United Kingdom*, App. No. 30054/96, paras. 94–98.

32 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

33 In its judgment in the case of *Mučibabić v. Serbia*, App. No. 34661/07, the European Court of Human Rights found Serbia in breach of the right to life enshrined in Article 2 of the ECHR. The police and judicial authorities conducted an incomplete investigation into the explosion that occurred in a plant during the production of rocket fuel on the order of the then State Intelligence Service (SIS), in which 11 workers were killed. They concluded their investigation in 2000. The applicant pursued a criminal subsidiary prosecution, seeking the investigation of the violations of safety regulations, but his motion was dismissed under the explanation that the production of rocket fuel had been initiated at the request of the SIS and the Serbian President. The Supreme Court referred the case back to the Belgrade District Court for additional investigation; the investigation was opened and closed. In 2003, the applicant filed an indictment against the senior officials of two companies that had been involved in the production of rocket fuel and the SIS Deputy Head for failing to enforce the requisite safety measures. Given that

The numerous crimes committed during the armed conflicts in Croatia, Bosnia and Herzegovina and Kosovo have not been investigated or prosecuted yet. The War Crimes Prosecution Service in 2016 filed seven indictments against 14 defendants for war crimes against 1,336 victims. The Srebrenica case trial opened before the Belgrade Higher Court War Crimes Department after the indictment was confirmed.³⁴ The Prosecution Service concluded only one plea bargain agreement in 2016.³⁵ The Serbian Government adopted the 2016–2020 National War Crimes Prosecution Strategy in February 2016. Although the Strategy is to be implemented by the Government, there are no specific or official data on how the implementation of the planned activities is proceeding because the Government did not form a body to monitor its enforcement in 2016, as it should have after it was elected in August 2016. The implementation of a number of Strategy activities is impossible until a Prosecutorial War Crimes Investigation and Prosecution Strategy, which was drafted in 2015, is adopted.³⁶ The implementation of many planned activities cannot begin until a War Crimes Prosecutor is appointed.³⁷ The Government had not nominated candidates for prosecutors by end-December 2016 although the relevant ministers had claimed that this would be one of the priorities after the National Assembly was constituted and the Government elected and despite the fact that the SPC forwarded

the trial still had not ended in a final decision although it was initiated 13 years ago, that the defendants were acquitted in the first-instance proceedings due to insufficient evidence, that one of the defendants died in the meantime, that the court sat in session only nine days, that the main hearing was adjourned 21 times, that the trial reopened six times for procedural reasons and that there were several inexplicably long periods of judicial inactivity, and the fact that the Constitutional Court of Serbia also found that the applicant's right to a trial within a reasonable time was violated, the ECtHR found a breach of the right to life and ordered Serbia to pay the applicant 12,000 EUR in respect of non-pecuniary damage.

- 34 Under the War Crimes Prosecution Service indictment KTO2/15, filed on 21 January 2016 and confirmed on 21 March 2016, former members of the Jahorina Training Centre, part of the Bosnian Serb Republic MIA Special Brigade Nedeljko Milidragović, Aleksa Golijanin, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Dragomir Parović and Vidoslav Vasić are charged with war crimes against the civilian populations in the halls of the farm cooperative in the village of Kravica at Srebrenica. Milidragović is charged with ordering and executing mass murders on 14 July 1995 and the other defendants with killing 1,313 civilians in the farm cooperative halls in Kravica.
- 35 The War Crimes Prosecution Service concluded a plea bargain agreement with a former member of the Bosnian Serb Army 10th Sabotage Detachment Brano Gojković, charged with involvement in the execution of hundreds of civilians on the Branjevo Farm at Zvornik on 16 July 1995. The Belgrade Higher Court War Crimes Department rendered a judgment endorsing the agreement and sentencing Gojković to ten years' imprisonment.
- 36 A working group, comprised of representatives of the War Crimes Department and other state authorities tasked with uncovering war crimes and extending support and protection to witnesses, was formed on 25 February 2016. The working group held two meetings in 2016. This Strategy clearly cannot be adopted before the new War Crimes Prosecutor is appointed.
- 37 The non-appointment of the War Crimes Prosecutor has, *inter alia*, resulted in the Department's failure to publish its regular report with detailed results on steps taken with regard to the 2005 criminal charges, with a view to reviewing whether all war crimes charges have been adequately investigated.

the list of candidates to the Government in late September and called on it to elect the prosecutors as soon as possible.³⁸

As per the identification and prosecution of perpetrators of assassinations broadly believed to have been masterminded by the state authorities, especially the ones before 2000, the trial of individuals charged with killing Slavko Ćuruvija continued in 2016.³⁹ No headway was made in the Karaš case regarding the death of two soldiers, Dragan Jakovljević and Dražen Milanović in the Belgrade military facility twelve years ago. In December 2016, the Serbian Government adopted a decision to form a commission to establish the facts regarding their deaths.⁴⁰ The investigation of the murder of Dada Vujasinović was still ongoing in 2016, although 22 years have passed since this Belgrade journalist was killed.⁴¹ The killers of journalist Milan Pantić and unsuccessful assassins of journalist Dejan Anastasijević have neither been identified nor prosecuted yet.⁴²

Assassinations of Zoran Todorović, member of JUL, a political party, former FRY Defence Minister Pavle Bulatović, police generals Radovan Stojičić and Boško Buha, Director of the national airline Živorad Petrović and state security agent Momir Gavrilović, have remained unsolved as well. The case of the death of Belgrade District Court judge Nebojša Simeunović was still in the preliminary investigation stage although he was killed sixteen years ago.⁴³

38 “SPC Requesting Urgent Election of Prosecutors,” and “Kuburović: War Crimes Prosecutor to be Elected at First Session,” *Tanjug*, available in Serbian at: <http://www.tanjug.rs/full-view.aspx?izb=272811> and at <http://www.tanjug.rs/full-view.aspx?izb=270874>

39 The charges for the assassination of Slavko Ćuruvija were filed in June 2014, but the case was handed back to the prosecutors to continue their investigation the following month. The indictment was confirmed in March 2015 and the trial opened on 1 June 2015.

40 The Commission is comprised of representatives of the Ministry of Defence, the Military Security Agency, the Ministry of Internal Affairs, the Security Information Agency, the Higher Public Prosecution Service, the Organised Crime Prosecution Service and four attorneys, see “New Commission to Investigate all Facts in Topčider Case,” *NI*, available in Serbian at: <http://rs.n1info.com/a213113/Vesti/Vesti/Nova-komisija-za-istrazivanje-svih-cinjenica-o-Topcideru.html>.

41 In late September 2015, the Serbian Ministry of Justice sent the evidence in the Dada Vujasinović case to the Netherlands Forensic Institute in The Hague asking it to perform its expertise. The Belgrade Higher Public Prosecution Service in July issued a press release stating that the Institute had said in its report that the injuries leading to Vujasinović’s death may have been the result of a suicide, homicide or accident. The Commission investigating her death and the deaths of other journalists said it expected of the Higher Prosecution Office to continue its investigation. More is available at http://www.b92.net/eng/insight/reports.php?yyyy=2016&m=07&nav_id=98646 and in Serbian at <http://rs.n1info.com/a178038/Vesti/Vesti/Forenzicki-izvestaj-o-Dadi-Vujasinovic.html>.

42 In August 2016, the media reported on headway in the investigation of the assassination of Milan Pantić that may soon lead to the identification of his killers. The news were relayed, for the umpteenth time, by the executive authorities, rather than the prosecutors charged with conducting the investigation. More is available in Serbian at: <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:621477-Uskoro-resenje-ubistva-Milana-Pantica>.

43 The investigating judge’s body was found in the Danube, near the Belgrade Yugoslavia Hotel on 3 December 2000. In the night of 3 October that year (on the eve of the 5 October overthrow of Slobodan Milošević), he refused to comply with the request of the district prosecutor and issue

On 30 June 2016, the Belgrade Higher Prosecution Service decided to close its criminal investigation of an Army of Serbia helicopter crash that left seven people dead on 13 March 2015⁴⁴. According to its press release, having completed the preliminary investigation proceedings and comprehensively reviewed the event, facts, statements by scores of witnesses, complex expert analyses, findings and opinions of the Army Commissions that had investigated the crash, it did not find reason to initiate criminal proceedings against individuals, who had participated in the preparation and implementation of the mission, because it had not found that they had intentionally or unintentionally taken actions constituting elements of any crime. The Service said it had established during the preliminary investigation proceedings that there had been oversights in the chain of command during the planning and preparation of the mission, but that these oversights carried disciplinary rather than criminal weight. It explained that the prosecutor in charge of the case had taken into account and given due weight also to the fact that disciplinary proceedings had been launched against Brigadier General Predrag Bandić and Major General Ranko Živak and that this fact had not prejudiced its decision, which, as it noted, was exclusively based on and corroborated by the evidence collected during the preliminary investigation proceedings.⁴⁵

The criminal case was thus closed, but the public has not been provided with an answer to the following question: how come no one is liable for the accident given that the then Defence Minister Branimir Stokich disrespected the strict procedures and that the decisions to launch the rescue mission despite the inclement weather not fulfilling the minimal safety standards and to land at Belgrade Airport Nikola Tesla were not taken by the pilots themselves, as the Commissions ascertained.

Media reported that the Deputy Public Prosecutor assigned this criminal case refused to sign the decision to close the investigation. Less than a month later, she was appointed notary public, a very lucrative profession, in Belgrade within an open call for applications.⁴⁶

a warrant and order the detention of the members of the Kolubara miners' strike committee and two Democratic Opposition of Serbia leaders. His family said he had been under tremendous pressure of the prosecutor, the police, the intelligence agencies and the Army of Yugoslavia General Headquarters because of his refusal. He disappeared in the night of 6 November, and after his body was found, the court he had worked in for over 30 years issued a press release saying he had committed suicide because he was depressed, prone to alcoholism and had serious heart problems. The investigation was rife with major deficiencies and its outcome was not made public until 2010, when the then Serbian President called on the relevant state authorities to re-examine the case. More is available in Serbian at: <http://www.politika.rs/sc/clanak/370320/Smrt-sudije-Simeunovica-jos-u-fazi-predistrage> and <http://pescanik.net/casni-sudija-nebojsa-simeunovic/>.

44 See *2015 Report*, II.1.3.

45 "Prosecution Service: No Criminal Liability for Helicopter Crash," *NI*; J. D., "No-one Criminally Liable despite Oversight," *Danas*, 30 June 2016, available in Serbian at: <http://rs.n1info.com/a172980/Vesti/Vesti/Nece-biti-pokrenut-krivnici-postupak-za-pad-helikoptera.html> and http://www.danas.rs/drustvo.55.html?news_id=322739 respectively.

46 "Decision not to Institute Proceedings in Helicopter Crash Case not Signed by Prosecutor in Charge, as Confirmed to Insider," *Insajder*, 10 October 2016, available in Serbian at: <https://insajder.net/sr/sajt/tema/1724/>.

Three people were killed and 11 injured when a fire broke out in an illegal old people's home in Pančevo in October 2016. Media reported that the fire had broken out in the two-bedroom apartment converted into an apartment for the care of old people. The police arrested the owner of the old people's home on suspicion of an aggravated crime against general safety.⁴⁷

2. Prohibition of Ill-Treatment and Status of Persons Deprived of Liberty

2.1. General

The Republic of Serbia has ratified all international instruments clearly laying down the absolute prohibition of torture, inhuman and degrading treatment or punishment, i.e. ill-treatment.⁴⁸ The Constitution of the Republic of Serbia also lays down that human dignity, life and physical and mental integrity shall be inviolable and that no one may be subjected to torture, inhuman or degrading treatment or punishment or subjected to medical and other experiments without their free consent (Arts. 23–25).

Persons deprived of liberty must be treated humanely and with respect to dignity of their person and any violence against them or extortion of statements shall be prohibited (Art. 28). Any person deprived of liberty by a state body shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay. Any person deprived of liberty shall be entitled to initiate proceedings in which the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law – the *habeas corpus act* (Art. 27).

The right of persons deprived of liberty to be examined by a doctor of their own choosing is the only one not enshrined in the Constitution.⁴⁹ The Constitution

47 “She Used the Money She Got from the City to Run an Illegal Home,” *NI*, available in Serbian at: <http://rs.n1info.com/a206008/Vesti/Vesti/Novac-za-nelegalni-dom-u-Pancevu.html>. More in: III.6.3.

48 The ECHR, ICCPR, Optional Protocol to the ICCPR, CAT, OPCAT and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Serbia is, of course, also bound by numerous rules set out in the legally binding decisions of the ECtHR, HRC and CAT, and the CPT recommendations.

49 The CPT has from the start attached particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to next of kin or a third party of his choice, the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice. See para. 36 of the CPT 2nd General Report [CPT/Inf (92) 3], available at: <http://www.cpt.coe.int/en/annual/rep-02.htm>.

also guarantees the right to effective judicial protection to everyone in the event their rights to physical and mental integrity are violated and the right to elimination of consequences arising from the violation, which entails the right to redress for torture and similar treatment, regardless of who committed it (Art. 22).

2.2. Torture – Definition, Penalties and Prescriptibility

Serbia's law still lacks adequate definitions of torture and other forms of ill-treatment (inhuman and degrading treatment). The definitions of these offences, incriminated in Articles 136 (extortion of confessions) and 137 (ill-treatment and torture) of the Criminal Code (CC),⁵⁰ is still inadequate, as CAT noted in its 2015 Concluding observations on the second periodic report of the Republic of Serbia.⁵¹

One of the problems is that Article 137 of the CC incriminates ill-treatment or torture committed by anyone, state and non-state agents alike, which has in practice led to the prosecution of many persons, who do not have the status of a public official. A careful analysis of Articles 1 and 16 of the UNCAT, defining torture and cruel, inhuman and degrading treatment respectively, clearly shows that the authors of this instrument reserved all forms of ill-treatment for public officials.⁵² In its Concluding observations on a periodic report of France, CAT took the view that French criminal law had to draw a clear distinction between acts of torture perpetrated by public officials and other acts of ill-treatment committed by persons who do not have that status. The Committee said it:

“remains concerned that the French Criminal Code does not contain a definition of torture that is in conformity with article 1 of the Convention, an omission that can lead to confusion and adversely affect the collection of relevant data.”

The Committee reiterated its recommendation that “the State party should consider incorporating into its criminal law a definition of torture that is in strict conformity with article 1 of the Convention, so as to draw a distinction between acts of torture committed by or at the instigation of or with the consent or acquiescence of a public official or any other person acting in an official capacity, and acts of violence in the broad sense committed by non-State actors; it also recommends that the State party should make torture an imprescriptible offence.”

50 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13 and 108/14.

51 *Concluding observations on the second periodic report of the Republic of Serbia*, adopted on 12 May 2015, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSRB%2fCO%2f2&Lang=en CAT/C/SR.1322 and CAT/C/SR.1323. The BCHR, as well as the NGO coalition that submitted a shadow report to CAT in April 2015, have also been alerting to this problem for years.

52 Those who perpetrated, instigated, aided and abetted, consented, acquiesced to or were complicit in ill-treatment.

It may thus be concluded that CAT requires of State parties to UN CAT to draw a clear distinction between ill-treatment perpetrated by public officials and by non-state actors. This does not mean that private individuals should not be held liable for unjustified violations of other people's physical integrity and dignity, but such acts have to be penalised by holding them liable for other offences incriminated by the Criminal Code: grave physical injury (Art. 121), light physical injury (Art. 122), participation in a physical altercation (Art. 123), threat by a dangerous implement in a verbal or physical altercation (Art. 124), endangerment (Art. 125), illegal deprivation of liberty (Art. 132), abduction (Art. 134), coercion (Art. 135) endangerment of safety (Art. 138), insult (Art. 170), injury to reputation on grounds of race, religion, ethnic or other affiliation (Art. 174), rape (Art. 178), domestic violence (Art. 194), extortion (Art. 214), medical malpractice (Art. 251), illegal performance of medical experiments and drug tests (Art. 252), failure to provide medical assistance (Art. 253), violent behaviour (Art. 344), violent behaviour at sports or public events (Art. 344a) et al.

The ECtHR held this view, noting that states had the positive obligation to investigate all serious allegations of ill-treatment, including those perpetrated by private individuals, and to take preventive measures to preclude ill-treatment in situations where there are indications that ill-treatment may occur or recur.⁵³

In its 2015 Concluding observations, CAT recommended to the Republic of Serbia to promptly implement the legislative measures necessary to harmonize the provisions of the Criminal Code dealing with torture and align them with the definition contained in article 1 of the Convention, by, among other things, including acts of torture perpetrated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁵⁴

The analysis of the Serbian torture and ill-treatment case files on paragraphs 1 and 2, where the suspects/defendants were not public officials, showed that they had clearly violated or been reasonably suspected of violating the physical integrity or human dignity of the injured parties. These acts, however, should not have been qualified as torture as defined in Serbian law.⁵⁵ A number of court decisions which were analysed regarded disagreements among neighbours, relatives, acquaintances and friends,⁵⁶ slaps of or threats voiced against children by the other children's parents, neighbours or third parties,⁵⁷ religious or ethnically-based insults,⁵⁸ public hu-

53 *Milanović v. Serbia*, App. No. 44614/07 (2010), paras. 83–85.

54 *Concluding observations on the second periodic report of the Republic of Serbia*, 12 May 2015, UN doc. CAT/C/SR 1322 and CAT/C/SR.1323, para. 8.

55 All court decisions were obtained pursuant to requests for access to information of public importance.

56 Kraljevo Basic Court Decision K 876/13, Leskovac Basic Court Decision K 905/12, Pančevo Basic Court Decision K 1180/11 and Pirot Basic Court Decisions K 688/12 and K 41/13.

57 Kraljevo Basic Court Decision K 935/13, Leskovac Basic Court Decision K 639/12, Niš Basic Court Decision K 1016/13, Sremska Mitrovica Basic Court Decisions K 301/15 and K 1236/13, and Užice Basic Court Decision K 738/12.

58 Novi Sad Basic Court Decision K 627/12.

miliation,⁵⁹ et al. Many cases regarded different forms of violence against women, notably: sexual abuse or harassment,⁶⁰ psychological violence,⁶¹ and light or grave forms of physical violence.⁶²

Another problem arises from the overlapping of the criminal offences of torture and ill-treatment (Art. 137) and extortion of confessions (Art. 137) Namely, there is no substantial difference between the qualified form of the crime of torture and ill-treatment committed by a public official (Art. 137, paragraph 2 in conjunction with paragraph 3) and the simple and qualified forms of the crime of extortion of confessions (Article 136, paragraphs 1 and 2). Extortion of confessions per se constitutes torture and the introduction of this act as a separate offence serves no practical purpose. These provisions provide the prosecutors with the discretion to decide whether to charge public officials reasonably suspected of applying threat or force to extort a confession with torture and ill-treatment (Art. 137, paragraph 2 in conjunction with paragraph 3) or with extortion of a confession. Furthermore, the maximum penalty for torture and ill-treatment is eight years' and for extortion of a confession 10 years' imprisonment. Therefore, there is a risk of diverse practices i.e. of charging perpetrators of identical crimes with different offences carrying different penalties.

In that respect, the Committee Against Torture stated that it remains concerned that article 136 and article 137, paragraphs 2 and 3, of the Criminal Code, dealing with acts of torture, are not harmonized, and the fact that they are not aligned with all elements of the crime of torture, as defined in article 1 of the Convention.⁶³

Another problem regarding the substantive provisions of the CC governing torture concerns the inadequacy of the penalties in view of CAT's case law. The maximum penalty for torture and ill-treatment is eight years' and for extortion of confessions 10 years' imprisonment. In CAT's view torture should warrant between 6 and 20 years' imprisonment. The CCPR alerted Serbia to this problem back in 2011 and the CAT issued it an identical recommendation in May 2015.

Not only are the penalties for torture and inhuman treatment in Serbian criminal law lenient, as the UN treaty bodies noted. So is the penal policy of the Serbian courts that ruled on torture and ill-treatment cases. In the 2010–2015 period, they

59 Sombor Basic Court Decision K 789/15.

60 Knjaževaa Basic Court Decision K 24/14 OS, Kraljevo Basic Court Decision K 2754/12, Niš Basic Court Decisions K 3035/12, K 3014/12, K 1011/15 and K 767/13, Mionica Basic Court Decision K 244/16, Sombor Basic Court Decision K 630/15.

61 Niš Basic Court decision K 967/13, Novi Sad Basic Court Decision K 635/14.

62 Belgrade Basic Court Decision K 823/2015, Loznica Basic Court Decision K 42/12, Mionica Basic Court Decision K 31/14, Niš Basic Court Decision K 777/12 and K 1782/13, Novi Sad Basic Court Decisions K 2556/13 and K 1203/13, Prokuplje Basic Court Decision K 563/14, Sremska Mitrovica Basic Court Decision K 1026/10 and Užice Basic Court Decisions K 709/12 OS and K 176/13.

63 *Concluding observations on the second periodic report of the Republic of Serbia*, 12 May 2015, UN doc. CAT/C/SR.1322 and CAT/C/SR.1323, para. 8.

delivered only 31 judgments finding (48) public officials guilty of these crimes: 26 public officials were sentenced to conditional sentences, five to imprisonment⁶⁴, two public officials were sentenced to home imprisonment and three to community service. Prosecution was deferred in five cases (against 12 public officials).

The statute of limitations still applies to torture, ill-treatment and extortion of confessions despite numerous recommendations by UN and CoE treaty bodies to make them non-prescriptible offences. The obligations arising from the ECHR and UN CAT practically do not allow prescriptibility for arguable claims of ill-treatment, i.e. the State Parties are under the obligation to take reasonable steps to investigate all serious allegations of ill-treatment. The fact that a criminal trial has not ended in a decision that, at the very least, clarifies all the circumstances in which an individual's physical integrity and dignity have been violated, may amount to a violation of the procedural limb of the prohibition of ill-treatment, i.e. a violation of Article 3 of the ECHR and Article 12 of the UNCAT. In 2011, the CCPR expressed concern that torture and ill-treatment were only punishable up to a maximum of eight years of imprisonment and that the statutory limitation period was ten years. The CAT, for its part, in its 2015 Concluding observations urges the State party to repeal the statute of limitations for the crime of torture and to take the action necessary to reinstate those investigations for acts of torture that have been discontinued owing to the statute of limitations.

This problem can be addressed by amending Article 108 of the Criminal Code, which lists non-prescriptible criminal offences. Inclusion of torture and other forms of ill-treatment in it would per se have a strong deterrent effect on public officials lawfully vested with powers to use force. Seven criminal proceedings against 19 public officials (police officers and prison guards) were discontinued in the 2010–2015 period because the statute of limitations had expired.⁶⁵

2.3. Legal Framework for the Prosecution of Perpetrators of Torture and Ill-Treatment and the Practices of the Judicial Authorities

All states are under the obligation to conduct effective official investigations of arguable claims of ill-treatment, capable of leading to the identification and – if appropriate – punishment of those responsible.⁶⁶ Credible assertions of ill-treatment are those based on facts directly or indirectly indicating that a public official or another person in an official capacity unjustifiably violated the physical integrity or dignity of an individual. When such claims appear, the relevant investigating

64 Ranging between six months and one year.

65 Belgrade Basic Court Decisions K 8627/12 and K 6156/13, Kragujevac Basic Court Decision K 2450/13, Leskovac Basic Court Decision K 2494/10, Pančevo Basic Court Decision K 347/10 and Stara Pazova Basic Court Decisions K 1339/11 and K 1148/12 OS.

66 See: *Manzhos v. Russia*, App. No. 64752/09 (2016), para. 33.

authorities are under the obligation to take reasonable (investigative) measures leading to the clarification of all circumstances in which a person's mental or physical integrity has been violated.⁶⁷ Without a positive obligation to investigate allegations or other indications of ill-treatment, the prohibition would be rendered theoretical and illusory, thus allowing state authorities and their agents to act with impunity.

Prosecutorial investigation was one of the most important changes introduced by the Criminal Procedure Code, in force as of 1 October 2013. Other changes in the CPC directly affecting the fulfilment of criteria regarding efficient and effective investigations of arguable ill-treatment claims include the abolition of the institute of subsidiary prosecutor before the confirmation of the motion to indict and summary proceedings for crimes warranting under eight years' imprisonment. Each of these changes adversely affected trials of defendants charged with torture and ill-treatment (Art. 137, CC) and extortion of confessions (Art. 136, CC).

The preliminary investigation and investigation stages are now fully within the remit of the public prosecutors. For the prosecutors to efficiently fulfil their new role under the CPC, they must have at their disposal professional, technical and material resources; and their role vis-à-vis the police needs to be defined clearly. Unfortunately, an adequate prosecutorial infrastructure had not been put in place before the CPC came into effect – or since – wherefore the prosecutors have been forced to delegate most of their powers to the police.

This has in practice led to situations in which the prosecutors are forced to *rely* on the actions taken by the police, even in cases in which police officers are the suspects/defendants. Consequently only a few criminal proceedings initiated against police officers after 1 October 2013 reached the main hearing (trial) stage; most cases ended with the dismissal of criminal reports against them. A total of 178 criminal reports against 378 regular and communal police officers and prison guards were filed from 1 October 2013 to 31 December 2015. Twelve of the mentioned reports concerned extortion of confessions (Art. 136 CC) and were lodged against 24 public officials. Ten of the reports (against 20 public officials) were dismissed, while the other proceedings were still pending at the end of the reporting period.

A total of 166 criminal reports were filed against 354 public officials for torture and ill-treatment (Art. 137 CC). Of them, 118 reports against 258 persons were dismissed, while proceedings on 33 reports (against 77 officials) were still pending. Three reports ended in deferral of criminal proceedings against five officials. Nine motions to indict 14 officials were filed.

In view of the fact that the institute of subsidiary prosecutor before the confirmation of the motion to indict was abolished, it is difficult to expect that many of the criminal reports will reach the main hearing stage. The conclusion that they will

67 See more in: *Istanbul Protocol – Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN, New York and Geneva, 2004, para. 75, available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

most probably be dismissed can be corroborated by the fact that out of the 191 torture, ill-treatment and extortion of confession proceedings initiated from 1 January 2010 to 31 December 2015, just 96 (55%) reached the main hearing stage after the injured parties assumed criminal prosecution in the capacity of subsidiary prosecutors (of course, before the 2013 CPC came into effect). The amendments to the CPC resulting in the abolition of the institute of subsidiary prosecutor were also criticised by the CPT after its 2015 visit to Serbia; this body asked the Serbian Government to comment the above-mentioned legal provisions.

Another problem arising from the lenient penalties for torture, ill-treatment and the simple form of extortion of confessions is that they are reviewed in summary proceedings, in which investigation is not mandatory. The severest form of the crime of torture/ill-treatment (Art. 137(3) CC) carries between one and eight years' imprisonment, while the maximum penalty for the simple form of extortion of a confession carries five years' imprisonment. Summary criminal proceedings are initiated pursuant to the public prosecutors' motions to indict; the prosecutors may undertake specific evidentiary actions before filing their motions to indict or dismissing the criminal reports.⁶⁸

The very term "summary" reflects the purpose of such proceedings – that they last as short as possible, i.e. that the speed and efficiency of the criminal process are improved by accelerating or not conducting specific stages (primarily the investigation proceedings). However, the desire to achieve greater speed and efficiency, which should definitely characterise criminal proceedings, must never impinge on the thoroughness of the investigation and other stages in which facts relevant to ascertaining the liability or non-liability of public officials are established. The very fact that these offences fall under summary proceeding provisions indicates that the state does not award them the importance commensurate to their gravity, in terms of the absolute character of the prohibition of torture.

The BCHR in 2016 also analysed numerous torture, ill-treatment and extortion of a confession cases that made it to the main hearing stage. One of the most alarming problems it identified was the overly long duration of trials of police and prison guards have been charged with these offences. None of the analysed proceedings have lasted less than four or five years; proceedings against police officers charged with graver offences have dragged on much longer, some more than a decade. One of the reasons lies in the defendants' failure to respond to court summons served on them via the police directorates they work in, notably, their superiors, and the absence of any court penalty for non-appearance. This problem can be addressed in practice if the judges become more proactive.⁶⁹ And, last but not the least, the extremely lenient penalties imposed against public officials found

68 Article 499, CPC.

69 E.g. by issuing an order to haul the policeman to court.

guilty of torture, ill-treatment or extortion of confessions cannot be said to have a deterrent effect.

Eleven trials of 21 public officials charged with extorting confessions were conducted from 1 January 2010 to 31 December 2015. The courts found only two of them (in two separate cases) guilty. One was sentenced to a conditional sentence and the other to home imprisonment. Four criminal proceedings against eight public officials were still under way at the end of 2016. The courts rendered non-guilty verdicts in five cases (concerning 11 defendants). In the same period, Serbian Basic Courts conducted 180 criminal proceedings against 329 public officials charged with torture and ill-treatment; motions to indict/indictments were filed in 65 cases (against 117 public officials).

Final decisions were delivered in 115 of these cases (212 defendants). The statute of limitations expired in seven cases (18 defendants) and the proceedings were discontinued; the courts found 48 public officials in 31 cases guilty and sentenced them to: conditional sentences (26), imprisonment (5), home imprisonment (2), and community service (3). Prosecution was deferred in five cases (against 12 public officials); 146 public officials in 77 cases were acquitted.

2.4. Use of Force by State Agents

Police officers may use force in the circumstances and in the manner laid down in the Police Act⁷⁰ and the Rulebook on the Technical Features and Manner of Use of Means of Coercion,⁷¹ while prison guards may use force in the circumstances and in the manner laid down in the Penal Sanctions Enforcement Act (PSEA)⁷² and the Rulebook on Maintaining Order and Security in Penitentiaries.⁷³ Both the regulations on the police and those on the use of force in penitentiaries lay down that means of coercion shall be applied in accordance with the principle of proportionality (Arts. 32(1) and 33(16)) of the Police Act and Art. 143(2) of the PSEA) and that reports shall be prepared on every use of force to ensure that it was lawful; they lay down that policemen and prison guards shall submit these reports to their superiors (Art. 108 of the Police Act and Art. 144(4) of the PSEA) and specify the data that report must include.

The PSEA also lays down that inmates subjected to use of force, with the exception of fixation, must be examined immediately by a doctor. The medical report, including the name and allegations of the inmate subjected to means of coercion, shall include the doctor's opinion on whether his injuries may have been caused by the applied measure. This report is submitted to the prison governor together with

70 *Sl. glasnik RS*, 6/16.

71 *Sl. glasnik RS*, 19/07, 112/08 and 115/14.

72 *Sl. glasnik RS*, 55/14.

73 *Sl. glasnik RS*, 105/06.

the guard unit's report and is forwarded to the Director of the Penal Sanctions Enforcement Administration (Art. 130(3 and 4)).⁷⁴

The Instructions on the Treatment of People Brought in or Detained by the Police (hereinafter: Instructions),⁷⁵ also provide for the obligation of police officers to ensure the medical examinations of people in their custody, whether or not they used means of coercion against them, or the people in their custody who need to see a doctor for another reason: "Ill or injured persons obviously in need of medical assistance and persons exhibiting signs of grave alcohol or other kind of poisoning may not be held in the detention cells". Under Paragraph 26.1 of the Instructions, police officers detaining such persons must immediately organise the provision of the requisite medical assistance to them and their admission to the appropriate health institutions.

The provision in the Instructions stipulating that the police officers must attend the medical examinations is problematic as it precludes independent and impartial medical examinations in accordance with the topmost international standards on the prevention of torture, above all, the standard under which doctors carrying out the examinations must include in their reports the explanations given by the patients as to how the injuries occurred.⁷⁶ It is very unlikely that a person subjected to (lawful or unlawful) violence on the part of the police officers would be willing or able to relate all the relevant details about the incident in the presence of police officers. Furthermore, Serbian doctors rarely report on whether the injuries are consistent with the explanations in practice despite their obligation to do so under the PSEA. The CAT also noted these deficiencies and made a number of recommendations to Serbia on how to eliminate them.⁷⁷

The Rulebook on the Technical Features and Manner of Use of Means of Coercion envisages an in-house procedure for controlling the justifiability and lawfulness of the use of force involving firearms, resulting in grave physical injuries, or in the event force was used against more than three people. In such cases, the police director or chief of the regional police administration, in which the officer who used the means of coercion works, shall establish a commission of minimum three police staff that shall review the circumstances in which the means of coercion were used, make a record of the review and render its opinion on whether the means

74 The PSEA also lays down that the inmate will be examined again between the 12th and 24th hours since the measure was applied, wherefore the prison governor, and the Director of the Penal Sanctions Enforcement Administration subsequently, are submitted two medical reports together with the prison guards' report.

75 Adopted pursuant to the Police Act (*Sl. glasnik RS*, 101/05, 63/09 – CC Decision and 92/11), and available in Serbian at: <http://media.ssp.org.rs/2013/03/Uputstvo-o-postupanju-premadovedenim-i-zadrzanim-licima-LAT.pdf>.

76 Paragraph 26.3 of the Instructions.

77 *Concluding observations on the second periodic report of Serbia*, UN doc. CAT/C/SRB/CO/2, (of 3 June 2015). Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, para. 9.

of coercion were used lawfully and professionally (Art. 25(1)). The opinion is forwarded to the police officer charged with assessing the justifiability and lawfulness of the use of force. In the event he establishes that the use of force was unjustified or unlawful, he shall propose to the police director to “take the measures set out in the law” (Art. 25(2 and 3)).

The new Police Act provides for external and internal oversight. External oversight shall be performed by the National Assembly and the provincial and local self-government assemblies, including those of city municipalities, the judicial authorities, independent regulatory authorities charged with oversight and other authorised state authorities and bodies, as well as the public (Art. 221). The National Assembly shall oversee the work of the Ministry directly and through the relevant internal affairs committee. The latter shall review the annual reports of the Ministry’s Internal Control Sector (Art. 222).

The work of the state authorities entitled to use force is also controlled by reviews of complaints. Complaints about police use of force may be filed pursuant to and in accordance with the Police Act (Art. 234) and the Complaints Review Procedure Rulebook, while complaints about the use of force by prison guards are submitted pursuant to Articles 114 and 144a of the PSEA and/or the penitentiary House Rules. Complaints of ill-treatment by the police and prison guards may also be filed with the Protector of Citizens (Arts. 25–31, Protector of Citizens Act), but this form of protection is subsidiary in character and the citizens may submit their complaints to the Protector of Citizens only after they had tried to protect their rights in “appropriate legal proceedings” (Art. 25(3)). The Protector of Citizens may exceptionally initiate a procedure on the complaint before “the exhaustion of all legal remedies”.⁷⁸

Under the Police Act, everyone is entitled to file a complaint against a police officer in the event he believes that his human and minority rights and freedoms were violated by the officer’s act or failure to act. The complainant may take part in the complaint review procedure. Complaints filed 31 or more days after the impugned violation occurred shall be reviewed in a summary procedure. A complaint with elements of a criminal offence shall without delay be brought to the attention of the competent public prosecutor, the Internal Control Sector and the head of the unit the respondent works in. In the event the complaint has elements of a violation of official duty, the head of the unit the respondent works in shall without delay initiate disciplinary proceedings against the respondent and notify the complainant thereof. (Art. 234). The complaint review procedure shall be conducted by the head of the unit the complainant works in or a person he designates, or the Complaints Review Commission (hereinafter: Commission).

78 That is possible “if the complainant would suffer irreparable damage or if the complaint regards a violation of the good governance principle, notably the inappropriate treatment of a complainant by an administrative authority, its dilatoriness or another violation of the administrative staff code of conduct” (Art. 25(5), Protector of Citizens Act).

Upon receipt of the complaint, the head of unit shall notify the complainant of the initiation of the complaint review procedure and invite him to an interview within 15 days from the day of receipt of the complaint. During the complaint review procedure, the head of unit shall rule on the complaint by seeking to reconcile his views with those of the complainant. In the event they fail to reconcile their views on the threat to or a violation of human and minority rights and freedoms, the complaint shall be referred to the Commission. Complaints shall also be referred to the Commission in the event the duly invited complainant does not respond to the interview invitation and notifies the head of unit that the complaint shall be reviewed by the Commission. The complainant shall be deemed to have withdrawn the complaint in the event he failed to respond to the interview invitation and did not require that the complaint be reviewed by the Commission. The complaint review procedure before the head of unit shall be completed within 30 days from the day of receipt of the complaint. The complaint review procedure before the Commission shall be completed by the service of a written reply on the complainant within 30 days from the day of referral of the complaint to the Commission. The Minister shall issue rulings appointing and dismissing the Commission members (Art. 237), which may bring into question the Commission's independence. Complaints reviewed in a summary procedure shall be reviewed by the head of the unit the respondent works in or the unit the complaint concerns (Art. 241).

The Internal Control Sector shall perform oversight of the lawfulness of work of the police officers and other Ministry staff, particularly their respect for and protection of human and minority rights and freedoms during their performance of official tasks and exercise of police powers, i.e. their performance of activities within their purview. The Internal Control Sector shall take measures and action in accordance with the criminal procedure law to identify and suppress crimes of corruption and other forms of corruptive behaviour, as well as other criminal offences by police officers and other Ministry staff, perpetrated at work or in relation to work (Art. 225).

2.5. Observance of the Non-Refoulement Principle and the Prohibition of Collective Expulsion

Under international human rights law, the principle of *non-refoulement* absolutely prohibits all countries in the world to return people to any countries where there are substantial grounds for believing that they would be in danger of being subjected to torture or inhuman or degrading treatment or punishment.⁷⁹ Furthermore, the principle of *non-refoulement* in refugee law entails the prohibition of re-

⁷⁹ Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 3 of the ECHR.

turning a refugee to the territory of the country in which he may be persecuted on any of the grounds specified in the 1951 Convention relating to the Status of Refugees (hereinafter: Refugee Convention).⁸⁰

Every forced removal – including returning an alien to his country of origin or a third country by air,⁸¹ removal under readmission agreements or pursuant to a ruling ordering him to leave the country⁸² or pursuant to the protective measure of removing an alien from the territory of the Republic of Serbia issued in a misdemeanour proceeding⁸³ – must be governed in a manner providing the alien with the possibility of objecting his removal in a procedure in which he has an interpreter and legal counsel. Furthermore, if the first-instance decision is not in favour of the alien, he must be provided with the possibility of challenging it by filing a legal remedy with suspensive effect. Those conducting the procedure need to ascertain whether the alien would be subjected to torture or inhuman or degrading treatment or punishment if he were returned to his country of origin or a third country. The authorities also need to devote particular attention to aliens reasonably assumed to be in need of international protection, and whether the third country they are being returned to is a signatory of the 1951 Refugee Convention and the 1967 Protocol.⁸⁴

In the context of the large inflow of aliens reasonably assumed to be in need of international protection passing through Serbia on their way to EU countries in the past few years, the competent Serbian authorities have repeatedly forcibly removed aliens they found had unlawfully entered or stayed in Serbian territory. Most aliens forcibly removed in 2015 had been returned by the Belgrade Border Police Station (hereinafter: BPS) at the Belgrade Nikola Tesla Airport because they did not fulfil the requirements for entering the country and from the Aliens Shelter under readmission agreements Serbia signed with the European Community and with countries such as Montenegro and the Former Yugoslav Republic of Macedonia (FYROM).⁸⁵ If one takes into account all the above-mentioned standards, as well as the assessments of numerous international bodies (including, notably, those of CAT in 2015), one may conclude that the valid forced removal procedures in Serbia do not include procedural safeguards against refoulement.⁸⁶

80 Article 1 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

81 Article 22(2) of the Aliens Act, *Sl. glasnik RS*, 97/08.

82 Article 35, Aliens Act.

83 Article 65 of the Act on Misdemeanours, *Sl. glasnik RS*, 65/13,13/16 and 98/16 CC Decision.

84 See CPT's 19th General Report [CPT/Inf (2009) 27], available at <http://www.cpt.coe.int/en/annual/rep-19.pdf>, paras. 93–95.

85 Countries from which most people in need of international protection have been entering Serbia.

86 *Concluding observations on the second periodic report of Serbia*, UN doc. CAT/C/SRB/CO/2, (of 3 June 2015), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, paras. 14–15.

The procedure for forced removal under the readmission agreements does not have a special format. Once the requested state approves the application for the readmission of an alien found to have unlawfully entered Serbia from one of the neighbouring countries, the alien is transported to the border and handed over to the competent authorities of the requested state.⁸⁷ As far as forced removals from the airport are concerned, aliens not fulfilling the requirements for entering Serbia are put on the first available flight back to the country they had come from at the expense of the airlines.⁸⁸ Therefore, neither procedure entails the adoption of an individual decision in a procedure in which an alien can object to his removal in the presence of an interpreter for a language he understands and a legal counsel nor the possibility of him filing an appeal with suspensive effect challenging the decision on his removal.⁸⁹

The BCHR was forced to apply with the ECtHR six times from November 2013 to the end of 2016 and seek an interim measure to prevent the violation of the *non-refoulement* principle by the Belgrade BPS and the Aliens Shelter. The ECtHR upheld all six applications and thus prevented the return of the aliens to Greece,⁹⁰ Somalia⁹¹ and Montenegro,⁹² Lybia,⁹³ FYROM⁹⁴ and Turkey.⁹⁵

3. Right to Liberty and Security of Person

3.1. General

The Republic of Serbia is a signatory of international treaties protecting the right to liberty and security of people from unlawful and arbitrary deprivation of liberty, notably the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). These two treaties enumerate all the situations in which deprivation of liberty is justified, as well as the requirements that must be fulfilled for the lawful restriction of this right (Article 9 of the ICCPR and Article 5 of the ECHR).

87 Art. 3 of Serbia's Readmission Agreement with Montenegro, and Arts. 6, 7 and 9 of Serbia's Readmission Agreement with the European Community.

88 Article 22, Aliens Act.

89 The BCHR obtained all the data on the work of the Belgrade BPS and the Aliens Shelter during its implementation of the project Provision of Free Legal Aid to Asylum Seekers, with UNHCR's support.

90 *P. S. v. Serbia*, App. No. 90877/13.

91 *Ahmed Ismail (Shiine Culay) v. Serbia*, App. No. 53622/14, so-called chain refoulement via Abu Dhabi (UAE), Khartoum (Sudan) to Mogadishu (Somalia).

92 *Othman v. Serbia*, App. No. 27468/15.

93 *Ben Rfad v. Serbia*, App. No. 37478/16.

94 *Kandafru v. Serbia*, App. No. 57188/16.

95 *Arons v. Serbia*, App. no. 65457/16.

The right to liberty and security of person is enshrined in Articles 27–31 of the Serbian Constitution. An entire set of criminal law regulations, as well as those governing the work of the Ministry of Internal Affairs, lay down various grounds for restricting the right to liberty. Article 45 of the Criminal Code (hereinafter: CC)⁹⁶ governs the sentences of imprisonment served in prison and in the convicts' homes. The Criminal Procedure Code (hereinafter: CPC)⁹⁷ governs in detail pre-trial detention (Arts. 210–223), house arrest with or without electronic monitoring (Arts. 208 and 209) and the bringing in of defendants (Arts. 195 and 196). The CPC also governs deprivation of liberty by police officers (with or without the consent of the public prosecutors) with a view to collecting information (Art. 288), questioning (Art. 299), as well as deprivation of liberty at crime scenes (Art. 290), police arrest (Art. 291) and custody of suspects (Art. 293).⁹⁸ Articles 82 and 86 of the Police Act⁹⁹ govern the holding and bringing in of persons by the police. The Act on Misdemeanours,¹⁰⁰ and the Road Traffic Safety Act (RTSA),¹⁰¹ in the articles 283 and 294 also allow deprivations of liberty by the police, while the Aliens Act¹⁰² governs the deprivation of liberty of aliens in the Aliens Shelter pending their forced removal, in order to establish their identity or on other grounds laid down in other laws, (Arts. 49–53) as well as their detention pending deportation (Art. 48).

3.2. Deprivation of Liberty by the Police

All persons deprived of liberty on any grounds by police officers enjoy the following three elementary rights, which are considered fundamental safeguards against ill-treatment: the right to have the fact of their detention notified to a third party of their choice, the right of access to a lawyer, and the right to be examined by a doctor.¹⁰³ The Instructions on the Treatment of People Brought in or Detained by the Police (hereinafter: Instructions)¹⁰⁴ lay down the content of the hard-copy factsheet on rights the police are to distribute to all individuals they bring in or detain, both crime and misdemeanour suspects. The factsheet enumerates a number of rights: before taking in, depriving of liberty or detaining an individual, the authorised police officers must notify him of his rights in his native language or a language he understands, of the reason why he is being brought in, deprived of liberty

96 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13 and 108/14.

97 *Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.

98 More on permitted deprivations of liberty under the CPC in the *2014 Report*, III.4.3.

99 *Sl. glasnik RS*, 6/16.

100 *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision (Arts. 189–192).

101 *Sl. glasnik RS*, 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – othr law and 9/16 – CC Decision.

102 *Sl. glasnik RS*, 97/08.

103 See, e.g. the excerpt from the CPT's 2nd General Report [CPT/Inf (92) 3], para. 36.

104 *Sl. glasnik RS*, 101/05, 63/09 – CC Decision and 92/11.

or detained, that he has the right to remain silent about the offence, that anything he says may be used against him in a court of law, that he may challenge the lawfulness of his deprivation of liberty before a court of law, et al.¹⁰⁵

The National Preventive Mechanism against Torture (NPM) published several reports on its visits to police directorates in 2016, during which it ascertained that not all individuals brought in and detained by the police had been given a copy of the factsheet on their rights.¹⁰⁶

During its 2016 visits, the NPM again noted the problem regarding the reckoning of the moment deprivation of liberty begins under the CPC in some of the police directorates; this problem can be ascribed to the police officers' misunderstanding of the very concept of deprivation of liberty and the moment it begins.¹⁰⁷ This is especially the case when they issue rulings ordering custody of suspects after having questioned them. Police officers are still unsure when police custody, which may not exceed 48 hours under the CPC, actually begins. Some police departments reckon custody from the moment the suspect is read his rights under Article 69(1) of the CPC, others from the moment he is served a custody order, while others, yet, reckon it from the moment he appears for questioning. The rule is to reckon policy custody from the moment the individual or suspect taken into custody responds to the summons, because, from that moment on, he cannot leave the police or prosecution premises of his own volition. The NPM identified such errant practices in, e.g. the police directorates in Niš¹⁰⁸ and Leskovac.¹⁰⁹

The same problem has existed for years now with respect to arrests and detention by the police under the Public Law and Order Act¹¹⁰ and the Act on Misdemeanours. All police directorates have been reckoning deprivation of liberty from the moment the person is brought in the police station, although, under the ECtHR's criteria, deprivation of liberty begins when the person at issue is arrested whilst committing an offence.¹¹¹

105 Instructions, para. 4.

106 Protector of Citizens – NPM, Report on the Visit to the Niš PD No. 281 – 24/16, of 17 May, 2016, pp. 6 and 7; Report on the Visit to the Pirot PD No. 281 – 61/16, of 15 August 2016, p. 4; and Report on the Visit to the Leskovac PD No. 281 – 40/16, of 30 June 2016.

107 More in the *2015 Report*, II.3.2.

108 Protector of Citizens – NPM, Report on the Visit to the Niš PD No. 281 – 24/16, of 17 May, 2016, pp. 12 and 13.

109 Report on the Visit to the Leskovac PD No. 281 – 40/16, of 30 June 2016, pp. 12 and 13.

110 *Sl. glasnik RS*, 6/2016

111 See, e.g., the ECtHR judgments in the cases of *Guzzardi v. Italy*, App. No. 7367/76 (1980), paras. 92 and 95; *Medvedyev and Others v. France*, App. No. 3394/03 (2010), para. 73; *Creangă v. Romania*, App. No. 29226/03 (2012), para. 91; *H.L. v. the United Kingdom*, App. No. 45508/99 (2004) para. 73; and *H.M. v. Switzerland*, App. No. 39187/98 (2002), para. 45; and the “Guide on Article 5 of the Convention – Right to Liberty and Security”, Council of Europe, 2014, pp. 5 and 6, available at http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

In light of these standards, deprivation of liberty clearly begins at the moment a person considered a suspect responds to a summons for questioning or to provide information.

3.2.1. *Deprivation of Liberty in the Belgrade Airport Nikola Tesla Transit Zone*

Belgrade Border Police Station (hereinafter: Belgrade BPS) officers in 2016 continued with their practice of not treating as deprivation of liberty the confinement of aliens not fulfilling the requirements to enter Serbia and to be returned to their countries of origin or third countries at the expense of the airlines that flew them in.¹¹² This practice is in contravention of the ECtHR's view stated in its judgment in the case of *Amuur v. France*¹¹³, in which it found that individuals held in airport transit zones awaiting deportation had to be treated as persons deprived of liberty and that their confinement in the transit zones had to be based on domestic regulations. The CPT upheld the view as well.¹¹⁴

Given that Serbia has not adopted any regulations on confinement in the transit zones pending forced removal, aliens who, in the view of the Belgrade BPS, do not fulfil the requirements to enter the Republic of Serbia (including aliens reasonably assumed to be in need of international protection) are held in an airport room until the airline that flew them in has a seat on a flight to their country of origin or a third country. This means that a decision on the deprivation of liberty of these people is not issued, wherefore they cannot challenge their *de facto* deprivation of liberty in court. Furthermore, these people cannot engage a lawyer or notify a person of their choosing of their deprivation of liberty: nor do they have access to an interpreter for the language they understand.

The BCHR in 2016 intervened in dozens of cases to ensure that persons reasonably assumed to be in need of international protection are provided with access to the territory of the Republic of Serbia and the asylum procedure and to prevent violations of the principle of *non-refoulement*. All the aliens BCHR assisted had been confined in the transit zone between several hours and several days, although no decisions on their deprivation of liberty had been issued; nor had they been provided with the opportunity of enjoying the other rights granted to people deprived of liberty. For example, an Iranian refugee was held in the transit zone of the Belgrade airport from 31 October to 27 November 2016. She was allowed to enter Serbia and access the asylum procedure only after the ECtHR upheld BCHR's request for a provisional measure to prevent her deportation to Turkey (which cannot be considered a safe third country for refugees).¹¹⁵

112 See more in *2015 Report*, II.3.2.1.

113 *Amuur v. France*, App. No. 19776/92.

114 Excerpt from the CPT's 7th General Report [CPT/Inf (97) 10], para. 25.

115 *Arons v. Serbia*, App. No. 65457/16.

3.2.2. Deprivation of Liberty in the Aliens Shelter

The Aliens Act provides for the deprivation of liberty of aliens in the Aliens Shelter pending their forced removal, in order to establish their identity or on other grounds prescribed by another law, such as, e.g., the Asylum Act (Arts. 52 and 53). A number of aliens were referred to the Aliens Shelter in 2016 pending their testimony in criminal proceedings against people reasonably suspected of having illegally entered Serbia, human smuggling or human trafficking (Arts. 350 and 388, CC).

As testimony in criminal proceedings is neither laid down as grounds for depriving aliens of their liberty and their confinement in the Aliens Shelter nor envisaged under the CPC, the need to establish their identity under the Aliens Act has been quoted as the grounds for depriving them of liberty. Testimony in criminal proceedings is not laid down as grounds for deprivation of liberty in any law in Serbia. These people were deprived of liberty arbitrarily and in contravention of the safeguards under Article 5 of the ECHR. The period of their confinement in the Shelter ranged from several days to several weeks, depending on the efficiency of the public prosecutors and the time they needed to hear their testimonies.

3.3. Measures Ensuring the Defendants' Presence at Trials and Unhindered Conduct of Criminal Proceedings

The BCHR in 2016 continued performing its regular activities aimed at improving the status of persons deprived of liberty and reducing the overcrowding of the penitentiaries, which involved the monitoring of the judicial authorities' practices in enforcing the measures to ensure the presence of the defendants and the unhindered conduct of criminal proceedings (Arts 188–223 of the CPC), as well as those regarding the deferral of criminal prosecution (Arts. 283–284 of the CPC) and plea bargains (Arts 313–319 of the CPC).

Table: Comparative Overview of People Ordered PTD and Alternatives to PTD Ensuring Their Presence and Unhindered Conduct of Criminal Proceedings from 2010 to 30 June 2016¹¹⁶

Measures	2010	2011	2012	1 October 2013– 1 November 2014	2015	1 January – 30 June 2016
PTD	4,037	3,246	3,317	4,926	3,585	2,638
House arrest and the prohibition of leaving one's temporary place of residence	91	113	145	This measure has not existed since October 2013	This measure has not existed since October 2013	This measure has not existed since October 2013

¹¹⁶ The data reflect the practices of 90% of the Basic and Higher Courts that had responded to BCHR's requests for access to information of public importance.

Individual Rights

Measures	2010	2011	2012	1 October 2013– 1 November 2014	2015	1 January – 30 June 2016
Bail	56	38	52	44	29	12
Home imprisonment	This measure did not exist until 1 October 2013			319 (of which 200 with electronic monitoring)	295 (of which 152 with electronic monitoring)	191 (of which 81 with electronic monitoring)
Prohibition of leaving one's temporary place of residence	This measure did not exist until 1 October 2013			214	426	277
Restraining order	This measure did not exist until 1 October 2013			104	276	161

Table: Number of Remanded Prisoners at the End of the Past Six Calendar Years¹¹⁷

2010	2011	2012	2013	2014	2015	2016
3,332	3,109	2,532	1,894	1,593	1,539	1,736

3.3.1 Damages for Unlawful Detention

The following table provides an overview of the data on claims submitted to the Ministry of Justice Damages Commission and the Solicitor General Offices' data on civil lawsuits against the Republic of Serbia over wrongful detention and indication of the practices of these two bodies.

Year	No. of filed wrongful detention claims	No. of claims reviewed by the Commission	No. of days of deprivation of liberty in claims reviewed by the Commission	No. of settlements	No. of days of deprivation of liberty in settled claims	Total amount of damages awarded under the settlements (in RSD)
2005	876	496	-	315	17,461	48,155,980
2006	904	405	24,872	170	12,687	40,016,500
2007	698	455	26,913	206	15,930	62,127,000

¹¹⁷ All the data were obtained from the Penal Sanctions Enforcement Administration, in response to BCHR's request for access to information of public importance.

Year	No. of filed wrongful detention claims	No. of claims reviewed by the Commission	No. of days of deprivation of liberty in claims reviewed by the Commission	No. of settlements	No. of days of deprivation of liberty in settled claims	Total amount of damages awarded under the settlements (in RSD)
2008	452	275	27,535	133	6,924	17,581,000
2009	528	237	13,499	63	2,722	7,644,000
2010	572	217	12,071	53	3,051	7,517,500
2011	574	346	22,076	50	4,149	25,061,400
2012	607	342	21,582	51	2,355	6,424,000
1 Jan–1 Oct 2013	658	408	31,591	45	5,419	25,045,000
				40	6,154	22,528,000
2014	913	208		19		1,669,000
1 Jan–30 June 2015	450	172		20		1,939,500
2016	940	233		54		11,625,500
Total	8,172	3,794	180,139	1,219	76,852	277,334,380 (circa 2.200.000 EUR)

The above table shows that the Damages Commission received 8,172 damage claims over wrongful detention from 1 January 2005 to 31 December 2016 and that it reviewed 3,974 (46%) of them but reached settlements only with 1,219 (14%) Therefore, 6,953 (85%) of the injured parties have presumably filed civil lawsuits against the Republic of Serbia, in which higher amounts of damages are generally awarded.

The number of days of unlawful detention cannot be established precisely. According to the Damages Commission data on the claims it reviewed in the 1 January 2005 – 1 October 2013 period, the number of days of wrongful detention in those claims amounted to 180,139.¹¹⁸ The fact that the Commission refuses to review a particular claim does not mean that the claimant had not been unlawfully

118 These data are inaccurate because the Damages Commission did not forward the 2005 data on the number of days of wrongful PTD covered by the claims it reviewed or those data for the October-December 2013 period. The number of days in the claims the Commission reviewed in the 2006–2008 period clearly indicates that it is higher than 20,000, which suggests that the number of days of wrongful PTD the Commission reviewed exceeds 200,000.

detained. As a rule, unsuccessful claimants file civil lawsuits against the Republic of Serbia with the courts, wherefore it may be concluded that the number of days of unlawful detention is much higher. It is thus extremely difficult to ascertain the precise number of days of unlawful PTD ordered every year. The data will be even more difficult to come by in the future, since the Damages Commission in 2014 stopped keeping records of the number of days of unlawful detention in the claims it has reviewed and on the number of days covered by the settlements it has reached.

What the available data do show is that the Damages Commission awarded a total of 277,334,380 RSD (around 2.2 million EUR) in damages from 2005 to 31 December 2016.

Solicitor General's Office	TOTAL NO OF CASES	NO OF DAYS OF UNLAWFUL PTD	AMOUNTS AWARDED (IN RSD)
Belgrade	385	85,277	449,994,000
Leskovac	52	2,202	10,431,395
Zaječar (no data for the 1 Nov 2014–31 Dec 2016 period were forwarded)	17 (in the 1 Oct 2013– 1 Nov 2014 period)	2,561 (in the 1 Oct 2013– 1 Nov 2014 period)	12,242,000 (in the 1 Oct 2013– 1 Nov 2014 period)
Zrenjanin	24	1,999 (one judgment does not specify the number of days)	7,236,163
Kraljevo	63	5,669	26,778,935
Kragujevac	27	1,840	11,723,100
Valjevo	31	1,440	6,662,500
Niš (podaci za period 1. januar-31. decembar 2016. nisu dostavljeni)	12 (in the 1 October 2013–31 December 2015 period)	2,061 (in the 1 October 2013–31 December 2015 period)	6,167,403,00 (in the 1 October 2013–31 December 2015 period)
Novi Sad (no data for the 1 Oct– 1 Nov 2014 and 1 Jan 2013–31 Dec 2016 periods were forwarded)	6 (in the 1 Nov 2014– 30 June 2015 period)	420 (in the 1 Nov 2014– 30 June 2015 period)	2,178,000 (in the 1 Nov 2014– 30 June 2015 period)

Solicitor General's Office	TOTAL NO OF CASES	NO OF DAYS OF UNLAWFUL PTD	AMOUNTS AWARDED (IN RSD)
Požarevac	20	1,164	10,530,000.00
Subotica (data for 2016 were not forwarded)	16	1,386	4,604,000
Užice	8	654	4.799.000,00
Total		(at least) 106,673	553,346,496 (circa 4,567,000 EUR)

Discounting the incomplete data supplied by the Solicitor General's Offices in Niš, Zaječar, Novi Sad and Subotica, the Serbian courts awarded damages amounting to 553,346,496 RSD (circa 4,567,000 EUR) in civil proceedings over unlawful detention from 1 November 2013 to 31 December 2016.

3.4. Penal Policy and Its Effects on the Enjoyment of the Right to Liberty and Security of Person

The Serbian penitentiaries were still overcrowded in 2016. The reason for this situation could be explained by the judiciary's ongoing practice of sentencing convicted offenders to short-term prison sentences rather than penalties alternative to imprisonment, despite the lack of capacity of the penal establishments.

During its 2015 visit to the Republic of Serbia, the CPT found that the material conditions of detention were particular poor at Pavilions III, IV, and the "Odmaralište" building of Sremska Mitrovica Correctional Institution.¹¹⁹ The situation in the Požarevac penitentiary remained unchanged, as its inmate population was still twice the size of its capacity (1,600 v. 800). The circumstances were still the direst in Pavilion VII of the Požarevac penitentiary, where the poor material conditions, strict daily regime and the absence of adequate rehabilitation and meaningful activities undoubtedly amounted to inhuman and degrading treatment.¹²⁰

Although the CPT did not visit the Požarevac penitentiary in the reporting period, BCHR's associates found that this institution was still overcrowded and that, in light of the Council of Europe's standards, the conditions in some parts of the establishment could also be qualified as inhuman and degrading.

119 Report to the Government of Serbia on the visit to Serbia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 May to 5 June 2015 [CPT/Inf (2016) 21], p. 7, available at: <http://www.cpt.coe.int/documents/srb/2016-21-inf-eng.pdf>.

120 BCHR's associates visited Pavilion VII of the Požarevac penitentiary in November 2016.

Individual Rights

*Number of Prison Sentences Imposed in the 2010–2015 Period*¹²¹

Prison Sentences by Duration	2010	2011	2012	2013	2014	2015	Total
Under one month	-	-	-	-	-	-	-
1–3 months	1,155	1,483	1,907	1,947	2,529	1,194	9,021
3–6 months	1,344	2,002	2,701	3,003	3,772	2,116	12,822
6–12 months	1,202	1,779	2,225	2,728	3,184	2,422	11,118
1–2 years	1,026	1,268	1,485	1,536	1,631	1,438	6,946
2–3 years	556	744	850	993	947	875	4,090
3–5 years	371	599	722	665	677	550	3,034
5–10 years	156	195	232	260	191	171	1,034
10–15 years	54	51	46	48	59	34	258
15–20 years	18	29	30	14	23	3	114
30–40 years	16	5	12	9	11	13	53
40 years	10	3	2	1	2	4	18
Total	5,908	8,158	10,212	11,204	13,026	8,820	57,328

*Statistical Data on the Number of Convicts and Duration of Their Imprisonment Sentences in the 2010–2015 Period*¹²²

Prison Sentences by Duration	2010	2011	2012	2013	2014	2015	2016	Total
Under one month	476	452	539	-	-	-	-	1,467
1–3 months	896	760	756	1,350	1,455	1,365	1,246	7,828
3–6 months	1,529	1,806	1,330	1,505	1,429	1,377	1,123	10,099

121 See the Statistical Office of the Republic of Serbia website: <http://webzrs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=145>.

122 Data obtained from the Penal Sanctions Enforcement Administration annual reports, available in Serbian at: <http://www.uiks.mpravde.gov.rs/cr/articles/izvestaji-i-statistika/>.

Prison Sentences by Duration	2010	2011	2012	2013	2014	2015	2016	Total
6–12 months	1,517	1,486	1,370	1,233	1,263	1,353	1,190	9,412
1–2 years	1,328	1,436	1,440	1,051	1,083	934	1,037	8,309
2–3 years	802	783	785	754	693	675	678	5,170
3–5 years	625	1,064	1,153	785	755	633	763	5,778
5–10 years	344	433	586	504	328	331	340	2,866
10–15 years	83	133	179	138	67	49	54	703
15–20 years	31	47	77	33	38	18	21	265
40 years	29	25	55	16	/	24	15	164
Total	7,660	8,425	8,270	7,369	7,111	6,759	6,467	52,061

Table: Number of Inmates in Serbian Penitentiaries at the End of the Year (2009–2016)¹²³

Year	2009	2010	2011	2012	2013	2014	2015	2016
Convicted Prisoners	7,463	7,167	7,322	6,952	7,330	7,737	7,670	7,958
Remanded Prisoners	2,601	3,332	3,109	2,532	1,894	1,593	1,539	489
Mandatory Medical Treatment	234	242	208	232	213	387	425	1,736
Juvenile Prison	41	36	29	22	24	14	17	19
Correctional Measures	217	213	218	210	215	228	194	200
Inmates Serving Misdemeanour Prison Sentences	239	221	208	278	355	329	219	267
Total	10,795	11,211	11,094	10,226	10,031	10,288	10,064	10,669

123 *Ibid.*

Table: Conditional Sentences Imposed in the 2010–2015 Period¹²⁴

Year	2010	2011	2012	2013	2014	2015
Number of Conditional Sentences	12,833	18,110	17,169	17,152	18,307	19,290

Table: Conditional Sentences under Protective Supervision Imposed from 2010 to 30 June 2016¹²⁵

Year	2010	2011	2012	2013	2014	2015	1 January – 30 June 2016	Total
Number of Conditional Sentences under Protective Supervision	3	21	11	14	29	371	70	519

Table: Community Service Sentences Imposed from 2007 to 30 June 2016¹²⁶

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	30 June 2016	Total
Number of Imposed Community Service Sentences	48	35	51	71	357	365	348	371	352	156	2,154
Number of Enforced Community Service Sentences	–	–	17	17	90	209	253	351	285	–	1,335

Table: Home Incarceration Sentences Imposed from 2011 to 30 June 2016¹²⁷

Year	2011	2012	2013	2014 (by 2 December)	2015	30 June 2016	Total
Number of Home Incarceration Sentences	88	610	725	627	1,422	1,283	4,755

124 See the Statistical Office of the Republic of Serbia website: <http://webzrs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=145>.

125 Data obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

126 Data obtained from the Penal Sanctions Enforcement Administration and the Basic and Higher Courts in response to BCHR's requests for access to information of public importance.

127 *Ibid.*

Table: Number of Parole Decisions in the 2008–2016 Period¹²⁸

2008	2009	2010	2011	2012	2013	2014	2015	2016
1,423	1,674	1,646	936	581	1,036	1,243	1,583	1,539

Table: Number of Early Release Decisions in the 2009–2016 Period¹²⁹

2008	2009	2010	2011	2012	2013	2014	2015	2016
0	36	38	244	213	41	20	10	45

The statistical tables clearly demonstrate the retributive character of the judicial authorities, which preferred imposing short-term prison sentences to alternative penalties in the 2010–2015 period. They imposed a total of 57,328 imprisonment sentences in that period: 44,323 (77%) ranging from one month to three years, 40,233 (70%) lasting up to two years and 32,661 (57%) lasting less than a year.

On the other hand, alternatives to imprisonment, such as home imprisonment and community service sentences, were imposed on 5,182 defendants found guilty. In light of the above statistics and the fact that home imprisonment may be imposed for offences warranting up to one year imprisonment¹³⁰ and that community service may be imposed for offences warranting up to three years' imprisonment¹³¹, these numbers show that the judicial authorities have been imposing alternatives to incarceration extremely rarely although they had thousands of opportunities to opt for them. Comparison of the number of felons sentenced to jail in the 2010–2015 period and the number of those admitted to prison to serve their sentences (57,328 vs 45,594) leads to the conclusion that 11,734 felons were waiting to serve their prison sentences on 1 January 2016, i.e. more than the total prison population on 31 December 2015 (which stood at 10,064).

The data indicate a mild increase in the number of releases on parole, from 28.14% (1,243) in 2014, to 34.8% (778) in the first six months of 2015. In the same period, the number of early releases fell compared to the 2011–2012 period. Namely, only 20 convicts were released early in 2014 and only 10 in 2015, as opposed to 2011 and 2012, when the then PSEA Director approved 244 and 213 early releases respectively. The data indicating that the number of imposed conditional sentences under protective supervision grew from 2014 to 2015 (from 29 to 371) is encouraging.

128 Data obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

129 *Ibid.*

130 Article 45(5), CC.

131 Article 52, CC.

4. Equality before the Court and Fair Trial

4.1. *Fair Trials*

Article 14 of the ICCPR and several articles of the ECHR (Arts. 6 and 7 and Arts. 2, 3 and 4 of Protocol No. 7 to the ECHR) guarantee equality before the courts, which entails numerous procedural guarantees in civil and criminal proceedings and the right to have court decisions reviewed by higher courts. The requirement regarding the independence and impartiality of the judiciary shall derive also from Article 47 of the EU Charter of Fundamental Rights when Serbia joins the EU.

Articles 32–36 of the Constitution of the Republic of Serbia govern the right to a fair trial. Article 36 of the Serbian Constitution guarantees everyone the right to equal protection of their rights in proceedings before courts, other state authorities, entities vested with public powers and provincial and local self-government authorities, as well as the right to file appeals or other legal remedies challenging decisions on their rights, obligations or lawful interests. Although the Constitution guarantees everyone the right to equal legal protection, without discrimination (Art. 21), this right is not accessible to everyone in Serbia.

The lack of an adequate free legal aid system is one of the problems undermining the fairness of proceedings in Serbia. The Government of the Republic of Serbia adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period.

The adoption of the law on free legal aid was still pending at the end of the 2016.

Although the text of the 2015 draft had in principle been agreed on, the irreconcilable views of lawyers and CSOs on who was entitled to extend legal aid led to delays in the finalisation of the text to be submitted to the Government. The CSOs held that the law should preclude monopolies and ensure the equal legal status of all legal aid providers and that it should be based on standards satisfying the needs of the broadest range of beneficiaries.¹³² The representatives of the attorneys, on the other hand, were of the view that extending the range of legal aid providers would be contrary to the Constitution, facilitate corruption and undermine legal certainty in this field.¹³³ In their joint conclusion of 18 October 2016, the Belgrade and Vojvodina Bar Associations said that this would totally run afoul of the subject and purpose of the law and that the regulation of the legal aid concept and determination

132 “Civil Sector: Adopt Legal Aid Law,” *RTV*, 1 November, available in Serbian at: http://www.rtv.rs/sr_ci/drustvo/civilni-sektor-usvojiti-zakon-o-besplatnoj-pravnoj-pomoci_770356.html.

133 “NGOs and Attorneys Wrangling over “Free” Legal Aid,” *Danas*, 12 November 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=332089&title=NVO+i+advokati+se+otimaju+oko+%26quot%3Bbesplatne%26quot%3B+pomo%C4%87.

of legal aid providers would be in contravention of the Constitution and the Act on Attorneys.¹³⁴

The draft underwent numerous changes in 2016; each new version narrowed the civil society's scope for extending legal aid, despite the fact that NGOs have been providing it successfully for over two decades now. Not even the legal clinics that exist at nearly all law schools in Serbia, which have been successfully working with clients and extending them legal aid free of charge, are entitled to do so under the final draft that was submitted to parliament for adoption.¹³⁵

4.2. Court Efficiency

The new court network was established in order to facilitate access to justice, cut legal costs, and improve court efficiency.

In its report on the state of the judiciary of March 2016,¹³⁶ the Anti-Corruption Council said that the data on the pending cases before courts showed that the establishment of the new court network had not yielded results as it neither improved court efficiency nor cut the costs of justice, both those sustained by the citizens and those sustained by the state. One of the reasons was that no analysis about the optimal number of courts was conducted either before the 2009 or the 2014 court network reforms. The number of delegated cases, which stood at 6,888 in the 1 January 2014–12 October 2015 period, was qualified as an indicator that access to judicial institutions was not equal. However, as the authors of the report noted, delegation of cases need not always be the consequence of unequal access to justice; it may be corruption driven, to ensure that particular cases end up in the dockets of particular judges.

In its Amended Backlog Reduction Programme for the 2016–2020 Period¹³⁷ of August 2016, the Supreme Court of Cassation said that the effects of the new court network could be analysed only once the 2016 data were collected because the enforcement cases of the Belgrade First, Second and Third Basic Courts had not been distributed yet due to their huge number and improper electronic case migration. The Court said that a number of measures had to be undertaken because the new court network and new procedural law provisions could not eliminate the negative effects of the 2009 reform.

134 Belgrade and Vojvodina Bar Associations conclusion, available in Serbian at: <http://akb.org.rs/public/userfiles/Upload/2016/22.10/BesplatnapravnapomocAKVojvodineiAKBeograda.pdf>.

135 See, e.g. "Attorneys or Civil Society – Who May Extend Free Legal Aid," *Blic*, 18 November, available in Serbian at: <http://www.blic.rs/vesti/drustvo/advokati-ili-nvo-ko-ce-sve-moci-da-de-li-besplatnu-pravnu-pomoc/p1lx4hy>.

136 The Report is available at <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/REPORT%20ON%20THE%20CURRENT%20STATE%20IN%20THE%20JUDICI-ARY.pdf>.

137 The Programme is available in Serbian at: <http://www.vk.sud.rs/sites/default/files/files/ResavanjeStarihPredmeta/Izmenjeni%20JP%202016-2020%20.pdf>.

The Amended Programme provides for systemic (strategic), general and special measures, measures for dealing with the backlog of enforcement cases, individual measures for courts, measures to be taken by the Ministry of Justice, by the Supreme Court of Cassation and special measures for courts in the territory of the City of Belgrade. Systemic measures include the need to detach the court administrative staff from the state administration system and exempt it from the restrictions imposed by the Act on the Method for Determining the Maximum Number of Public Sector Staff. The Programme alerts to the need to fill the judicial vacancies, decide on the implementation of training for judges and judicial assistants, implement continuous electronic case management training, improve the current electronic case management software applications and introduce new standardisation.

The amended Court Rules of Procedure,¹³⁸ which came into force on 23 April 2016, include provisions aimed at ensuring the efficient implementation of the Backlog Reduction Programme. The court registry staff are now under the obligation to stamp “backlog”, “urgent – backlog” and “very urgent – backlog” on the first pages of the files of cases that have been pending over two, five and ten years respectively. Under Article 44b of the Court Rules of Procedure, courts shall keep records of the length of proceedings: of first-instance cases pending over two years from the day of filing and of appeal cases pending over one year from the day of filing.

Under the Enforcement and Security of Claims Act,¹³⁹ enforcement creditors were to declare whether they wished to have their claims enforced by courts or enforcement agents in the 1 May-1 July 2016 period, otherwise the enforcement proceedings would be terminated. The closure of a large number of cases was, in fact, due to the fact that a substantial number of creditors did not state their preference by 1 July. The Justice Minister said that the enforcement of around 900,000 enforcement cases would be dealt with by the end of 2016.¹⁴⁰

4.3. Trial within a Reasonable Time

Under the Constitution, everyone shall have the right to a public hearing *within a reasonable time* before an independent and impartial tribunal already established by the law, which shall hear and pronounce a judgment on their rights and obligations, grounds for suspicion that led to the initiation of the proceedings and charges against them (Art. 32(1)). Serbia’s Criminal Procedure Code recognises the rights of the defendants to be brought before a court as soon as possible and to a trial without any undue delay and obliges the courts to endeavour to conduct the proceedings without undue delay.

138 *Sl. glasnik RS*, 110/09.

139 *Sl. glasnik RS*, 106/15.

140 See: <http://www.mpravde.gov.rs/en/vest/14054/minister-kuburovic-900000-of-old-enforcement-cases-to-be-finalised-by-the-end-of-the-year.php>.

Serbian courts are still staggering under huge backlogs although the adjudication of such cases and trials within a reasonable time have been among the top priorities of the Serbian judiciary for years. Court inefficiency has strongly reflected on the duration of court proceedings, the respect for human rights of parties to the proceedings and appraisals of the performance of judges and public prosecutors and has prompted the submission of many applications against Serbia to the ECtHR.

The National Judicial Reform Strategy envisages measures for addressing the problem, including the identification and reassignment of the backlog, electronic case management, horizontal reallocation of judges and court staff whilst respecting the constitutional guarantees and with adequate stimulation; resolution of a significant number of cases by enforcement agents and notaries public, amendments of substantive and procedural laws in order to improve the efficiency and legal certainty.

The Act on the Protection of the Right to a Trial within a Reasonable Time came into force on 1 January 2016.¹⁴¹ This law envisages judicial protection of the right to a trial within a reasonable time to all parties to the proceedings. This right is not afforded to public prosecutors in criminal trials. Proceedings on violations of this right are urgent and free of charge.

The Act lays down the criteria by which the length of the trials is assessed. When ruling on legal remedies protecting the right to a trial within a reasonable time, the court shall take into account all the circumstances of the case, above all the complexity of the factual and legal issues, the duration of the proceeding and the actions of the court, public prosecutors or other state authorities, the character and type of the adjudicated or investigated matter, the relevance of the adjudicated or investigated matter to the parties, the conduct of the parties during the trial, especially adherence to procedural rights and duties, adherence to the case review schedule and the legal deadlines for scheduling the hearings and the trial and for drafting the decisions. These criteria do not provide sufficient safeguards protecting this right during the court's consideration of its violation, because they do not lay down any trial time limits. Both the 2015 Progress Report and the Screening Report identified violations of the right to a trial within a reasonable time as one of the gravest problems of the Serbian judiciary and proposed the establishment of a relevant methodology for weighting the cases to measure the workloads and ensure a more equitable allocation of cases to judges and prosecutors.

The Act provides for the following three legal remedies protecting the right to a trial within a reasonable time: a complaint with a view to expediting the proceedings, an appeal and a just satisfaction claim.

The proceeding for the protection of the right to a fair trial is initiated by the party's submission of a complaint. The complaint is to be submitted to the court conducting the trial and must include the information specified in Article 6 of the

141 *Sl. glasnik RS*, 40/15.

Act. The complaint review procedure is conducted by the court president. There is no oral hearing on the complaint and the court president must adopt a decision on it within two months from the day of receipt. The court president may issue a ruling dismissing or rejecting a complaint that does not include all the mandatory information or in the event the duration of the impugned proceedings is manifestly not excessive. In the event the court president does not dismiss or reject the complaint, he shall launch a review during which he shall require of the judge to submit a report on the proceeding, elaborating the course of the trial and giving an estimation when he will complete it. The court president then issues a ruling either rejecting the complaint or upholding it and finding a violation of the right to a trial within a reasonable time. In the latter ruling, the court president shall specify the procedural actions the judge is to undertake to expedite the trial and the deadline, ranging from a fortnight to four months, by which he is to complete them. Parties, who have failed to appeal rulings rejecting their complaints, may file new complaints after the expiry of four months from the day they are served the rulings.

Parties may appeal rulings rejecting their complaints within eight days from the day of rejection or as soon as the two-month deadline, by which the court president has to rule on it, expires. The appeal must include the same mandatory information as the complaint. It shall be submitted to the court president ruling on the complaint and ruled on by the president of the next highest court. The latter court president shall also issue a ruling, either dismissing or rejecting the appeal, or review it and render a decision on it.

Parties, whose complaints or appeals have been upheld, are entitled to just satisfaction. The Act provides for three kinds of just satisfaction: the right to pecuniary damages, the right to the publication of a written statement by the Solicitor General finding a violation of the party's right to a trial within a reasonable time, and the right to the publication of a judgment finding a violation of the party's right to a trial within a reasonable time. The parties may file claims against the Republic of Serbia seeking pecuniary damages within one year from the day they are recognised the right to just satisfaction. The pecuniary damages shall range from 300 to 3,000 Euro and shall be set by the Solicitor General and the court, taking into consideration the criteria for assessing the duration of the trial within a reasonable time.

Although the Act entered into force on 1 January 2016, no data on its enforcement were available at the end of the reporting period, wherefore no assessments could be made of the extent to which it has responded to one of the greatest challenges regarding to respect to respect for the right to a fair trial. The High Judicial Council's data for the first nine months of the year show that Serbia paid 141.5 million RSD in damages for violations of the right to a fair trial.¹⁴² The damages were paid pursuant to the provisions of the Act on the Organisation of Courts,

142 "Damage for Slow Trials Standing at 187 Million Dinars," *Politika*, 22 November 2016, available in Serbian at: <http://www.politika.rs/scc/clanak/368284/Odstete-za-spora-sudenja-187-miliona-dinara>.

which applied until the Act on the Protection of the Right to a Trial within a Reasonable Time came into force.

Expiry of the statute of limitations has been one of the problems constantly plaguing the Serbian judiciary.¹⁴³ The criminal proceedings against Bogoljub Karić became statute-barred in 2016. Karić was charged by the Belgrade Higher Public Prosecution Office in 2010 for abuse of post for unlawfully siphoning 60 million EUR from Mobtel's accounts to the accounts of his private companies in the 1998–2005 period.¹⁴⁴ In late 2016, media recalled the so-called “*Indeks Scandal*”, in which 88 people, including students and professors of the Kragujevac Law School, were indicted for bribery. The hearings scheduled for 27 and 28 December 2016 were adjourned for end January 2017. Not even first-instance judgments have been delivered in this case, which entered its 10th year in court.¹⁴⁵ Proceedings against 44 of the 88 indictees had in the meantime been terminated because the statute of limitations expired.¹⁴⁶

Expiry of the statute of limitations is also reason why no-one will be found guilty of the death of Jelica Radović, who died of sepsis after a bunion operation at the private Decedra Clinic in September 2006. In the reasoning of its decision, the Belgrade Appellate Court said the “it was not proven during the trial that Jelica Radović's death had been the result of the defendants' failure to undertake diagnostic therapeutic measures, i.e. of their generally obvious negligence.” Although the lower court found the doctors guilty of negligence, the Appellate Court ruled that it had erred in its findings of fact and in the penalties it imposed on the doctors and itself held a hearing on the case, in which it, too found the doctors guilty but acquitted them because the statute of limitations expired back in 2010.¹⁴⁷

Under the CPC, when a trial is discontinued due to the expiry of the statute of limitations, the court is under the obligation to compensate the costs and expenses the defendant suffered during the trial. Given the duration of this trial and the gravity of the crimes the defendants had been charged with, the state will have to pay millions just to cover the costs of their legal counsels.

143 More in the *2014 Report*, III.5.4.2.

144 The indictment was sent back to the prosecutors in 2013 for alignment with the amended Criminal Code. The Belgrade Higher Court neither confirmed nor dismissed the aligned indictment by 2016. In January 2016, it issued a ruling terminating the proceedings against Karić and his two co-defendants because the statute of limitations for their criminal prosecution had expired. More is available in Serbian at: <http://www.novimagazin.rs/vesti/visi-sud-postupak-protiv-bogoljuba-karica-obustavljen-u-januaru>.

145 “*Indeks Scandal Trial Enters 10th Year*,” *Novosti*, 27 December 2016, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:642030-Afera-Indeks-ula-zi-u-desetu-godinu-sudjenja>.

146 “*Indeks Scandal – Legal Lawlessness*,” *Danas*, 22 December 2016, available in Serbian at: http://www.danas.rs/dijalog.46.html?news_id=335066&title=Afera+%26quot%3bIndeks%26quot%3b%2c+legalno+bezakonje.

147 “*Medical Negligence Becomes Statute-Barred*,” *Politika*, 25 November, available in Serbian at: <http://www.politika.rs/scc/clanak/368656/Pogledi/Zastarela-nesavesnost-lekara>.

4.4. *Notaries Public*

The 2011 Notaries Public Act entered into force on 1 September 2014. It was amended several times since and the latest amendments came into force on 29 December 2015.¹⁴⁸ The work of the notaries public did not provoke any major polemics in 2016, as opposed to the past few years when the impugned provisions of the Act and related laws resulted in a months-long strike of the attorneys and, consequently, the blockade of the judicial system.¹⁴⁹

According to the Report on the Implementation of the Chapter 23 Action Plan No. 4/2016,¹⁵⁰ 152 notaries public were operating in Serbia on 7 December 2016 and 18 assistant notaries public were entered in the relevant register. The list of all notary public offices is available on the Notary Chamber's website.¹⁵¹

The Professional Council of the Notary Chamber of Serbia (hereinafter NCS Professional Council) was established in early February 2015 to extend professional support to the notaries public. Under the Decision on its establishment, it shall be composed of eminent experts in the relevant fields of law, as well as notaries public actively engaged in addressing disputed legal issues. The composition of the NCS Professional Council was changed under a decision of the Chamber Executive Committee.¹⁵² All members, apart from the latter three, shall be remunerated for their work by the Notary Chamber, in accordance with a decision thereto rendered by the Notary Chamber Executive Committee.¹⁵³ The Chamber enacted the Notaries' Code of Ethics¹⁵⁴ and the Rulebook on Disciplinary Proceedings and Disciplinary Liability¹⁵⁵ in 2016.

Under the Notaries Public Act, as amended in 2015, the court may entrust the notaries public with conducting a non-contentious procedure or specific non-contentious actions under conditions laid down in the law governing the procedure at issue (Art. 98(1)).¹⁵⁶ This provision already exists in the Non-Contentious Procedure Act

148 *Sl. glasnik RS*, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14, 6/15 and 106/15

149 More in the *2014 Report*, III.5.4.3. and the *2015 Report*. II.4.4.5.

150 Chapter 23 Action Plan Implementation Report No. 4/2016, p. 65, available in Serbian at: <http://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%2042016%20o%20provo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%202023.pdf>.

151 See: http://beleznik.org/images/pdf/spisak/spisak_javnobelesnickih_kancelarija.pdf.

152 The Decision on the new Professional Council members and the list of the members is available in Serbian at: http://beleznik.org/images/pdf/odluka/odluka_i-1-149-2016.pdf.

153 Article 15(6) of the NSC Professional Council Rules of Procedure, available in Serbian at: http://beleznik.org/images/pdf/pravilnik_o_radu_strucnog_saveta.pdf.

154 The Code of Ethics is available in Serbian at: http://beleznik.org/images/pdf/zakon/eticki_kod-eks_javnih_belesnika.pdf.

155 The Rulebook on Disciplinary Proceedings and Disciplinary Liability is available in Serbian at: http://beleznik.org/images/pdf/zakon/pravilnik_o_disciplinskom_postupku_i_disciplinskoj_odgovornosti.pdf.

156 *Sl. glasnik RS*, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14, 6/15 and 106/15.

(hereinafter: NCPA) and envisages specific restrictions. Under the NCPA, the courts may not entrust notaries public with conducting proceedings on status-related and family matters, proceedings regarding the setting of the amount of compensation for expropriated real estate, keeping of public books and registers to be kept by courts under the law, with drawing up documents that may be drawn up only by courts under the NCPA or another law, and with conducting inheritance proceedings in which the law of another state applies. Furthermore, the courts shall rule on the expediency of entrusting the notaries public with the conduct of specific proceedings and taking of individual procedural actions within their jurisdiction (Art. 30a).¹⁵⁷

The Supreme Court of Cassation, the Ministry of Justice and the High Judicial Council adopted Guidelines on the Enforcement of Articles 30a and 110a of the NCPA and Article 98 of the Public Notaries Act on 13 May 2016 to ensure legal certainty and facilitate the entrustment of specific non-contentious proceedings to notaries public.¹⁵⁸ As provided for in the Notaries Public Act, the Minister of Justice set the Notary Fee Schedule for handling inheritance proceedings entrusted to notaries by the courts¹⁵⁹. The Minister also adopted amendments to the Notaries Fee Schedule¹⁶⁰ that came into force on 20 February 2016.

Pursuant to the above-mentioned provisions, the courts in 2016 started entrusting to notaries public specific non-contentious proceedings, including on inheritance, which should lead to their faster and more efficient completion. Inheritance proceedings are still instituted before the courts, which entrust them to notaries public in their jurisdiction by alphabetical order. Inheritance proceedings are expected to be completed more rapidly now, in view of the fact that, in their rulings entrusting the inheritance cases to the notaries, the courts define the deadlines by which the latter are to complete the proceedings, as well as the fact that the Notaries Public Act defines as disciplinary offences the notaries' excess of powers entrusted to them by the court and their failure to take the steps within the timeframes laid down in the rules of the procedure they have been entrusted with conducting.¹⁶¹ The fees and costs and expenses notaries charge their clients are set pursuant to the Notary Fee Schedule; decisions to exempt clients from paying the notary fees are taken under the rules of the procedure the notaries have been entrusted with performing (Art. 140).¹⁶²

157 *Sl. glasnik SRS*, 25/82 and 48/88, and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 85/12, 45/13 – other law, 55/14, 6/15 and 106/15 – other law.

158 The Guidelines are available in Serbian at: <http://vss.sud.rs/sr-lat/saop%C5%A1tenja/uputstvo-za-sprovo%C4%91enje-odredaba-%C4%8Dlanova-30a-i-110a-zakona-o-van-parni%C4%8Dnom-postupku-i>.

159 *Sl. glasnik RS*, 12/16.

160 *Sl. glasnik RS*, 91/14, 103/14, 138/14 and 12/16.

161 “See a Notary for Inheritances” B92, 11 September 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=09&dd=11&nav_category=12&nav_id=1175549.

162 *Sl. glasnik RS*, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14, 6/15 and 106/15.

The Minister of Justice said that the courts had entrusted a total of 6,403 inheritance cases and 9,452 death confirmation cases to the notaries in the first nine months of 2016.¹⁶³

4.5. E-Justice

The automation of the judiciary and introduction of ICT tools in its work significantly contribute both to the efficiency and transparency of the judiciary.

An electronic case management system was introduced in courts of general jurisdiction several years ago. This system facilitates the work of courts in a number of areas, from the monitoring of the status of cases in courts to the preparation of extensive statistical reports on the work of the courts. Furthermore, it facilitates the creation of a large case law database, which can easily be made available to interested parties given that it is electronic, whereby it also enhances the transparency of the judiciary.

The courts' records, however, are not uniform because three different systems for electronic registration of data and case management are in use: the APV application is used by the Basic, Higher and Commercial Courts, as well as by the Commercial Appeals Court, the SAPS application is used by the Supreme Court of Cassation, the Administrative Court, the Appeals Courts and the Sremska Mitrovica Basic and Higher Courts, and the newest application, SIPRES, is used by the Misdemeanour Courts and the Misdemeanour Appeals Court. The introduction of the electronic case management system in the misdemeanour courts (hereinafter: SIPRES) was the main step towards e-Justice that was taken. The system was first piloted in two misdemeanour courts in 2015 and launched in all of them in January 2016.¹⁶⁴ This system is centralised and all the data are stored on a server in the Justice Ministry; they can be accessed by all departments of all misdemeanour courts. Apart from allowing for the exchange of data among misdemeanour courts, the system is also interlinked with other, external entities. SIPRES is also interconnected with the Treasury, the Interior Ministry's Traffic Police Department and the Central Mandatory Social Insurance Register, with a view to ensuring faster and more efficient exchange of data needed to process misdemeanour orders.¹⁶⁵

Surveys have shown that the courts are frequently unable to provide the information sought under the free access to information regulations precisely because the software limitations do not allow the search of their databases under different criteria. These shortcomings may also reflect on the courts' ability to prepare com-

163 The Minister's statement is available in Serbian at: <http://www.mpravde.gov.rs/vest/14124/min-istarka-kuburovic-intezivan-rad-na-daljem-unapredjenju-polozaja-javnih-beleznika.php>.

164 See the report of 1 January 2016, available in Serbian at: <http://ozonpress.net/drustvo/startovao-sipres/>.

165 See: <http://en.jrga.org/news/jrga-opens-a-new-chapter-for-efficient-misdemeanor-courts-in-serbia/>.

prehensive analyses and reports of major importance, such as the ones submitted to the numerous international bodies.

According to Chapter 23 Implementation Report No. 1/2016¹⁶⁶ in addition to the use of different case management programmes, each of which suffers from specific deficiencies, the problem lies also in the insufficient training of the court staff entering the data. Namely, the Supreme Court of Cassation and the Working Group charged with implementing the Backlog Reduction Programme conducted a survey of all Serbian courts in the first quarter of 2016, on their use of the case management software to electronically schedule hearings, ascertain the numbers of hearings that were held, not held and adjourned and the reasons for not holding or adjourning the hearings, and to reschedule the adjourned hearings in standardised time periods.

The survey results showed that APV allowed the registration of the hearings that were held, not held and adjourned, but that the data were entered in different ways and irregularly, because the staff in courts using APV were unaware of the option. The APV, however, does not have the option of registering the reasons why hearings were adjourned or not held, but the survey showed that some courts entered the reasons in the Notes text box in this part of the application. The survey further showed that SAPS had the option of registering both whether the hearings were or were not held or adjourned, as well as the reasons why they were not held or adjourned, but that the only first-instance court to use all these options was the Administrative Court, while the Sremska Mitrovica Basic and Higher Court staff were unaware it even existed, and, thus, did not use it. And, finally, the survey showed that SIPRES had all these options, but that the Misdemeanour Courts were not making full use of the application.

The following steps could be made to improve the electronic system: the adoption of regulations on a uniform method for entering case file data in the database, organisation of additional training for the users of the software, and improvement of the courts' ICT to ensure optimal storage of data in the electronic database(s).¹⁶⁷

Both the 2013–2018 National Judicial Reform Strategy (NJRS)¹⁶⁸ and the Chapter 23 Action Plan envisage the establishment of a nationwide e-Justice system, building on the existing electronic case management system, with the aim of improving the efficiency, transparency and consistency of the judicial process. Another two goals stated in these two documents include ensuring the availability of reliable and consistent judicial statistics and the introduction of a system for monitoring the length of trials. A number of activities to be implemented by the end of 2018 are planned with a view to achieving these goals.

166 The Report is available at: <http://www.mpravde.gov.rs/files/Report%20no.%201-2-72016%20on%20Implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>.

167 The BCHR conducted a survey within the project "Protection of Human Rights before Serbian Courts – Contribution to Judicial Reform Monitoring" the results of which are available in Serbian at: <http://www.bgcentar.org.rs/konsultativni-proces-izrada-preporuka-za-vođenje-jedinstvene-sudske-statistike/>.

168 *Sl. glasnik RS*, 57/13.

A comprehensive analysis of the judicial hardware and software was conducted by USAID and the Justice Ministry in February 2015. The Ministry of Justice Chapter 23 Action Plan provides for a thorough analysis of the human and technical resources by the end of 2016,¹⁶⁹ but the publication of the analysis was put off until early March 2017.¹⁷⁰ The Ministry initiated the forming a Sectorial ICT Council to ensure the relevant stakeholders' maximum consensus on ICT decisions. The Council, established on 13 April 2016, comprises 14 representatives appointed to four year terms in office by judicial institutions relevant to ICT use and management, notably the Supreme Court of Cassation, the Republican Public Prosecution Service, the State Prosecutorial Council, the Judicial Academy, the Penal Sanctions Enforcement Administration, the Solicitor General's Office, the Chamber of Enforcement Agents, the Notary Chamber, the Seized Property Management Directorate and the Justice Ministry Judiciary, EU Integration and International Projects, e-Justice and Material and Financial Affairs Departments. The Council was established to institutionalise ICT coordination and management in the judicial sector, pursuant to activities laid down in the Chapter 23 Action Plan and the Ministry of Justice e-Justice Department's operational plan.¹⁷¹

A case weighting programme, prerequisite for including case complexity among the assignment criteria, was not introduced in 2016 either, wherefore a number of other Chapter 23 Action Plan activities were not implemented in the reporting period.¹⁷² One of them aiming at achieving the above goals involves the amendment of the part of the Court Rules of Procedure dealing with the criteria for defining data input pursuant to a pre-defined list of data that must be entered to allow for the monitoring of the statistical parameters of judicial efficiency. The establishment of the system, involving the assignment of a single reference number to a case until a final decision on it is rendered is also planned. The assignment of single case reference numbers would, *inter alia*, address the problem of inflating the number of cases in the records. The Court Rules of Procedure were amended three times in 2016,¹⁷³ but did not include any of the amendments envisaged by the Action Plan.

4.6. Public Character of Hearings and Judgments

The Constitution guarantees the public character of court hearings (Art. 32), but it does not explicitly guarantee the public pronouncement of court judgments. The Constitution lists the instances in which the public may be excluded from all or

169 Chapter 23 Action Plan, p. 26.

170 See p. 27 of the Chapter 23 Implementation Report No. 4/2016, available in Serbian at: <http://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%204-2016%20o%20sprovo%C4%91enju%20Aktionog%20plana%20za%20Poglavlje%2023.pdf>.

171 *Ibid.*, p. 28.

172 *Ibid.*, pp. 33 and 34.

173 *Sl. glasnik RS*, 39/16, 56/16 and 77/16.

part of the court proceedings in accordance with the law only to protect the interests of national security, public order and morals in a democratic society, the interests of minors or privacy of the parties to the proceedings.

Civil and criminal proceedings are guided by the general rule that hearings and trials are public and may be attended by adults. The CPC envisages that the main hearing may be attended by persons over 16 years of age. Under the CPC, the court may *ex officio* or on the request of a party, but only upon hearing the views of the parties, exclude the public from the entire or part of the trial in order to protect morals, public law and order, national security, minors or the privacy of the parties to the proceedings or to protect justified interests in a democratic society. The public is always excluded from trials of minors (Art. 75, Juvenile Justice Act).¹⁷⁴

Under Article 101 of the Act on Misdemeanours,¹⁷⁵ the public may be excluded from the entire misdemeanour hearing or part of it, if so required to preserve confidentiality, protect morals, interests of minors or to protect other community interests. Exclusion of the public from the main hearing is in contravention of the law, constitutes a grave violation of due process and grounds for appeal (Art. 368(4), CPC and Art. 361(2.11), CPA).

The CPA formulates the grounds for excluding the public from a hearing differently: the public may be excluded from a hearing to protect the interests of national security, public order and morals in a democratic society and to protect the interests of a minor or the privacy of the participants in the proceedings (Art. 322). Under the CPA, the public may be excluded from a hearing also in order to maintain order in the court.

All procedural laws stipulate that the decision on the exclusion of the public must be reasoned and public. Both the CPC and CPA lay down that a judgment must always be delivered publicly, notwithstanding whether the public was excluded from the proceedings, but that the court shall decide whether the public will be allowed to hear the reasoning of the judgment. The Administrative Disputes Act¹⁷⁶ specifies that the hearings shall as a rule be public and lists grounds for excluding the public, which are in accordance with the ECHR (Art. 35).

4.7. *Equality before the Law*

The constitutional principle, under which everyone shall be equal before the law, is violated by non-aligned case law. Divergent judicial assessments are possible and normal, but this divergence cannot be of such proportions so as to result in totally different decisions regarding identical or nearly identical facts. Such decisions lead to continuous legal uncertainty and undermine public trust in the judiciary.

174 *Sl. glasnik RS*, 85/05.

175 *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.

176 *Sl. glasnik RS*, 111/09.

The Supreme Court of Cassation and the Appellate Courts should play a crucial role in harmonising the case law. The amendments to the Act on the Organisation of Courts aim to address this problem by envisaging joint sessions of the Appellate Courts and their notification of the Supreme Court of Cassation of disputable issues relevant to the work of the courts.¹⁷⁷ A case law database allowing courts insight in the judgments of other courts would facilitate the alignment of case law.¹⁷⁸

The Chapter 23 Action Plan envisages a number of activities to be undertaken by the end of 2016 with a view to aligning the case law. Some of them – such as the analysis of the normative framework governing the issues of binding case law, right to a legal remedy and jurisdiction for ruling on legal remedies, publication of court judgements and legal views taking into account the opinions of the Venice Commission, and changes of the normative framework governing these issues – were not implemented by the set deadlines. According to the Chapter 23 Action Plan Implementation Report No. 4/2016, the reason for delays lay in the changes at the helm of the Ministry of Justice, the High Judicial Council and the State Prosecutorial Council, necessitating the appointment of the new members of the working group and its resumption of work.¹⁷⁹

4.8. Guarantees to Defendants in Criminal Cases

There are three forms of punishable offences in Serbian law: criminal offences, misdemeanours and economic offences. A criminal offence is an offence defined by the law as a criminal offence which is unlawful and committed with a guilty mind (Art. 14, CC). A misdemeanour shall denote an unlawful act defined by the law or another regulation of a competent authority as a misdemeanour and warranting a misdemeanour penalty (Art. 2, Act on Misdemeanours). According to the ECtHR, all these punishable offences fall under the scope of Article 6 of the ECHR. Under Article 33(8) of the Constitution, all natural persons charged with punishable acts shall enjoy all the rights afforded to criminal defendants. The Constitution and the CPC are in compliance with international standards with regard to the following rights guaranteed criminal defendants under Article 6 of the ECHR: to be presumed innocent, to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusations against them, to have the free assistance of an interpreter if they cannot understand or speak the language used in court, to defend themselves in person or through legal assistance of their own choosing, to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions

177 Act on Organisation of Courts, Article 24(3).

178 More on the database in Serbian at: <http://www.bgcentar.org.rs/konsultativni-proces-izrada-preporuka-za-vodjenje-jedinstvene-sudske-statistike/>.

179 Page 99 of the Report.

as witnesses against them. There are, however, problems in ensuring and violations of these procedural safeguards in practice.

Article 34(3) of the Constitution and Article 3(1–2) of the CPC both prescribe that everyone shall be presumed innocent until proven guilty by a final decision of a competent court. Under the CPC, not only courts, but all other state authorities, media, civic associations, public figures and others as well, are under the obligation to respect the presumption of innocence.

Given that violations of the presumption of innocence are not incriminated, the problem of the respect of this safeguard rests on the moral and political responsibility of the media and public figures, which may give rise to problems in societies such as Serbia's, lacking legal culture and general awareness of the importance of respecting human rights.

This issue is also dealt with in the Chapter 23 Action Plan, which aims to raise awareness that judicial independence is undermined by criticisms of court decisions, as well as violations of the presumption of innocence, especially by politicians.

Under Article 73 of the Public Information and Media Act,¹⁸⁰ the media may not qualify anyone as the perpetrator of a punishable offence or declare anyone guilty of or liable for an offence prior to a final court decision. A misdemeanour fine ranging between 50,000 and 150,000 dinars shall be levied against the Chief Editor of the outlet that violates this provision (Art. 140). The Chapter 23 Action Plan envisages the following activities in this area: more efficient prosecution of misdemeanours on the motion of the ministry charged with media and public information and keeping of accurate statistics on this type of proceedings by the Supreme Court of Cassation.¹⁸¹ According to the Chapter 23 Action Plan Implementation Report No. 4/2016, a total of four misdemeanour proceedings over violations under Article 140 of the Public Information and Media Act were conducted before Serbian misdemeanour courts in 2015 and only one of them was completed by 15 June 2016. A total of five misdemeanour proceedings were initiated over the violations under Article 140 in the 1 September–1 December 2016 period, all before the Belgrade Misdemeanour Court, and only one proceeding was completed by 1 December. Statistics on such proceedings are collected by the Misdemeanour Appeals Court on a monthly and the Supreme Court of Cassation on a biannual and annual basis.

In April 2016, the CSO Partners for Democratic Change published its report entitled *Protection of Privacy and the Presumption of Innocence in the Media*, within a project by the same name.¹⁸² It, inter alia, presents the results of a survey and content analysis of media reports with focus on violations of the right to presumption of innocence. The survey showed that the 14 outlets analysed within the survey

180 *Sl. glasnik RS*, 83/14, 58/15 and 12/16 – authentic interpretation.

181 Chapter 23 Action Plan, p. 47.

182 See: <http://www.partners-serbia.org/en/wp-content/uploads/2016/05/Protection-of-Privacy.pdf>.

had published 83 reports violating the right to presumption of innocence in one fortnight. The comparison of these results, spanning just two weeks, and the data on the number of initiated and completed misdemeanour proceedings in the past two years, clearly indicate the sheer discrepancy between the number of initiated proceedings and the number of violations of the right to presumption of innocence, perpetrated on a daily basis by the media.

The Chapter 23 Action Plan also envisages the adoption of a Code of Conduct of National Assembly deputies governing their comments of court decisions and proceedings. The Code was not enacted either in 2015, as announced, or in 2016, although the public has been inundated by inadmissible statements and actions of the deputies suffering no consequences for their actions.

In January 2016, the Serbian Government issued a conclusion adopting the Code of Conduct of the members of government regulating the commenting of court decisions and proceedings, also envisaged by the Chapter 23 Action Plan. Under the Code, members of government are under the duty to respect the presumption of innocence, which means that in their public statements and appearances, they may not qualify anyone against whom criminal proceedings or preliminary criminal proceedings have been instituted as a perpetrator of a criminal offence before a final ruling of the court finding that individual guilty. Under the Code, members of government are also prohibited from publicly expressing ideas, information or opinions prejudicing the outcome of pending criminal, misdemeanour or economic offence proceedings or assessing the procedural value of the evidence presented in the proceedings in a manner that may be prejudicial to the outcome of the proceedings. As the Code states, these prohibitions aim at precluding intentional and unintentional pressures on the courts depriving the defendants of the right to a fair and impartial trial. The Code, however, does not lay down any penalties in case the members of government do not comply with their rights and obligations under the Code, wherefore the numerous violations of its provisions have gone unpunished.

The Code provisions were violated virtually on a daily basis by the Prime Minister and members of his cabinet in 2016. Prime Minister Aleksandar Vučić violated the ban on publicly expressing ideas, information or opinions prejudicing the outcome of pending criminal proceedings or assessing the procedural value of the evidence presented in the proceedings in a manner that may be prejudicial to the outcome of the proceedings on a number of occasions. For instance, in his statement to the media on the illegal demolition of the buildings in Hercegovačka Street in Belgrade, he claimed he had not been aware of the campaign, because, if he had been, he would have told them “Demolish in broad daylight, give me a construction machine so that I, too, can demolish!”¹⁸³ He also said that the topmost Belgrade

183 “Aleksandar Vučić: Demolish in broad daylight, give me a construction machine so that I, too, can demolish!” *Beta*, 10 June 2016, Available in Serbian at: <http://beta.rs/izjava-dana/komentar-politika/34361-aleksandar-vucic-rusite-u-po-bela-dana-dajte-i-meni-jedan-bager-da-rusim>.

city authorities were behind the demolition and that they would be held liable under criminal, misdemeanour and all other laws.¹⁸⁴

The Code was repeatedly violated by Minister of Internal Affairs Nebojša Stefanović in 2016 as well. For instance, in his comment of the arrest of 49 people during the police campaign dubbed “Scanner 2” in April, he said that all of them had committed a number of crimes since 2007 and incurred around 7.6 million EUR damages to the Serbian and Vojvodina budgets, a number of companies and private individuals.¹⁸⁵

Under the Constitution, all persons accused of crimes shall have the right to be notified promptly, in detail and in a language they understand of the nature and reasons for the charges laid against them and the evidence against them (Art. 33). This right is guaranteed in Article 68 of the CPC and Articles 93(2) and 94 of the Act on Misdemeanours. The Constitution guarantees everyone the right to an interpreter free of charge in the event they do not understand the language officially used in court. Deaf, mute and blind persons shall be guaranteed the right to an interpreter free of charge (Art. 32(2)).

The Chapter 23 Action Plan envisages that, as of the 1st quarter of 2017, the police and prosecution services will provide all persons in their custody with factsheets with standard and comprehensive information clearly defining their rights. The factsheets are to be published in Serbian, the national minority languages in areas populated by national minorities and in English. As of the 3rd quarter of 2017, these factsheets, in Serbian, minority languages in areas populated by national minorities, and in English, will be made available in all police stations and prosecution services. In the event the suspects or indictees do not understand any of these languages, they must be provided with court interpreters for the languages they understand.¹⁸⁶

Under Article 33(2) of the Constitution, everyone charged with a criminal offence shall be entitled to defend himself or through legal assistance of his choosing, to consult freely with his legal counsel and have adequate time and facilities for preparing his defence. Under paragraph 3 of this Article, defendants who cannot afford legal representation are entitled to free legal aid when so required by the interests of fairness and in compliance with the law. The right to defence is guaranteed also by the Act on Misdemeanours (Art. 93) and the CPC (Art. 68(2(7))). The CPC restricts free legal aid to defendants charged with crimes warranting over three years’ imprisonment and when so required by the interests of fairness.

184 “Topmost Belgrade City Authorities behind Demolition,” *B92*, 8 June 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=06&dd=08&nav_id=1141186.

185 “49 People Arrested in “Scanner 2” Campaign,” *B92*, 14 April 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=04&dd=15&nav_category=16&nav_id=1120265.

186 Chapter 23 Action Plan, pp. 228 and 298.

This provision will provide ample opportunity for enforcement once the legal aid law is adopted and the system becomes operational.

Under Article 33(5) of the Constitution, all criminal defendants shall be entitled to defend themselves in person or through legal assistance, to present evidence in their favour, to examine witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as the witnesses against them and in their presence. Article 68 of the CPC also guarantees the right of defendants to examine the witnesses for the prosecution and the witnesses for the defence under the same conditions and in their presence.

The CPC does not prohibit the questioning of a police officer in the capacity of a witness on what he had learned in the pre-investigation proceedings. It also allows the court to call to the witness stand persons relieved of the obligation to testify at the request of the defendant or his defence counsel (Art. 93). Persons related to the defendant to a specific degree of kinship are also relieved of the duty to testify, but they may testify if they so wish (Art. 94). The CPC also allows witnesses not to answer specific questions if they would thus expose themselves or relatives to a specific degree of kinship to grave humiliation, considerable material loss or criminal prosecution.

Persons testifying in court are under the obligation to tell the truth. Perjury is incriminated by Article 206 of the Criminal Code. The CPC obliges the court to protect a witness from insults, threats or any other attacks. A witness may be granted the status of protected witness in circumstances specified by the law. The CPC also introduces the institute of a particularly vulnerable witness. Apart from the protection afforded by the CPC, the Act on the Protection of Participants in Criminal Proceedings¹⁸⁷ also envisages witness protection measures under specific conditions.

5. Right to Privacy and Confidentiality of Correspondence

5.1. *General*

The ECHR and the ICCPR guarantee the right to privacy, which includes the protection of family life, home and correspondence. The ICCPR also guarantees the right to protection of honour and reputation. Although this right is not explicitly listed in the ECHR, the European Court of Human Rights (ECtHR) acknowledged a similar interpretation of the concept of privacy in its judgments.¹⁸⁸ According to ECtHR case law, privacy encompasses, *inter alia*, the physical and the moral in-

187 *Sl. glasnik RS*, 85/05.

188 See *Pfeifer v. Austria*, ECtHR, App. No. 10802/84, 25 February 2007 and *Lindon and Others v. France*, ECtHR, App. Nos. 21279/02 and 36448/02 (2007).

tegrity of a person, sexual orientation,¹⁸⁹ relationships with other people, including both business and professional relationships.¹⁹⁰ The ECtHR accepts a wider interpretation of the concept of privacy and considers that the content of this right cannot be predetermined in an exhaustive manner.¹⁹¹

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,¹⁹² the first binding international instrument on the protection of personal data. The States Parties to the Convention are obliged to undertake the necessary measures to ensure the legal protection of fundamental human rights with regard to the automatic processing of personal data. The Additional Protocol to the Convention, which Serbia also ratified,¹⁹³ obliges states to establish oversight authorities and regulates in greater detail the transborder flow of the personal data to a recipient, which is not subject to the jurisdiction of a party to the Convention.

The Constitution of Serbia guarantees the inviolability of physical and mental integrity (Art. 25), inviolability of the home (Art. 40), and confidentiality of letters and other means of communication (Art. 41). Although the Constitution does not include an explicit provision on the respect for the right to private life, the Constitutional Court of Serbia is of the view that this right is an integral part of the constitutional right to dignity and the free development of the personality,¹⁹⁴ enshrined in Article 23 of the Constitution.

The Constitution guarantees the right “to be informed” in Article 51, which prescribes that everyone shall have the right to access data in the possession of the state authorities and organisations vested with public powers and lays down that this right shall be exercised “in accordance with the law,” which means that the provisions protecting the right to privacy must be respected.

The Constitution includes a general provision guaranteeing the protection of personal data and prescribing that their collection, keeping, processing and use shall be regulated by the law and explicitly prescribes that the use of personal data for any other purpose save the one they were collected for shall be prohibited and punishable as stipulated by the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia. Under the Constitution, everyone shall have the right to be informed of personal data collected about him, in accordance with the law, and the right to court protection in case they are abused (Art. 42).

189 See *Dudgeon v. the United Kingdom*, ECtHR, App. No. 7275/76 (1981).

190 See *Niemitz v. Germany*, ECtHR, App. No. 13710/88 (1992).

191 See *Costello-Roberts v. the United Kingdom*, ECtHR, App. No. 13134/87 (1993) and *K. U. v. Finland*, ECtHR, App. No. 2872/02 (2008).

192 *Sl. list SRJ (International Treaties)*, 1/92 and *Sl. list SCG*, 11/05.

193 *Sl. glasnik RS (International Treaties)*, 98/08.

194 CC Decision No. UŽ-3238/2011, p. 9.

Apart from the protection afforded by the Constitution, the right to privacy is mainly protected by the Criminal Code, which incriminates specific forms of violations of the right to privacy in Articles 139–146, dealing with: inviolability of the home, unlawful search, unauthorised disclosure of secrets, violations of the confidentiality of letters and other mail, unauthorised wiretapping, recording and photographing, and unauthorised publication of another’s text, portrait or recording. The Criminal Code incriminates disclosure or dissemination of information about someone’s family circumstances that may harm his honour or reputation (Art. 172).

A judgment the European Court of Human Rights delivered in early 2016 in the case of *Bărbulescu v. Romania* is relevant to the workers’ privacy at the workplace.¹⁹⁵ The applicant had been dismissed by his employer, a private company, after it was established in disciplinary proceedings against him that he had used the company *Yahoo Messenger* account for private purposes. The ECtHR found no violation of Article 8 of the ECHR in this case, as the performed monitoring was limited in scope and proportionate. Namely, since the company only monitored the applicant’s communications via the company’s *Yahoo Messenger* account but not the other documents and data stored on his computer, the Court found that it was not unreasonable for an employer to want to verify that the employees are completing their professional tasks during working hours, wherefore it concluded that the employer had not violated the applicant’s right to respect for his private and family life enshrined in Article 8 of the Convention.

5.2. *Families and Family Life*

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.¹⁹⁶ It comprises a series of relationships, such as marriage, children, parent-child relationships,¹⁹⁷ and unmarried couples living with their children.¹⁹⁸ Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.¹⁹⁹ Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,²⁰⁰ parents and adopted children, grandparents and grandchildren.²⁰¹ Moreover, a family relationship may also exist in situations where there is no blood kinship, in which cases other criteria are to be taken into account, such as

195 See *Bărbulescu v/ Romania*, ECtHR, App. No. 61496/08 (2016).

196 See *K. v. the United Kingdom*, ECmHR, App. No.11468/85 (1991).

197 See *Marckx v. Belgium*, ECmHR, App. No. 6833/74 (1979).

198 See *Johnston v. Ireland*, ECmHR, App. No. 9697/82 (1986).

199 See *Keegan v. Ireland*, ECmHR, App. No. 16969/90 (1994).

200 See *Boyle v. the United Kingdom*, ECmHR, App. No. 16580/90 (1994).

201 See *Bronda v. Italy*, ECtHR, App. No. 22430/93 (1998).

the existence of a genuine family life, strong personal relations and the duration of the relationship.²⁰²

The Constitution does not include a provision protecting the family within the right to privacy and merely deals with the family from the aspect of society as a whole. Under Article 66(1), “the family, mothers, single parents and children (...) shall enjoy special protection.”

Article 63 of the Constitution guarantees the right to freely decide whether or not to have children. The fact that this right is guaranteed “to all” is disputable. The question arises how one can guarantee this right to the prospective father, if the mother decides not to have the baby (a right she is guaranteed under this Article).

The Constitution guarantees everyone the right to freely enter and dissolve a marriage and prescribes that entry into and the duration and dissolution of a marriage are based on spousal equality (Art. 62). The Constitution also lays down that a marriage is valid only with the freely given consent of a man and woman, whereby it effectively renders any legislation allowing homosexual marriages unconstitutional. Although the regulation of this issue is within the jurisdiction of states, the question arises whether it had been necessary to establish it as a constitutional principle, thus impeding any legislative changes. This solution is particularly problematic in cases in which one spouse had undergone a sex change, such as a case the Constitutional Court reviewed.²⁰³ These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

The procedure of entering a marriage in Serbia is administrative in character and relatively simple. Although the Family Act legally equated marital and extra-marital unions, numerous regulations governing individual rights arising from family relations have not been aligned with this legal norm yet.

The provisions of the Family Act²⁰⁴ are in accordance with international standards in terms of the right to privacy. The Act prescribes that everyone has the right to the respect of family life (Art. 2 (1)). It also guarantees the children’s right to maintain personal relationships with the parents they are not living with, unless there are reasons for partly or fully depriving those parents of parental rights or in case of domestic violence (Art. 61). The children are also afforded the right to maintain personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia taking into account the parents’ interests in their children’s education, as it entitles them to provide their children with education in keeping with their ethical and religious convictions (Art. 71).

202 See *X., Y. and Z. v. the United Kingdom*, ECtHR, App. No. 21830/93 (1997). In its judgment in the case *Schalk and Kopf v. Austria*, ECtHR, App. No. 30141/04 (2010), the ECtHR for the first time took the view that a stable relationship between two persons of the same sex living together fell under the scope of family life protected under Article 8.

203 CC Decision UŽ-3238/2011.

204 *Sl. glasnik RS*, 18/05 and 72/11.

One of the cases of the babies that went “missing” from Serbian maternity wards was reviewed by the European Court of Human Rights.²⁰⁵ In its judgment, the ECtHR ordered Serbia to take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant’s within one year from the date the judgment became final and said that this mechanism should be supervised by an independent body.

This mechanism had not been established by the end of 2016 although the one-year deadline the ECtHR gave Serbia expired on 9 September 2014.

Despite the enhanced supervision of the execution of the judgment in the case of *Zorica Jovanović v. Serbia*²⁰⁶ by the Council of Europe Committee of Ministers and the state’s assurances that a law would be adopted by the end of 2016 at the latest, Serbia neither enforced the part of the decision on the forming of a mechanism to establish the fate of the new-borns believed to have gone missing from maternity wards in Serbia nor adopted the law by the end of the reporting period. The working versions of the draft law on the procedure for establishing facts about the status of new-borns suspected to have gone missing in the maternity wards in the republic of serbia still leave various issues outstanding, particularly the investigative powers of the authorities that will be conducting the investigations and the provisions on the supervision of the mechanism the forming of which was ordered by the European Court of Human Rights. The authorities in 2016 ceased their regular consultations with the parents of the missing babies and did not involve them in the drafting of the law.

During the public debate, associations of parents took the view that the preliminary draft of the law on missing babies was unacceptable and called on the Serbian Government to withdraw it.²⁰⁷ The Government nevertheless submitted the Draft Act on the Procedure for Establishing Facts about the Status of New-Borns Suspected to Have Gone Missing in the Maternity Wards in the Republic of Serbia²⁰⁸ to parliament for adoption on 31 October 2016. Under the Draft Act, a separate non-contentious procedure shall be instituted to establish the facts on the status of the missing babies and grant just satisfaction amounting to 10,000 EUR to the parents whose right to a family life was violated. The parents of the missing babies,

205 *Jovanović v. Serbia*, ECtHR, App. No. 21794/08 (2013). More about the judgment in the *2015 Report*, II.5.2.

206 Available at: http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Zorica+Jovanovic+&StateCode=SER&SectionCode=ENHANCED+SUPERVISION.

207 Available in Serbian at: http://www.danas.rs/danasrs/drustvo/povuci_zakon_o_nestalim_bebama_i_deci.55.html?news_id=306896.

208 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2674-16.pdf.

for their part, believe that the law is inadequate and will not help ascertain what really happened to their new-borns.²⁰⁹

5.3. Confidentiality of Correspondence

Article 41 of the Constitution guarantees the right to confidentiality of letters and other means of communication and allows for derogations from this right only on the order of the court and if such derogations are necessary to conduct criminal proceedings or protect the security of the state in the manner prescribed by the law. State interference in the confidentiality of correspondence and other means of communication may be only temporary. The Constitution, unfortunately, does not specify that measures infringing on the confidentiality of communication must be necessary in a democratic society. The Constitutional Court has, however, introduced this standard in the Serbian legal system by referring to Article 8 of the ECHR and ECtHR's case law in its Decision²¹⁰.

Provisions of laws²¹¹ governing the surveillance of communication have been the subject of many polemics in the past few years. In the past four years, the Constitutional Court of Serbia declared unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency, the Electronic Communications Act and the Security Information Agency Act that were not in compliance with the constitutionally proclaimed right to confidentiality of letters and other means of communication. The National Assembly reacted by amending the disputed provisions and bringing them into conformity with the Constitution.²¹² The National Assembly deviated from its practice of waiting for the Constitutional Court to declare legal provisions unconstitutional before amending them and itself initiated the amendment of the provisions of the Criminal Procedure Code – challenged in a motion filed with the Constitutional Court and challenging the compatibility of these provisions with Article 41 of the Constitution. These provisions would have most certainly been declared unconstitutional by the Constitutional Court, in view of its case law.²¹³

The relevant legal framework was thus aligned with Article 41 of the Constitution, bringing Serbia closer to putting in place the pre-conditions for the unimped-

209 See the *NI* report of 12 November 2016, available in Serbian at: <http://rs.n1info.com/a207592/Vesti/Vesti/Sta-su-nedostaci-predlozenog-zakona-o-nestalim-bebama.html>.

210 CC Decision IUz 1245/10.

211 The Act on the Military Security Agency and the Military Intelligence Agency (*Sl. glasnik RS*, 88/09 and 55/12 – CC Decision), the Electronic Communications Act (*Sl. glasnik RS*, 44/10, 60/13 – CC Decision and 62/14), the Criminal Procedure Code (*Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), and the Security Information Agency Act (*Sl. glasnik RS*, 42/02, 111/09, 104/13, 65/14 – CC Decision and 66/14).

212 See the *2014 Report*, II.6.4.

213 *Ibid.*

ed realisation of the right to confidentiality of letters and other means of communication. Problems in this area, however, persisted. On the one hand, neither the valid Electronic Communications Act nor the 2016 Draft Electronic Communications Act are in compliance with EU standards. On the other hand, problems have arisen in the enforcement of the Electronic Communications Act, notably some of the entities have not complied with their obligations under the Act.

Following a series of terrorist attacks in London and Madrid, the European Union in 2006 adopted the Data Retention Directive 2006/24/EC,²¹⁴ which, inter alia, lay down the operators' obligation to retain data on their users' communications, enabling the state authorities to access the data of all electronic communication users at any time. Serbia in 2010 adopted the Electronic Communication Act, which did not include even minimal legal safeguards regarding access to retained data.²¹⁵ This Act differently treated the content of the users' communications and access to the retained data: it required a court order for access to data on the content of the users' communications whereas, in respect of access to the retained data, it referred to other laws (the Criminal Procedure Code, the laws on the Security Information Agency and the Military Intelligence Agency, etc.), under which other state authorities were entitled to order access to the retained data without a court order.²¹⁶

The impugned provision of the Electronic Communications Act ceased to be effective in 2013, after the Constitutional Court found that lack of judicial control over access to retained data was unconstitutional.²¹⁷ The problem was not fully resolved, however, as data retention itself became problematic at that moment. The filing of an initiative to review the compliance of Directive 2006/24/EC with the EU Charter of Fundamental Rights with the European Court of Justice coincided with the public debate on the draft amendments to the Electronic Communications Act in 2013.

One of the controversial issues was whether the retention of the users' data amounted to a disproportionate interference in the right to privacy as a fundamental human right. Experts, notably the organisation *SHARE Defense*, warned during the public debate on the draft amendments that the formulation of the provisions on the manner of data retention in the draft was problematic. Another issue that arose was whether Serbia should insist on the data retention obligation in light of strong indications that the EU would abandon it in the near future.²¹⁸

In April 2014, the European Court of Justice declared Directive 2006/24/EC invalid and took the view that retention of communication data under the Directive

214 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF>.

215 See the *2012 Report*, 2012, II 6.4.

216 *Ibid.*

217 More on the Constitutional Court Decision in the *2013 Report*, II.6.4.

218 Available in Serbian at: http://www.shareconference.net/sites/default/files/u741/komentar_share_na_nacrt_zakona_o_izmenama_i_dopunama_zakona_o_elektronskim_komunikacijama.pdf.

interfered in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data.²¹⁹ During the ongoing public debate on the draft amendments, the Serbian experts thus warned that the legislator had to take the decision of the European Court of Justice into account.²²⁰ They stressed that Serbia needed to immediately repeal the data retention provisions in the Electronic Communications Act, because they had been introduced in the national legal order because of the impugned Decision.²²¹ The Act Amending the Electronic Communications Act²²² was nevertheless adopted in June 2014; the data retention provisions remained intact despite the numerous warnings of the experts.

Although more than two years have passed since the European Court of Justice invalidated the Directive, Serbia still has not taken into account its views on the retention of the users' data and the realisation of the right to privacy and confidentiality of correspondence. The legislator opened a public debate on the Preliminary Draft of a new Electronic Communications Act in the latter half of 2016.²²³ The bill is novel in many respects, but its transitional and final provisions lay down that the provisions of the valid Electronic Communications Act shall apply until a law governing lawful data interception and retention is adopted; these provisions rely on the invalidated EU Directive.

The enforcement of these provisions has led to problems in practice. The amendments to the Electronic Communications Act²²⁴ introduced the obligation of electronic communication operators to retain the communication data and the obligation of the competent state authorities accessing them to keep records of requests to access them during the calendar year and their obligation to forward those annual records to the Commissioner by 31 January of the following calendar year at the latest. These records are to specify the number of submitted requests for access to the retained data, the number of granted requests and the time from the day the data were retained to the day access to them was sought under Article 128(2) of the Electronic Communications Act.²²⁵

The state authorities with access to the retained data (the Security Information Agency, the Ministry of Internal Affairs and the Military Security Agency) fulfilled their legal obligation in 2016. However, only 34 of approximately 187 elec-

219 Available at: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf>.

220 Available in Serbian at: <http://www.shareconference.net/sh/defense/back-drawing-board-direktiva-o-zadrzavanju-podataka-nevazeca>.

221 *Ibid.*

222 *Sl. glasnik RS*, 44/10, 60/13 – CC Decision and 62/14.

223 The Preliminary Draft is available in Serbian at: http://www.paragraf.rs/nacrti_i_predlozi/151116-nacrt_zakona_o_elektronskim_komunikacijama.html.

224 Article 130a of the Electronic Communications Act.

225 Under Article 128(2) of the Electronic Communications Act, access to the retained data is not permitted without the users' consent, except for a specific period of time and pursuant to a court decision provided that such access is necessary to conduct criminal proceedings or ensure the protection and safety of the Republic of Serbia.

tronic communication operators retaining communication data forwarded the annual records to the Commissioner in accordance with the law.²²⁶ In February 2016, the Commissioner for Information of Public Importance and Personal Data Protection wrote to the Ministry of Trade, Tourism and Telecommunications, which is charged with overseeing the enforcement of the Electronic Communications Act, asking it to perform a check of the operators which had defaulted on their obligation under the law and to ascertain whether they kept any records of requests for access to the retained data and, why they had not forwarded them to the Commissioner as stipulated by the law.²²⁷

The Draft Rulebook on Technical Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication and Retention of Electronic Communication Data, which prompted much debate in 2011 and 2012, had not been adopted at the insistence of the Commissioner and some experts, because it relied on the provisions of the Electronic Communications Act that were subsequently declared unconstitutional.²²⁸ This draft by-law, going by a somewhat different name (Draft Rulebook on Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication and Technical Requirements for the Fulfilment of the Obligation on the Retention of Electronic Communication Data) was also criticised by the Commissioner. It was adopted in October 2015²²⁹ despite the Commissioner's warnings that some of its provisions were problematic.²³⁰

6. Personal Data Protection and Protection of Privacy²³¹

6.1. *General*

Article 42 of the Constitution of the Republic of Serbia guarantees the protection of personal data and sets out that the collection, storage, processing and use of personal data shall be governed by the law. It further lays down that the use of personal data for any purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia, in

226 See the Commissioner's press release available at: <http://www.poverenik.rs/en/press-releases-and-publications/2292-nuzna-odgovornost-za-izvravanje-obaveza-iz-zakona-o-elektronskim-komunikacijama.html>.

227 *Ibid.*

228 See the *2014 Report*, II.6.4.

229 *Sl. glasnik RS*, 88/15.

230 More in the *2012 Report*, II 6.4.

231 More on the work of the Commissioner for Access to Information and Personal Data Protection in I.5.3.2.

a manner stipulated by the law. Everyone is entitled to be informed about the personal data collected about him, in accordance with the law, and to court protection in case of their abuse.

The Personal Data Protection Act (hereinafter PDPA)²³² is the main law regulating this field. This law governs the conditions for collecting and processing personal data, the rights and protection of the persons (data subjects) whose data are collected and processed, restrictions of personal data protection, the procedure for protecting personal data before the competent authority, data safety, personal data records, transfer of data outside the Republic of Serbia and monitoring of the enforcement of this law.

Under the PDPA, personal data shall mean any information about a natural person, regardless of its form or format, the carrier of information (paper, tape, film, electronic medium, et al.) or at whose order, in whose behalf or for whose account it is stored. Information about a natural person shall constitute personal data regardless of the time of creation, place of storage or the means by which they were obtained or of any other features of such data.²³³ The purpose of collecting data must be specified in advance and clearly. The Act distinguishes between processing of personal data with the consent of the data subject and in accordance with an authority's legal remit. The data subject whose consent for processing his data is sought shall be clearly notified in advance of the purpose of the data processing and is entitled to subsequently withdraw his consent. Personal data may be processed without the data subject's consent in specific instances.²³⁴ The grounds for processing personal data have been set very broadly and the Act allows public authorities to process personal data without the subjects' consent in a large number of instances.²³⁵

The realisation of the right to personal data protection was brought into question ever since the PDPA was adopted in 2009, wherefore it may be concluded that the state is not interested in governing the field of personal data protection in a systemic manner that would provide for the enjoyment of this right enshrined in

232 *Sl. glasnik RS*, 97/08, 104/09, 68/12 – CC Decision and 107/12.

233 Article 3, PDPA.

234 Article 12 of the Personal Data Protection Act allows the processing of a person's data without his consent in three instances: in case of an overriding vital interest, particularly the life, health or physical integrity of the data subject or another person prevails, for the purpose of fulfilling obligations specified in a law, in an enactment adopted in accordance with the law or a contract concluded between the data subject and the controller, and for the purpose of preparing the conclusion of a contract and in other instances specified in the Act to achieve an overriding justified interest of the subject, controller or user.

235 Under Article 13 of the PDPA, a state authority may process personal data without the consent of the data subject if such processing is necessary to perform the legally-defined duties within its purview laid down in the law or another regulation with the aim of achieving the interests of national or public security, state defence, prevention, detection, investigation and prosecution of criminal offences, economic or financial interests of the state, protection of health and morals, protection of rights and freedoms and other public interests, and in other cases with the written consent of the data subject.

the Constitution.²³⁶ Such a conclusion is corroborated by the fact that the relevant authorities have not adopted an action plan for the implementation of the Personal Data Protection Strategy enacted in mid-2010, that numerous provisions of other laws adopted before the PDPA have not been aligned with it and that many of the personal data controllers and processors lack the knowledge they need to perform their duties adequately.

Under the Chapter 23 Action Plan, a new Personal Data Protection Act is to be prepared in accordance with the Model Act prepared by the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner) and by-laws governing in detail the enforcement of that law and raising the capacities of the Commissioner's staff pursuant to the valid rulebook on the staffing and internal organisation of his Office, as well as an analysis of the needs to strengthen the Office's staffing capacities in view of its new competences.

In March 2016, the Commissioner qualified Serbia's Chapter 23 negotiating position regarding personal data protection as inferior to Serbia's real needs. He said the Chapter 23 Action Plan ignored the need to adopt an action plan for the implementation of the Personal Data Protection Strategy, enacted nearly seven years ago, and warned that the adoption of a new personal data protection law was put off yet again. The Commissioner also warned that some views and statements in the Chapter 23 Action Plan did not reflect the facts and the actual state of affairs.²³⁷

No substantial headway in implementing Chapter 23 Action Plan activities regarding personal data protection was made in 2016. The Report on the Implementation of the Chapter 23 Action Plan No. 4/2016²³⁸ states that the Working Group continued drafting the new personal data protection law and that the Ministry of Justice will engage an expert to assist the Group and draft a report on the compatibility of the new legal framework. The Report also says that the employment of nine new members of staff will improve the human resource capacities of the Commissioner's Office, now staffed by 71 full-time employees.

Having realised that rapid technological developments and globalisation have brought new challenges for the protection of personal data, the European Parliament adopted Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data in April 2016 (hereinafter Regulation 2016/679).²³⁹ The Regulation repeals Directive 95/46/EC, better known as the General Data Protection Regulation. Since

236 More on the deficiencies in the enforcement of data protection regulations in the *2014 Report*, III.7.1.

237 See the Commissioner's press release of 17 March 2016, available at: <http://www.poverenik.rs/en/press-releases-and-publications/2320-polazna-pozicija-za-poglavlje-23-los-inferioran-pristup-zastiti-podataka-o-licnosti.html>.

238 Available in Serbian at: <http://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%204-2016%20o%20sprovo%C4%91enju%20akcionog%20plana%20za%20Poglavlje%2023.pdf>.

239 European Parliament and Council Regulation 2016/679 of 24 April 2016.

the Chapter 23 Action Plan states that the legislator shall ensure that the new personal data protection law is in compliance with Regulation 2016/679, the text below will highlight the provisions in the current Preliminary Draft Act that differ from those in the Regulation.

The Preliminary Draft provisions on the consent of the data subjects to the processing of their personal data are more limited than those in the Regulation.²⁴⁰ Under the Preliminary Draft, data subjects may give their consent in writing, orally for the record or in electronic format with a qualified electronic signature. This leaves out numerous situations in which persons are asked to consent to the processing of their personal data. Under Regulation 2016/679, consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement. This could include ticking a box when visiting an internet website, choosing technical settings for information society services or another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data.

First, the Preliminary Draft allows the processing of the personal data without the consent of the data subject when such processing is necessary for the purposes of the justified interests pursued by the controller, recipient, processor or a third party, if the necessity of such processing overrides the necessity of protecting the data subject's fundamental rights and freedoms. Under Regulation 2016/679, processing without the consent of the data subject shall be lawful in the event it is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. The Preliminary Draft evidently expands the list of persons that may process a data subject's personal data without his consent by including the data processors.

Second, the Preliminary Draft defines special data ("particularly sensitive data" in the valid PDPA) as data revealing the data subject's race, racial or ethnic origin, national affiliation, political opinions, religious or philosophical beliefs, trade union membership, state of health, sex life, sex, gender identity, personal identification number, his biometric data, criminal and misdemeanour records data, juvenile records data and genetic data, and data revealing whether he receives welfare benefits or is a victim of violence. The Explanatory Note states that personal identification numbers are defined as special data because they include information on the basis of which the data subjects' sex may be ascertained. However, Article 9 of Regulation 2016/679 does not include sex among special categories of personal data.

240 More in the 2015 Report, II.6.1.

6.2. Other Provisions Relevant to Personal Data Protection

Provisions relevant to personal data protection can also be found in other laws and regulations, notably those governing labour, tax procedures and the tax administration, health, the banking sector, education, advertising, etc. The PDPA is the main law governing personal data protection and it sets out the relevant principles. These principles should be elaborated by all the other laws governing various fields (security, education, health, labour, economy...). Few, however, do.

Furthermore, some issues, such as video surveillance, direct marketing, security checks and biometric data, which have major impact on personal data protection, remain unregulated, wherefore there is still a lot of room for abuse and violations of the right to privacy.

The Classified Information Act,²⁴¹ adopted in 2009, was to have fully regulated the issue of classified information in Serbia. It is a corollary law that replaced the normative “dispersion” which characterised the situation in this field. The Act, *inter alia*, defines classified information and the different degrees of confidentiality and specifies the authorities charged with enforcing this Act and overseeing its enforcement.²⁴² However, numerous problems in this field persist although six years have passed since it came into force.

The deadline by which the other laws and by-laws were to have been aligned with the Classified Information Act has been exceeded a long time ago, wherefore “new” and “old” provisions governing this area are still valid in Serbia, often leading to absurd situations. For instance, the Criminal Code, which has been amended several times since the Classified Information Act came into force, still includes the crimes of disclosure of official and military secrets, although the Act provides for the following degrees of confidentiality: state secret, confidential, strictly confidential and for internal use.²⁴³

The confusion caused by the new degrees of confidentiality, i.e. the competent authorities’ failure to align the provisions of some laws with the Classified Information Act, is visible also in the Civil Servants Act,²⁴⁴ which has also been amended a number of times since the Classified Information Act was adopted. Under Article 23 of the Civil Servants Act, civil servants and employees are under the duty to maintain the confidentiality of state, military, official and trade secrets in accordance with separate regulations. Although the Classified Information Act lays down the obligation of state authorities to process and review data and documents classified as confidential under the previous regulations within two years from the

241 *Sl. glasnik RS*, 104/09.

242 Notably, the National Security and Classified Information Protection Council and the Ministry of Justice.

243 Article 8 of the Classified Information Act.

244 *Sl. glasnik RS*, 79/05, 81/05 – corr., 83/05 – corr., 64/07, 67/07 – corr., 116/08, 104/09 and 99/14.

day of its adoption, “there is still a large number of documents that were given in a certain period or moment the designation of confidentiality for which the need existed at that point of time, but which was never reviewed later or abolished once the reasons for this had ceased to exist.”²⁴⁵

One of the many dilemmas has also arisen with respect to Article 23 of the Security Information Agency Act, under which SIA staff are under the duty to maintain the confidentiality of SIA data constituting a state, military, official or trade secret, methods, measures and actions representing or comprising such secrets, as well as other data the disclosure of which would incur damage to the interests of natural or legal persons or hinder the successful performance of SIA duties. The question as to why trade secrets²⁴⁶ have been classified as state secrets arises if one bears in mind the definition of classified information in the Classified Information Act, as data or documents in the possession of public authorities regarding the territorial integrity and sovereignty of Serbia, the protection of its constitutional order, human and minority rights and freedoms, national and public security, defence, internal and foreign affairs.

In late April 2016, the Serbian Government enacted amendments to the Decree on Office Operations of Public Administration Authorities, introducing a new degree of confidentiality: “official” for “documents that are sensitive in character and warrant limited distribution”. The Anti-Corruption Council said in its Report²⁴⁷ that by amending the Decree, the Government “went beyond the uniform data confidentiality system prescribed by the law and introduced another degree of confidentiality – ‘official’, albeit in the absence of criteria for identifying information that is ‘sensitive in character and warrants limited distribution’ and without specifying to whom such information may be distributed. The Council held that the provision amounted to a gross violation of the Classified Information Act and the Constitution. The Council filed an initiative with the Constitutional Court seeking a review of the constitutionality and legality of the Decree. The Commissioner for Information of Public Importance sent a letter to the Prime Minister, in which he, inter alia, stressed that, under Article 51 of the Constitution, everyone had the right to be informed and the right of access to information kept by state authorities and

245 Center for Euro-Atlantic Studies Analysis of the Classified Information Act, available at: http://ceas-serbia.org/root/images/CEAS_analiza_-_Zakon_o_tajnosti_podataka_-maj_2015_eng.pdf.

246 The Trade Secrets Act (*Sl. glasnik RS*, 72/11) defines a trade secret as information of commercial value, because it is not generally known or available to third parties who could gain economic benefits from its use or disclosure, which the holder of such information protects by adequate measures, in accordance with the law, business policy, contractual obligations or relevant standards with a view to preserving its confidentiality, and the disclosure of which to third parties could incur damages to the holder of the trade secret.

247 The Report is available at: <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/IZVE%C5%A0TAJ%20O%20NEZAKONITOM%20ODRE%C4%90IVANJU%20TAJNOSTI%20PODATAKA%20ENG.pdf>.

organisations vested with public powers *in accordance with the law*²⁴⁸ and that the Constitution was clearly violated because an issue of relevance to the realisation of the right to be informed was governed by a Decree, which was a by-law, not a law. Public criticisms and pressures resulted in the Government amending the Decree and deleting the impugned provision in Article 10.²⁴⁹

The media have over the past few years been in the habit of publishing the personal data of citizens, mostly for daily politicking reasons, even data the PDPA qualifies as particularly sensitive. The trend continued in 2016.

For instance, National Assembly deputy Marijan Rističević, who also sits on the Republican Health Insurance Fund (RHIF) Management Board, on 16 November published on his Twitter account how much money the RHIF paid for the medical treatment of DS deputy Dejan Nikolić's daughter abroad. The Tweet prompted a debate on the issue in the National Assembly, which continued the next day. The Commissioner for Information of Public Importance and Personal Data Protection performed an oversight exercise on the RHIF's compliance with the PDPA and issued it a warning²⁵⁰, stating that, although its Management Board members did not have access to the personal data of health insurance beneficiaries, deputy Rističević obtained the information informally, by phoning the relevant RHIF officials twice and asking them to reveal the data about Nikolić's underage daughter. The Commissioner warned the RHIF of the irregularities in the processing of the personal data of the girl and her parents, health insurance beneficiaries, which its staff made available to Management Board member and deputy Rističević in violation of the law. He ordered the RHIF to notify him within a fortnight of the measures it had undertaken and the activities it planned to implement to eliminate the identified irregularities in the processing of personal data. At the end of 2016, the RHIF notified the Commissioner it would act as instructed in the warning and that it had sent a letter to all heads of departments about their obligations to act in compliance with the PDPA and apply the prescribed personal data protection measures and to notify all their staff handling such data that they had to respect the provisions of that law.²⁵¹

The Commissioner in May 2016 issued a press release alerting to the increasing disclosure of data on people's state of health, which are categorised as

248 The Commissioner's letter is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2420-pravo-na-pristup-informacijama-u-posedu-vlasti-ne-moze-se-quredjivati-q-uredbama.html>.

249 *Sl. glasnik RS*, 98/16.

250 The Commissioner's warning of 6 December 2016 is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2496-poverenik-upozorio-rfzo.html>.

251 "Commissioner Receives RHIF's Reply," *Danas*, 21 December 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=334970&title=Poverenik+dobio+odgovor+RFZO.

particularly sensitive data, by print and electronic media²⁵² in which he, inter alia, said that the publication of data on the health of individuals in print and electronic media was “in extremely concerning, almost grotesque, contradiction with these provisions²⁵³”. He appealed to the media to comply with their own Press Code of Conduct and refrain from publishing information violating the privacy of the citizens. The Commissioner in particular warned the state authorities and medical institutions (the potential sources of such data in the vast majority of cases) of their liability for such violations under the law.

7. Freedom of Thought, Conscience and Religion

7.1. *General*

The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR and Article 18 of the ICCPR. The Constitution of Serbia states that Serbia is a secular state and prohibits the establishment of a state religion (Art. 11), regulates the issue of individual religious freedoms and freedom of thought and explicitly guarantees the right to change one’s religion or belief and the right to manifest one’s religion in religious worship, observance, practice and teaching and to manifest religious beliefs in private or public (Art. 43). Under the Constitution, no one is obliged to declare his or her religion or beliefs. The Constitution explicitly guarantees parents the right to freely decide on their children’s religious education and upbringing. The Constitution enshrines the freedom of religious organisation (Art. 44) and the right to conscientious objection (Art. 45).²⁵⁴

Freedom of manifesting a religion or a belief may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent incitement of religious, national, and racial hatred. The Constitution also lays down that no-one is obliged to declare his religion or beliefs and guarantees parents the right to freely decide on their children’s religious education and upbringing. The freedom of religious organisation is governed in the provisions of the Constitution on the status of church and religion, i.e. the equality of churches and religious communities (Art. 44).

252 The Commissioner’s press release of 10 May 2016 is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2356-zakon-o-pravima-pacijenata-veliki-raskorak-izmedju-prava-i-stvarnosti.html>.

253 Provisions of the Patients’ Rights Act and the Personal Data Protection Act.

254 Compulsory army service was abolished as of 2011 and the Army of Serbia has been fully professionalised. See more in II.7.6.

The administrative duties regarding the state's cooperation with churches and religious communities are performed by the Ministry of Justice Directorate for Co-operation with Churches and Religious Communities.

7.2. Status of Religious Communities and Exercise of the Right to Freedom of Thought, Conscience and Religion

The Constitution guarantees the equality of all religious communities, the freedom of religious organisation and collective manifestation of religion and the autonomy of religious communities (Art. 44). The Anti-Discrimination Act also prohibits religious discrimination. Under the Anti-Discrimination Act, religious discrimination shall occur when the principle of freedom of professing one's religious beliefs is breached, i.e. in the event a person or a group are denied the right to adopt, maintain, express or change their religious beliefs, or the right to privately or publicly express or act in accordance with their beliefs (Art. 18).

The Act on Churches and Religious Communities²⁵⁵ guarantees the equality of all religious communities before the law (Art. 6). This law, however, distinguishes between four categories of churches. The first group comprises the traditional churches and religious communities granted that status under various laws passed in the Kingdom of Serbia (Kingdom of Serbs, Croats and Slovenes, later Kingdom of Yugoslavia): the Serbian Orthodox Church, the Roman Catholic Church, the Slovak Lutheran Church, Reformed Church, Evangelical Christian Church and the Islamic and Jewish communities. The second group comprises confessional communities, the legal status of which was regulated by application submitted in accordance with the federal Act on the Legal Status of Religious Communities²⁵⁶ and the republican Act on Legal Status of Religious Communities.²⁵⁷ The third group includes new religious organisations. The fourth group, which the Act does not mention but establishes implicitly, comprises all those unregistered religious communities.²⁵⁸

Under the Act, churches and religious communities are under the obligation to register. The registration procedure is governed in detail by the Rulebook on the Register of Churches and Religious Communities.²⁵⁹ Both the Act and the Rulebook provoked harsh criticisms as soon as they were adopted and several initiatives and motions had been submitted to the Constitutional Court of Serbia to review the

255 *Sl. glasnik RS*, 36/06.

256 *Sl. list FNRJ*, 22/53, *Sl. list SFRJ*, 10/65.

257 *Sl. glasnik SRS*, 44/77, 12/78, 45/85 and 12/80.

258 A comprehensive overview of the problematic provisions in the Act on Churches and Religious Communities is available in the *2011 Report*, I.4.

259 *Sl. glasnik RS*, 64/06.

constitutionality of their provisions. The Court in the meantime rejected and dismissed these motions and initiatives as inadmissible.²⁶⁰

The Chapter 23 Action Plan envisages the implementation of a detailed comparative law analysis of the status of churches and religious communities. The planned analysis will focus on states bordering the Republic of Serbia that have fulfilled EU accession criteria. The Action Plan also envisages the launch of a dialogue with the Serbian Orthodox Church to encourage the use of minority languages in religious services.

With a view to identifying the Action Plan obligations, the Directorate for Cooperation with Churches and Religious Communities conducted an analysis of the state of religious rights, in which it concluded that the recommendation in the Screening Report – to ensure state neutrality towards the internal affairs of religious communities and further ensure that the right of persons belonging to a national minority to equal access to religious institutions, organisations and associations is consistently guaranteed in both legislation and its implementation in line with independent bodies recommendations – has been fulfilled within the reform process and during the preparation of the Action Plan.

In the section on freedom of thought, conscience and religion of its Serbia 2016 Report,²⁶¹ the European Commission said that these constitutionally guaranteed rights were generally respected. It said that incidents related to religion have continued to decline. It noted that the lack of transparency and consistency in the registration process continued to be one of the main obstacles preventing some religious groups from exercising their rights. It also said that the contested provisions of the Rulebook on the Register of Churches and Religious Communities have not been changed and that access to church services in some minority languages were not fully guaranteed across Serbia.

The BCHR also alerted to this issue in its prior Annual Reports, notably the excessively high threshold of founders needed to register a religious community in the Register. Namely, all religious communities except traditional ones, need to supplement the decision on their establishment with a list of the signatures of the founders accounting for at least 0.001% of Serbia's adult citizens residing in Serbia according to the official census of the population, or of foreign nationals permanently residing in the territory of the Republic of Serbia. Furthermore, they must submit overviews of their main religious teachings, religious rites and religious goals, whereby they are practically forced to declare their religious beliefs.²⁶² Precisely the impugned provision in Article 18 of the Act on Churches and Religious Communities provides the executive authorities with the opportunity to assess the quality of the religious teachings, rites and goals during the registration procedure,

260 More in the *2014 Report*, II.8.2.

261 Serbia 2016 Report, section 5.23.

262 More in the *2012 Report*, II.7.2.

which is absolutely inadmissible from the viewpoint of the freedom of thought and religion and has a restrictive effect on the freedom of religious organisation.

7.3. Financing of Religious Communities and the Relationship between the State and the Church

The Act on Churches and Religious Communities allows the state to extend financial aid to churches and religious communities.²⁶³ This aid may take various forms. First, the state may grant churches and religious communities funding from the state budget, by subsidising the pension, social and health insurance of the priests and clerical officers.²⁶⁴ Under the Act, churches and religious communities may also be exempted from paying taxes.²⁶⁵ Verified and accredited religious educational institutions are entitled to budget funding proportionate to the size of their congregations.²⁶⁶ The Act also allows the authorities to subsidise cultural and scientific institutions and programmes of churches and religious communities.²⁶⁷

The principle of neutrality does not prohibit such a practice as long as it is conducted at least approximately in proportion to the size of the religious community at issue and the number of its believers. A large share of budget funding allocated to aid churches and religious communities is clearly extended to the Serbian Orthodox Church, given that the vast majority of Serbia's citizens are Serbian Orthodox, or at least declare themselves as such. Religious communities are allocated funding in proportion to the number of their believers according to the Census – most of the funding goes to the Serbian Orthodox Church (87.7%), the Roman Catholic Church (around 5%) and the Islamic Community (around 3%).

The national Pension and Disability Insurance Fund has been subsidising 50% of the pension and disability insurance contributions for priests and clerical officers since 2012.

Slightly less than one billion RSD were allocated in Serbia's 2017 budget to the Directorate for Cooperation with Churches and Religious Communities; 62 million RSD are to be spent on support to the work of priests and clerical officers and 260 million RSD to subsidise their pension, disability and health insurance, while 279 million RSD are designated for the protection of cultural heritage and support to the Serbian Orthodox Church and its cultural activities in Kosovo.²⁶⁸

263 Article 28(2).

264 Article 29 (2 and 3).

265 Article 30.

266 Article 36(2).

267 Article 44.

268 The Budget Act is available in Serbian at: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2016/3081-16.pdf>.

Churches and religious communities have also been raising funds from donors; these funds may be tax-exempted. Churches and religious communities also earn revenue from extending church and religious services. They are not under the obligation to publish their financial statements.²⁶⁹ Under the Value Added Tax Act²⁷⁰ registered churches and religious communities are exempted from paying taxes on services religious in character. They are also exempted from paying taxes on their main religious activities and are entitled to reclaim VAT on the goods they use in religious services. Whereas both traditional and other confessional and registered churches and religious communities are exempted from paying property tax,²⁷¹ only traditional churches and religious communities are exempted from paying VAT.²⁷²

The described status of religious communities has met with criticism in view of their quite high revenues.²⁷³ Serbian Patriarch Irinej said in early 2017 that the Serbian Orthodox Church would start paying taxes once the state returned to it all its property. He thanked the state for returning part of the SPC's property in kind, but specified the SPC would insist on just compensation for its former property that had been sold and that it was discussing substitutional restitution with the institutions and that he expected of the state to address the remaining issues.²⁷⁴

7.4. Restitution of Property of Religious Organisations²⁷⁵

The Act on the Restitution of Property to Churches and Religious Communities²⁷⁶ regulates the restitution of the property in Serbia to the churches and religious communities and their foundations and societies that had been taken away from them in accordance with the agrarian reform, nationalisation, sequestration and other regulations passed and adopted since 1945 and any other legislation and for which they had not received compensation reflecting the market value of such property. The Act provides for the restitution of real estate and movable property of cultural, historical or artistic relevance that had been in the possession of the churches and religious communities at the time it was taken away. The Act does not

269 See: <http://www.kreativnisvetbalkana.net/srpska-pravoslavna-crkva-dobija-iz-budzeta-a-neceda-placa-porez/>.

270 *Sl. glasnik RS*, 84/04, 86/04 – corr., 61/05, 61/07, 93/12, 6/14, 68/14 – other law, 142/14, 5/15, 5/16 and 108/16.

271 Art. 12(1(3)), Property Tax Act.

272 Art. 55, Value Added Tax Act.

273 More is available in Serbian at: <http://www.dnevne.rs/drustvo/ne-placa-ni-porez-na-imovinu-ni-pdv-crkva-godisnje-zaradi-140-miliona-evra>.

274 More is available in Serbian at: <http://www.kurir.rs/vesti/drustvo/patrijarh-irinej-kad-nam-drzava-vrati-svu-imovinu-placacemo-porez-clanak-2624403>.

275 This section will focus only on issues relevant to the freedom of religion. More on restitution in II.12.2.

276 *Sl. glasnik RS*, 46/06.

explicitly list the restitution of temples, as the vast majority were never nationalised, although there were some cases in which monastery property, synagogues, et al. had been taken over by the state.

The right to restitution is afforded churches and religious communities, i.e. their legal successors in accordance with the valid enactments of churches and religious communities. If this provision is interpreted in accordance with the Act on Churches and Religious Communities, then this right is limited only to registered churches and religious communities in view of the fact that only they have the status of legal persons.

The procedure for reviewing the constitutionality of this Act was launched before the Constitutional Court back in 2009. The Constitutional Court on 20 April 2011 dismissed the initiative.²⁷⁷

The state started returning property to the religious communities once this law was adopted. Some data indicate that 73,150 hectares of land have been restituted to the Serbian Orthodox Church and 3,889 hectares of land to the Roman Catholic Church.²⁷⁸

7.5. Activities of Religious Communities in Serbia

In addition to the traditional churches, another 19 religious organisations officially exist in Serbia. Numerous other small religious communities, estimated at as many as 100, also exist in Serbia. Small religious communities have often complained of discrimination and of being equated with sects. They are also critical of the obligation that they have to declare their religious beliefs on registration and quote this as the reason why most of them have not officially been registered.

Two Islamic Communities have existed in Serbia since 2007. One of them is headed by Mufti Zukorlić and is spiritually linked to the Islamic Community Riyaset in Bosnia-Herzegovina, and the other is headed by Reis-ul-Ulema Adem Zilkić and has limited its activities to Serbia. The rift between the two communities continued in 2016, although there had been indications in 2014 that they may overcome it.

The submerging of the St. Michael Archangel Monastery in Tubravić at Valjevo, better known as the Valjevo Gračanica, due to the filling of the Rovni reservoir on Jablanica River, made the limelight in early 2016.²⁷⁹ Twenty-five years ago,

277 The CC Decision No. 119/2008 is available in Serbian at: <http://www.ustavni.sud.rs/page/jurisprudence/35/>. More on the provisions of this Act and the Constitutional Court's Decision in the *2011 Report*, II.4.8.4.

278 More is available in Serbian at: <http://www.kreativnisvetbalkana.net/srpska-pravoslavna-crkva-dobija-iz-budzeta-a-nece-da-placa-porez/>.

279 "Several Municipalities to be Saved by Submerging the Monastery," *RTS*, 8 March 2016, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/57/srbija-danas/2239350/potapanje-valjevske-gracanice-spasava-nekoliko-opstina-.html>.

the state and the Serbian Orthodox Church signed an agreement on the relocation of the monastery but the SOC in 2003 consented to its submerging because the material it was made of was too dilapidated for the monastery to be dismantled and reassembled.²⁸⁰ SOC Patriarch Irinej welcomed the relocation and preservation of the endangered shrines and noted that a new monastery had been built in lieu of the one now submerged, as agreed 25 years ago.²⁸¹ However, a group of citizens, rallied in the association “*Istinoljublje*”, organised a religious procession through Belgrade streets and several dozen of people were camping for months in front of the Government headquarters in the capital protesting the submerging of the monastery. The members of this association, carrying church relics and singing church anthems, entered the Valjevo town hall in March. The ongoing session of the Municipal Assembly was interrupted because two councilmen insisted on including a debate on the submerging of the monastery in the agenda.²⁸²

The Serbian Orthodox Church reacted vehemently to Education Minister Srđan Verbić’s initiative to merge religious instruction and civic education, two elective subjects introduced in the 2001/2002 school year, because, as he argued, the existence of subjects distinguishing between the pupils not by their interests but on the basis of their parents’ religious affiliation was an issue that concerned all citizens of Serbia and it had to be discussed.²⁸³ Just a few months before that, Patriarch Irinej voiced the view that religious instruction should be a mandatory rather than an elective school subject.

An incident broke out in late 2016 over the unlawful construction of a building in the heart of Novi Pazar. The building is to be used by the International University Islamic Studies College and its construction is funded by the Meshihat of the Islamic Community in Serbia. The Ministry of Internal Affairs did not act on the request to assist the demolition of the illegal building, quoting “security reasons”.²⁸⁴ National Assembly deputies and the Protector of Citizens joined in the debate on the issue, as did Prime Minister Aleksandar Vučić, who justified the failure of the police to act by the wish to avoid a bloodbath between the Moslems and the Chris-

280 “Is it too late for the Valjevo Gračanica,” *RTS*, 30 March 2016, available in Serbian at: <http://www.rts.rs/page/stories/ci/story/124/drustvo/2264386/da-li-je-kasno-za-valjevsku-gracanicu.html>.

281 “Several Municipalities to be Saved by Submerging the Monastery,” *RTS*, 8 March 2016, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/57/srbija-danas/2239350/potapanje-valjevske-gracanice-spasava-nekoliko-opstina-.html>.

282 “Valjevo: Broke into Town Hall Protesting against Submerging of Gračanica,” *B92*, 8 March 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=03&dd=08&nav_category=12&nav_id=1105076.

283 See the *Informer report*, available in Serbian at: <http://www.informer.rs/vesti/drustvo/47869/MINISTAR-PROSVETE-NASAO-SOLOMONSKO-RESENJE-Veronauka-i-gradjansko-ubuduće-jedan-predmet>.

284 “Fate of Building (II) Legally Erected in Novi Pazar under Question,” *NI*, 11 November 2016, available in Serbian at: <http://rs.n1info.com/a208316/Vesti/Vesti/Gradnja-objekta-u-centru-Novog-Pazara.html>.

tian Orthodox.²⁸⁵ The Protector of Citizens said that the non-enforcement of the law in this illegal construction case was destroying the rule of law, legal certainty, the right to property and the equality of all before the law.²⁸⁶

7.6. Right to Conscientious Objection

Although international treaties do not explicitly refer to the right of conscientious objection, it is inferred from the right to freedom of thought, conscience and religion.²⁸⁷ The right to conscientious objection is recognised in CoE Parliamentary Assembly and Committee of Ministers recommendations and resolutions.²⁸⁸ Mandatory military service was abolished in Serbia in 2011.

A *Demostat* public opinion survey on the restoration of mandatory military service, published in December 2016, showed that three quarters of the respondents aged between 18 and 29 were for the restoration of mandatory military service; most of these respondents live in West Serbia and Šumadija.²⁸⁹ Defence Minister Zoran Đorđević said an additional 70 billion RSD would have to be earmarked in the annual budget the first year to cover the accommodation, clothes, equipment and other needs of the conscripts if mandatory military service were restored.²⁹⁰ No official initiatives to introduce mandatory military service were launched by the end of 2016. Nor has the law on this issue been amended.

8. Freedom of Expression

8.1. General

Freedom of expression is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR. Both of these international treaties allow restrictions of this freedom, provided that they are in accordance with law and necessary in a democratic society.

285 “Zukorlić Vučić Case: You Want a War between Christian Orthodox and Moslems, I Don’t Want a Bloodbath,” *Blic*, 18 November 2016, available in Serbian at: <http://www.blic.rs/vesti/politika/slucaj-zukorlic-vucic-hocete-rat-pravoslavaca-i-muslimana-ja-necu-krvoprolisce-u/srm5qbp>.

286 Protector of Citizens “Message to the Prime Minister: One Man Cannot be the State,” 23 November 2016, available in Serbian at: <http://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/5005-z-sh-i-ni-gr-d-n-pr-ds-dni-u-vl-d-drz-v-n-s-d-bud-d-n-c-v>.

287 Article 18 ICCPR, Article 9 ECHR.

288 More on the right to conscientious objection in the *2010 Report*, II.4.8.5.

289 “Exclusive Survey: Why Serbs Want Mandatory Military Service Back,” *Blic*, 21 December 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/ekskluzivno-istrazivanje-zasto-srbi-zele-vracanje-obaveznog-vojnog-roka/yqmemeq>.

290 “Restoration of Military Service Would Cost Us 70 Billion RSD,” *Blic*, 2 November 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/vracanje-vojnog-roka-kostalo-bi-nas-70-milijardi-dinara/ey6gvvf>.

The Constitution of Serbia guarantees right to freedom of expression of opinion. It prescribes that freedom of expression may be restricted by law. Restriction could be imposed only if necessary to protect the rights and reputation of others, uphold the authority and impartiality of the courts and protect public health, morals of a democratic society and the national security of the Republic of Serbia (Art. 46 (2)). It is unclear what is exactly implied by “morals of a democratic society”, a coinage introduced by the Constitution as grounds for restricting specific rights.

The Constitution guarantees the freedom of the press: publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law (Art. 50).

Censorship of the press and other media is prohibited by the same article. Only competent court may prevent the dissemination of information. This preventive measure could be imposed only if that is “necessary in a democratic society to prevent incitement to the violent change of the constitutional order or the violation of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Art. 50(3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law. Criminal Code incriminate insult but warrant only fines (Art. 170).

The National Assembly on 2 August 2014 adopted a set of media laws – the Public Information and Media Act,²⁹¹ the Electronic Media Act²⁹² and the Public Media Services Act²⁹³. The state thus fulfilled most of the obligations it assumed under the Strategy for the Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (hereinafter: Media Strategy) adopted back in 2011.²⁹⁴ The media laws established a proper legislative framework for achieving all the important goals set out in the Media Strategy and for the first time define programmes of public interest.

8.2. Media Privatisation Effects

The privatisation of publicly-owned media in Serbia was officially completed on 31 October 2015. The company Politika, which publishes the daily by the same name, was among the 17 companies declared to be of “strategic importance for the Republic of Serbia” and exempted from privatisation under a Government decision.²⁹⁵ Although the privatisation of Politika was put off until

291 *Sl. glasnik RS* 83/14.

292 *Ibid*

293 *Ibid*.

294 *Sl. glasnik RS*, 75/11.

295 See the Government Press Department’s press release of 29 May 2015, available at: <http://bit.ly/2irFetA>.

1 June 2016²⁹⁶, the state did not sell its stock in it by the end of the reporting period. Thirty-six percent of the state's share in the publisher of the daily *Večernje novosti*²⁹⁷ and 51% of the shares in the company HD-WIN of Telekom Serbia (telecommunications operator with a majority public stake) were not put up for sale either.²⁹⁸

According to the Public Finance Civil Oversight Coalition, 34 out of 50 media outlets put up for auction were sold, while the privatisation of 16 outlets failed.²⁹⁹ Twenty of the outlets were shut down, two changed their core activity and 17 were to be privatised by distributing free shares to their staff. The fate of *Radio Požarevac* remained unknown.³⁰⁰ Media not sold at public auction were opt for the privatisation model involving the free distribution of their shares. Ministry of Economy data indicate that the 13 outlets completed the free distribution of shares procedure successfully, that the procedure was about to be finalised with respect to two outlets and that it was discontinued with regard to one media outlet.³⁰¹

The state-owned national news agency *Tanjug* ceased to exist as such pursuant to Article 146 of the Public Information and Media Act on 31 October 2015, after two unsuccessful attempts to sell it. The Government decision to dissolve it entered into force on 5 November 2015. *Tanjug*, however, continued working thanks to state funding. *Fairpress* reported that the Serbian state authorities and institutions paid *Tanjug* over 135 million RSD in the first nine months of 2016.³⁰² Slightly more than 76 million RSD from the state budget were spent on paying off 152 redundant staff and addressing the legal consequences of the agency's dissolution.³⁰³ *Tanjug* continued working by re-engaging a number of its staff,

296 The other companies were to have been sold by 31 December 2015 under Article 6 of the Privatisation Act.

297 Sixty-two percent of the stake in this company are under the control of businessman Milan Beko, who was deprived of his voting rights under a Securities Commission ruling because he had not bid for the remaining shares, as he had been under the obligation to, wherefore the company has practically been managed by the owner of the minority stake, i.e. the state.

298 Telekom Serbia is owned by: the Republic of Serbia (58.11%), Telekom Serbia (20%), citizens of Serbia (14.95%) and the current and former employees of Telekom and its predecessor (6.94%).

299 According to the expert report by Miloš Stojković and Jasna Matić, *Media Reform Five Years after the Adoption of the Media Strategy: Overview and Recommendations for the Future*, presented at the OSCE Conference Towards a Contemporary Media Policy, held in Belgrade on 17/18 November 2016, p. 12. The data are available in Serbian on the website of the Public Finance Civil Oversight Coalition: <http://bit.ly/2hkgdwB>.

300 *IJAS*, 12 May 2016.

301 According to the expert report by Miloš Stojković and Jasna Matić, *Media Reform Five Years after the Adoption of the Media Strategy: Overview and Recommendations for the Future*, presented at the OSCE Conference Towards a Contemporary Media Policy, held in Belgrade on 17/18 November 2016, p. 13.

302 *Peščanik*, 15 November 2016. See also <http://www.fairpress.eu/rs/?s=Tanjug>.

303 The state used to allocate *Tanjug* 200 million RSD per annum, which, according to media reports, accounted for 70% of the agency's income.

under criteria that were not made public, and it continued broadcasting news despite the warnings of the media associations and the two private news agencies that it was operating in violation of the law.³⁰⁴ Eyebrows were also raised when Minister of Culture and Information Vladan Vukosavljević gave a statement indicating that the authorities were attempting to “legalise” Tanjug’s unlawful status *a posteriori*. In response to a question on Tanjug’s fate, the Minister, inter alia, said that the state should not have a stake in the media, but that there was a “margin of major exceptions,” and that the authors of the new media strategy would look for a “model tailored to the general tendencies but reflecting certain specificities” and that it was good for the state to have a stake in media in specific situations. Press and media associations interpreted his statement as a sign that the state was abandoning its strategic commitment to withdraw from media ownership.³⁰⁵ The European Commission also commented the Tanjug case, stressing that “[T]he legal situation of the news agency Tanjug and its financing need to be clarified and brought in line with the existing legislation.”³⁰⁶

Purchase of outlets by individuals, who had previously not been engaged in media activities, is one of the alarming features characterising the 2015 privatisation of the media. Media experts have repeatedly qualified the privatisation as a sham in their analyses, because the new owners of the outlets were in many cases either the close relatives or the friends of public officials or their financial and political cronies. It may thus be concluded with a high degree of certainty that the media privatisation process in Serbia was a disguised process of strengthening state and party influence on the media and their editorial policies.³⁰⁷ These assessments are perhaps best illustrated by the example of Radoica Milosavljević, a member of the ruling Socialist Party of Serbia (SPS) in Kruševac, who bought eight outlets, seven of them TV stations, for slightly more than 280,000 EUR. Milosavljević was at the same time granted nearly 400,000 EUR from the budget to co-fund his media projects of public interest, i.e. 120,000 EUR more than he had spent to buy the outlets.³⁰⁸

304 “Beta and FoNet: Implement Decision on Tanjug Urgently and in its Entirety,” *B92*, 17 November 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=11&dd=17&nav_id=1200458.

305 See the press release of the Coalition of Press and Media Associations, *IJAS*, 23 September, available in Serbian at <http://bit.ly/2jEjcS8>.

306 Serbia 2016 Report, p. 41, available at: http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf.

307 Chairman of the *Nezavisnost* trade union Branislav Čanak, himself a journalist, said that the social and professional status of journalists had seriously and intentionally been undermined during and after the privatisation of the media outlets. He concluded that the privatisation had been conducted for political and ideological rather than economic reasons, Press Council, 31 May 2016.

308 “Radoica Buying, Tax-Payers Funding, Media Crumbling,” *IJAS*, 30 August 2016, available in Serbian at: <http://www.nuns.rs/info/news/28719/radoica-kupuje-gradjani-finansiraju-medi-ji-propadaju.html>.

Many of the new owners of the media have defaulted on their contractual obligations to keep on and pay the staff wages for at least two years, to invest in upgrading the outlets' equipment and fixed assets, and to pursue the core media activity for at least another five years. *RTV Kragujevac*, until recently the leading regional broadcaster in Central Serbia, halted its broadcasts in early December 2016, after its property was sold at a public auction ordered by the court to settle the six-month salary arrears claims filed by its staff. *RTV Kragujevac* was privatised in October 2015, when Radoica Milosavljević bought it for 85,500 EUR. Interestingly, most of the auctioned equipment was bought by the City of Kragujevac, whose motives for purchasing it remain unknown. The Ministry of Economy performed a check and Minister Goran Knežević said that Milosavljević would lose *TV Kragujevac* because he defaulted on his contractual obligations. The contract with Milosavljević was broken off in mid-January 2017.³⁰⁹

TV Požega, also owned by Milosavljević, stopped airing its programme in August 2016 because the owner had not been fulfilling his obligations. Four of the eight outlets bought by Radoica Milosavljević have in the meantime gone off the air forever or temporarily: the TV stations in Brus, Pirot, Novi Kneževac and Pančevo were no longer broadcasting by the end 2016.³¹⁰

TV Vranje is an example of an outlet that has successfully resisted machinations during privatisation and pressures by the authorities. As this company was not sold off in 2015, its shares were to have been distributed to its staff free of charge. However, the Privatisation Agency transferred 67% of the station's capital to the Equity Fund (owned by the state), in violation of the law. The station staff's legal right of ownership was acknowledged in October 2016, after a year of arduous struggle with the state administration.³¹¹

The law does not devote sufficient attention to oversight of the "preservation of continuity of media activity". The powers of the oversight bodies (Electronic Media Regulatory Authority and the Ministry of Economy) are unclear and inadequate. Dissolution of the privatisation contracts is the only measure that can be imposed after oversight and it does not address the main problem, since the media publishers are thus again placed under a kind of "public protectorate".

8.3. Media Project Co-Funding

Regulations on project co-funding were completed with the adoption of the Public Information and Media Act and, subsequently the 2014 Rulebook on the Co-Funding of Projects to Achieve Public Interests in the Field of Public Informa-

309 More is available in Serbian at: <http://www.blic.rs/vesti/drustvo/raskinuta-privatizacija-radio-televizije-kragujevac/15pxngr>.

310 "Radoica Milosavljević Withholding Salaries, Violating Contracts," *IJAS*, 1. September 2016, available in Serbian at: <http://www.nuns.rs/info/news/28721/radoica-milosavljevic-ne-da-je-plate-ne-postuje-ugovore.html>.

311 *IJAS*, 6 October 2016.

tion³¹² and the 2016 Rulebook.³¹³ A mere 880 million RSD (7,2 million EUR) were earmarked for media project co-funding in all the budgets (national, provincial and local) for the September 2015-January 2016 period, much less than the state set aside for advertising purposes in the same period.³¹⁴ The Ministry of Culture and Information allocated only 151 million RSD (1.2 million EUR) for co-funding media projects in 2016.³¹⁵ Local self-governments earmarked much more for the same purpose, 8.6 million EUR for the first half of 2016. Media associations, however, said that the total amount of funding LSGs set aside for media projects accounted for only 1% of their budgets, although estimates were that at least 2% needed to be earmarked to ensure the unimpeded work of the outlets.³¹⁶ Forty-two Serbian local self-governments (25.15%) did not comply with their obligation under Article 17 of the Public Information and Media Act to publish calls for proposals from the beginning of 2015 to April 2016,³¹⁷

The allocation of funding through public calls for media project proposals was accompanied by numerous irregularities and abuse.³¹⁸ A coalition of press and media associations monitored the implementation of 212 calls published from 1 April 2015 to 1 April 2016 at all levels, during which over two billion RSD were granted to various outlets.³¹⁹ Many of the local calls were tailored to specific media; some LSGs modified the decisions of the professional selection commissions, charged with evaluating the media projects under the law, or insisted on the appointment of their public officials to these commissions, ensuring they had indirect influence on the allocation of the funding.

RTV Novi Pazar was awarded nearly 90% of the funding the city authorities earmarked for media project co-funding over a three-year period (over 151 million of the total of 170 million RSD), i.e. it will be receiving around 50 million RSD a year from the city budget. *Studio B* received nearly half of the amount the Belgrade city authorities earmarked for co-funding media projects: 23 of the 45 million RSD.

The Niš city authorities earmarked the most money for co-funding media projects in 2016 – 68 million RSD. A local anti-corruption forum said that 76.5% of the funding was allocated to outlets labelled as very close to the authorities in various ways in the Anti-Corruption Council's report, which led to public protests

312 *Sl. glasnik RS*, 126/14.

313 *Sl. glasnik RS*, 16/16.

314 *IJAS*, 19 February 2016.

315 *Cenzolovka*, 26 July 2016.

316 *IJAS*, 15 December 2016.

317 White Book on Calls for Funding Public Interests in the Field of Public Information, Coalition of Press and Media Associations, 2016, p. 11, available in Serbian at: <http://www.ndnv.org/wp-content/uploads/2016/06/BelaKnjigaWEB.pdf>.

318 *Insajder.net*, 19 August 2016. More in *Danas*, Media File, December 2016, p. IV.

319 The survey results were published in the White Book on Calls for Funding Public Interests in the Field of Public Information, available in Serbian at: <http://www.ndnv.org/wp-content/uploads/2016/06/BelaKnjigaWEB.pdf>.

and the resignation of the selection commission members.³²⁰ The Preševo municipality, with a majority ethnic Albanian population, continued discriminating against the local Serbian language media in 2016. Its call for proposals specified that only media “producing media content in *national minority* languages officially used in the municipality” were eligible to apply.³²¹

The 2017 national budget set aside 4.7 billion RSD for the media, i.e. around 440 million RSD more than in 2016. Like in 2016, four billion RSD are earmarked for the public service broadcasters and 400 million RSD for the construction of a new *RTV Vojvodina* building, demolished during the 1999 air strikes on the FRY. Out of the rest of the money, 186.5 million RSD is allocated for funding media projects, slightly less than in 2016.³²²

8.4. Advertising by Public Entities and Public Procurement of Advertising Services

The procurement of advertising services by public entities (national, provincial and local governments and all their authorities, public companies and institutions and other organisations vested with public powers at all government levels) i.e. public service advertising is still inadequately regulated although a new Advertising Act was adopted in 2016³²³. Advertising services are still procured through the public procurement system or even in direct arrangements with the outlets. During the public debate on the Preliminary Draft of the Advertising Act³²⁴, some NGOs and media associations noted that the regulation of public interest and project co-funding was merely one element of regulating the flow of money from the public entities to the authorities and that public service advertising was not governed either by media or advertising law.³²⁵ The authors of the Preliminary Draft insisted that it could not regulate the flow of money, only the content of the advertisements. Regulation of public service advertising remains one of the priorities in the ongoing media reform, as well as one of the outstanding goals of the valid Media Strategy.³²⁶

320 *Niš City portal*, 12 May 2016.

321 *IJAS*, 21 November 2016.

322 *IJAS*, 4 December 2016.

323 *Sl. glasnik RS*, 6/16. Available in Serbian at http://www.paragraf.rs/propisi/zakon_o_oglasavanju.html

324 See the Preliminary Draft of the Advertising Act of January 2015, available in Serbian on the website of the Ministry of Trade, Tourism and Telecommunications: <http://bit.ly/2jFRJQM>.

325 See ANEM's Contribution to the Public Debate on the Preliminary Draft of the Advertising Act of 3 February 2015, available in Serbian at: <http://bit.ly/20m611w>.

326 Experts have proposed potential ways of regulating this issue, but the relevant authorities have not yet launched any substantive steps in that direction. See, e.g. the expert report by Miloš Stojković and Jasna Matić, *Media Reform Five Years after the Adoption of the Media Strategy: Overview and Recommendations for the Future*, presented at the OSCE Conference Towards a Contemporary Media Policy, held in Belgrade on 17/18 November 2016 pp. 9 and 11.

On the other hand, the public procurement procedure, often resorted to by public entities to procure media services, is frequently abused to channel funds to specific outlets, and sometimes to circumvent the project co-funding system. Press and media associations have repeatedly alerted to the numerous instances of such abuse and called on the relevant state authorities to explain and respond to them.³²⁷ The media and public procurement legislation has to be amended to preclude further subsidising of the “politically-correct” media; it needs to enumerate all the situations in which tenders for the public procurement of media services may be called.

8.5. Electronic Media Regulatory Authority (EMRA)

EMRA’s integrity and independence were seriously brought into question in 2016. The status of this authority is not ideal, primarily because it was designed as a body levitating between an independent regulator and a state administration authority. Its powers to penalise outlets violating the regulations are inadequate, since it may impose only the following measures: it may issue reprimands and warnings, temporarily prohibit the broadcasting of specific content and revoke the licences of the offending media.³²⁸ The enforcement of these measures over the past two years demonstrated their inefficiency in ensuring the lawful work of media service providers with respect to the suitability of the content they broadcast.³²⁹ The efficiency of the EMRA’s power to initiate misdemeanour proceedings is extremely questionable, because many of the initiated misdemeanour proceedings soon became time-barred. All of this has significantly undermined the independent regulatory system.

EMRA’s authority was significantly shaken in 2016 by the disgraceful conduct of the National Assembly, which clearly broke the law when it refused to elect one of the two candidates nominated by civil society organisations focusing on freedom of expression and child rights to the EMRA Council. There were serious indications that the sole reason why it refused to vote on one of the two candidates was that neither of them was “to the liking” of the Assembly majority. The procedure of appointing a member of the EMRA Council nominated by CSOs was accompanied by controversies from the very start. Since the Assembly did not vote in either of the two candidates, the Assembly Committee decided to call on the relevant CSOs to nominate their candidates again. The Assembly’s position is best explained by the statement of Assembly Speaker Maja Gojković, who also chairs the Culture and

327 See, e.g. ANEM’s press release of 23 April 2014, available in Serbian at: <http://bit.ly/2fibL2y> or the press release of the Coalition of Press and Media Associations of 8 December 2015, available in Serbian at: <http://bit.ly/2e5f6UT>.

328 Article 28, Electronic Media Act.

329 To illustrate, *TV Happy*, which has a national broadcasting licence, was issued three warnings in 2016 alone for broadcasting various “reality shows in confined environments”. *TV Happy* was the only station temporarily prohibited from airing specific programme content in 2015 (the *Couples* reality show). The register of measures imposed by the EMRA is available in Serbian at: <http://bit.ly/2jF6kMt>.

Information Committee; during her polemic with the representatives of the opposition parties at the Committee session; she asked them to “name the law under which the Assembly has to elect one of the candidates” and “specify the Article”³³⁰. The developments surrounding the appointment of EMRA Council members did not go unnoticed by the European Commission, which said in its Serbia 2016 Report that the EMRA Council members’ appointment procedure “should be free from political influence”.³³¹

Another problem lies in the fact that the EMRA still operates pursuant to the 2005 Statute³³², adopted pursuant to the powers vested with its predecessor, the Republican Broadcasting Agency, under the Broadcasting Act, although this law has not been valid for two and a half years now. The Draft Statute prepared in accordance with Article 33 of the Electronic Media Act was not endorsed by the National Assembly, as the European Commission noted as well.³³³

It is crucial to ensure also the financial independence of this regulatory authority, which may be brought into the question given that its financial plans must be approved by the parliament and that the remuneration of EMRA Council members is fixed in a Government decree.

8.6. *Public Media Services*

Nothing changed in the way the public media services, Radio Television of Serbia (RTS) and Radio Television of Vojvodina (RTV), were funded in 2016. Most of their funding still came from the state budget rather than other sources of revenue stipulated by the Public Media Services Act, including licence fees. In the absence of adequate guarantees, this reliance on state funding may lead to (undue) influence on their editorial policies in the long term. Namely, under the Public Media Services Act, the public service broadcasters were to be funded from several sources (licence fees collected from citizens, revenue from commercial activities, limited budget funding of projects of public interest, etc.) as of 1 January 2016. However, in late 2015, the Assembly adopted the Act on the Temporary Regulation of Public Media Service Licence Fee Collection³³⁴ (hereinafter: Fee Collection Act), which set the fee at 150 RSD, in contravention of the Public Media Services Act, while the Government enacted the Decree on the Funding of Public Media Services from the State Budget in 2016.³³⁵ The Public Media Services Act was amended to comply with the Licence Fee Collection Act and the Decree and the beginning of the

330 See *Fairpress* report available in Serbian at: <http://www.fairpress.eu/rs/blog/2016/10/18/no-vo-glasanje-da-li-je-regulatorno-telo-za-elektronske-medije-kompromitovano/>.

331 Serbia 2016 Report, p. 42.

332 *Sl. glasnik RS*, 102/05.

333 Serbia 2016 Report, p. 42.

334 *Sl. glasnik RS*, 112/15.

335 *Sl. glasnik RS*, 3/16.

enforcement of the new model of funding was put off until 1 January 2017.³³⁶ Both the Public Media Services Act and the Fee Collection Act were again amended in December 2016³³⁷ and the “temporary funding” of the two public media services from the state budget was extended to the end of 2018.

The dismissal of the editors of the Vojvodina public service broadcaster after the change of government in the province was another step away from ensuring the full independence of the public media services, corroborating that the authorities’ commitment to the principle of their independence was merely declaratory, that they essentially still treated these institutions as state media and that their transformation into genuine public service media was far from over.

Hardly any steps were made in 2016 towards improving the public media services’ openness to the members of the public and the representatives of civil society. The occasional public debates they organised could not be qualified as sufficient channels of communication between the public services and the citizens, who should have ownership of and oversee the work of these institutions.

8.7. Pressures on the Media

Although most media were well-disposed to the ruling coalition and positively reported on the Government’s and Prime Minister’s activities throughout 2016, the authorities qualified nearly all criticisms voiced in the media or at news conferences as attempts to topple the Prime Minister or his Government, often deriding the reporters in extremely insulting terms. The authorities and other power wielders seemed to perceive the media as a tool for their personal promotion and attacks on their political opponents, and often resorted to inappropriate and indecent language and populist argumentation and gross stigmatisation of all those who criticised their work.

The media situation in Serbia was slightly more favourably assessed by Reporters without Borders, which also noted the negative trends regarding media freedoms in South-East Europe, but nevertheless ranked Serbia 59th on its World Press Freedom Index, an improvement over 2015, when was ranked 67th.³³⁸ Freedom House, however, said in its April 2016 report on media freedoms in 199 countries that Serbia was among the 19 countries where media freedoms declined the fastest in the course of a single year, losing points in all categories (down by five points, to 45 out of maximum 100 points). The decline in press freedom in Serbia was blamed on the government’s “hostile rhetoric toward investigative journalists, reported censorship of journalists and media outlets, and a decrease in the availability of critical, independent reporting,” said the report.³³⁹

336 *Sl. glasnik RS*, 103/15.

337 *Sl. glasnik RS*, 108/16.

338 *JAS*, 7 September 2016. More is available at: <https://rsf.org/en/serbia>.

339 See <https://freedomhouse.org/report/freedom-press/2016/serbia>.

Although the Serbian Government enjoys strong support from EU representatives, which publicly praise its work and reforms, the EU's assessments of the media situation are not positive. In its Serbia 2016 Report, the European Commission said that media legislation in place since 2014 had not yet been fully implemented and that the privatisation of the state-owned media had not ensured transparency of ownership. It said that the number of recorded cases of threats, intimidation and violence against journalists remained a concern, noting that some criminal charges had been filed but that final convictions were still rare.³⁴⁰

Many analysts and media associations agree with the EC's assessments and alert to political pressures on the media, corroborated by a plethora of examples. For instance, the Programme Director of *RTV Vojvodina*, the provincial public service broadcaster, was dismissed after the 2016 early parliamentary elections and change of government at the provincial level; the Channel 1 Director and Chief Editor resigned and some twenty Newsroom editors and journalists were dismissed. No clear explanation was provided for any of the dismissals.³⁴¹

The Protector of Citizens said that a critical attitude towards reality was being punished rather than encouraged in Serbia and that Serbia should be concerned by the regression of press freedoms. In his opinion, like in other parts of the world, media freedoms in Serbia are withdrawing in the face of non-transparent political, economic and personal interests and more and more journalists are becoming mere executors of the will of others, denied the real chance of opposing the situation and complying with press standards without losing their jobs. The Commissioner for Information of Public Importance voiced similar views, alerting to the need to ensure greater transparency of media ownership and halt tabloidisation, which was at an advanced stage.³⁴²

Suing reporters is one way of pressuring the media. A number of lawsuits and trials against reporters and outlets marked 2016. Most of the plaintiffs sued for damages they suffered due to alleged violations of their honour and reputation. A total of 1,135 lawsuits against media owners, editors and reporters were filed with the Belgrade Higher Court from early 2014 to late July 2016.³⁴³ Analysts qualify such a high number of lawsuits against journalists as pressures on the media and

340 Serbia 2016 Report, pp. 21–24. The Culture and Information Minister, Vladan Vukosavljević, qualified the EC's statement that there was no progress in the freedom of expression as "blanket assessments" and "trite phrases". He said he had expected of the Report to provide data on specific violations of the freedom of expression and that there were 57 assaults on journalists, specifying they were in the jurisdiction of other state authorities, not his Ministry (*FoNet*, 14 November 2016). Vukosavljević refuted the statement by the EU Rapporteur on Serbia David McAllister that Serbia still had to do a lot to strengthen media freedoms (*FoNet*, 16 November 2016).

341 *Danas* online, 18 May 2016.

342 See the Commissioner's statement on World Press Freedom Day, available at: <http://www.pov-erenik.rs/en/press-releases-and-publications/2352-3maj-svetski-dan-slobode-medija.html>.

343 *IJAS*, 4 November 2016.

further attempts to limit press freedoms, especially when they are filed by senior government officials.

Minister of Internal Affairs Nebojša Stefanović, for instance, sued the Belgrade weekly *NiN* for violating his professional reputation and honour and sought 300,000 RSD in damages. The court expressly scheduled the trial for late November and completed the hearing the same day. The Minister was accompanied by the city senior officials to the trial, and welcomed by numerous supporters in front of the courthouse. The police did not react when they physically assaulted peaceful civic activists and tore up their banner saying “Stop Government Terror”. The trial was closed to the public and only the representatives of select outlets were allowed into the courtroom.³⁴⁴ Although trials in Serbia ordinarily last a long time, the court delivered its judgment in this case in record time. On 4 January 2017, the court ruled *NiN* and its Chief Editor were to pay the Police Minister 300,000 RSD in damages.³⁴⁵ Minister Nebojša Stefanović had also filed a lawsuit against sociologist Vesna Pešić and the *Peščanik* editors, who published her column on the Savamala demolition case on 14 May 2016.³⁴⁶

Žarko Rakić, the Acting Chief Editor of the daily *Politika*, suddenly broke off cooperation with political caricaturist Dušan Petričić, whose caricatures sharply criticising the Serbian authorities were front-paged in the daily on Sundays. Petričić said he was convinced that the management was dissatisfied because Prime Minister Aleksandar Vučić frequently featured in his caricatures.³⁴⁷

Verbal attacks, threats and insults against journalists were also a common occurrence in 2016. The politicians focused on journalists and investigative networks critical of the government. Journalists of *Insajder*, *KRIK*, the Balkan Investigative Reporting Network (*BIRN*) and the Centre of Investigative Journalism of Serbia (*CINS*) portals were repeatedly threatened.³⁴⁸ Pro-government media, above all the tabloid *Informer* and Pink TV, waged negative campaigns against critically oriented journalists and media on an almost daily basis. The *Informer* Chief Editor accused the daily *Danas* reporters of being foreign spies and mercenaries, claiming they

344 More is available in Serbian at: <http://www.021.rs/story/Info/Srbija/150198/Pocelo-sudjenje-Stefanovica-i-NiN-a-incident-ispred-sudnice.html>.

345 *NiN* had published an article entitled “Main Phantom of Savamala”, which said that that a number of “state and non-state structures at different levels of government were involved in the Savamala demolition” in the early morning hours on 25 April 2016 and that “such an endeavour would not have been possible without the knowledge and help of the police minister” especially in view of the fact that neither the regular nor the communal police reacted to reports by citizens, whose freedom of movement had been restricted and whose cell phones had been seized.

346 More is available in Serbian at: <https://www.cenzolovka.rs/vesti/ministar-policije-tuzio-vesnu-pesic-i-pescanik/>.

347 See Dušan Petričić’s interview to *Radio Free Europe*, available in Serbian at: <http://www.slobodnaevropa.org/a/dusan-petricic-politika/28027093.html>.

348 *FoNet*, 26 February 2016; *IJAS*, 13 July 2016, *Danas*, 15 September 2016, p. 11, *Danas online*, 17 November 2016; *BETA*, 27 July 2016.

were to blame for Serbia's loss of its southern province of Kosovo.³⁴⁹ Threats were also voiced against the *Danas* Chief Editor, journalists in Novi Pazar and Leskovac, the author of the show *24 Minutes with Zoran Kesić* and a reporter of the Novi Sad-based Vojvodina Investigative Analytical Centre *VOICE*.³⁵⁰

The information department of Prime Minister Aleksandar Vučić's Serbian Progressive Party staged an exhibition entitled "Uncensored Lies" in the summer of 2016, at which it displayed over 2,500 reports, caricatures and front pages of newspapers and TV shows critical of the Prime Minister and his Government, which were published or aired in the past two years. Vučić said that the exhibition was staged to prove that there was no censorship in Serbia. The exhibition was to have toured all the major cities in the country, but a break was made after its display in Belgrade and Kruševac. It opened in Subotica in early December 2016, but not for the general public.³⁵¹

8.8. Financial Status of Media and Journalists

The financial status of the media, seriously undermined by the years-long economic crisis, has been further aggravated by the consequences of the media privatisation and visibly negative results of budgetary co-funding of media projects of public interest. The status of the media has also been undermined by the existence of a large number of outlets. A total of 1,788 media outlets were registered in the Business Registers Agency's Media Register in late December 2016, or around 400 less than in 2016. Of them, 826 were print media, 297 were radio and 190 TV stations, 272 were Internet portals and 36 were Internet websites; 23 were news agency services and 144 were undefined media outlets.³⁵²

Fifteen daily newspapers (three regional, one focusing on sports, one on the economy and one distributed free of charge) were published in 2016. There are no accurate data on their circulation and the number of copies they sold, but it is definitely lower than in 2015, when the number of sold copies was estimated at 400,000.³⁵³ Considering the circa 10% annual drop in the number of sold copies and circulation over the past three years, it may be concluded with a high degree of certainty that the Serbian dailies had a sold around 350,000 copies in 2016.

The salaries of journalists have for years now been lower than the national average. A survey conducted by the Centre for the Development of Trade Unionism showed that the average wage in Serbia stood at 47,000 RSD (around 400 EUR)

349 *IJAS*, 27 October 2016.

350 *IJAS*, 16 and 21 November 2016: *Danas*, 2 November 2016, p. 8 and 20 June 2016, p. 5; *JAS*, 1 November 2016.

351 *Danas*, 10–11 December 2016, p. 5.

352 *JAS*, 29 December 2016.

353 See *2015 Report*, II.8.3.

and that the journalists earned around 36,000 RSD (circa 300 EUR) on average, in early 2016. These data are all the more concerning in view of the fact that most of the surveyed journalists have college degrees and have been working in the media for 11–20 years. Many journalists are not registered by their employers and are therefore denied nearly all the rights guaranteed by the already restrictive labour law. Furthermore, between 30 and 50 percent of the journalists are paid their wages with delay, ranging from one month to one year.³⁵⁴ A survey of 1,100 journalists showed that over 40% of them wanted to leave the profession because of pressure and poor financial and legal status³⁵⁵.

Over 1,000 journalists lost their jobs during the 2015 media privatisation round, joining 1,149 of their colleagues already registered as unemployed with the National Employment Service in 2014. Many journalists have to work overtime but hardly any are paid for the long hours they put in. They rarely attempt to associate in trade unions as their employers are generally ill-disposed to such endeavours. For instance, in its response to an attempt by the local staff to form a trade union, the senior management of the Serbian branch of the multinational concern *Ringier Axel Springer* said that the corporation respected workers' rights and that a trade union was unnecessary. Staff working in many of *Ringier's* branch offices in other countries have trade unions.³⁵⁶ In late 2016, *Ringier* declared 15 staff members in Serbia redundant and let them go.³⁵⁷

Chairman of the European Federation of Journalists Steering Committee Mogens Blicher Bjerregård alerted to the need to create strong press trade unions, which would act as one of the most important mechanisms for resolving media-related problems and for ensuring better pay and security for journalists.³⁵⁸

8.9. Assaults on and Unresolved Murders of Journalists

No major progress was made in 2016 in the cases of journalists murdered decades ago. The few trials dragged on and no major breakthrough was made in the investigations under way. The trial of the assassins of editor and journalist Slavko Ćuruvija in the heart of Belgrade in 1999 was not completed in 2016; the family's attorneys said they expected it to continue for years due to judicial slowness.³⁵⁹

The investigation into the 2001 liquidation of Jagodina journalist Milan Pantić at the entrance into the building he was living in did not progress beyond indications of who may have killed him. The investigation in the case of journalist

354 *IJAS*, 9 and 14 November 2016.

355 From Journalist to Day Labourer, Precarious Work and Life available in Serbian at: <http://sindikalizam.org/wp-content/uploads/2014/09/Od-novinara-do-nadnicara.-Prekarni-rad-i-zivotl.pdf>.

356 *B92*, 19 February 2016.

357 *IJAS*, 30 December 2016.

358 *IJAS*, 13 May 2016.

359 More in the *2014 Report*, II.1.3 and II.8.3.

Dada Vujasinović, who lost her life in 1994, practically went back to square one. Persisting public doubts of claims that she had committed suicide led the MIA to send the scant evidence to the Netherlands Forensic Institute in The Hague and ask it to perform its expertise in September 2016. The Institute said in its report that the injuries leading to Vujasinović's death may have been the result of a suicide, homicide or accident. It is therefore quite unlikely that the court will ever resolve this case. No headway was made in investigating and prosecuting the attempted murder of *Vreme* journalist Dejan Anastasijević in 2007, when someone left a bomb on the window sill of his apartment. Fortunately, no-one was injured.

The Independent Journalists' Association of Serbia (*IJAS*) said its records showed that as many as 128 assaults on journalists had occurred since 2014; 27 of the assaults were physical. The stable trend of frequent physical and verbal attacks on media and journalists continued in the year behind us, as corroborated by *IJAS* data, according to which 69 journalists were assaulted in 2016: nine physically and 26 verbally; 33 reporters were subject to pressures and the property of one journalist was attacked.³⁶⁰ It thus comes as no surprise that the Republican Public Prosecution Service said its caseload included 70 attacks on journalists at various stages of proceedings. The representatives of the Republican Public Prosecution Service, the Ministry of Internal Affairs and press associations signed an Agreement on Cooperation and Measures to Increase the Security of Journalists in December 2016. The representative of the Prosecution Service said that prosecutors attached priority to assaults on journalists, but the reporters were not provided with an answer to their question whether any headway had been made in resolving the assault cases that had happened years ago.

8.10. Unprofessional Conduct by Journalists and Media

Analysts and media associations have for several years now been alerting to the tabloidisation of the Serbian press, which has been undermining the professionalism and the reputation of journalists and the media. The situation did not improve in 2016 either. The journalists of the most popular tabloids continued presenting assumptions, conjectures and impressions as facts, showering their readers with sensationalist news, violating the rights of the child, the right to privacy and presumption of innocence and the basic moral code. The tabloids often published articles voicing even direct threats against public figures and revealing details of police investigations.

The monitoring of compliance with the Press Code of Conduct by eight Serbian dailies (*Politika*, *Danas*, *Večernje novosti*, *Blic*, *Alo*, *Kurir*, *Informer* and *Srpski telegraf*) conducted from 1 March to 31 August 2016 by the Press Council, an independent self-regulatory authority, showed the Code was violated in 3,191 articles

360 *Beta* and *NI*, 26 December 2016.

they had published in the reporting period. Over two-thirds (2,110) of these reports were carried by *Informer*, *Srpski telegraf* and *Kurir*. The Press Council warned that the number of violations of the Code in the 2016 monitoring period had increased by a third over the same period in 2015. The Council also said that the papers had most often violated the provision, under which a clear distinction must be made between assumptions, conjectures and facts. Furthermore, the media that violated the Code regularly resorted to sensationalism, publication of unconfirmed information, shocking and disturbing photographs and testimonies, especially in cases attracting a lot of public attention, such as murders and personal tragedies.³⁶¹

The Code and rules binding on media were violated also during the 2016 election campaign. Niš TV stations, for instance, directly broadcast SNS rallies ten or so times in April, without displaying notice that a paid or election programme was at issue, as stipulated in the rules enacted by the Electronic Media Regulatory Authority (EMRA).³⁶²

Some TV stations continued violating the professional code in 2016 with their reality show broadcasts. Namely, some electronic media in Serbia do not comply with the law and the rulebooks and do not label programmes inadequate for viewers under a particular age. The most frequent mistakes made by broadcasters also include broadcasting specific programmes at inappropriate times. EMRA issued a number of reprimands and warnings and penalised one outlet by temporarily taking it off the air.

The conduct of some pro-government tabloids towards media critically reporting on the work of the Government and state authorities caused major concern. The daily *Informer*, for instance, qualified an article on the activities of the Prime Minister's brother published in the daily *Danas* as a call to assassinate the Prime Minister and cause chaos in the country. *Informer* also front-paged the photographs of *BIRN* and *CINS* reporters, who had earlier been the subject of a fierce campaign in which they were branded foreign mercenaries and traitors.³⁶³

9. Freedom of Peaceful Assembly

9.1. *International Standards and the Constitution of the Republic of Serbia*

The freedom of peaceful assembly is guaranteed by the leading international human rights documents that are binding on Serbia as well. This right is enshrined in general terms in Article 20 of the Universal Declaration of Human Rights. The

361 Available in Serbian at: <https://www.cenzolovka.rs/vesti/sramota-profesije-za-180-dana-informer-prekrsio-kodeks-763-puta/>.

362 *TV NI*, 30 May 2016.

363 *IJAS*, 8 November 2016.

European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Art. 11) and the International Covenant on Civil and Political Rights (ICCPR) govern this right in greater detail (Art. 21).

The right to freedom of peaceful assembly is enshrined in Article 54 of the Constitution, under which citizens are free to assemble peacefully and indoor assemblies shall not be subject to approval or notification. Outdoor rallies, demonstrations and other forms of assembly shall be notified to the state authorities in accordance with the law. The Constitution guarantees only the freedom of *peaceful* assembly, which is in accordance with international standards. The Constitution, however, states that *citizens* may assemble freely, i.e. it does not explicitly guarantee this right to aliens or stateless persons. The ECHR guarantees the right to freedom of peaceful assembly to “everyone”, while the ICCPR “recognises” this right generally, without limiting it to specific categories of people. The ECHR includes a separate article allowing restrictions of the activity of aliens,³⁶⁴ but only with respect to political activity, wherefore this provision could justify the ban on political assemblies organised by aliens. Assemblies are not necessarily always political and the general exclusion of aliens from the exercise of the right to freedom of assembly, like the one in the Constitution, is unwarranted. Furthermore, the ECHR does not mention restrictions of rights of stateless persons.

Although the Constitutional Court has not reviewed any cases alleging violations of the right to freedom of assembly of aliens,³⁶⁵ it has consistently noted that there were no substantive differences between Article 11 of the ECHR and Article 54 of the Constitution, wherefore it may be assumed that it would recognise the freedom of assembly of aliens as well, as long as the assemblies are not political in character.

Although the Protector of Citizens identified a number of irregularities in the work of the Ministry of Internal Affairs (MIA) with respect to its prohibition of Falun Gong rallies in 2015,³⁶⁶ it banned the assembly Falun Dafa was planning on organising when the Chinese President was visiting Serbia in June 2016. Like in 2015, the MIA merely said in its ruling prohibiting the event that the legal requirements for banning the rally had been met, failing to specify the facts and circumstances on which it based its decision, which is in contravention of the good administration principle³⁶⁷ and the recommendation issued by the Protector of Citizens in 2015.³⁶⁸ Although the organisers filed all the regular legal remedies at their

364 Article 16 of the ECHR – Restriction on the political activity of aliens: Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

365 Information obtained after a search of the Court’s case law database on 26 November 2016.

366 More in *2015 Report*, III.9.1.

367 The principles of good administration and transparent decision making regarding the exercise of the freedom of peaceful assembly is particularly highlighted in the joint OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly, Warsaw/Strasbourg, 2010, available at: <http://www.osce.org/odihr/73405?download=true>.

368 Protector of Citizens Recommendation No. 62–2496/14 of 15 January 2015.

disposal, the final decision on them was not rendered before the date provided in the notification of the event,³⁶⁹ legitimately giving rise to the question whether the legal remedies laid down in the Public Assembly Act adopted in January 2016³⁷⁰ are actually effective.

The Public Assembly Act does not prescribe any restrictions with respect to the nationality of the organisers and participants in public assemblies. Rather, it guarantees the freedom of assembly to everyone (in Article 1), which gives rise to another question: whether it is in compliance with the Constitution of the Republic of Serbia.

The described practice of the competent authorities leads to the conclusion that there is a degree of restrictive treatment of aliens as far as the realisation of their freedom of assembly in the Republic of Serbia is concerned.

Under the Constitution, the authorities need not be notified of indoor assemblies. On the other hand, the Constitution sets out that the state authorities shall be notified of outdoor assemblies in accordance with the law. It is unclear from this provision whether each outdoor assembly must be notified or whether the law may specify in which cases such an obligation does not exist. The new Public Assembly Act clarifies this issue by specifying that, in exceptional cases, spontaneous assemblies need not be notified.

Article 54 of the Constitution explicitly lays down that the freedom of assembly may be restricted by the law only if necessary, while Article 20 prescribes that human rights may be restricted only “to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right”. Article 54 lists four grounds on which the freedom of assembly may be restricted: to protect public health, morals, rights of others or the security of the Republic of Serbia. Therefore, restrictions of the freedom of assembly cannot be justified on any other grounds, because the list in the Constitution is exhaustive. Of course, the question remains how these grounds are interpreted in practice, i.e. what can be subsumed under them because they are set quite broadly and constitute legal standards interpreted in each specific case. The Public Assembly Act, however, envisages specific restrictions that are not in compliance with the Serbian Constitution or the ECHR.

9.2. Public Assembly Act

The Constitutional Court of Serbia rendered a decision in April 2015 declaring the 1992 Public Assembly Act unconstitutional in its entirety.³⁷¹ The Serbian National Assembly adopted the new Public Assembly Act in January 2016. Under

369 Data obtained on 29 November 2016 from the Committee of Human Rights Lawyers (YU-COM), which extended legal aid in this case.

370 *Sl. glasnik RS*, 6/16.

371 IUz 204/13 of 9 April 2015.

the final version of the Chapter 23 Action Plan, endorsed by the Serbian Government in April 2016, this law was to be adopted in the first quarter of 2016, with a view to aligning the legislation on this issue with the Venice Commission's and ODIHR's recommendations, Article 11 of the ECHR and Article 12 of the EU Charter of Fundamental Rights.³⁷²

The new Public Assembly Act, however, does not eliminate all the deficiencies that had rendered its predecessor unconstitutional in its entirety. Nor is it in compliance with international standards. In its decision, the Constitutional Court highlighted that the legal restrictions had to be in compliance with the Constitution of the Republic of Serbia and that the law governing this matter had to be in line with Article 36 of the Constitution guaranteeing the right to an effective legal remedy, which entails that final decisions prohibiting assemblies must be rendered before the dates they are to be held on. Furthermore, the Constitutional Court held that there were no constitutional grounds entitling local self-government units to adopt enactments specifying venues suitable for public assemblies, as provided for by the prior Act.

The Republic of Serbia merely formally fulfilled the Chapter 23 Action Plan obligation when it enacted the Public Assembly Act in January 2016, as this law is not in compliance with the international standards on the freedom of peaceful assembly either. The Protector of Citizens also alerted to the many shortcomings of the draft law in his Opinion of January 2016, but the legislator paid no heed to the views of this independent institution.³⁷³ The chief shortcomings of the Act he alerted to regard the incompatibility of the *in abstracto* provisions restricting the venues and times of public assemblies with the Constitution, the overly complicated and demanding assembly notification requirements, the absence of a deadline by which final Administrative Court decisions banning assemblies must be issued, and the high fines for violating the law levelled against the assembly organisers, leaders and responsible persons. In its Serbia 2016 Report,³⁷⁴ the European Commission said that the freedom of peaceful assembly was generally respected in Serbia. It, however, observed that, although the 2016 Public Assembly Act introduced some improvements (legal remedies), the first cases of application of the law indicated that shortcomings still existed. It also noted that by-laws necessary for the full implementation of the law had not yet been adopted.³⁷⁵

The Public Assembly Act guarantees only the freedom of *peaceful* assembly (in Article 2(1)), which is in accordance with the Constitution of the Republic of

372 Chapter 23 Action Plan, April 2016, Point 3.6.1.24, available at: <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>.

373 Protector of Citizens Opinion on the Draft Public Assembly Act No. 10–25–42/15 of 18 January 2016, available in Serbian at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/4544-2016-01-18-10-29-54>.

374 Serbia 2016 Report, section 5.23.

375 *Ibid.* p. 62.

Serbia and the relevant international treaties. However, every public assembly may potentially cause a certain degree of chaos and disruption of everyday life, which definitely has to be tolerated to secure the right to freedom of peaceful assembly. The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities.³⁷⁶ It thus might be useful to define the term *peaceful* in a by-law or include a provision on the subsidiary application of the Public Law and Order Act³⁷⁷ for the interpretation of this concept.

Under the Public Assembly Act, everyone is entitled to organise and take part in assemblies, wherefore this law explicitly protects both the rights of the organisers of public assemblies and the rights of citizens to take part in them. This is relevant as potential assembly participants are also entitled to file legal remedies and constitutional appeals against decisions banning assemblies. Probably guided by the text of the prior Act, which did not include such a provision, the Constitutional Court of Serbia on 21 April 2016 rendered a decision upholding a constitutional appeal by the civic association that had organised the banned 2013 Pride Parade, but dismissing a constitutional appeal filed by a number of applicants, natural persons, who were potential participants of the Pride Parade because it held that only organisers of public assemblies were entitled to file constitutional appeals.³⁷⁸

Under Article 3 of the Public Assembly Act, a public assembly shall denote an assembly of more than 20 people who have rallied with a view to expressing, realising and promoting state, political, social, national beliefs and goals and other freedoms and rights in a democratic society, as well as an assembly for the purpose of achieving religious, cultural, humanitarian, sports, entertainment and other interests. Sports and entertainment assemblies, however, are devoid of a political dimension or value in a democratic society and should not be regulated and protected by the Public Assembly Act.

Under Article 4 of the Public Assembly Act, assembly venues shall denote all areas individually accessible to an indefinite number of persons unconditionally or under equal conditions. The Act, however, restricts the freedom of assembly in an abstract manner, as it prescribes, in Article 6(1), that assemblies may not be held at venues next to dangerous sites, the specific features or purpose of which render them a potential threat to the safety of humans and property, public health, morals, rights of others or the security of the Republic of Serbia. The Act leaves the identification of inappropriate venues to local self-government units, which are under the obligation to pass enactments listing such venues within 60 days from the day the Act takes effect. As opposed to the previous law, under which local self-government units were to pass enactments identifying appropriate venues for public assemblies, the valid Act lays down that they shall identify the inappropriate venues, whereby

376 See the ECtHR judgment in the case of *Christian Democratic People's Party v. Moldova* (No. 2), App. No. 25196/04 of 2 February 2010, paragraph 23.

377 *Sl. glasnik RS*, 6/16.

378 CC Decision Už 8591/2013 of 21 April 2016.

it still leaves room for arbitrary restrictions of the freedom of assembly. The OSCE and Venice Commission recommend that the states restrict the freedom of assembly only on the legitimate grounds prescribed in international and regional human rights instruments and that these grounds should not be supplemented by additional grounds in domestic legislation. Furthermore, such a possibility of restricting the freedom of assembly is incompatible with the constitutionally prescribed grounds for restrictions.

In its April 2015 decision declaring the Public Assembly Act unconstitutional in its entirety, the Constitutional Court stressed that the individual grounds for restricting the freedom of assembly could be defined in greater detail in the Act, but that these grounds had to be directly linked to the constitutional grounds for the restrictions and that it followed from the Constitution that public assemblies could be held anywhere, wherefore there were no constitutional grounds for designating venues at which public assemblies were allowed.

Article 6 of the Public Assembly Act also prohibits public assemblies in front of hospitals, kindergartens, schools and facilities of particular importance for the defence and security of the Republic of Serbia. The *ratio legis* of this provision is totally unclear; the legislator appears to have included this ban to prevent protests by health and school staff.

Under the Public Assembly Act, the organisers need not notify indoor public assemblies but they may notify the Ministry of Internal Affairs of them if the police need to take special security measures to secure the events (Art. 13(4)). This is a welcome solution as it provides the organisers with the opportunity to ask the police to safeguard their events, which is also a positive obligation the state has with respect to the realisation of the freedom of assembly. The Act also lays down that organisers may notify mobile public assemblies in specific areas, i.e. it guarantees public processions and, as opposed to the previous drafts of the law, commendably allows procession participants to stop at different points along the way (Art. 5(2)).

Whereas the 1992 Act did not include provisions defining when public assemblies may be held, the new Act includes an entirely unjustified restriction in Article 7, which stipulates that public assemblies may be held between 6 am and midnight.

Organisers of assemblies have until now been under the obligation to notify the authorities of their assemblies, but did not need to wait for their approval, which meant that assemblies only needed to be notified on time, which was in accordance with international standards. However, the deadlines for notification should be set so as to ensure the efficiency of the legal remedies, i.e. that the decisions on the legal remedies can be issued before the day the assemblies are scheduled for.

Article 12 of the Public Assembly Act lays down that the organiser shall notify in writing the MIA unit with the territorial jurisdiction over the venue of the planned static assembly at least five days before the date provided in the notifica-

tion of the event. The Public Assembly Act requires of the organisers to submit an unnecessarily large amount of information in their notices, including information about the organiser, the leader of the assembly (a responsible person category introduced by the Act and designated by the organiser), the person responsible for the stewards, the venue, time, programme, goal and expected duration of the assembly, information on measures undertaken by the organiser to maintain law and order at the public assembly, an estimate of the number of participants, *data of interest to the safe and unimpeded holding of the assembly* and data on the route of the procession in case of a mobile assembly (Art. 14).

Under the Act, organisers shall be provided with 12 hours to supplement incomplete notices. Their assemblies shall be deemed not notified if they fail to eliminate the shortcomings within that deadline, i.e. the assemblies shall be deemed banned in the meaning of the Act and their organisers may be fined between 100,000 and 150,000 RSD. This provision may result in groundless restrictions of the freedom of movement, particularly since the Act lists all the data proper notices must include, but fails to specify what some of the data to be entered in the notice entail (e.g. data of interest to the safe and unimpeded holding of the assembly).

Although the Act envisages that public assemblies shall be notified rather than subject to approval, it nevertheless imposes excessive obligations on the organisers with respect to the filing of notices, which may be interpreted as amounting to a *de facto* approval system. The notice forms should be simple and not impose on the organiser such a great responsibility, because the purpose of the notice is precisely to notify the relevant authority of the event to be held so that it can safeguard it.

Furthermore, the collection of the requisite documentation liable to incur considerable costs, thus restricting the right to freedom of peaceful assembly. The organisers of the Belgrade Pride Parade have been regularly collecting the extensive documentation they needed for holding their assemblies, which involved a lot of organisation, time and considerable costs.³⁷⁹ The situation was the same in 2016 as well.³⁸⁰ In their Guidelines, the OSCE and Venice Commission stated that the costs of providing adequate security and safety (including traffic and crowd management) should be fully covered by the public authorities.

The Public Assembly Act does not require notification of religious events in religious facilities or of other traditional popular assemblies, country fairs, weddings, funerals, state celebrations, jubilees and other assemblies organised by the state authorities (Art. 13). These provisions fully reflect the character of these assemblies lacking a political dimension. As opposed to its predecessor, the new Act

379 For example: consent of the Savski venac Municipality to organise an assembly in the territory of the municipality; consent of the City Traffic Secretariat to hold a procession; consent of the City Parks PUC to hold the assembly at a city park; request to the City Waste Disposal PUC to dislocate the garbage containers and application to the Parking Services PUC to dislocate parked vehicles, etc. More in the *2013 Report*, II.10.2.2.

380 As Pride Parade organisers told BCHR on 21 December 2016.

allows spontaneous assemblies, which it defines as assemblies that are not notified and have no organisers and that take place at open or closed venues in immediate reaction to specific events upon their occurrence and whose participants express their views and opinions on those events (Art. 13(1(4)). Although such assemblies had not been formally permitted in the past, the MIA allowed them to proceed in practice.³⁸¹

The provision on spontaneous public assemblies was included in the new law at the insistence of NGOs that participated in the public debates on the draft text. The legislator, however, did not demonstrate sufficient understanding of the “spontaneous assembly” concept, because the same article guaranteeing such assemblies lays down that spontaneous assemblies shall not include assemblies called by natural or legal persons that are organisers of these assemblies under the Act. It is practically impossible to hold any assembly without someone initiating or calling it; the purpose of allowing spontaneous assemblies lies precisely in the fact that the state is to demonstrate a specific degree of flexibility and tolerance, by relieving the organisers of the notification formality when they are organising assemblies in immediate reaction to events. The definition of spontaneous assemblies as events no-one is calling or organising may in practice result in the relevant authorities’ failure to qualify any assembly as spontaneous. Furthermore, the Act levies misdemeanour fines against organisers who fail to notify their assemblies, which may give rise to problems with respect to spontaneous assemblies, because the Act does not include an adequate definition of this concept. The authorities, for instance, filed misdemeanour charges against the organisers of spontaneous Let’s Not Drown/Give Belgrade assemblies against the city authorities and the Belgrade Waterfront project in 2016, both the one they organised in protest against the Belgrade City Assembly session on the project and the one protesting against the illegal and violent demolition of the buildings in Hercegovačka Street on 25 April 2016³⁸² to implement the impugned project.³⁸³

Under the Act, assemblies shall not be permitted, in the event of a threat that they will endanger the safety of people or property, public health, morals, rights of others or the security of the Republic of Serbia, or in the event of a threat of violence, destruction of property or other forms of disruption of public law and order to a greater extent (Art. 8). Article 8 also prohibits assemblies aimed at inciting or encouraging armed conflicts, violence, violations of human and minority freedoms

381 BCHR associates took part in several spontaneous assemblies in 2014 and 2015.

382 “Belgrade – in the night of 25 April 2016, while the votes were being counted, mysterious excavators appeared in Hercegovačka Street and tore down several privately owned buildings, the *Savski ekspres* restaurant and the property of the *Iskra* and *Transport peroni* companies,” *Kurir*, 30 April 2016, available in Serbian at: <http://www.kurir.rs/vesti/beograd/video-snimci-rusenja-u-savamali-evo-sta-se-te-noci-dogadalo-u-hercegovackoj-ulici-clanak-2246177>.

383 Information obtained from the Let’s Not Drown/Give Belgrade civic initiative on 28 November 2016.

and rights of others, or racial, ethnic, religious or other inequalities, hate or intolerance, as well as assemblies in contravention of this law. These grounds existed also in the 1992 Act that was annulled by the Constitutional Court; moreover, they do not correspond fully to the legitimate grounds for restricting the freedom of assembly under the Constitution and the ECHR. In its 2015 Decision, the Constitutional Court held that the fact that the Constitution allowed for a restriction of the freedom of assembly did not suffice for the legal restriction of the guaranteed freedom, and that this restriction had to serve the purpose for which the Constitution allowed it, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. The new Act, however, envisages only prohibitions of assemblies, but not any less restrictive measures, such as, e.g., change of venue or time of the assembly. Therefore, as it does not envisage any measures less restrictive than prohibition, the Act does not provide for restrictions of the freedom of assembly proportionate to the purpose of the restrictions; nor does it specify that the restrictions are to be necessary in a democratic society, the legal standard (laid down in Article 11 of the ECHR) the Constitutional Court highlighted in its decision declaring the prior Act unconstitutional. Proportionality does not directly balance the right against the reason for interfering with it. Instead, it balances the nature and extent of the interference against the reason for interfering.³⁸⁴ The state authorities need to put in place a wide range of interventions, rather than merely two – non-interference in the freedom of assembly and prohibition of an assembly.

Under the Public Assembly Act, rulings prohibiting assemblies shall be issued at least 96 hours before they are planned to take place. Such rulings may be appealed with the MIA within 24 hours from the time of service. The MIA is to rule on the appeals within 24 hours and its final decisions may be contested in an administrative dispute initiated with the Administrative Court. The Act, however, does not specify the deadline by which the Administrative Court must rule on the disputes, thus rendering absolutely senseless the obligations of other authorities to issue their decisions within specific deadlines, as proceedings before the Administrative Court can last up to several months. Although the legislator endeavoured to eliminate ineffective legal remedies that are *post hoc* in character, which do not provide protection before the date the assemblies have been scheduled for and which had existed in the prior law, the new Act still allows for the possibility of the Administrative Court adopting its final decisions a few months after the assemblies were to have taken place.

Police officers are authorised to prevent or disperse an ongoing public assembly in the event circumstances constituting grounds for prohibiting it occur before or during the assembly. The police shall notify the organiser or leader of the assembly of the order to disperse the public assembly, and the latter is under the

384 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 39.

duty to immediately inform the participants that the assembly is being dispersed and call on them to disperse peacefully. Written dispersal orders shall be served on the assembly organisers within 12 hours from the moment they were verbally communicated. If the organiser or leader of the assembly fail to terminate the assembly, the police may take legal and proportionate measures to disperse the participants and establish public law and order. Thus, as far as the dispersal of assemblies is concerned, the Act envisages the undertaking of proportionate measures when the freedom of assembly is restricted, but does not lay down proportionality as a general requirement for banning public assemblies. The Act, however, fails to explicitly specify the legal and proportional measures that may be undertaken in such cases, leaving room for police arbitrariness.

9.2.1. Legal Remedies

The new Public Assembly Act was to have eliminated the deficiencies regarding the ineffective legal remedies by, *inter alia*, extending the notification deadlines and shortening the deadlines by which the authorities are to rule on appeals, to ensure they issue their final decisions before the date provided in the notification for the event. Article 15 of the Act lays down that the relevant authorities shall issue rulings prohibiting an assembly at least 96 hours before they are to take place. Not all rulings banning assemblies in the past were reasoned; some merely referred to the Article on prohibition of rallies, wherefore the legislator should have specified that rulings prohibiting assemblies must include brief explanations of the reasons for restricting the freedom of assembly and that the burden of proof that the restriction was necessary in the given circumstances lay on the authorities.³⁸⁵

Appeals of such rulings may be filed with the Ministry of Internal Affairs within 24 hours from the time of service. This deadline is much too short given that the appellants need to submit additional evidence together with their appeals. Parties to the proceedings, especially the organisers of public assemblies, should have access to the evidence on which the regulatory authority based its initial decision.³⁸⁶ The relevant Serbian authorities, however, have not always made such evidence available, which may render the right of appeal utterly meaningless. For instance, the MIA refused to communicate the operational report,³⁸⁷ based on which it prohibited all events planned for 11 July 2015, both those commemorating the anniversary of the Srebrenica genocide and others, to the Youth Initiative for Human Rights (YIHR), the organiser of one of the events. The MIA was of the opinion that the report was confidential and could not be communicated to the applicant. Under Article 9(1(5)) of the Free Access to Information of Public Importance Act, authorities shall not provide applicants access to the information they are seeking

385 *Ibid.*, para. 135.

386 *Ibid.*, para. 139.

387 MIA, Belgrade City Police Directorate, Ruling No. 214.1–1571/15 of 22 July 2016.

in the event such access will make available information or documents qualified as restricted or confidential under the law or official enactments based on the law, i.e. in the event such documents or information are accessible only to a specific group of persons and their disclosure might seriously legally or otherwise prejudice the interests protected by the law and outweighing the access to information interest. In his ruling of February 2016, the Commissioner for Information of Public Importance and Personal Data Protection repealed the MIA ruling rejecting YIHR's request and ordered the Ministry to communicate the sought information, specifying that the Ministry did not explain in its reasoning what harm would be incurred by the provision of access to the operational report.³⁸⁸ The Constitutional Court had not ruled on a constitutional appeal filed over the prohibition of the YIHR event by the end of the reporting period.

Furthermore, the Public Assembly Act lays down that the MIA shall rule on appeals within 24 hours (Art. 16), which is an extremely short period of time for reviewing the entire appeal. The MIA's decisions on appeal may be contested in an administrative dispute before the Administrative Court. The Act, however, does not specify the deadline by which the Administrative Court must rule on the dispute, which may again result in the *post hoc* character of the legal remedies and, thus, their ineffectiveness. The deficiencies of the prior law have thus not been eliminated in the new Act. In his Opinion on the Draft Public Assembly Act, the Protector of Citizens also noted that the law did not ensure an effective appeals procedure.³⁸⁹ The on-line search of the Administrative Court's case law database indicates that this Court did not render any decisions on freedom of assembly cases in the reporting period.

Organisers may file constitutional appeals against final decisions prohibiting their assemblies or in the event they have no effective legal remedies at their disposal. On 21 April 2016, the Constitutional Court rendered a decision upholding the constitutional appeal of the Belgrade Pride Parade association, in which it found a violation of the right to judicial protection (Article 22(1) of the Constitution), the right to a legal remedy (Art. 36(2) of the Constitution) and the freedom of assembly (Article 54 of the Constitution) by the Savski venac Police Station, which issued a ruling prohibiting the holding of the Pride Parade in 2013. The Constitutional Court awarded the association 800 EUR in respect of non-material damages payable in RSD but dismissed its claim in respect of material damages. In its decision, the Constitutional Court did not extensively comment on the circumstances of the case, merely noting that the text of the constitutional appeal led to the conclusion that statements on violations of guaranteed rights and freedoms were based on identical statements and arguments set out in constitutional appeals filed against individual

388 Commissioner for Information of Public Importance and Personal Data Protection Ruling No. 07-00-02968/15-03 of 18 February 2016.

389 Protector of Citizens Opinion on the Draft Public Assembly Act No. 10-25-42/15 of 18 January 2016, available in Serbian at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/4544-2016-01-18-10-29-54>.

enactments of state authorities that had banned the 2009 and 2011 Pride Parades, regarding which it had already found violations of the freedom of assembly and the rights to judicial protection and a legal remedy. The Constitutional Court observed that it had, on 9 April 2015, declared the prior Act, pursuant to which the ruling contested by the constitutional appeal was adopted, unconstitutional in its entirety. The Constitutional Court based its 2016 decision on the principle of analogy with the other cases. Although the applicant had claimed material damages for costs sustained during the organisation of the 2013 Pride Parade, the Constitutional Court dismissed the claim, specifying that there were no grounds for it to rule on such a claim under paragraphs 1 and 2 of Article 85 of the Constitutional Court Act. The Constitutional Court ought to have explained in greater detail why it dismissed the claim given that the applicants, represented by BCHR, had filed evidence corroborating their claim for material damages together with the constitutional appeal. As per the impugned actions of the state authorities, notably, the MIA's failure to do its utmost to prevent violence and discrimination against Pride Parade participants, the Constitutional Court emphasised that there were no constitutional grounds for alleging violations of constitutional rights given that the public assembly was not held on 28 September 2013 and that no incidents occurred during the protest walk organised the previous evening. Such a constellation of events had not prompted the Constitutional Court to hold that the 2013 Pride Parade could have been held, but that the competent authorities had not taken all the reasonable measures to ensure the safety of its participants, which is the state's positive obligation with respect to the freedom of assembly, especially in case of public assemblies organised to convey unpopular views.³⁹⁰

As per the applicant's allegation that the statements by the Minister of Internal Affairs and church dignitaries about the Pride Parade the applicants claimed constituted discrimination prohibited under Article 21 of the Constitution, the Constitutional Court said that those statements were made in 2011 and that the Parade was to be held in 2013, noting that the 2012 Parade had not been prohibited, which indicated that the prohibition of the 2013 event was not the consequence of discrimination on grounds of sexual orientation. However, with respect to the applicant's reference to the Minister's discriminatory statements published in the *Press* and *Kurir* dailies on 24 and 25 September 2013, the Constitutional Court said that the text of the constitutional appeal and submitted documents did not lead to the conclusion that the applicant had exhausted all the legal remedies, wherefore it did not review these allegations on the merits.

The Constitutional Court decision on the whole indicates that it had found a violation of the freedom of assembly solely because the Pride Parade organisers did not have effective legal remedies to protect that freedom at their disposal.

³⁹⁰ See the ECtHR judgment in the case of *Baczkowski and Others v. Poland*, App. No. 1543/06, of 3 May 2007, para. 64.

Under the Public Assembly Act, organisers must publish the rulings prohibiting them from holding their assemblies, which is in contravention of the OSCE/Venice Commission Guidelines, under which the authorities should publish such decisions, for example, by posting them on a dedicated website.³⁹¹

The Constitutional Court of Serbia does not keep records of the number of constitutional appeals claiming violations of individual constitutionally guaranteed rights, wherefore there are no statistics on constitutional appeals concerning freedom of assembly restrictions in 2016. In the first 11 months of the year, the Constitutional Court reviewed one constitutional appeal regarding the freedom of assembly; it upheld the appeal and found a breach of Article 54 of the Constitution.³⁹²

9.2.2. Responsibilities of the Organisers and Counter-Demonstrations

The Public Assembly Act lays down extremely stringent penalties for public assembly organisers and leaders who do not comply with their legal obligations. The 2016 Act envisages only fines imposed in misdemeanour proceedings, not imprisonment like its predecessor. Legal and natural persons, organisers of public assemblies, shall be fined 1–1.5 million and 100–120 thousand RSD respectively in the event they hold their assemblies at the venues and times other than those specified in their notifications; fail to notify the public of the prohibition of their assemblies, engage stewards or ensure law and order during the assemblies or during the arrival or departure of the participants; do not manage and monitor their assemblies; fail to facilitate the unimpeded movement of ambulances, police and firemen; fail to act on the orders of the competent authority (police unit); fail to disperse their assemblies in case of an immediate threat to the safety of people and property and notify the police thereof (Art. 21). Natural persons organising assemblies shall also be levied fines ranging from 100 to 150 thousand RSD if they attempt to hold their assemblies at venues at which assemblies may not be held, assemblies they have not notified or assemblies that have been prohibited (Art. 22). Even higher fines for these offences are laid down for legal persons organising assemblies, who commit these misdemeanours, and the same fines are cumulatively prescribed for the responsible persons in the legal persons.

In addition to assembly organisers, the Act recognises other categories of persons liable for the security of the assemblies, notably, the assembly leaders, who may be designated as such by the organisers, and the stewards. The Act does not define their roles but it does lay down 50–100 thousand RSD fines in the event they fail to manage and monitor the assemblies, ensure the unimpeded movement of ambulances, police and firemen, disregard the orders of competent authorities or fail

391 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 136.

392 Constitutional Court reply to a request for access to information of public importance, No. 17/76/2016 of 14 December 2016/.

to disperse the assemblies in case of an immediate threat to the safety of people and property and notify the police thereof (Art. 21(3)).

In his Opinion on the Draft Act, the Protector of Citizens noted that the high fines and possibility of levying cumulative fines against the organisers, legal persons and their responsible persons, as well as assembly leaders, may deter citizens from organising public assemblies and that the misdemeanour penalties might constitute a disproportionate reaction in individual cases, especially when “less significant” violations of the law that have not resulted in adverse consequences are at issue. The legislator was not, however, swayed much by the Opinion of the Protector of Citizens.

Under international standards, organisers, leaders and stewards have a responsibility to make reasonable efforts to comply with legal requirements and to ensure that their assemblies are peaceful, but they should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so. The organisers should not be liable for the actions of individual participants or of stewards not acting in accordance with the regulations and orders of the competent authorities. Instead, individual liability should arise for any steward or participant if they commit an offence or fail to carry out the lawful directions of law enforcement officials.³⁹³

The Public Assembly Act, however, is not in line with these standards, which may result in disproportionate restrictions of the freedom of assembly in practice.

In 2015, the MIA filed a misdemeanour report against the Director of the Youth Initiative for Human Rights Anita Mitić for violating the prior Assembly Act, i.e. for holding an unnotified assembly on 10 July 2015, on the eve of the Srebrenica genocide commemoration. The spontaneous assembly was held in reaction to the prohibition of the Seven Thousand event planned for 11 July and properly notified to the competent authorities. Although the prior law on assembly was declared unconstitutional in April 2015 and the Constitutional Court decision to that effect came into force in October the same year, the misdemeanour proceedings against Anita Mitić continued, despite the fact that the new Act allows spontaneous assemblies and the misdemeanour report had been filed under the prior, unconstitutional law.³⁹⁴ The preliminary hearing was held before the Belgrade Misdemeanour Court in February 2016. The hearing was adjourned so that the acting judge could read the Constitutional Court’s decision declaring the prior law unconstitutional. Such practices are absolutely illegal and leave the impression that misdemeanour proceedings are used to intimidate organisers of assemblies promoting views not toeing the line of the ruling political parties.

393 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 197.

394 Information obtained from YIHR on 20 December 2016.

The Act does not govern the issue of dissenting and simultaneous assemblies at all. At the public debate on the draft in Belgrade in 2015, the MIA said that counter-demonstrations should not be allowed, notably that the assembly that was first notified should be allowed to proceed and that all other events subsequently scheduled at the same time and the same place should be prohibited. Although this position most probably aims to protect the participants of one assembly from the participants of the counter-demonstration, it should not be applied in practice, because the fact that one assembly was notified before another cannot constitute legitimate grounds for prohibiting the latter. Moreover, the law should definitely regulate this matter in greater detail since the organisation of counter-demonstrations is very important in a democratic society, because it provides for pluralism of opinion.

The state authorities' lack of will to take the necessary measures to enable the holding of simultaneous assemblies identified in practice may be the consequence of the fact that the law does not govern simultaneous assemblies and counter-demonstrations. For instance, they prohibited the simultaneous holding of the events scheduled by the National Serbian Front and the Association of Anti-Fascists for 1 October 2016. In the reasoning of its ruling prohibiting the National Serbian Front event, the police said that there was a risk of clashes between its participants and those in the anti-Fascist event notified to the Stari grad Police Station as an assembly in procession and scheduled at the same time and at the same place, and that such clashes would jeopardise the safety of people and property, particularly in view of the fact that large number of citizens and tourists frequented the venue on a daily basis.³⁹⁵ The MIA did not specify the facts that informed its security assessment or the measures taken to protect the participants in both events.

The police also prohibited the assembly by rightist organisations *SNP Naši* and *Obraz*, which was to have been held in front of the Serbian Government Building and the Serbian Progressive Party headquarters at the same time as the Pride Parade. The event was prohibited under the explanation that the Pride Parade would be held at the same time and that there was a risk of clashes between the participants in the two events.³⁹⁶ It, however, remains clear what grounds the ruling prohibiting the assembly was based on and whether the police had undertaken all the requisite measures to ensure that both assemblies were peaceful, or whether they merely gave precedence to the assembly that was notified first, i.e. the assembly that enjoyed greater political support at the time.

395 MIA Belgrade City Police Directorate, Vračar Police Station Ruling 03/16/21 No. 212–120 of 27 September 2016, obtained from YIHR.

396 “Rightists’ Rally during Pride Parade Banned,” *Blic Online*, 18 September 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/zabranjen-skup-desnicarskih-organizacija-tokom-trajanja-parade-ponosa/e5t2l1dd>.

9.3. *Right to Freedom of Peaceful Assembly in 2016*

The Public Assembly Act came into force less than a month before the local/provincial/national election campaign was launched, wherefore neither the citizens nor the MIA had time to adequately prepare for the enforcement of the new Act, which is of crucial importance not only for the exercise of the freedom of peaceful assembly, but for free, fair and democratic elections as well. Even banal oversights, such as the absence of assembly notification forms in police stations, could lead to delays in notifying the events and, consequently, them not being held.³⁹⁷ On 29 March 2016, a coalition of NGOs appealed on the MIA to penalise the organisation and holding of a large number of illegal rallies, formally organised by the state authorities to promote political parties at venues prohibited under the Public Assembly Act. The Prime Minister and Minister of Internal Affairs had personally attended these rallies, although the latter defended his Ministry's view on prohibition of all rallies at specific venues during the drafting of the Act.³⁹⁸

Given that the Public Assembly Act prohibits assemblies at specific venues, the consistent enforcement of this law may, on the other hand, result in the prohibition of e.g. traditional school performances, such as the celebrations of the school St. Sava day. YUCOM, which monitored the enforcement of the Act in the first half of 2016 in coalition with other NGOs, noted that the Act was applied selectively, resulting in legal insecurity, and that the high fines prescribed by the Act constituted a real threat to the survival of political parties, trade unions and other organisations and risked to actually deter the citizens from enjoying the freedom of peaceful assembly.

The media reported on the Bor Mayor's threat to public institution staff that they would lose their jobs unless they attended the local rallies organised by the Serbian Progressive Party.³⁹⁹ Such practices, which may not necessarily be limited to local power-wielders, constitute grave violations of the freedom of assembly, which entails also the freedom to attend public assemblies.

A total of 43,345 public assemblies, 42,805 notified and 540 not notified to the relevant police authorities, were held across Serbia from January to November 2016.⁴⁰⁰

397 Information obtained from YUCOM, which monitored the enforcement of the Public Assembly Act with regard to 106 rallies organised during the 2016 election campaign.

398 Appeal to the Police to React of Holding of Illegal Rallies, NGO Coalition, Belgrade, 28 March 2016, available in Serbian at: <http://www.yucom.org.rs/saopstenje-apel-policiji-da-reaguje-u-slucajevima-nezakonitih-skupova/>.

399 Impossible Choice; Pink Slip or Proof of Loyalty by Attending Rally, *NI*, 17 April 2016, available in Serbian at: <http://rs.n1info.com/a152702/Vesti/Vesti/Nemoguc-izbor-Otkaz-ili-dokaz-lojalnosti.html>.

400 Ministry of Internal Affairs reply to a request for access to information of public importance Ref. No. 1195/16-3 of 17 November 2016.

Pride of Serbia, rallying around 150 members of the LGBTI community, was organised as a protest in procession in Belgrade on 25 June 2016.⁴⁰¹ This event was a follow up of the 2015 Trans Pride event, which was adequately safeguarded by the police, wherefore the “sight and sound” principle allowing its participants to freely communicate their views to the public was fully complied with. No incidents occurred during the event.⁴⁰²

The September 2016 Pride Parade, which was also organised as a procession, was safeguarded by strong police forces. As opposed to Pride of Serbia, it was manned by 5,000 police officers in full anti-riot gear and the streets were blocked off to citizens not participating in the event. The media were, however, allowed to cover the rally. The Belgrade Mayor and Minister of State Administration and Local Self-Governments and members of the diplomatic corps attended the rally to express their political support. No incidents occurred during the Pride Parade.⁴⁰³ At the very start of the event, the police stopped a group of Serbian Orthodox believers, who wanted to protest against the Parade and took into custody a man who appeared to be a police officer.⁴⁰⁴

The “Let’s Not Give/Drown Belgrade” Initiative against the Belgrade city authorities and the controversial Waterfront construction project held around 12 protests throughout 2016. The initial events were not notified as they were organised in immediate reaction to specific events, but misdemeanour charges were raised against their organisers. The protesters physically clashed with the police during one of the events, in front of the Belgrade City Assembly.⁴⁰⁵ Although the subsequent assemblies were properly notified, the police failed to take any measures to protect their participants from the violence of their opponents, who hurled things at them from the windows, or from the unidentified individuals impersonating police officers and trying to illegally ID the organisers and drag one of them into a car.⁴⁰⁶ The traditional media paid hardly any attention to these public protests, attended by up to five thousand people at any one time.

Four misdemeanour charges were filed against the Let’s Not Give/Drown Belgrade civic initiative in 2015. Two misdemeanour proceedings ended in final

401 “LGBTI Rights Procession Held in Belgrade,” *NI*, 25 June 2016, available in Serbian at: <http://rs.n1info.com/a171561/Vesti/Vesti/Setnja-za-zastitu-prava-LGBTI-osoba-odrzana-u-Beogradu.html>.

402 Information obtained from the organisers.

403 “Pride Parade Held under Strict Security Measures,” *Večernje novosti*, 18. September, available in Serbian at: <http://www.novosti.rs/vesti/beograd.74.html:625677-UZIVO-U-toku-setnja-uc-esnika-Prajda-nema-incidentata-FOTOVIDEO>

404 “Pride Parade Minute by Minute, Pride Week Ends without Incident,” *Telegraf*, 18 September 2016, available in Serbian at: <http://www.telegraf.rs/vesti/beograd/2361693-parada-ponosa-2016>.

405 Information obtained from the “Let’s Not Give/Drown Belgrade” Initiative.

406 “Initiative: Parallel Structures Also at Protests,” *Danas*, 22 November 2016, available in Serbian at: http://www.danas.rs/politika.56.html?news_id=332812&title=Inicijativa%3A+Na+protestima+i+paralelne+strukture.

decisions acquitting the Initiative, one because the charges were based on the prior public assembly law that was declared unconstitutional, and the second because the event at issue was a news conference organised at a public venue, not a public assembly. The two other misdemeanour proceedings were still pending at the end of the reporting period. Although the new Public Assembly Act allows spontaneous assemblies (under specific conditions), three misdemeanour reports were filed against Let's Not Give/Drown Belgrade initiative because it had failed to pre-notify the assemblies. One of them was held in November 2016, at the site of the buildings demolished to implement the Belgrade Waterfront project, wherefore the question arises whether it can be qualified as a public assembly given that it took place on private land. None of the misdemeanour proceedings initiated in 2016 had ended with final decisions by the end of the year.⁴⁰⁷ A twelve misdemeanour proceedings were initiated against the members of the Let's Not Give/Drown Belgrade initiative under the Public Law and Order Act⁴⁰⁸ since 2014, who are charged with violating this law during their public assemblies protesting against the ruling party and the Belgrade Waterfront project.⁴⁰⁹

The practice of prosecuting organisers of assemblies openly criticising the local authorities and the ruling party for misdemeanours brings into question the possibility of publicly expressing views not toeing the government line and essentially constitutes a mechanism for silencing and punishing political opponents.

9.4. The Role of the Police

The Public Assembly Act makes no mention of the obligation of the police to ensure the free holding of assemblies and the protection of their participants. The police have nevertheless been fulfilling this obligation in practice, especially assemblies provoking fierce reactions and debates, such as the Pride Parades. There have been cases, however, when the police did not take all the requisite measures to protect the participants in the Let's Not Drown/Give Belgrade events. Their organisers said that the police seemed to be present at these rallies to monitor what was happening at them and protect the other people from the participants. On several occasions, the organisers asked the present officers to protect them from the people hurling things at them and from the man impersonating a police officer, who tried to ID an organiser by force. The police, however, did not take all the necessary measures to protect the participants, telling them to call up the relevant police station.⁴¹⁰ Furthermore, OSCE and the Venice Commission recommend in their Guidelines that “[l]aw-enforcement personnel should be clearly and individually identifiable:

407 Information obtained from the Civic Initiative Let's Not Drown/Give Belgrade.

408 *Sl. glasnik RS*, 6/16.

409 “On Trial because of Yellow Duck in front of Assembly,” *NI*, 26 January 2017.

410 Information obtained from the “Let's Not Give/Drown Belgrade” initiative on 28 November 2016.

When in uniform, law-enforcement personnel must wear or display some form of identification (such as a nameplate or number) on their uniform and/or headgear and not remove or cover this identifying information or prevent persons from reading it during an assembly.” Large numbers of plain-clothes policemen were, however, present at the rallies organised by the Let’s Not Drown/Give Belgrade Civic Initiative.

Police securing assemblies also need to make sure that the participants’ messages are seen and heard. However, this has not been the case at numerous events staged by Women in Black. At these rallies, the police have made an almost full circle round the participants, isolating them from the others, wherefore it was practically impossible for the organisers to convey any of their messages to the public. This gives rise to the question whether the “sight and sound” principle is fully complied with at events at which unpopular views are conveyed.⁴¹¹

The police should be proactive in securing public assemblies and communicate actively with their organisers to remain updated about any threats or escalation of any conflicts. Furthermore, the police should designate liaison officers the organisers can contact before and during the assemblies, whose names and contact details need to be publicly available. The Serbian police applied such a practice during the organisation of the assemblies promoting LGBTI rights.

As noted, the Public Assembly Act provides the police with a broad discretion because it lays down many *in abstracto* grounds for prohibiting assemblies and does not prescribe that restrictions of the freedom of assembly must be proportionate to the aim and justified in a democratic society. Furthermore, the police are entitled to prevent or disperse assemblies before they begin or during them in case circumstances constituting grounds for their prohibition occur (Article 17, Public Assembly Act). The Act does not specify that dispersal of assemblies should be a measure of last resort or that the police are to apply all reasonable measures to ensure the safety of assemblies before dispersing the participants (e.g. by taking into custody individuals threatening to employ violence) in case of an imminent threat of violence.

The Chapter 23 Action Plan, which was at long last adopted in 2016, envisages the training of police officers in maintaining law and order at public assemblies and other large-scale events in accordance with international human rights protection instruments, but not before the last quarter of 2017, although the Public Assembly Act was adopted in January 2016.⁴¹² It remains, however, unclear why the training of police officers has been put off and how they can be expected to properly enforce the new Act without training.

411 Information obtained from the participants in the Women in Black assemblies on 26 November 2016.

412 Chapter 23 Action Plan, April 2016, Point 3.6.1.25, available at: <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>.

10. Freedom of Association

10.1. General

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantee everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Both of these international documents allow the States Parties to impose lawful restrictions on the exercise of these rights by members of the armed forces and the police, while the ECHR also allows them to impose such restrictions on members of the administration of the State.

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations (Art. 55). The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Constitution also prohibits political party membership of Constitutional Court judges, public prosecutors, the Protector of Citizens and army and police staff, but not their membership of professional associations.

The Register of Associations of Citizens i.e. of non-government organisations (hereinafter Register) is kept by the Business Registers Agency, while the political parties are entered in the Register of Political Parties kept by the Ministry of Justice and State Administration (Register of Political Parties). The Office for Cooperation with Civil Society was established by a Government Decree in April 2010.⁴¹³ Its main goals are: to involve civil society organisations (associations of citizens) in continuous dialogue with the Government institutions and encourage ongoing and open cooperation between the associations of citizens and the state administration authorities. The Office Director resigned in 2015, but it was not until a year later, on 12 February 2016, that the Acting Director was appointed in her stead. The Office is still managed by the Acting Director.

As regards the freedom of association, the European Commission said in its Serbia 2016 Report⁴¹⁴ that Serbia had made some progress towards establishing an enabling environment for the development and financing of civil society but that further efforts were needed to ensure systematic inclusion of civil society in policy dialogue and help develop its full potential.

The European Commission said that the Office continued with initiatives aimed at improving cooperation between the state and the civil sector and at enhancing the legal, financial and institutional framework for the development of civil society. It also said that cooperation between civil society and parliament in the area

413 *Sl. glasnik RS*, 26/10.

414 Serbia 2016 Report, pp. 8–9.

of EU negotiations had improved, notably through the National Convent on European Integration.

The Commission noted that Guidelines for Cooperation between the core negotiating team, representatives of civil society organisations, the National Convent and the Chamber of Commerce were adopted in April, aiming to improve the level of inclusion of civil society in the accession negotiations. It, however, said that civil society was struggling to exert influence on policy-making and facing obstacles from parts of the public administration. “At many levels, civil society participation in policy-making is still to a large extent *ad hoc*, which means that the full potential of the sector is not being realised,” the Commission said.

In the past two years, the state appeared to have been more willing to involve the civil sector in various working groups and public debates and to take on board its opinions and suggestions on specific regulations. An IPSOS survey, however, indicated that CSOs were of the view that the Government’s capacity for cooperating with the civil sector was lower; 36% of the respondents qualified the level of cooperation as worse and 14.6% as better than the previous year.⁴¹⁵

The exercise of the freedom of association is governed in greater detail by the Act on Associations⁴¹⁶ and the Act on Political Parties.⁴¹⁷ The provisions on the status of associations in the Draft Civil Code⁴¹⁸ differ significantly from those in the Act on Associations. CSOs were not involved in the preparation of the Preliminary Draft in 2015. In cooperation with Civic Initiatives and the Trag Foundation, the representatives of the Office for Cooperation with Civil Society organised a meeting with the Civil Code Drafting Commission on 11 July 2016, at which they presented the CSOs’ views, proposals and suggestions regarding the provisions on the status of associations, endowments and foundations, endorsed by 247 CSOs in 57 cities. The representatives of CSOs submitted to the Commission their analysis of the relevant Draft Civil Code provisions and the amendments they proposed.⁴¹⁹

The CSOs, notably, criticised the definition of associations, the requirements to be fulfilled by founders of associations, the relationship between the associations’ Articles of Association and the Code, the work and powers of association Assemblies, the Assembly members’ voting rights and membership termination and expulsion. The provisions in the Draft provide for excessive and unnecessary state

415 “2016 CSO Needs Assessment Report Serbia”, TACSO, Belgrade, May 2016, p. 30, available at: <http://www.gradjanske.org/izvestaj-o-proceni-potreba-civilnog-drustva-u-srbiji-za-2016-godinu/>.

416 *Sl. glasnik RS*, 51/09 and 99/11.

417 *Sl. glasnik RS*, 36/09 and 61/15– CC Decision.

418 The Draft Civil Code is available in Serbian at: <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

419 Proposed Amendments to the Draft Civil Code Provisions on Associations and Foundations, Belgrade, June 2016, available in Serbian at: <http://www.civilnodrustvo.gov.rs/upload/documents/Razno/2016/Komentari-naact-Gra%C4%91lanskog-zakonika.pdf>.

intervention in the freedom of association and are in contravention of the Act on Associations and Article 11 of the ECHR.

The procedure under which associations are registered is thoroughly regulated by the Business Registers Agency Registration Procedure Act.⁴²⁰

10.2. Associations of Citizens (Non-Government Organisations)

The Act on Associations regulates the establishment, legal status, registration and deregistration, membership, bodies, changes in status, dissolution and other issues of relevance to the work of associations of citizens, as well as the status and activities of foreign associations. The Act defines an association as a voluntary and non-government non-profit organisation based on the freedom of association of two or more natural or legal persons established to achieve and promote a specific common or general goal or interest not prohibited by the Constitution or the law. The Act applies subsidiarily, as a *lex generalis*, to other associations the activities of which are governed by other laws (e.g. religious communities, trade unions, political parties, etc.). Under the Draft Civil Code, an association denotes a voluntary organisation of two or more natural or legal persons, established with a view to achieving a specific social or common non-economic purpose.

The Draft Civil Code commendably clearly distinguishes between civic associations and other forms of associations as it specifies that the legal status and activities of political organisations, trade unions, churches and religious communities, business associations and other business organisations shall be governed by other regulations. CSOs criticised this definition of associations, opining that it was not in compliance with the Act on Association and that the term “social and common non-economic purpose” implied that a common purpose was not social. CSOs, on the other hand, believe that all purposes for which associations are established are social *per definitionem*. Furthermore, the definition of “non-economic” in the Draft is not fully in compliance with the term “non-profit” in the Act on Associations, which allows associations to perform economic activities under specific circumstances.

An association of citizens may be established by at least three natural or legal persons, one of whom must have residence in the territory of the Republic of Serbia. The Draft Civil Code also includes this provision, but lays down that at least half of the founders must reside or be headquartered in the Republic of Serbia (Art. 54). The CSOs criticised this provision as well, claiming it was not in compliance with the Act on Associations. It remains unclear why the legislator opted for such a restrictive solution, which risks to undermine legal certainty and limit the possibilities of using associations as the suitable legal status form for developing cross-border and regional cooperation among citizens.

420 *Sl. glasnik RS*, 99/11 and 83/14.

Under the Act on Associations, an association shall pursue its goals freely and autonomously and have legal subjectivity from the moment it is entered in the Register. Regulations on civil partnership shall apply to associations not entered in the Register. Therefore, registration is the condition an association has to fulfil to acquire the status of a legal person but it does not have to register to work.

A Registrar's decision may be challenged with a Ministry. Neither the Act on Associations nor the Business Registers Agency Registration Procedure Act specify which ministry is charged with ruling on the complaints. An administrative dispute may be initiated against a decision of the Minister. The Business Registers Agency Registration Procedure Act envisages a special legal remedy against a final Administrative Court decision – the submission of a motion for its review to the Supreme Court of Cassation. A motion for the review of a court decision is an extraordinary legal remedy envisaged by the Administrative Disputes Act (ADA).⁴²¹ The ADA does not envisage appeals of Administrative Court decisions or motions for the protection of legality, but specifies that such motions may be filed by parties to an administrative dispute⁴²² and the competent public prosecutor.

The Act on Associations thoroughly governs association bodies and their work. The Draft Civil Code provisions on these issues are in collision with the Act. For instance, Article 57 of the Draft Civil Code lays down that an Assembly of an association shall be the topmost association authority, convene the sessions of the association's management board, hold its regular sessions at least twice a year, and that its extraordinary sessions may be called by at least a fifth of all Assembly members unless otherwise provided for in the association's Articles of Association. However, under Article 22 of the Act on Associations, an association shall hold regular Assembly sessions at least once a year, or more frequently if so provided for in its Articles of Association; furthermore, the extraordinary Assembly sessions shall be called by one-third of the Assembly members, or less if so provided for in the Articles of Association. The provision on the holding of regular Assembly sessions once a year is a logical consequence of the provision under which the associations' Assemblies shall adopt the annual financial reports. Furthermore, the Act on Associations does not stipulate that associations must have management boards, as opposed to the Draft Civil Code (Art. 62). The extent of the inconsistencies between the Act on Associations and the Draft Civil Code gives rise to the question whether the legislator had consulted the provisions of other laws at all during the preparation of the Draft.

421 *Sl. glasnik RS*, 111/09.

422 An administrative dispute may be initiated by a party challenging an administrative decision on its rights and obligations; by a public prosecutor in the event an administrative enactment violated the law to the detriment of public interest; the Attorney General in the event an administrative enactment violates the law to the detriment of the property rights and interests of the Republic of Serbia, an autonomous province or a local self-government (Art. 11, ADA). The defendant in an administrative dispute denotes the authority the enactment or silence of which is disputed (Art. 12, ADA).

In addition, the Draft Civil Code lays down that association members shall have the equal right to vote in the Assembly and adopt their decisions by a majority of votes. This issue should be dispositive in character as well, because the Act on Associations, on the other hand, sets out that the Articles of Association must specify the Assembly decision-making procedure (Article 12 in conjunction with Article 22). Namely, legislation on the freedom of association needs to primarily be guided by the state's negative obligation not to interfere in the way this freedom is realised.⁴²³ The Draft Civil Code, however, equates motions signed by all association members with decisions adopted by the Assembly; this solution will be justified only if the Code specifies that this issue, too, may be regulated otherwise in the Articles of Association.

The provisions on association membership in the Draft Civil Code are not in compliance with Article 55 of the Constitution and the state's negative obligation regarding the realisation of the freedom of association. Under Article 63 of the Draft Civil Code, association members shall denote the founders and individuals who subsequently join the association pursuant to the Articles of Association. Members are entitled to leave the association at any time provided they thereby do not cause the association material and non-material damages. This provision may result in precluding the members from renouncing their membership since material and non-material damages are civil law matter determined in separate proceedings, wherefore such a vague formulation is not in accordance with Article 55 of the Constitution, under which everyone is entitled not to be a member of an association. Article 12 of the Act on Associations lays down that the acquisition and termination of membership must be governed by the associations' Articles of Association, i.e. that these issues are dispositive in character.

Associations may engage in economic activities but are not entitled to distribute their profits to their members and founders.⁴²⁴ The Draft Civil Code excludes this possibility. An association may use its assets only to pursue its goals. Only a local non-profit legal person founded to achieve the same or similar goal may be designated as the successor of an association's assets in its statute in the event the latter dissolves. An association's assets shall become the assets of the Republic of Serbia and may be used by the local self-government unit in which the association had been headquartered in the event the assets cannot be transferred in accordance with the law or with the association's Articles of Association at the time of its dissolution or in the event it was dissolved pursuant to a decision prohibiting its work or in the event its Articles of Association do not specify what will happen to its assets in the event it dissolves.

423 See V. Dimitrijević, D. Popović, T. Papić and V. Petrović, "International Human Rights Law," p. 254, BCHR, Belgrade, 2007.

424 An association performing an economic activity generating income exceeding the amount it needs to pursue its goals shall be fined between 50 and 500 thousand RSD (Art. 73(1(2))).

The Act on Associations lays down that funds will be earmarked in the budget of the Republic of Serbia to encourage the implementation of programmes of public interest⁴²⁵ or cover the funds an association lacks to implement them. These funds shall be disbursed through public calls for proposals. Autonomous provinces and local self-government units may also grant funds to associations from their budgets. Associations funded in this manner are under the obligation to publish reports on their work and funding at least once a year and to submit such reports to their donors (Art. 38). Under the Act, the Government shall specify in detail the grant criteria, the grant procedure and the procedure for reimbursing the funds not used for the purpose they had been granted for. In 2012, the Government enacted a Decree on funding to encourage the implementation of programmes of public interest by associations or cover the funds they lack to implement them; the Decree was revised in 2013 and 2015,⁴²⁶ which should increase the transparency of budget allocations and prevent the misuses that had been possible due to existence of legal lacunae.

At the time this Report was prepared, the Office for Cooperation with Civil Society was still in the process of collecting data for its 2016 annual synthetic report on state budget funds spent to support programmes by CSOs and other organisations. As this report will be completed in 2017, the Office was unable to forward to the BCHR data on allocated and spent budget funding (budget line 481) designated for CSOs. Given that funding for NGOs is designated in various fields, it is extremely difficult to ascertain how much money was altogether earmarked in the state budget for CSOs by perusing the 2016 Budget Act.⁴²⁷ The same problem has arisen in attempts to ascertain the amount of funding designated for NGOs in the Vojvodina budget. According to the Office for Cooperation with Civil Society data, 6,028,428,679.63 RSD on budget line 481 were spent in 2015. The Office did not have data on the share of NGO income in the national GDP or the personal income taxes they paid for their staff.⁴²⁸

The Act on Associations lays down that legal and natural persons that give contributions and donations to associations are entitled to tax exemption. Under Article 15 of the Corporate Profit Tax Act,⁴²⁹ a company's outlays – in the amount not

425 Programmes of public interest shall, notably, comprise programmes in the fields of social welfare, veteran-disability protection, protection of people with disabilities, social care of children, protection of internally displaced people from Kosovo and refugees, birth rate stimulation, aid to the elderly, health care, human and minority rights protection and promotion, education, science, culture, information, environmental protection, sustainable development, animal protection, consumer protection, anti-corruption, as well as humanitarian and other programmes via which an association is exclusively and directly satisfying public needs.

426 *Sl. glasnik RS*, 8/12, 94/13 and 93/15.

427 2016 Budget Act, *Sl. glasnik RS*, 103/15, available in Serbian at: <http://www.parlament.gov.rs/upload/documents/3204-15.pdf>.

428 E-mail reply of the Office for Cooperation with Civil Society to BCHR's request for access to information of public importance of 23 December 2016.

429 *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14 – other law, 142/14, 91/15 – authentic interpretation and 112/15.

exceeding 3.5% of its total revenue – on health care, cultural, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes, as well as on social care institutions established in accordance with the law governing social protection, shall be recognised as expenditure.⁴³⁰ These outlays shall be recognised as expenditure only if the funds were paid to legal persons registered for those purposes and using the funding solely to pursue the above-mentioned activities. Although the Corporate Profit Tax Act was amended in 2015, tax legislation, however, still does not include provisions allowing for tax relief on these grounds yet, i.e. direct tax deductions for companies donating funds to associations of citizens.

Serbian tax law in general exempts CSOs from paying tax on grants, donations, membership fees and other non-economic sources of income. Under Article 44 of the Corporate Profit Tax Act, non-profit organisations shall be exempted from paying tax on declared profit from economic activities not exceeding 400,000 RSD in the relevant year, provided that: such profit is not distributed to their founders, members, executives or affiliated persons; the annual personal income paid to staff, executives and affiliated persons does not exceed twice the average wage in Serbia in the relevant year; they do not distribute their assets in favour of their founders, members, executives, staff or affiliated persons; and, do not have a monopoly or dominant position in the market under competition law. Non-profit organisations are under the obligation to keep records of income and spending and file tax statements and returns.⁴³¹ CSOs are not entitled to tax relief on loans drawn to invest in fixed assets.⁴³²

In its Serbia 2016 Report, the European Commission said that corporate donations to non-profit organisations that were licensed providers of social services were now exempt from VAT (this type of exemption previously applies only to donations to state-owned service providers). It remains unclear why such relief is envisaged only for donations to associations extending social services and not to all civic associations.

10.3. Restriction and Prohibition of the Work of Associations

Freedom of association is not an absolute right, wherefore it may be restricted in the event such restrictions are prescribed by law, necessary in a democratic society in the interests of national security or public safety, for the prevention of

430 The percent of recognised expenditure affects the amount of taxable corporate profit as the taxable profit is calculated in the tax balance by adjusting the company profit declared in accordance with the method of acknowledging, measuring and estimating revenue and expenditure.

431 Corporate Profit Tax Act, *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14 – other law, 142/14, 91/15 – authentic interpretation and 112/15.

432 “2016 CSO Needs Assessment Report Serbia,” TACSO, Belgrade, May 2016, available at: <http://www.gradjanske.org/izvestaj-o-proceni-potreba-civilnog-drustva-u-srbiji-za-2016-godinu/>.

disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (Art. 11(2), ECHR). Art. 22(2) of the ICCPR lays down that freedom of association may be restricted in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Constitution specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate. The Act on Associations further prescribes that an association may be prohibited in the event its goals and activities are aimed at undermining the territorial integrity of the Republic of Serbia, incitement of inequality, hate or intolerance on grounds of race, ethnicity, religious or other affiliation or orientation, as well as of gender, sex, physical, psychological or other features or abilities.

The Act on Associations thus introduces new grounds for banning an association not recognised in international documents – undermining territorial integrity. On the other hand, it specifies what “protection of the rights and freedoms of others” as grounds for prohibiting an association entail. However, undermining territorial integrity need not necessarily fall under “the interests of national security” grounds. If the activities of an association are peaceful and if it is conducting non-violent political activities and advocating e.g. greater autonomy for cities and provinces, then “undermining territorial integrity” does not constitute legitimate and sufficient grounds for prohibiting its work. The Anti-Discrimination Act prohibits associating to commit discrimination, i.e. activities of organisations or groups aimed at violating the rights and freedoms enshrined in the Constitution, international and national law, or at inciting national, racial, religious or other forms of hate, dissent or intolerance (Art. 10), whereby it also elaborates the “protection of the rights and freedoms of others” grounds.

Under the Act on Associations, a decision to prohibit an association may also be based on the actions of the association’s members provided that there is a link between their actions and the activities or goals of the association, that the actions are based on the organised will of the members and the circumstances of the case indicate that the association tolerated the actions of its members (Art. 50(2)). Secret and paramilitary associations are prohibited by the Constitution *ex constitutio* and by the Act on Associations *ex lege*.

The Act on Associations prohibits the public use of visual symbols and insignia of prohibited associations (Art. 50(5)). The Act’s penal provisions, however, do not lay down any penalties for non-abidance by this prohibition. The *Fatherland Movement Obraz* association, which the Constitutional Court banned in 2012⁴³³, continued displaying its symbols and insignia at the public rallies it organised and on its official website. This association continued implementing its programme as

433 CC Decision VII U 249/2009, *Sl. glasnik RS*, 69/12.

an informal movement called *Srbski obraz*, which uses the visual identity of the prohibited *Fatherland Movement Obraz*. Furthermore, the organisation *Srbski obraz* has been operating its official website available to the public.

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia⁴³⁴ further prohibits the activities of organisations reaffirming neo-Nazi and Fascist ideas in their statutes and programmes. Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association advocating neo-Nazi or Fascist goals and disregarding the prohibitions in the Act (Art. 2(2)). The Act, therefore, does not introduce fresh grounds for the prohibition of an association, but grounds for initiating the procedure for deleting it from the Register. This legal sanction borders on the absurd given that most of the organisations, including Combat 18, which are advocating such ideas, are unregistered. Under the Act, a fine shall be imposed upon a registered association the member of which committed the misdemeanour of propagating neo-Nazi or Fascist ideas; the Act however, does not require that the individual acted in the capacity of a member in the specific case or that the association supported, endorsed or tolerated his actions. Such automatic punishment of associations for the activities of their members may jeopardise the freedom of association because associations cannot control or be aware of all the actions of all their members.

The Convention on the Elimination of All Forms of Racial Discrimination⁴³⁵ lays down that States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination and obliges them to declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and recognise participation in such organisations or activities as an offence punishable by law (Art. 4(1)). The Republic of Serbia has acted in compliance with the commitments it assumed when it ratified the Convention on the Elimination of All Forms of Racial Discrimination by adopting and applying this Act. The Act, however, needs to be elaborated in greater detail with respect to the misdemeanour penalties imposed on associations and it needs to define the concept “neo-Nazi and Fascist ideas and insignia”. Furthermore, the Act prohibits “all activities of neo-Nazi and Fascist associations” without requiring of the Constitutional Court to first qualify the associations as such and prohibit their work or of the Business Registers Agency to dismiss their registration applications, which provides a lot of room for arbitrariness of the misdemeanour courts.

Despite the relatively good legal framework, which has potential to pre-empt propagation of neo-Nazi and Fascist ideas, associations aiming at inciting national,

434 *Sl. glasnik RS*, 41/09.

435 *Sl. list SFRJ*, 31/67.

racial, religious and other hate and intolerance or limiting the rights and freedoms of others nevertheless exist in Serbia. The organisation *Srbski obraz*, for instance, has suffered no consequences for staging events at public venues. Together with another rightist organisation, *Naši*, this association organised numerous events in 2016.⁴³⁶ The organisation *Stormfront* features the activities of ‘White Nationalists of Serbia and South-East Europe’ on its website.⁴³⁷

The procedure for prohibiting an association is initiated on the motion of the Government, the Chief State Prosecutor, the ministry charged with administration affairs, the ministry charged with the field in which the association is pursuing its goals or the registration authority – the Business Registers Agency. The Constitutional Court of Serbia did not render any decisions prohibiting the work of an association or review any claims of violations of the freedom of association, enshrined in Article 55 of the Constitution, in the January-November 2016 period.⁴³⁸

The Draft Civil Code does not include any provisions restricting the work of associations or prohibiting them, but it includes extremely restrictive provisions regarding association membership and exclusion from membership. Under the Draft, associations may specify grounds for exclusion from membership in their Articles of Association. Exclusion from membership of an association may be conditioned by the explicit consent of the member in question. Association membership shall cease if it is *in contravention of the law or morals*. Associations may specify in their Articles of Association that no grounds need to be specified in decisions on exclusion from membership, in which case the excluded members are not entitled to initiate a dispute on the decisions to exclude them. Unless otherwise provided for by the association’s Articles of Association, its member may be excluded only by a decision of the association’s Assembly and for justified cause (Art. 65).

The provision allowing exclusion from membership of members due to their actions in contravention of the law and morals and the provision allowing for exclusion from membership without specifying the grounds for exclusion may provide room for numerous abuses and unwarranted restriction of the members’ rights. This solution was criticised by CSOs as well. Whereas the Act on Associations lays down that membership acquisition and termination must be governed by the Articles of Association, the Draft Civil Code entitles the associations to govern these issues in their Articles of Association, but does not impose that obligation on them. It is legally nonsensical to condition renunciation of membership by the member’s explicit consent, as only members of associations can renounce their subjective right. The provision on the termination of membership of an association in the event such membership is in the contravention of the law or morals is extremely problematic

436 Available at: <http://srbin.info/tag/obraz/>.

437 See: <https://www.stormfront.org/forum/f43/>.

438 The reply of the Constitutional Court to a request for access to information of public importance Su No. 17/76/2016 of 14 December 2016.

because it is difficult to imagine a situation in which membership of an association, the goals of which are not in contravention of the Constitution or the law, ceases *ipso iure*, because the membership of a specific individual in that association is in contravention of the law.

Furthermore *ipso iure* membership termination because it is “in contravention of morals” does not fulfil the ECHR requirement that every restriction of the freedom of association must be prescribed by law – which necessitates both a specific degree of foreseeability and accuracy of the regulations and conformity with the restrictions of the freedom of association laid down in the ECHR. Namely, the vagueness of the provision mentioning “in contravention of morals” provides the authorities with excessive powers regarding matters that should actually not be within their remit at all. Furthermore, the right to membership of an association may be gravely undermined by the provision in the Draft Civil Code allowing the exclusion of a member without specifying the grounds for the exclusion and without providing that member with the chance to argue his case. The CSOs took the view that *a priori* abjuration of the right to judicial protection against decisions on exclusion created room in the law for potential unjustified discrimination against the minority by the majority, resulting in the association’s loss of its democratic character. The Draft Civil Code does not specify justified cause for exclusion of a member under an Assembly decision. On the other hand, the Act on Associations lays down that these grounds shall be specified in the Articles of Association. The two pieces of legislation need to be aligned on this matter as well.

The tabloid *Telegraf* in 2016 published a list of NGOs “funded by American tycoon George Soros”⁴³⁹ with a view to branding them as pro-American, enemies and as spies. Such discourse prevailed in the 1990s, during Slobodan Milošević’s rule. Access to information on the donations of Soros’ Open Societies Foundation, as well as those granted by other US and European funds – both for NGO and state projects, both in Serbia and the rest of the world – is publicly available and transparent, leading to the conclusion that media reports, such as *Telegraf*’s, are tendentious. *Telegraf* was not the only outlet in Serbia to publish such “revelations” in 2016, usually in the form of lists of recipients of Western grants.

In its Serbia 2016 Report, the European Commission underlined that an empowered civil society was a crucial component of any democratic system and should be recognised and treated as such by state institutions. It also observed that CSOs and human rights defenders, who played a key role in raising awareness of civil, political and socioeconomic rights, continued to operate in a public and media environment often hostile to criticism.

439 “Tabloid List of Soros’ Mercenaries: Reawakening of the Balkan Spies”, *Radio Free Europe*, 16 August 2016, available in Serbian at: <http://www.slobodnaevropa.org/a/soros-napadi-srbija-0816/27927991.html>.

10.4. Association of Aliens

The Act on Associations allows aliens to establish local associations provided that at least one of the founders resides or is headquartered in the territory of the Republic of Serbia. As noted above, Article 54 of the Draft Civil Code is more restrictive with respect to the right of aliens to establish associations as it lays down that at least half of the founders of an association must reside or be headquartered in the Republic of Serbia. The Act on Associations also governs the status-related issues of foreign associations in Serbia. Under the Act, a foreign association shall denote an association headquartered in another state, established under that state's regulations to achieve a joint or common interest or goal, the activities of which are not aimed at making profit. A foreign association may pursue activities in Serbia in the event it establishes a representative office entered in a separate register of the Business Registers Agency.

The representative office of a foreign association is entitled to operate freely in the territory of the Republic of Serbia provided that its goals and activities are not in contravention of the Constitution or laws of the Republic of Serbia, international treaties acceded to by the Republic of Serbia or other regulations. The Constitutional Court shall decide on the prohibition of a foreign association on the motion of the same authorities entitled to seek the prohibition of a national association.

10.5. Associations of Civil Servants and Security Forces

The Constitution prohibits the judges of the Constitutional Court and other courts, public prosecutors, the Protector of Citizens, members of the police and armed forces from membership in political parties. The Police Act allows police officers to organise in trade unions, professional and other organisations but prohibits their organisation in parties and political activities in the ministry (Art. 134). The Act on Judges and the Act on Public Prosecution Services allow judges, public prosecutors and their deputies to associate in professional organisations to protect their interests and take measures to protect their autonomy (public prosecutors and their deputies) and their independence and autonomy (judges). In 2016, the High Judicial Council was asked to rule on the compatibility between the holding of a judicial office and membership of an NGO, the Judicial Research Centre, which was founded by judges, prosecutors and attorneys with a view to improving the judiciary. Judge Aleksandar Trešnjev was recused from a trial because he and the defendant's attorney were both members of this association; in BCHR's view, Trešnjev's recusal is a flagrant violation of the freedom of association. The President of the Belgrade Higher Court, who had recused the judge, asked the High Judicial Council to render its opinion on the compatibility between the holding of a judicial office and membership of the association. The High Judicial Council said it did not have jurisdiction to rule on the incompatibility of holding a judicial office in specific cases and at the request of court presidents. It also dismissed the recused judge's complaint

against the decision to recuse him, holding that his rights had not been violated and that recusals were in the jurisdiction of the court presidents, who rendered such decisions to ensure the unimpeded and lawful conduct of proceedings.⁴⁴⁰

The Act on the Army of the Republic of Serbia guarantees professional army members the right to organise in trade unions (Art. 14(3)). In addition to prohibiting army members from membership of a political party, the Act also prohibits them from attending political events in uniform and from engaging in any other political activities apart from exercising their active right to vote (Art. 14(1)). Given that the Constitution of Serbia explicitly prohibits specific civil servants from membership of political organisations in Article 55(5) but does not include a ban on membership of a trade union, the interpretation according to which these categories of civil servants have the constitutionally guaranteed right to associate in trade unions is a correct one. In November 2016, the Military Trade Union staged a protest to alert to the social and financial difficulties Army members were facing. The procession ended in front of the Presidency building, where the Trade Union representatives left a letter with the Union's demands for the head of state. The Trade Union leader accused the General Staff of attempting to sabotage Army members' participation in the protest in Belgrade and that the soldiers were read a notice that the protest was directed against the state; he also claimed that many TU members had received orders to report for duty on the day of the protest. The Defence Ministry issued a press release, in which it said that the views voiced during the protest were not those of the Army of Serbia or the TU members, although it was organised by the TU leadership.⁴⁴¹ The Defence Ministry's press release apparently aimed at undermining the credibility of the Military Trade Union and its activities.

11. Electoral Rights and Political Participation

11.1. Electoral Rights

In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected. The Constitution proclaims the sovereignty of the people, and lays down that suffrage is universal and equal (Arts. 2 and 52). Under the Constitution, every adult citizen of the Republic of Serbia with a working capacity shall have the right to vote and be elected. Elections shall be free and direct and voting shall be by secret ballot and in person (Art. 52).

440 "High Judicial Council Rules on Judge Trešnjev Case," *KRIK*, 16 September 2016, available in Serbian at: <https://www.krik.rs/visoki-savet-sudstva-odlucio-u-slucaju-sudije-tresnjeva/>. See more in: I.5.2.9.

441 "Military Trade Union Stages Protest, Leaves Letter for Nikolić," *B92*, 27 November 2016, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=11&dd=27&nav_category=12&nav_id=1203729.

The electoral procedures are governed in detail by the Act on the Election of Assembly Deputies (AEAD),⁴⁴² the Local Elections Act (LEA),⁴⁴³ the Act on the Election of the President of the Republic,⁴⁴⁴ and the Decision on the Election of AP Vojvodina Assembly Deputies (DEV D).⁴⁴⁵

Rules governing the election procedure are to be found also in the decisions of the electoral commissions, which supervise the lawfulness of the election process and the uniform application of the electoral statutes, appointment of the permanent members of the electoral commissions in the election districts, the appointment of members of polling committees (bodies directly administering elections), and hand down instructions for the work of other permanent electoral commissions (if any) and polling committees.⁴⁴⁶ The Republican Election Commission (REC) is also authorised in the first instance to review complaints against decisions, actions or omissions by polling committees (Art. 95 (2)), AEAD).

However, the legal provisions, under which the bodies charged with conduct of elections are accountable to the body that appointed them (Art. 28 (2), AEAD and Art. 11 (3), LEA) are disputable. Since municipal election commission members are appointed by the municipal assemblies, the inclusion of representatives of political parties in some municipal commissions was deemed membership on the basis of the political balance in the respective municipality, and resulted in those commissions taking decisions along political lines.

Mandates are allocated only to election tickets that have won at least 5% of votes of the overall number of votes cast in the electoral district.⁴⁴⁷ Half of the deputies in the Vojvodina Assembly are elected under a proportional and half under the majority election system (Art. 5 (3), DEV D).⁴⁴⁸

11.2. Elections in 2016

Parliamentary elections, the eleventh since the multi-party system was introduced in Serbia in 1990, were held on 24 April 2016. These early parliamentary elections were scheduled to coincide with the regular provincial and local elec-

442 *Sl. glasnik RS*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

443 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

444 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

445 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.

446 The Republican Election Commission and the polling committees are the authorities charged with implementing republican parliamentary elections, while the local government unit election commissions and polling committees are charged with implementing local elections. All three – the Republican Electoral Commission, the local government unit election commissions and polling committees – are charged with the implementation of presidential elections (Art. 5, Act on the Election of the President of the Republic).

447 The election threshold of 5% does not apply to national minority political parties.

448 More on the legal and court protection of election rights in the *2015 Report*, II.11.

tions.⁴⁴⁹ This was the third time parliamentary elections were held in the past four years and the second time they were held before the parliament's term in office expired.

A total of 6,739,441 citizens were registered to vote at the 8,377 polling stations that opened on election-day. Twenty-nine of these stations were opened in penitentiaries and 38 abroad. In Vojvodina, 1,729,437 citizens were eligible to vote at 1,785 polling stations. According to the REC's data, 3,778,923 (56.7%) citizens cast their votes. A total of 20 election tickets ran in the parliamentary elections.⁴⁵⁰

The ruling coalition, rallied round the Serbian Progressive Party (SNS), again won the majority at the national level. It also won the most seats in the Vojvodina Assembly and in most of the local self-governments (LSGs). The REC proclaimed the final election results on 6 May. The turnout was greater than at the previous parliamentary elections as 188,206 more voters went to the polls on 24 April than in 2014.⁴⁵¹

The elections were monitored by the OSCE Limited Election Observation Mission (OSCE LEOM) and a coalition of NGOs CRTA – Citizens on Watch (CRTA-GnS). They concluded that the voters were offered a variety of choices. The OSCE LEOM concluded that while the election administration performed its duties efficiently and generally enjoyed the trust of the electoral stakeholders, its handling of post-election complaints and processing of results raised concerns. It also noted that biased media coverage, undue advantage of incumbency and a blurring of distinction between state and party activities unlevelled the playing field for the contestants.⁴⁵²

In its report, CRTA concluded that, although the regularity of the election process was not questionable, the 2016 snap parliamentary vote in Serbia was carried out under vague and often conflicting legal provisions, “exhibiting a series of omissions and deficiencies by the relevant bodies and institutions, along with the obvious absence of professional resources required for the credible conduct of elections, but that, nonetheless, the outcome reflects the will of the voters”.⁴⁵³

The irregularities identified during the 2016 elections occurred in nearly all stages of the election process and regarded: the non-updated single voter register,

449 Local elections were not held in the following 14 LSGs, in which early local elections were held in the 2013–2015 period: Belgrade, Zaječar, Arandelovac, Bor, Vrbas, Kovin, Kosjerić, Lučani, Majdanpek, Medveđa, Mionica, Negotin, Odžaci and Pećinci.

450 The REC endorsed 20 of the 30 submitted tickets. One ticket was rejected by the Administrative Court, three were withdrawn and six were rejected by the REC. More on the election results of minority tickets in III.2.5.

451 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, p. 61, available at: <http://cрта.rs/wp-content/uploads/2016/12/Citizens-on-Watch-2016-Final-Report.pdf>.

452 Republic of Serbia Early Parliamentary Elections 24 April 2016, OSCE/ODIHR Limited Election Observation Mission, Warsaw, 29 July 2016, available at: <http://www.osce.org/odihr/elections/serbia/256926?download=true>.

453 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, p. 11.

the party officials' abuse of incumbency during the campaign, deficiencies in the work of polling committees, election commissions and the REC, influence on the media and insufficient supervision of the elections.

11.2.1. Single Voter Register

A nationwide register of the nationals of the Republic of Serbia with the right to vote, created under the Act on a Single Voter Register⁴⁵⁴, was used for the first time at the April 2016 elections since the introduction of the multi-party system in the country. Whether a person may vote and be elected to a public office depends on whether he is entered in the voter register. The Act defines the single voter register as a public document kept ex officio by the ministry charged with administrative affairs, which maintains a single electronic database of all citizens of Serbia with the right to vote.

Voter registers and their updating used to be within the remit of the LSGs, but a number of shortcomings had been identified during the updating of the registers and inspectorial oversight exercises. Estimates were that around 150,000 voters had been registered twice and that the size of Serbia's electorate stood at 7,058,683, while the personal identification numbers of 600,000 voters had been registered incorrectly. Under the new Act on Ministries, the single voter register is within the remit of the Ministry of Justice and State Administration.

A month before the elections, the Ministry of State Administration and Local Self-Governments said that 7,000,095 people were entered in the single voter register,⁴⁵⁵ REC Chairman Dejan Đurđević, however, said that the number did not reflect the number of citizens with the right to vote. According to REC's data, 6,765,998 citizens were eligible to vote at the 2014 early parliamentary elections.⁴⁵⁶

Despite previous OSCE/ODIHR recommendations, voter lists were not displayed for public scrutiny. Although the law provides for lists to be disclosed at the municipal level, the relevant ministry issued an instruction that allowed only individual checking of records using one's personal identification number. This lack of public scrutiny limited the transparency of the voter registration process and amplified concerns about the overall accuracy of the voter register.

CRTA-GnS' findings were similar. It found irregularities in the voter lists at 20% of the polling stations. In CRTA's view, the deficiencies in the voter register have given rise to many dilemmas among the citizens, who either did not receive their voter notification cards or were referred in them to the wrong polling stations.⁴⁵⁷

454 *Sl. glasnik RS*, 104/09 and 99/11.

455 See the *B92* report, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=03&dd=07&nav_category=11&nav_id=1104794.

456 See the *B92* report, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=03&dd=09&nav_category=11&nav_id=1105792.

457 Although the single voter register system was established back in 2012, these findings demonstrate that the register is not updated adequately. The outcome of the elections could not have

11.2.2. Abuse of Incumbency during the Election Process

Under Article 5 of the AEAD, the citizens are entitled to be informed of the election programmes and activities of election ticket submitters and of the candidates on the tickets via the media and the media are under the obligation to ensure equal coverage to all election ticket submitters and the candidates on the tickets.

A survey conducted by *BIRN* during the election campaign, however, showed that the information provided by the media was neither full nor balanced and that the campaign resembled a referendum rather than an election. Namely, the main tone of the campaign was set by the Prime Minister, who, in his quest for a new mandate, frequently praised the achievements of his Government either in the capacity of Prime Minister or in the capacity of SNS leader, while the opposition politicians were hardly visible in media reports.⁴⁵⁸

The elections were characterised by the unequal presentation of the parties in the media, with nearly all the relevant dailies and TV stations giving huge advantage to the Serbian Progressive Party. The OSCE LEOM said that “...the government and the ruling party activities dominated campaign coverage in the news and current affairs programmes. The analytical and critical reporting on the influential nationwide television channels was narrow, partly due to widespread self-censorship resulting from political influence over the media sector.”⁴⁵⁹ The LEOM particularly alerted to the increased misuse of state resources and offices in the campaign to additionally promote the representatives of the ruling parties.⁴⁶⁰

The OSCE, however, noted that representatives of the ruling Serbian Progressive Party and, to a lesser extent, the Socialist Party of Serbia increased their participation at official events during the electoral campaign, taking undue advantage of incumbency and blurring the distinction between state and party activities, at odds with OSCE commitments and Council of Europe standards.⁴⁶¹

Transparency Serbia ascertained that the number of promotional activities during a six-week period in 2016 was almost three times higher (195%) than in the same period in 2015: 436 v. 148. The number of other activities (travels abroad, Cabinet meetings, events) at the same time fell by around 20%, wherefore the total

been affected because only 0.32% of the voters were at issue, but the findings alert to serious shortcomings of the voter register, its administration and updating.

458 2016 Election Campaign: How the Politicians Communicated with the Voters, *BIRN*, Belgrade, April 2016, available in Serbian at: <http://birnsrbija.rs/wp-content/uploads/2016/04/Izborna-kampanja-2016-Kako-su-politi%C4%8Ddari-komunicirali-sa-bira%C4%8Dima.pdf>.

459 Republic of Serbia Early Parliamentary Elections 24 April 2016, OSCE/ODIHR Limited Election Observation Mission, Warsaw, 29 July 2016, p. 7, available at: <http://www.osce.org/odihr/elections/serbia/256926?download=true>.

460 *Ibid.*

461 *Ibid.*

number of activities increased from 413 during the monitored period in 2015 to 651 in 2016, i.e. by 58%, or 1.6 times.⁴⁶²

11.2.3. Election Supervision

The National Assembly failed to establish a Supervisory Committee as an additional monitoring mechanism, as provided for in Article 99 of the AEAD. The forming of an independent standing body to monitor elections is important also in view of the fact that the REC is an *ad hoc* institution using the National Assembly's professional service.

The 2016 parliamentary elections showed that this lack of professionalism resulted in numerous problems and doubts about the overall regularity of the election process. Under the valid law, the REC is not entitled to annul the results at polling stations *ex officio*, even the results that are manifestly incorrect unless a complaint is filed. Furthermore, the REC is seriously understaffed, which may gravely jeopardise the regularity of the entire process due to the extremely short deadlines by which the election activities are to be performed.

The procedure for granting election tickets the status of minority tickets is not regulated in detail and the REC rules on them on a case to case basis. The Administrative Court's case law shows that such status is granted to every ticket that defines itself as a minority ticket, which has led to paradoxical results and manifest abuse of the election processes.

It may be concluded that Serbia lacks clear regulations on what activities public officials may and may not engage in during election campaigns, with a view to precluding unequal treatment of the contestants and ensuring prompt response to any misuse.⁴⁶³

The Electronic Media Regulatory Authority (EMRA) is to play an important role in monitoring the electronic media during election periods, but its control has not yielded major results to date. Namely, the EMRA is of the view that its monitoring role is fulfilled if it submits a report on political advertising.⁴⁶⁴ In its response to a request by the Independent Journalists Association of Serbia (IJAS) to grant it insight in its electronic media monitoring report for the period covering the parliamentary election campaign and elections, the EMRA said it did not have such a report.⁴⁶⁵

462 "Campaign of Public Officials" as a special kind of abuse of public resources for political promotion," Transparency Serbia, Belgrade, July 2016, available at: <http://www.transparentnost.org.rs/images/projekti/NIS/Campaign%20of%20Public%20Officials%20as%20a%20special%20kind%20of%20abuse%20of%20public%20resources%20for%20political%20promotion.pdf>.

463 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, available at: <http://crta.rs/wp-content/uploads/2016/12/Citizens-on-Watch-2016-Final-Report.pdf>.

464 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a215110/Vesti/Vesti/REM-o-iz-vestaju-o-predizbornoj-kampanji.html>.

465 The EMRA was to have replied to IJAS' request within a fortnight, but it did so with a three-month delay and only after the Commissioner for Information of Public Importance ordered it

11.2.4. Work of the Election Bodies

CRTA's observation mission registered grave irregularities at 4% of the polling stations, including voting without personal documents, voting by citizens not registered in the voting lists, party activists' pressures on the voters, lack of UV cameras at the polling stations, et al.⁴⁶⁶

The gravest identified irregularity was the large-scale resort to forging the signatures of citizens supporting election tickets. With the MIA's assistance, the REC established that over 15,000 signatures in support of six election tickets were counterfeit.⁴⁶⁷ The signatures had been verified with the seals of the Basic Courts in Šabac and Belgrade. Five of the tickets were rejected or withdrawn, but the ticket of the Republican Party remained on the ballots although it was also supported by forged signatures since it had been endorsed before the forgeries were revealed and the REC decided not to apply extraordinary legal remedies lest it bring into question the election deadlines.⁴⁶⁸ Although forging signatures is a grave criminal offence, no information was publicly available on whether anyone was prosecuted for it by the end of the reporting period.

It took the REC over four hours after the polling stations closed to come out with its first statement on the results, which led to suspicions of election fraud. The representatives of the opposition went to the REC HQ to check what was happening. The following day, the opposition also organised a protest against vote thefts. All this deepened tensions and cast a shadow over the entire election process. Dveri leader Boško Obradović verbally abused the REC representatives in the National Assembly building, claiming they were trying to push his ticket below the threshold.⁴⁶⁹

The REC members' conduct during its reviews of polling station protocols sowed further confusion. Given that the REC cannot *ex officio* annul results at polling stations where logical and arithmetical errors had obviously been made, it arbitrarily decided whether to annul the results (whereby every candidate would receive zero votes) or to order a repeat of the voting. Voting was ultimately repeated at 15 polling stations, it was annulled at some stations: the results at other stations were recognised after the REC *itself corrected* what it claimed were obviously arithmetical errors.⁴⁷⁰ After a lot of debate, the REC decided to recount the votes in the sacks although the sacks had already been unsealed. The procedure laid down in the law

to. See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=333645&title=REM+nema+izve%C5%A1taj+o+kampanji.

466 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, pp. 61 and 62, available at: <http://crt.rs/wp-content/uploads/2016/12/Citizens-on-Watch-2016-Final-Report.pdf>.

467 *Ibid.*, pp. 31 and 33.

468 "Seven Tickets Used Forged Seals to Verify Signatures," *Politika*, 15 April 2016, p. 4.

469 See the *Vreme* report, available in Serbian at: <http://www.vreme.com/cms/view.php?id=1390913>.

470 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, pp. 70, available at: <http://crt.rs/wp-content/uploads/2016/12/Citizens-on-Watch-2016-Final-Report.pdf>.

was thus violated since the REC is not legally authorised to perform the work of the polling station committees and count the votes.⁴⁷¹ All this resulted in overall confusion and numerous doubts among the public, which deepened when it transpired that one ticket had made the threshold by only a few dozen votes.

Numerous irregularities were registered at local elections as well. They were annulled in their entirety in Bela Palanka and the Niš municipality of Medijana.⁴⁷² Voting was repeated as many as five times at some polling stations in Niš.⁴⁷³

12. Right to Peaceful Enjoyment of Possessions

12.1. General

The right to peaceful enjoyment of possessions is enshrined in Article 1 of Protocol No. 1 to the European Convention on Human Rights. Under this Article:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

The ECtHR has repeatedly reiterated that this Article of the Convention comprises three distinct rules. The first rule is of a general nature and enunciates the principle of the peaceful enjoyment of property. The second rule lays down the conditions under which someone may be deprived of possessions: in the public interest and subject to the conditions provided for by law and by the general principles of international law. The third rule, stated in paragraph 2 of the Article, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.⁴⁷⁴

The ECtHR further elaborated the second rule, under which no one may be deprived of possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law, adding a third

471 *Ibid.*

472 *Ibid.*, pp. 72–74.

473 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/politika/peti-krug-glasan-ja-u-nisu-se-danas-ponavljaju-izbori-za-opstinu-pantelej/02jdyh1>.

474 See e.g. the ECtHR judgment in the case of *Kozacıoğlu v. Turkey*, App. No. 2334/03 (2009), para. 48.

condition: proportionality. Proportionality means that “fair balance” must be struck between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. That balance will be lacking where the person concerned has to bear an individual and excessive burden.⁴⁷⁵ The ECtHR holds held that the search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 of Protocol No. 1.⁴⁷⁶

The concept of possessions has a distinct meaning under the Convention. ECtHR case law indicates that the concept is widely construed and that, apart from the right of ownership, it also includes a whole range of pecuniary rights such as rights arising from shares, patents, arbitration award, established entitlement to a pension, entitlement to a rent, and even rights arising from running of a business.⁴⁷⁷ The notion of “possessions” is not limited to “existing possessions” and covers claims in respect of which an applicant can argue that he or she has at least a “legitimate expectation” that they will be realised.⁴⁷⁸

The right to peaceful enjoyment of possessions is also enshrined in the Constitution. Article 58 of the Constitution guarantees the right to peaceful enjoyment of possessions and other property rights acquired under the law. It permits deprivation or restriction of the right of ownership only in public interest established by the law and with compensation which may not be less than market value. The Constitution lays down that the way in which property is used may be restricted only under the law and permits deprivation or restriction of property to collect, taxes, fines and other levies only in accordance with the law.

The text of the Constitution follows the text of the ECHR and international standards but it could be improved in principle. Its authors should have included the proportionality standard re restrictions of property rights, albeit proportionality, which – as noted above, the ECtHR deems inherent in the whole of the Convention and Protocol No. 1 – must be applied even when it is not explicitly laid down, because, pursuant to Article 16(2) of the Constitution, the ECHR shall apply directly in Serbian law. Furthermore, the Constitution permits deprivation or restriction of the right of ownership only in public interest established by the law and with compensation which may not be less than market value, but, whether or not intentionally, its authors failed to mention other property rights. On the other hand, the Constitution sets a higher standard than the one established in ECtHR case law,

475 See e.g. the ECtHR judgment in the case of *Valkov and Others v. Bulgaria*, App. Nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05 (2011), para. 91.

476 See e.g. the ECtHR judgment in the case of *Sporrong and Lönnroth v. Sweden*, App. No. 7151/75; 7152/75 (1982), para. 69.

477 Grgić, A. et al, *The Right to Property under the European Convention on Human Rights. A guide to the implementation of the European Convention on Human Rights and its protocols*, Council of Europe, 2007, p. 7, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff55>.

478 *Ibid.*

as it lays down that compensation may not be less than market value; the ECtHR, for its part, holds that Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances.⁴⁷⁹

In addition to the Constitution, the enjoyment of possessions is governed by a number of regulations directly or indirectly. The Act on the Bases of Ownership and Proprietary Relations (hereinafter: Property Act)⁴⁸⁰ regulates the content, acquisition and termination of the right of ownership and other important property rights. This law, however, suffers from a number of legal lacunae. For instance, with the exception of a limited number of rights concerning nuisances, the Act does not regulate the rights of adjoining landowners, which by definition amount to legal restrictions of the right of ownership and entitle the land title holders to use the adjoining property, require of the adjoining landowners not to use it in a particular way or to do something with it; nor does it govern the landowners' demarcation of adjoining properties.⁴⁸¹ Furthermore, under Article 6(1) of the Property Act, the right of easement, real encumbrance and pledge may be established regarding objects to which there is a right of ownership under the conditions prescribed by the law, but neither the Property Act nor any other national law governs this issue, i.e. the valid regulations provide for the right, but not its content, acquisition, transfer and termination. These deficiencies can be eliminated by the new Civil Code, the draft of which was publicly debated in 2016.

12.2. Property Restitution and Compensation

Restitution and Compensation Act (hereinafter: the Restitution Act)⁴⁸² governs the conditions, manner and procedure for the restitution of and compensation for the property which was appropriated from natural and specific legal persons in the territory of the Republic of Serbia by the enforcement of 42 regulations⁴⁸³ on agrarian reform, nationalisation, sequestration, and other regulations and nationalisation enactments after 9 March 1945, and transferred into people's, national, state, social or cooperative property (Art. 1(1)). The Act also applies to property seized during the Holocaust committed in the territory of the Republic of Serbia (Art. 1(2)).⁴⁸⁴

The Act lays down a separate restitution/compensation administrative procedure, which is conducted before the Restitution Agency (Arts. 39–50). An Agency

479 *The European Convention on Human Rights and property rights*, 1998, Council of Europe Publishing, p. 39, available at: [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-11\(1998\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-11(1998).pdf).

480 Act on the Bases of Ownership and Proprietary Relations, *Sl. list SFRJ*, 6/80 and 36/90, *Sl. list SRJ*, 29/96, and *Sl. glasnik RS*, 115/05 – other law.

481 See, e.g. Stanković, O., Orlić, M., 1996, *Stvarno pravo*, Nomos, pp. 205–206.

482 *Sl. glasnik RS*, 72/11, 108/13, 142/14 and 88/15 – CC Decision.

483 Article 2 of the Act comprises a detailed list of relevant regulations.

484 Mora about the Restitution Act in *2011 Report*, I.4.12.3.

decision may be appealed in administrative proceedings, while a second-instance administrative decision may be challenged in an administrative dispute (Art. 48). Reviews of administrative disputes shall be urgent (Art. 48(4)).

In its Serbia 2016 Report, the European Commission said that the Agency for Restitution “continued to fulfil its mandate” by adopting about 39,300 opinions and first-instance decisions on return of confiscated properties (out of about 76,000 claims) by the end of June 2016 and that the vast majority of decisions were thereafter approved by the Ministry of Finance as the second-instance decision body.⁴⁸⁵ The Agency data (excluding restitution of church property) show that by the end of 2016, over 394,000m² of commercial and residential property was returned to their former owners.⁴⁸⁶ The Restitution Agency ruled on 43,850 (58%) of the claims by the end of 2016, i.e. it returned 5,593 pieces of real estate property (4,033 commercial real estate, 754 apartments and 806 buildings). In 2016 alone, the Restitution Agency returned 1,141 facilities to their owners or their heirs. It also returned around 968,000m² of construction land, over 9,500 hectares of farmland and over 700 hectares of woods and woodland. In the past six years, the Restitution Agency returned around 2.5 million square metres of city construction land, around 17,700 hectares of farmland and 4,228 hectares of forestland.⁴⁸⁷

12.3. Project Belgrade Waterfront and Property Rights

The National Assembly adopted the Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project (hereinafter: Belgrade Waterfront Act)⁴⁸⁸ on 8 April 2015. Under this law, the implementation of the Belgrade Waterfront Project is in the public interest, wherefore the necessary expropriations are formally and legally performed in public interest. In terms of the right to peaceful enjoyment of possessions, this law derogates the provisions of the Expropriation Act⁴⁸⁹ that precisely specifies in which cases public interest for expropriation may be determined. Business and residential facilities for sale, as well as HORECA facilities, envisaged in the Waterfront Project, are not on that list.⁴⁹⁰ Furthermore, even the Government admitted that expropriation to facilitate the construction of the Belgrade Waterfront complex

485 Serbia 2016 Report, section 5.23.

486 More about the restitution of church property in II.7.4.

487 See the *Politika* report, available in Serbian at: <http://www.politika.rs/scc/clanak/372331/Za-sest-godina-kraj-restitucije>.

488 *Sl. glasnik RS*, 34/15 and 103/15.

489 *Sl. list SRJ*, 53/95, 16/01 – CC Decision and *Sl. glasnik RS*, 20/09, 55/13 – CC Decision and 106/16 – authentic interpretation.

490 See at: <https://www.export.gov/article?id=Serbia-Expropriation-and-Compensation>.

would be unlawful under the Expropriation Act,⁴⁹¹ which is why it opted for enacting a separate law declaring the Belgrade Waterfront a public interest. Such actions by the authorities may lead to the adoption of other *lex specialis* by their obedient parliamentary majority and result in total disregard of the public interest concept and in the expropriation of private property in pursuit of achieving private interests, which are declared public interests under individual laws. Such a practice undoubtedly jeopardises the peaceful enjoyment of possessions because it facilitates limitless proliferation of cases in which property may be expropriated.

Furthermore, Article 4(2) of the Belgrade Waterfront Act provides that:

The party to the expropriation procedure shall be the owner of the construction land on which a facility has been built in contravention of the law in the event a final decision on the request for the legalisation of the relevant facility or a request regarding the relevant facility submitted under the Act on Special Requirements for the Registration of the Right of Ownership of Illegally Built Facilities (*Sl. glasnik RS*, 25/13 and 145/14) was still pending at the onset of the expropriation procedure.

Exclusion of persons, whose legalisation requests are still pending, from the expropriation procedure may amount to their deprivation of the right to possessions, without compensation, i.e. violations of their property rights. Under ECtHR case law, persons who applied for the legalisation of facilities enjoy the protection enshrined in Article 1 Protocol No. 1 and can legitimately and reasonably expect to acquire property rights.⁴⁹²

A statement made by Finance Minister Dušan Vujović, who was commenting the Belgrade Waterfront expropriation costs and said that the authorities were paying 19.24 EUR per square metre, also gave rise to concern.⁴⁹³ Namely, both the Constitution and the Belgrade Waterfront Act lay down that compensation for expropriated real estate may not be less than its market value. The rate the Minister mentioned is not even close to the market rates⁴⁹⁴ given that the area in which the

491 As noted in the Transparency Serbia release of 9 March 2015, available in Serbian at: <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7412-posebna-zakon-za-eksprijaciju-za-beograd-na-vodi>.

492 Namely, in its judgment in the case of *Öneriyıldız v. Turkey* (App. No. 48939/99, para. 124), the ECtHR reiterated that the concept of “possessions” was not limited to “existing possessions” but might also cover assets, including claims, in respect of which the applicant could argue that he had at least a reasonable and “legitimate expectation” of obtaining effective enjoyment of a property right. In this case, the Court found that the applicant, who had been living in a dwelling built in contravention of the law, which he had not even tried to legalise, had a proprietary interest in his dwelling that was of a sufficient nature and sufficiently recognised to constitute a substantive interest and hence a “possession” within the meaning of the rule laid down in Article 1 of Protocol No. 1, protecting the right to peaceful enjoyment of possessions, because the authorities had tolerated the situation for five years (paras. 124–125).

493 See the B92 report, available in Serbian at: http://www.b92.net/biz/vesti/srbija.php?yyyy=2015&mm=04&dd=09&nav_id=978996.

494 Unless Minister Vujović made a mistake or was misquoted, the compensation rate is obviously in breach of the right to peaceful enjoyment of possessions, because both the Constitution and the Belgrade Waterfront Act lay down that it may not be less than the market rate.

Waterfront will be built is in Zone 1⁴⁹⁵ where, under a ruling on average rates per square metre of real estate in Belgrade City zones for the purpose of determining the 2015 property tax rates, a square metre of construction land stood at 49,500 RSD, a square metre of residential space at 160,500 RSD and a square metre of office space at 271,600 RSD.

It may thus be concluded that the Belgrade Waterfront Act is controversial, to say the least, from the perspective of the right to peaceful enjoyment of possessions. There is no doubt that this right has been violated as far as compensation rate for expropriated property is concerned, unless Minister made a mistake or was misquoted, because both the Constitution and the Belgrade Waterfront Act lay down that the compensation to be paid for the expropriated property may not be less than its market rate.

12.4. Savamala Case and Violation of Property Rights

The Protector of Citizens performed an oversight exercise, during which he found that a group of masked men with telescopic batons, who arrived in black jeeps and two construction machines, effectively assumed control over a part of Belgrade called Savamala in the early morning hours of 25 April 2016; that they violated numerous civil rights, including the right to property, that the Belgrade City Police Directorate and Communal Police ignored the citizens' appeals for help and that the omissions in the work of the authorities were not the result of individual mistakes, but organised and implemented within the framework of a previously prepared plan.⁴⁹⁶ These masked men violated the right to property, notably, because they demolished buildings in Hercegovačka Street in Belgrade.⁴⁹⁷

The Serbian authorities' conduct was in violation of the state's positive obligation to protect human rights, including the right to property. The ECtHR has repeatedly reiterated that:

Genuine, effective exercise of the right ... does not depend merely on the State's duty not to interfere, but may require positive measures of protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his effective enjoyment of his possessions.⁴⁹⁸

There are, however, fears that the state or Belgrade authorities – or both – violated also their negative obligation not to interfere in the right to property, and

495 See the Belgrade Official Journal, available at: <http://www.slistbeograd.rs/pdf/2015/69–2015.pdf#view=Fit&page=13>.

496 Protector of Citizens Findings and Recommendations, available in Serbian at <http://www.zastitnik.rs/attachments/article/4723/savamala.pdf>. See also the Balkan Insight report, available at: <http://www.balkaninsight.com/en/article/serbian-police-involved-in-phantom-masked-nocturnal-demolition-05-10-2016>.

497 See e.g. the special Danas "Savamala Dossier" issue of 26 June 2016, available in Serbian at: <http://www.danas.rs/upload/documents/Dodaci/2016/Dosije%20Savamala%20NBS%20web.pdf>.

498 See, e.g. *Öneriyıldız v. Turkey*, App. No. 48939/99, para. 134.

that they took steps to impede the identification of the people who demolished the buildings in Hercegovačka Street. This conclusion is based on several facts. Firstly, the Serbian Prime Minister himself said on 8 June 2016 that the topmost City authorities were behind the demolition in Hercegovačka Street.⁴⁹⁹ Second, the city services gravely undermined the investigation by removing the traces of the demolition, i.e. the physical evidence, the next day.⁵⁰⁰

Doubts about the effectiveness of the investigation and that the authorities were covering up for the offenders were fuelled by the radical changes in the Real Estate Register⁵⁰¹ electronic database made since May. For instance, in May 2016, Savski venac Cadastral Municipality Real Estate Lot No. 1570, one of the lots on which a building was demolished, had been registered as city construction land, in public i.e. state ownership, as was the building of the railway company on it⁵⁰². However, search of the lot data in the database on 19 November 2016 came up blank. So did searches of lots at the following addresses: Hercegovačka Str. 1, Hercegovačka Str. 2 and Hercegovačka Str. 3. These results, or, rather, lack of them, indicate that the Register has been amended because the lots and buildings on them appeared in the database in May. The Register now makes no mention of even the lots at those addresses.

The Savamala case is an illustration of both a grave violation of the right to peaceful enjoyment of possessions and the suspension of the rule of law.⁵⁰³ The investigation of the Savamala case was not completed by the end of the reporting period. Interior Minister Nebojša Stefanović said in October that it was still under way and that he would publicly disclose all the information about the case and the police activities during the night the buildings were demolished.⁵⁰⁴

499 See, e.g. the *NI* report of 8 June 2016, available in Serbian at: <http://rs.n1info.com/a167147/Vesti/Vesti/Identifikovani-odgovorni-za-rusenje-u-Savamali.html>, accessed on 21 November 2016.

500 See, e.g. the *NI* report of 7 May 2016, available in Serbian at: <http://rs.n1info.com/a158049/Video/Info/Komunalne-sluzbe-ciste-rusevine-u-Savamali.html>, accessed on 21 November 2016.

501 The database is available in Serbian at: <http://katastar.rgz.gov.rs/KnWebPublic/PublicAccess.aspx>, accessed on 21 November 2016.

502 See a text by Prof Dr Vesna Rakić-Vodinelić, published on 12 May 2016 and Footnote 1 with a print screen of the data: <http://pescanik.net/bauk-kruzi-sava-malom-bauk-lazi/>, accessed on 21 November 2016.

503 More on the violations of other rights in II. 5.2.10 and II.9.3.

504 At the session of the Assembly Defence and Internal Affairs Committee on 31 October, some opposition deputies asked the minister about the Savamala case, displeased that the report on the work of the MIA did not include any information about it. Stefanović told the press that the prosecutors had taken the MIA Internal Audit Sector's data and that he did not want to request access to them or interfere lest his actions be interpreted as pressure. See the EurActiv report of 31 October, available in Serbian at: <http://www.euractiv.rs/vesti/197-posmatraci/10623-savamala-nije-deo-izvetaja-o-radu-mup-a.html>.

12.5. Provisional Pension Payments Act

In 2014, the National Assembly voted in two laws temporarily slashing pensions and public sector wages.⁵⁰⁵ Under the Provisional Pension Payments Act, the amounts of pensions exceeding the 25,000 RSD threshold were cut by 22%⁵⁰⁶ while the amounts of pensions exceeding the 40,000 RSD threshold were cut by the application of a different formula.⁵⁰⁷ The Act does not specify how long this pension payment regime will remain in effect. The Government explained that these austerity laws were necessary to stabilise public finance.⁵⁰⁸

The Constitutional Court of Serbia dismissed the numerous initiatives asking it to review the constitutionality of this Act. It noted that the pensions were cut pursuant to the law and in public interest given the well-known fact that the state's public finance was precarious. It also said that the proportionality requirement was satisfied, since pensions under 25,000 RSD were not subject to cuts, while the pensions ranging from 25,000 and 40,000 RSD were slashed less than those exceeding 40,000 RSD. The Court also stressed that the minimum pensions in Serbia stood nearly half the 25,000 RSD threshold and that most pensions paid out in Serbia were under 25,000 RSD. In its explanatory note, the Court, *inter alia*, properly cited ECtHR case law, according to which the right to a pension is a possession in the meaning of Article 1 of Protocol No. 1 in the event that right is prescribed by domestic law, but that this does not mean that this provision confers the right to a specific amount of a pension; that pension and welfare cuts are permitted if they are in public interest and prescribed by law and if the reductions do not impair the substance of the right to a pension or impose an excessive burden on the person whose possessions are reduced in such a manner.⁵⁰⁹ The Constitutional Court also cited the ECtHR's observation that it was an international tribunal and that states were in a better position to assess whether or not cutting pensions was in public interest.⁵¹⁰

505 *Sl. glasnik RS*, 116/14.

506 Article 2 of the Act.

507 Article 3 of the Act.

508 See the *2015 Report*, II.13.1.1.

509 See in detail in Ruling No. IUz-531/2014.

510 The Constitutional Court is a Serbian judicial authority not an international tribunal, wherefore it should review the legitimacy of measures laid down in the law. The Court, however, did not perform such an analysis, basing its decision on the Government's explanation that the austerity measures were aimed at effecting the requisite savings. In her dissenting opinion, Constitutional Court judge Bosa Nenadić recalled that the Serbian Constitution set stricter standards for restricting human rights than the ECHR or ECtHR case law, referring to Article 20(3) of the Constitution, under which all state authorities are under the obligation to consider the aim of the rights they are restricting and the possibility of achieving it by less restrictive means (page 60 of the Constitutional Court ruling).

The Constitutional Court should have compared the amounts of the protected pensions with living costs in Serbia. The fact that most pensions have not been subject to cuts, as the Court notes, raises the question about the justifiability of this measure because it has not been established whether slashing only a small number of pensions will actually result in substantial budget savings. The proportionality and necessity of this measure to restrict property under the Act is questionable to say the least, giving rise to reasonable doubts that the state violated the right to peaceful enjoyment of possessions of all the pensioners whose pensions have been reduced pursuant to this law.

12.6. Tenancy Right

The tenancy right provides for permanent and unimpeded use of housing exclusively for the purpose of satisfying personal and family housing needs.⁵¹¹ This right was introduced after World War II and initially applied to both socially and privately owned housing.⁵¹² The 1973 Housing Act abolished the acquisition of tenancy rights concerning privately owned housing.⁵¹³ According to case law, tenancy rights cannot be transferred to children of holders of tenancy rights, who were born after this Act came into effect, upon the holders' demise.⁵¹⁴ The same applies to persons who married holders of tenancy rights after the Act came into effect.⁵¹⁵ However, people who acquired tenancy rights or became members of the family households of holders of tenancy rights before 1973 still have tenancy rights, i.e. right of lease for an indefinite period of time.

Under the 1992 Housing Act, holders of tenancy rights to private housing shall continue using the housing, but as holders of the right of lease for an indefinite period of time.⁵¹⁶ Under this Act, local self-governments were under the obligation to secure housing for such tenants by the end of 2000 at the request of the owners of the housing, provided the latter acquired the property before the end of 1956.⁵¹⁷ The local self-governments have not fulfilled this obligation.⁵¹⁸ Owners of the housing occupied by specially protected tenants can take possession of their property only if they provide the tenants with alternative housing.⁵¹⁹

511 Stanković, O., Orlić, M., 1996, p. 302.

512 Stanković, O., Orlić, M., 1996, p. 304–305.

513 See Supreme Court of Serbia judgment Rev. 2128/07.

514 See, e.g. Supreme Court of Serbia judgment Rev. 2812/05.

515 See, e.g. Supreme Court of Serbia judgment, Rev. 2128/07.

516 Housing Act, Articles 40 (1) and 31(1), *Sl. glasnik RS*, 50/92, 76/92, 84/92 – corr., 33/93, 53/93, 67/93, 46/94, 47/94 – corr., 48/94, 44/95 – other law, 49/95, 16/97, 46/98, 26/2001, 101/2005 – other law and 99/2011.

517 Housing Act, Article 42(1).

518 Law and Finance Institute, available in Serbian at http://ipf.rs/stanarsko-pravo/#_ftn3.

519 Housing Act, Article 41(1).

Under the new Housing and Maintenance of Residential Buildings Act (hereinafter: Housing Act)⁵²⁰, which was adopted in late 2016, owners of housing have 30 days from the day the law came into force (i.e. from 31 December 2016) to submit requests to their local self-governments to move out the holders of indeterminate leases occupying their apartments. As opposed to the prior law, this Act does not set any special requirements in this regard, but it does transfer the burden of providing such tenants with alternative housing to the local self-governments. The owners, however, may have to wait until 31 December 2026, the ultimate deadline by which the local self-governments are to provide housing for such tenants.⁵²¹

This is why the right to indeterminate lease, may give rise to violations of the right to peaceful enjoyment of possessions only of the owners of the apartments occupied by holders of indeterminate lease. In its judgement in the case of *Statileo v. Croatia*, the ECtHR said that the protected tenancy right and subsequently indeterminate lease of privately owned apartments constituted an interference in the right to property but, since this interference was imposed to pursue a legitimate aim provided for by law, it did not necessarily need to amount to a breach of the right to peaceful enjoyment of possessions.⁵²² For such an interference to be permitted in terms of Article 1 Protocol 1 to the ECHR, it must be not only be provided for by law and pursue a legitimate aim, but be proportionate as well. In this case, the Court found that the test of proportionality had not been met, i.e. that the burden of pursuing the legitimate aim had been disproportionately distributed between the state and the apartment owner, to the detriment of the latter.⁵²³ The Court attached particular importance to the fact that the rent the owner had been entitled to was extremely low and disproportionate to the costs he sustained as the owner.⁵²⁴ The Court also noted that that no statutory time-limit was applied to the protected lease scheme and that the members of the tenant's household were entitled to succeed to his status as protected tenants, wherefore it was most likely that neither the apartment owner, nor his heir, would be able to use the apartment in their lifetime.⁵²⁵

In Serbia, the right to acquire the status of a member of the household of a holder of indeterminate lease and thus the right to succeed to the status, is limited to the tenants' descendants born before 1973 and the tenants' spouses, provided they married them before 1973. Furthermore, the new Act sets the deadline by which the holders of indeterminate lease are to be provided with housing. Until the new Housing Act came into effect, the rent had been set in accordance with the Rent Fixing Instructions⁵²⁶, which did not amount to a violation of the right to peaceful enjoy-

520 *Sl. glasnik RS*, 104/16.

521 *Ibid.*, Arts. 140–146.

522 *Statileo v. Croatia*, App. No. 12027/10, paras. 117–122.

523 *Ibid.*, para. 143.

524 *Ibid.*, para. 129.

525 *Ibid.*, para. 132.

526 *Sl. glasnik RS*, 27/97, 43/01, 28/02 and 82/09.

ment of possessions. Neither does the provision on fixing the rent in Article 140(2) of the new Housing Act.

12.7. “Old” Foreign Currency Savings of Nationals of Former Yugoslav Republics

Back in July 2014, the European Court of Human Rights published the Grand Chamber’s pilot– judgment (applying to all similar cases) in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia*,⁵²⁷ which regarded the inability of the applicants to recover their “old” foreign currency savings – after the disintegration of the SFRY – deposited in two banks (Investbanka’s branch office in Tuzla and Ljubljanska banka’s branch office in Sarajevo) in Bosnia and Herzegovina.⁵²⁸

The Court found Slovenia and Serbia in violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 to the ECHR and of the right to an effective legal remedy, under Article 13 of the ECHR. Serbia was ordered to pay the applicant 4,000 EUR in respect of non-material damages within three months.⁵²⁹

The Court also ordered the respondent States to make all necessary arrangements, including legislative amendments, within one year and under the supervision of the Committee of Ministers, so as to allow the applicants and all others in their position to recover their “old” foreign-currency savings under the same conditions as those who had such savings in the domestic branches of Serbian (or Slovenian) banks.⁵³⁰

At its June meeting, the Committee of Ministers noted with regret that the draft law aimed at introducing a repayment scheme for the “old” currency-savings deposited in foreign branches of Serbian banks had not been adopted even though the deadline set by the ECtHR had expired on 16 July 2015. The Committee urged the Serbian authorities to ensure that the above-mentioned draft law was adopted as a matter of priority and to provide information to the Committee in this respect no later than 1 October 2016.⁵³¹ Since Serbia did not react within the deadline, the

527 *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, App. No. 60642/08.

528 Around 1,850 applications filed by 8,000 people complaining primarily that they were unable to withdraw their “old” foreign currency savings from the *Ljubljanska banka* branch offices in Sarajevo and Zagreb, and from several Serbian banks with branch offices in and outside Serbia.

529 The ECtHR also ordered Slovenia to pay the same amounts in respect of non-material damages and within the same deadline to the other two applicants.

530 The ECtHR also decided to defer its review of all similar applications against Serbia and Slovenia for a year.

531 The Council of Europe Committee of Ministers Decision is available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=090000168065da33.

Committee of Ministers again noted at its December meeting that Serbia still had not adopted the law, but that it had given assurances it would be adopted before the end of December 2016 or at the beginning of January 2017 at the latest and strongly urged it to sustain its efforts to adopt this draft law within the announced time frame.⁵³² In December the law was adopted.⁵³³

13. Right to Work

13.1. Realisation of the Right to Work

Serbia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Revised European Social Charter (ESC). It is also a member of the International Labor Organization (ILO) and a signatory of a large number of conventions adopted under the auspices of this organisation.⁵³⁴

Article 60 of the Constitution guarantees everyone the right to work and lays down that everyone shall be entitled to free choice of occupation, dignity at work, safe and healthy working conditions, the requisite protection at work, limited working hours, daily and weekly rests, paid annual leave, fair remuneration and protection in cases of termination of employment. Furthermore, the Constitution extends special protection at work to women, youths and persons with disabilities. The Constitution prohibits all forms of discrimination, including discrimination in the enjoyment of the right to work and work-related rights. The Constitution does stipulate the state's obligation to ensure that everyone can earn a livelihood by work, which is the main purpose of the right to work.⁵³⁵

Labour law is regulated primarily by the Labour Act⁵³⁶ and the Employment and Unemployment Insurance Act.⁵³⁷ The General Collective Agreement⁵³⁸, which regulated relations between employers and workers in greater detail, ceased to be effective in May 2011, which essentially means that the Labour Act, particularly the branch collective agreements (if concluded), general enactments (employers' collective agreements or rulebooks) or employment contracts apply to work-related rights,

532 The Council of Europe Committee of Ministers Decision is available at: https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c5177.

533 *Sl. glasnik RS*, 108/16.

534 Serbia has to date adopted 77 ILO Conventions.

535 Article 4 of the ESC guarantees the right to a fair remuneration. See *Digest of the Case Law of the European Committee of Social Rights*, pp. 44–48 and General Comment No. 18, paragraph 1.

536 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

537 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

538 *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.

duties and obligations. The National Employment Strategy for the 2011–2020 Period was adopted in May 2011⁵³⁹.

The Employment and Social Reform Programme in the EU Accession Process (ESRP),⁵⁴⁰ developed by the Serbian Government at the invitation of the European Commission, pursuant to the 2013–2014 EU Enlargement Strategy, which all candidate countries are to prepare, is particularly relevant. The implementation of the ESRP will be a strategic process, modelled after the Europe 2020 strategy that is implemented by the EU Member States, and it will accompany the EU accession process as the key mechanism for dialogue on the Republic of Serbia's social policy and employment priorities in the European integration process.

The ESRP development process was formally launched in September 2013, and the Programme was adopted by the Government of the Republic of Serbia in May 2016. The entire process was transparent and all the national stakeholders were repeatedly consulted and invited to take an active part in the drafting of the document, in order to ensure its quality and representativeness, as well as the support of all social actors and social partners. The European Commission monitors the Programme implementation process at the annual level, both through its annual progress reports and through thematic meetings and conferences.

The ESRP primarily deals with labour market and employment, human capital and skills, social inclusion and social protection, as well as the challenges in the pension system and health care. It particularly focuses on youth employment, given the extremely high youth unemployment rate.

In December 2015, the European Committee of Social Rights adopted its fourth periodic report on the implementation of the Revised European Social Charter for the 2010–2013 period.⁵⁴¹ The report covers the enforcement of the provisions on the rights of children and young people to special protection against the physical and moral hazards to which they are exposed (Art. 7), the right of working women to protection of maternity (Article 8), the right of families to social, legal and economic protection (Article 16), the right of children and young people to social, legal and economic protection (Article 17) and the rights of migrant workers and their families to protection and assistance (Article 19). The Committee found Serbia in violation of six of the 28 obligations it assumed under these Articles. It deferred its conclusions on Serbia's fulfilment of 14 obligations because the state had submitted incomplete information and asked it to supply the additional information. The Committee concluded that Serbia fulfilled eight of its obligations.⁵⁴²

539 *Sl. glasnik RS*, 37/11.

540 The ESRP is available at: <http://sociojalnoukljucivanje.gov.rs/en/employment-and-social-reform-programme-esrp-adopted/>.

541 See: [http://hudoc.esc.coe.int/eng#{"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{).

542 See: [http://hudoc.esc.coe.int/eng#{"ESCDcType":\["CON"\],"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{).

In its 2016 Serbia Report,⁵⁴³ the European Commission said that Serbia was moderately prepared in the area of social policy and employment. It said that some progress had been made on employment policy, Roma inclusion, non-discrimination and equality between women and men. It qualified the adoption of the first national ESRP as an important step in addressing policy challenges in the employment and social areas, which continued to be affected by scarce public finances and limited institutional capacity. It said that, in the coming period, Serbia should in particular: ensure financial and institutional resources for employment and social policies to more systematically target young and long-term unemployed persons; increase the efficiency of social benefits for people below the poverty threshold; and, significantly strengthen bipartite and tripartite social dialogue at all levels, including consultations on draft legislation.

13.2. Labour Act

The National Assembly adopted the amendments to the 2005 Labour Act under an urgent procedure in July 2014⁵⁴⁴ without organising a serious public debate on them beforehand. The Government explained that the amendments were being adopted under an urgent procedure because they governed issues of relevance to the social and economic status of workers, put in place the legal framework for boosting employment and investments in the economy, and in view of the current economic situation, especially due to the floods and landslides in May 2014.⁵⁴⁵ Another reason quoted for the adoption of the amendments to the Labour Act under an urgent procedure was that they ensured the fulfilment of Serbia's obligations to international financial organisations, and alignment of the law with EU regulations in accordance with the obligations assumed in the National Programme for the Adoption of the EU *acquis*.⁵⁴⁶

Experts and representatives of some trade unions still have the impression that the 2014 amendments to the Labour Act leave room for abuse by the employers and that some of them jeopardise workers' rights.⁵⁴⁷

543 See: http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf.

544 More in the *2014 Report*, III.13.2.

545 Explanatory Note to the law amending the Labour Act.

546 See the *Blic* report available in Serbian at: <http://www.blic.rs/Vesti/Ekonomija/480492/Obrazlozenje-Izmene-Zakona-o-radu-doprinece-smanjenju-rada-na-crno>.

547 See the *NI* and *Peščanik* reports, available in Serbian at: <http://rs.n1info.com/a168796/Biznis/Efekti-zakona-o-radu.html> and <http://pescanik.net/paralelni-svetovi-zakona-o-radu/>. See also: Reljanović, M., Ružić, B., Petrović, A., *Analysis of the Effects of the Enforcement of the Labour Act Amendments*, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primene-izmena-i-dopuna-zakona-o-radu.pdf>.

The authors of the amendments failed to further elaborate specific provisions of the Labour Act to facilitate its full implementation. The Ministry of Labour issued its opinions on the enforcement of individual provisions, but, under Article 80(2) of the State Administration Act, the opinions of the state administration cannot be considered legally binding.⁵⁴⁸

At its 20th session on 17 November 2016, the Constitutional Court found that paragraph 3(5) of Article 179 of the Labour Act was not compatible with the Constitution,⁵⁴⁹ This provision entitled employers to terminate the employment contracts of workers for violating the work discipline if their conduct amounted to the commission of a criminal offence at work or in relation to work, whether or not criminal proceedings for the offence had been instituted against them. This provision was seen as entitling the employers to themselves determine that the workers' conduct had elements of crime, as grounds for terminating their employment contracts, which is in contravention of Article 34 of the Serbian Constitution, pursuant to which everyone shall be considered innocent of a crime until convicted by a final judgment of the court.⁵⁵⁰

In view of the fact that European labour law protects the rights of workers in the event of collective redundancies, bankruptcy, relocation of businesses, the workers' right to be notified and consulted on issues regarding their work, and includes rules in respect of working hours and occupational health and safety issues, it may be concluded that the amendments to the Labour Act do not pursue the same goals as European labour law.⁵⁵¹ The EU encourages social dialogue between the representatives of workers and employers with a view to protecting the workers, as well as with a view to increasing competitiveness. The EU prohibits discrimination on grounds of sex, race, ethnicity, disability, sexual orientation, age, religion or beliefs. Furthermore, the EU has been applying a number of efficient measures to fight against informal employment, to ensure that the whole labour force in EU territory enjoys equal rights and freedoms.⁵⁵²

In its Chapter 19 Screening Report, the European Commission concluded that Serbia was insufficiently prepared for opening talks on this Chapter, wherefore it could not recommend the launch of these negotiations. It also recommended that the negotiations on this Chapter open once Serbia fulfilled the Action Plan on the Gradual Transposition of the *Acquis* and built the requisite capacities for imple-

548 *Sl. glasnik RS*, 79/05, 101/07, 95/10 and 99/14.

549 Case IUz-424/2014.

550 Article 34 of the Constitution envisages the right to legal certainty in criminal law, see: http://www.parlament.gov.rs/upload/documents/Ustav_Srbije_pdf.pdf.

551 See: Reljanović, M., Ružić, B., Petrović, A., Analysis of the Effects of the Enforcement of the Labour Act Amendments, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primenezmena-i-dopuna-zakona-o-radu.pdf>.

552 See: <http://www.eu.me/mn/19/item/64-poglavlje-19-socijalna-politika-i-zaposljavanje>.

menting and enforcing the *acquis* in all areas covered by the Chapter on Social Policy and Employment. Additionally EC expect from Serbia to adopt new labour law until the end of 2016.⁵⁵³

13.3. Employment Rates in Serbia

According to the Statistical Office of the Republic of Serbia (SORS) Labour Force Survey for the 3rd quarter of 2016,⁵⁵⁴ a total of 2,022,788 of Serbia's 7.14 million population were registered as employed in the reporting period; 619,601 of them were employed in the public sector. The unemployment rate stood at 13.8%: 12.6% among men and 15.2% among women. It was the highest in the South and East and Šumadija and West Serbia regions (14.2%), followed by the Vojvodina region (13.5%), and the lowest in the Belgrade region (13.3%). The percentages indicate that this rate fell by merely 2.8% over the same quarter in 2015. The Foundation for the Advancement of Economics (FREN) said in its Q3 Monitor⁵⁵⁵ that the Labour Force Survey showed that the employment rate rose by 7.2% to 46.8% (the formal employment rate grew by 3.8% and the informal employment rate by 19.8%) year on year.

In its explanation of its methodology applied in the Labour Force Survey conducted in the second quarter of the year, SORS said that the employment rate did not include workers employed by entrepreneurs or all small companies, just some of them, or Ministry of Defence and Ministry of Internal Affairs staff, which means that the number of employed people is somewhat higher. SORS also noted that the number included all workers, both those working full and part time and those employed for definite and indefinite periods of time. The number thus manifestly demonstrates that only around 22% of the working-age population (around 14% of the entire population) was employed. Four out of five persons of working age were jobless, informally employed or working under service contracts. The same press release indicates that around 360,000 workers, i.e. 36% of them, were employed in the public non-manufacturing sector, i.e. in state administration, social insurance, health and educational institutions. Over 100,000 people were working in public companies alone, which practically means that the state is the employer of most of the employed people in Serbia.⁵⁵⁶

SORS provided an explanation of its amended Labour Force Survey methodology, specifying that the new weighting method applied since early 2016 precluded

553 See the Chapter 19 Screening Report, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf.

554 See: <http://webrzs.stat.gov.rs/WebSite/repository/documents/00/02/37/73/zp22122016e.pdf>.

555 See: <http://www.fren.org.rs/sites/default/files/qm/Prezentacija%20QM46.pdf>.

556 As explained by Mario Reljanović in his article Minimum Cost of Dignity, available in Serbian at: <http://pescanik.net/minimalna-cena-dostojanstva/>.

comparison of the data with those from the previous years.⁵⁵⁷ The new weighting method was also applied to 2014 and 2015 data (revised results) to facilitate their comparison with those from 2016.⁵⁵⁸ Therefore, the activity rate denotes the share of the economically active population of a specific age in the total population of the same age. The employment rate denotes the share of employees of a specific age in the total population of the same age. The unemployment rate denotes the share of unemployed people of a specific age in the total population of the same age. The inactivity rate denotes the share of the economically inactive population of a particular age in the total population of the same age.

SORS data for the third quarter of 2016 show that the employment rate stood at 46.8%, i.e. that it increased by 3.4% compared to the revised data for the same period in 2015. There is, however, a gap of 0.6% between the employment and unemployment rates. SORS data also show that the employment rate (of the working age population) in the third quarter of 2016 stood at 54.3%; according to its estimates, 2,761,500 people were employed. The National Employment Service's records show that 717,324 job-seekers were registered with it in Q3 2015, compared to 686,821 job-seekers in Q3 2016, i.e. it fell by 3.5 % year on year.⁵⁵⁹

The age breakdown of the job-seekers registered with NES shows that young people under 30 account for 24.2%, persons over 50 for 28.8% and persons in the 30–49 age group for 47% of the registered job-seekers. The breakdown of the registered job-seekers by education level shows that almost a third of them (32.7%) are unskilled or low-skilled workers, Job-seekers with secondary education account for most of the registered unemployed – 52.64%, while job-seekers with junior college and university education account for 15.26% of the unemployed. As per long-term unemployment, 469,972 people, or 68.4% of the job seekers have been looking for a job for over 12 months.⁵⁶⁰

There is, however, a major discrepancy between what the man in the street and official statistics consider employment (SORS has been applying the ILO methodology to measure employment and unemployment in Serbia). The Labour Force Survey is conducted on a sample of 11.900 interviewed households in Serbia, but it remains unclear how the households considered a random sample are selected. Furthermore, anyone who worked even for one hour in the week in which the survey is conducted is considered employed. The survey, therefore, does not take into account whether the respondents generated any income, but it does take into account everyone working either formally or informally, be they remunerated financially or

557 More is available at <http://www.stat.gov.rs/WebSite/userFiles/file/Zaposlenost%20i%20zarade/ARSSmet/SMET019050E.pdf> and in Serbian at: <http://www.javnepfinansije.rs/2016/05/Objavljeni-revidirani-podaci-iz-Ankete-o-radnoj-snazi>.

558 See: <http://www.stat.gov.rs/WebSite/userFiles/file/Zaposlenost%20i%20zarade/ARSSmet/SMET019050E.pdf>.

559 See: http://www.nsz.gov.rs/live/info/vesti/stopa_nezaposlenosti_smanjena_na_13_8_odsto.cid32683.

560 See: http://www.nsz.gov.rs/live/digitalAssets/6/6553_bilten_nsz_10_2016_-_broj_170.pdf.

in kind, as well as workers on sick, annual or unpaid leave, and those who have not been paid for months for the jobs they do.

On the other hand, statistics do not recognise as unemployed the people who have no job or income. According to the SORS methodology, unemployed persons are those who are of working age (between 15 and 64 years old) and are actively looking for a job. “Actively” means that they are registered with the NES and report to their NES advisers at specific intervals, on a particular day every month. They are deleted from the NES records and lose the status of unemployed if they report either before or after that day. This is why the number of registered unemployed people has been falling. The picture of labour market trends painted by this methodology is much rosier than reality. Analyses and statements persistently highlighting the drop in the unemployment rate and the rise in employment on the basis of such statistics can only be interpreted as abuse of statistics for political purposes.⁵⁶¹

The Foundation for the Advancement of Economics (FREN), however, said in its Quarterly Monitor that the Labour Force Survey results indicated that the unemployment rate had fallen by as many as 45% from Q2 2012 to Q2 2016. FREN brought into question the credibility of the data on employment because the overall employment/unemployment trends significantly diverged from the other macroeconomic trends. It said that if the data were accurate, the productivity of Serbia’s economy had dropped by 15% in the past four years (by 4.4% over the past year alone) while the increase in private sector wages in real terms and strong export growth indicated that the productivity of the national economy was growing.⁵⁶²

In its Serbia 2016 Report, the EC said that the overall labour market performance had improved slightly and that specific pressure on the labour market resulted from fiscal consolidation measures and the restructuring of state-owned enterprises. In its view, labour market integration of workers who have become redundant and the long-term unemployed remained a key challenge. Allocations for active labour market policies remained at the same level in 2016 as in 2015. While all regions showed improvements in labour market indicators, regional imbalances continued to persist. The EC noted that Roma, especially women, were the most discriminated against on the labour market and that other vulnerable groups included persons with disabilities, and people with low qualifications who were long-term unemployed. The adoption of the ESRP in June was qualified as a significant step forward in terms of evidence-based policy development. The EC noted that the revision of the national employment strategy 2010–2020 was being completed and that, while authorised private employment agencies were already active in the labour market.⁵⁶³

561 See Union University Associate Professor and Labour Law Legal Clinic Secretary Mario Reljanović’s text of 15 April 2015 on Peščanik, available in Serbian at: <http://pescanik.net/svismo-mi-pomalo-zaposleni/>.

562 The overview of FREN’s Q3 2016 Quarterly Monitor is available in Serbian at <http://www.fren.org.rs/sites/default/files/qm/Prezentacija%20QM46.pdf>.

563 Serbia 2016 Report.

13.3.1. Youth Employment

The European Commission also alerted to the very high unemployment rate of young people (43.2% in 2015), concluding that this issue was a key challenge for the state, particularly in view of the fact that allocations for active labour market policies remained at the same level in 2016 as in 2015.

The SORS Q3 2016 Labour Force Survey data showed that the unemployment rate of the 15–24 age category stood at 28.5% and that the employment rate of this category stood at 22.5%. The young people's inactivity rate stood at 68.5% and their activity rate at 31.3% in the reporting period.⁵⁶⁴

Serbia ranked sixth on the Trading Economics list of countries with the highest youth unemployment rates. It put the youth unemployment rate at 38.1% in July 2016.⁵⁶⁵

According to a survey of the needs of young people (between 15 and 30 years of age) conducted by the Ministry of Youth and Sports and published in December 2016⁵⁶⁶, 26.9% of the respondents think that unemployment and the economic situation in the country are the gravest problems they face today. Sixty percent of the respondents described the economic situation in their households as average, while 21.6% qualified it as good and 15% as poor. Over half of the young people said they were unemployed, while 43% said they had a job; most of the latter were male and/or living in cities. Among the employed youths, 81.8% were working full-time, 8.2% held occasional jobs, 5.7% worked part-time and 4.3% worked more than eight hours a day; 79.4% said that their employers had registered them; 61% of the employed respondents thought that they were not overqualified for the jobs they held.

A quarter of the unemployed respondents said they were registered with the NES. Most of the unemployed youths are supported by their family members (91.2%), while 4.2% rely mostly on the savings they had earned. Less than 3% said they lived on their scholarships, family pensions and welfare. Only four percent of the respondents were willing to start their own business, while 69% said they had not taken any steps in that direction, mostly because they lacked the start-up funds. Over half of the respondents think that poorly paid jobs are the main reason why unemployed youths are inactive, while 36% think that the only way to get a job is by pulling strings.

564 See: <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d24000200IND01%26102%3dRS%266%3d1%2c2%2c3%2c4%2623%3d0%2c1%2c2%262%3d%23Last%231%2640%3d15%2cL15-24%2cL15-64%26sAreaId%3d2400021200%26dType%3dName%26lType%3dSerbianLatin>.

565 See: <http://www.tradingeconomics.com/serbia/youth-unemployment-rate>.

566 See: <http://www.mos.gov.rs/public/ck/uploads/files/Dokumenta/Omladina/istrazivanja/istrzivavanje%202016/Istrazivanje%20polozaja%20i%20potreba%20mladih%20teren%20decembar%202016.pdf>.

The youth unemployment rate broken down by education shows that it is the highest among youths who completed only primary school (40.7%), followed by youths with college diplomas (32.9%), and that it is the lowest among youths with secondary education (29.9%). The problem of long-term youth unemployment in Serbia is extremely grave: more than 50.9% of them have been looking for a job for over a year. Long-term unemployment particularly impinges on young people and their position in the labour market, because it often results in the decay of their skills and discouragement.⁵⁶⁷

The labour market situation has prompted many young and well-educated youths to emigrate from Serbia, who quote the lack of job opportunities as the main reason for leaving Serbia. A record high number of people, 58,000, emigrated to OECD countries in 2015, more than double the annual average between 2004 and 2013, around 9,000 of them had Bachelor's or higher university degrees.⁵⁶⁸

The World Economic Forum's 2016/17 Global Competitiveness Report ranked Serbia 137th out of 138 countries for "capacity to retain talent". Serbia is estimated to have lost 12 billion EUR since the early 1990s due to the departure of well-educated young people, particularly scientists and technical engineers, according to the local media.⁵⁶⁹

13.4. Right to Assistance in Employment and in the Event of Unemployment

The Employment and Unemployment Insurance Act⁵⁷⁰ governs the work of the National Employment Service (NES). The National Employment Strategy for the 2011–2020 Period, which provides the long-term framework for designing employment policies, is operationalised by the adoption and implementation of annual National Action Plans.

The national 2011–2020 Employment Strategy qualifies the following groups of the working age population as particularly vulnerable in the labour market: Roma, refugees, internally displaced persons, persons with disabilities, the rural population (especially rural population that does not own land and the rural population in South-East Serbia), those without school, women and youths (15–24 years old), and older people (50–64 years of age) as well as the long-term unemployed,

567 Marjanović, Dragana, *Labour Market Transitions of Young Women and Men in the Republic of Serbia*, International Labor Organization, Geneva, 2016, available at: http://www.ilo.org/wcms-sp5/groups/public/---ed_emp/documents/publication/wcms_488799.pdf.

568 See the *Večernje novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovnadrustvo/aktuelno.290.html:549798-Nezaposlenost-i-nesigurnost-glavni-razlozi-odlaska-mladih-iz-Srbije>.

569 See: <https://www.yahoo.com/news/balkan-youngsters-emigrate-en-masse-better-prospects-062328437.html>.

570 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

single parents, welfare beneficiaries, children not in parental custody, human trafficking victims, et al.⁵⁷¹

The 2016 National Employment Action Plan also envisages special measures.⁵⁷² Local self-governments enact their local employment action plans, defining the local employment policy goals and priorities, pursuant to the Employment and Unemployment Insurance Act and the National Employment Action Plans and implement active employment policy measures at the local level.

According to the 2016 National Employment Action Plan, priority shall be given to the coverage of the following difficult-to-employ people by active policy measures, youths under 30, redundant workers and job-seekers over 50, unqualified job seekers, low-skilled job-seekers, the long-term unemployed, persons with disabilities and Roma. Particular attention is paid to activating welfare beneficiaries of working age. The Action Plan states that the active employment programmes and measures shall target other difficult-to-employ people and particularly vulnerable categories of the unemployed, such as women, the rural population, refugees and internally displaced persons, returnees under readmission agreements, children not in parental custody, victims of domestic violence and human trafficking, single parents, spouses in families in which both spouses are jobless, parents of children with disabilities, et al, in a manner facilitating their integration in the labour market and improvement of their quality of life.

The 2016 budget allocation for active employment measures stood at 3.35 billion RSD, 2.8 billion RSD of which were designated for active measures and 550 million RSD for the employment of persons with disabilities. In early 2016, the authorities planned to include 131,000 people in the active employment policy measures and employ 40,918 people registered with NES.

Remuneration for public works was increased in 2016 and the duration of the public works was extended from three to four months. On the other hand, the rulebook on the selection of workers for public works was amended, leaving it to the employers to decide who they would engage under this measure. The purpose of the public works measure may thus be rendered senseless to an extent because the amendment may result in the employers' failure to engage people, who are genuinely in need of a job in public works.

The subsidies for employers hiring welfare beneficiaries of working age were increased from 10,000 to 15,000 RSD.

The Serbian authorities in 2016 continued subsidising foreign investors to the detriment of national companies. The recommendation of the Economic Development Council⁵⁷³ to grant subsidies to six foreign investors, including five facto-

571 *Sl. glasnik RS*, 37/11.

572 *Sl. glasnik RS*, 82/15.

573 Under the Investments Act (*Sl. glasnik RS*, 89/15), this Council shall comprise the Ministers of Economy, Finance and of Labour and Employment, the Chairman of the Serbian Chamber of Commerce and the Director of the national Development Agency.

ries in the interior of the country and the British company Endava, which entered the Serbian market the previous year, when it purchased one of the largest domestic software companies, PS Techa, caused a lot of dissatisfaction. The planned 1.6 million EUR subsidy to this foreign IT company places the domestic IT companies at a disadvantage. The domestic IT companies launched a petition against the state for granting subsidies to foreign companies for employing the local labour force, given that IT professionals are in great demand. The petitioners are of the view that this decision will not help increase the employment rate because the IT labour force will just leave their companies to work for Endava, the entire profit of which will end up in Great Britain.⁵⁷⁴

The short supply of IT professionals in the national labour market is the greatest challenge currently faced by the Serbian IT sector, as corroborated by an assessment of the Economic Institute, which stated that as many as 30,000 people with the requisite qualifications could easily find jobs in this industry. This huge subsidy to a major foreign IT company will enable it to offer IT professionals better working conditions and/or salaries and other benefits. The state is technically placing one company at an advantage over all others, and a foreign one at that.⁵⁷⁵

The effectiveness of subsidising foreign companies has been publicly questioned for several years now. A number of reports were published in 2016, claiming that the foreign investors granted subsidies were defaulting on their contractual obligations and not hiring as many workers as claimed by the national and local authorities. For example, according to the available information, the state has concluded contracts with around 30 foreign companies, under which the latter were to open 20,767 jobs in total; they have, however, hired only 11,000 workers so far.⁵⁷⁶

In addition to the NES, employment services are also provided by private employment agencies, as provided for by the Employment and Unemployment Insurance Act.

The status of people employed through “employee leasing agencies” is another problem that has arisen due to the vagueness of the Labour Act provisions. Although the working group formed to draft a law on employee leasing is expected to complete its work in 2017, the fact is that this issue could have been resolved much earlier, by including a separate chapter in the amendments to the Labour Act adopted in 2014. Deregulation of the status of leased employees definitely cannot be considered a positive development of workers’ rights or in compliance with the Labour Act.

574 The press release and petition are available in Serbian at: <http://startit.rs/ministarstvo-privrede-subvencije-it-srbija/>.

575 *Ibid.*

576 Data obtained by the *Istinomer* portal from the Central Mandatory Social Insurance Register, more is available in Serbian at: <http://www.istinomer.rs/ocena/3619/Strani-investitori-za-dve-godine-zapostili-150-hiljada-ljudi>.

Serbian labour law does not provide grounds for employee leasing. Neither does ILO Convention No. 181 on private employment agencies. On the contrary, it explicitly states that the provisions of this Convention shall be applied by means of laws or regulations or by any other means consistent with national practice, which is not the case in Serbia. This economic activity is regulated by the Decree on the Classification of Activities, which the Government enacted back in 2010 and which suffers from a number of controversial provisions.⁵⁷⁷

Scope for abuse is, thus, great. Some public companies have been leasing employees to perform jobs defined as full-time jobs in their staffing regulations. Leased employees are paid a fraction of the wage earned by the companies' employees performing the same jobs. There are many examples of violations of the workers' rights. For example; leased employees injured at work are as a rule sacked, while, on the other hand, the leasing agencies, as their employers, and the companies they worked in, which are responsible for their occupational health and safety, are not held legally liable.⁵⁷⁸

This is a complex legal issue the courts will have to address on a case to case basis, until a law governing in detail the responsibilities of leasing agencies and companies using their services enters into force.⁵⁷⁹

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work aims at establishing protection of workers with a contract of employment or an employment relationship with temporary-work agencies. Given that not all EU Member States can regulate this form of employment identically in their national law, the Directive lays down the minimum standards for protecting workers who have such contracts with temporary-work agencies.⁵⁸⁰ The existence of this Directive is all the more reason for the Republic of Serbia to efficiently regulate the work of such agencies in its national legislation.

13.5. Workers' Rights Concerning Termination of Employment

The Labour Act provisions on disciplinary proceedings and measures against workers need to be elaborated. The law regulates disciplinary measures in the section on the termination of employment by the employers, but does not include any provisions governing disciplinary proceedings. Further confusion is sowed by Arti-

577 See: Reljanović, M., Ružić, B., Petrović, A., Analysis of the Effects of the Enforcement of the Labour Act Amendments, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primene-izmena-i-dopuna-zakona-o-radu.pdf>.

578 See the text by Mario Reljanović, "Dignity for Lease," available in Serbian at: <http://pescanik.net/dostojanstvo-na-lizing/>.

579 *Ibid.*

580 The Directive is available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008L0104>.

cle 179a on measures imposed for violations of work discipline or obligations because workers cannot be certain whether the employers will dismiss them or subject them to another penalty. Under the Labour Act, the workers must immediately state whether they wish to be reinstated when they file a lawsuit for the revocation of their dismissal. Their lawsuits will be dismissed if they file them after the decision to dismiss them became final.⁵⁸¹

The Labour Act also provides special protection from dismissal to specific categories of workers: pregnant workers and workers on maternity or childcare leave (Art. 187). Special protection from dismissal is also afforded to the workers' representatives during their terms in office if they acted in keeping with the law, general enactments and their employment contracts. It is up to the employers to prove that they had not dismissed a worker because of his activities in the capacity of a workers' representative, his trade union membership or participation in union activities (Art. 188). The Labour Act originally prohibited employers only from placing workers' representatives in an unfavourable position; the ban now applies to all workers if the reason for the unfavourable treatment lies in their status or activities in the capacity of workers' representatives, their trade union membership or participation in union activities. This provision is in line with ILO Convention 135 on workers' representatives.⁵⁸²

The amendments to the Labour Act unfortunately abolished the provision stipulating that labour disputes shall be urgent and completed within six months from the day they are initiated; labour disputes are now conducted in accordance with the Civil Procedure Act.⁵⁸³ This further aggravates the workers' uncertainty about the outcome of the disputes and provides greater opportunities for massive applications claiming violations of the right to a trial within a reasonable time. The deletion of the provision on the urgency of labour disputes would, perhaps, make sense if the peaceful labour dispute settlement institute functioned adequately in practice.

13.6. Labour Mobility

In its Serbia 2016 Report on Serbia's Chapter 2 obligations, the European Commission said that Serbia was moderately prepared in the area of the freedom of movement for workers. It said that some progress was made, notably by regulating access to the labour market and that, in the coming period, Serbia should in particular make further efforts to strengthen its social security institutions. It said that the Rulebook on the implementation of the 2014 Act on the Employment of Aliens

581 More on the protection of workers from dismissals in the *2014 Report*, III.13.5 and the *2015 Report*, II.12.5.

582 *Sl. list SFRJ (International Agreements)*, 14/82.

583 At the moment, labour disputes last around four years on average.

was adopted in November 2015, with the aim of further regulating procedures for issuance of work permits. The EC noted that the implementation of the new law led to more than 6,000 permits being issued in 2015, compared with around 3,000 in 2014, and a reduced number of complaints.⁵⁸⁴

The Act on the Employment of Aliens⁵⁸⁵ entered into force in December 2014. Articles 5–8 of the Act shall come into force on the day Serbia accedes to the EU.

Specific difficulties arose in the initial stages of the implementation of the new Act on the Employment of Aliens. First of all, an alien is entitled to a work permit provided s/he has a temporary residence permit, which, according to the current practice of the MIA, which issues the residence permits, cannot be obtained without a signed employment contract. On the other hand, an employment contract is not valid unless the alien has a work permit and aliens applying for these permits are required to submit draft employment contracts.

Employers hiring aliens have alerted to the complicated administrative procedure under which the work permits are issued. Some situations have not been regulated clearly, especially when aliens intend to work under service agreements or under other arrangements not constituting employment.⁵⁸⁶

The Serbian authorities cannot issue permits for temporary residence exceeding 90 days to aliens intending to work under service agreements since the Act on the Employment of Aliens took effect because it is not fully in line with the Aliens Act. Therefore, aliens cannot be granted temporary residence on those grounds, until a by-law governing this issue in greater detail is enacted. There is no secondary legislation at the moment that specifies which forms of employment and activities are taken into account during the reviews of temporary residence applications; the MIA, notably its Border Police Directorate (Aliens Department), rules on these applications at its own discretion.

13.7. Exercise and Protection of Workers' Rights

A worker is entitled to complain against a violation or denial of his employment rights to the labour inspection (Arts. 268–272, LA), launch proceedings before the competent court (Art. 195, LA) or require the arbitration of the disputed issues together with the employer (Art. 194, LA). The provisions of the Peaceful Settlement of Labour Disputes Act apply to individual and collective labour disputes.⁵⁸⁷

Under Articles 187 and 188 of the Labour Act, employers may not dismiss pregnant workers, workers on maternity leave and workers on childcare leave. Nor

584 See: http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf.

585 *Sl. glasnik RS*, 128/14.

586 The Serbian Chamber of Commerce organised an expert event entitled “Obtaining a Work Permit in Serbia” in April 2015, more is available in Serbian at: http://www.pks.rs/SADRZAJ/Files/PKSpropisiINFO_april_2015.pdf.

587 *Sl. glasnik RS*, 125/04 and 104/09.

may they dismiss or otherwise place workers in an unfavourable position on account of their status or activities in the capacity of representatives of employees, trade union membership or participation in union activities. In the event of a dispute, the employer bears the burden of proving that an employee has not been dismissed on any of those grounds.⁵⁸⁸

The International Labor Organization (ILO) set for its member states the general principles and guidelines for resolving labour disputes, which primarily promote collective bargaining and settlement of labour disputes by assisting the parties to themselves resolve their disputes or ask arbiters for help in resolving their disputes. The Republic of Serbia has not, however, ratified all the conventions and recommendations on the settlement of labour disputes in keeping with international standards. Notably, it has not ratified the Collective Bargaining Conventions 151 and 154 although their relevance is emphasised also in the Serbia Decent Work Country Programme Document 2013–2017.⁵⁸⁹ The Programme Document underlines the necessity of assisting the social partners to effectively realise the right to collective bargaining in both the private and the public sectors through the implementation of coordinated collective bargaining structures and mechanisms, whilst noting that participatory governance will add legitimacy to the decision-making process.

The authors of the Analysis of the Effects of the Enforcement of the Labour Act Amendments qualified the Labour Act provisions on the protection of workers' rights as extremely poor and as discouraging the workers from seeking court protection.

The Labour Act provides for the initiation of arbitration proceedings over dismissals. Workers may initiate such proceedings by filing a motion in writing within 24 hours from the moment they are served the decision terminating their employment. Arbitration proceedings may also be launched with respect to collective disputes that arose during collective bargaining or the enforcement of collective agreements (Articles 254, 255 and 265).

Arbitration of labour disputes is governed in much greater detail by the Peaceful Settlement of Labour Disputes Act. The enforcement of this law has, however, yielded relatively poor results in practice, and the authorities vowed it would be amended in the next cycle of the labour law reform. The following issues are the most disputable: application of the voluntary participation principle, which is not fully elaborated, lack of second-instance proceedings, which is absolutely unacceptable from the perspective of the right to a legal remedy and access to justice, the legislator's decision to opt for arbitration rather than mediation on individual dis-

588 See: Reljanović, M., Ružić, B., Petrović, A., Analysis of the Effects of the Enforcement of the Labour Act Amendments, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primenizmena-i-dopuna-zakona-o-radu.pdf>.

589 Available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/serbia.pdf>.

putes, and the open issue of the enforceability of the arbiters' decisions. Under this Act, peaceful dispute settlement proceedings may be initiated only in the event the disputes concern discrimination, harassment at work, termination of employment, minimum wage contracting and payments, or the protection of individual rights laid down in collective agreements, other general enactments or employment contracts (Art. 3 (1 and 2)). The Act on the Prevention of Harassment at Work and the Anti-Discrimination Act also provide for peaceful settlement of disputes.

Workers, who fail to initiate a labour dispute within 60 days, lose their right to protection in civil proceedings, regardless of how unlawful the employers' conduct was. They can file criminal reports against their employers if they believe the latter's actions constitute a crime, which, of course, rarely happens and which cannot provide them with adequate satisfaction in terms of their employment-related rights and status.

The 60-day deadline is apparently insufficient as the workers are as a rule left to fend for themselves. Many of them are unfamiliar with their rights and/or are not members of a trade union, if any even exist in the companies they work for. Add to that the absence of a law on legal aid and the scarcity of legal aid services, which mostly exist only in big cities. All this gives rise to a very serious issue: the workers' access to justice and court protection. For instance, workers who want to sue their employers over salary arrears, especially if they have not been paid for a longer period of time, in which case the amounts they are claiming will be high, will have to reckon with paying high court fees when they file their claims, because the higher the amounts claimed, the higher the court fees. The workers, who have not received any income over a longer period of time, which is precisely why they are going to court seeking protection, will thus have limited access to court because they have to pay a substantial amount of money to initiate a dispute, money they most likely do not have.

The efficient protection of workers' rights should primarily be within the remit of the labour inspectorates. The example of the Jura factory, which the media extensively wrote about throughout 2016, demonstrates that the system does not operate as well as it should in practice. The media reported that the inspectorate performed oversight of the plant after one of the trade unions complained it was prevented from organising a unit in Jura. The inspectorate concluded that it could not confirm the allegations because the employer "categorically refuted" them. It further said in its report that the employer also denied that the workers were physically punished and concluded there were no grounds for initiating any procedure against the employer, although it had not interviewed the complainant or the alleged victims of such treatment named by the complainant. As per allegations about Jura's unlawful dismissals of workers, the inspectorate said in its report that it could not take any action because the dismissed workers did not want to initiate proceedings against the plant management, which constituted legal grounds for it to act.⁵⁹⁰

590 See the following press reports, available in Serbian at: <https://www.juznevesti.com/Ekonomija/Fabrika-Jura-zabranjeni-grad.sr.html>, <http://www.novosti.rs/vesti/srbija.73.html:602589-Strajk->

Doubts about the inspectorate's professionalism deepened when news broke that Jura donated the Niš labour inspectorate office two cars to increase the inspectors' capacity for field work and working conditions.

The opinion of the labour inspectorate, i.e. the Ministry of Labour – that labour inspectors do not have the remit to investigate allegations of harassment at work made by former workers – is particularly absurd.⁵⁹¹

It may be concluded that steps need to be made urgently to build the capacity of the labour inspectorates, as the European Commission and the UN Committee on Economic, Social and Cultural Rights also noted.⁵⁹²

14. Right to Just and Favourable Conditions of Work

14.1. Fair Wages and Minimum Cost of Labour

Serbia is a signatory of the ILO Minimum Wage Fixing Convention (No. 131) and the ILO Equal Remuneration Convention (No. 100), but has not yet ratified ILO Minimum Wage-Fixing Machinery Convention (No. 26) and the ILO Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99).

The Constitution guarantees the right of workers to a fair remuneration for their work (Art. 60(4)), although it does not include a provision explicitly prescribing equal remuneration for work of equal value. The Labour Act prescribes that an appropriate wage shall be fixed in keeping with the law, a general enactment or an employment contract and that workers shall be guaranteed equal wages for the same work or work of the same value, adding that the employment contracts violating this principle shall be deemed null and void. The Act defines work of the same value as work requiring the same qualifications, abilities, responsibility and physical and intellectual work.

Under Article 112 of the Labour Act, the Social-Economic Council⁵⁹³ established for the territory of the Republic of Serbia shall issue a decision setting the

u-juznokorejskoj-fabrici-Jura-Rade-i-na-Uskrs and http://www.danas.rs/danasrs/ekonomija/ne_daju_im_da_idu_u_toalet_teraju_ih_da_nose_pelene.4.html?news_id=319688 and: <https://insajder.net/sr/sajt/tema/997/>.

591 More is available in Serbian at: <http://pescanik.net/inspekcija-iz-doba-jure/>.

592 In its Concluding Observations on Serbia's 2nd Periodic Report on the implementation of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights noted with concern the limited effectiveness of the Labour Inspectorate. The Concluding Observations are available at: <http://www.refworld.org/type,CONCOBSERVATIONS,,53fdbbb64,0.html>.

593 The Social-Economic Council comprises 18 members; six members of the representative trade unions, six members of representative associations of employers and six representatives of the Serbian Government.

minimum cost of labour for the following calendar year, by 15 September of the current year at the latest. The hourly rate shall apply as of 1 January of the following calendar year. The law may be amended to specify when the minimum cost of labour has to be increased to reflect the inflation rate, changes in consumer basket prices, et al. The Social-Economic Council sets the minimum cost of labour per hour, which serves as the basis for setting the minimum wage (minimum cost of labour multiplied by the number of working hours in a given month). The following criteria shall be taken into account during the determination of the minimum cost of labour: the existential and social needs of workers and their families expressed in the value of the minimum consumer basket, the employment rate and unemployment rate trend, the GDP growth rate, the consumer price trends, national productivity and average wage rates. However, the minimum cost of labour is in practice usually set in negotiations between employers and trade unions and the agreed amount is fitted into the listed parameters.⁵⁹⁴ The Serbian Government sets the cost in the event the Economic-Social Council fails to reach agreement on it.

The Government had set the 2016 net minimum cost of labour in Serbia at 121 RSD per hour. The trade unions proposed that the minimum cost of labour for 2017 be raised to 143.55 RSD, and the employers were willing to raise it to between 125 and 127 RSD. After lengthy negotiations, the minimum cost of labour for 2017 was raised to 130 RSD per hour.⁵⁹⁵

Some of the negotiators suggested the abolition of the tax on minimum wages. The taxable income threshold, now standing at around 50% of the minimum wage, will fall when the minimum cost of labour is raised. The employers will more easily agree to a greater increase in the minimum cost of labour if the minimum wage tax is abolished, as they will not have to fear that the increase will affect their business. On the other hand, under the Labour Act, employers cannot sign contracts with workers offering them the minimum wage, but this provision is rendered senseless in practice, because employers as a rule contracting salary just negligibly higher than the statutory minimum.

With a minimum monthly wage of 174 EUR, Serbia is at the bottom of the list in the region; the minimum wages are lower only in the Former Yugoslav Republic of Macedonia and Albania.⁵⁹⁶

Around 58,000 workers in Serbia are paid salaries lower than the minimum wage (gross salaries under 25,000 RSD). Most of them are working without contracts and part-time. If one also bears in mind the data indicating that circa 30,000 workers are not paid their salaries, one may conclude that the percentage of workers not remunerated at all or earning salaries below the minimum wage is quite

594 See Mario Reljanović's article "Minimum Price of Dignity", available in Serbian at: <http://pescanik.net/minimalna-cena-dostojanstva/>.

595 See the text available in Serbian at: http://www.paragraf.rs/statistika/minimalna_zarada.html.

596 See the article in *Politika*, available in Serbian at: <http://www.politika.rs/search/searchEngine-Landing/article/Socijalno-ekonomski-savet-opet-nije-utvrdio-minimalnu-cenu-rada>.

high. Furthermore, around 141,000 workers are in the minimum wage zone (earning gross salaries ranging from 25 to 35 thousand RSD). The average gross wage stood at around 51,000 RSD in March 2016; most of the workers in Serbia fall into this income category (over 281,000 of them earned between 45,000 and 65,000 RSD a month). There were 624,000 (around 62% of all workers in Serbia) earning average or above average wages in Serbia. These data, on the one hand, indicate that the above average wages are not much higher than the average wage, and, on the other, that the remaining 38% of the workers must be earning salaries much lower than the average wage (inferred from the formula for calculating the average wage).⁵⁹⁷

The average consumer basket cost around 67,000 RSD and the minimum consumer basket around 35,000 RSD in March 2016, meaning that 1.5 wages were needed to cover the average consumer basket. It was out of reach of many pensioners, given that the average pension standing at slightly over 25,000 RSD in March 2016, as well as of the 389,340 workers, who received between 0 and 45,000 gross wages that month. Comparison of the data shows that less than 3% of Serbia's population can afford the average consumer basket every month.⁵⁹⁸

In its third periodic report, the European Committee of Social Rights deferred its conclusion on whether Serbia fulfilled its obligations regarding the right of young workers to a fair wage and of apprentices appropriate allowances (Article 7(5) of the ESC) pending receipt of full information. It said that domestic law had to provide for the right of young workers to a fair wage and of apprentices' appropriate allowances and that this right may result from statutory law, collective agreements or other means. The Committee said that "fair" or "appropriate" character of the wage was assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above) and that wages taken into consideration were those after the deduction of taxes and social security contributions. In its report, the Committee requested of Serbia to provide it with the net values of the allowances paid to apprentices (after deduction of social security contributions) at the beginning and at the end of the apprenticeship.⁵⁹⁹

14.2. Payment of Wages, Pensions and Overtime

Employers must pay wages to their workers within one month from the month they earned them at the latest, but many employers pay their workers neither their salaries nor the contributions. Under the 2014 amendments to the Labour

597 Statistical Office of the Republic of Serbia Statistical Release on Employment No. 186. Date for the last quarter are available at: <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?p-Key=27>.

598 As explained in the article Minimum Cost of Dignity by Mario Reljanović, available in Serbian at: <http://pescanik.net/minimalna-cena-dostojanstva/>.

599 See: [http://hudoc.esc.coe.int/eng/#{"ESCStateParty":\["SRB"\],"ESCDcIdentifier":\["2015/def/SRB/7/5/EN"\]}](http://hudoc.esc.coe.int/eng/#{).

Act, the statements of account of earnings, and/or of compensations of earnings the employers are under the obligation to pay and hand over to their workers shall constitute enforceable instruments, wherefore the courts may order the garnishment of the unpaid earnings from the company accounts and their payment to the workers (Art. 121(5) LA).⁶⁰⁰ Most employers have, however, been failing to issue payslips to their workers or have been issuing them payslips that do not include all the requisite information. Steps have to be taken to put an end to such violations of the law, all the more since this mechanism facilitates the effective realisation of the workers' right to be paid their wages.

Article 123 of the Labour Act is in collision with the provisions of the Act on Enforcement and Security of Claims on the garnishment of wages and compensations of wage under final court decisions. Under the Labour Act, employers may garnish up to one-third of a worker's wage in cases specified in the law, unless otherwise provided for by the law. Article 258 of the Act on Enforcement and Security of Claims, however, allows the garnishment of up to two-thirds of the earnings, compensation of earnings or pensions (or up to 50% in case they are equal to or less than the minimum wage), thus rendering meaningless the "protection" of wages and compensations afforded by the Labour Act.⁶⁰¹

The provisions on workers' claims in bankruptcy cases have not been changed substantially and claims are still paid by the Solidarity Fund. The terminology has been aligned with the one used in the Bankruptcy Act and the other amended provisions of the Labour Act. The Act now commendably extends the deadline within which workers may file claims, from 15 to 45 days, which will facilitate the realisation of this right.⁶⁰²

Many employers in Serbia do not pay their workers on time. Trade union data indicate that around 600,000 private sector workers are paid their salaries with one- or two-month or even greater delays and that as many as 50,000 workers are not paid at all.

Around 85,000 workers in Serbia have for years been waiting for the state to pay them their salary arrears. The state owes them over 40 billion RSD. In Niš alone, around 4,500 former workers of EI Niš, MIN, Građevinar, Jastrebac and Niteks have not been paid for years; the claims of 2,500 of them are still outstanding although the courts have delivered enforceable judgments in their favour. The state has owed salaries since 2005 to many of the workers, who had sued their companies, most of which have already been liquidated or gone bankrupt; in many

600 This is, however, possible only if there is money in the company accounts; otherwise, if the companies go bankrupt, the workers have to wait to be paid out of the bankruptcy estate.

601 M. Reljanović, B. Ružić, A. Petrović, *Analysis of the Effects of the Enforcement of the Labour Act Amendments*, Centre for Democracy Foundation, Belgrade, 2016, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primene-izmena-izdopuna-zakona-o-radu.pdf>.

602 *Ibid.*

cases, the debts now stand at millions of RSD, as the courts have been ordering the payment of the statutory default interest rate. A large share of these 85,000 workers do not fulfil the retirement requirements and are unable to find new jobs. This is why many of them, to whom the state owns millions, are on the “welfare list” of the Ministry of Labour, Employment and Social and Veteran Affairs and receive just several thousand RSD of welfare a month.

A Ministry of Economy working group has processed the data on salary arrears in the entire country but has not yet proposed a model of how the state companies are to pay them to the workers. The number of workers who may file their salary arrears claims may be much higher than it already is because some had not sued their companies or the state so that they could file claims for linking their years of service; some workers had terminated their lawsuits until they filled the years of service gap. Although linking years of service is not related to salary arrears claims, it was conditioned by the immediate withdrawal of the lawsuits. Workers of bankrupt companies, who wanted to receive redundancy amounting to 200 EUR per year of service, also had to withdraw their lawsuits. The Ministry of Economy claimed that termination of lawsuits by workers paid redundancy in no way meant that they should abandon their salary arrears claims and explained that they should seek their settlement from the bankruptcy estate.⁶⁰³ The number of workers unable to settle their claims from bankrupt companies is large and rising every year.⁶⁰⁴

In late 2014, the National Assembly adopted two laws⁶⁰⁵ reducing the wages of public sector staff and pensions. These austerity measures further impoverished Serbia’s population, especially if one takes into account the large numbers of workers in the public sector and the high share of pensioners.⁶⁰⁶ The Government explained its austerity measures by the need to ensure stability of public finances, primarily to return Serbia to sustainable fiscal deficit levels and a falling debt-to-GDP path, and, thus, macroeconomic stability.⁶⁰⁷

603 See the B92 report, available in Serbian at: http://www.b92.net/biz/vesti/srbija.php?yyyy=2016&mm=03&dd=18&nav_id=1109112.

604 See the *2015 Report*, 14.1.3

605 Act on the Temporary Regulation of the Bases for the Calculation and Payment of Salaries, Wages and Other Regular Income of Beneficiaries of Public Funds and Act on the Temporary Regulation of Pension Payments, *Sl. glasnik RS*, 116/14.

606 Pensions above 25,000 RSD were cut by 22%, while public sector wages were linearly cut by 10%. The laws came into force in November 2014 and will apply until the end of 2017. Full-time workers with net wages under 25,000 RSD are not affected. Workers, whose net wages would fall below 25,000 RSD if they were cut, are paid 25,000 RSD. The wages of part-time workers are set in proportion to their working hours and their reduction is commensurate to the cut of the wages they would suffer if they worked full time in the given month.

607 Although the wage cuts are not in contravention of the law, the legitimacy of the decision has been challenged by a number of experts, who are of the view that the authorities should have instead opted for the dismissal of surplus labour, which would have resulted in major savings, or for a combination of dismissals and wage cut measures. More in an article by Sofija Mandić, 23 September 2014, available in Serbian at <http://pescanik.net/nema-mira-za-gradane-srbije/>.

As opposed to wages, which are calculated on a monthly basis, pensions are an acquired right. The European Court of Human Rights treats pension and disability insurance payments as possessions in the meaning of Article 1 of Protocol 1 to the ECHR⁶⁰⁸ Like the ECHR, the Constitution of the Republic of Serbia (Art. 58) guarantees the peaceful enjoyment of possessions and other property rights acquired under the law, and the obligation of non-interference in the enjoyment of human rights, one of which is the right to pension insurance.

An initiative to review the constitutionality of the law cutting the pensions was filed with the Constitutional Court of the Republic of Serbia. In the reasoning of its decision the Constitutional Court said that the adoption of the law was justified because: it contributed to maintaining the financial sustainability of the pension system, ensuring the regular payment of pensions; most of the pensioners were not struck by the austerity measures; the Constitution does not guarantee the amounts of the pensions; and, measures temporary in character are at issue.⁶⁰⁹

Under the Labour Act, a worker is under the obligation to work overtime in the event of a *force majeure*, an unexpected increase in the volume of work and in other instances when it is necessary to complete unplanned work (Art. 54). Overtime work may not exceed eight hours a week and workers may not work more than 12 hours a day, including overtime (paras. 2 and 3). Workers working overtime shall be entitled to an increase of their wages by at least 26% of their wage base. Employers who violate these provisions shall be fined between 400,000 and 1,000,000 RSD.

Employers do not comply with these provisions in practice and rarely pay overtime. This violation of this right of the workers is difficult to prove because the employers are under no obligation to keep records of overtime and of overtime payments. The statutory penalty is imposed rarely, if ever, and most workers do not report their employers, fearing they will lose their jobs. Employers also frequently qualify the late hours their workers work not as overtime, but as re-distribution of working hours, precluding the workers from claiming overtime.

14.3. Right to Rest, Leisure and Limited Working Hours

Serbia ratified nearly all ILO conventions regarding weekly rest and paid leave. Serbia withdrew from ILO Holidays with Pay Convention (No. 52) and Holidays with Pay (Agriculture) Convention (No. 101). Serbia never ratified ILO Hours of Work (Commerce and Offices) Convention (No. 30) or the Forty-Hour Week Convention (No. 47). Article 60(4) of the Constitution explicitly guarantees the right to limited working hours, daily and weekly rest, and paid annual holidays.

In its third periodic report, the European Committee of Social Rights says that, under Article 7(4) of the ESC, domestic law must limit the working hours of

608 More on the violations of the right to property in II.12.5.

609 Decision of the Constitutional Court, 23, September 2015 No. IV3-531/2014.

persons under 18 years of age who are no longer subject to compulsory schooling and that the limit of eight hours a day or forty hours a week for persons under 16 years of age is contrary to the article. The Committee noted that young persons under 16 were allowed to work for eight hours per day under Serbia's labour legislation, which was contrary to the Charter and that the duration of daily and weekly working time for young workers under the age of 16 was excessive.⁶¹⁰

According to the Labour Act, workers are legally entitled to a break during working hours and to daily, weekly and annual holidays, as well as to paid and unpaid leave in keeping with the law. Workers may not be deprived of these rights. Specific problems may arise in the interpretation of Labour Act provisions on annual leaves of workers who changed jobs and on the moment when they gain the right to annual leave.⁶¹¹

Provisions on paid leave are problematic as the amendments cut the duration of paid leave from seven to five days in a calendar year. Furthermore, the words "and other persons living in the same household as the employee" have been deleted from the provision, thus reducing the number of persons with regards to whom the workers are entitled to seek paid leave. The principle equating marital and extramarital unions in Article 62(5) of the Constitution, in conjunction with Article 4 of the Family Act, is violated in the provision, under which workers are not entitled to paid leave because their civil partner gave birth or suffers from a grave illness, although it leaves it to employers to lay down this right in a general enactment, the employment contract or a ruling.

According to European standards, a worker is also entitled to paid leave during public holidays (Art. 2(2), ESC) and work performed on a public holiday should be paid at least double the usual rate.⁶¹² Under Article 108 of the Labour Act, a worker shall be entitled to an increase in pay for work during a public holiday amounting to a minimum 110% of the wage base.

14.4. Occupational Safety and Health

Serbia has ratified two ILO Conventions that are the most relevant in respect of occupational safety and health: Convention No. 187 on a Promotional Framework for Occupational Safety and Health⁶¹³ and Convention No. 167 on Safety and Health in Construction.⁶¹⁴ The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.⁶¹⁵

610 See: [http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":\["2015/def/SRB/7/4/EN"\],"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng/#{).

611 More in the *2015 Report*, II.13.2.

612 *Conclusions XVIII-1, Croatia*, p. 116.

613 *Sl. glasnik RS (International Treaties)*, 42/09.

614 *Ibid.*

615 More in *Digest of the Case Law of the European Committee of Social Rights*, pp. 35-43.

Article 60(4) of the Constitution guarantees everyone the right to occupational safety and health and the right to protection at work. Paragraph 5 of the Article guarantees special protection at work to women, youth and persons with disabilities. The Government of the Republic of Serbia adopted a new Occupational Safety and Health Strategy for the 2013–2017 Period.⁶¹⁶ The Action Plan for the Implementation of the Strategy was adopted in July 2014.⁶¹⁷

Major amendments to the Occupational Health and Safety Act were adopted in November 2015.⁶¹⁸ Under the amendments, the Act shall not apply to the performance of specific military duties in the Army of Serbia and of police and protection and rescue duties within the remit of the relevant state authorities, where occupational health and safety issues are governed by separate laws and regulations adopted pursuant to them (Art. 1). The concept of employers is expanded and includes natural persons providing work to workers on any legal grounds, with the exception of persons providing work in the household and heads of family agricultural holdings performing work together with their family household members pursuant to regulations on agriculture, as well as natural persons performing economic or other activities together with their family household members.

Article 3 of the Act amending the Occupational Health and Safety Act aligns this law with the Employment and Unemployment Insurance Act⁶¹⁹ and creates the grounds allowing the relevant ministries to lay down measures with respect to the work of youth and pregnant and breast-feeding women. The employers involved in construction at temporary and mobile sites are now under the obligation to prepare proper erection site reports and submit them to the relevant labour inspectorate together with the reports on start-up of work.

Under Article 24 of the Act, employers must provide their workers with the equipment for work and personal protective equipment that is in compliance with the prescribed technical requirements, as verified in the prescribed procedure. Such equipment must be labelled pursuant to regulations and accompanied by the prescribed certificates of compliance and other prescribed documentation. Amendments to Article 27 of the Act obligate the employers to train their workers for safe operation when they are hired, assigned to another job and when they change the work equipment. Article 27 now specifies that employers shall define the training programme, the curriculum of which shall be updated and revised if necessary.

The Act now lays down a new deadline for periodic examinations of the workers' safe and healthy working practices, at least once a year with respect to workers performing high risk jobs, and at least every four years with respect to

616 More in the *2013 Report*, I.15.3.

617 The Action Plan is available in Serbian at: http://www.minrzs.gov.rs/files/doc/bezbednost/Akcioni_plan_za_sprovodjenje_Strategije_bezbednosti_i_zdravlja_na_radu_RS_2013_2017.pdf.

618 *Sl. glasnik RS*, 91/15.

619 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

workers performing other jobs. The training in safe and healthy working practices shall be performed in the language(s) the workers understand and be tailored to workers with disabilities and those suffering from occupational diseases (Art. 28).

The amendments lay down stricter occupational health and safety licencing requirements. The holders' licences may be revoked also in the event they no longer fulfil the licencing requirements. The remit of the Occupational Health and Safety Directorate has also been changed and supplemented.

In its Serbia 2016 Report, the European Commission said that the November 2015 amendments to the Occupational Health and Safety Act and the adoption of eight bylaws and a rulebook on electromagnetic radiation in December 2015 contributed to further alignment with the *acquis*.

Construction is the branch with the greatest number of fatal work-related accidents, as well as with the greatest number of illegal workers, the Construction Workers' Autonomous Trade Union warned. Seventeen of the 32 fatal work-related accidents registered in Serbia in 2016 occurred in this sector. Fatal work-related accidents in the construction sector account for around 53% of all fatal occupational accidents; over half of the workers who were killed had been working illegally. Illegal employment is also present in retail trade and the HORECA sectors, but the number of work-related accidents in these sectors is much smaller. The workers in these sectors are in a precarious financial situation as their salaries are lower than the national average, standing at around 40,000 RSD.⁶²⁰

14.5. Freedom to Associate in Trade Unions

The freedom to associate in trade unions is the only trade union freedom guaranteed by all four general human rights protection instruments ratified by the Republic of Serbia – Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and Articles 5 and 6 of the ESC. This freedom entails the right to establish a trade union and join it of one's own free will, the right to establish associations, national and international alliances of trade unions and the right of trade unions to act independently, without interference from the state. Serbia has also signed ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, ILO Convention No. 11 Concerning Right of Association (Agriculture),⁶²¹ ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively⁶²² and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter⁶²³, ratified by Serbia in 2009, enshrines the right of workers and em-

620 See: <http://www.sindikats.rs/ENG/news.html#369>.

621 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

622 *Sl. list FNRJ (Addendum)*, 11/58.

623 *Sl. glasnik RS*, 42/09.

ployers to organise, which entails the right to form local, national or international organisations for the protection of their economic and social interests.

Article 55 of the Constitution guarantees the freedom of association in trade unions. Trade unions may be established by registration with the competent state authority pursuant to the law and do not require prior approval. The Constitutional Court is the only authority entitled to prohibit the work of any association, including a trade union, and only in the cases explicitly laid down in paragraph 4 of Article 55. The exercise of the freedom to organise in a trade union is governed in greater detail by the Labour Act, law regulating the association of citizens and the by-laws. The Labour Act defines a trade union as an autonomous, democratic and independent organisation of workers associating in it of their own will to advocate, represent, promote and protect their professional, labour-related, economic, social, cultural and other individual and collective interests (Art. 6). Article 206 of the Act guarantees workers the freedom of organising in trade unions. Trade unions shall be established by entry in a register and do not require prior consent. The register shall be kept by the ministry charged with labour affairs. The trade union registration procedure is governed by the Rulebook on the Registration of Trade Unions.⁶²⁴ Under Article 7 of the Rulebook, an organisation shall be deleted from the register, *inter alia*, pursuant to a final decision prohibiting the work of a trade union (Art 7 (item 2) of the Rulebook)⁶²⁵. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).⁶²⁶

In its Serbia 2016 Report, the European Commission said that bipartite dialogue had remained weak and that new collective agreements had been concluded almost exclusively in the public sector, while those that had expired following the introduction of the new labour law have not been renewed except for some in the public sector (health, social protection, culture, police, and in state-owned enterprises). The EC noted that collective bargaining needed to be promoted further through adapting the legal framework (representativeness of social partners and extension of agreements) and strengthening the capacity of social partners. It observed that tripartite dialogue has shown some progress with more frequent meetings of the Social-Economic Council at the national level but that this body was not systematically consulted on all the relevant draft legislation. It stated that the sustainability

624 *Sl. glasnik RS*, 50/05 and 10/10.

625 Article 4 of the ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise explicitly prohibits the dissolution and suspension of work of a trade union by the administrative authorities. According to the ILO Committee on Freedom of Association, this is the most extreme form of interference in the independent operations of trade unions by public authorities.

626 The provisions, which had allowed *municipal administrative bodies* charged with internal affairs to render decisions prohibiting the work of trade unions, were abolished by the adoption of the Act on Associations.

of the 29 local economic and social councils operational across the country was impeded by lack of capacity and funding.⁶²⁷

The status of trade unions in Serbia is extremely unfavourable. Apart from all the difficulties in determining which of them are representative and eligible to partake in social dialogue, they also face other obstacles, including, notably, discrimination on grounds of union membership and prohibition of their work by the employers. The state has not efficiently endeavoured to protect the trade unions, that is, the workers who wish to associate in unions, from either. On the other hand, the trade unions themselves are unable to rise to the challenges, while all the larger trade unions have become bureaucratized and inefficient and do not fight for the workers' rights effectively, undermining the workers' trust in them.⁶²⁸

The 2005–2007 World Values Survey shows that trade unions in Serbia enjoy a great deal of confidence of 1% and quite a lot of confidence of 18% of the respondents. On the other hand, 53% of the respondents have little and 28% have no confidence in the trade unions. This international survey showed that 19% of Serbia's citizens had confidence in labour unions, whereas unions enjoyed the trust of an average of 37% of the respondents in all other 16 countries in the sample. The situation was even more unfavourable two years later, because the 2008–2010 Survey showed that only 2% of Serbia's citizens had a great deal of confidence, while 38% had no confidence in them at all. In the 47 countries covered by the survey (involving 70,000 respondents), confidence in trade unions stood at 39% on average and at only 12% in Serbia, ranking it 46th, with only Bulgaria trailing behind with 11% confidence in unions.⁶²⁹

Article 117 of the Act Amending the Labour Act⁶³⁰ repealed all collective agreements in force on the day this Act came into force as of 29 January 2015. By 25 February 2015, collective agreements were signed for public services (health, culture, education and social protection), the police, public companies and corporations founded by the Republic of Serbia.

Many institutes protecting the workers' collective workers are not dealt with either by the Labour Act or the amendments to it. The 2014 amendments brought no changes to workers' councils. This form of collective organisation of workers apparently has not taken root, save for a few rare exceptions. This comes as no surprise as they had been conceived as auxiliary bodies to take part in decisions only to

627 See: http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf.

628 M. Reljanović, B. Ružić, A. Petrović, Analysis of the Effects of the Enforcement of the Labour Act Amendments, available in Serbian at: <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-primene-izmena-i-dopuna-zakona-o-radu.pdf>.

629 S. Mihailović, Z. Stojiljković, D. Torbica, V. Mihailović, Trade Unions in the Media, Belgrade, 2011, available in Serbian at: http://www.mc.rs/upload/documents/istrazivanje/Sindikati_i_mediji.pdf.

630 *Sl. glasnik RS*, 75/14.

the extent defined by the employers. This has led to the retrogression of collective bargaining, open issues and permanent clashes about representativeness, as well as the absence of any efficient mechanism to stimulate social partners to engage more intensively in dialogue, cooperation, exchange of information and all other forms of useful and positive communication and interaction. It may be concluded that the state has been investing insufficient, if any, efforts in improving the workers' collective rights, or at least in regulating them fully. Therefore, a lot remains to be done in this area to achieve at least the minimal European standards.⁶³¹

14.6. Right to Strike

The right to strike is guaranteed by Article 61 of the Constitution. Workers are entitled to stage strikes in accordance with the law and the collective agreement. The right to strike may be restricted only by law and in accordance with the type and nature of activity.

Under the Strike Act⁶³² the right to strike is limited by the obligation of the strikers' committee and workers participating in a strike to organise and conduct a strike in a manner ensuring that the safety of people and property and people's health are not jeopardised, that direct pecuniary damage is not inflicted and that work may continue upon the termination of strike. Besides that general restriction, a special strike regime is also established: "in public services or other services where work stoppages could, due to the nature of the service, endanger public health or life, or cause major damage" (Art. 9 (1)).⁶³³

The European Committee of Social Rights said in its January 2015 report that Serbia violated the right of workers and employers to collective action in cases of conflicts of interest, with respect to minimum services of public interest, because the law did not precisely define these services. Under Article 6 of the ESC, the state may prohibit the organisation of strikes only under conditions established by law⁶³⁴

This area clearly has to be regulated in accordance with contemporary standards as soon as possible given that the Strike Act was adopted two decades ago and has undergone only a few changes in the meantime. Furthermore, the workers' rights are seriously jeopardised by the economic situation in Serbia and workers are increasingly going on strike. One cannot shake off the impression that the authorities are not willing to launch reforms in this area: the Government has not taken any serious steps towards adopting a new law, although experts have been alerting to the need to enact new legislation on strikes for years. This issue is regulated to the

631 M. Reljanović, B. Ružić, A. Petrović, Analysis of the Effects of the Enforcement of the Labour Act Amendments.

632 *Sl. list SRJ* 29/96 and *Sl. glasnik RS*, 101/05 – other law and 103/12 – CC Decision.

633 More on the right to strike in the *2011 Report*, I.4.17.4.3.

634 See: [http://hudoc.esc.coe.int/eng#{"ESCStateParty":\["SRB"\],"ESCDcIdentifier":\["2014/def/SRB/6/4/FR"\]}](http://hudoc.esc.coe.int/eng#{).

even greater detriment of the workers in the latest draft law on strikes available in the public domain. The draft has never been submitted to parliament for adoption. The draft Strike Act, prepared back in 2011, was aligned with ILO Conventions in April 2014; although a public debate on it was organised in July 2013, it still has not entered the parliament pipeline. Surprisingly, the 2016 Serbia Report makes no mention of the need to regulate the right to strike, although the EC regularly noted the need to adopt a new law on strikes in its prior reports.

Draft versions of the new Strike Act were published in 2016⁶³⁵ but the final text of this law was neither published nor submitted to the Government for endorsement by the end of the reporting period.

Staff working in the judiciary, schools, the Army and the police, all of them employed by the state, threatened to go on strike in 2016. A number of strikes were in the reporting period by workers of companies undergoing restructuring and bankrupt companies.

The Judicial Trade Union several times threatened that staff of courts, prosecution services and penitentiaries would stop working. The general strike scheduled for 1 November 2016 was postponed, but the judicial staff did not abandon its demand – that their salaries be raised to the level of wages paid other public sector staff. The Judicial Trade Union also warned that the judicial administrative staff never received the one-off financial aid, amounting to 20,000 RSD, promised back in 2015.⁶³⁶

The only representative Serbian Army Trade Union staged a protest in 2016 to voice its dissatisfaction with the poor working conditions in the military. It demanded that the wage base of professional Army troops be raised to the statutory minimum and that all rulebooks and enactments on the socio-economic status of defence staff adopted after March 2015 be repealed. It also demanded that the reform of the army health system be halted and that an expert and professional team, which will include a representative of the employees – the trade union, be formed to develop the army health system reform plan and model and that the Military Medical Academy not be dissolved. It also insisted that the employer stop impeding its work in the defence system, the reversal of all the consequences of the hitherto steps taken to prevent its activities and that talks begin on a collective agreement for Army of Serbia staff. Members of the Police Trade Union of Serbia joined the Army Trade Union protest.⁶³⁷

The Union of Teachers' Trade Unions repeatedly threatened to organise warning strikes in 2016 because none of the agreements made with the Government during

635 See the working version, available in Serbian at: http://www.ssetv.rs/pdf/ZAKON_O_STRAJKU_radna_verzija_29.06.2016.pdf

636 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a204871/Vesti/Vesti/Sindikativnosudja-Hocemo-da-nam-se-plate-priblize-drugim.html>.

637 See the *NI* and *B92* reports, available in Serbian at: <http://rs.n1info.com/a210656/Vesti/Vesti/Protest-vojnog-sindikata.html> and http://www.b92.net/info/vesti/index.php?yyyy=2016&m=12&dd=24&nav_category=12&nav_id=1213692.

the 2015 strike had been honoured. One such warning strike was staged in November 2016 and the Union of Teachers' Trade Unions filed a lawsuit over the non-enforcement of the provisions of the 2015 Agreement signed between the teachers' representatives and the then Ministers of Education and State Administration.⁶³⁸

Workers of private and privatised companies, as well as companies undergoing restructuring, also staged a number of strikes in 2016. Most of them demanded the fulfilment of their elementary rights because their employers had not been paying them their wages and/or their contributions, protested against the poorly managed privatisation of their companies, et al. Strikes were staged, inter alia, by the disabled workers of the Kragujevac plant Zastava INPRO, the workers of the South Korean plant Jura, the daily *Sport* reporters, over 4,000 workers of the erstwhile Niš economic giants, EI Niš, MIN and Građevinar, etc.⁶³⁹

15. Right to Social Security

15.1. General

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In its Opinion on the Constitution of Serbia, the Venice Commission commented that social protection was not granted generally but only to citizens and families by the Constitution.⁶⁴⁰

The Constitution also guarantees the rights of the employed and their families to social protection and insurance, the right to compensation of salary in case of temporary inability to work and to temporary unemployment allowances. The Constitution also affords special social protection to specific categories of the population and obliges the state to establish various types of social insurance funds. Article 70 of the Constitution specifically guarantees the right to pension insurance.

638 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/drustvo/unija-sindikata-prosvetnih-radnika-najavila-strajk-upozorenja/k415e5x>,

639 See the *Blic*, *Balkan Magazin*, *Radio Free Europe*, *B92* and *N1* reports, available in Serbian at: <http://www.balkanmagazin.net/danasnje-novine/cid167-150504/policijski-sindikata-najavljuje-strajk>, <http://www.slobodnaevropa.org/a/niski-radnici-traze-zaostale-plate/27496766.html>, <http://www.blic.rs/vesti/srbija/cekajuci-plate-zavravaju-u-bolnici-invalidi-radnici-u-zastavi-impro-usli-u-peti-dan/1lmkj4p>: http://www.b92.net/biz/vesti/srbija.php?yyyy=2016&mm=10&dd=10&nav_id=1186349 and <http://rs.n1info.com/a180935/Vesti/Vesti/Novinari-Sporta-zapoceli-strajk-zatvorili-se-u-redakciju.html>.

640 See Venice Commission, *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD (2007)004, paragraph 41.

Social insurance comprises pension, disability, health and unemployment insurance. Social protection and social security are provided in the Republic of Serbia through social insurance and various financial benefits and services within the system of social, child and veteran-disability protection.

Pension and disability insurance rights and health care are partly funded also from the budget. Most social benefits are secured at the national level. Spending on social protection and social security amounted to around 25% of the GDP in the past, with net pensions accounting for the greatest share – 13%.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act⁶⁴¹ and the Act on Voluntary Pension Funds and Pension Plans.⁶⁴² Mandatory insurance encompasses all employees, individual entrepreneurs and farmers. This insurance ensures the rights of the insured persons in old age, or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The Pension and Disability Insurance Act was amended several times in the past few years. The retirement requirements are stricter and the pensionable age threshold will be progressively raised until 2023.⁶⁴³ The law now envisages payment of lower pensions to early retirees. The law also envisages the progressive raising of the full retirement age threshold for women to 65, to equate it with that of men.⁶⁴⁴

In its 2016 Serbia Report, the European Commission said that the adoption of amendments to the social welfare law, the family law and the draft law on financial support for families with children were still pending. It said that the Survey on Income and Living Conditions was conducted for the third time in 2015 and that the at-risk-of-poverty (AROP) rate in Serbia decreased slightly to 25.4 %, with the highest rates among young people aged 18–24 and those under 18, unemployed persons, and households with two adults and three or more dependent children. The EC noted that the current system of social benefits did not effectively help to reduce poverty, that the pension system continued to show a high deficit and that the ratio of insured persons to pensioners was low and undermined the long-term sustainability of the system.⁶⁴⁵

The EC further observed that the system of social services, including those for elderly and socially disadvantaged persons, was still largely institutionalised. In its view, the findings of the ongoing mapping exercise of social services at the lo-

641 *Sl. glasnik RS*, 34/03, 64/04 – CC Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – CC Decision, 5/09, 107/09, 34/03, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14.

642 *Sl. glasnik RS*, 85/05 and 31/11.

643 More on the retirement requirements introduced by the amendments is available on the website of the Pension and Disability Insurance Fund <http://www.pio.rs/eng/>.

644 More on the full retirement age requirements in the *2014 Report*, III.15.1.

645 See: http://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

cal level undertaken by the Social Inclusion and Poverty Reduction Unit (SIPRU) in cooperation with the Republican Social Protection Institute should contribute to developing non-institutional forms of care, developing a range of service providers and integrated social services, and improving service accessibility, efficiency and quality. As per non-discrimination in employment and social policy, the EC observed that women were particularly exposed to discrimination on the labour market, while the Roma population was exposed to discrimination in almost all areas of life.⁶⁴⁶

The Statistical Office of the Republic of Serbia (SORS) and the World Bank developed a set of poverty maps for Serbia, which show variability in welfare across the country by combining two sources – the 2011 Census of the Population and the 2013 Survey on Income and Living Conditions – to estimate the poverty rates for small geographic areas, such as districts and municipalities. Poverty mapping uses multiple imputation techniques and leverages data from these two sources to estimate poverty for small areas, which would be impossible to reliably derive with survey data alone. The results show that a number of municipalities in the southern part of Serbia have high poverty incidence. The estimated AROP rate ranges from 4.8 percent in Novi Beograd in the Belgrade Region, to 66.1 percent in Tutin in the region of Šumadija and Western Serbia. Even within the same region, such as Southern and Eastern Serbia, this rate ranges from more than 13 percent in Medijana to more than 63 percent in Bojnik. Some areas with high AROP incidences also have many poor people, and a great number of poor people are in densely populated parts of the country.⁶⁴⁷

15.2. Social Protection and Poverty Reduction

Reduction of extreme poverty and part of the social protection not covered by social insurance is realised in Serbia through social and child protection, governed by two laws: the Social Protection Act⁶⁴⁸ and the Act on Financial Support for Families with Children⁶⁴⁹. The Social Protection Act governs rights to welfare benefits targeting the poor (financial aid, increased financial aid, and one-off financial aid), long-term domiciliary care and assistance allowances, job skills training allowances, social protection services, as well regulatory and control mechanisms in the field of social protection.

Social protection services include assessment and planning services, everyday community services, independent living support services, counselling-therapeutic and social-educational services and placement services. The Act on Financial

646 *Ibid.*

647 See: <http://www.worldbank.org/en/country/serbia/publication/poverty-map-of-serbia>.

648 *Sl. glasnik RS*, 24/11.

649 *Sl. glasnik RS*, 16/02, 115/05 and 107/09.

Support for Families with Children governs the rights to financial aid for poor families with children (child benefits) and aid aimed at balancing work and parenthood and supporting childbearing (maternity and parental benefits).

As of 1 January 2017, parents in Serbia will no longer be able to count on VAT refund on baby food and apparel, but the authorities announced they would increase parental allowances. This is just one of the vows the Serbian Government made in its Letter of Intent to the International Monetary Fund after the fourth and fifth reviews of the Stand-by Arrangement, before the Washington session of the IMF's Executive Board. This move will relieve the burden of the Tax Administration, which has been spending 50 percent of its time performing non-core activities.⁶⁵⁰

Parental allowances are at the moment paid for a total of 60,476 children. The one-off allowances for firstborn children stand at 38,008.09 RSD, while the allowances for the 2nd, 3rd and 4th children (standing at 6,192.75 RSD, 11,146.44 RSD and 14.861.77 RSD respectively) are paid in 24 monthly instalments.

Parents of children under two years of age have so far been able to claim VAT refunds for the baby food and apparel they had bought up to the amount of 73,847 RSD a year. The VAT could be reclaimed by parents, whose total net income in the previous year did not exceed 1.01 million RSD, who owned taxable property worth less than 24.3 million RSD and who submitted fiscal receipts for the baby food and apparel they had bought.

The portal *Bebac* (Baby) said that the state was thus encouraging grey economy and forcing parents to buy the things they needed for their babies abroad. In its press release, the portal called for the abolition of all VAT on baby food and apparel.⁶⁵¹

The chair of the association *Roditelj* (Parent) and member of the working group that drafted the new law on financial support for families with children said that the authorities seemed to have mixed up the two measures. "VAT refund is a measure aimed at reducing the economic price of parenthood, whereas parental allowances are a pronatalist policy measure. Both of these measures should exist, rather than be mutually exclusive." According to the data of this association, VAT refunds on baby apparel ranged between 12,000 to 16,000 RSD a year per infant. "An increase of the parental allowances by a mere 2,000 or 5,000 RSD would not compensate the abolition of the VAT refund. The state obviously did not measure the impact of this measure," she said.⁶⁵²

650 See the *Novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:623732-NOVOSTI-SAZNAJU-Ukida-se-povracaj-PDV-za-bebe>.

651 See the *NI* report, available in Serbian at: <http://rs.n1info.com/a191003/Vesti/Vesti/Bebac-Ne-otimajte-od-beba-ukinite-PDV.html>.

652 See: <http://www.roditelj.org/2016/09/08/ukida-se-bebi-pdv/>.

The vehemently criticised Decree on the Social Inclusion Measures for Welfare Beneficiaries⁶⁵³ adopted in 2014 is still in force.⁶⁵⁴ Under this Decree, under agreements concluded between the social work centres and welfare beneficiaries, social work centres are entitled to reduce the amount of the welfare or revoke the beneficiaries' right to welfare "in the event they failed to fulfil their obligations under the agreement without good cause". The Government, however, remained adamant, amidst fierce public criticism. In October 2016, the Prime Minister said that welfare beneficiaries were "do-nothings" and that they had to earn the welfare on which the state was spending the tax-payers' money.⁶⁵⁵ The Ministry of Labour, Employment and Veteran and Social Affairs State Secretary went a step further and said that a so-called Hungarian model law would be introduced in 2017, under which welfare beneficiaries would have to work for their welfare.⁶⁵⁶

The Decree provisions on the obligations of welfare recipients have also been criticised as extremely imprecise. The thorough definition of obligations regarding education, employment and medical treatment is left to the educational institutions, the NES and the outpatient health clinics. The only agreement obligation defined in the Decree is the one on community service, volunteering and public works to be performed by welfare beneficiaries, while the specific duties are to be determined by the local self-governments in accordance with the guidelines they receive from the social work centres.

Welfare beneficiaries in Serbia are individuals whose income from work, rent of property or other sources is lower than the amount of welfare laid down in the law. This amount, which initially stood at around 7,890 RSD (app. 64 EUR), is aligned with the consumer price index twice a year, while the beneficiaries' family members are entitled to a half or a third of the amount. People who have the capacity to work but fall in the category of extremely low income earners need to fulfil additional requirements to qualify for welfare: they must be attending a school or job skills training or be registered as unemployed; they are unable to work because they are caring for a child with disabilities; those who refused any offers of full-time, temporary, part-time or seasonal jobs or vocational training, requalification, additional qualification or primary education and terminated their employment of their own free will, with their consent or through their own fault because they committed a disciplinary or criminal offence, are ineligible to apply.

These special eligibility requirements have practically excluded all those who have the capacity to work from the financial support system. Those who are still eligible are either still in school or supporting a child with disabilities, or are ac-

653 *Sl. glasnik RS*, 112/14. More at: <http://www.minrzs.gov.rs/cir/aktuelno/item/1319-uredba-omerama-socijalne-ukljucenosti-korisnika-novcane-pomoci>.

654 More in the *2014 Report*, III.15.

655 See the *Insajder* report, available in Serbian at: <https://insajder.net/sr/sajt/tema/1867/>.

656 *Ibid.*

tively, albeit unsuccessfully, looking for a job. The welfare system provides the last category of beneficiaries with the possibility of surviving until they find a job.⁶⁵⁷

In late 2014, the Protector of Citizens filed a motion with the Constitutional Court asking it to review the lawfulness and constitutionality of the provisions in the Decree regarding the obligations to undergo medical treatment or engage in community service with a view to activating the beneficiaries to overcome their economic difficulties. In his explanatory note, the Protector of Citizens said that the mandatory medical treatment obligation was in contravention of the constitutionally guaranteed right of people to freely decide on anything regarding their lives or health and their right not to be subjected to medical treatment against their own will. The Protector of Citizens held that volunteering, by its legal character, was in contravention of social inclusion measures, as it entailed work for which the volunteers were not remunerated, wherefore it did not help improve their financial situation. Furthermore, welfare beneficiaries are precluded from looking for a job and earning an income during the time they have to spend volunteering.⁶⁵⁸

The Protector of Citizens also asked the Court to review the constitutionality of the provisions on the reduction of welfare and revocation of the right to welfare in case the beneficiaries breached the individual activation enactments, i.e. the agreements between the social work centres and beneficiaries, which may stipulate mandatory treatment and volunteering. He qualified them as compulsion and the introduction of new welfare eligibility requirements, which, in his view, was not only anti-constitutional, but also in contravention of the principle on the hierarchy of regulations, because the Decree laid down additional welfare eligibility requirements not prescribed by the Social Protection Act, as well the principle under which fundamental human rights may be regulated only by primary legislation, not by subsidiary legislation. Furthermore "... community service is not defined either in conceptual or substantive terms: nor is the period of time during which beneficiaries may be engaged in such work limited, thus giving rise to grave legal insecurity and opening room for abuse of socially destitute citizens".⁶⁵⁹ The Constitutional Court failed to state its view on the motion to review the constitutionality of the Decree in 2016 as well.

15.3. Protection Accorded to Family

Apart from the ICESCR, Serbia is a signatory of the Convention on the Rights of the Child, the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Pornography, and the ILO Conventions on Maternity Protec-

657 See the paper by Sofija Mandić, available in Serbian at: <http://pescanik.net/rad-oslobada/>.

658 The entire explanatory note is available in Serbian at: <http://www.paragraf.rs/dnevne-vesti/021214/021214-vest1.html>.

659 *Ibid.*

tion (No. 3); Medical Examination of Young Persons (Sea) (No. 16), Underground Work (Women) (No. 45), Night Work (Women) (Revised) (No. 89), Night Work of Young Persons (Industry) (Revised), (No. 90), Maternity Protection (Revised) (No. 103), Minimum Age (No. 138), Workers with Family Responsibilities (No. 156), Worst Forms of Child Labour (No. 182) and on Maternity Protection (No. 183).

By ratifying the ESC, Serbia undertook also to fulfil the obligations regarding the full protection of children and young people (Art. 7) and the right of employed women to protection of maternity by defining the legal minimum obligations of employers towards pregnant women (Art. 8). Furthermore, it undertook to promote the economic, legal and social protection of family life by such means as social and family benefits (Art. 16) and to take measures to ensure the protection of children and young people from negligence and violence, provide them with free education and provide special aid to young people deprived of their family's support (Art. 17).

In its third report on Serbia, the European Committee of Social Rights reviewed Serbia's fulfilment of its obligations under Article 8 of the ESC – Right of employed women to protection of maternity.

The Committee recalled that, under Article 8(1) of the Charter, maternity benefits had to be at least equal to 70% of the previous wage and that the right to benefit may be subject to conditions such as a minimum period of contribution and/or employment but that such conditions should not be excessive. The Committee noted however that, according to the ILO database on Maternity Protection, a salary compensation corresponding to 100% of the previous earnings was paid to employees with at least 6 months of continuous insurance coverage, while only 60% of the salary was paid to employees insured for more than 3 but less than 6 months and 30% of the salary was paid to employees with less than 3 months contributions. The Committee deferred its conclusion and asked the state to clarify in its next report what were the criteria for entitlement to maternity benefits and whether interruptions in the employment record were taken into account in the calculation of the qualifying period. It also asked the state to provide in its next report any relevant information, in particular statistical data, on the proportion of women getting, as maternity benefits, less than 70% of their previous salary. Furthermore, it asked the state whether the minimum rate of maternity benefits corresponded at least to the poverty threshold, defined as 50% of the median equivalised income, calculated on the basis of the Eurostat AROP threshold value.⁶⁶⁰

The Committee also asked Serbia to provide information in its next report whether its legislation provided for paid nursing breaks for all employees and for details of such provisions, including information on how long employed mothers were entitled to time off for nursing their child. It said that, should the next report not provide any information on this issue, there would be nothing to demonstrate that the situation in Serbia was in conformity with Article 8(3) of the Charter, under

660 See: <http://hudoc.esc.coe.int/eng/?i=2015/def/SRB/8/1/EN>.

which all employed mothers (including domestic employees and women working at home) who breastfeed their babies shall be granted time off for this purpose. Time off for nursing should in principle be granted during working hours, should be treated as normal working time and remunerated as such, the Committee said.⁶⁶¹

The Committee asked the state to specify in its next report what rules applied to pregnant women, women who have recently given birth or who were nursing their infants as regards underground mining and other activities involving exposure to known hazards, and whether the women concerned could be temporarily transferred to another post or, if no transfer was possible, whether they were entitled to paid leave, as provided for in Article 8(5) of the Charter.⁶⁶² The Committee recalled that, under Article 8(5) of the Charter, national law had to ensure a high level of protection against all known hazards to the health and safety of women, who came within the scope of this provision, and make provision for the re-assignment of women who were pregnant or nursing their infant if their work was unsuitable to their condition, with no loss of pay, and, if this was not possible, that such women should be entitled to paid leave. It said that such women should retain the right to return to their previous employment.

In response to the authorities' announcements that the maternity benefit requirements would be tightened, experts in 2016 repeatedly alerted to violations of ILO Convention No. 183 on Protection of Maternity, guaranteeing the right to cash benefits to all employed women on maternity leave. This Convention also includes an explicit provision stipulating that, where cash benefits paid with respect to maternity leave are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings.

Under the Preliminary Draft of the Financial Support for Families with Children Act, the right to maternity leave benefits may be exercised also by parents who had not worked before, and they may acquire the right even after their child is born and they find a job. The average monthly wage the parents earned in the previous 18 months shall be the base for calculating their benefits. This means that parents who had worked for e.g. six months and earned an average wage (circa 40,000 RSD), will receive just a third of the maternity or childcare leave benefit they are entitled to under the valid law. i.e., half the amount laid down as minimal earnings guaranteed under Convention No. 183. The benefit would practically be half the minimum wage because the parents would have to work without interruption for 18 months to receive benefits equalling their wages. The legislator probably intended to reduce the RHIF's financial burden arising from the benefits it pays out to young mothers, or, more precisely the parents exercising the right to maternity and childcare leave.

661 See: [http://hudoc.esc.coe.int/eng#{"fulltext":\["Serbia Article 8-3"\],"ESCDcIdentifier":\["2015/def/SRB/8/3/EN"\]}](http://hudoc.esc.coe.int/eng#{).

662 See: [http://hudoc.esc.coe.int/eng#{"fulltext":\["Serbia Article 8-5"\],"ESCDcIdentifier":\["2015/def/SRB/8/5/EN"\]}](http://hudoc.esc.coe.int/eng#{).

Article 25 of the Preliminary Draft restricts the right to child allowances to the first four children and only provided they “live, are educated and regularly attend school in the territory of the Republic of Serbia.” This provision is in contravention of the very purpose of child allowances and, considering the fact that a large share of the Roma population have more than four children, it may adversely affect this category of the population.⁶⁶³

Article 66 of the Constitution guarantees special protection to the family and the child, mothers and single parents. In paragraph 2 of this Article, it guarantees support and protection to mothers before and after childbirth and, in paragraph 3 of this Article, it guarantees special protection to children without parental care and children with physical or intellectual disabilities. The Constitution prohibits employment of children under 15; minors over 15 are prohibited from performing jobs that may adversely affect their health or morals. Article 64 of the Constitution is devoted to the rights of the child.

Pregnant women and women with children under the age of three may not work overtime or at night. Exceptionally, a woman with a child over the age of two may work at night but only if she specifically requests this in writing. Single parents with a child under seven or a severely disabled child may work overtime or at night only if they submit a written request to this effect (Art. 68, Labour Act).

If the condition of a child requires special care or if it suffers from a severe disability, one of the parents has the right to additional leave. One of the parents may choose between leave and working only half-time, for 5 years maximum (Art. 96, Labour Act). Under the Labour Act, one parent may take leave from work until the child’s third birthday and his labour rights and duties will remain dormant during this period (Art. 100 (2), Labour Act).

The initiative of 60,000 citizens to help parents of sick children by paying their pensionable service during the time they spent caring for their children has been pending for four years now.⁶⁶⁴

Pursuant to his constitutional powers, the Protector of Citizens submitted draft amendments to two laws, the Labour Act and the Act on Financial Support for Families with Children, with a view to improving the status of families with children with disabilities and enabling them to live easier and better quality lives.⁶⁶⁵ These initiatives were neither reviewed nor upheld in 2016.

Under the Act on Financial Support for Families with Children, “the right to a child benefit shall be exercised by the parent directly caring for the child, provided he is a national of the Republic of Serbia, has residence in the Republic of Serbia and exercises the right to health care via the RHIF, for the first four children

663 See the full article by Mario Reljanović, available in Serbian at <http://pescanik.net/depopulaciona-politika/>.

664 See the *2015 Report*, II.14.3.

665 See the *2015 Report*, II.14.3.

born into the family”. Aliens may exercise this right if “they work in the territory of the Republic of Serbia, if so provided for in an international agreement”. The right to child benefits may be exercised on condition the family’s total monthly income does not exceed a specific threshold.

The Act recognises the right to child benefits to children regularly attending school or, exceptionally, until they turn 26, if they are categorised as children with disabilities. The Act raised the threshold for the right to child benefits in case of families with children categorised as children with disabilities.⁶⁶⁶

Only 15% of the population in Serbia at risk of poverty exercises its right to welfare. The data on the number of both the individuals and the children in the poorest quintile by consumption, who exercise the right to welfare and child benefits, indicate the need to expand the coverage of the vulnerable by these cash benefits.⁶⁶⁷ Such coverage may be expanded by increasing the income threshold, as well as by relaxing the property and other eligibility requirements (such as, e.g. the child benefits scheme requirement that the parents must have health insurance).⁶⁶⁸

16. Right to Education

16.1. General

Under the Constitution, everyone shall have the right to education. Article 71 sets out that primary and secondary education shall be free of charge. In addition, primary education shall be mandatory. Under the Constitution, all citizens shall have equal access to tertiary education; the state shall provide free tertiary education to successful and talented students, who are unable to pay the tuition, in accordance with the law.

In mid-2012, the Government of the Republic of Serbia adopted the Education Development Strategy until 2020.⁶⁶⁹ The Strategy, however, suffers from specific shortcomings, including the failure to address human rights and rights of the

666 The explanatory note to the initiative is available in Serbian at: <http://roditeljsrbija.com/roditeljski-i-deciji-dodatak-izmene-zakona/4/>.

667 See: http://www.unicef.rs/files/novčana_davanja_za_decu_i_porodice_sa_decom_u_rs.pdf.

668 See the final draft of the Employment and Social Reform Programme in the EU Accession Process, available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3313-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-petina-crta-%E2%80%93>

669 *Sl. glasnik RS*, 107/12. The Strategy, which is available in Serbian at <http://www.mpn.gov.rs/prosveta/page.php?page=307>, focuses on improving the quality, fairness and efficiency of the education system. It, *inter alia*, defines the measures for preventing early school leaving, defines the education policy reflecting the labour market demands and envisages comprehensive support for inclusive education and inclusion of children from marginalised groups.

child in education, although it was drafted after the UN Committee on the Rights of the Child recommended that these rights be incorporated in the school curricula. This topic was not incorporated in the mainstream school curricula in 2016 either, wherefore education on the rights of the child is still not available to all children.⁶⁷⁰

In its Serbia 2016 Report, the European Commission noted that the worsening demographic situation and weak education outcomes demanded increased focus on human capital policies. It observed that Serbia's population was ageing and shrinking by around 0.5% per year and that public spending on education was comparable to that of EU countries, but that the outcomes in terms of skills and key competences were weaker, as manifested by below-average PISA⁶⁷¹ test scores showing that around one-third of the population was functionally illiterate. The EC said that Serbia ranked below all EU Member States on the 2016 World Economic Forum Human Capital Index,⁶⁷² with particularly weak results in the 15–24 age group. It noted that, although the country had a relatively good scientific base, the level of investment in research was less than 1 % of GDP and that cooperation between the public and private sectors was weak and not systematically supported. The EC went on to say that the quality, equality, and relevance of education and training had to be improved in order to better match societal needs and that both employers and graduates believed that the education institutions did not equip students with key soft skills, such as problem solving, organisational, decision-making. It noted that the national strategy and action plan for education development aimed to address the outdated curricula and obsolete teaching methods. It said that the integrated National Qualifications Framework for lifelong learning had been developed on the basis of existing qualifications framework for vocational and higher education and was under consultation with the relevant national bodies and that it should be linked with steps for a progressive reform of the education system at all levels, improving the level of basic skills acquired by students. The EC also observed that pre-primary education enrolment was below the EU average, standing at around 60% for children aged 3 and above and just 17% for children aged below 3.

The document entitled National Qualifications Framework in Serbia (NQFS), covering the national qualifications system levels I-V, was prepared in 2015. This document, dealing with primary and secondary education, has been endorsed by the national Education Improvement Institute. The frequent announcements of the imminent adoption of a law on the NQFS did not materialise either in 2016.⁶⁷³ The posting of a press release on the website of the Ministry of Education, Science and Technological Development was the only step made towards introducing a single

670 More in the *2014 Report*, III.16.16.1.

671 See: OECD's Programme for International Student Assessment, available at: <https://www.oecd.org/pisa/pisaproducts/PISA2015-Released-FT-Cognitive-Items.pdf>.

672 See: <http://reports.weforum.org/human-capital-report-2016/measuring-human-capital/#view/fn-6>.

673 See: <http://www.blic.rs/vesti/drustvo/trziste-rada-u-srbiji-posle-ove-promene-vise-nece-biti-isto/jwqrn8l> and <http://paragraf.rs/dnevne-vesti/161015/161015-vest6.html>.

qualifications network since the new Government took office in 2016.⁶⁷⁴ Two decisions, adopted by the National Higher Education Council (NHEC) and the National Vocational and Adult Education Council (NVAEC) and proposing the determination of the existing qualification levels with a view to referencing the NQFS to the European Qualifications Framework were also posted on the website in 2016.

The education system in Serbia mostly boils down to formal education at the moment, while informal education and lifelong learning, despite the praiseworthy initiatives launched by the Ministry of Youth and Sports, are still insufficiently recognised or applied as an instrument for the development of human capital and skills. The development of a comprehensive vocational orientation, career counselling and guidance system is still at an early stage (the system has so far been established only in primary schools within the National Employment Service).

Education at all levels mostly concentrates on the transfer of academic knowledge and devotes hardly any attention to critical thinking. Quite a few young graduates lack developed competences on which their participation in society and the labour market, as well as in continuous lifelong learning activities, depends.

The previous Education Minister commented the dual education model, explaining that “there are no prerequisites for applying dual education, it simply cannot be copied unless the entire setting, the infrastructure, corporate social accountability, business culture, et al, is simultaneously copied as well.” He also clarified that the Serbian secondary school students’ vocational practice required the opening of approximately 50,000 apprenticeships and that it was hardly unlikely that the Serbian economy would be able to open as many apprenticeships in the foreseeable future, especially when one bore in mind that competent, certified instructors need to be in charge of the practice of so many students.⁶⁷⁵

Dual education effects have, however, been declining in some developed countries as well.⁶⁷⁶ Dual education involves the assumption of a two-way obligation: the students assume the obligation to start working on the job they were trained for as soon as they graduate, while the companies and their owners, assume the obligation to cover the education costs and secure adequate jobs for the students. Trade unions and workers movements used to manage this form of schooling in the past, but dual education now boils down to churning out disciplined workers

674 “Serbia is introducing a single National Qualifications Framework covering all levels and types of qualifications, regardless of the way they are acquired (through formal or non-formal education, i.e. informal learning – life or work experience) or at what age (youth or adults). It will facilitate the integration and coordination of the existing qualifications systems in Serbia (e.g. higher education system, secondary education system and the other systems.” More is available in Serbian at: <http://www.mpn.gov.rs/prosveta/noks/>.

675 See ex-Minister Srđan Verbić’s interview to weekly *NiN*, 18 February 2016, pp. 24–25, available in Serbian at: <http://www.nin.co.rs/pages/article.php?id=99754>.

676 See the *Peščanik* report, available in Serbian at: <http://pescanik.net/demokratsko-a-ne-dual-no-obrazovanje/>.

with medium-level training workers deprived from their early days of the possibility to think entrepreneurially, both in business and in social terms.⁶⁷⁷

Debates on dual education nevertheless intensified despite the listed shortcomings of the dual education model in Serbia, even by the ex-Minister of Education.⁶⁷⁸

Enrolment in secondary and tertiary schools is by and large based only on academic achievement during prior schooling, and the graduation and admission test results. Academic achievement is also the main criterion for awarding financial aid to pupils and students. The education system is insufficiently inclusive – its capacities to respond to the educational needs of various vulnerable groups are underdeveloped, as are the affirmative measures for the enrolment of pupils from deprived backgrounds.⁶⁷⁹ There are no precise data on the Serbian school dropout rates, particularly among children from vulnerable groups. The secondary school dropout rate is much higher because secondary education is not mandatory; only 15% of Roma children attend secondary schools.⁶⁸⁰ A pilot project implemented in ten schools within a UNICEF-funded project entitled “Combating Early School Leaving in Serbia” cut the dropout rate in these schools by 66.1%. Of all the measures implemented by the schools, individual measures of support to students at risk of leaving school early proved to be the most effective. Schools can also preventively dampen the effects of external factors usually believed to be out of their reach, such as dire poverty and grave family and behaviour problems.⁶⁸¹

In his 2015 Annual Report, the Protector of Citizens said that one quarter of Serbia’s population was between 20 and 29 years old and that only 14% have completed tertiary education, while over 50% of them had completed only secondary education. The unemployment rate of this age group exceeds 40% and youths on the whole account for over one-third of the jobless. Youths with physical and mental disabilities do not have at their disposal adequate education support services and measures. Pre-university and university education support services, based on inclusive education and social inclusion principles, which are

677 See the *Peščanik* report, available in Serbian at: <http://pescanik.net/domacinsko-obrazovanje/>.

678 See the *Newsweek*, *B92*, *Danas* and *Blic* reports, available in Serbian at <http://www.newsweek.rs/konferencija/73363-newsweek-konferencija-o-dualnom-obrazovanju-uzivo.html>; http://www.b92.net/info/vesti/index.php?yyyy=2016&mm=01&dd=07&nav_category=12&nav_id=1082837; http://www.danas.rs/drustvo.55.html?news_id=330706&title=%C5%A0ar%C4%8Devi%C4%87%3A+Prioritet+dualno+obrazovanje; and: <http://www.blic.rs/vesti/drustvo/trziste-rada-u-srbiji-posle-ove-promene-vise-nece-biti-isto/jwqrn8l> respectively.

679 Affirmative measures have been introduced for pupils and students belonging to the Roma national minority and those with disabilities.

680 See the *Danas* report, available in Serbian at: [http://www.danas.rs/drustvo.55.html?news_id=333311&title="+Siroma%C5%A1tvo+okida%C4%8D+za+rano+napu%C5%A1tanje+%C5%A1kolovanja+#sthash.H4ELEWG8.dpuf](http://www.danas.rs/drustvo.55.html?news_id=333311&title=).

681 See the Centre for Education Policy website: <http://www.cep.edu.rs/news/conference-combating-early-school-leaving-in-serbia-through-effective-dropout-prevention-and-intervention-measures-at-the-school-level/64>.

to facilitate the education of youths with mental and physical disabilities, increase their attendance of secondary and tertiary schools and provide them with equal opportunities to attend university and integrate in society and everyday life, are underdeveloped.⁶⁸²

The percent of men and women with higher or university education is almost the same (around 16%), but there are more women than men that have not completed primary school or have no more than primary education (39% v. 29%). The educational levels of various ethnic communities are extremely divergent as well – e.g. 87% of the Roma population have incomplete primary education or only primary education and less than 1% have completed higher education. The educational breakdown of persons with disabilities is also unfavourable: 52.7% of them over 15 years of age have not completed primary school or have no more than primary education and only 6.5% have completed higher education.⁶⁸³

A 2015 public opinion survey on education in Serbia,⁶⁸⁴ commissioned by the Social Inclusion and Poverty Reduction Unit (SIPRU) and the Ministry of Education, Science and Technological Development, showed, notably, that the citizens did not perceive education as a major problem Serbia was facing at the moment, as they were preoccupied with making ends meet, unemployment and low living standards. The share of respondents, who thought that education was one of the crucial problems, was higher only among respondents with higher education and those with children in college. One out of two respondents said they were satisfied with the education system in Serbia; the share of those dissatisfied with it was considerably higher among the highly educated respondents. In the respondents' view, the greatest shortcomings of the national education system included lack of practice, poor quality of the curricula, lack of teacher enthusiasm and overly extensive study material. Lack of practice was highlighted to a greater extent by highly educated respondents and those in the 18–29 age category. Respondents without children in school qualified lack of practical training as the greatest deficiency of the education system. This opinion was held also by respondents with children in college, who also cited the outdated curricula as a deficiency. On the other hand, respondents with children in primary or secondary school highlighted overly extensive study material and lack of teacher enthusiasm as the greatest shortcomings of the education system in Serbia.⁶⁸⁵

682 The 2015 Annual Report is available at: <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>.

683 According to the 2011 Census, see: <http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Skolska%20sprema,%20pismenost%20i%20kompjuterska%20pismenost-Educational%20attainment,%20literacy%20and%20computer%20literacy%20.pdf>.

684 See the report in Serbian at: <http://omk-obrazovanje.gov.rs/wp-content/uploads/2015/09/Obrazovanje-u-Srbiji-%E2%80%93-Stavovi-gra%C4%91ana-o-obrazovanju-u-Srbiji.pdf>.

685 *Ibid.*

16.2. Education Law and Its Implementation in Practice

The amendments to the Education System Act adopted in late July 2015⁶⁸⁶ align this Act with the National Education Strategy and the circumstances in the countries around Serbia, especially in the EU, which clearly demonstrate that Serbia is in need of a quality education system that will ensure the increase in the education levels of the population and the development of Serbia as a knowledge-based society, as well as improve the employment rates. The explanatory note to the amendments states that they are to be adopted, *inter alia*, to provide children, pupils and adults with disabilities, regardless of their financial status, with the possibility to access all levels of education. It also highlights the need to reduce the rate of early school leavers, especially among vulnerable categories of the population and those living in underdeveloped areas, persons with disabilities and other persons with specific learning difficulties.

The adopted amendments envisage the establishment of an Education Agency that will monitor the fulfilment of the general principles and goals and the achievement of the strategic education development and overall improvement objectives. The enactment on the establishment of the Agency is to be adopted within two years from the day the amendments come into effect and the Agency shall become operational on 1 January 2016, to put in place the legal and financial prerequisites for its work. This Agency was not established by the end of 2016.

Article 27 of the Act on the types of educational establishments has also been amended and now both the so-called special schools for children with disabilities and the mainstream schools that have pupils with disabilities are entitled to extend additional educational support to such pupils. This provision will improve the efficiency of inclusive education and allow for the provision of expert assistance to teachers and other professionals working with children and adults with disabilities.

The Education System Act now includes a provision allowing for deferred enrolment of first graders. Experience has demonstrated the need to postpone the enrolment of children due to start first grade in exceptional circumstances, above all when such delays are in the interest of the children. This in no way undermines the inclusiveness of the education system, but, rather, tailors it to the children's specific needs to a greater extent.

Article 100 of the Act has been aligned with the Council Directive 77/486/EC of 25 July 1997 on the education of the children of migrant workers and the obligation of the host state to provide them with assistance in learning the official language spoken in that country to ensure their access to the education system as soon as possible. The prior term "children and pupils of European countries" had excluded migrants, children of non-European foreign nationals. Under the amended

686 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – CC Decision.

paragraph 2 of this Article, schools are under the obligation to organise language and/or preparatory and catch-up tuition, pursuant to instructions issued by the Education Minister, for refugees and displaced persons and children and pupils returned under readmission agreements, who do not know the language of instruction or need to master specific parts of the curricula in order to continue their education.

Paragraph 2 of Article 144 of the Act was deleted to align this law with the Labour Act⁶⁸⁷ and teaching staff shall now retire under the same conditions as others. The explanatory note to the Act Amending the Education System Act called for the urgent adoption of this law to pre-empt the negative consequences of the deleted paragraph, under which teaching staff had to retire after forty years of service whether or not they fulfilled the pensionable age requirement.

Media reported in 2014 that some local self-governments set much higher kindergarten rates than the ones laid down in the law. Under the new Kindergarten Rates Rulebook, which came into force on 1 January 2015, the parents are charged up to 20% of the full price of kindergarten (maximum 6,000 of 27,700 RSD). All local self-governments were under the obligation to bring their kindergarten rates into conformity with this by-law and abide by the Education System Act and limit the parents' fees to maximum 20% of the full price of kindergarten. The Protector of Citizens said in his 2015 Report that local self-government units had not eliminated all the deficiencies and taken measures to compensate or reduce the damages incurred to parents by the unlawfully imposed kindergarten fees. He said that the relevant Belgrade and Kragujevac city authorities had also failed to act on his recommendations to review the possibilities and propose measures to reverse the effects of calculating the parents' kindergarten participation fees in contravention of the law.⁶⁸⁸

Education system savings have affected not only the teachers, but the education of the children as well. The classes are still oversized, despite vows that this problem would be dealt with; investments in schools and equipment are insufficient; some schools even lack proper toilets. Rigorous restrictions on recruiting professional associates (NB psychologists, pedagogues and other expert staff) have been imposed; their numbers are determined by the application of a mathematical formula based on the number of classes in schools, rather than on the number of pupils. The new rulebooks governing this matter have not facilitated education, especially inclusive education or protection from violence. The schools are allocated insufficient funding. Furthermore, the accounts of some schools have been blocked, because the local self-governments have not paid them funds. Although the Ministry of Education, Science and Technological Development drafted amendments to the Education System Act governing more thoroughly the obligations of the Minis-

687 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

688 The 2015 Annual Report is available at: <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>.

try and the local self-government units, the problem of the blocked schools persists, chronically threatening the quality education of a large number of pupils.⁶⁸⁹

In his 2015 Report, the Protector of Citizens highlighted the following deficiencies of the education system in Serbia: the system of additional support to children with mental and physical disabilities was underdeveloped and the existing support services were not provided to a sufficient extent. Furthermore, the rulebooks on criteria and standards for funding educational institutions, which were adopted in 2015, linked the number of professional associates solely to the number of classes, in disregard of the pupils' needs and the existing problems in implementing inclusive education and the protection of children from violence, abuse and neglect.⁶⁹⁰

The Protector of Citizens also stressed that the Ministry of Education, Science and Technological Development had failed to enact by-laws on education of children undergoing extended home or hospital medical treatment, home schooling and distance learning, thus preventing the development of new forms of educational support to pupils with health problems and mental or physical disabilities. A functional and efficient system for protecting children against violence has not been established although a decade has passed since the adoption of the General and Special Protocols on the Protection of Children from Abuse and Neglect. He also noted that the schools' responses to violence were often not in line with the rules and standards applicable to cases of suspected/identified violence and that the school inspectorates insufficiently monitored the schools' compliance with those rules and standards.⁶⁹¹

16.3. Higher Education

The Constitution of Serbia explicitly guarantees the autonomy of the universities, colleges and scientific institutions (Art. 72). Under paragraph 2 of that Article, they shall decide freely on their organisation and work in accordance with the law. Article 73 of the Constitution also guarantees the freedom of scientific and artistic creation.

This area is regulated by the Higher Education Act.⁶⁹² In its introductory provisions, the Act says that higher education is of special relevance to the Republic of Serbia and part of international, notably European education, science and arts (Art. 2). Higher education is based, *inter alia*, on the principles of academic freedoms, autonomy, respect for human rights and civil liberties, including prohibition of all forms of discrimination, participation of students in management and decision making, especially on issues of relevance to quality of instruction (Art. 4).

689 *Ibid.*

690 *Ibid.*

691 *Ibid.*

692 *Sl. glasnik RS*, 76/05, 100/07 – authentic interpretation, 97/08, 44/10, 93/12, 89/13, 99/14, 68/15 – authentic interpretation, 68/15 and 87/16.

New amendments to the Higher Education Act were adopted in September 2016.⁶⁹³ The National Higher Education Council reviewed the need to amend the Act at its sessions on 22 June and 14 September 2016, and issued an opinion that the legislator upheld in its entirety. The Council took the view that the problems in enforcing the Act could not be addressed without the adoption of a new law or amendments to the valid one, that the amendments needed to be adopted urgently because they had to be enforced during the enrolment of students in the 2016/2017 academic year, to preclude the adverse effects that would occur if they were not adopted on time. The amendments lay down deadlines by which students enrolled in college before this Act came into effect are entitled to complete their studies under the curriculum and rules and conditions valid at the time they enrolled: the end of the 2017/2018 academic year for junior college and college undergraduates and the end of the 2018/2019 academic year for med school students.

The 2016 amendments to the Higher Education Act did not put in place an honour code, although the European Parliament, in its resolution on Serbia of March 2015, expressed concern over the failure of Serbia's state institutions and academic community to address the problem of plagiarised theses.

17. Health Care

17.1. General

The right to physical and mental health is enshrined in Article 12 of the ICE-SCR.⁶⁹⁴

The Serbian Constitution guarantees the right to healthcare and entitles children, pregnant women, mothers on maternity leave, single parents of children under seven and the elderly to free medical care even if they are not beneficiaries of mandatory health insurance. The Constitution obliges the state to assist the development of health and physical culture. It also obliges the state to establish a health insurance fund.

Mandatory and voluntary health insurance is regulated by the Health Insurance Act.⁶⁹⁵ The Republican Health Insurance Fund (hereinafter: RHIF) is charged with managing and ensuring mandatory health insurance, while voluntary health insurance may be provided by private insurance and special health insurance investment funds, the organisation and activities of which are to be regulated by a separate law.

693 *Sl. glasnik RS*, 87/16.

694 More on the standard in General Comment No. 14, UN doc. E/C 12/2000/4.

695 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14, 126/14 – CC Decision, 106/15 and 10/16 – other law.

Under the Health Care Act,⁶⁹⁶ healthcare shall comprise curative, preventive, and rehabilitative care funded from the health insurance funds, the state budget and by beneficiaries in cases specified by the law (co-payments). Healthcare may be fully covered from insurance funds or co-paid by the insured persons. Article 45 of the Health Insurance Act enumerates all the cases in which the insured persons must cover part of the medical costs and sets the amounts in percentages. Specific categories are exempted from co-paying (war military and civilian invalids, other persons with disabilities, blood donors, et al).

Serbia's healthcare system formally follows the Bismarck mandatory health insurance model and its main goal is to achieve the highest possible level of preservation of health of the citizens and families by implementing measures for the preservation and promotion of health, the prevention and early diagnosis of illnesses and injuries, and timely and efficient treatment and rehabilitation.

Healthcare is extended in Serbia at the primary, secondary and tertiary levels through a developed network of health establishments operating at all three levels. Some primary healthcare institutions (health stations and doctor's offices) in rural parts of Serbia struck by depopulation and rural-urban migration have been closed, impeding access of the remaining mostly elderly population to healthcare services. Less than a quarter of Serbia's healthcare staff have university degrees; 7% of them have junior college degrees and 43.7% secondary education. Serbia's health institutions also employ 24.5% non-medical staff. Their share in total staff is higher than in other European countries.

In its Serbia 2016 Report the European Commission said that, in the area of public health, the e-Health Unit in the Ministry of Health was not operational, and the EU-funded centralised electronic health record system was not integrated. It noted that the sustainability of the sector was endangered by the poor financial situation of the RHIF, aggravated by the lowering of the health insurance contribution in 2014. The EC said that shortages of medical staff in primary healthcare remained problematic, and that greater organisational capacity was needed. It noted that the national plan for human resources in the health sector needed to be implemented and that new programmes for specialisation and professional development should be developed. The EC observed that no progress had been made towards the preparation of a new strategy on tobacco control.

As regards communicable diseases, the EC said that surveillance and response capacity remained limited and required modernisation. It noted that the new law to protect the population from communicable diseases, adopted in March 2016,⁶⁹⁷ ensured further alignment with the *acquis*. The EC said that a centralised health information and communication system remained to be developed and that more attention needed to be paid to effective, sustainable financing of disease-spe-

696 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.

697 *Sl. glasnik RS*, 15/16.

cific strategies, including the national HIV/AIDS strategy and awareness-raising, notably on the importance of child vaccination. It observed that additional work was needed on surveillance of antimicrobial resistance and inter-sectoral cooperation. The EC said that no progress had been made in aligning with the *acquis* on blood, tissues, cells and organs and that formal strengthening of the overall administrative and technical capacity of the Directorate for Biomedicine to perform oversight of the sector remained to be completed. It noted that, overall, EU-level quality, safety standards and inspection services for the sector needed to be developed and that a monitoring centre for drugs and drug addiction was established in March 2016.

According to an Economist Intelligence Unit case study, entitled “Modernising the Serbian health system: The need for a reliable decision-making compass,”⁶⁹⁸ Serbia encapsulates many of the health challenges facing less-developed Balkan countries. Its healthcare system is decentralised and fragmented in places, and levels of out-of-pocket (OOP) payments and corruption are high. In addition, the country lacks a transparent and comprehensive system of assessing the value of its healthcare investments and determining how to pay for them. All of these issues undermine access to healthcare and contribute to relatively poor health outcomes.

17.2. Access to Health Care

Life expectancy in Serbia is considerably higher than the EU average and somewhat lower than the average in the South East European region, as defined by the World Health Organisation (WHO).⁶⁹⁹

The above-mentioned case study attributes the mismatch between healthcare spending and health outcomes to several contributing factors; notably, corruption, old equipment and facilities, inefficiency in hospitals, poor quality of services and waiting lists contributing to poor health outcomes. It says that access to healthcare is the main problem and notes that health spending is failing to cover essential care, so that out-of-pocket (OOP) payments make a large contribution to overall spending in Serbia. Given the impact of corruption and other private co-payments, OOP spending accounts for almost 40% of total health expenditure in Serbia. Overall, private health expenditure in Serbia, expressed as a percentage of GDP, has risen in recent years and is the highest in the region. The authors of the case study go on to say that Serbia faces a number of challenges in modernising its health system, including budgetary constraints and problems accessing innovative healthcare solutions, principally owing to the absence of a sustainable, comprehensive and transparent way to evaluate and procure new health technology. Under the existing system, employee- and employer-financed social health insurance (SHI) covers most general medical services, with

698 See: <https://www.eiuperspectives.economist.com/sites/default/files/images/ModernisingSerbianhealthsystem.pdf>.

699 WHO Regional Office for Europe, Health for All Data Base – HFA-DB. See: <http://data.euro.who.int/hfad/>.

uninsured groups covered by state budget funds; there is also a voluntary health insurance (VHI) system in Serbia. Co-payments officially exist for certain medicines and are informally required to access many others, making many drugs unaffordable and out of reach for large segments of the population. The deficits are evident in some of the most vital but costly medicines. For example, out of more than 2,000 who are potentially eligible, only 200–300 new patients are getting the prescribed treatment for hepatitis C each year. The situation in oncology is even worse, due to the shortage of funds collected by the RHIF that has limited the resources available for high-cost medicines because not only is the RHIF decreasing the number of reimbursed indications, but even those patients are not getting it because the RHIF has only enough medicine to treat a small number of patients and has to agree on who they will be.⁷⁰⁰

Lack of access to healthcare can be attributed both to legislative deficiencies and the enforcement of the regulations. Diverse interpretations of the norms have been resulting in violations of the rights of the patients, who are prevented from accessing health services.

In his 2015 Annual Report⁷⁰¹, the Protector of Citizens said that the exercise of guaranteed rights to health insurance and healthcare was still impeded due to inefficient cooperation and exchange of information among the competent authorities. The Protector of Citizens received a number of complaints in 2015 from citizens who claimed that they and/or their family members could not validate their health cards because their employers had not paid the mandatory social insurance contributions. He said that the amended Act on the Protection of the Population from Communicable Diseases would improve the quality of healthcare and facilitate the prevention, suppression, elimination and eradication of communicable diseases, as well as increase the degree of protection of the population from communicable diseases jeopardising health, the prevention, early diagnosis and suppression of which are in the Republic of Serbia's general interest. The RHIF promptly acted on the recommendations of the Protector of Citizens on the exercise of the right to maternity leave payments, by making data regarding these rights available to the beneficiaries and the public on a timely basis. As the Protector of Citizens noted, the adoption of the Cell and Tissue Transplantation Act had prompted legitimate public expectations that the first public cell and tissue bank would be established. However, such a bank has not been formed although the law had been enacted six years earlier. Having analysed the reports by patient rights advisers, health councils of local self-governments and the Ministry of Health, the Protector of Citizens found that the patient rights protection system was not fully functional in practice because the competent local authorities and the Ministry of Health had not taken all measures within their competence in the manner and within the time limit set by the Patient Rights Act, which, as he noted, has resulted in omissions that may cause legal uncertainty and aggravate the patients' legal status, as well as lead to violations of their rights.

700 See: <https://www.eiuperspectives.economist.com/sites/default/files/images/ModernisingSerbianhealthsystem.pdf>.

701 See: <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>.

The elderly in rural areas face multiple vulnerability risks (age, poverty, exclusion), resulting in their difficult access to health services – health stations and doctor’s offices in remote areas have been closed due to depopulation and rural-urban migration and domiciliary care and assistance services cannot be formed due to the small number of residents. Integrated services are being developed at the local level; they include the assistance of caregivers for the elderly, palliative care and treatment of the terminally ill. Serbia’s hospital geriatric wards and institutions lack capacity to care for these people.

The results of a survey of the satisfaction of the patients of the Serbian state health institutions, conducted by Public Health Institute “Dr Milan Jovanović Batut” in 2015, were published in December 2016. The survey was conducted in 176 primary healthcare institutions and involved the processing of 52,046 questionnaires (57.1% were filled by patients seeing their general practitioners, 28.8% by those seeing their paediatricians, and 14.1% by those seeing their gynaecologists). Slightly over 3% of the patients said that they did not always get all the information, while 2.8% described the nurses at the reception desks as unpleasant; 2.2% disagreed with the statement that the cooperation between the doctors and nurses was good. One out of twenty respondents (4.7%) think the doctors do not devote enough time to them, 3.3% think the doctors are not listening to them carefully, and 3.4% are of the view that the doctors do not give them clear explanations about the drugs they are prescribing them. A third of the patients (36.2%) could not say whether the health institution had a website (all health institutions in Serbia do), one out of six (15.5%) were unaware of the existence of a complaints logbook/box. One-third (35.3%) thought they had to wait a long time in the waiting room before the doctor could see them and a half (51.1%) said they could call their doctor up on the phone for advice or consultations; 3.3% of the patients were dissatisfied with the working hours of the wards covered by the survey. One out of twenty patients thought they could not get an appointment with their designated doctors the same day in case of an emergency (4.1%). Only three-fifths (60.2%) of the surveyed patients fully or partly agreed with the statement that the health institutions (wards) had sufficient medical equipment. Overall, most of the patients co-pay the prescribed therapies (medications or shots) – 36.1%. If access to healthcare services is broken down by wards, the highest share of free services is delivered in the paediatric wards. Appointments with designated general practitioners account for the service most frequently accessed free of charge. Patients of general practitioners most often co-pay all the services. One out of ten beneficiaries (11.8%) put off a healthcare service at least once in the past 12 months because they could not afford the co-payment or the medications. This percentage has not changed since the survey was first conducted in 2009. The average satisfaction of primary healthcare patients in Serbia stood at 3.96 in 2015, a 0.06 increase over 2014.⁷⁰²

702 See the survey results, available in Serbian at: http://www.batut.org.rs/download/izvestaji/Analiza_zadovoljstva_korisnika_2015.pdf.

The satisfaction of hospital patients was surveyed in 85 secondary and tertiary health institutions in the Republic of Serbia. Rehabilitation ward patients were the most and OB/GYN patients the least satisfied with each individual aspect. One out of ten hospitalised patients said they were unaware of their right to give consent to the recommended intervention (8.5%) or their patient duties whilst in hospital (10.8%). A fifth of the respondents (21.6%) were unfamiliar with the possibility of filing an objection or a complaint; 1.8% of the treated patients during the survey week were generally dissatisfied with the healthcare they received and the conditions in the hospital.⁷⁰³

The Serbian Government in 2014 adopted a decision establishing a Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia, with a view to enabling Serbia's citizens to avail themselves of medical treatment abroad in the event such treatment is unavailable in Serbia. This Fund started working in 2015 and over 40 people were referred abroad for treatment or diagnostics. The by-laws thoroughly governing the requirements, methods and procedures for approving funding from the Fund were adopted and several dozen children were referred abroad for treatment or diagnostics.⁷⁰⁴

Lack of staff in the medical institutions has also undermined access to healthcare.⁷⁰⁵ The ban on hiring new staff continued undermining the efficient rendering of health services in 2016. Health institutions have been unable to hire new doctors to replace those going into retirement although their personnel plans envisaged such positions. On the other hand, the healthcare system has a surplus of administrative and technical staff. Hence the fears that the coverage of Serbia's entire population by medical staff will be jeopardised.

Health professionals in 2016 continued disputing the lawfulness of the decisions on specialisation applications and the annexes to employment contracts upon reassignment and the set wages. The conclusion of a separate collective agreement for staff in health institutions established by the Republic of Serbia, autonomous provinces and local self-governments led to an increase in the number of complaints in which health professionals alerted to the diverse methods used to calculate the years of service wage compensations of members of staff working in the same health institutions.

Serbia's health system rose from the last place it held on the Euro Health Consumer Index in 2015. Headway was registered in three areas: patient rights, access to healthcare and treatment outcomes. Serbia's greatest progress on the indicators was achieved due to the reduction of the infant mortality rate.⁷⁰⁶

703 *Ibid.*

704 See: <http://www.ombudsman.org.rs/attachments/article/132/Annual%20Report%202015.pdf>.

705 See: *Report 2015*, II.16.2.

706 See: http://www.healthpowerhouse.com/files/EHCI_2015/EHCI_2015_report.pdf.

III. MINORITY RIGHTS

1. National Minorities and Minority Rights

1.1. Status and Rights of National Minorities under Serbian Law

Serbia's legal framework guarantees a satisfactory level of national minority rights. It has ratified the leading international documents protecting the rights of national minorities, including the International Covenant on Civil and Political Rights, the Council of Europe Framework Convention for the Protection of National Minorities (hereinafter: CoE Framework Convention) and the European Charter for Regional and Minority Rights.

Under Article 75 of the Constitution of the Republic of Serbia, persons belonging to national minorities shall be guaranteed special individual and collective rights in addition to the rights guaranteed to all citizens by the Constitution, which they may exercise individually and together with others. The Constitution further lays down that persons belonging to national minorities shall take part in decisions or decide on specific issues related to their culture, education, information and official use of scripts and languages themselves or via their representatives. Persons belonging to national minorities may elect their national councils in accordance with the law in order to exercise the right to self-governance in these four areas. In addition to the general anti-discrimination provision (in Art. 21), the Constitution underlines that any discrimination on grounds of affiliation to a national minority shall be prohibited (Art. 76), that persons belonging to national minorities are entitled to participate in the administration of public affairs and hold public offices on an equal footing with other citizens, and that the ethnic breakdown of the population and adequate representation of persons belonging to national minorities shall be taken into consideration when employing staff of state, provincial and local self-government authorities and public services (Art. 77). Articles 78 and 79 of the Constitution prohibit the forced assimilation of persons belonging to national minorities and guarantee their rights to preserve their specificities and associate and cooperate with their ethnic kin outside Serbia.¹

Under Article 77(2) of the Constitution, the ethnic breakdown of the population and adequate representation of persons belonging to national minorities shall be

¹ More on potential improvements of minority rights under the Constitution in I.3.1.

taken into consideration in employment of staff of state, provincial and local self-government authorities and public services. Laws² including norms on the adequate representation of persons belonging to national minorities in the public authorities also use this formulation but fail to lay down detailed criteria or the penalties for violating this constitutional provision. Given that this provision does not specify that the formulation will be further defined by law and that the Acts do not elaborate it in greater detail, the question arises in which procedure is the ethnic breakdown of the population “taken into consideration” and what happens if it is “not taken into consideration”. The absence of a clear definition of this concept and adequate penalties has rendered this constitutional norm inapplicable and had adverse consequences in practice. The problem regarding the under-representation of persons belonging to national minorities among staff of public authorities was noted both in the Third Opinion on Serbia of the Advisory Committee on the Framework Convention.³

In addition to the Constitution, the status and rights of national minorities are mainly governed by the following three laws: the Act on the Protection of Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act),⁴ the National Councils of National Minorities Act (hereinafter: NCNMA)⁵ and the Official Use of Scripts and Languages Act.⁶

The Minority Protection Act provides a definition of national minorities. The Minority Protection Act also lays down the main principles regarding the rights and obligations of national minorities, notably: the prohibition of discrimination, the implementation of affirmative measures to ensure full and effective equality of the national minorities and the majority population, the freedom to declare and express one’s ethnicity; the right to cooperate with their ethnic kin in Serbia and abroad; the obligation to respect the constitutional order and the protection of acquired rights.⁷

The rights of national minorities are also covered by the bilateral agreements the Republic of Serbia (which was part of the then Serbia and Montenegro State Union) signed with the Former Yugoslav Republic of Macedonia,⁸ Croatia,⁹ Roma-

2 The Act on the Protection of Rights and Freedoms of National Minorities, the Civil Servants Act, etc.

3 Available at: <http://www.coe.int/en/web/minorities/country-specific-monitoring#Serbia>.

4 *Sl. glasnik SRJ* 11/02, *Sl. list SCG*, 1/03 – Constitutional Charter and *Sl. glasnik RS*, 72/09 – other law and 97/13 – CC Decision.

5 *Sl. glasnik RS*, 72/09, 20/14 – CC Decision and 55/14.

6 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.

7 This Act had been conceived as a law that would govern the status and rights of national minorities at a very high level of generality, mainly because it was adopted as a law of the Federal Republic of Yugoslavia. Elaboration of the provisions of this Act had been left to the federal units (Serbia and Montenegro). After Montenegro declared independence, the Republic of Serbia integrated the Act in its legal system and it is still the main law governing the status of national minorities.

8 *Sl. list SCG (International Treaties)*, 6/05.

9 *Sl. list SCG (International Treaties)*, 3/05.

nia¹⁰ and Hungary.¹¹ These documents, declarative in character, reaffirm the constitutional and legal obligations the Republic of Serbia has towards national minorities. The agreement with Hungary, in particular, lays down that the States Parties shall invest maximum efforts in returning to the national minorities and their religious communities and organisations confiscated or otherwise seized property. The parties to the bilateral agreements also envisage the establishment of inter-governmental mixed commissions charged with monitoring the enforcement of these treaties.

Other laws, including the Culture Act, the Education System Act, etc., include provisions governing the individual rights of national minorities as well. The *Expert Report on the situation of minority rights in the Republic of Serbia*¹² noted that, while the legal framework applicable to national minorities in Serbia remained above the European average, the complexity of this framework and its lack of full clarity had been further increased by the Serbian Constitutional Court decision in which it had struck down 10 essential articles of the NCNMA.¹³ The inconsistency of legal norms governing the rights and status of national minorities, the vagueness of individual provisions, the non-regulation of specific issues and the arbitrary enforcement of the legal provisions, mostly by local self-government authorities, have all created a state of complete legal uncertainty.¹⁴

1.2. Preliminary Draft Act Amending the Minority Protection Act

The Preliminary Draft Act Amending the Minority Protection Act was presented at a meeting called by the MSALSG on 22 December 2016.¹⁵ The Ministry invited stakeholders to forward their comments by 28 December. The CSOs had not been involved in the drafting of these amendments. In view of the fact that the Minority Protection Act is the main law governing the status and rights of national minorities, the BCHR is of the view that all stakeholders involved in the protection of minority rights should have been involved in the legislation process and that they should have been provided with reasonable time to seriously analyse and comment the Preliminary Draft.

The Minority Protection Act, which was adopted by the FRY Assembly back in 2002, indisputably has to be brought in conformity with the changes that have been made in Serbia's legal system since. The Preliminary Draft aligns the text of

10 *Sl. list SCG (International Treaties)*, 14/04.

11 *Ibid.*

12 Anastasia Crickley and Rainer Hofmann, *Expert Report on the situation of minority rights in the Republic of Serbia*, 24 September 2015. Available at: http://www.ljudskaprava.gov.rs/images/pdf/nacionalne_manjine/expert_mission_report_on_minorities.pdf.

13 More on the Constitutional Court Decision (IUz 882/2010) in the *2014 Report*, IV.3.6.

14 More in the *2014 Report*. IV.3.6.2.

15 The Preliminary Draft is available in Serbian at <http://www.mduls.gov.rs/latinica/aktivnosti-obavestenja.php>.

the Minority Protection Act with the Serbian Constitution and systemic laws governing fields of relevance to the realisation of national minority rights, both in terms of content and nomotechnically.

Under Article 1 of the Preliminary Draft, additional national minority rights may be established under provincial regulations, in addition to those enshrined in the Constitution, ratified international treaties and the law. Articles 3 and 4 govern in greater detail the prohibition of discrimination and affirmative action measures, especially in the field of public sector employment, with a view to achieving the full and effective equality of national minorities.

Persons belonging to national minorities are entitled to request the registration of the data on their ethnicity in the official records and personal data filing systems. This area is to be governed by a separate law, which will lay down the purposes and procedure for using the data on registered ethnicity (Art. 5).

Under Article 9 of the Preliminary Draft, local self-governments (LSGs) must include in their Statutes provisions on the official use of minority scripts and languages when the legal requirements are fulfilled. Under this Article, names of authorities vested with public powers, LSGs, settlements, squares and streets and other toponyms will be written also in the minority languages in the LSG settlements in which the said minorities account for over 15% of the population. The LSGs shall list these settlements in their Statutes, whilst taking into account the traditional population of persons belonging to those national minorities and with the prior consent of their NMCs. The ministry charged with LSG affairs shall endorse these provisions within 60 days. This Article also lays down that Assembly deputies belonging to national minorities accounting for over 2% of Serbia's total population are entitled to address the National Assembly in their own languages and that the National Assembly will put in place conditions for the realisation of this right.

Under the Preliminary Draft, institutions, societies and associations of persons belonging to national minorities can now also be funded by LSGs, not only national and provincial authorities. This provision is in line with the systemic laws. Ethnically-mixed LSGs are to include in their operational programmes content, measures, activities and events preserving and promoting the cultural identity and traditions of the national minorities (Art. 11).

NMCs shall participate in the development of curricula for subjects expressing the specificities of national minorities in the minority languages and speech, for bilingual tuition and for learning of minority languages with elements of national culture. Curricular and extracurricular primary and secondary education programmes covering the history, culture and status of national minorities in Serbia shall also be implemented (Art. 12).

The Preliminary Draft introduces penal provisions aimed at securing compliance with and the effective enforcement of the individual provisions of the law (Art. 21). There are no penal provisions in the valid Minority Protection Act.

The Preliminary Draft, however, suffers from specific deficiencies. For instance, it does not concretise the valid definition of national minorities in Article 2

of the Minority Protection Act.¹⁶ Namely, concepts such as “sufficiently representative” and “a firm bond with the territory” are devoid of the precision every legal norm should be characterised by, in order to preclude diverse interpretations and arbitrariness in application.

The Preliminary Draft includes several declaratory provisions, the practical scope of which is questionable and immeasurable and which are stylistically befitting more of documents, such as strategies and action plans. Article 4(5), for instance, sets out that the Republic of Serbia shall take the adequate measures to improve the economic status of undeveloped areas traditionally populated by persons belonging to national minorities. This provision will remain a dead letter without further elaboration or an additional instructive norm.

The Preliminary Draft does not elaborate paragraph 2 of Article 75 of the Constitution, under which persons belonging to national minorities shall take part in decisions or decide on specific issues related to their culture, education, information and official use of scripts and languages themselves or via their representatives. Namely, it does not deal at all with the direct participation of national minorities in decision-making. The Preliminary Draft also fails to specify how persons belonging to national minorities shall directly take part in decisions or decide on specific issues related to their culture.

As far as the Council for National Minorities is concerned, BCHR is of the view that its membership should be expanded to include representatives of CSOs and experts dealing with minority rights.

The provision penalising non-compliance with the Articles on the use of minority scripts and languages and display of symbols and emblems, does not mention penalties for LSGs defaulting on their obligation to include in their Statutes provisions on the official use of minority scripts and languages although all the legal requirements have been met. To recall, the LSGs that have defaulted on this obligation laid down in the Official Use of Scripts and Languages Act, which establishes this right of national minorities, have not suffered any consequences to date.

1.3. National Councils of National Minorities Act

The MSALSG formed a working group tasked with drafting a new law on national minority councils in late 2015. The group, however, did not meet even once in 2016, wherefore it is quite unlikely that either a new law on NMCs will be adopted or the valid one amended in the first quarter of 2017, as envisaged by the Action Plan.

16 In terms of this Act, a national minority shall denote all groups of nationals sufficiently representative but constituting a minority in the territory of the FRY, belonging to population groups with a long-standing and firm bond with the territory and possessing distinctive features, such as language, culture, national or ethnic affiliation, origin or religion, distinguishing them from the majority of the population, and the members of which are characterised by their concern for the preservation of their common identity, including culture, tradition, language or religion.

The status of NMCs should be defined more thoroughly, notably, their legal character needs to be specified. NMCs are at present defined as legal persons, but the valid regulations do not specify what kind of legal person they are or the character of their property.¹⁷ The NCNMA does not regulate in greater detail the deletion of NMCs from the register. It also needs to govern in greater detail the termination of the NMCs' term in office, their dissolution, provisional management, et al.¹⁸

Although the NCNMA lays down numerous NMC powers in the fields of culture, education, public information and official use of scripts and languages, the enforcement of this law over the past seven years has shown that its provisions do not satisfy the needs of all etnic communities in Serbia, as well as lack of will to fully apply it. The Act does not recognise the diversity of ethnic communities characterising Serbia as it provides for only one model of representation of national minorities (the NMCs), regardless of the size and other specificities of the individual minority communities.

In its 2014 decision, the Constitutional Court declared unconstitutional, in whole or in part, 10 Articles of the NCNMA on NMCs' powers. It, of course, goes without saying that the legislator is to be guided by the Constitutional Court's views. The legislator should, however, also bear in mind the fact that the Constitutional Court failed to deal with numerous problems that arose in the enforcement of this law, due to the vagueness of the legal norms or their non-conformity with other laws.¹⁹

Furthermore, the legislator has to find a way to reduce the influence of political parties on the work of NMCs. Thought should also be given to introducing rules on the system of distribution of powers in the management of NMCs or on extending the NMC membership incompatibility rules to senior political offices.

The legislator should also formalise the work of the Coordination Body to make maximum use of its capacities. The authorities have recognised this informal body as a competent partner for reviewing issues regarding the status of national minorities. The Coordination Body, however, does not have a clearly established structure or internal enactments governing its work at the moment. In the event Coordination Body becomes a legal category under the upcoming amendments to the NCNMA, its internal enactment should, notably, deal with its composition, remit and precisely define its status vis-à-vis state authorities and other organisations,

17 The Vojvodina Ombudsman came across this problem during her review of a complaint by the Aradac Culture Centre, which was unable to spend the funds approved for refurbishing its premises because the building was registered as private property in the land books. More in the Ombudsman's *2015 Annual Report*, p. 36, available in Serbian at: <http://www.ombudsmanapv.org/riv/index.php/dokumenti/godisnji-izvestaj/1768-godisnji-izvestaj-2015.html>.

18 More in *Cultural Autonomy of National Minorities – Analysis of the Legislation on National Minority Councils*, MSALSG, December 2015, pp. 5 and 6. Available in Serbian at: <http://www.mduls.gov.rs/doc/ANALIZA%20za%20stampanje.pdf>.

19 More in *2014 Report*, II.2.2.3.

internal organisation, decision-making procedure, transparency, reporting requirements and sources of funding.

The NCNMA does not regulate in detail the NMCs' transparency. Article 8 of that law lays down that their work shall be transparent, but it does not define transparent or the NMCs' obligations to the persons belonging to the national minorities they represent and the public in general. The inclusion of a definition of 'transparent' for the purpose of this law in this Article would constitute a basis for governing the NMCs' transparency, which could then be elaborated in greater detail in the NMCs' Statutes.

1.4. Minority Rights in 2016

In March 2016, the Government of the Republic of Serbia adopted the Action Plan for the Realisation of National Minority Rights (hereinafter: Action Plan).²⁰ The Action Plan envisages numerous activities, divided into 11 chapters: personal status, prohibition of discrimination, culture and media, freedom of religion, use of scripts and languages; education, democratic participation, adequate representation of persons belonging to national minorities in the public sector and public companies, national minority councils, economic status of persons belonging to national minorities and international cooperation.

The most relevant activities set out in the Action Plan are those on changes of the legal framework governing the rights of national minorities, notably the Minority Protection Act and the NCNMA.

The Council for National Minorities has been entrusted with monitoring the implementation of the Action Plan Activities. It will be assisted by the Serbian Government Human and Minority Rights Office, which will extend it expert and administrative and technical support in the process and prepare quarterly implementation reports.

Pursuant to the Action Plan, the Serbian Government in 2016 adopted a Decree on the National Minorities Budget Fund Disbursement Procedure.²¹ The Decree governs the criteria, requirements and procedure for disbursing funding in the National Minorities Budget Fund for projects and programmes in the fields of culture, education, public information and official use of scripts and languages of national minorities. The funds in the Budget Fund shall be disbursed via public calls for proposals published by the Ministry of State Administration and Local Self-Governments (MS-PALSG). Institutions, associations, foundations, companies and other organisations founded by national minority councils (NMCs) and CSOs registered in the relevant

20 The Action Plan is available in Serbian at: <http://www.mduls.gov.rs/doc/Akcioni%20plan%20za%20ostvarivanje%20prava%20nacionalnih%20manjina%20-%20usvojen%203.mart%202016.pdf>.

21 *Sl. glasnik RS*, 22/16.

registers and pursuing the protection and advancement of the rights and status of persons belonging to national minorities are eligible to apply. The funds will be allocated in accordance with a programme proposed by the Council for National Minorities and adopted by the Minister. The programme proposed by the Council for National Minorities shall specify the priority areas in which projects and programmes are to be implemented. The state has earmarked 1,800,000 RSD for the Budget Fund, which are in the MSALSG budget group. The funding was not disbursed because the programme of priority areas to be funded from the Fund had not been endorsed.

The proposal of the priority areas to be funded in 2017 was one of the items on the agenda of the Council for National Minorities session scheduled for 16 December 2016. The session was, however, adjourned due to disagreements about the agenda, notably, the request by most NMCs to strike the following items off the agenda: the Action Plan Implementation Report, the draft amendments to the Minority Protection Act, and the proposal priority areas to be funded from the National Minorities Budget Fund in 2017.²² The Coordination Body of NMCs explained that it requested that the Council not discuss these items because the Action Plan did not reflect the real needs of national minorities and the NMCs did not have the role of partner in the implementation of its activities, that the NMCs could not state their views on the draft amendments while the public debate on them was ongoing and that neither the Coordination Body nor the NMCs were forwarded the session material on the proposed priority areas for funding.²³

The media reported on the establishment of the National Council of the Russian National Minority in late December 2016.²⁴ The news agency *Tanjug* said that “the National Minority Council was formed at an event in the Russian Centre...in the presence of 35 delegates – representatives of 300 citizens of Russian ethnicity, who had previously supported the establishment of this body with their signatures.” According to the *Tanjug* report, the Russian 15-member NMC is chaired by Professor Irina Miljković Chairwoman and it adopted its Council Statute “thus completing the legal procedure and legal requirement to apply for registration”. *Tanjug* also reported that the Council would soon submit its application for registration to the MSALSG and initiate the procedure for the forming of a separate election roll of the Russian national minority in Serbia. The “first session” was attended also by a Ministry of Labour State Secretary and a National Assembly deputy.²⁵

22 “Council for National Minorities Session Adjourned due to Disagreements over Agenda,” *Blic*, 16 December 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/odlozen-savet-za-nacionalne-manjine-srbije-zbog-neslaganja-okolo-dnevnog-reda/mc5bzwb>.

23 The Coordination Body’s request to put off the discussion on specific items on the agenda and its explanation are available in Serbian on the Bosniak NMC’s website: <http://www.bnv.org.rs/manjine-u-srbiji-jedinstvene-u-zastiti-svojih-prava/>

24 “National Council of the Russian National Minority Formed,” *Tanjug*, 24 December 2016, available in Serbian at: <http://www.tanjug.rs/full-view.aspx?izb=293683>.

25 “National Council of Russian National Minority in Serbia Formed,” *Informer*, 24 December 2016, available in Serbian at: <http://www.informer.rs/vesti/politika/109876/RUSKI-DOM-Os-novan-Nacionalni-savet-ruske-nacionalne-manjine-Srbiji>.

Assuming that the media accurately reported the news, the establishment of the Russian NMC was not in compliance with the NCNMA provisions on the election of NMC members. Under the Act, an NMC may be formed if at least 5% of the persons belonging to that minority under the latest Census, provided their number exceeds 300, support the request for the establishment of the NMC; such a request is submitted to the MSALSG. Statements supporting the request for the forming of a separate election roll are submitted to the MSALSG on the prescribed form and have to be certified by the authority charged with signature certification. In the event the requirements for forming a separate election roll are fulfilled, the Ministry informs persons belonging to the said national minority via the media that the forming of a separate election roll has commenced. The latter are entered in the election roll exclusively at their own request. The election of the members of all NMCs, including the new ones, are held on the same day. The MSALSG did not rule on the Russian NMC's request to form a separate election roll by the end of the reporting period.

Given that the last NMC elections were held in 2014, elections of the members of the Russian NMC cannot be held before 2018, assuming that the Ministry upholds the request for the forming of a separate election roll of the Russian national minority in the meantime. Under the Act, the constituent sessions at which the terms in office of the NMCs' members are confirmed are called by the Minister within 20 days from the day the final election results are published. The NMCs elect their chairpersons from among NMC members. An NMC's Statute is adopted by the initially elected NMC within 10 days from the day it is constituted. The question therefore arises how the Russian NMC was "formed", how its Chairwoman was elected and how it adopted its Statute when the requirements laid down in the NCNMA have not been fulfilled. The second question that arises is why the representatives of the Serbian executive and legislative authorities lent their support to such an unlawful act by attending it.

1.5. National Minority Parties at 2016 Elections

The Act on Political Parties defines national minority parties as parties, the activities of which are particularly aimed at "representing and advocating the interests of individual national minorities and protecting and improving the rights of persons belonging to those national minorities in accordance with the Constitution, the law and international standards, and governed by their founding enactments, programmes and statutes" (Art. 3). National minority parties may be established by 1,000 adult nationals of Serbia with legal capacity (Art. 9), whereas the establishment of non-minority parties requires the endorsement of ten times as many Serbian nationals.

The election threshold does not apply to national minority parties, i.e. they are provided with seats in the National Assembly even if they win fewer than 5% of all the cast votes. Eight of the 20 tickets that ran in the early parliamentary elec-

tions in April 2016 were filed by national minority parties. Exercising its powers vested by law, the Republican Election Commission (REC) granted the status of a national minority party to the Party of Democratic Action – Ardita Sinani and the Green Party, but it rejected the applications of the Russian Party – Slobodan Nikolić, the Serbian – Russian Movement and the Republican Party – Republikanus Part – Nikola Sandulović.²⁶ These parties exercised their right to appeal to the Administrative Court, which overturned the REC’s rulings and ruled that these parties had the status of national minority parties.²⁷

The frequency with which this issue is raised just before the elections demonstrates the need for either defining the status of national minority parties in the election cycles more clearly or changing the way they are registered. Under Article 81 of the AEAD, the Republican Election Commission shall decide which parties have the status of minority parties when it declares the election tickets. The Administrative Court’s case law, however, indicates that this Court recognises as a national minority party every party registered as such in the Register of Political Parties kept by the Ministry of State Administration and Local Self-Governments. The relevant legal provisions need to be re-examined to lessen the scope for the identified abuses of the affirmative measure facilitating the registration of national minority parties, which have undermined the election process and procedure and reduced the chances of persons belonging to minority communities having representatives they perceive as legitimate.²⁸

Only five parties representing the minorities won seats in the 2016 parliamentary elections: The Alliance of Vojvodina Hungarians (SVM), which has almost always won more seats than any other minority party, is represented by four deputies in the National Assembly. The Bosniak national minority is represented by two parties: the Bosniak Democratic Community headed by Muamer Zukorlić and the Sandžak Party of Democratic Action (SDA), led by Sulejman Ugljanin. Each of them won two seats in parliament. In addition to these two parties, registered as national minority parties, part of the Bosniak electorate is represented also by the Social Democratic Party of Serbia (SDPS) headed by Rasim Ljajić, which is not registered as a minority party and which ran in the coalition formed

26 The REC said it had rejected the applications because practice has shown that national minority parties could avail themselves of their more privileged status at elections and that this was the way to put an end to the “abuse” of this status. It also said that only parties with a track record in the protection and improvement of national minority rights could be recognised as minority parties at elections in the state.

27 CRTA Election Observation Mission, Early Parliamentary Elections 2016, Final Report, p. 24, available at: <http://cрта.rs/wp-content/uploads/2016/12/Citizens-on-Watch-2016-Final-Report.pdf>.

28 See the detailed report on the participation of national minorities in elections in the *Political Participation of National Minorities, 2016 Elections*, Forum for Ethnic Relations, Belgrade, 2016. Available in Serbian at: <http://www.fer.org.rs/media/download/105-Forum%20broj%202-2016%20Izbori%202016.pdf>.

by the winner of the elections, the Serbian Progressive Party (SNS).²⁹ The ethnic Albanian Party for Democratic Action (PDD) won one seat, as did the Green Party, which made it into parliament because it was granted the status of a minority party.³⁰

2. Status of Roma

2.1. General

According to the last Census, conducted by the Statistical Office of the Republic of Serbia in 2011, 147,604 (2%) of Serbia's nationals declared themselves as Roma.³¹ Roma are one of the most vulnerable categories of the population in Serbia.

The first strategic document on the improvement of the status of Roma in Serbia to be drafted was the 2002 Draft Strategy for the Integration and Empowerment of Roma. The National Action Plans in the four Decade of Roma Inclusion priority areas were the first documents the Serbian Government adopted, on 27 January 2005. Serbia joined the Decade of Roma Inclusion on 2 February 2005. During Serbia's chairmanship of the Roma Decade in 2009, the Serbian government adopted the national Strategy for the Improvement of the Status of Roma in the Republic of Serbia³² and Action Plans in 13 areas. The measures envisaged in the strategic documents aimed at eliminating the causes of poverty of and discrimination against Roma.³³

On 9 March 2016, the Serbian Government adopted the national 2016–2025 Strategy for the Social Inclusion of Roma Men and Women, which covers five priority areas: education, housing, employment, health and social protection. The Council for Improving the Status of Roma and the Implementation of the Decade

29 Rasim Ljajić is in fact the leader of two political parties: the Social Democratic Party of Serbia (SDPS), registered as a multi-ethnic party, and the Sandžak Democratic Party (SDP), registered as a party of the Bosniak national minority. SDPS ran in coalition with the SNS, while the SDP ran in the local elections Novi Pazar, Sjenica, Tutin, Prijepolje and Priboj, where Bosniaks account for large shares of the population.

30 More in *Political Participation of National Minorities, 2016 Elections*, Forum for Ethnic Relations, Belgrade, 2016, pp. 37–44.

31 See the Statistical Office of the Republic of Serbia publication <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

32 *Sl. glasnik RS*, 27/09. The English translation of the Strategy) is available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf>.

33 Platform for the Improvement of the Status of Roma in the Republic of Serbia, Roma National Minority Council, available in Serbian at: http://www.romskinacionalnisavet.org.rs/files/1_platforma_2003.doc.

of Roma Inclusion, the Human and Minority Rights Office the Social Inclusion and Poverty Reduction Unit and the relevant ministries are charged with the development and implementation of the Roma Social Inclusion Strategy.³⁴ The Action Plan for the implementation of the Strategy, which is yet to be adopted, is to define the activities, deadlines, financial sources and remit of the relevant institutions that will be involved in the implementation of the Strategy.³⁵

In its Serbia 2016 Report, the European Commission noted that, although the legislative and institutional framework for observance of international human rights law and, generally, the legal framework to uphold and protect minority and cultural rights were in place, their consistent implementation across the whole country was needed. It said that a comprehensive approach to the integration of national minorities was needed through full implementation of the action plan on national minorities across the country and that full implementation of the new strategy for Roma inclusion needed to be ensured and that the action plan needed to be adopted promptly. It said that some progress was made in Roma inclusion, but alerted that Roma, especially women, were the most discriminated against in the labour market and that only 18.5% of registered unemployed Roma were included in active labour market measures in 2015. It also noted that Roma were subjected to the greatest discrimination. It said that legislative changes have led to a significant drop in the number of Roma at risk of statelessness and that new guidelines on immediate registration at birth of children whose parents lacked personal documents had been adopted. The EC particularly highlighted the fact that most Roma, especially those living in informal settlements, did not have adequate access to fresh water and electricity, social protection, health, employment and adequate housing and that Serbia has not yet developed guidelines on evictions in line with international standards, or trained local and national institutions on procedures to be followed before, during and after evictions. It noted that school drop-out rates for Roma children remained high and that Roma women and children were frequently subjected to domestic violence, which often remained unreported.

The European Union said it planned to earmark an additional 14 million EUR for new projects to improve the status of Roma and that it has already allocated 15.4 million EUR for ongoing projects.³⁶ Two EU-funded projects have been successfully completed: Let's Build a Home Together, worth 3.6 million EUR and secured from IPA funding, which was implemented in cooperation with UNOPS Serbia and the Belgrade city authorities and within which social housing was secured for socially vulnerable Roma, and EU Support for Roma Employment project, worth 1.6

34 The Roma Inclusion Strategy is available at: <http://sociojalnoukljucivanje.gov.rs/en/roma-inclusion-strategy-adopted/>.

35 See the report in Serbian at: <http://rominfoimedia.rs/akcioni-plan-za-sprovođenje-usvojene-strategije-za-socijalno-ukljucivanje-roma-i-romkinja-u-republici-srbiji/>.

36 EU Support for Roma in Serbia, available at: <http://europa.rs/eu-support-for-roma-in-serbia/?lang=en>.

million EUR.³⁷ The EU has also supported the implementation of two more projects: EU Support to Inclusive Society, aimed at increasing the inclusion of vulnerable groups in Serbia, including Roma and We Are Here Together – European Support for Roma Inclusion. The latter project is implemented in cooperation with the OSCE Mission to Serbia and aims at supporting the Serbian institutions' endeavours to improve Roma's access to their fundamental rights, the formation of mobile support teams, empowerment of civil society organisations, prevention of early school leaving and improvement of housing and sustainable employment.

The Council of Europe Commissioner for Human Rights sent an open letter to the authorities of several European states, including Serbia, in which he expressed his concern over the grave forms of discrimination against Roma and violations of their human rights, both at the local and the national levels. He alerted to the forced evictions and provision of alternative housing without prior consultation with the families concerned and often at very short notice, while adequate alternative accommodation was not always provided, noting that this situation increased the vulnerability of Roma families, prevented their social inclusion and impeded any prospect of regular schooling for their children. In his letter to Serbian Deputy Prime Minister Zorana Mihajlović,³⁸ the Commissioner referred to his 2015 Report³⁹ in which he specified the main problems Roma faced, specifically, exercise of the right to adequate housing and access to quality education. In that Report, the Commissioner also qualified as particularly concerning that the status of internally displaced Roma, most of whom did not have adequate access to fundamental human rights. He also recalled CoE Committee of Ministers Resolution CM/ResCMN(2015)8⁴⁰ and expressed concern that the approximately fifty Roma families that were forcibly evicted in 2012 from the irregular settlement in Belvil, Belgrade, had not yet been provided with adequate housing solutions despite the reported availability of funds to this aim.

The Commissioner welcomed the legislative steps taken by Serbia in order to address this long-standing issue, in particular the preparation of the draft Housing Act, which includes provisions concerning forced evictions, but expressed concern that a new version of the law had reportedly been prepared without broad, public

37 BizeL: EU to Support Roma Inclusion Projects with Additional 14 Million EURO, available at: <http://europa.rs/bizeL-eu-to-support-roma-inclusion-projects-with-additional-eur14-million/?lang=en>.

38 Letter from the Council of Europe Commissioner, Nils Muižnieks, to Ms Zorana Mihajlović, Deputy Prime Minister of Serbia, concerning evictions of Roma, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2016\)14&Language=lanEnglish&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2016)14&Language=lanEnglish&direct=true).

39 The CoE Commissioner for Human Rights Report on his visit to Serbia on 16–20 March 2015 is available at: <http://www.coe.int/en/web/commissioner/country-report/serbia/>.

40 Resolution CM/ResCMN(2015)8 on the implementation of the Framework Convention for the Protection of National Minorities by Serbia, available at: [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/ResCMN\(2015\)8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/ResCMN(2015)8&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864&direct=true).

consultations. In her response of 3 February 2016, the Deputy Prime Minister said that the Draft Housing Act incorporated all the elements of housing rights laid down in international human rights conventions ratified and signed by the Republic of Serbia. She said the Draft Act regulated a number of essential issues in cases of necessary forced evictions: forced evictions from buildings and settlements constructed in contravention of construction law, adequate housing for relocation, the basic principles, documents and procedures related to eviction and relocation, including the involvement of the residents in eviction proceedings, as well as legal protection and free legal aid; and monitoring of the eviction and relocation procedures. She also said that, during its preparation of the law, the Ministry had been unable to find a suitable example of a consistent national framework that the Serbian law could be modelled after, except for the Philippine 1992 Urban Development and Housing Act. Housing Act is adopted on 22, December 2016.⁴¹

In its “Analysis of the Procedures for Determining the Date and Place of Birth and for the Exercise of the Rights to Citizenship and Registration of Permanent Residence”⁴² the NGO Praxis concluded that most of the problems in exercising the rights to birth, citizenship and residence registration persisted in 2016. It noted a substantial increase in the number of returnees, whose children were born abroad and were not registered in the Serbian birth registers, in 2016. Praxis commended the announced introduction of the electronic birth registration system, which could finally solve the systemic problem it had been alerting to for years.

2.2. Discrimination

The 2013–2018 Strategy for the Prevention of and Protection from Discrimination⁴³ reiterates that the Roma community in Serbia, especially its most vulnerable categories – women, children, IDPs, legally invisible people – are exposed to various forms of discrimination, above all verbal and physical assaults, destruction of their homes and segregation. In the section on national minorities, the Strategy devotes particular attention to the status of Roma (Section 4.2.2.3) and sets out special measures (Measures 4.2.4, paragraphs 10–13) and objectives (Section 4.2.5.4) regarding the Roma national minority.

The Office of the Commissioner for the Protection of Equality contributed to the prevention of and protection from discrimination. She intervened in response to a complaint against the daily *Kurir* and the article it published on its website, in which it specified the ethnicity of a woman suspected of communicating an infectious disease to minors. In her review of the complaint, the Commissioner found that the ethnicity of the suspect was not relevant to the offence and that its disclo-

41 *Sl. glasnik RS*, 104/16.

42 The Analysis is available at: http://www.praxis.org.rs/images/praxis_downloads/Report_UN-HCR_2016_-_28.11.pdf.

43 *Sl. glasnik RS*, 60/13.

sure did not shed greater light on the event. She concluded that the disclosure of the suspect's ethnicity amounted to expression of degrading and disquieting ideas and views violating the dignity of the person belonging to the Roma national minority, and was thus in breach of the Anti-Discrimination Act. She advised *Kurir* against publishing or picking up reports perpetuating prejudices against national minorities in the future.⁴⁴

The Commissioner also recommended measures the Zemun primary school Sutjeska was to take to ensure equality. She said that the school, the Ministry of Education, Science and Technological Development and the Belgrade City Administration should act in concert and take all the measures and activities within their remit to address the problem of segregation, i.e. the overrepresentation of Roma pupils in this Zemun school.⁴⁵ She also singled out discrimination against Roma children and children with disabilities and segregation of Roma children as the most frequent violations of child rights in the Republic of Serbia.⁴⁶

The Protector of Citizens took a similar view. He concluded that Roma were one of the most vulnerable groups in Serbia and that the adoption of by-laws systematically governing affirmative measures, including measures for enrolling Roma pupils in secondary schools, substantially facilitated the establishment of procedures that would pursue to aim of such measures.⁴⁷ The Director of the Human and Minority Office also singled out Roma as the most vulnerable social group in Serbia, in addition to the LGBT community, specifying that Roma women were particularly vulnerable as many of them were victims of violence and at risk of becoming human trafficking victims, that they had a much harder time finding jobs than other women and that their life span was shorter than that of other women in Serbia.⁴⁸

The construction of a 120-meter long and two-meter high wall between a road and the Roma settlement Marko Orlović in Kruševac, home of 2,500 people, provoked a lot of attention. Some minority rights protection associations condemned the erection of the wall, specifying that they most sharply condemned such

44 The Commissioner's opinion and recommendation re R.Z.C.'s complaint against *Kurir* alleging discrimination on grounds of ethnicity in the field of public information, available in Serbian at: <http://ravnopravnost.gov.rs/rs/prituzba-r-z-c-b-protiv-dnevnog-lista-k-zbog-diskriminacije-po-osnovu-nacionalne-pripadnosti-u-oblasti-javnog-informisanja/>.

45 The Commissioner's recommendation of measures to Zemun Primary School Sutjeska, the Education Ministry and the Belgrade City Administration to address the segregation problem, available in Serbian at: <http://ravnopravnost.gov.rs/rs/pr%0%b5p%0%beruk%0%b0-m%0d%b5r%0%b0-%0%bes-sut%0d1%98%0%b5sk%0%b0/>.

46 "Commissioner: Roma Children and Children with Disabilities Discriminated against the Most," *Blic*, 12 September 2016, available in Serbian at <http://www.blic.rs/vesti/drustvo/poverenica-romska-i-deca-sa-smetnjama-u-razvoju-najcesce-diskriminisana/cbw4yc2>.

47 "Ombudsman: Roma One of the Most Vulnerable Groups," *NI*, 7 April 2016, available in Serbian at: <http://rs.n1info.com/a149814/Vesti/Vesti/Ombudsman-Romi-jedna-od-najranjivijih-grupa.html>.

48 "Paunović: Roma and LGBT Most Vulnerable in Serbia", *Blic*, 4 August 2016, available in Serbian at: <http://www.blic.rs/komentar/paunovic-romi-i-lgbt-najugrozeniji-u-srbiji/dq749m7>.

an “attempt to create a ghetto” and that they would “not let anyone separate us or keep us apart from the other Kruševac residents”. The public company building the wall, Roads of Serbia, on the other hand, said that the wall was to serve as a sound barrier and that the development of the project had been funded by the local self-government. Unfortunately, some Kruševac residents supported the erection of the concrete barrier.⁴⁹

The organisation of a conference, entitled “Roma Inclusion – Challenges and Chances at the Local Level” was a positive development in 2016. Twenty local self-governments that participated in the conference signed the Declaration on the Social Inclusion of Roma Men and Women at the Local Level.⁵⁰

Roma returnees from Western Europe, who failed to obtain asylum, are a particularly vulnerable group. Serbian Chamber of Commerce data indicate Roma account for 65% of the returnees.⁵¹ A Belgrade Fund for Political Excellence (BFPE) survey of returnees under readmission agreements shows that they are not recognised as a particularly vulnerable group of the population and that they mostly rely on the help of NGOs. Returnees have encountered problems obtaining personal documents, exercising their rights to welfare and finding jobs. The data BFPE obtained from the Commissariat for Refugees and Migration show that Roma account for as many as 82% of the returnees. The survey showed that these statistical data were not final because neither Serbia nor the European Union had full data on the number of returnees.⁵²

2.3. Education and Employment

Not only do Roma have difficulties accessing education; they face discrimination throughout their schooling as well. As far as (violations of) equality and access to quality education are concerned, the Republic of Serbia undoubtedly launched major and critical systemic changes when it adopted the corollary Education System Act.⁵³ The state has, however, been very inert when it comes to implementing measures to prevent discrimination in education. Seven years after the adoption of

49 “Sound Barrier of “Kruševac Ghetto”? Citizens Shocked by 150-Meter Wall Built around Roma Settlement”, *Blic*, 8 November 2016, available in Serbian at: <http://www.blic.rs/vesti/srbija/zvucna-barijera-ili-kruisevacki-geto-gradani-sokirani-zbog-podizanja-150-metara-zida/59zhk2n>.

50 See the report in Serbian of 26 October 2016, available at: <http://rominformatika.rs/dvadeset-loklnih-samouprava-potpisalo-deklaraciju-o-ukljucivanju-roma-na-lokalnom-nivoufoto/>.

51 “Belgrade Dialogues on Migrants in Serbia”, *RTS*, 13 September 2016, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/2450744/poceli-beogradski-dijalozi-o-migrantima-u-srbiji.html>.

52 “Returnees Greeted with a Cold Shower as Soon as They Return,” *Blic*, 10 September 2016, available in Serbian at: <http://www.blic.rs/vesti/drustvo/cim-se-vrate-povratnike-u-srbiju-cekahladan-tus/51d8wm3>.

53 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – CC Decision.

the Education System Act, the Ministers of Education and State Administration and Local Self-Governments at long last adopted the rulebook laying down the detailed criteria for recognising forms of discrimination by the staff, pupils or third parties in the educational institutions⁵⁴

The commitment to inclusive education has, however, remained unfulfilled for most Roma children still attending the so-called special schools for pupils with developmental difficulties. The number of Roma pupils has fallen, but is still too high. The drop-out rate of Roma children remains high as well.⁵⁵ The Serbian NGO Praxis conducted a research on the access of Roma women to social and economic rights in Serbia,⁵⁶ in which it found that 17% of its respondents had never gone to school, mostly because of poverty, because they got married and had children, had not been registered at birth, lived far away from school, had to look after their younger siblings and because their families opposed it. Poverty and migration were the reasons cited the most often by the respondents who had started primary school but dropped out.

The introduction of additional assistants and health mediators has been proposed to deal with the high shares of early school leavers and poor access to health care, identified as major problems plaguing the Roma community.

A major problem has arisen with respect to Roma children, who had been enrolled in school but emigrated abroad with their parents, who had applied for asylum there. As most of these applications are rejected, many of the families are returned to Serbia under readmission agreements but their children have trouble catching up with the school curriculum they had missed. There have been cases of 14- and 15-year-old children who had to enrol in lower grades when they returned with their families after having spent several years abroad.⁵⁷

Some headway has, however, been made with respect to improving the conditions for the education of Roma. The Chapter 23 Action Plan envisages the adoption of a rulebook on the enrolment of Roma pupils in secondary schools through affirmative action measures, support to enrolment of Roma in schools and prevention of early school leaving, and increase in the coverage of Roma children by the education system. Plans are to open a Roma Language Centre within the Belgrade

54 *Sl. glasnik RS*, 22/16.

55 According to UNICEF's 2014 Multiple Indicator Cluster Survey, the percentage of Roma settlement children of secondary school age currently attending secondary school or higher stands at 21.6% while the share of children of that age attending school in the rest of the population stands at 89.1% See: The 2014 Serbia Multiple Indicator Cluster Survey and 2014 Serbia Roma Settlements Multiple Indicator Cluster Survey, available at http://www.unicef.org/ceecis/MICS_5_-_Key_Findings.pdf.

56 The report on the research of October 2015 is available at http://www.praxis.rs/images/praxis_downloads/Access%20to%20Socioeconomic%20Rights%20for%20Roma%20Women.pdf.

57 See the *Blic* article of 27 January 2015, available in Serbian at <http://www.blic.rs/vesti/drustvo/oebis-problem-skolovanja-dece-iz-porodica-koje-traze-azil/r258p0>.

University School of Languages and to introduce Roma Language as an elective subject in primary schools.

The decision of the Belgrade University School of Languages to establish a Roma Language Group is definitely a step towards putting in place the prerequisites for preserving and nurturing Roma Language because it finally provides teachers with degrees with the opportunity to obtain Roma Language certificates and start holding class in this language. Furthermore, the decision to establish this Group finally equated Roma with other national minority languages taught at the Belgrade University School of Languages.⁵⁸

Roma Language lessons have been introduced in 15 schools in Serbia. They were attended by 2,264 pupils in 2016. Pupils in large cities, such as Belgrade, have shown the least interest in the course, as opposed to their peers in smaller communities. Roma Language is taught by Belgrade University School of Languages graduates and students with teaching certificates. The absence of Roma textbooks and the schools' lack of interest are the greatest problems.⁵⁹

The Serbian Government 2017 Employment Action Plan qualifies Roma as a group warranting special treatment and allocates four billion RSD for increasing employment. The EU Support for Roma Employment project has enabled the employment of 74 persons, whereas 270 Roma have been engaged in active employment measures.⁶⁰

A total of 121 scholarships were awarded to 58 students attending health colleges at universities in Belgrade, Novi Sad, Niš and Kragujevac through the Roma Health Scholarship Programme in the past six years.⁶¹

2.4. Living Conditions and Realisation of the Right to Adequate Housing

The living conditions of the Roma are still difficult. Those living in the numerous informal settlements are subject to a high degree of discrimination in accessing welfare, health care, employment and adequate housing, including the basic hygienic living conditions, water and electricity.

58 See the Social Inclusion and Poverty Reduction Unit press release available in Serbian at <http://socijalnoukljucivanje.gov.rs/rs/ustanovljen-lektorat-za-romski-jezik-na-filoloskom-fakultetu-univerziteta-u-beogradu/>.

59 See: <http://europa.rs/education-in-romani-with-eu-support/?lang=en>.

60 "BizeL: EU to Support Roma Inclusion Projects with Additional 14 Million EUR", available at: <http://europa.rs/bizeL-eu-to-support-roma-inclusion-projects-with-additional-eur14-million/?lang=en>.

61 "Roma Education is Also a Public Welfare, Roma Health Scholarship Programme", *RHSP*, 31 August 2016, available at: http://rhsp.info/previous-2015/roma_education_is_also_a_public_welfare.46.html?newsId=135.

Evictions and the right to housing are generally a big problem. Serbia is far from fulfilling the international standards on evictions and resettlement. Social housing is still at an early stage and, in the absence of a comprehensive legal framework and the slow implementation of the activities envisaged by the National Social Housing Strategy, it does not provide a satisfactory response to the Roma housing problems. The percent of Roma granted social housing is still very low.

The European Union earmarked 3.6 million Euro for the “Livelihood Enhancement for the Most Vulnerable Roma Families in Belgrade” (Let’s Build a Home Together) project, which is to provide durable and adequate housing solutions for up to 200 Roma families resettled from the Belgrade Belvil informal settlement and living in the Belgrade container settlements in Makiš, Jabučki rit, Resnik and Kijevo. The Project is implemented in partnership with the City of Belgrade, the United Nations Office of High Commissioner for Human Rights (UN OHCHR) through the UN Human Rights Adviser (HRA) in Serbia, the Danish Refugee Council, the Housing Development Centre for Socially Vulnerable Groups, the OSCE and the UN Serbia Team.⁶² The implementation of the project began in February 2013 and was subsequently extended to May 2016.

Housing was secured for 110 Roma families with 512 members through allocation of social housing apartments, purchase of rural households, support for the reconstruction of the existing houses and other income generating activities. The European Union has to date invested 50 million EUR in projects aimed at improving the living conditions of Roma in Serbia.⁶³

The Chapter 23 Action Plan envisages the resolution of the issue of the informal Roma settlements by the legalisation of all sustainable settlements. Absolutely necessary relocations must be implemented in accordance with the future law on forced evictions and the accompanying manual. The Commissariat for Refugees and Migration is to address the situation of internally displaced Roma not planning on returning to Kosovo by funding programmes improving their living conditions. One of the activities involves the establishment of a Geographic Information System for the informal Roma settlements, which will include data on the number of informal settlements.

The living conditions in the informal settlements are below the threshold of human dignity. Most of them lack electricity and running water and the hygiene in them is appalling. Fires often break out in them in autumn and winter because their residents build fires and light candles to warm themselves. The living conditions in these settlements have not been addressed after the 2014 fires, which claimed the lives of several children. The measures taken by the national or local governments

62 The First Intermediary Report, “Let’s Build a Home Together”, 8 February–31 July 2013, UNOPS Serbia, 18 August 2013, available at http://www.sagradimodom.org/dokumenti/en/27_542934_first-intermediary-report-feb-july-2013.pdf.

63 See <https://inserbia.info/today/2015/07/mcallister-eu-will-continue-helping-roma-in-serbia/>.

to improve the living conditions in them, especially in the winter months, have been ineffective as well.

In its research on access of Roma women to social and economic rights in Serbia,⁶⁴ the NGO Praxis found that as many as 8% of its respondents lived in structures made of cardboard and tin, while 88% of them lived in structures with electricity, which they are probably illegally hooked up to. The electricity company often disconnects all households hooked up to the same electricity meter because some of them had not paid their electricity bills. Seventy-two percent of the respondents have access to potable water, but some of them have to draw it from the common outdoor fountains. Access to the sewage system appears to be the gravest problem; 45% of the female respondents confirmed that the facilities in which they lived were not hooked up to the sewage system, which may give rise to grave health issues. Women account for only 8% of the respondents holding tenancy rights.

In response to the questions regarding the German Federal Government's decision to declare Serbia a safe country of origin for asylum seekers, the Government quoted UNHCR as saying that some 80,000 Roma were living in around 600 informal settlements with over 100 residents in Serbia that were yet to be legalised. Thirty percent of these settlements did not have water supply, 33% were not connected to the public electricity grid and 40% were not connected to the sewage system. Only 85% of Roma children regularly attended primary school and only 22% attended secondary school. In practice, however, registration represents a serious obstacle to access to social services, health care, educational establishments and housing, the German Federal Government said.⁶⁵

UNMIK's Human Rights Advisory Panel said in April 2016 that the United Nations should offer financial compensation to the Roma community in Kosovo's Mitrovica for the damage they sustained because they were exposed to lead poisoning whilst residing in the IDP camps administered by UNMIK.⁶⁶

In its report entitled *Child, Early and Forced Marriages are Not a Private Family Matter*,⁶⁷ NGO Praxis quoted a UNICEF survey, according to which 57% of Roma women aged 20–49 were married before the age of 18, compared to 6.8% of women in the general population. "The percentages are dramatically different in case of women aged 20 to 24 who gave birth before the age of 18: 38.3% for Roma woman and 1.4% for women in the general population," UNICEF was quoted as saying.

64 See: http://www.praxis.rs/images/praxis_downloads/Access%20to%20Socioeconomic%20Rights%20for%20Roma%20Women.pdf.

65 See http://beckstage.volkerbeck.de/wp/wp-content/uploads/2016/12/2069-16_EN_Serbia.pdf.

66 See: <http://www.un.org/apps/news/story.asp?NewsID=53690#.WIEcz1UrLVQ>.

67 The Report is available at: http://praxis.org.rs/images/praxis_downloads/Child_Early_and_Forced_Marriages_are_Not_a_Private_Family_Matter.pdf.

3. LGBTI Rights

3.1. Normative framework

The Serbian legislative framework protecting the equality of lesbian, gay, bisexual, transgender and intersex persons (LGBTI) persons is largely satisfactory, but the provisions of the valid laws, strategies and by-laws prohibiting their discrimination are not enforced consistently. The Constitution of the Republic of Serbia does not explicitly list sexual orientation or gender identity among the personal features that constitute prohibited discrimination grounds.⁶⁸ The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Article 2) but makes no explicit mention of gender identity.⁶⁹ Article 21 of the Anti-Discrimination Act lays down that sexual orientation is a private matter, that no-one may be requested to publicly declare their sexual orientation, that everyone is entitled to express their sexual orientation and prohibits discriminatory treatment based on such expression. Most other laws mention either sexual orientation or gender identity, or cover them by “other grounds” of discrimination⁷⁰. The 2013 Anti-Discrimination Strategy and its Action Plan envisage amendment of laws to ensure they explicitly specify sexual orientation and gender identity as discrimination grounds.⁷¹ The implementation of these measures has, however, met with delays.⁷² Furthermore, their enforcement has not been constituent. For instance, the Police Act⁷³ mentions gender identity but not sexual orientation among prohibited discrimination grounds; the legislator missed the opportunity to introduce both of these grounds in the recent amendments to the Education System and Sports Acts.

Neither the rights of transgender persons, including the right to change the sex designation in their personal documents and access documents⁷⁴, nor the rights of same-sex partners⁷⁵ are regulated at all by Serbian law.

68 Although the Constitution does not explicitly mention discrimination on grounds of sexual orientation, it prohibits discrimination on any grounds and on grounds of personal traits, which include sexual orientation, as the Constitutional Court confirmed, see its decision in the case Už–1918/2009, of 22 December 2011.

69 More in the BCHR 2009 Report, pp. 57–58.

70 E.g., the Labour Act prohibits discrimination on grounds of sexual orientation and the Act on Youths discrimination on grounds of gender identity.

71 See the Anti-Discrimination Strategy, p. 45, 4.4.4, paragraphs 3 and 3, and Action Plan measures 3.2.10, 4.1.3., 4.4.1, 4.4.2 and 4.5.1. The Strategy is available at: http://www.seio.gov.rs/upload/documents/ekspertske%20misije/2014/ad_strategzy.pdf.

72 See the Second Anti-Discrimination Strategy Implementation Monitoring Report, covering the 2nd, 3rd and 4th quarters of 2015, available in Serbian at: <http://www.ljudskaprava.gov.rs/index.php/yljudska-prava/strategije>.

73 *Sl. glasnik* 6/2016, Article 5.

74 See below, Section 3.5. Status of Transgender Persons.

75 See below, Section 3.4 Rights of Same Sex Partners.

After their September 2016 joint session attended also by representatives of LGBTI organisations, the National Assembly Human and Minority Rights and Gender Equality and EU Accession Committees called on the parliament to enact an Anti-Homophobia Declaration and on the Government to adopt a national strategy recognising violence against LGBTI persons and peer violence in schools provoked by the victims' perceived sexual orientation, and to prepare a law regulating all the legal consequences of sex change.⁷⁶ Ana Brnabić, appointed in 2016, is the first Serbian minister to openly declare her different sexual orientation.⁷⁷ In its 2016 Serbia Report, the European Commission said that strong and visible political support was needed to protect the rights of the groups facing most discrimination, including LGBTI persons.⁷⁸

A survey conducted by the Commissioner for the Protection of Equality in 2016 showed that Serbia's citizens still felt the greatest social distance towards LGBT persons, although its results indicated that it was slightly lesser than in 2013, when the previous survey was conducted. The 2016 survey showed that a quarter of the respondents would not like to work alongside LGBT persons, that a third of them did not want to socialise with them, that half of them did not want their children to have LGBT kindergarten teachers and that some 60% of them would not want their children to marry an LGBT person.⁷⁹

The Pride Parade, held in Belgrade in 2016 for the third consecutive year, passed in a somewhat more relaxed atmosphere than the previous ones, but under strong police security again. No incidents occurred.⁸⁰

The Commissioner for the Protection of Equality in 2016 rendered decisions on four complaints of discrimination on grounds of sexual orientation. All four cases concerned breaches of the prohibition of discrimination due to violations of the dignity of or spreading hate against homosexually oriented persons, on a Facebook account,⁸¹ by Trstenik municipal councilman Dragan Vilimonović,⁸² by United Serbia leader Dragan Marković *aka* Palma,⁸³ and against Internet portal S.I. which published a number of disquieting and humiliating texts about persons of different sexual orientation from May 2015 to March 2016.⁸⁴

76 'Summary Minutes of the Joint Session of Committee for Human and Minority Rights and Gender Equality and the EU Integration Committee, 9 September 2016. On file with the author.

77 "Historic Moment for the LGBT Community," Gay Straight Alliance (GSA), 8 August 2016, available in Serbian at: <http://gsa.org.rs/2016/08/gsa-istorijski-trenutak-za-lgbt-zajednicu/>.

78 Serbia 2016 Report, p. 19.

79 Report on the Public Opinion Survey "Public Views on Discrimination in Serbia," Commissioner for the protection of Equality, Belgrade, 2016, p. 52.

80 "Pride Parade Ends with Party on Republic Square," *NI*, 18 September 2016, available in Serbian at: <http://rs.n1info.com/a194302/Vesti/Vesti/Parada-ponosa-u-Beogradu.html>.

81 Opinion No. 07-00-734/2015-02 of 9 May 2016.

82 Opinion No. 07-00-120/2016-02 of 16 June 2016.

83 Opinion No. 07-00-182/2016-02 of 16 June 2016.

84 Opinion No. 07-00-206/2016-02 of 19 June 2016.

3.2. Violence and Hate Crimes

The Criminal Code was amended in 2012 and now includes Article 54a, under which courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity. No final court decisions finding the perpetrators guilty of the committing this crime under aggravating circumstances were delivered in the reporting period. Nor have the police, prosecutors or courts issued any official data on hate crimes they processed.⁸⁵

In its 2016 Serbia Report, the European Commission said that investigation, prosecution and penalties for hate-motivated crimes needed to be stepped up.⁸⁶ Most hate crimes against LGBTI persons are not reported to the competent institutions, due to distrust in the institutions, fears of outing or lack of information.⁸⁷ NGOs focusing on LGBTI rights, Labris and Gayten-LGBT in 2015 launched a portal “DA SE ZNA!” providing victims and witnesses of violence and discrimination with the opportunity to safely report such cases.⁸⁸

A young man was physically assaulted and injured by two perpetrators on Slavija in Belgrade on 17 December 2016 because they assumed he was gay.⁸⁹

LGBT activist Boban Stojanović was attacked and insulted by his assailants because of his sexual orientation in the heart of Belgrade on 22 August 2016.⁹⁰

A trans* person, Vanja V, was physically attacked and insulted by three assailants in Vlasotince on 13 October 2016. The eye witnesses did not react at all as they inflicted grave physical injuries to their victim. The police that arrived while the assault was in progress laughed at the victim and later failed to notify him of the outcome of their search for the perpetrators.⁹¹

85 Statistical data are only kept by type of crime, wherefore new methods need to be introduced to register judgments in which the courts found aggravating circumstances under Article 54a. The prosecutors can now keep such statistics pursuant to the Republican Public Prosecutor’s Guidance A. No. 802/15 of 22 December 2015.

86 2016 Serbia Report, p. 19.

87 More in: I. Stjelja, K. Todorović, D. Todorović, J. Todorović: *HATE CRIMES Actions of State Authorities in Cases of Attacks Against LGBT Persons in Serbia*, Labris, Beograd, 2014, available at: <http://labris.org.rs/en/wp-content/uploads/2014/04/Hate-Crimes-Publication-English.pdf>;

88 See <https://dasezna.lgbt/aboutus.html>.

89 See “Young Man Assaulted on Slavija,” DA SE ZNA!, 17 February 2016, available in Serbian at: https://dasezna.lgbt/case/TimDaSeZna_005/Napad%20na%20mladi%C4%87a%20na%20Slaviji%20.html.

90 “Boban Stojanović Assaulted,” *Danas*, 22 August 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=326123&title=Napadnut%20Boban%20Stojanovi%C4%87.

91 “Young Trans* Man Assaulted,” DA SE ZNA!, 13 October 2016, available in Serbian at: https://dasezna.lgbt/case/DaSeZna_0029/Napad%20na%20trans*%20mladi%C4%87a%20.html.

3.3. Discrimination in the Education System

Discrimination in the education system is prohibited by numerous regulations, including the Anti-Discrimination Act (Article 19), the Primary Education Act (Article 9)⁹², the Higher Education Act (Articles 4 and 8)⁹³, the Textbook Act (Articles 11),⁹⁴ etc. A Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties was adopted in 2016.⁹⁵

Despite numerous recommendations by civil society and independent authorities,⁹⁶ there has been no change in the treatment of same-sex orientation in the high-school textbooks in 2016. Discriminatory content presenting same-sex orientation as pathological and replication of negative prejudices in biology, psychology and medical textbooks have not been eliminated.⁹⁷

No studies have been conducted on the extent of peer violence provoked by the victims' perceived presumed sexual orientation or gender identity, but the numerous cases reported by the media,⁹⁸ data on widespread peer violence in general⁹⁹ and discriminatory feelings against LGBTI persons among pupils,¹⁰⁰ testify to the gravity of the problem. In February 2016, the Assembly Child Rights Committee reviewed the so-called "Aleksa's law", a civic initiative to amend a number of

92 *Sl. glasnik RS*, 55/2013.

93 *Sl. glasnik RS*, 76/2005, 100/2007, 97/2008, 44/2010, 93/2012, 89/2013, 99/2014, 45/2015, 68/2015, 87/2016.

94 *Sl. glasnik RS*, 68/2015.

95 *Sl. glasnik RS*, 22/2016.

96 See, e.g. the Commissioner for the Protection of Equality Recommendation to the Ministry of Education and Science, the National Education Council and the Education Improvement Bureau on the Elimination of Discriminatory Content from Teaching Material and Practices and Promotion of Tolerance and Respect for Human Rights No. 649/2011 of 10 June 2011, Recommendation No. 8; Labris, *Analysis of Discriminatory Content in Secondary School Textbooks*, 2014, available in Serbian at: <http://labris.org.rs/wp-content/uploads/2014/07/Analiza-diskriminatorsnog-sadržaja-srednjoskolskih-udžbenika.pdf>; Public Policy Research Centre, *Mapping (Non-)Discrimination in the Military Education System of the Republic of Serbia*, 2013, available in Serbian at: <http://www.publicpolicy.rs/publikacije/a23e232904cd4c9ff9583fb3a9de745b4a12dc9.pdf>; *Towards a Non-Homophobic School – Analysis of Selected Secondary School Textbooks Concerning Treatment of Homosexuality*, Gayten-LGBT Centre for the Promotion of Sexual Minority Rights, Belgrade, 2008, available in Serbian at: <https://www.scribd.com/document/99191744/Ka-Nehomofobicnoj-Srednjoj-Skoli>.

97 2016 Serbia Report, p. 63.

98 See, e.g. "Peer Violence: Other Child Always to Blame," *NI*, 5 November 2016, available in Serbian at: <http://rs.n1info.com/a206143/Vesti/Vesti/Vrsnjacko-nasilje-Uvek-je-tudje-dete-kri-vo.html>.

99 See, e.g. D. Popadić, D. Plut, Z. Pavlović, *Violence in Serbian Schools, 2006–2013 Situation Analysis*, Institute of Psychology, UNICEF, Belgrade, 2014.

100 See, e.g. *Discrimination on grounds of sexual orientation and gender identity in Europe*, 2nd edition, Council of Europe, 2011, p. 114, available at: https://www.coe.int/t/commissioner/Source/LGBT/LGBTStudy2011_en.pdf.

laws to prevent peer violence. The Committee requested of the relevant ministries and the Protector of Citizens to take views on the proposed anti-peer violence measures within their remit and submit their amendments to the laws to the National Assembly for adoption.¹⁰¹

3.4. *Rights of Same-Sex Partners*

Serbian law does not entitle same-sex partners to marry,¹⁰² or register as civil partners.¹⁰³ Nor does it regulate their other rights, wherefore they are discriminated against with respect to a number of rights (alimony, joint adoption of children, joint property, special protection from domestic violence, succession of a surviving partner to the deceased's tenancy rights, the right to refuse to testify, to legal inheritance, to pension survivor benefits, et al).

The Anti-Discrimination Strategy Action Plan envisages the drafting of a model Act on Registered Same-Sex Partnerships and a model Act Amending the Inheritance Act to equate marriage and civil partnerships and recognise the same-sex partners' right of direct inheritance, as well as public debates on these drafts in the last quarter of 2017.¹⁰⁴ It remained unknown at the end of the reporting period whether a working group to draft the legislation has been formed. The Centre for Advanced Legal Studies (CUPS) has already drafted a model law on registered same-sex partnerships.¹⁰⁵

The European Court of Human Rights judgment in the case of *Oliari and Others v. Italy* of July 2015 is in line with the trend of legalising same-sex partnerships.¹⁰⁶ In this case, the ECtHR found Italy in violation of Article 8 of the ECHR because it did not provide any legal recognition of same-sex partnerships. In another judgement,¹⁰⁷ the ECtHR also found Greece, which had not provided for registration of civil partnerships even between heterosexual let alone same-sex couples (which is the case in Serbia now), in breach of the ECHR when it introduced registered partnerships but only of heterosexual couples. The ECtHR does not hold that same-sex marriages are protected under the Convention.¹⁰⁸

101 Ninth session of the Child Rights Committee, 11 February 2016, available in Serbian at: http://www.parlament.gov.rs/Deveta_sednica_Odbora_za_prava_deteta.28745.941.html.

102 Article 62(2) of the Serbian Constitution defines marriage as a union of a man and a woman.

103 Decision in Case No. IU-347/05, of 22 July 2010. More in the *2013 Report*, II.4.2.

104 Anti-Discrimination Strategy Action Plan, points 4.3.2. and 4.3.3.

105 See: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-registrovanim-istopolnim-zajednicama.pdf>.

106 *Oliari and Others v. Italy*, App No. 18766/11 and 36030/11, judgment of 21 July 2015.

107 *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, Grand Chamber judgment of 7 November 2013.

108 See, e.g. *Hämäläinen v. Finland*, App. No. 37359/09, Grand Chamber judgment of 16 July 2014.

3.5. Status of Trans¹⁰⁹ Persons

The Serbian legal system does not recognise trans persons. The health system recognises only transgender, which it categorises as a mental disorder.¹¹⁰ The Anti-Discrimination Strategy highlights the following major problems: lack of legal regulations protecting the right of transgender persons to the legal recognition of their sex change and clearly facilitating the prompt changes of their personal documents and the current inconsistent practices on this issue, which have resulted in depriving such persons of numerous rights, e.g. the right to work.

In 2012, the Constitutional Court issued a decision on a constitutional appeal,¹¹¹ finding violations of the rights to dignity and free development of the personality, enshrined in Article 23 of the Constitution, and the right to respect for private and family life, guaranteed by Article 8 of the ECHR, of a trans person precluded from obtaining personal documents reflecting her new identity. The Court ordered the entry of the required changes in the appellant's vital records and the enforcement of this decision to all applicants in an equivalent situation. The Court notified the National Assembly and Protector of Citizens, in their capacity of legislators, of the need to regulate the legal consequences of sex change. The Protector of Citizens did not draft a law but did formulate, in 2013, "Recommendations for Amending Regulations of Relevance to the Legal Status of Transgender Persons" in cooperation with the Commissioner for the Protection of Equality.¹¹² The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism¹¹³ in 2012 and the Model Gender Identity Act¹¹⁴ in 2016.

The Anti-Discrimination Strategy Action Plan envisages two more measures addressing this issue: 1) the drafting of a law on gender identity to improve the status of transgender persons until mid-2016¹¹⁵ and 2) the implementation of the

109 Trans is an umbrella term for people whose gender identity/ies differ/s from sex/gender assigned at birth.

110 See, J. Vidić, "Trans Persons in Serbia – Analysis of the Status and Proposal of a Legal Solution, Model Gender Identity Act, Gayten-LGBT", GAYTEN, Belgrade, 2015, p. 10, available in Serbian at: <http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf>.

111 The CC Decision on case Už-3238/2011 is available in Serbian at <http://www.ustavni.sud.rs/Storage/Global/Documents/UstavneZalbe/%D0%A3%D0%B6-3238-2011.pdf>.

112 Available in Serbian at: <http://www.ombudsman.rodnaravnopravnost.rs/images/stories/preporuke%20transpolne%20osobe.do>.

113 Prepared by CUPS, Gayten LGBT and Aire Centre, S. Gajin (ed.), *Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism*, CUPS, Belgrade, 2012, available in Serbian at: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-priznavanju-pravnih-posledica-promene-pola-i-utvr%C4%91ivanja-transeksualizma.pdf>.

114 Prepared by Gayten LGBT. Available in Serbian at: <http://www.transserbia.org/images/2015/dokumenti/Trans%20osobe%20u%20Srbiji%20-%20analiza%20poloaja%20i%20predlog%20pravnog%20reenja.pdf>.

115 Anti-Discrimination Strategy Action Plan, point 3.1.6(4).

Constitutional Court's above-mentioned decision, i.e. the preparation of a draft sex change law, which would subsequently serve as grounds for amending other relevant laws; the latter measure, however, does not need to be implemented until the last quarter of 2017.¹¹⁶ There were no indications that the implementation of these Action Plan measures had begun by the end of the reporting period.

The Action Plan envisages the drafting of a rulebook on the legal recognition of gender reassignment in school and university certificates and diplomas; this measure, also recommended by the Commissioner for the Protection of Equality,¹¹⁷ was to have been implemented in the first quarter of 2015.¹¹⁸ The Rulebook was not adopted by end 2016.

3.6. People Living with HIV/AIDS

The HIV infection is one the chief health challenges faced by gay people. Young men, born between 1985 and 1995, are at present the group at greatest risk of contracting HIV.¹¹⁹ The Dr Milan Jovanović Batut Public Health Institute said that the number of people newly diagnosed with HIV had soared in 2015 to 178, compared to 130 in 2014. Most of the newly diagnosed cases of HIV – 73 percent – belonged to the MSM (men who have sex with men) category.

The National Strategy for Combatting HIV/AIDS has expired. Its action plan was never adopted. Nor was funding for the activities to prevent and suppress the epidemic secured.¹²⁰ The number of programmes implemented by NGOs¹²¹ plunged after the withdrawal of the Global Fund to Fight AIDS, Tuberculosis and Malaria. Serbia will again be eligible to apply for the Global Fund's funds for the 2017–2019 period.¹²²

The Commissioner for the Protection of Equality reacted to media reports on HIV, underlining that “press articles ascribing transmission of HIV to homosexuals undermine the dignity and jeopardise the rights of LGBT persons; they also incur harm to persons living with HIV, whose status is further impeded by sensationalist headlines and dissemination of false information on the transmission of the virus.”¹²³

116 *Ibid.*, point 3.1.14.

117 “Recommendation of Measures to Achieve Equality,” Commissioner for the Protection of Equality, Ref. No. 335 of 16 March 2012.

118 Anti-Discrimination Strategy Action Plan, point 4.1.4.

119 “Nenad is HIV+ and Forced to Lie about It,” Gay-Serbia, 1 December 2016, available in Serbian at: <http://www.gay-serbia.com/nenad-je-hiv-i-prinudjen-je-da-laze-o-tome-8442/>.

120 M. Anonijević Priljeva, “Silence – Death HIV EPIDEMIC”, *Optimist*, 29 April 2016.

121 *Ibid.*

122 The Global Fund, Eligibility List 2017 is available at: <http://www.theglobalfund.org/en/fundingmodel/process/eligibility/>.

123 “Warning about Homophobia in Press Articles,” Commissioner for the Protection of Equality, 18 April 2016, available in Serbian at: <http://ravnopravnost.gov.rs/upozorenje-povodom-izrazavanja-homofobije-u-novinskim-tekstovima>.

3.7. Intersex¹²⁴ Persons

There are no specific regulations in Serbian law or publicly available data on intersex persons and their quality of life.¹²⁵ Estimates are that between six and eight intersex babies are born in Serbia every year.¹²⁶ Intersex variations are still considered medical disorders.¹²⁷ No data are available on the number of “corrective” operations performed on intersex children in Serbia. The CoE Commissioner for Human Rights and the UN have warned that medical interventions, including operations, were being performed on intersex children in various regions of the world, without their free and fully-informed consent.¹²⁸ The NGO Gayten LGBT formed a group to extend support to intersex persons in Serbia.¹²⁹

4. Human Rights of Persons with Disabilities

4.1. General

The status of persons with disabilities is governed by numerous international treaties Serbia acceded to, as well as by its national legislation. The UN Convention on the Rights of Persons with Disabilities¹³⁰ (hereinafter: CRPD) has been an integral part of the national legislation since 2009, but Serbia still lacks an independent mechanism for monitoring its implementation. Rather than introducing new rights of persons with disabilities, the CRPD equates their status with that of others. The CRPD Preamble recognises that disability is “an evolving concept and [...] results from the interaction between persons with impairments and attitudinal and environ-

124 “Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations.” Intersex Fact Sheet, Free&Equal”, United Nations for LGBTI Equality, available at: https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf.

125 See <http://www.transserbia.org/interseks/595-podrska-i-poziv-interseks-osobama>.

126 J. Simić, “A Boy or a Girl or a Person?” in S. Gajin (ed.), *General Framework for the Implementation of Child Rights*, CUPS, Belgrade, 2016, p. 146.

127 *Ibid.* p. 144.

128 “End violence and harmful medical practices on intersex children and adults, UN and regional experts urge”, UN press release of 24 October 2016, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>; Human rights and intersex people. Issue Paper published by the Council of Europe Commissioner for Human Rights, CommDH/IssuePaper(2015)1, of 12 May 2015, p. 9, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2933521&SecMode=1&DocId=2367288&Usage=2>

129 See: <http://www.transserbia.org/interseks/595-podrska-i-poziv-interseks-osobama>.

130 *Sl. glasnik RS – International Treaties*, 42/09.

mental barriers that hinders their full and effective participation in society on an equal basis with others.”

According to 2011 Census in Serbia, the first to include a set of questions on disabilities, 7.96% (571,780) of Serbia’s citizens suffer from some kind of disability. As many as 60.3% of them were over 65 and 1.2% under 15 years of age in 2011. The Census showed that most suffered from physical and sensory disabilities (59.5% and 41.9% respectively) and that 16.2% of all persons with disabilities suffered from three or more of the listed disabilities.

Persons with disabilities face numerous difficulties in exercising their rights in practice although the Serbian Constitution absolutely prohibits all forms of discrimination, particularly on grounds of disability, and although nearly all laws adopted by the National Assembly include at least one article on rights of persons with disabilities. In its Concluding Observations on the initial report of Serbia on the implementation of the CRPD (hereinafter Concluding Observations), the UN Committee on the Rights of Persons with Disabilities said that some areas called for immediate attention and urgent steps by the competent authorities. These areas include, notably, reform of the guardianship and incapacity regime, respect for the physical and psychological integrity of person, deinstitutionalisation, and protection of persons with disabilities from abuse and torture in view of reports of the use of coercive measures, including physical and chemical restraints, and excessive antipsychotic therapy, and the prolonged isolation of both adults and children with disabilities.¹³¹

4.2. *Independent Living and Inclusion in the Community*

Under Article 19 of the CRPD, “[S]tates Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.” The Serbian Act on the Prevention of Discrimination against Persons with Disabilities¹³² also aims at facilitating independent living of persons with disabilities in the community. Under Article 35 of that Act, local self-governments shall encourage the establishment of services supporting persons with disabilities. Local self-governments, however, lack the funding facilitating the establishment of effective support systems. Furthermore, the Act does not define the criteria that would guarantee the quality of services extended to persons with disabilities.

131 The Concluding Observations, published on 23 May 2016, are available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fSRB%2fCO%2f1&Lang=en.

132 *Sl. glasnik RS*, 33/06 and 13/16.

Although Serbia has committed to deinstitutionalisation in principle, the number of institutionalised persons has been increasing every year and the Government still lacks a clear deinstitutionalisation plan. The successful process of deinstitutionalisation has to be accompanied by comprehensive changes in the systems of education, social policy, health protection, employment, accessibility, participation and the overall development of local support services. Back in 2014, the Protector of Citizens prepared a roadmap for deinstitutionalisation (life in the community) of persons with disabilities and their full social inclusion, in which he outlined recommendations to the state authorities on how to implement the process. In its Serbia 2016 Report, the European Commission recognised the problems and said that no headway had been made in the deinstitutionalisation process in 2016 and that a large number of people with mental and psychosocial disabilities, including elderly people, were involuntarily confined in psychiatric institutions. It expressed concern about reports of the use of coercive treatment in these institutions.¹³³

According to the Republican Social Protection Institute 2015 Annual Report, 89% of 14,663 beneficiaries in 2015 were institutionalised and only 11% were living with their families.¹³⁴ The overwhelming share of institutionalised persons can be ascribed to the fact that specialised foster care and system of local services supporting children and adults with disabilities are not developed, a problem identified also by the Institute. Like in the past, institutionalisation was in most cases terminated due to the death of the beneficiaries.

In paragraphs 13 and 14 of its Concluding Observations, the Committee on the Rights of Persons with Disabilities focused on the devastating data showing that children with disabilities accounted for as many as 80% of all institutionalised children, as well as the fact that a number of infants were placed there directly from maternity wards, although Article 52 of the Social Welfare Act¹³⁵ prohibits the placement of children under three years of age in residential institutions. The Republican Social Protection Institute stated in its 2015 Annual Report that 12 children with disabilities under three were living in such institutions at the end of the reporting period, four of them for over a year.¹³⁶ The Committee on the Rights of Persons with Disabilities urged Serbia to “prevent any new institutionalisation of infants under the age of 3 and ensure a more efficient transition for boys and girls moving from institutions into families. In the interim period, it recommends that the State party provide children with disabilities with sufficient early childhood in-

133 Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf, p. 61.

134 2015 Annual Report on the Work of Child and Youth Residential Institutions, Republican Social Protection Institute, p. 26, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

135 *Sl. glasnik RS*, 24/11.

136 2015 Annual Report on the Work of Child and Youth Residential Institutions, Republican Social Protection Institute, p. 33, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

tervention and development services, initiate education programmes for the staff in institutions and develop efficient community-based care services for those leaving institutions.” It also urged Serbia to adopt a comprehensive strategy and measures for effective deinstitutionalisation, and ensure no investment was made for new institutions.

The principle of the best interests of the child must be applied in all cases regarding children, including children with disabilities. The Guidelines for the Alternative Care of Children adopted by the UN General Assembly in 2010 recognise the family as the fundamental group of society and the natural environment for the growth, well-being and protection of children, and recommends to states to primarily direct their efforts “to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. The State should ensure that families have access to forms of support in the caregiving role.”¹³⁷ Life in an institution and exclusion from the mainstream education system cannot be interpreted as being in the best interests of the child and may result in neglect, abuse and violence. A total of 1,444 children and youths were placed in institutions for children and youths with disabilities in 2015:¹³⁸ adults still accounted for over 50% of the residents of these institutions.¹³⁹ Two-thirds of the children were institutionalised in 2015 because their parents were unable to respond to their health needs, while most of the adults with disabilities were institutionalised because their families lacked the will to look after them.¹⁴⁰ These data definitely reflect the absence of local community support to persons with disabilities, where care for persons with mental disabilities hinges on their families’ financial standing and will to care for them. The level of day, home and community care services is still inadequate; even Belgrade lacks centres where children with dystrophy and cerebral palsy can spend time while their parents are at work,¹⁴¹ which reinforces the conclusion that the Republic of Serbia has failed to develop efficient and effective forms of alternative care and sustainable care services at the local level.

In June 2016, Human Rights Watch presented its report indicating that medical staff often advised parents to institutionalise their children with disabilities and

137 The Guidelines are available at: https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf.

138 The data regard the following six residential institutions for children: the Home for Children and Youths Suffering from Autism in Šabac, the Home for Persons Suffering from Autism in Belgrade, the “Veternik” Home in Novi Sad, the “Kolevka” Home in Subotica, the “Sremčica” Home in Belgrade and the “Dr Nikola Šumenković” Home in Stannica.

139 2015 Annual Report on the Work of Child and Youth Residential Institutions, Republican Social Protection Institute, p. 30, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

140 *Ibid*, pp.31, 32.

141 “All Doors Closed to Children with Disabilities,” *Mondo*, 11 April 2016. Available in Serbian at: <http://mondo.rs/a892662/Info/Drustvo/Ogromni-problemi-za-decu-sa-fizickim-invaliditetom.html>.

that institutionalised children were not provided with an individualised approach and attention. It cited an example of one institution in which only one caregiver and one educator were responsible for 11 children and young people with disabilities per shift. The report also documented that the decrease in the number of institutionalised children with disabilities reflected the fact that they have reached the age of adulthood and were thus no longer counted as children, rather than that they have left the institutions.¹⁴²

4.3. Equal Recognition before the Law and Legal Capacity of Persons with Disabilities

Under Article 12 of the CRPD, persons with disabilities shall have the right to recognition everywhere as persons before the law and enjoy legal capacity on an equal basis with others in all aspects of life; States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. In addition to international documents and ECtHR case law, the equality of persons with disabilities is also guaranteed by the Constitution of the Republic of Serbia, the Anti-Discrimination Act and the Act on the Prevention of Discrimination against Persons with Disabilities.¹⁴³

Legal capacity is the main prerequisite for exercising other rights. Deprivation of legal capacity¹⁴⁴ greatly impacts the everyday life and freedoms of persons with disabilities.

Decisions on depriving people of legal capacity are taken by courts in a non-contentious procedure, whilst decisions on appointment of their guardians are taken by social work centres in an administrative procedure. The legal capacity proceedings are based on court medical expert evaluations and may be conducted in the absence of a judge. The consequences of the full and partial deprivation of legal capacity differ greatly. In their rulings on partial deprivation of legal capacity, the courts determine the type of actions the person at issue can take apart from the ones they are authorised to take under the law. On the other hand, full deprivation of legal capacity means that the person in question cannot take any decisions or exercise his rights.

Rather than falling, the number of adults appointed guardians rose in 2015, by around two thousand over the previous year, and totalled 12,493.¹⁴⁵ Of them,

142 “It is my dream to leave this place,” Human Rights Watch, June 2016, available at: <https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions>.

143 *Sl glasnik RS*, 33/06 and 13/16.

144 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

145 Synthetic Report on the Work of Social Work Centres in Serbia in 2015, Republican Social Protection Institute, Belgrade, 2016., p. 12, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

93% were fully and 7% partly deprived of legal capacity. Comparison of the data over the past three-year period shows that the number of adults appointed guardians increased by 20% every year.

Depriving a person of legal capacity practically results in his “civic death” and denies him his fundamental human rights, undermining his autonomy. Furthermore, depriving a person with disabilities of his legal capacity brings him into danger of being institutionalised and subjected to treatment against his will; he cannot marry, have a family or vote. Not only are persons deprived of legal capacity unable to find employment; in specific situations, they cannot work as volunteers either¹⁴⁶ In its Concluding Observations, the Committee on the Rights of Persons with Disabilities said it was concerned about the incapacity and guardianship regime, which contravened the CPRD and its General Comment No. 1 (2014) on equal recognition before the law. The Committee thus recommended to Serbia to align its legislation with the Convention with a view to replacing substituted decision-making with supported decision-making regimes that respect the person’s autonomy, will and preferences, and establish transparent safeguards.

The European Court of Human Rights has on several occasions reaffirmed the relevance of legal capacity in terms of the protection of human rights and found that full deprivation of legal capacity amounted to a violation of Article 8 of the ECHR. The ECtHR unequivocally held that a person subjected to proceedings about his legal capacity had to be involved in the procedure in which such an important decision was being taken and provided with the opportunity to express his views, opinions and interests. In its judgment in the case of *Salontaji-Drobnjak v Serbia* delivered in 2009, the Court noted that, although the applicant had attended several hearings in the legal capacity proceedings, he had been excluded from the last hearing at which the decision depriving him of legal capacity was taken, in contravention of the right to a fair trial enshrined in Article 6(1) and the right to respect for private and family life enshrined in Article 8 of the ECHR.

The regulation of this area in Serbian law is outdated and not in compliance with the international legal framework and standards, namely it is in contravention of the obligations Serbia undertook when it ratified international human rights treaties.¹⁴⁷ Although it proclaims the principle of full respect for the dignity of persons with mental disabilities in Article 5, the Act on the Protection of Persons with Mental Disabilities¹⁴⁸ permits deprivation of liberty on the basis of impairment and involuntary placement of children and adults with disabilities in health and residential institutions. The Committee noted this problem in its Concluding Observations as well, qualifying the provisions as gross violations of the right to

146 Article 12(2(3)), Volunteer Act, *Sl. glasnik RS*, 36/10.

147 K. Beker, *Deprivation of Legal Capacity: Law and Practice in the Republic of Serbia*, Mental Disability Rights Initiative Serbia (MDRI-S), Belgrade, 2014, available in Serbian at: <http://www.mdri-s.org/wp-content/uploads/2013/03/Lisenje-poslovne-sposobnosti.pdf>.

148 *Sl. glasnik RS*, 45/13.

freedom and security of person and urging Serbia to repeal this law and prohibit impairment-based detention of children and adults with disabilities.

The 2014 amendments to the Non-Contentious Procedure Act impose upon the courts the obligation to periodically review their decisions depriving persons of their legal capacity; this is a welcome provision, given that the courts originally used to render such decisions for indefinite periods of time and were under no obligation to review them. The legislator, however, missed the opportunity to substantially harmonise the Act with the CPRD and other laws prohibiting discrimination.

4.4. Accessibility

Accessibility is one of the main principles in the CPRD. It is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination and is a clearly established element of international human rights law.

The Act on the Prevention of Discrimination against Persons with Disabilities prohibits discrimination on grounds of disability in access to services and public areas and buildings. Article 27 of the Act also prohibits discrimination against persons with disabilities in all forms of public transportation. However, persons with physical disabilities face obstacles hindering their use of public transport, home appliances, electronic and digital systems, services and products, and access to public and private buildings in everyday life. Persons with mental disabilities, on the other hand, face an insufficiently inclusive education system and segregation in school, lack of individual or group support in local communities and other problems in everyday life. In its General Comment No. 5 of 1994, the Committee on Social, Cultural and Economic Rights highlighted the states' duty to apply the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, emphasising the importance of accessibility of the physical environment, information and communication for full equality. A survey on the status of youths with disabilities in the Belgrade labour market¹⁴⁹ shows that persons with disabilities often chose the schools and colleges they would attend on the basis of their accessibility, rather than their professional aptitudes.

The 2006 amendments to the Planning and Construction Act¹⁵⁰ lay down the obligation of builders to observe the standards of accessibility of persons with disabilities. This obligation is governed in greater detail in the Technical Accessibility Standards Rulebook¹⁵¹. Most buildings housing the public administration and pub-

149 Dr Slobodan Cvejić, Stefan Stefanović, Research Report: Status of Youths with Disabilities in the Belgrade City Labour Market, Belgrade, November 2016, <http://secons.net/frontend/project.php?p=140>.

150 *Sl. glasnik RS*, 72/09, 81/09 – corr., 64/10 – CC Decision, 21/11, 121/12, 42/13 – CC Decision, 50/13 – CC Decision, 98/13 – CC Decision, 132/14 and 145/14.

151 *Sl. glasnik RS*, 46/13.

lic institutions,¹⁵² new and old alike, are inaccessible to persons with disabilities. Furthermore, Serbia lacks a national strategy on accessibility or effective sanctions for violations of the regulations on the accessibility of public facilities. The Committee on the Rights of Persons with Disabilities thus recommended to Serbia to promote universal design for all buildings, public services and public transport, and accessible information and social communication media, paying special attention to electronic media, in accordance with its General Comment No. 2 (2014) on accessibility.

Under the Air Transportation Act,¹⁵³ operators are under the obligation to extend all the requisite services to passengers with disabilities or mobility difficulties in order to enable them to exercise their right to air transportation on an equal footing and without discrimination. Under the Railway Act,¹⁵⁴ contracts on public transport obligations must include a provision on quality requirements, including provision of access to passengers with disabilities, but only if the competent authority requires that the operator fulfil specific quality requirements under the law (Article 87). The Land Transportation Act¹⁵⁵ does not have specific provisions on persons with disabilities, but Article 20 lays down that passengers must be provided with access to the vehicles at the bus stations. Belgrade is the only city in Serbia with public transportation accessible to persons with disabilities.

The National Assembly adopted the Act on Independent Movement with the Assistance of Guide Dogs¹⁵⁶ in March 2015, but there is still a lack of trained guide dogs for around 12,000 blind and visually impaired people; centres for training guide dogs are scarce in Serbia as well. The Committee on the Rights of Persons with Disabilities also noted the problem.

Although sign language was officially recognised by the Sign Language Act,¹⁵⁷ state institutions lack sign language interpreters, wherefore persons with disabilities are forced to themselves engage interpreters via the Sign Language Interpretation Services Office.¹⁵⁸ A mechanism that will monitor use of sign language and guarantee the existence of a standardised and official Serbian Braille alphabet has not been established yet. Persons with hearing impairments are entitled to court-sworn sign language interpreters, but many of them are unable to avail them-

152 Under Article 13, paragraphs 1 and 3, of the Act on the Prevention of Discrimination against Persons with Disabilities, they include facilities in which educational, health, welfare, cultural, sports and tourist institutions and services are housed and facilities used for environmental protection and protection from natural disasters, et al.

153 *Sl. glasnik RS*, 73/10, 57/11, 93/12 and 45/15.

154 *Sl. glasnik RS*, 45/16 and 91/15.

155 *Sl. glasnik RS*, 46/95, 66/01, 61/05, 91/05, 62/06, 31/11 and 68/15 – other laws.

156 *Sl. glasnik RS*, 38/15.

157 *Ibid.*

158 See the *Večernje novosti* article, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:539266-Znakovni-jezik-kao-profesija>.

selves of their services in practice as the Serbian courts altogether have eight sign language interpreters: five in Belgrade, one in Niš, one in Novi Pazar and one in Kragujevac.¹⁵⁹ There is no formal training of court-sworn sign language interpreters; most of them were born to deaf parents or work as teachers in schools for deaf children. Only the Niš City Water Company has complied with the provision in the Sign Language Act, which imposes upon the public institutions the obligation to make available such interpreters.¹⁶⁰

Access to information and communication is prerequisite for enjoying the right to hold opinions and freedom of expression guaranteed under Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and Political Rights. Such access is regulated by the Electronic Media Act¹⁶¹, the Public Media Services Act¹⁶² and the Electronic Communications Act,¹⁶³ and Public Information Media Act.¹⁶⁴ Under Article 12 of the Public Information and Media Act “[W]ith a view to protecting the interests of persons with disabilities and ensuring their exercise of the right to freedom of opinion and expression on an equal footing, the Republic of Serbia, Autonomous Provinces and local self-government units shall take measures to ensure their unhindered reception of information intended for the public, in the appropriate form and by applying the appropriate technologies, and provide part of the funding or other conditions for the operation of the media publishing information in sign language or Braille, or shall facilitate the exercise of these persons’ rights pertaining to the public information sector in another manner.” Although public service broadcasters are under the legal obligation to produce and broadcast programmes designated for specific social groups, the number of broadcasts tailored to persons with disabilities is very small. Under Article 55 of the Electronic Communications Act on basic universal services, such services shall include special measures providing persons with disabilities with equal access to publicly available telephone services, including calls to emergency services. Such services shall be rendered to persons with disabilities at lower rates.

Persons with disabilities unable to sign themselves have encountered problems in using facsimiles because printed facsimiles of contracts they concluded and financial transactions they engaged in had not been recognised without their signatures. The amendments to the Act on the Prevention of Discrimination against Persons with Disabilities, adopted in November 2015, introduce the obligation of the

159 Initial Report on the Implementation of the Convention on the Rights of Persons with Disabilities, 2012, available at: <http://drpi.research.yorku.ca/wp-content/uploads/2015/01/InitialSerbianRepEn.pdf>.

160 “Sign Language Interpreters in Niš City Water Company”, *RTS*, 20 October 2016, available in Serbian at <http://www.rts.rs/page/stories/sr/story/57/srbija-danas/2496247/tumaci-znakovnog-jezika-u-niskom-vodovodu.html>.

161 *Sl. glasnik RS*, 83/14 and 6/16 – other law.

162 *Sl. glasnik RS*, 83/14, 103/15 and 108/16.

163 *Sl. glasnik RS*, 44/10, 60/ 13 – CC Decision and 62/14.

164 *Sl. glasnik RS*, 83/14, 58/15 and 12/16 – authentic interpretation.

public authorities to allow persons with permanent physical disabilities or sensory impairments, who are unable to sign themselves, to sign documents by stamping their seals including their personal identity data or their seals with their inscribed signatures (Art. 34). These amendments have facilitated the realisation of rights by persons unable to sign themselves due to their disabilities. The amendments also envisage fines for public authorities and individuals preventing persons with disabilities from exercising this right.

4.5. *Inclusive Education*

The right to education is one of the fundamental human rights to be enjoyed by all children without discrimination. Article 24 of the CRPD enshrines the right of persons with disabilities to education and lays down the goals and steps towards its realisation. States Parties, including Serbia, are to ensure that persons with disabilities can access inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live and that effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

The discriminatory practice of excluding children with disabilities from the formal mainstream education system was applied in Serbia until 2009 when inclusive education was introduced by the new Education System Act¹⁶⁵ that launched a long-term reform of the education system. The reform envisages individualised teaching and learning methods, affirmative preschool and school enrolment measures, the provision of additional support, the development of services supporting education, the introduction of assistive technologies, etc. This Act guarantees persons with disabilities the right to education in the mainstream education system, which recognises their needs, and provides for additional, both individual and group, support.¹⁶⁶ Under the Act, school principals shall form professional inclusive education teams.

An Individual Education Plan (IEP) is an instrument introduced to tailor the education process to children with disabilities. The Rulebook on Additional Educational, Health and Social Support to Children and Pupils¹⁶⁷ governs in detail the requirements for assessing the children's needs and the composition and work of the inter-sectoral commissions tasked with identifying and addressing all the barriers to the children's inclusion in the community, together with the children's parents and other community stakeholders, as well as the drawing up individual support plans for the children. Under Article 77 of the Education System Act, an IEP shall be drawn up by the expert inclusive education team or the team extending additional support

165 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – authentic interpretation.

166 Article 6, Education System Act.

167 *Sl. glasnik RS*, 63/10.

to children (comprising the child's kindergarten and school teachers and the school pedagogue) and adopted by the pedagogical team (comprising chairs of the expert council and team and a representative of the school's professional associates i.e. pedagogue and psychologist). The IEP shall be submitted and evaluated on a quarterly basis during the first year of education in an institution and at the beginning of each semester thereafter. The children's parents or guardians must approve the IEPs and the Education Ministry is tasked with monitoring their implementation.

The Textbook Act¹⁶⁸ provides for special textbooks for children with disabilities although such a practice may result in the segregation of pupils. The Commissioner for the Protection of Equality noted that there were no grounds to introduce special textbooks for children with disabilities and that tailoring education to their individual needs should be achieved via the IEPs, as prescribed by the law.¹⁶⁹

The enforcement of the education laws and inclusive practices leave a lot to be desired, and there is still the tendency to exclude children with disabilities, especially institutionalised children. In March 2016, Mental Disability Rights Initiative – Serbia (MDRI-S) presented the results of its research on the educational status of children with disabilities in four institutions and two residential communities¹⁷⁰, showing that as many as 56% of them were not covered by formal education, that 31% attended school and that 13% were home schooled. Note needs to be made of the major differences among the individual institutions as regards the education of their children. In one of them, over 80% of the children of primary school age went to school, whereas as many as 82% of such children in the three other institutions did not. The Committee on the Rights of Persons with Disabilities also drew attention to this problem in its Concluding Observations, urging Serbia to identify concrete targets in the Action Plan for Inclusive Education (2016–2020), to meet inclusive education standards and requirements and devote special attention to children with multiple disabilities and pupils and students with disabilities living in institutions, as well as to the development of individual education plans and accommodation of all types of disabilities.

Republican Social Protection Institute data show that only 28% of the institutionalised children are covered by some type of education; furthermore, they indicate that none of them attend mainstream schools.¹⁷¹ Children attending school, however, face major obstacles in practice arising from lack of resources, difficul-

168 *Sl. glasnik RS*, 68/15.

169 Opinion on the Draft Textbook Act, Commissioner for the Protection of Equality, July 2015, available in Serbian at: <http://ravnopravnost.gov.rs/rs/misljenje-na-nacrt-zakona-o-udzbencima-3/>.

170 *Exclusion and Segregation of Children with Disabilities in Residential institutions in the Education System*, available at: <http://www.mdri-s.org/wp-content/uploads/2016/04/Publikacija-ENG.pdf>.

171 2015 Annual Report on the Work of Child and Youth Residential Institutions, Republican Social Protection Institute, p. 13, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2016/izvestaj%20o%20radu%20CSR%20za%202015.pdf>.

ties in planning additional educational support services, lack of tailored textbooks and teaching aids, lack of transport to and from school, physical inaccessibility, the work of the inter-sectoral commissions, underdeveloped professional competences of teaching staff, etc.

The caseload of the Commissioner for the Protection of Equality indicates that there is still some resistance to inclusive education among teachers and professional associations, which greatly impedes the realisation of the right of children with disabilities to quality education.¹⁷² In her opinion about the complaint a mother of a disabled child filed against the Prijepolje municipality, the Commissioner for Protection of Equality said that the school had violated the Anti-Discrimination Act because it had failed to provide additional support to children and pupils in need of personal escorts.¹⁷³

The results of a survey of the needs of persons with disabilities for local community services and their accessibility in Belgrade, implemented by the organisation IDEAS, showed that their degree of education depended primarily on the time of occurrence of the disability. Sixty percent of those, whose disability had occurred before they started school, attended or completed primary school, while only 45% of those rendered disabled when they were already in school completed this level of education. Forty-eight percent of persons with disabilities in Belgrade have completed secondary school, 32% have attended or completed primary school and the fewest, 29%, have a tertiary degree. Unfortunately, numerous major obstacles exist in practice, such as lack of resources and the underdeveloped capacity of the teachers, exacerbated by the generally negative social climate in which nearly 80% of the citizens think that children with sensory or physical disabilities attending mainstream schools have negative influence on their peers, while 65% have the same opinion of the influence of children with intellectual disabilities attending mainstream schools.¹⁷⁴

It needs to be noted that the CRPD provides for the right not only to primary and secondary education, but to education at all levels, including lifelong learning, without discrimination and on an equal basis with others.

4.6. Work and Employment

The Republic of Serbia comprehensively regulated the employment of persons with disabilities in the Act on the Professional Rehabilitation and Employment of Persons with Disabilities¹⁷⁵ that was enacted in 2009. Around 28,000 persons

172 See the 2014 Annual Report by the Commissioner for the Protection of Equality, 2015.

173 Opinion and Recommendation of the Commissioner for the Protection of Equality, available in Serbian at: <http://ravnopravnost.gov.rs/rs/prituzba-s-m-protiv-opstine-prijepolje-zbog-diskriminacije-po-osnovu-invaliditeta-u-oblasti-obrazovanja-i-vaspitanja/>.

174 The main findings of the survey are available in Serbian at: <http://ideje.rs/wp-content/uploads/2016/06/Saz%CC%8Cetak-istraz%CC%8Civanja-Za-z%CC%8Civot-u-zajednici.pdf>.

175 *Sl. glasnik RS*, 36/09 and 32/13.

with disabilities, 4,846 of them women, have found a job since this law came into force.¹⁷⁶ Chapter VII of the Act lays down active measures for the employment of persons with disabilities, including reimbursement of the employers' expenses of adapting the workplace and subsidising the first 12 monthly salaries they pay to persons with disabilities without work experience who they hired for an indefinite period of time. Under this Act, employers with 20–49 workers must hire one person with disabilities, while those with 50–99 workers must hire two persons, etc. (Article 24). This obligation, however, does not apply to newly-established companies during the first 24 months of their work (Article 25). Employers defaulting on the obligation to hire persons with disabilities under Article 24 are under the obligation to pay 50% of the average wage in Serbia in the budget fund for the professional rehabilitation and encouragement of employment of persons with disabilities.

These obligations are regulated more thoroughly in the Rulebook on the Monitoring of the Fulfilment of the Obligation to Hire Persons with Disabilities and Methods for Proving the Fulfilment of the Obligation¹⁷⁷, which exempts the Republic of Serbia as an employer from the obligation, specifying in Article 8 that the state shall fulfil the obligation exclusively by allocating the requisite financial resources in the budget. Given that the state, as the biggest employer, is totally exempted from this affirmative measure for employing persons with disabilities, the state has missed the opportunity to promote the employment of persons with disabilities and set a positive example to other employers. It thus comes as no surprise that other employers have also been opting for paying fines, rather than hiring persons with disabilities.

The 2014 amendments to the Labour Act¹⁷⁸ have undermined the employment of persons whose disabilities were caused by injury at work, because they lay down that such workers shall be declared redundant and dismissed by their employers in the event the latter cannot provide them with an adequate job. The National Organisation of Persons with Disabilities of Serbia filed a motion with the Constitutional Court of Serbia, asking it to review the constitutionality of this provision alleging it was in violation of Article 27 of the CRPD.¹⁷⁹

The 2015 Annual National Survey of Employers' Needs¹⁸⁰ indicated that persons with disabilities accounted for around 1.9% of the employed workforce, that

176 Dr Slobodan Cvejić, Stefan Stefanović, Research Report: Status of Youths with Disabilities in the Belgrade City Labour Market, Belgrade, November 2016, <http://secons.net/frontend/project.php?p=140>.

177 *Sl. glasnik RS*, 33/10, 48/10 – corr. and 113/13.

178 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

179 Comments to State's Replies to the UN Committee, National Organisation of Persons with Disabilities of Serbia and Centre for Independent Living, April 2016, p. 7, available in Serbian at: http://www.cilsrbija.org/ebib/201604170819260.05_komentari_na_odgovore_drzave_komite-tu_un_noois_i_csz.pdf.

180 2015/2016 Employers Survey: Main Findings, National Employment Service, 2015, p. 6, available in Serbian at: http://www.nsz.gov.rs/live/digitalAssets/5/5152_anketa_poslodavaca_2015-2016_-_glavni_nalazi.pdf.

the total number of employed persons with disabilities was below the legal threshold, and that the employment growth trend of this category was slowing down. The survey also showed that most workers with disabilities were employed in the processing industry and in administrative and auxiliary support services. As per the size of companies they are working in, 55% were working in large and only 12.7% in small enterprises. The shares of employed persons with disabilities were similar in all the regions, and were slightly greater in the Belgrade and Vojvodina regions.

Given the substandard social inclusion and employment of persons with disabilities, the data of the Ministry of Labour, Employment and Social and Veteran Affairs indicating that 70% of persons with disabilities in Serbia are poor and that over half of them are on some kind of welfare come as no surprise. The Ministry said that 4,778 persons with disabilities found jobs via the National Employment Service so far in 2016, i.e. 45% more than in 2015.¹⁸¹ The above-mentioned survey on the needs for services of persons with disabilities and the accessibility of local communities to them showed that 7% of persons with disabilities between 18 and 64 years of age were employed, 10% of them in the NGO sector. Most persons with disabilities are retired (63%); half of them are under 65. Most of the employed persons with disabilities (46%) suffer from sensory impairments and most of those, who have retired, suffer from physical disabilities (69%). Persons with developmental and intellectual disabilities are the worst off; only 2% of them are employed.

In its Concluding Observations, the Committee on the Rights of Persons with Disabilities called on Serbia, inter alia, to make sure legislation was not disadvantageous for persons with disabilities in terms of employment and labour market participation, to guarantee the full implementation of the law, and make sure that persons with disabilities can exercise in practice their right to establish trade unions, given their inability to establish a representative trade union in the open labour market owing to their low representation.

4.7. Social Protection

The 2011 Social Protection Act lays down that “all individuals and families in need of social assistance and support to surmount their social and existential difficulties and create conditions for satisfying their basic needs” shall be entitled to social protection. The Act defines and regulates social protection services, including community day and independent living support services. Personal assistants were introduced as a mechanism for extending social protection and the Belgrade City Social Protection Secretariat in May 2016 published its first public call for

181 “Three Crucial Problems of Persons with Disabilities,” *RTS*, 12 October 2016, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/drustvo/2486370/tri-sustinska-problema-osoba-sa-invaliditetom.html>.

the engagement of personal assistants.¹⁸² The Rulebook on Detailed Social Protection Service Provision Conditions and Standards¹⁸³ governs the admission and assessment of beneficiaries, determination of the degree of support, planning, internal evaluation, staff development and the availability of community programmes and services. Social protection is also governed in greater detail by the Rulebook on Licencing of Social Protection Professionals, the Rulebook on Licencing of Social Protection Institutions and the Rulebook on Professional Social Protection Jobs.

The public's attention refocussed on the deplorable conditions in residential institutions when a horrific fire, claiming the life of one ward, broke out in the Novi Sad Home for Children and Youths "Veternik" in May 2016¹⁸⁴. The ward had been locked up in a 2-square meter isolation room. Isolation, as a coercive measure, indisputably constitutes an act of ill-treatment and torture that has to be prohibited and eradicated. Conditions in residential institutions have to meet the human rights standards Serbia bound itself to respect when it ratified the CRPD and the CaT. Both treaties explicitly prohibit ill-treatment, cruel, inhuman and degrading treatment, exploitation, violence and abuse and call for the protection of human integrity and dignity. However, there are no grounds in Serbia for monitoring the fulfilment of the CRPD in the field of social protection. Although the Protector of Citizens found that the rights of the "Veternik" wards to dignity and free development were jeopardised back in 2014¹⁸⁵, his recommendations on eliminating the irregularities addressed to the relevant ministry and Vojvodina secretariat have gone unheeded.

Life in Serbian residential institutions is also characterised by excessive medication of and denial of the necessary medical treatment to the wards, the wards' absolute lack of privacy and chance to have a say even on basic issues, their neglect and abuse, and the practices of isolation and physical restraint.¹⁸⁶ In its Concluding Observations, the Committee on the Rights of Persons with Disabilities urged Serbia to prohibit and penalise such practices, by initiating administrative and criminal investigations on the reported cases of such treatment in order to establish the respective responsibilities and through an independent oversight mechanism, and to take all measures to ensure free and informed consent to all interventions that

182 Public Call for the Engagement of Personal Assistants Call Published, May 2016, available in Serbian at: <http://www.beograd.rs/lat/beoinfo/1724166-psrozrsmis-isbms-msasbjss-zs-odjprjmskmdj-srzrdsjmsdj/>.

183 *Sl. glasnik RS*, 42/13.

184 *Politika*, 25 May 2016, available in Serbian at: <http://www.politika.rs/sr/clanak/355771/Sticenik-stradao-u-pozaru-u-Domu-u-Veterniku>, see also the MDRI-S report, available in English at: <http://www.mdri-s.org/press-releases/death-in-veternik-institution-is-a-direct-consequence-of-torture-against-persons-with-mental-disabilities-in-serbia/>.

185 National Preventive Mechanism Report and Recommendations after the visit to "Veternik", available in Serbian at: http://npm.rs/attachments/412_Dom%20Veternik.doc.

186 "The hidden and forgotten: segregation and neglect of children and adults with disabilities in Serbia," Mental Disability Initiative – Serbia, Belgrade, 2012, available at: <http://www.mdri-s.org/wp-content/uploads/2013/10/the-hidden-and-forgotten-2013-12-17.pdf>.

might undermine the integrity of persons with disabilities, whether or not they are deprived of legal capacity.

Temporary foster care is a new social protection service, introduced to relieve the parents of disabled children of the obligation to look after them all the time. The children are left in the care of close friends or relatives, for a few hours or a few days. This service was introduced to assist the parents, preclude their exhaustion and exclusion from society and the child's referral to an institution.¹⁸⁷

4.8. Health Care

Persons with disabilities are recognised as particularly vulnerable groups by the Health Care Act,¹⁸⁸ the Health Insurance Act¹⁸⁹ and the Pension and Disability Insurance Act¹⁹⁰.

Article 20 of the Health Care Act proclaims the principle of equality of health care, involving the prohibition of discrimination in the provision of health care. Persons with disabilities are entitled to health care even if they do not fulfil the labour and employment-related requirements to have medical insurance. The right to health care also includes medical rehabilitation in case of illness or injury, and the right to walking and moving aids, sight, hearing, and speech aids (hereinafter: medical-technical aids). The Rulebook on Medical Rehabilitation in Specialised Rehabilitation Institutions¹⁹¹ regulates the types of indications, duration and manner of and procedures for referral to medical rehabilitation. The 2016 amendments to the Rulebook introduced rehabilitation of persons with psychological disorders in specialised rehabilitation institutions and extended the length of treatment for some categories of patients.

The Republican Health Insurance Fund (hereinafter: RHIF) covers between 60 and 100 percent of the costs of the medical-technical aids and the procurement procedure and requirements are laid down in the Rulebook on Medical-Technical Aids Covered by Mandatory Health Insurance.¹⁹² The Rulebook provides for leg

187 “Occasional Foster Parent – Fall-back for Parents of Children with Disabilities,” *RTS*, 2 June 2016, available in Serbian at <http://www.rts.rs/page/stories/sr/story/125/drustvo/2338388/povremeni-hranitelj--oslonac-roditeljima-dece-sa-smetnjama-u-razvoju.html>.

188 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.

189 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14 and 126/14 – CC Decision.

190 *Sl. glasnik RS*, 34/03, 64/04 – Serbian CC Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – Serbian CC Decision, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14.

191 *Sl. glasnik RS*, 75/16.

192 *Sl. glasnik RS*, 52/12, 62/12 – corr., 73/12 – corr., 1/13, 7/13 – corr., 112/14, 114/14 – corr. and 18/15.

and arm prostheses, orthoses, orthopaedic shoes, wheel-chairs, walking aids (crutches, walking canes) and other aids (beds, lifts and belts). The amount of co-funding the patient has to cover is laid down in Article 21 of the Rulebook on the Content and Scope of the Right to Health Care under Mandatory Health Insurance and Participation for 2016.¹⁹³ It stands at 10% of the price of the aid, with the exception of acrylic total and subtotal prostheses for persons over 65 years of age, who have to cover 35% of the price.

The RHIF covers the costs of maintaining and servicing specific aids, from the expiry of their warranties to their expiry dates, provided that their functionality had previously been checked. The procedure for the procurement of medical-technical aids at the expense of the RHIF is extremely restrictive and the deadlines for replacing and repairing the aids have been extended. Due to the lack of funds allocated for the aids, the procured medical-technical aids are of substandard quality and usually cannot be used for the full period envisaged under the regulations.

The Health Care Act does not include provisions focusing specifically on persons with disabilities, but covers them by specifying that all citizens are entitled to health care, while respecting the highest possible standards of human rights and values and the right to physical and psychological integrity (Art. 25). Apart from the right to health care, health insurance rights include the right to compensation of wages during sick leave and the right to compensation of health care-related travel expenses.

The Patients' Rights Act¹⁹⁴ governs the health care rights of patients and their protection and other issues of relevance to the patients' rights and duties. The Act guarantees all patients equal rights to quality and continuous health care, in accordance with their state of health, generally accepted professional standards and ethical principles, in their best interests, whilst respecting their personal views (Art. 3). The Act also lays down that all patients are entitled to access quality health care and the right to freely choose and consent to all medical measures without discrimination.

The 2015–2017 Mental Health Protection Strategy¹⁹⁵ was adopted with a view to humanising treatment and improving mental health and the prevention of mental health diseases. Under the Strategy, mental health services shall provide modern, comprehensive community-based treatment, involving a bio-psycho-social approach, which is to be extended as close as possible to the patients' families. Professional organisations and the Protector of Citizens criticised the inconsistent implementation of this approach.¹⁹⁶

193 *Sl. glasnik RS*, 12/16.

194 *Sl. glasnik RS*, 45/13.

195 *Sl. glasnik RS*, 55/05 and 71/05 – corr.

196 See the *Danas* report, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/sta_treba_menjati_u_zakonu_o_zastiti_lica_sa_mentalnim_smetnjama.1118.html?news_id=278631.

5. Gender Equality and Special Protection of Women

5.1. General

Gender equality is of crucial importance both from the human rights and economic perspectives. It entails equal access to resources, as well as the empowerment of both women and men in all spheres of public and private life. The Republic of Serbia has undertaken gender equality obligations by ratifying the key international treaties in this area, such as the 1995 Beijing Declaration and Platform for Action the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁹⁷, the 1953 UN Convention on the Political Rights of Women, the 1966 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), UN Resolution 1325 on Women, Peace and Security, the Council of Europe Convention on preventing and combatting violence against women and domestic violence (the Istanbul Convention), et al.

Gender equality and development of equal opportunity policies is one of the 17 principles laid down in the Constitution. This constitutional provision has been further elaborated in the Gender Equality Act and the Anti-Discrimination Act. Issues of relevance to gender equality are also governed by numerous laws and by-laws on, *inter alia*, health, family, education, labour and employment, etc.

The Gender Equality Act¹⁹⁸ regulates areas of particular importance for ensuring gender equality and explicitly prohibits discrimination on grounds of sex or gender. Under this law, civil proceedings initiated to protect against discrimination on grounds of sex shall be especially urgent and courts must rule on motions for interim protection orders within three days from submission (Art. 47). The valid Act is not aligned with international standards or the subsequently adopted by-laws, does not envisage instruments for its implementation and fails to elaborate thoroughly the establishment and enforcement of a mechanism for the protection of gender equality, which was criticized by the BCHR in the previous reports. “Additional consultations” were quoted as the reason for withdrawing from the parliament pipeline the new Gender Equality Act, which was to have been adopted in an urgent procedure in February 2016.¹⁹⁹ This law was not adopted until the end of the reporting period.

The main framework for the gender equality policy until 2020 is laid out in the National Gender Equality Strategy for the 2016–2020 Period and its 2016–2018

197 *Sl. list SFRJ (International Treaties)*, 11/81.

198 *Sl. glasnik RS*, 104/09.

199 “Why the Gender Equality Act Was Withdrawn,” *Politika*, 18 February 2016, available in Serbian at: <http://www.politika.rs/scc/clanak/349327/Zasto-je-povucen-zakon-o-ravnopravnosti-zena-i-muskaraca>.

Action Plan²⁰⁰, which were adopted in January 2016, and in the new Gender Equality Act, the enactment of which is pending. The 2015 amendments to the Budget System Act²⁰¹ envisage the gradual introduction of gender responsive budgeting, a legal obligation all institutions funded from the state budget, national and local alike, are to fulfil by 2020.

The first Gender Equality Index for Serbia (for 2014)²⁰² was presented in February 2016. It covers a number of main gender equality domains: work, money, knowledge, time, power, health, et al. Serbia scored 40.6 of 100 points on the Index, i.e. 12.3 less than the EU average. Serbia lags behind the EU average the most in the work and money domains and the least in the health domain. On the other hand, it scored better than the EU average in the domain of power, i.e. the participation of women in decision-making and management structures.

Although Serbia has assumed numerous international obligations and incorporated international standards in its legislation, women's and men's contributions are still not valued the same and the division of work and chores into male and female is still widespread and socially acceptable. Men's work is traditionally associated with productive labour, while the women's gender roles and jobs are associated with the non-productive sphere, i.e. household chores and child care. The state needs to ensure full enforcement of anti-discriminatory laws, especially with respect to dismissals of pregnant women and young mothers, sexual harassment, the wage gap and unequal promotion prospects of women.

5.2. Institutional Gender Equality Protection Mechanisms

Serbia established specific institutional mechanisms to advance gender equality, both at the national, provincial and local levels. The Government established a Gender Equality Council, comprising representatives of ministries and external experts, and a Gender Equality Coordination Body, set up after the dissolution of the Gender Equality Directorate. A Gender Equality Improvement Division operates within the Ministry of Labour, Employment and Veteran and Social Affairs.

In the National Assembly, gender equality issues are reviewed by the Committee for Human and Minority Rights and Gender Equality, chaired by MP Meho Omerović; most of its members are women MPs. The Committee held nine sessions in 2016.²⁰³ The Women's Parliamentary Network was established in 2013 as an

200 *Sl. glasnik RS*, 4/16. Available in Serbian at: <http://www.mgsi.gov.rs/lat/dokumenti/nacionalna-strategija-za-rodnu-ravnopravnost-za-period-od-2016-do-2020-godine-sa-akcionim>.

201 *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11, 93/12, 62/13 – corr., 108/13, 142/14. 68/15 – other law and 103/15.

202 The Gender Equality Index is available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2016/02/Izvestaj_Indeks_rodne_ravnopravnosti_2016_EN.pdf.

203 The breakdown of the Committee and press releases on its sessions are available in Serbian at: <http://www.otvoreniparlament.rs/odbori/odbori-aktuelni-saziv/odbor-za-ljudska-i-manjinska-prava-i-ravnopravnost-polova/>.

informal group of all National Assembly women MPs, regardless of their political affiliation, with a view to empowering women and advancing gender equality. Women deputies have been submitting amendments to laws and raising issues of relevance to improving gender equality and developing the equal opportunities policy through this mechanism.

Two independent human rights regulatory authorities, the Protector of Citizens and the Commissioner for the Protection of Equality, are also charged with improving gender equality. Their remits are governed by the Protector of Citizens Act²⁰⁴ and the Anti-Discrimination Act²⁰⁵ respectively and entitle them to issue opinions and assessments of the valid and draft laws, launch legal initiatives, review complaints and issue recommendations to the relevant authorities and institutions to eliminate the identified shortcomings and barriers to the full realisation of the rights by all citizens of the Republic of Serbia.

One of the five deputies of the Protector of Citizens is tasked specifically with gender equality. In 2016, the Protector of Citizens issued an Opinion on the Draft Act on Financial Support for Families with Children,²⁰⁶ and presented his Special Report on Initial and Advanced Training on Preventing, Combatting and Protecting Women from Domestic and Intimate Partner Violence²⁰⁷ in October. The Protector of Citizens performed checks with regard to 14 cases of femicide and established shortcomings in the work of 12 competent services and authorities, and issued 45 systemic recommendations on the elimination of the shortcomings to the Ministry of Internal Affairs, the Ministry of Labour, Employment and Veteran and Social Affairs, the Ministry of Health and the Vojvodina Social Policy Secretariat.²⁰⁸ Of all complaints filed with the Protector of Citizens in 2015, 62/7% regarded violations of the right to gender equality.²⁰⁹

In 2016, the Commissioner for the Protection of Equality reviewed seven sex and gender related complaints. As many as five of them regarded discrimination of women in the fields of labour and job recruitment. In addition, she issued a general recommendation to social work centres in April 2016, urging them not to base the decisions and opinions they issue after overseeing the exercise of parental rights

204 *Sl. glasnik RS*, 79/05 and 54/07.

205 *Sl. glasnik RS*, 22/09.

206 Protector of Citizens Opinion on the Draft Act on Financial Support for Families with Children, *Protector of Citizens*, January 2016, available in Serbian at: [http://www.rodnaravnopravnost.rs/attachments/217_Misljenje%20i%20\(1\).doc](http://www.rodnaravnopravnost.rs/attachments/217_Misljenje%20i%20(1).doc).

207 Special Report on Initial and Advanced Training on Preventing, Combatting and Protecting Women from Domestic and Intimate Partner Violence, *Protector of Citizens*, October 2016, available in Serbian at: <http://www.rodnaravnopravnost.rs/attachments/article/230/Posebna%20izvestaj%20Zastitnika%20gradana%20D0BE%20obukama.pdf>.

208 The Report and recommendations are available in Serbian at: http://www.rodnaravnopravnost.rs/attachments/214_Sistemske%20preporuke.doc.

209 Protector of Citizens 2015 Annual Report, March 2016, available at http://www.ombudsman.org.rs/index.php?option=com_content&view=category&layout=blog&id=11&Itemid=13.

and their assessments of parental competences on parental role stereotypes.²¹⁰ Gender-related complaints accounted for a quarter of the complaints filed with the Commissioner in 2015; 76% of them were filed by women.²¹¹

Special mechanisms for promoting and improving gender equality have been established at the provincial level as well. They comprise, notably, the Vojvodina Provincial Government Gender Equality Council, the Provincial Secretariat for Social Policy, Demography and Gender Equality, the Vojvodina Provincial Assembly Gender Equality Institute, the Provincial Ombudsman, and the Provincial Government Inter-Sectoral Committee charged with coordinating, monitoring and evaluating the effects of measures laid down in the Programme for the Protection of Women from Domestic and Intimate Partner Violence. A Women's Parliamentary Network, an informal group of women deputies of different political parties committed to the achievement of gender equality and full equality of all citizens, has been active in the Vojvodina Provincial Assembly.

The European Charter for Equality of Women and Men in Local Life was adopted in 2006 by the Council of European Municipalities and Regions rallying over 30 European countries. Thirty-eight Serbian cities and municipalities have signed the Charter since 2011; the Prokuplje municipality was the first to sign this Charter. A total of 129 cities and municipalities have formed gender equality mechanisms and 43 local governments have implemented gender equality projects.²¹² Under Article 39 of the Gender Equality Act, all local governments are under the obligation to form local gender equality mechanisms.

5.3. Women's Labour Rights and Social Protection

The Labour Act²¹³ prohibits gender-based discrimination against workers and job seekers. However, the number of complaints filed with the Commissioner for the Protection of Equality every year indicates that women are particularly discriminated against in the labour market. Namely, five of the seven recommendations regarding sex- and gender-related discrimination the Commissioner for the Protection of Equality issued by early November 2016 to the relevant authorities after reviewing the complaints regarded the discrimination of women job applicants due to their marital or partner status. In 2016, the employment rate of men again exceeded that of women, by 14%.²¹⁴

210 The recommendation is available in Serbian at: <http://ravnopravnost.gov.rs/opsta-preporuka-mera-centrima-za-socijalni-rad/>.

211 2015 Annual Report of the Commissioner for the Protection of Equality, March 2016, available at: <http://ravnopravnost.gov.rs/wp-content/uploads/2016/09/Commissioner-for-the-Protection-of-Equality-2015-Regular-Annual-Report-1.pdf>.

212 More on the website of the Standing Conference of Towns and Municipalities: <http://rr.skgo.org/>.

213 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

214 Source: Statistical Office of the Republic of Serbia.

The 2014 amendments to the Labour Act, which are in keeping with International Labor Organization (ILO) Maternity Protection Convention (Convention No.183),²¹⁵ established the legal framework for empowering women at the workplace, reconciling the family and professional obligations of working women and for increasing the protection of working pregnant women. The enforcement of these provisions calls for strengthening the oversight role of the labour inspectors, as well as for more efficient court protection. It also necessitates continuous and committed efforts by all institutions and citizens to eliminate the deeply rooted traditional gender divisions and stereotypes.

Conclusion of fixed-term contracts is the most widespread form of indirect discrimination against women. Employers have been resorting to such contracts when hiring young women. It is impossible to grasp the proportions of this problem because only a handful of women report violations of their rights, due to fear they will lose their jobs, high litigation costs or because they are unfamiliar with their rights. In 2016, the Commissioner for the Protection of Equality rendered decisions on seven complaints, as many as five of which concerned discrimination of women applicants and workers on grounds of their family status.

Under the 2014 amendments to the Health Insurance Act²¹⁶ pregnant women on temporary sick leave or on leave because of pregnancy-related complications are entitled to remuneration equalling their full wages after the first month of leave 65% of their benefits are paid out of the Republican Health Insurance Fund (RHIF) and the rest out of the state budget (Art. 96). Employers are under the obligation to pay the pregnancy leave cash benefits only during the first month of their workers' leave and, thereupon, to submit documentation on the extension of pregnancy leave for the benefits to be paid out of the RHIF. Employers may also continue paying the benefits out of their own accounts and then seek reimbursements from the state.

Under Article 94 of the Labour Act, working women are also entitled to maternity leave, which they have to take maximum 45 and minimum 28 days before the date they are due. Maternity leave may last up to three months from the day they give birth. Article 94a of this law entitles working women to take two-year leave to care for their third and all subsequent children.

Under the Rulebook on the Requirements and Procedure for Exercising the Right of Families with Children to Financial Support,²¹⁷ after the expiry of mater-

215 *Sl. glasnik RS – International Treaties*, 1/10. Under this Convention, its Members shall adopt a number of measures ensuring the protection of the health of working pregnant women and mothers, maternity leave, sick leave and protection against discrimination. The Convention stipulates that cash benefits paid to women on leave “shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”

216 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 126/16 – CC Decision, 106/15 and 10/16 – other law.

217 *Sl. glasnik RS*, 29/02, 80/04, 123/04, 17/06, 107/06, 51/10, 73/10 and 27/11 – CC Decision.

nity leave, working women are entitled to child care leave until the expiry of 12 months and, in some cases, until the expiry of 24 months from the day they went on pregnancy leave.

Social protection is expected to improve once the planned amendments to the Social Protection and Family Acts and the Draft Act on Financial Support for Families with Children are adopted. The Decision on Additional Forms of Protection of Young Mothers in the Territory of the City of Belgrade²¹⁸ envisages cash benefits for unemployed young mothers (in the amount of 35,000 RSD, paid in four instalments) and one-off aid to working young mothers (amounting to 10,000 RSD). Unfortunately, this right may be exercised only by young mothers, whose total monthly income per household member did not exceed 10,000 RSD in the previous quarter (Article 7 of the Decision). One-off aid to unemployed young mothers had initially stood at 50,000 RSD, while working young mothers in Belgrade had been entitled to one-off aid in the amount of 25,000 RSD before the Decision was amended. Benefits paid out to pregnant women and young mothers are the highest in Jagodina (12,000 RSD a month); this city also provides one-off aid for every new-born.²¹⁹

5.4. Gender-Based Violence

Violence against women is the most widespread form of violation of women's human rights. Serbia does not ensure efficient protection of women from domestic violence. Comprehensive consideration of this problem is additionally undermined by the non-existence of nationwide records of various authorities dealing with domestic and intimate partner violence cases. The most recent national data indicate that young people account for nearly half of the victims of violent crimes against life and body and that young women account for 49% of the rape victims.²²⁰ The Serbian Government declared 2016 the Anti-Gender Violence Year, thus committing to zero tolerance for domestic and intimate partner violence. On the other hand, none of the projects aimed at preventing violence against women or supporting victims of violence were granted funding by the Ministry of Justice through its Call for Proposals, within which over three million Euros, raised on the basis of prosecutorial discretion (opportunism), i.e. deferral of criminal prosecution, were disbursed.²²¹

218 *Sl. glasnik RS*, 36/14 and 2/15.

219 "Budget Aid to Young Mothers, Babies, the Sick and for Funerals," *Blic*, 22 January 2016, available in Serbian at: <http://www.blic.rs/vesti/srbija/pomoc-iz-budzeta-porodiljama-bebama-za-sahrane-i-obolele/y102nxl>.

220 Belgrade Centre for Security Policy, see the report available in Serbian at: <http://www.bezbednost.org/Svi-projekti/5945/Izrada-prirucnika-za-sveobuhvatni-odgovor-na.shtml>,

221 *Al Jazeera*, "Serbia: without Support for Women Victims of Violence," 27 May 2016, available in Serbian at: <http://balkans.aljazeera.net/vijesti/srbija-bez-podrske-zenama-zrtvama-nasilja>.

Since the Convention on the Elimination of All Forms of Discrimination against Women does not explicitly mention violence against women, the UN Committee on the Elimination of Discrimination against Women expressly said in its General Recommendation No. 19²²² that the Convention applied also to this form of violation of women's rights. Gender-based violence is defined in Article 10 of the Gender Equality Act as "conduct jeopardising the physical integrity, mental health or tranquillity, or causing material damage to a person, as well as a serious threat of resorting to such conduct, preventing or jeopardising the person's enjoyment of rights and freedoms based on the principle of gender equality".

In October 2013, Serbia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,²²³ the so-called Istanbul Convention, which is the first and only binding document governing violence against women at the European level. The Convention provides for the establishment of an independent mechanism, a group of experts on action against violence against women and domestic violence, which will oversee and monitor the implementation of the Convention by the Parties (the GREVIO Committee).²²⁴ When it ratified the Convention, Serbia reserved the right not to apply the provisions on compensation to the victims, issues of territorial jurisdiction in situations when the perpetrators have habitual residence in the territory of Serbia and jurisdiction over sexual violence cases until it aligns its criminal legislation with the relevant provisions of the Convention. The legislator therefore needs to amend Serbia's Criminal Code, introduce new criminal offences and redefine the existing ones, and establish a more efficient mechanism of assistance to victims of all forms of violence covered by the Convention.

In its Serbia 2016 Report, the European Commission expressed serious concern about the cases of women killed by their partners and called on the full implementation of the Istanbul Convention. It also noted that emergency protection orders were not issued promptly, that the number of shelters was insufficient and that there was no state-run centre for victims of sexual violence or national helpline.²²⁵ On the other hand, NGOs have opened 29 specialised helplines for women and children victims of violence. Only nine of them have been granted support from the local budgets, 150,000 RSD on average; these amounts are far from the funding they need to operate properly.²²⁶

The Domestic Violence Prevention Act²²⁷ was at long last adopted in November 2016. The Act governs the organisation and activities of state authorities

222 See: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

223 *Sl. glasnik RS (International Treaties)*, 12/13.

224 Article 66 of the Istanbul Convention.

225 Serbia 2016 Report, pp. 62–63.

226 NGO Astra press release, available in Serbian at: <http://www.astra.rs/saopstenje-za-javnost-povodom-rezultata-konkursa-ministarstva-pravde-za-dodelu-sredstava-prikupljenih-po-osnovu-od-laganja-krivicnog-gonjenja/>.

227 *Sl. glasnik RS*, 94/16.

aimed at preventing domestic violence, introduces urgent measures, such as removal of the offenders from the families and 48-hour restraining orders, which may be extended another 30 days, as well as disciplinary measures against public officials not acting in accordance with the law.

Although the 2009 amendments to the Criminal Code lay down stricter penalties for domestic violence offenders, domestic violence cases are rarely reported in practice, and even more rarely end up in court. Estimates are that every other woman in Serbia is subjected to some form of violence. Unemployed and economically dependent women, 56% of all Serbia's women according to the 2011 Census, are at greater risk of abuse.

The coordination between the police, prosecutors and social services can be qualified as poor, as reflected in the fact that most women killed in domestic violence incidents over the past few years had previously reported the offenders.²²⁸ In the past decade, 327 women were killed in domestic violence cases, while nearly 19,000 gender-based violence cases were reported to the social work centres. The number of reports of violence against women has been doubling every year; 46% of the cases regarded physical violence.²²⁹

In response to the growing violence against women, the Protector of Citizens issued, in July 2016, 45 systemic recommendations on the elimination of the shortcomings this mechanism identified in the work of the Ministry of Internal Affairs, the Ministry of Labour, Employment and Veteran and Social Affairs, the Ministry of Health and the Vojvodina Secretariat for Social Policy, Demography and Gender Equality.²³⁰ Most of the deficiencies were identified in the work of guardianship authorities, which had in some cases advised the courts to grant custody of the children to the parents who had injured or abused them, and failed to treat children, who had witnessed domestic or intimate partner violence, as victims of abuse. The Protector of Citizens reviewed 46 complaints alleging domestic violence in the reporting period.

At its session in July 2016, the Gender Equality Council decided to form a working group to fight domestic violence.²³¹ Furthermore with a view to empowering victims of domestic and intimate partner violence, the Vojvodina Secretariat for Social Policy, Demography and Gender Equality published a Call for Proposals in October offering grants totalling five million RSD to employers offering full-time one-year jobs to women victims of domestic and intimate partner violence in Vojvodina.

228 "Domestic Violence Reports Preclude Murder," *Danas*, 5 July 2016, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=323010&title=Prijava%20porodi%C4%8Dnog%20nasilja%20spre%C4%8Dava%20ubistvo.

229 "327 WOMEN KILLED in Domestic Violence Casts in Serbia in Past Decade," *Blic*, 13 November 2016, available in Serbian at: <http://www.blic.rs/vesti/hronika/u-srbiji-za-deset-godina-u-porodicnom-nasilju-ubijeno-327-zena/r8kfcmt>.

230 The Protector of Citizens recommendations are available in Serbian at: <http://www.rodnaravnopravnost.rs/attachments/article/229/preporuka%20nasilje%20zbirna.doc>.

231 Available in Serbian at: <http://www.beograd.rs/lat/beoinfo/1725675-odrzana-sednica-save-ta-za-rodnu-ravnopravnost/>.

The crucial gaps in the legislation on domestic violence concern the absence of provisions on stalking, the different definitions of a family member in the Criminal Code and the Family Act, lack of provisions on urgent criminal proceedings in domestic violence cases, absence of a programme for violent males, of an effective mechanism for protecting victims of violence and on legal aid. Furthermore, domestic violence offenders are criminally prosecuted only if they incurred grave physical injuries to their victims. The trials last a long time and the victims are not provided with protection either when they report the offenders or later, during the trials.

5.5. *Participation of Women in Political and Public Life*

Under Article 37(2) of the Gender Equality Act, the gender equality principle shall be applied in all nominations of candidates for jobs in the public authorities and financial and other institutions. The Act on the Election of Assembly Deputies²³² includes an affirmative measure aimed at increasing the number of women in parliament: every third candidate on every election ticket must be a woman and the election tickets must include at least 30% of the candidates of the less represented gender (Art. 40a). According to the 2011 Census results, women account for 52% of the electorate and the number of women in politics is on the rise. Women are, however, seriously underrepresented in positions that have actual impact on decision-making. The quotas prescribed by the law have the greatest impact on the participation of women in politics. In her decision on a complaint about gender-related discrimination by a public authority of 4 July 2016, the Commissioner for the Protection of Equality found that the Senta Municipal Assembly had discriminated women on grounds of gender during the appointment of municipal executive officials.

Five of the 19 ministers in Serbia's new Government are women; one of them is also a Deputy Prime Minister. No woman has ever been a Prime Minister or charged with heading a ministry considered important in Serbia, such as the Ministries of Internal or Foreign Affairs. Only a few women have ever run for president; those that did won scant support. The Serbian Academy of Arts and Sciences, established 129 years ago, has never been headed by a woman.²³³

The representation of women in the army and the defence system has been increasing every year since 2007, when women were allowed to enrol at the Military Academy, and since 2014, when girls were allowed to enrol at the Military High School, under the same condition as men and boys. The Ministry of Defence in 2016 continued its media campaign to attract more women to join the army operational units and enrol in the Military High School and Academy. There are 268

232 *Sl. glasnik* 35/00, 57/03 – Constitutional Court Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

233 See *Tanjug's* report, available in Serbian at: <http://www.tanjug.rs/full-view.aspx?izb=212953>.

female Army officers and 68 female non-commissioned officers performing managerial and executive jobs in the Army, as well as 1,082 professional female soldiers and 5,169 female civilian staff. None of the women officers satisfy the requirements to be promoted to general.²³⁴ Over 10.5% of the Serbian Army troops deployed in peace missions are women.²³⁵

6. Status of the Elderly

6.1. Legal framework

The Republic of Serbia ratified the Revised European Social Charter.²³⁶ Article 23 of the Charter is devoted to the right of elderly persons to social protection and obligates the Contracting Parties to take measures to enable elderly persons to remain full members of society for as long as possible and to choose their life-style freely. The need to establish an effective UN mechanism for the human rights of the elderly was recognised also by the UN Human Rights Council and the UN Secretary General in his report to the General Assembly in 2011.²³⁷

Serbia has also ratified conventions governing rights of social groups, which include the elderly. Under Article 16(2) of the Convention on the Rights of Persons with Disabilities²³⁸ States Parties shall take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, *inter alia*, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognise and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.²³⁹

234 “No Woman Eligible to be General,” *Danas*, 21 January 2016, available in Serbian at: http://www.danas.rs/danasrs/drustvo/nijedna_zena_ne_ispunjiva_uslove_da_bude_generalica.55.html?news_id=314706.

235 “Defence Minister Đorđević: No Dismissals or Pay Cuts in Army of Serbia,” *Kurir*, 19 October 2016, available in Serbian at: <http://www.kurir.rs/vesti/drustvo/ministar-odbrane-dordevic-u-vojsci-srbije-nece-biti-otpustanja-ni-smanjenja-plata-clanak-2499731>.

236 *Sl. glasnik RS (International Treaties)*, 42/09.

237 Nadežda Satarić et al, *Report on Monitoring of Human Rights of Older People in Residential Care in Serbia*, (Amity-Strength of Friendship and the Autonomous Women’s Centre, Belgrade, 2013). Available at: http://europa.rs/images/publikacije/05-Deprived_of_Rights_out_of_Ignorance.pdf, p. 12.

238 *Sl. glasnik RS (International Treaties)*, 42/09.

239 Nadežda Satarić et al, *Report on Monitoring of Human Rights of Older People in Residential Care in Serbia*, (Amity-Strength of Friendship and the Autonomous Women’s Centre, Belgrade, 2013). Available at: http://europa.rs/images/publikacije/05-Deprived_of_Rights_out_of_Ignorance.pdf.

Similarly, Article 11(1e)) of the Convention on the Elimination of All Forms of Discrimination against Women obligates States Parties to take all appropriate measures to ensure that women, including elderly women, have equal access to the social protection system.²⁴⁰

The international legal framework includes also the following three documents focusing exclusively on older persons, the Vienna International Plan of Action on Aging,²⁴¹ United Nations Principles for Older Persons²⁴² and the Political Declaration and Madrid International Plan of Action on Ageing.²⁴³ In spite of the fact that these documents belong to the category of “soft law” and are not binding in character, they nevertheless provide the states with guidance on the treatment of older persons and on the development of their policies on the protection of older persons. These documents do not define older persons. However the Guide on the National Implementation of the Madrid International Plan of Action on Ageing²⁴⁴ (published by the UN Department of Economic and Social Affairs) explains that the standard policy development approach is to assign all those aged 60 or above the status of “older persons”. This definition is, however, oversimplified given the different lifespans in various countries and the specific features of life after 60 in various societies.²⁴⁵

The Vienna International Plan of Action on Aging, adopted at the first World Assembly on Aging in 1982, indicates the problems and needs of older people and opportunities for them to contribute to and share in the benefits of development of their societies. This Plan recalls that the fundamental and inalienable rights enshrined in the Universal Declaration of Human Rights apply fully and undiminishedly to the aging and states that the aging should therefore, as far as possible, be enabled to enjoy in their own families and communities a life of fulfilment, health, security and contentment, appreciated as an integral part of society. The Vienna Plan also underlines the importance of the impact of aging populations on development and vice versa, and recommends the development of an international plan of action that will guarantee the economic and social security of the aging people and provide them with the opportunity to integrate more in society and thus contribute to its development.²⁴⁶

The United Nations Principles for Older Persons focus on the rights of older persons to independence, dignity, protection from abuse and exploitation and care in accordance with each society’s system of cultural values. It also devotes attention to the participation of older people in society, through their work, volunteering and sharing their knowledge and skills with younger generations.²⁴⁷

240 *Sl. list SFRJ (International Treaties)*, 11/81.

241 Adopted by the UN General Assembly in Resolution 37/51.

242 Adopted by the UN General Assembly in Resolution 46/91.

243 Adopted by the UN General Assembly in Resolution 57/167.

244 More at: <http://www.un.org/esa/socdev/ageing/documents/papers/guide.pdf>.

245 *Ibid*, p.11.

246 More at: <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>.

247 More at: <http://www.un.org/documents/ga/res/46/a46r091.htm>.

The Political Declaration and Madrid International Plan of Action on Ageing reaffirms commitment to the Vienna Plan, the UN Principles for Older Persons and the Millennium Goals and envisages the adoption of a joint plan to respond to the demographic changes in the 21st century and the increasing longevity.²⁴⁸ Although elimination of age-based discrimination and promotion of the human rights of older people are mentioned in the Madrid Plan, the states are under no obligation to implement it.²⁴⁹ The Plan focuses on three priority areas: older persons and development; advancing health and well-being into old age; and ensuring enabling and supportive environments.²⁵⁰ Its authors qualify it as a resource for policymaking, suggesting ways for Governments to link questions of ageing to other frameworks for social and economic development and human rights, to enable older people to enjoy rights in accordance with the specific features of their age.²⁵¹ The document recognises the importance of eliminating violence and gender-based discrimination.²⁵²

The Constitution of Serbia does not recognise the elderly as a social group. In Article 21, it guarantees the equality of all citizens and prohibits discrimination on any grounds, including age. The Constitution also mentions the elderly in Article 68, notably their right to “health care ... provided from public revenues”.

Article 4 of the Anti-Discrimination Act²⁵³ lays down that all persons shall be equal, enjoy equal status and equal legal protection, regardless of their personal features. Article 23 of this law prohibits discrimination on grounds of age and guarantees older people the right to decent living conditions and access to public services.

Specific provisions of the Social Protection Act,²⁵⁴ the Pension and Disability Insurance Act,²⁵⁵ the Act on the Prevention of Discrimination against Persons with Disabilities,²⁵⁶ the Health Care Act,²⁵⁷ the Health Insurance Act,²⁵⁸ and the

248 More at: http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf.

249 Maggie Murphy, *International human rights law and older people: Gaps, fragments and loopholes*, Help Age International, 2012. Available at: <http://social.un.org/ageing-working-group/documents/GapsinprotectionofolderpeoplesrightsAugust2012.pdf>.

250 Political Declaration and Madrid International Plan of Action on Ageing.

251 *Ibid.*

252 Brankica Janković et al, *Well-Kept Family Secret – Abuse of Older Persons* (Red Cross of Serbia, Belgrade, 2015), available in Serbian at: http://www.redcross.org.rs/slika_4096_Dobro%20cuvana%20porodicna%20tajna%20e-knjiga.pdf.

253 *Sl. glasnik RS*, 22/09.

254 *Sl. glasnik RS*, 24/11.

255 *Sl. glasnik RS*, 34/03, 64/04 – CC Decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – CC Decision, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14.

256 *Sl. glasnik RS*, 33/06.

257 *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14 and 96/15.

258 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – CC Decision, 119/12, 99/14, 123/14 and 126/14 – CC Decision.

Act on the Protection of Persons with Mental Disorders²⁵⁹ are also relevant to the realisation of the rights of older people.

The 2006–2015 National Strategy on Ageing departs from the Madrid Plan recommendations and the regional strategy for its implementation adopted by the UN Economic Commission for Europe.²⁶⁰ The Action Plan for the implementation of the Strategy has never been adopted, however, wherefore it is impossible to monitor its implementation or the impacts of the measures laid down in the Strategy.

One of the goals of the Anti-Discrimination Strategy is to ensure observance of the constitutional principle prohibiting discrimination of people based on their personal features. Older people are recognised as a group particularly vulnerable to discrimination. The Strategy objectives on the status of older people include the adoption of a law that will comprehensively regulate the rights of the elderly, whilst taking into account the needs of this vulnerable group and the challenges they face in enjoying their rights in the Republic of Serbia.²⁶¹ The Action Plan for the implementation of this Strategy accordingly envisages the adoption of a “corollary law” on older persons and the legal definition of the concept of an older person.²⁶² This activity was to have been completed in the last quarter of 2015.²⁶³

6.2. Poverty and Loneliness of Older People

According to the 2011 Census, 17.40% of Serbia’s population is over 65 years of age.²⁶⁴ Around 145,000 people are over 80 years of age, i.e. account for 3.59% of the total population. The Census registered 430,000 elderly households; over half of them were one-member elderly households.²⁶⁵ However, despite the significant share of this age group in the total population, the rights of older people and their potential to contribute to the development of society are rarely discussed topics. In its publication devoted to persons with disabilities based on the 2011 Census results, the Statistical Office of the Republic of Serbia said that persons with

259 *Sl. glasnik RS*, 45/13.

260 See: <http://www.globalaging.org/elderrights/world/2007/BGSerbia.pdf>.

261 See: http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

262 There is no single definition of the concept of older people either in international or Serbian law.

263 See: http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_engleski.pdf.

264 2013–2018 Strategy for the Prevention of and Protection from Discrimination, point 4.6, available in English at: http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

265 Petrušić et al, Introduction to Ageing and Human Rights of Older Persons (Red Cross of Serbia, 2015). Available in Serbian at: http://www.redcross.org.rs/slika_3989_Uvod%20u%20starenje%20i%20ljudska%20prava%20starijih.pdf.

disabilities, who accounted for eight percent of Serbia's total population, were 67 years old on average.²⁶⁶

The ratio of people over the age of 60 was 24.4% in 2015 and it is estimated that this ratio will reach 32.3% by 2050 which is in line with European projections. (HelpAge International, GAWI, 2015). The Employment and Social Reform Programme (ERSP) by the government of Serbia adopted in June 2016 is an integral part of the Serbian EU accession process and will be a subject of annual reporting to the European Commission. There are explicit objectives, measures and activities targeting older people directly or indirectly in the ERSP. Objective 3 covers the continuing process of de-institutionalisation and development of non-institutional local capacities for assisted living. Objective 5 describes the improvements to social protection at local level through better quality of services, monitoring and evaluation, improving licensing of service providers and supporting non-state providers of social services with a special emphasis on outreach initiatives to identify and cover persons otherwise left out from service provision. Other objectives target reforms of the pension system, preservation and improvement of the minimum standard of living of older people, better health protection for older people and better protection from discrimination.

Analysis of the current capacity of civil society organisations focusing on ageing and older people shows that most of the interviewed organisations cite project funding as their primary way for mobilising resources. Some organisations partially rely on funding from the national budget yet these funds have become sparser in the last several years.²⁶⁷

The Republican Pension and Disability Insurance Fund data show that Serbia has around 1.7 million pensioners. Sixty percent of them receive pensions under 25,000 RSD, while only 10% receive pensions exceeding 40,000 RSD.²⁶⁸ The following data – that the average pension slightly exceeded 23,000 RSD²⁶⁹ and that the minimum consumer basket cost around 35,000 RSD (while the average consumer basket cost around 67,000 RSD²⁷⁰) in 2016 – lead to the devastating conclusion that pensioners in Serbia cannot satisfy even their minimum needs to lead a normal life in dignity.

The pensioners' living standards are further undermined by the fact that many of them are supporting their descendants. Some pensioners are forced to relinquish

266 More is available in Serbian at: <http://webrzs.stat.gov.rs/WebSite/Public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2710>.

267 See more at: http://www.tacso.org/doc/doc_tasiop_newsletter2.pdf.

268 More is available in Serbian at: <http://www.penzin.rs/tribina-siromastvo-i-diskriminacija-penzionera-i-starijih-osoba-u-srbiji/>.

269 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=329059&title=Prose%C4%8Dna+poljoprivredna+penzija+10.480+dinara.

270 Population's Purchasing Power – Consumer Basket, Ministry of Trade, Tourism and Telecommunication, October 2016.

their pensions to their progeny, as corroborated by a survey showing that financial abuse was the most widespread form of abuse of the elderly in Serbia (11.5%). Data showing that 13.5% of the elderly said they did not dispose of their funds freely also give rise to concern.²⁷¹

The Women's Committee of the Serbian Pensioners' Trade Union Association conducted an anonymous poll among Serbian pensioners on the types and degrees of vulnerabilities this social group is exposed to. The poll was conducted after the Serbian Government adopted austerity measures involving the reduction of pensions exceeding 25,000 RSD. Sixty percent of the respondents lived in Belgrade, 10% in Vojvodina and the remaining 30% in other parts of Serbia. Over two-thirds of them were dissatisfied with the quality of life they were leading and as many as 80% said their cultural life was poor.²⁷² Only pensioners with higher education and, thus, higher pensions, could afford active aging.

On the other hand, a pilot study conducted by the Gerontological Society of Serbia shows that social isolation of older people is not necessarily caused by their financial standing as, for instance, only 8,000 pensioners avail themselves of the workshops and programmes offered by the 24 clubs for the elderly in Belgrade, all of which are free of charge.²⁷³ Therefore, only 3% of Belgrade's circa 270,000 pensioners use the services offered by these clubs; the rest mostly spend their time watching TV, and rarely go out to visit their friends.²⁷⁴ The study shows that one out of two older people in Belgrade feel very lonely. Most of them are widows, in good health, who do not need anyone's assistance.²⁷⁵

The status of older people in rural areas is further aggravated by lack of access to healthcare, poor road infrastructure and lack of public transport. Most rural households (73%) covered by the survey conducted by the Red Cross of Serbia and the Commissioner for the Protection of Equality have only one source of income. As many as 61% of them said they had trouble or could hardly make ends meet with their income.²⁷⁶ The rural population singled out lack of money as their greatest problem and said that financial aid from the state would be the most useful form of assistance they could get. Loneliness and social exclusion are widespread problems among the rural population, in view of the fact that over 30% of the rural

271 Brankica Janković et al, *Well-Kept Family Secret – Abuse of Older Persons* (Red Cross of Serbia, Belgrade, 2015), available in Serbian at: http://www.redcross.org.rs/slika_4096_Dobro%20cuvana%20porodicna%20tajna%20e-knjiga.pdf.

272 *Impact of Pension Cuts on Your Lives*, Pensioners' Trade Union Association, 2016, more is available in Serbian at: <http://www.penzin.rs/tribina-siromastvo-i-diskriminacija-penzionera-i-starijih-osoba-u-srbiji/>.

273 See the *Politika* report of 17 July 2016, p. 9.

274 *Ibid.*

275 According to the 2011 Census, 55% of the women over 65 years of age are widowed.

276 Brankica Janković and others, "Position of the Elderly in Rural Areas," survey presented at the Belgrade Media Centre on 26 December 2016. More is available in Serbian at: <http://www.agronews.rs/istrazivanje-los-polozaj-starih-na-selu/>.

households are one-member households and that most of them cannot participate in community life. Many of them are not visited regularly or assisted systematically by health, social or humanitarian organisations.²⁷⁷

6.3. *Elderly in the Social Protection System – Residential Homes*

Under Article 69 of the Constitution, all citizens and families in need of welfare to satisfy their basic subsistence needs shall be entitled to social protection. The principle of the best interests of the beneficiaries laid down in Article 26 of the Social Protection Act²⁷⁸ recognises the specific features of the elderly as it stipulates that social protection services shall be rendered in accordance with the best interests of the beneficiaries, in accordance with, *inter alia*, their life cycle and need for additional assistance in everyday life.²⁷⁹ Article 41 of this law defines adult beneficiaries of rights and social protection services as persons between 26 and 65 years of age and elderly beneficiaries as persons over 65, whose satisfaction of basic needs, safety or productive life are jeopardised due to old age, a disability, illness, or family or other circumstances.

The Government is in charge of establishing a system of social protection institutions extending accommodation services²⁸⁰ to adult and elderly beneficiaries (Art. 63). The determination of residential homes as institutions for both adult (between 26 and 65 years of age) and elderly (over 65) beneficiaries has in practice led to the placement of people of various ages and states of mental health in the same institutions (persons with intellectual disabilities are also placed in residential homes for adult and elderly beneficiaries), despite their diverse needs for care and support.²⁸¹

The issue of efficient supervision of whether the private and state homes for the elderly fulfil the legal requirements²⁸² again made the headlines when a fire broke out in an unregistered private old people's home in Pančevo, leaving three residents dead and eleven injured.²⁸³ The police arrested two people under the

277 *Ibid.*

278 *Sl. glasnik RS*, 24/11.

279 As well as their sex, ethnic and cultural origin, language, religion and living habits.

280 Under the Social Protection Act, social welfare services are divided into five categories: assessment and planning services; daily community services; independent living support services; counselling-therapeutic and social-educational services; and accommodation services.

281 The data were obtained on 1 December 2015 from Amity – Strength of Friendship, which monitored the situation in the residential homes.

282 The norms and criteria that must be fulfilled by both private and state residential institutions for adults and older people are identical and set out in the Social Protection Act and the Rulebook on Detailed Standards and Requirements for Extending Social Protection Services. More in the *2015 Report*, IX, 9.5.

283 “Pančevo: Three Die and 11 Injured in Fire in Old People’s Home,” *B92*, 29 October 2016, available in Serbian at: http://www.b92.net/video/vesti.php?yyyy=2016&mm=10&dd=29&nav_id=1193502.

suspicion of committing and aiding and abetting a crime against general safety. It transpired that the owner of the illegal home in Pančevo had twice been prohibited from running such an establishment.²⁸⁴

After the tragedy, the Ministry of Labour, Employment and Social and Veteran Affairs said that its inspectors enhanced supervision of old people's homes in the past two years and shut down 56 unlicensed private old people's homes not fulfilling the legal requirements. Most of them were shut down because they did not have doctors on staff, round-the-clock health care or controlled access to medications.²⁸⁵ In July 2016, the social protection inspectors shut down nine private old people's homes. The fact that many of the residents of these institutions had been placed in the homes against their will or their heirs usurped their property gives rise to particular concern. The status of the residents of these homes, which in most cases provide them with just occasional medical care, if any, is further aggravated by the fact that some of them suffer from dementia and are unable to state their will.²⁸⁶

In view of the fact that the social protection inspectorate comprises merely nine inspectors covering all the social protection institutions in Serbia, it may be concluded that the continuous and efficient checks of state and private old people's homes are almost impossible. A survey conducted by the *Nezavisnost* Pensioners' Trade Union indicates that one percent of all pensioners in Serbia live in old people's homes.²⁸⁷

7. Migrants, refugees and asylum seekers – Migrant Crisis and Its Effect on Serbia

7.1. *Asylum Procedure*

Access to the asylum procedure is governed by Articles 22 and 23 of the Asylum Act,²⁸⁸ under which aliens may either orally or in writing express the intention to seek asylum to authorised police officers at Serbia's borders or within its territory (Art. 22(1)), on which occasion they shall be issued certificates of intent

284 "Fire in Unregistered Old People's Home in Pančevo Leaves Three Dead and 12 Injured," *RTS online*, 29 October 2016, available in Serbian at: <http://www.rts.rs/page/stories/ci/story/134/hronika/2507097/stravicna-pozar-u-pancevu-stradale-tri-osobe.html>.

285 "Woman from Pančevo Twice Prohibited from Running Old People's Home," *Tanjug*, 29 October 2016, available in Serbian at: <http://www.tanjug.rs/full-view.aspx?izb=280111>.

286 "Nine Old People's Homes Shut Down," *Novosti online*, 6 July 2016, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:613651-Zatvoreno-devet-domova-za-stare>.

287 *Politika*, 17 July 2016, p. 9.

288 *Sl. glasnik RS*, 109/07.

to seek asylum (Art. 23(1))²⁸⁹ instructing them to report to the Asylum Centre designated in their certificates within the following 72 hours (Art. 22(2)). Authorised police officers also take the aliens' personal and biometric data and enter them into two MIA electronic databases – OKS²⁹⁰ and *Afis*.²⁹¹ This practice, although not envisaged by the Asylum Act, was introduced because many aliens did not have travel or other personal documents wherefore the photographs and fingerprints entered into *Afis* are the only reliable way of establishing and checking their identity.

Given the circumstances in Serbia, characterised by a large influx of aliens, most of whom have no intention of staying in Serbia and are endeavouring to travel on to their desired countries of destination, and the fact that certificates of intent to seek asylum are issued without adequate profiling, the police officers have not been conducting assessments of the aliens' real intentions – whether or not they wanted to remain in Serbia. Nor does the law lay down grounds for such profiling. Thus, the police officers in 2016 frequently issued to aliens, who did want to stay in Serbia, certificates referring them to Reception Centres rather than Asylum Centres. In 2016, the Asylum Office performed its official duties only in Asylum Centres, wherefore aliens referred to e.g. the Preševo Reception Centre did not have the opportunity to apply for asylum in that Centre and thus did not have access to the asylum procedure in it.

The work of the Aliens Shelter in 2016 is a good practice example of facilitating access to the asylum procedure. BCHR's lawyers had unimpeded access to all aliens, whose origin indicated they were in need of international protection. In 2016, 43 aliens in the Aliens Shelter expressed the intention to seek asylum. In the same period, the Asylum Office issued 12 rulings restricting the movement of aliens and referring them to the Aliens Shelter in order to ensure unimpeded implementation of the asylum procedure (Art. 51, Asylum Act).²⁹²

289 Under Article 5 of the Rulebook on the Design and Content of Asylum Applications and Documents Issued to Asylum Seekers and Persons Granted Asylum or Temporary Protection, three copies of the certificate shall be issued; one copy shall be retained by the police administration in which the alien expressed the intention to seek asylum, one copy shall be forwarded to the Asylum Office and one copy shall be given to the alien.

290 OKS stands for Specific Category of Aliens and denotes a database on aliens in Serbia, in which all legal actions the MIA has undertaken with respect to them are entered.

291 *Afis* is an MIA database into which data on perpetrators of crimes and misdemeanours in the territory of the Republic of Serbia are entered and which the MIA uses also to register asylum seekers. The checking of their personal data in this database is much more reliable than checking them in the OKS. Apart from the aliens' personal data, their photographs and biometric data, which cannot be forged, are also entered into the *Afis*.

292 Under Article 51 of the Asylum Act, the movement of asylum seekers may be restricted pursuant to an Asylum Office ruling if so necessary to: establish their identity; ensure their presence during the asylum procedure where there are reasonable grounds for suspicion that they applied for asylum to avoid deportation or in case other relevant facts on which the asylum applications are based cannot be ascertained in their absence; or if so necessary to protect national security and public order pursuant to the law.

The Serbian authorities continued the practice of penalising *prima facie* refugees for illegally entering or staying in Serbia although the Asylum Act lays down the principle of impunity of asylum seekers for such transgressions.²⁹³ The drastic cut in the number of penalised aliens in the first ten months of the year over 2015 (2,144 until November 2016 as opposed to 10,250 in the first six months of 2015) can also be ascribed to the fact that a much greater number of migrants entered Serbia while the so-called Western Balkan route was open.

The Asylum Office in 2016 issued the greatest number of positive decisions on asylum applications since the Asylum Act came into force in 2008. It corroborated many of its decisions by referring to the reports of the relevant international organisations and information about the applicants' countries of origin in the reasonings, wherefore it may be concluded that the quality of the first-instance decisions improved in the reporting period. There were, however, cases in which the Asylum Office did not pay much attention to information about the situation in the applicants' countries of origin or the UNHCR's views. Furthermore, it continued dismissing asylum applications because the applicants had passed through countries designated as safe third countries in the Government's 2009 Decision²⁹⁴ on their way to Serbia, disregarding the way in which those countries enforced their regulations in the field of refugee law.

Appeals of Asylum Office decisions are reviewed by the nine-member Asylum Commission appointed by the Serbian Government. The MIA performs the administrative duties of the Commission. The terms in office of the Asylum Commission members expired on 16 September 2016 but the Serbian Government failed to appoint the new members by the end of the year. Thus, the second-instance asylum authority was not operational until the end of the year and appeals of Asylum Office decisions had merely suspensive effect (the enforcement of the first-instance decisions was suspended).

7.2. Migrant Crisis and Its Effects on Serbia

Apart from being a source of emigres itself, the Republic of Serbia has also been experiencing the increase in the number of immigrants that other Central and East European countries had gone through as they approached EU membership. On the other hand, Serbia is surrounded by EU member states and is often described as merely a transit country for migrants heading towards EU states. The mixed migration in the past few years and the large number of migrants passing through Serbia,

293 Under Article 8 of the Asylum Act, asylum seekers shall not be held liable for illegally entering or staying in the Republic of Serbia, provided they apply for asylum without delay and give a reasonable explanation why they entered or stayed in Serbia illegally.

294 Decision on Safe Countries of Origin and Safe Third Countries, *Sl. glasnik RS*, 67/09.

who have been staying in it for shorter or increasingly longer periods of time, have turned Serbia from a mostly transit country into a country of temporary destination.

The abolition of the “open border” policy, which characterised all of 2015 and the first quarter of 2016, greatly affected the asylum and migration system in Serbia. The state’s treatment of migrants in 2016 was primarily influenced by the policies of the neighbouring countries and decisions taken at the EU level. The March 2016 agreement between EU and Turkey, the so-called EU-Turkey Statement²⁹⁵, was aimed at reducing the influx of refugees and migrants to the EU and consequently led to stepped-up control of the EU’s external borders and the “closure” of the Western Balkan route. The effects of this predominantly political agreement were reflected in the drastic fall of the number of migrants entering Serbia, measured in thousands before the agreement was signed. Under the amendments to the Hungarian State Border and Asylum Acts, which came into force on 5 July 2016, the Hungarian police are entitled to automatically push back all persons apprehended without valid documents and visas within eight kilometres of its borders with Serbia and Croatia, without providing them with the possibility of seeking asylum in that state. As of September, Hungary gradually limited the number of aliens in the so-called transit zones on the border with Serbia, who could access its asylum procedure every day.²⁹⁶ The two transit zones established near the Horgoš and Kelebija border crossings were the only places at which refugees and migrants could lawfully enter Hungarian territory and access its asylum procedure.

In order to introduce order in the vicinity of the transit zones and prevent the plight of hundreds of people in the makeshift camps while they waited to enter Hungary, the refugees and migrants in Serbia started drawing up waiting lists of persons who wished to enter Hungary and forwarding them to the Hungarian border police in April 2016.

This informal system of compiling and exchanging lists functioned in the ensuing months in the following manner: the refugees and migrants put their names on the lists when they arrived at Asylum or Reception Camps and forwarded these lists to their representatives at the border with Hungary. The Hungarian border police drew up new lists on the basis of these lists, making sure that vulnerable groups, primarily families with children and unaccompanied children, were given priority.

In September 2016, the Serbian Government Working Group on Mixed Migration Flows²⁹⁷ adopted the Response Plan in Case of Increased Inflow of Mi-

295 See “EU – Turkey Statement: Questions and Answers“, Brussels, 19 March 2016, available at http://europa.eu/rapid/press-release_MEMO-16-963_en.htm.

296 Hungary cut the number of people it allowed to enter a transit zone from the initial 100, to 50, to a mere 30 people in mid-2016.

297 The Working Group was established in 2015 and comprises the Minister of Labour, Employment and Veteran and Social Affairs, the Minister of Internal Affairs, the Minister of Health, the Minister of Defence, the Minister without Portfolio charged with EU accession and the Refugee Commissioner. The Decision on the establishment of the Working Group is available in Serbian

grants to the Republic of Serbia in the October 2016 – March 2017 Period, the implementation of which primarily relied on foreign donations. The Plan envisaged the expansion of the accommodation capacities for migrants in Serbia, extension of health care and provision of access to the asylum procedure to aliens who wanted to apply for asylum. The Plan was based on several presumptions: that the uncontrolled transit of refugees and migrants via Western Balkan countries had been halted, that the number of migrants illegally entering Serbia would drop considerably, that the number of refugees and migrants entering and leaving Serbia on a daily basis would not exceed 30, and that most refugees and migrants would not perceive Serbia as a country of asylum.

The authors of the Response Plan, however, neglected the following fact: that many more migrants were entering Serbia than leaving it in 2016 (UNHCR reports showed that the average daily influx of refugees and migrants stood at 200 in July and August and 300 in September). The Plan did not specify the legal status of aliens illegally present in Serbia, who do not want to seek asylum but are in need of international protection because they come from countries where their liberty and security are at risk.

7.3. *Preliminary Drafts of the Asylum and Temporary Protection and Aliens Acts*

The EU accession process has been Serbia's strategic priority since 2000. Talks on Chapter 24 – Liberty, security and justice, which includes migration and asylum, were opened in July 2016 within Serbia's efforts to align its law with the EU *acquis*. Under the Chapter 24 Action Plan, Serbia is to adopt new laws on asylum and aliens, which are to comply as much as possible with the *acquis* considering Serbia is a candidate country.

The Ministry of Internal Affairs and the Commissariat for Refugees and Migration in 2016 intensively worked on the draft law on asylum and temporary protection within an EU-funded twinning project. This law is to ensure compliance of the Serbian legal framework with EU regulations in this field. The Preliminary Draft was presented at public debates held throughout Serbia. The MIA also drafted a new Aliens Act²⁹⁸.

The Preliminary Draft of the Asylum and Temporary Protection Act defines specific concepts more precisely than the valid one, including the reasons for and acts and perpetrators of persecution, as well the procedure for assessing the facts and circumstances, the safe countries of origin, safe third countries and asylum

at: <http://slg.bazapropisa.net/54-20-05-2015/29541-odluka-o-obrazovanju-radne-grupe-za-re-savanje-problema-mesovitih-migracionih-tokova.html>.

298 The working versions of the Asylum and Temporary Protection Act and the Aliens Act are available in Serbian at www.mup.gov.rs.

countries. The different definition of safe third countries (which shall be identified as such on a case to case basis and stipulate the existence of a link between the asylum seeker and the country at issue) primarily relies on the existence of access to an efficient asylum procedure and effective international protection in the specific country. It should thus preclude automatic dismissal of applications because the asylum seekers had passed through safe third countries before entering Serbia, as has been the case so far. Furthermore, under the Preliminary Draft, the Republic of Serbia shall be under the obligation to review the asylum applications in the event the safe third countries refuse to let the asylum seekers enter their territory.

The Preliminary Draft economises by merging specific asylum procedure actions but it also significantly extends the deadlines within which the first-instance decisions on the applications must be rendered.²⁹⁹ It governs more thoroughly the border procedure and deprivation of liberty pending the completion of the asylum procedure, but it is still vague on specific issues. For instance, it does not specify whether or not appeals by aliens held in transit areas have suspensive effect. The *ratio legis* of devoting so much attention to the border procedure and restriction of movement of asylum seekers and the implications these provisions will have in practice remain unclear.

The Preliminary Draft of the Asylum and Temporary Protection Act aims at eliminating the present shortcomings regarding the realisation of the right to residence of successful asylum seekers as it lays down that the rulings granting them asylum shall specify that they thereby acquire the right to residence in Serbia, which they shall prove by producing their asylum seeker IDs. The Preliminary Draft, however, does not specify what kind of residence the asylum seekers shall be granted or for how long. This will require the alignment of the Aliens Act and the regulations governing asylum, notably, the Aliens Act will need to lay down that persons granted asylum shall acquire the right to temporary residence of specific duration. Despite the intensive work on the draft laws on asylum and aliens, neither law was adopted by the end of the 2016.

7.4. Statistics

Most refugees still do not perceive Serbia as a country of asylum, but rather as a country of transit to states with functional asylum systems, including social and cultural integration programmes. This fact affected Serbia's policy on the migrants as well. A very small number of people came to Serbia intending to seek asylum in it since the Asylum Act came into force in 2008. Most of the asylum seekers were already in Serbia on other grounds at the time the risk of persecution in their countries of origin appeared (*sur place* refugees).³⁰⁰

299 The decisions must be rendered within three months and the deadline may be extended another three months.

300 For instance, a number of Libyan nationals, had already been working, studying and/or had formed a family in Serbia.

Most asylum seekers had not planned on seeking international protection in Serbia when they were fleeing their countries of origin, but in other countries.³⁰¹ The major change in the neighbouring countries' policies on migrants in late 2015 and early 2016 prompted more and more people to decide to seek asylum in Serbia because they were unable to leave Serbia³⁰² or could put themselves at great risk if they did.³⁰³ Aliens who did seek asylum usually filed their applications after having spent a few weeks or a few months in Serbia.³⁰⁴

On the other hand, the Serbian asylum procedure still cannot be described as efficient, although the largest number of people – 42 – were granted international protection in Serbia in 2016 since the Asylum Act entered into force. Many asylum applications were still dismissed by the first-instance authority (the Asylum Office) merely because the applicants had passed through countries qualified as safe in the Serbian Government 2009 Decision. Administrative and judicial appeals filed with the second-instance authority (the Asylum Commission) and the Administrative Court still cannot be described as effective legal remedies.

From 1 January to 31 December 2016. A total of 12,821 aliens expressed the intention to seek asylum and/or were registered as asylum seekers in Serbia,³⁰⁵ Out of this number 9,128 were men and 3,693 were women; 5,390 of them were minors, 177 of whom unaccompanied. Most of the unaccompanied minors were nationals of Afghanistan (119), Syria (24) and Pakistan (16). This number is much less than in 2015, when as many as 577,995 aliens expressed the intention to seek asylum, or in 2014, when such an intention was expressed by 16,940 aliens. The Serbian authorities issued 94,756 certificates of entry into the Republic of Serbia (the so-called

301 Mostly Germany, Austria, the Scandinavian and Benelux countries, et al.

302 In its July 2016 Report on the Visit to Informal Venues in Belgrade at which Refugees and Migrants Have Been Rallying, the NPM quoted reports by a group of refugees from Afghanistan and Pakistan (including children) who had tried to enter Hungary illegally. They claimed that as soon as they went through the fence, the Hungarian border police apprehended them and applied force against them, resorting to rubber truncheons, tear gas and service dogs to push them back to Serbia. The Report is available at: <http://www.npm.lis.rs/attachments/article/195/Report%20Belgrade%20Park.pdf>. The NPM published the same allegations regarding the practice of the Hungarian border authorities in its Report on the Visit to the Subotica Reception Centre, the Horgoš and Kelebija Border Crossings and the Home for Children with Disabilities Kolevka – Subotica“, available at: <http://www.npm.lis.rs/attachments/article/193/Report%20Subotica%20Horgos%20Kelebija%20Kolevka.pdf>.

303 E.g. with the help of organised crime groups involved in smuggling or by attempting to circumvent the procedures at the Hungarian border. More in “Hungary Steps up Control, Pushes Migrants back behind the Fence,” *N1 info*, 6 July 2016, available in Serbian at: <http://rs.n1info.com/a174583/Svet/Region/Madjarska-pojacala-kontrolu-vraca-migrante-iza-ograde.html>.

304 Like the hundreds of people who spent up to several months on Belgrade streets, in abandoned barracks or the border area with Hungary. More in “Migrants to be Covered by Asylum System, Question is How,” *N1 info*, 23 November 2016, available in Serbian at: <http://rs.n1info.com/a209990/Vesti/Vesti/Migrante-ukljuciti-u-azilantski-sistem.html>.

305 Aliens who express the intention to seek asylum in Serbia are registered by the authorised MIA officers (Articles 22 and 23, Asylum Act).

transit certificates) to migrants in the first three months of the year,³⁰⁶ but halted this form of registration in March 2016.

The Asylum Office registered 830 aliens in 2016; 574 of them applied for asylum and 160 were interviewed. The Office upheld 42 and dismissed 40 applications on the merits, and dismissed another 53 applications regarding 65 aliens. It discontinued the review of 268 applications (regarding 484 applicants) because the asylum seekers had in the meantime left Serbia or their temporary places of residence, including Asylum Centres. The Asylum Office granted asylum to the applicants of 19 applications and subsidiary protection to the applicants of 23 of the 42 applications it upheld in 2016. Overall, the Asylum Office granted asylum to 41 people and subsidiary protection to 49 people from 2008, when the Asylum Act came into force, to the end of 2016. A total of 6,505 aliens were accommodated in Serbia's Asylum Centres in 2016; 5,491 of them left them of their own accord.

7.5. Accommodation of the Refugees and Migrants

The number of refugees and asylum seekers staying at the Asylum Centres constantly grew after the "closure" of the Western Balkan route, especially in the summer of 2016, which resulted in severe overcrowding of these facilities. The quality of accommodation and compliance with legally prescribed regulations varied among the Asylum Centres, above all due to lack of coordination at the national level and the sizes of the Centres. The Centres' admission policy changed during the year and, in periods of greater influx of migrants, they also took in aliens without certificates of intent to seek asylum although these Centres are primarily designated for the accommodation of asylum seekers.

Reception and Transit Centres were successively opened along Serbia's borders with Croatia, Hungary, the Former Yugoslav Republic of Macedonia and Bulgaria. Some of the Centres operated under the jurisdiction of the CRM, others under the jurisdiction of the Ministry of Labour, Employment and Veteran and Social Affairs. Reception Centres were opened in Preševo, Miratovac and Bujanovac, near the border with FYROM, in Bosilegrad³⁰⁷, Dimitrovgrad and Pirot³⁰⁸, near the bor-

306 The certificates were issued pursuant to the Decision on the Issuance of Certificates of Entry into the Territory of the Republic of Serbia to Migrants Coming from Countries Where Their Lives are in Danger (*Sl. glasnik RS*, 81/2015), available in Serbian at <http://www.slglasnik.info/sr/81-24-09-2015a/30724-odluka-o-izdavanju-potvrde-o-ulasku-na-teritoriju-republike-srbije-za-migrante-koji-dolaze-iz-zemalja-u-kojima-su-njihovi-zivoti-u-opasnosti.html>.

307 The first refugees were referred to the Bosilegrad Centre, under the jurisdiction of the CRM, in mid-December 2016, although the reconstruction of the old army barracks and hospital where they are accommodated and registered was completed in April 2016. This Reception Centre can take in up to 50 people.

308 The Reception Centre was opened on 18 December 2016 and comprises the main building and two auxiliary buildings, each with four smaller rooms. The main building houses the administrative offices, cafeteria and two large dormitories, which can accommodate up to 40 people,

der with Bulgaria, in Sombor,³⁰⁹ Šid, Principovac and Adaševci, at the border with Croatia, and in Subotica and Kanjiža, at the border with Hungary.

The Miratovac and Kanjiža Reception Centres were closed by the end of 2016, as the refugees and migrants changed route, with more of them coming from Bulgaria. The Serbian authorities said they were planning on opening Reception Centres in Kikinda, Negotin and Zaječar. Eleven centres for the reception of migrants were operational at the end of 2016. According to the CRM, these centres can take in over 4,000 people altogether.

7.6. Integration of Aliens Granted International Protection in Serbia's Social, Economic and Cultural Life

Forty-three people were granted international protection in Serbia in 2016, bringing the total to 90 since the Asylum Act came into force. The Government of Serbia identified the following vulnerable groups of the population at greater risk of social exclusion and poverty in its strategic documents and policies: refugees and internally displaced persons, persons with disabilities, children, young people, women, older people, Roma, uneducated people, the unemployed and the rural population. Refugees in Serbia have the same rights as Serbian nationals, at least formally: to work, to acquire an education, to access health care and social services and to be safe and secure in the territory of the Republic of Serbia. The rights of aliens granted international protection are guaranteed under the 1951 Convention relating to the Status of Refugees and Serbian law.

The following rights of asylum seekers and aliens granted international protection are governed by Chapter VI (Arts. 22–27) of the Asylum Act: the rights to residence, accommodation, basic living conditions, health care, education, welfare, and other rights equal to those of aliens with permanent residence in the Republic of Serbia, as well as rights equal to those of Serbia's nationals.

Although the Aliens Act does not generally apply to aliens who applied for or were granted asylum in the Republic of Serbia, its provisions apply to the reunification of aliens granted asylum or subsidiary protection and their families. Aliens granted asylum in the Republic of Serbia formally have the same rights as aliens with permanent residence in Serbia with respect to employment and work-related rights, entrepreneurship, the right to permanent residence and freedom of movement, the

and two smaller dormitories, which can accommodate up to 12 people. A total of 180 people can be accommodated in the auxiliary buildings. Each building has a shared toilet/bathroom.

309 The new Reception Centre in Subotica, under the jurisdiction of the CRM, was opened on 5 November 2016 in the former army barracks. Its renovation had been funded by the German Ministry for Economic Cooperation and Development through the humanitarian organisation *Help*. Mostly families with children are accommodated in this Centre, which can take in up to 120 people.

right to movable and immovable property and the right to association, wherefore the Article 10 of the Aliens Act applies to them with regard to these rights.

Under Articles 10–16 of the Migration Management Act,³¹⁰ the CRM is tasked with the integration of aliens granted asylum in Serbia. This law specifies that the Commissariat shall be charged with the accommodation and integration of aliens granted asylum or subsidiary protection. The Commissariat shall perform duties regarding the identification, proposal and implementation of measures for the integration of persons granted asylum pursuant to the Asylum Act. The manner of integration, i.e. involvement in Serbia's social, cultural and economic life of persons granted asylum shall be regulated by the Government, on the proposal of the Commissariat.

Pursuant to Article 16 of the Migration Management Act³¹¹ and Article 46 of the Asylum Act, the Serbian Government at long last adopted the Decree on the Integration of Aliens Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia on 24 December 2016. It may be concluded that substantial headway was made in the field of integration in 2016 in terms of norms, but that the relevant institutions did not coordinate amongst themselves and that systemic regulation and coordination will be the key challenge in 2017.

The results of a public opinion survey, conducted on a sample of 1,004 respondents in March 2016, showed that Serbia's citizens empathised with the migrants, had nothing against them being in Serbia and supported the state's activities addressing their plight. Slightly over 73% of the respondents cited war, insecurity and fear of persecution as the main reasons why these people have been leaving their homes, a substantial increase over 2015, when 47.9% of Serbia's citizens were aware of the real reasons for their flight. Most of the respondents (67%) qualified these reasons as justified, while only a few percent thought the migrants should not have left their war-torn countries. In response to the question whether the migrants should stay in Serbia, 52% of the respondents said they would have nothing against it; most of those who said "no" said that Serbia was a vulnerable country as well and could not take them in. Slightly less than 60% of the respondents would have nothing against migrants moving to their neighbourhood, while 54% said they supported the activities the state was implementing vis-à-vis the refugees and migrants.³¹²

310 *Sl. glasnik RS*, 107/12.

311 *Sl. glasnik RS*, 107/12.

312 The TNS Medium Gallup survey commissioned by UNDP, is available at: http://www.rs.undp.org/content/serbia/sr/home/library/crisis_prevention_and_recovery/stavovi-prema-izbeglikoj-i-migrantskoj-krizi-u-srbiji.html.

Appendix I

The Most Important Human Rights Treaties Binding on Serbia

- Act Amending the Act on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05.
- Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature and committed through computer systems, *Sl. glasnik RS*, 19/09.
- Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows, *Sl. glasnik RS (Međunarodni ugovori)*, 98/08.
- Additional Protocol to the Criminal Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorisation, *Sl. glasnik RS*, 103/07.
- Agreement between the Republic of Serbia and the European Community on Visa Facilitation, *Sl. glasnik RS*, 103/07.
- Agreement on Amending and Accessing the Central Europe Free Trade Agreement – CEFTA 2006.
- Civil Law Convention on Corruption, *Sl. glasnik RS*, 102/07.
- CoE Convention on Action against Trafficking in Human Beings, *Sl. glasnik RS*, 19/09.
- CoE Convention on Laundering, Search, Seizure and Confiscation of of the Proceeds from Crime and on the Financing of Terrorism, *Sl. glasnik RS*, 19/09.
- Convention against Discrimination in Education (UNESCO), *Sl. list SFRJ (Dodatak)*, 4/64.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SFRJ (Međunarodni ugovori)*, 9/91.
- Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Convention Concerning Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, *Sl. list SFRJ (Dodatak)*, 13/64.
- Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, *Sl. list SRJ (Međunarodni ugovori)*, 1/92 and *Sl. list SCG*, 11/05.

- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Sl. glasnik RS*, 38/09.
- Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SFRJ (Međunarodni ugovori)*, 11/81.
- Convention on Environmental Impact Assessment in a Transboundary Context, *Sl. glasnik RS*, 102/07.
- Convention on the High Seas, *Sl. list SFRJ (Dodatak)*, 1/86.
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, *Sl. list SRJ (Međunarodni ugovori)*, 7/02 and 18/05.
- Convention on the Nationality of Married Women, *Sl. list FNRJ (Dodatak)*, 7/58.
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, *Sl. list SFRJ (Međunarodni ugovori)*, 50/70.
- Convention on Police Cooperation in South East Europe, *Sl. glasnik RS*, 70/07.
- Convention on the Political Rights of Women, *Sl. list FNRJ (Dodatak)*, 7/54.
- Convention on the Preservation of Intangible Cultural Heritage, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Convention on the Prevention and Punishment of the Crime of the Genocide, *Sl. vesnik Prezidijuma Narodne skupštine FNRJ*, 2/50.
- Convention on the Protection and Promotion of Diversity of Cultural Expression, *Sl. glasnik RS*, 42/09.
- Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, *Sl. glasnik RS (Međunarodni ugovori)*, 12/10.
- Convention Relating to the Status of Refugees, *Sl. list FNRJ (Dodatak)*, 7/60.
- Convention Relating to the Status of Stateless Persons and Final Act of the UN Conference Relating to the Status of Stateless Persons, *Sl. list FNRJ (Dodatak)*, 9/59 and 7/60 and *Sl. list SFRJ (Dodatak)*, 2/64.
- Convention on the Rights of the Child, *Sl. list SFRJ (Međunarodni ugovori)*, 15/90 and *Sl. list SRJ (Međunarodni ugovori)*, 4/96 and 2/97.
- Convention on the Suppression of Trade in Adult Women, *Sl. list FNRJ*, 41/50.
- Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others, *Sl. list FNRJ*, 2/51.
- Criminal Law Convention on Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Charter of Local Self-Government, *Sl. glasnik RS*, 70/07.
- European Convention on the International Validity of Criminal Judgments, with appendices, *Sl. list SCG (Međunarodni ugovori)*, 18/05.

- European Convention on Extradition with additional protocols, *Sl. list SRJ (Međunarodni ugovori)*, 10/01.
- European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes, *Sl. glasnik RS (Međunarodni ugovori)*, 13/10.
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 9/03.
- European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, *Sl. list SRJ (Međunarodni ugovori)*, 1/02.
- European Charter on Regional and Minority Languages, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- European Framework Convention on the Value of Cultural Heritage for Society, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Framework Convention for the Protection of National Minorities, *Sl. list SRJ (Međunarodni ugovori)*, 6/98.
- ILO Convention No. 3 Concerning Maternity Protection, *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 11 Concerning Right of Association (Agriculture), *Sl. novine of the Kingdom of Yugoslavia*, 44-XVI/30.
- ILO Convention No. 14 Concerning Weekly Rest (Industry), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 16 Concerning Medical Examination of Young Persons (Sea), *Sl. novine of the Kingdom of Serbs Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 17 Concerning Workmen’s Compensation (Accidents), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 18 Concerning Workmen’s Compensation (Occupational Diseases), *Sl. novine Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 19 Concerning Equality of Treatment (Accident Compensation), *Sl. novine of the Kingdom of Serbs, Croats and Slovenes*, 95-XXII/27.
- ILO Convention No. 29 Concerning Forced Labour, *Sl. novine of the Kingdom of Yugoslavia*, 297/32.
- ILO Convention No. 45 Concerning Underground Work (Women), *Sl. vesnik of the Presidium of the Assembly of the Federal People’s Republic of Yugoslavia (FNRJ)*, 12/52.

- ILO Convention No. 81 Concerning Labour Inspection, *Sl. list FNRJ (Addendum)*, 5/56.
- ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, *Sl. list FNRJ (Dodatak)*, 8/58.
- ILO Convention No. 89 Concerning Night Work of Women (revised), *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 90 Concerning Night Work of Young Persons in Industry (Revised) *Sl. list FNRJ (Dodatak)*, 12/56.
- ILO Convention No. 91 Concerning Paid Vacations for Seafarers (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 7/67.
- ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, *Sl. list FNRJ (Dodatak)*, 11/58.
- ILO Convention No. 100 Concerning Equal Remuneration, *Sl. list FNRJ (Međunarodni ugovori)*, 11/52.
- ILO Convention No. 103 Concerning Maternity Protection (Revised), *Sl. list FNRJ (Dodatak)*, 9/55.
- ILO Convention No. 105 Concerning Abolition of Forced Labour, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- ILO Convention No. 106 Concerning Weekly Rest (Commerce and Offices), *Sl. list FNRJ (Dodatak)*, 12/58.
- ILO Convention No. 109 Concerning Wages, Hours of Work and Manning (Sea), (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 10/65.
- ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation, *Sl. list FNRJ (Dodatak)*, 3/61.
- ILO Convention No. 121 Concerning Employment Injury Benefits, *Sl. list SFRJ (Međunarodni ugovori)*, 27/70.
- ILO Convention No. 122 Concerning Employment Policy, *Sl. list SFRJ*, 34/71.
- ILO Convention No. 129 Concerning Labour Inspection (Agriculture), *Sl. list SFRJ (Međunarodni ugovori)*, 22/75.
- ILO Convention No. 131 Concerning Minimum Wage Fixing, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 132 Concerning Holidays with Pay Convention (Revised), *Sl. list SFRJ (Međunarodni ugovori)*, 52/73.
- ILO Convention No. 135 Concerning Workers' Representatives, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 138 Concerning Minimum Age for employment, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.

- ILO Convention No. 140 Concerning Paid Educational Leave, *Sl. list SFRJ (Međunarodni ugovori)*, 14/82.
- ILO Convention No. 144 Concerning Tripartite Consultation (International Labour Standards), *Sl. list SCG (Međunarodni ugovori)*, 1/05.
- ILO Convention No. 155 Concerning Occupational Safety and Health, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 156 Concerning Workers with Family Responsibilities, *Sl. list SFRJ (Međunarodni ugovori)*, 7/87.
- ILO Convention No. 161 Concerning Occupational Health Services Convention, *Sl. list SFRJ (Međunarodni ugovori)*, 14/89.
- ILO Convention No. 167 concerning safety and health in construction, *Sl. glasnik RS*, 42/09.
- ILO Convention No. 182 Concerning the Worst Forms of Child Labour, *Sl. list SRJ (Međunarodni ugovori)*, 2/03.
- ILO Convention No. 183 of the Maternity Protection, *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- ILO Convention No. 187 concerning the promotional framework for occupational safety and health, *Sl. glasnik RS*, 42/09.
- International Covenant on Civil and Political Rights, *Sl. list SFRJ*, 7/71.
- International Covenant on Economic, Social and Cultural Rights, *Sl. list SFRJ*, 7/71.
- International Criminal Court Statute, *Sl. list SRJ (Međunarodni ugovori)*, 5/01.
- International Convention on the Elimination of All Forms of Racial Discrimination, *Sl. list SFRJ (Međunarodni ugovori)*, 6/67.
- International Convention on the Suppression and Punishment of the Crime of Apartheid, *Sl. list SRFJ*, 14/75.
- Kyoto Protocol to the UN Framework Convention on Climate Change, *Sl. glasnik RS*, 88/07.
- Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, *Sl. list SRJ (Međunarodni ugovori)*, 13/02.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Sl. list SCG (Međunarodni ugovori)*, 16/05.
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, *Sl. list SRJ (Međunarodni ugovori)*, 7/02.
- Optional Protocol to the UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.
- Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), *Sl. glasnik RS (Međunarodni ugovori)*, 1/10.
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol Amending the Slavery Convention Signed at Geneva 25 September 1926, *Sl. list FNRJ (Dodatak)*, 6/55.

Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. list SCG (Međunarodni ugovori)*, 5/05 and 7/05.

- Protocol No. 15 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, *Sl. glasnik (Međunarodni ugovori)*, 10/15.
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, *Sl. list SRJ (Međunarodni ugovori)*, 6/01.
- Protocol on Relating to the Status of Refugees, *Sl. list SFRJ (Dodatak)*, 15/67.
- Revised European Social Charter, *Sl. glasnik RS*, 42/09.
- Second Optional Protocol to the International Covenant on Civil and Political Rights, *Sl. list SRJ (Međunarodni ugovori)*, 4/01.
- Slavery Convention, *Sl. novine Kraljevine Jugoslavije*, XI–1929, 234.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *Sl. list FNRJ (Dodatak)*, 7/58.
- Third Additional Protocol to the European Convention on Extradition, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention Against Corruption, *Sl. list SCG (Međunarodni ugovori)*, 18/05.
- UN Convention for the Protection of All Persons from Enforced Disappearance, *Sl. glasnik RS (Međunarodni ugovori)*, 1/11.
- UN Convention on the Reduction of Statelessness, *Sl. glasnik RS (Međunarodni ugovori)*, 8/11.
- UN Convention on the Rights of Persons with Disabilities, *Sl. glasnik RS*, 42/09.

Appendix II

Legislation in Serbia Concerning Human Rights and Mentioned in the Report

- Act on Associations, *Sl. glasnik RS*, 51/09 and 99/11 – other law.
- Act on the Basis of the Education System, *Sl. glasnik RS*, 72/09, 52/11 and 55/13.
- Act on the Bases of Ownership and Proprietary Relations, *Sl. list SFRJ*, 6/80 and 36/90, *Sl. list SRJ*, 29/96, and *Sl. glasnik RS*, 115/05 – other law.
- Act on the Basis of the Regulation of the Security Agencies of the Republic of Serbia, *Sl. glasnik RS*, 116/07.
- Act on Churches and Religious Communities, *Sl. glasnik RS*, 36/06.
- Act on Defence, *Sl. glasnik RS*, 116/07, 88/09 – other law and 104/09 – other law.
- Acts on Detectives, *Sl. glasnik RS*, 104/13.
- Act on the Election of Assembly Deputies, *Sl. glasnik RS*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.
- Act on the Election of the President of the Republic, *Sl. glasnik RS*, 111/07 and 104/09 – other law.
- Act on the Employment of Aliens, *Sl. glasnik RS*, 128/14.
- Act on the Enforcement and Security of Claims, *Sl. glasnik RS*, 106/16.
- Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project, *Sl. glasnik RS*, 34/15 and 103/15.
- Act on Financial Support to Families with Children, *Sl. glasnik RS*, 16/02, 115/05 and 107/09.
- Act on Free Access to Information of Public Importance, *Sl. glasnik RS*, 120/04, 54/07, 104/09 and 36/10.
- Act on Health Care of Children, Pregnant Women and New Mothers, *Sl. glasnik RS*, 104/13.
- Act on the Implementation of the Constitution, *Sl. glasnik RS*, 98/06.
- Act on Independent Movement with the Assistance of Guide Dogs, *Sl. glasnik RS*, 38/15.

- Act on Judges, *Sl. glasnik RS*, 116/08, 58/09 – CC Decision, 104/09, 101/10, 8/12 – CC Decision, 121/12, 124/12 – CC Decision, 101/13, 111/14-CC Decision, 117/14, 40/15 – CC Decision, 106/15 and 63/16 – CC Decision.
- Act on the Judicial Academy, *Sl. glasnik RS*, 104/09, 32/14 – CC Decision and 106/15.
- Act on Mediation in Dispute Resolution, *Sl. glasnik RS*, 55/14.
- Act on the Military Security Agency and the Military Intelligence Agency, *Sl. glasnik RS*, 88/09, 55/12 – CC Decision and 17/13.
- Act on Misdemeanours, *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.
- Act on the Organisation of Courts, *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13, 106/15, 40/15, 13/16 and 108/16.
- Act on Political Parties, *Sl. glasnik RS*, 36/09 and 61/15 – CC Decision.
- Act on Prevention of Discrimination against Persons with Disabilities, *Sl. glasnik RS*, 33/06 and 13/16.
- Act on Private Security, *Sl. glasnik RS*, 104/13.
- Act on the Professional Rehabilitation and Employment of Persons with Disabilities, *Sl. glasnik RS*, 36/09 and 32/13.
- Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia, *Sl. glasnik RS*, 41/09.
- Act on the Protection of Participants in Criminal Proceedings, *Sl. glasnik RS*, 85/05.
- Act on the Protection of People with Mental Disorders, *Sl. glasnik RS*, 45/13.
- Act on Protection the Population from Communicable Diseases, *Sl. glasnik RS*, 15/16.
- Act on the Protection of Rights and Freedoms of National Minorities, *Sl. glasnik SRJ* 11/02.
- Act on the Protection of the Right to a Trial within a Reasonable Time, *Sl. glasnik RS*, 40/15.
- Act on Public Prosecutor’s Offices, *Sl. glasnik RS*, 116/08, 104/09, 101/10 and 171/14.
- Act on the Restitution of Property to Churches and Religious Communities, *Sl. glasnik RS*, 46/06.
- Act on a Single Voter Register, *Sl. glasnik RS*, 104/09 and 99/11.
- Act on Special Requirements for the Registration of the Right of Ownership of Illegally Built Facilities, *Sl. glasnik RS*, 25/13 and 145/14.
- Act on the Temporary Regulation of Public Media Service Licence Fee Collection, *Sl. glasnik RS*, 112/15.

- Act on Voluntary Pension Funds and Pension Plans, *Sl. glasnik RS*, 85/05 and 31/11.
- Action Plan for the Implementation of the Personal Data Protection Strategy, *Sl. glasnik RS*, 58/10.
- Action Plan for Implementation Strategy to Reduce Overcrowding in Penitentiaries, *Sl. glasnik RS*, 90/11.
- Administrative Disputes Act, *Sl. glasnik RS*, 111/09.
- Administrative Procedure Act, *Sl. glasnik RS*, 18/16.
- Adult Education Act, *Sl. glasnik RS*, 55/13.
- Air Transportation Act, *Sl. glasnik RS*, 73/10, 57/11, 93/12 and 45/15.
- Aliens Act, *Sl. glasnik RS*, 97/08.
- Anti-Discrimination Act, *Sl. glasnik RS*, 22/09.
- Anti-Corruption Agency Act, *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision and 112/13 – authentic interpretation.
- Advertising Act, *Sl. glasnik RS*, 6/16.
- Asylum Act, *Sl. glasnik RS*, 109/07.
- Bankruptcy Act, *Sl. glasnik RS*, 104/09.
- Budget Act for 2016, *Sl. glasnik RS*, 103/15.
- Budget System Act, *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11, 93/12, 62/13 – corr., 108/13, 142/14, 68/15 – other law and 103/15.
- Business Registers Agency Registration Procedure Act, *Sl. glasnik RS*, 99/11.
- Civil Procedure Act, *Sl. glasnik RS*, 72/11, 49/13 – CC Decision and 74/13 – CC Decision.
- Civil Servants Act, *Sl. glasnik RS*, 79/05, 81/05 – corr., 83/05 – corr., 64/07, 67/07 – corr., 116/08, 104/09 and 99/14.
- Classified Information Act, *Sl. glasnik RS*, 104/09.
- Constitution of the Republic of Serbia, *Sl. glasnik RS*, 83/06.
- Constitutional Court Act, *Sl. glasnik RS*, 109/07, 99/11, 18/13 – CC Decision, 103/15 and 40/15 – other law.
- Constitutional Act for the Implementation of the Constitution. *Sl. glasnik RS*, 98/06.
- Corporate Profit Tax Act, *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14 – other law, 142/14, 91/15 – authentic interpretation and 112/15.
- Criminal Code, *Sl. glasnik RS*, 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13 and 94/16.

- Criminal Procedure Code, *Sl. glasnik RS* 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14.
- Decision of forming Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms, *Sl. glasnik RS*, 140/14.
- Decision on Additional Forms of Protection of Young Mothers in the Territory of the City of Belgrade, *Sl. glasnik RS*, 36/14 and 2/15.
- Decision on the Election of AP Vojvodina Assembly Deputies, *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.
- Decision amending High Judicial Council Rules of Procedure, *Sl. glasnik RS*, 91/16.
- Decree on Designation of Information as Classified, *Sl. glasnik RS*, 8/11.
- Decree on the Funding of Public Media Services from the State Budget in 2016, *Sl. glasnik RS*, 3/16.
- Decree on the National Minorities Budget Fund Disbursement Procedure, *Sl. glasnik RS*, 22/16.
- Decree on the Social Inclusion Measures for Welfare Beneficiaries, *Sl. glasnik RS*, 112/14.
- Domestic Violence Act, *Sl. glasnik RS*, 94/16.
- Education Development Strategy until 2020, *Sl. glasnik RS*, 107/12.
- Education System Act, *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – CC Decision.
- Electronic Communications Act, *Sl. glasnik RS*, 44/10, 60/13 – CC Decision and 62/14.
- Electronic Media Act, *Sl. glasnik RS*, 83/14 and 6/16 – other law.
- Employment and Unemployment Insurance Act, *Sl. glasnik RS*, 36/09, 88/10 and 38/15.
- Enforcement and Security of Claims Act, *Sl. glasnik RS*, 106/15.
- Expropriation Act, *Sl. list SRJ*, 53/95, 16/01 – CC Decision and *Sl. glasnik RS*, 20/09, 55/13 – CC Decision and 106/16 – authentic interpretation.
- Family Act, *Sl. glasnik RS*, 18/05 and 72/11 – other law.
- General Collective Agreement, *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.
- Gender Equality Act, *Sl. glasnik RS*, 104/09.
- Health Care Act, *Sl. glasnik RS*, 107/05, 72/09 – other law, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15 and 106/15.

- Health Insurance Act, *Sl. glasnik RS*, 107/05, 109/05 – corr, 57/11, 110/12 – CC Decision, 119/12, 99/14, 126/14 – CC Decision, 106/15 and 10/16 – other law.
- Higher Education Act, *Sl. glasnik RS*, 76/05, 100/07 – authentic interpretation, 97/08, 44/10, 93/12, 89/13, 99/14, 68/15 – authentic interpretation, 68/15 and 87/16.
- Housing and Maintenance of Residential Buildings Act, *Sl. glasnik RS*, 104/16.
- Instructions on the Treatment of People Brought in or Detained by the Police, *Sl. glasnik RS*, 101/05, 63/09 – CC Decision and 92/11.
- Investments Act, *Sl. glasnik RS*, 89/15.
- Juvenile Justice Act, *Sl. glasnik RS*, 85/05.
- Labour Act, *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.
- Land Transportation Act, *Sl. glasnik RS*, 46/95, 66/01, 61/05, 91/05, 62/06, 31/11 and 68/15 – other laws.
- Languages and Scripts Act, *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.
- Local Elections Act, *Sl. glasnik RS*, 129/07, 34/10 and 54/11.
- Mental Health Protection Strategy, *Sl. glasnik RS*, 8/07.
- Migration Management Act, *Sl. glasnik RS*, 107/12.
- Minority Protection Act, *Sl. glasnik SRJ*, 11/02.
- National Councils of National Minorities Act, *Sl. glasnik RS*, 72/09, 20/14 – CC Decision and 55/14.
- National Employment Action Plan for 2016, *Sl. glasnik RS*, 82/15.
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