Belgrade Centre for Human Rights

HUMAN RIGHTS IN SERBIA

2017

The Belgrade Centre for Human Rights was established by a group of human rights experts and activists in February 1995 as a non-profit, non-governmental organisation. Members and collaborators of the Centre are human rights activists of long standing, lawyers, sociologists, political scientists, journalists and students. The main purpose of the Centre is to study human rights, to disseminate knowledge about them and to educate individuals engaged in this area. It hopes, thereby, to promote the development of democracy and rule of law in Serbia. The most important fields of the work of the Centre are education, publishing, research, reporting on the state of enjoyment of human rights, monitoring of the observance of human rights in Serbia and assistance to applicants to the European Court of Human Rights and international treaty bodies.

Educational efforts of the Belgrade Centre are directed towards professionals who have the crucial role in carrying out the reforms of the country, as well as younger generations. The Centre has organised more than five hundred seminars and roundtables in the country and in the region, established training programs for future lecturers on human rights issues and judges; hosted international conferences and lectures on issues of human rights and democracy.

The Centre has also published more then 120 books. Among them are university level textbooks on human rights and public international law, collections of essays on human rights and humanitarian law, international human rights documents, translations of books of foreign authors, etc. Since 1998 Belgrade Centre for Human Right has been publishing Annual Human Rights Report.

For its achievements in the area of human rights, the Centre was awarded the *Bruno Kreisky* Prize for 2000. The Belgrade Centre is member of the Association of Human Rights Institutes (AHRI).

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LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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Belgrade Centre for Human Rights
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Contents

Abbreviations

2008–2016 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

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

CC Decision – Constitutional Court Decision

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 Protec tion 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 Punishmen

CRTA-GnS – Citizens on Watch

Concluding – Concluding Observations on the initial report of Serbia on the implementation of the CRPD

CSM – Community of Serb majority municipalities

DEVD – Decision on the Election of AP Vojvodina Assembly Deputies

doc. UN – UN document

DS – Democratic Party

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

NCPA – Non-Contentious Procedure Act

NCS Professional – 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
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
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

UNHCR – United Nations High Commissioner for Refugees

VBA – Military Security Agency

Venice Commission – European Commission for Democracy through Law of the Council of Europe

YIHR – Youth 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, by, notably, Ivana Antonijević, Katarina Golubović, Vladica Ilić, Dušan Jovanović, Nikola Kovačević, Bogdan Krasić, Nikolina Milić, Nataša Nikolić, Nevena Nikolić, Lena Petrović, Vesna Petrović, Vida Petrović Škero, Dušan Pokuševski, Ivan Protić, Aleksa Radonjić, Bojan Stojanović, Anja Stefanović, Miloš Stojković, Milana Todorović, Duška Tomanović, Ana Trifunović, Ana Trkulja, Sonja Tošković, Senka Škero and Marko Štambuk.

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 fourth 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

Introduction

This Report on Human Rights in Serbia analyses the Constitution and laws of the Republic of Serbia with respect to the civil and political rights guaranteed by international treaties binding on Serbia, in particular the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols, the Revised European Social Charter (ESC) and standards established by the jurisprudence of the UN Human Rights Committee and the European Court of Human Rights (ECtHR). Where relevant, the Report also reviews Serbia's legislation with respect to standards established by the specific International Labour Organisation (ILO) treaties and other international treaties dealing with specific human rights, such as the UN Convention against Torture, the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Elimination of All Forms of Racial Discrimination. The 2017 Report reviews legislation that was in force in 2017 but also comments laws that were adopted during the reporting period, irrespective of whether they entered into force.

The Report deals with the entire Serbian legislation relevant to each of the rights reviewed, going beyond the actual text of the law to include judicial interpretation where it exists. To evaluate the conformity of the legislation with international standards we are analysing, how one right is formulated in national legislation and to what extent the formulation differs from that contained in the international human rights instruments; whether the right is defined in national legislation and whether its interpretation by the state authorities carries the same meaning and scope as the international human rights instruments; whether the restrictions on rights envisaged by Serbian law are in accordance with the restrictions allowed by international standards; and whether national legislation provides effective legal remedies the protection of a right.

The analyses of the draft regulations are aimed at alerting experts to any shortcomings or inconsistencies in them with a view to rectifying them before they are enacted by the National Assembly.

In addition to the domestic regulations, BCHR also analysed the state authorities' practices in enforcing provisions affecting the exercise of human rights, which was often a greater problem than the very text of the law. BCHR's associates have thus also been regularly monitoring news and information relating to human rights and reports by national and international human rights NGOs and perused informa-

tion and press releases of guild and professional associations. We have also been regularly monitoring reports, press releases and recommendations of 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 and analysing their impact on the practices of the public authorities, since we believe that the independent regulatory authorities have been pursuing the mission they were established to fulfil – to improve the state of human rights in Serbia. A 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.

Articles published by the dailies *Danas, Politika, Kurir, Srpski telegraf, Alo* and *Informer* were used during the preparation of the part of the Report on the freedom of expression. BCHR's associates also perused: articles that appeared in the weeklies *NiN* and *Vreme;* items that appeared on the wires of the *Beta, FoNet* and *Tanjug* news agencies; press releases issued by the Independent Journalists' Association of Serbia (IJAS) and the Journalists' Association of Serbia (JAS); the news published on the portals *Peščanik, Mondo, Cenzolovka, Insajder, Južne vesti, B92* and *Media & Reform Centre* Niš; and, the reports published by *RTS, TV N1, Radio Free Europe* and *Radio 21*.

The laws, which are still in force but were adopted before 2017, 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.

Socio-Political Climate for the Realisation of Human Rights in Serbia in 2017

Summary

1. Serbia's political life in 2017 was characterised by topics that have for years dominated its public discourse and greatly affected its endeavours to join the European Union, notably: the normalisation of relations between Belgrade and Priština, EU accession, definition of the national foreign policy, regional cooperation and, on the domestic plane, presidential elections, the forming of the new Government and reforms that must be implemented in all areas pursuant to the requirements in the adopted national strategies and action plans.

2. Tensions between Belgrade and Priština rose in early 2017, when Alliance for the Future of Kosovo leader Ramush Haradinaj was arrested in France on a Serbian arrest warrant accusing him of war crimes. Tensions were further strained when a train painted in the colours of the Serbian flag and bearing the slogan "Kosovo is Serbia" left Belgrade for Kosovska Mitrovica in January, prompting the Kosovo authorities to deploy special police forces in northern Kosovo to stop it. The Brussels-sponsored dialogue did not resume the entire year; the expert teams had not met sine late 2016.

3. The Belgrade and Priština delegations finally met in January 2018, but they did not hold talks because the Serbian delegation left Brussels after news broke that the leader of the opposition party, Civic Initiative "Freedom, Democracy, Justice", Oliver Ivanović was assassinated. The tragic event corroborated claims that the safety and security of people living in Kosovo were in danger. It remained unclear when and in which format the talks between Belgrade and Priština would continue, as the full normalisation of their relations is an important condition both have to fulfil to make headway in EU accession talks.

4. In mid-2017, Serbian President Aleksandar Vučić initiated an internal dialogue on Kosovo, but failed to explain how it would be organised and who would take part in it. He merely said that he was suggesting a discussion and not offering a solution and that he expected the internal dialogue to lead to a solution both sides would find satisfactory. The invitation to the internal dialogue on Kosovo led to some political tensions, as had been expected. Most of the opposition parties criticised Vučić's proposal and said they would not take part in the dialogue because its purpose was unclear, except that it would serve as an alibi for a decision already taken. They also criticised the absence of a platform for discussion and lack of

information about the content of the negotiations in Brussels and the promises the Serbian delegation made during them.

5. The Working Group Supporting the Management of the Internal Dialogue on Kosovo held its first meeting in October 2017. Several round tables rallying athletes, representatives of social science institutes, law professionals and economic experts were held and other similar events were planned for 2018. Although the outcome and results of the initiative cannot be assessed before the dialogue is completed, the round tables held to date leave the impression that the few concrete solutions the participants put on the table were unrealistic and unfeasible.

6. It also remains unclear to what extent Serbs still living in Kosovo will be involved in the internal dialogue, given that part of the Serb community in Kosovo has blamed Belgrade for causing rifts among the Kosovo Serbs and for openly siding with politicians toeing its line, with utter disregard of what opposition politicians and the man in the street there were saying. They also warned that the safety and security of people in northern Kosovo were in great jeopardy and that criminal structures have practically assumed control over that territory.

7. Cooperation among the countries in the region is another topic relevant to EU accession of both Serbia and other Balkan countries. EU officials have for several years now insisted on this issue and launched the Berlin Process aiming to improve regional cooperation and the bilateral relations between the countries in the region. Serbia's relations with its neighbours, however, remained burdened by a number of outstanding issues: border, succession, minorities, missing persons, confrontation with the past, disintegration processes in some Balkan countries, to name but a few. The year behind us was characterised by ups and downs in regional relations and grave tensions qualified by some international circles as extremely dangerous to fragile regional stability. especially in view of the recent past and the brutality of the wars in the 1990s.

8. The importance the EU attaches to regional stability is undoubtedly one of the reasons why the Serbian authorities, especially Aleksandar Vučić, who is recognised by European circles as the figure whose actions can impact relations in the region, continued enjoying the support of most EU officials in 2017. Most analysts interpreted that support in the context of the EU's specific relations with Serbia. Namely, the parties that assumed power in 2000 after toppling Milošević's regime, which the EU considered its natural allies, were expected to transform Serbia rapidly and efficiently, implement market reforms, strengthen democratic potential and start addressing the Kosovo problem. When this did not materialise, for justifiable or unjustifiable reasons, Europe started perceiving Aleskandar Vučić, who came out as a strong winner of the 2012 parliamentary elections, as its new ally and the politician capable of addressing the challenges Serbia faces.

9. Vučić proved the EU right already the following year, in April 2013, when he signed up to the Brussels Agreement, the first to spell out the principles for the

normalisation of relations between Belgrade and Priština. This Agreement was the condition Serbia had to fulfil to start accession talks with the EU. Simply put, although aware that Vučić's ruling methods were not conducive to the development of democracy in Serbia, EU officials are convinced that there is no other strong political option in Serbia they can rely on and that can secure broad support at home.

10. The capacity of the pro-EU and democratic opposition parties has been extremely weakened for various reasons, not least because of the ruling parties' continuous attacks on them and lies spread publicly about their leaders and activities, the lack of an open public dialogue, and increasingly strong political pressures on the media, independent regulatory authorities and the judiciary. It can also be ascribed to the opposition leaders' inability to iron out their disagreements, put aside their vanities, join forces and finally show they are willing and able to lead the country in the direction they are publicly espousing, notwithstanding the risks and popular discontent such reforms entail.

11. The democratic public often criticised EU representatives in 2017 warning that their unreserved support for Vučić was consolidating his iron-fist rule, that media freedoms were being stifled, that the goals proclaimed in the strategies and action plans were not being fulfilled, especially those in the Chapter 23 and 24 Action Plans, the consistent implementation of which is to ensure the implementation of the requisite reforms in the areas they cover. The appeals appear to have led to some change in EU messages addressed to Serbia, as, in the latter half of 2017, its officials increasingly started mentioning rule of law, judicial reform and media freedoms among the conditions Serbia needed to fulfil. It remains to be seen how the Serbian authorities will respond to these requirements and to what extent the accession talks will be conditioned by their fulfilment.

12. This is particularly important in view of the direction in which the Justice Ministry has taken the constitutional reform to fulfil its Chapter 23 Action Plan obligation. The goal of the reform is to amend the constitutional provisions on the judiciary in order to put in place constitutional guarantees of genuine judicial independence and eliminate all political influence on the judiciary, whilst ensuring full respect for the rule of law. Although the proposed constitutional amendments were not submitted to the Venice Commission for comment by the end of the year, some ruling politicians claimed that the constitutional reform process would be completed in 2018.

13. The greatest doubts in the government's vows that the constitutional reform would preclude the influence of the executive and legislative authorities on the judiciary were sparked by the way in which the Justice Ministry representatives treated the members of professional judicial and prosecutorial associations and civil society activists and experts during the consultations on the constitutional reform. There was no real public debate and the proposed amendments to the constitutional provisions on the judiciary, authored by the Justice Ministry and finally published in late January 2018, confirmed that the government did not genuinely wish to put

in place safeguards of full judicial independence, as corroborated by the criticisms voiced both by the representatives of the judicial authorities and civil society and numerous constitutional law experts and professors.

14. EU accession has been in the public limelight since Serbia was granted the status of candidate country in 2012. That was the case in 2017 as well. The political leaders' daily vows that accession was crucial to Serbia, however, did not appear genuine. This conclusion is corroborated, inter alia, by the slow implementation of the action plans adopted to fulfil the accession requirements. EU officials have consistently reiterated that the fulfilment of the Chapter 23 and 24 requirements was key to the assessment of Serbia's readiness to join the EU but many of the tasks and activities defined in the two Action Plans were not fulfilled by the set deadlines.

15. The ruling coalition thus appeared to lack a clear plan for the future, stoking public apprehension that Serbia will become more and more susceptible to foreign influence and foreign interests. The Government thus needs to urgently Serbia's foreign policy and implement it consistently. That would provide the citizens of Serbia, whose support for joining the EU has been falling, with a clear picture of where the ruling political elite is leading them. This is all the more critical in view of the fact that opposition parties opposing EU membership have won seats in the National Assembly at the 2016 early parliamentary elections.

16. The work of the National Assembly was heavily criticised in 2017, primarily due to the conduct of some deputies and the way in which Assembly Speaker Maja Gojković chaired the sessions. The main impression of the parliament's work in the reporting period is that the deputies did not seriously debate the laws or amendments they were adopting, wasting hours on discussing issues unrelated to the legislative duties of the topmost representative authority in the country, on political self-marketing and on hurling indecent insults at their political opponents. Parliamentary dialogue was drowned out by vehement and unfitting outbursts of some deputies.

17. The opposition deputies were almost as a rule denied floor and often penalised, The Speaker allowed the parliamentary majority to dominate and thus preclude normal democratic parliamentary dialogue, as the December session, at which the deputies were to vote in the 2018 Budget Act, drastically illustrated. The ruling coalition deputies abused the Assembly Rules of Procedure, preventing both the opposition deputies from commenting the draft and the public from hearing assessments of this crucial law directly affecting their lives.

18. The Assembly continued with its practice of adopting laws under an urgent procedure in 2017. Its work was, on occasion, suspended without justified cause. The most dissatisfaction was caused by the Speaker's unprecedented decision to suspend the spring session on the day it started (1 March) until the presidential elections were completed. The Assembly resumed work 48 days later.

19. Presidential elections dominated the public agenda in the first half of 2017. Outgoing President Tomislav Nikolić said in several interviews that he was going to run in the elections but decided against it after the ruling Serbian Progressive Party (SNS) decided to field Aleksandar Vučić as its candidate. Nikolić, however, continued living in the presidential villa and was appointed Chairman of the National Council for Coordination of Cooperation with the Russian Federation and the People's Republic of China, established under a Government decree.

20. Ten other candidates ran against Vučić in the election. He won by a convincing majority. Since he had not resigned from the post of Prime Minister, nearly all analysts said he had a major advantage over the other candidates from the very start of the campaign. Like the prior election campaign, this one, too, was characterised by abuse of public office and public resources for campaigning purposes.

21. The turnout at the polls was very low (54.55%), confirming the findings of analyses of political processes in Serbia, that the citizens were less and less interested in politics and more in more disappointed in political parties. Such a mood contributed to Vučić's expected victory, resulting in the absolute concentration of power in the hands of one man, who continued taking the key political decisions as both Serbian President and SNS leader transforming the system of government in Serbia into a de facto presidential system (much like Slobodan Milošević) and perhaps even downright patrimonialism and clientelism.

22. Spontaneous protests by citizens, mostly organised via social networks, were staged several days after the elections. The protest goals were not precisely defined and its participants expressed their dissatisfaction with the presidential election results and criticised the conditions in which they had been held as unfair. The protests were attended by young people, students, and a large number of residents of Belgrade, and of other cities in which such spontaneous rallies were also organised.

23. The issue of who would replace Vučić as Prime Minister arose after he took office of President in May 2017. The decision to entrust the mandate to form a new government to Ana Brnabić, the then Minister of State Administration and Local Self-Governments, was taken in June. She listed digitalisation, education and economic development as her Government's priorities in her speech to the parliament. In a number of public appearances in which she commented Serbia's foreign policy, she said that Serbia was committed to EU accession and that it would opt for EU membership if it had to choose between closer ties with Russia and joining the EU.

24. Stepping up economic development, productivity and economic growth are the main challenges before the Serbian Government if it is to improve the environment for doing business and attract foreign investments. The fulfilment of these goals calls for genuine economic reforms, especially of public companies that have been generating losses for years, and a reform of the state administration in order to improve its efficiency. Similar assessments were made by the IMF, which said that

public company reform had to be a clear priority if Serbia wanted to make greater headway in terms of macroeconomic performance indicators and successfully complete the reforms.

25. Although some economists have positively assessed the reforms implemented by the Serbian Government, the national economy experienced weaker than planned economic growth in 2017, significantly lagging behind that of other countries in the region. Economic analysts attribute this to the weakness of the economic system and undue influence of political and other informal power centres on the economy. The Government's main achievement was the reduction of the fiscal deficit, mostly thanks to austerity measures and better revenue collection (7% increase in tax collection over 2016).

26. On the other hand, available data show that Serbia has the highest rates of people at risk of poverty (AROP) and social exclusion in all European countries in which these indicators are measured. The absolute poverty rate has also been quite high, exceeding 7% for several years now. Poverty and risks of poverty and social exclusion are extremely widespread among the Roma population, especially in informal Roma settlements, wherefore coverage by education of these citizens of Serbia is much smaller, they have greater difficulty accessing social services, their children's nutrition is poorer than that of other children in Serbia and their development is slower.

27. Around half a million of Serbia's citizens were unable to meet their basic subsistence needs. The mild fall in the number of poor people in absolute terms was primarily the consequence of the decrease in Serbia's population and, to a less extent, to the reduction of the incidence of poverty. There is a real risk of stabilisation of the poverty reproduction mechanism, because data indicate lesser enrolment of children from the poorest families in primary schools, that many of them do not complete it and that hardly any of those who do pursue secondary education.

28. The deeply entrenched and socially acceptable discrimination against women in Serbia is inextricably linked to other factors affecting their lives, notably their financial dependence on male family members. The actual share of women in national and local power structures remained low. The statutory quotas have actually contributed the most to the increase in women's participation in politics. Discrimination, double standards and sexual harassment were merely some of the factors contributing to the relatively meagre participation of women in public and political life in Serbia.

29. Impartial and professional journalism was one of the goals of the Media Strategy and the set of media laws adopted in 2014. This goal was not achieved by the end of 2017. On the contrary, media freedoms were increasingly stifled and the financial status of media and journalists deteriorated even further. The media situation in 2017 can be described as alarming because the confrontation between the authorities and critically oriented media has never been this stark, except when Vučić was Milošević's Information Minister in the late 1990s.

30. On the one hand, the strong monolithic government fully controlled most of the outlets, using them for its own political promotion, while on the other hand, the few media professionally doing their job were under constant pressure of the government, accused almost on a daily basis of being in the service of foreign interests, working against the state, et al. Sixty-eight attacks (many of them physical) on journalists, mostly those investigating organised crime and corruption, were registered in 2017, corroborating claims of growing risks to media independence and professionalism.

31. Tabloidisation of the media was another phenomenon with far-reaching consequences that came to a head in 2017. The increase in the number of newspapers attacking and discrediting government opponents and critics, publishing false and unverified information on their front-pages and in their articles is extremely concerning in view of the crucial role media play in informing the public and creating public opinion. To make things worse, pro-government tabloids disseminated fear and panic in the public by front-paging, almost on a daily basis, reports of imminent attacks on Serbia by bogus enemies aiming to eliminate the Serbian nation, sensationalist reports about foreign and local conspiracies against Serbia, its people, politicians in power and, especially, Aleksandar Vučić.

32. The state is under the obligation to put an end to corruption at all levels, not only because it vowed to do so in its Anti-Corruption Strategy and its Action Plan, but because corruption corrodes the fabric of society. The promised clampdown on corruption was not however publicly visible. Reports by the Anti-Corruption Agency and Council were not reviewed seriously either by the Assembly deputies or the Serbian Government, although they include a lot of information and analyses of the state authorities and obstacles to achieving this goal, as well as a number of useful recommendations facilitating the fulfilment of the Strategy tasks.

33. One of the crucial prerequisites for the effective suppression of corruption is a satisfactory legal framework, which calls for a radical amendment of the provisions on the jurisdiction and status of the Anti-Corruption Agency in order to ensure its substantial independence. The adoption of the new law on the Anti-Corruption Agency was put off for 2018, under the explanation that the new Agency Director needed to be appointed first.

34. The fact that the Agency Board was not operating with its full complement of members hindered the work of the institution and the appointment of the Agency Director, until September 2017, when the then Secretary of the High Judicial Council Majda Kršikapa was voted in Director. During the two months she headed the institution, the Agency initiated checks of assets and incomes of senior public officials, requested of the Anti-Laundering Administration to check the SNS transactions, due to suspicions that the funds donated in the run up to the presidential elections had been acquired through illegal activities. Kršikapa, however, resigned two months later, in November 2017, for reasons she would not disclose to the public.

35. Dragan Sikimić, formerly the Deputy Director of the National Employment Service, was appointed Director in January 2018. His appointment was heavily criticised because he was one of SNS' donors and ran on its ticket at the Zemun local elections in 2016 although the law lays down that the Director may not be a member of any political party or entity and is subject to the same obligations and restrictions as public officials.

36. Sikimić's appointment did not come as a big surprise because party politicisation of public and administrative offices has become the rule in Serbia, as has the practice of providing senior public officials with additional well-paid sinecures in management and supervisory boards of public companies at both the central and local levels.

37. Large-scale appointments of unqualified party members and sympathisers have impinged on the professionalism of the state administration, further undermining the already weakened recently established institutions that are to secure the professional and effective work of the state apparatus and ensure its stable functioning despite the changes at the helm. Contrary to what the ruling parties promised during the election campaigns, 2017 reflected increasing dependence on politics in all walks of life, slowing down consolidation of democracy requiring decades of hard work even when it does not face such serious and persistent resistance. Halting of democratic processes is conducive to the strengthening of rightist ideas and the establishment of a totalitarian regime.

38. The increase in the number of rightist parties, organisations and movements in Serbia was visible in 2017, as was the rehabilitation of WWII Nazi collaborators. The pro-rightists movements have primarily rallied in opposition to Serbia's potential NATO membership, Albanian-Serbian talks in Brussels on the normalisation of relations between Belgrade and Pristina, cooperation with neighbours, especially Albanians, confrontation with the past, the ICTY and war crime trials and their pro-Russian views.

39. It goes without saying that the expression of pro-right views is not prohibited and that it is legitimate and permitted in democratic societies, but that line was crossed a number of times in Serbia in 2017 – some of these organisations interrupted events they considered "harmful to the state" and even physically assaulted their participants, disseminating hate speech and qualifying their traitors and "Soros' mercenaries". The authorities' mild response, if any, to such incidents can be interpreted even as acquiescence.

40. The authorities failed to demonstrate their genuine support to confrontation with the past as well. The goals of the 2016 National War Crimes Prosecution Strategy were not fulfilled in 2017. Only eight indictments were filed since it was adopted; war crime trials took an unreasonably long time, the search for missing persons was inefficient and ineffective, and the legal framework for redressing victims of the wars in the 1990s remained unsatisfactory. Even the implementation

of all the Strategy activities would not suffice or make a crucial difference in the process of confronting the past.

41. The situation was exacerbated by the lack of genuine will to face the events of the past in the entire region. The lack of support to the process on the part of influential political and social stakeholders since the wars in the former Yugoslavia ended became particularly obvious in 2017. Such an attitude towards transitional justice is attributed inter alia to the direct or indirect fire-branding in the 1990s by some of the politicians now in power. The increasingly frequent appearances of convicted war criminals at public events organised by the state authorities or ruling parties, their treatment as heroes and utter neglect of the victims and survivors were especially disconcerting, conveying the message that there was no reconciliation in the lands of the former Yugoslavia.

42. The authorities' attitude towards independent regulatory authorities was not reflected merely by the fact that the Anti-Corruption Agency operated without a Director for nearly the whole year. When former Protector of Citizens Saša Janković resigned in February 2017 to run for Serbian President, the Office was run by his Deputy until the end of July, just before the statutory deadline for electing the new Protector of Citizens was to expire. The Assembly finally elected Zoran Pašalić, a former Belgrade Misdemeanour Court judge with no experience in human rights protection, who was nominated by the ruling coalition, although over 90 CSOs and some opposition parties supported the other candidate, the Deputy Protector of Citizens with years-long experience in human rights.

43. The election of the new Protector of Citizens has given rise to fears that the election of the new Commissioner for Free Access to Information of Public Importance and Personal Data Protection in 2018 will also be heavily influenced by politics, especially since the Commissioner is entitled to intervene and compel the authorities to provide access to important information they are often reluctant to make public. The year behind us was the third consecutive year in which the National Assembly did not review in plenary the annual report submitted by this institution (or, for that matter, the annual reports submitted by the Protector of Citizens or the Anti-Corruption Agency in March).

44. In sum, it may be concluded that 2017 was marked by lack of public dialogue, stifling of media freedoms, disregard of all critical opinions and undermining of some already achieved rights and freedoms. All this was accompanied by frequently ruthless attacks on anyone who had a different idea of the future of Serbia's society and was not prepared to unreservedly support the ruling structure's moves and decisions. One thing is certain: without genuine and open support of international institutions, politicians and experts, especially EU officials, to professional media, media associations and many civic associations and movements advocating the creation of a better and more equitable Serbia, the achievement of their goal will be impossible.

I.
HUMAN RIGHTS IN SERBIA'S LAW

1. International Human Rights Treaties and Serbia's obligations

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 continued

1.1. Reports Submitted to UN Bodies

All UN Member States are under the obligation to submit Universal Periodic Reviews (UPR) to the UN Human Rights Council every four years, and to submit, within a period of one year from the day of ratification, initial reports on the implementation of international treaties they signed under UN auspices to the UN Committees established to monitor the fulfilment of the States Parties' obligations under those treaties. Thereinafter, every four years, the States Parties are under the duty to submit to the Committees periodic reports on the enforcement of the treaties and the recommendations the Committees issued after reviewing their prior reports.

With a view to improving the state authorities' coordination in the process of drafting periodic reports for UN Committees and the Universal Periodic Reviews, the Government of the Republic of Serbia in December 2014 enacted a decision forming a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms.[2] The Council members are appointed by the Government. The Council is charged 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.

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. No individual complaints were filed against Serbia with UN Committees, with the exception of a request filed by BCHR and the legal representatives of detained Turkish Kurd Cevdet Ayaz, to suspend his extradition. On 11 December 2017, the UN Committee against Torture issued an interim order requiring of Serbia to refrain from returning Ayaz to Turkey. The Serbian authorities, however, extradited Ayaz to Turkey on 25 December 2017.[3]

1.1.1. Universal Periodic Review (UPR)

The Universal Periodic Review (UPR) is a mechanism for monitoring respect for human rights in all UN Member States, UPRs, introduced in 2006, are

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 *Sl. glasnik RS*, 140/14.

3 More in I.1.2.

submitted to the Human Rights Council and comprise three parts: the States' reports on human rights, the reports by the UN Office of the High Commissioner for Human Rights (OHCHR), which are based on the reports of the UN treaty bodies and Special Procedures reports, and a summary of information received from stakeholders, including NGOs, which is also prepared by the OHCHR.[4]

The Serbian authorities started drafting the report for the third UPR cycle covering the state of human rights in the 2013–2017 period. The preparations involved consultations with the representatives of the authorities charged with implementing the recommendations issued during the second cycle, NGOs and independent regulatory authorities. The Report, adopted by the Serbian Government, was presented to the Human Rights Council by Serbia's delegation on 24 January 2018.[5] A number of NGOs submitted their shadow reports and recommendations to the OHCHR and some of their representatives attended the pre-session, held in Geneva in December 2017.

1.1.2. Serbia's Periodic Reports Reviewed by UN Committees in 2017

In 2016, Serbia submitted periodic reports to the Committee on the Rights of the Child, the Human Rights Committee,[6] the Committee on the Elimination of All Forms of Racial Discrimination and the Committee on the Rights of Persons with Disabilities.[7] On 27 July 2017, the Serbian Government adopted its fourth periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, which the Committee was due to review at its session in July 2018.

The Committee on the Rights of the Child. – reviewed Serbia's second and third reports on the implementation of the Convention on the Rights of the Child in January 2017. In its Concluding Observations,[8] published in February 2017, it called on Serbia to adopt a comprehensive children's act, strengthen the role of the Council for Child Rights as the principal institutional coordinating mechanism at the inter-ministerial level and provide it with a clear mandate and sufficient authority to coordinate all activities, and to conduct a comprehensive assessment of the budget needs for children and allocate adequate budgetary resources. It also required of Serbia to expeditiously strengthen information management and data-collection

4 Serbia has submitted two UPRs since 2006: the first in 2008, after which it accepted 18 recommendations, and the second in 2013, after which it accepted 139 recommendations by the Human Rights Council.

5 See: http://www.ohchr.org/EN/HRBodies/UPR/Pages/RSindex.aspx.

6 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SRB/2–3&Lang=en.

7 In April 2016, Serbia's delegation presented its initial report on the implementation of the Convention on the Rights of Persons with Disabilities. See: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19785&LangID=E.

8 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SRB/CO/2–3&Lang=En.

systems in order to facilitate analysis of the situation of all children, expedite the adoption of the law on the ombudsman for the rights of the child and strengthen its efforts to provide adequate and systematic training on awareness-raising about children's rights to all the relevant stakeholders working with and for children.

The Committee required of Serbia to ensure full implementation of the relevant existing laws prohibiting discrimination, including by strengthening public education campaigns to address negative social attitudes towards Roma children, children with disabilities, minority children, refugees and asylum-seeking children, migrant children, children in street situations, lesbian, gay, bisexual and transgender children and children with HIV/AIDS and to strengthen the health care of these categories. The Committee drew attention to the problem of (mostly Roma) children not registered at birth and the State's obligation to protect children from abuse and neglect and required of Serbia to ensure full implementation of the new regulations enabling immediate birth registration of children whose parents do not have personal documents, establish a mechanism to protect children from all forms of physical or sexual abuse and put in place a national database on all cases of domestic violence against children.

The Committee expressed concern about some cases of alternative care, especially of children with disabilities, and recommended to Serbia to ensure adequate legal safeguards and clear criteria for determining whether a child should be placed in alternative care, taking into consideration the views and best interests of the child. It also expressed concern about children living below the poverty line and called on the state to strengthen the support provided to the most vulnerable children and families.

The Committee recalled the State's obligation to ensure the availability of and equitable access to quality primary and specialised health care for all children and that all girls and boys complete free, equitable and quality primary and secondary education by 2030, to promote inclusive education, and access to education of rural children and Roma children.

The Committee devoted particular attention to juvenile justice and said it remained concerned that, owing to funding constraints, existing provisions that provided alternatives to detention were not being fully implemented and that reports indicated that correctional educational institutions were significantly limited in terms of capacity. It recommended to the state to ensure the provision of qualified and free legal aid to children in conflict with the law at an early stage of the procedure and throughout the legal proceedings, expeditiously establish specialised juvenile court facilities and procedures with adequate resources, ensure that alternative measures were fully implemented and that detention was used as a last resort. In cases where detention is unavoidable, the Committee called on the state to ensure that detention conditions were compliant with international standards, including with regard to access to education and health services.

The Committee issued several recommendations with regard to Serbia's obligations vis-à-vis refugee and asylum seeking children, children belonging to national minorities, street children, children victims of exploitation and human trafficking, including that the State take measures to ensure their equal treatment and realisation of their rights under the Convention on the Rights of the Child.

Serbia is to submit its combined fourth and fifth periodic reports to the Committee by 24 May 2022 and to include therein information on the follow-up to these Concluding observations.

The UN Human Rights Committee. – reviewed Serbia's Third Periodic Report on the Implementation of the International Covenant on Civil and Political Rights in March 2017 and issued its Concluding observations[9] the following month. It invited Serbia to submit its next periodic report by 21 March 2012.[10]

The Committee welcomed the adoption of the National Strategy for Improving the Position of Women and Promoting Gender Equality and some other laws[11] and the ratification of some international conventions. It voiced concern about the lack of clear legal mechanisms for implementing and monitoring the implementation of the Views adopted by the Committee under the Optional Protocol and expressed regret that awareness of the practical applicability of the ICCPR in the domestic legal system among the judiciary and legal community appeared to remain low. It emphasised that the State should ensure that the Committee's Views were systematically disseminated and implemented and strengthen its efforts to ensure that authorities, in particular judges, prosecutors and lawyers, were aware of the applicability of the Covenant's provisions in Serbia.

As per the prohibition of discrimination, the Committee noted that Serbia should ensure that the Action Plan for the Implementation of the Anti-Discrimination Strategy was carried out. While noting the amendments to Article 54a of the Criminal Code introducing aggravating circumstances for crimes committed by individuals who feel hatred for a particular race, religion, nationality or ethnicity, sex, sexual orientation or gender identity, it said it regretted that the State party had not provided any example of the practical implementation of those amendments and recommended that Serbia increase its efforts to promote tolerance for persons belonging to ethnic, national, racial, religious and other minorities, including persons belonging to the Roma community and effectively implement Article 54a of the Criminal Code, including by ensuring that hate crimes were identified and promptly investigated, that alleged perpetrators were prosecuted and, if convicted, that they were punished with appropriate sanctions.

9 See: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f3&Lang=en.

10 Serbia is to notify the Committee within a year on the implementation of its recommendations regarding Roma exclusion (paragraph 15), refugees and asylum seekers (paragraph 33) and the freedom of expression (paragraph 39).

11 The Penal Sanctions Enforcement Act, the Non-Custodial Sanctions and Measures Enforcement Act and the new Domestic Violence Act.

The Committee expressed concern that: the number of acts of discrimination, intolerance and violence against LGBTI, persons with HIV and especially Roma remained very high and that members of the Roma community continued to suffer from widespread discrimination and exclusion, unemployment, forced eviction and de facto housing and educational segregation, but it did note headway in the registration of Roma. It called on the state to improve the services it extended to this category of the population and take all steps necessary to implement the strategy for the social inclusion of Roma.

While the Committee noted that the State party had made some progress in terms of promoting and protecting the rights of persons with disabilities, it was concerned that persons with disabilities still faced many challenges in getting access to justice, education, employment and political and noted with concern the forced placement in medical institutions, isolation and forced treatment of large numbers of persons with mental, intellectual and psychosocial disabilities; the inadequacy of the current legal frameworks to achieve deinstitutionalisation and enhance appropriate community-based support and the reported tendency to resort to the deprivation of legal capacity. It recommended that Serbia ensure that any decision to isolate, place or treat persons with mental, intellectual and psychosocial disabilities was made after a thorough medical assessment, that any restrictions were legal, necessary and proportionate to the individual circumstances and include guarantees of an effective remedy, that any abuse was effectively investigated and that criminal liability was imposed. The Committee made a similar assessment of gender equality and discrimination against women and recommended to the State to pursue efforts to raise awareness of women's equality with a view to combating all prejudices and stereotypes against women and take all measures necessary to protect women belonging to vulnerable groups, including from early marriage. The Committee also noted that severe forms of violence against women and children, including domestic violence, remained prevalent.

The Committee also remained concerned about the limited progress made in the search for disappeared persons; the low rate of prosecutions for war crimes, the narrow definitions of "victim" in Serbian law and called on the State to be more efficient in punishing perpetrators of war crimes and clarify the fate of disappeared persons. It also touched on the prohibition of torture and situation of persons deprived of liberty, noting that the definition of torture in Serbian law still was not in conformity with Article 7 of the ICCPR, that the prosecution rate for torture and ill-treatment remained low and convicted perpetrators received lenient penalties, and that the victims' access to reparation was often hindered owing to the high standard of proof of harm set by the courts and the application of statutes of limitations to their claims. It recommended that Serbia amend its Criminal Code to include a definition of torture that was fully in line with Article 7 of the Covenant and other internationally established norms, ensure that an independent body conducted effective investigations into all credible allegations of torture or ill-treatment and to

repeal the statute of limitations for crimes of torture and ill-treatment. As regards persons deprived of their liberty, the Committee said Serbia should strengthen its efforts to reduce overcrowding, including by continuing to develop the use of alternatives to detention, improve conditions of detention, including access to health care.

The Committee recommended that Serbia strengthen measures to prevent and combat trafficking in persons, placing a specific focus on migrants and refugees, provide the national anti-trafficking coordinator with the necessary resources and a formal work plan, ensure that children were removed from families responsible for their exploitation, take all available measures to identify and prevent child labour; and develop programmes to rehabilitate victims, including children, of trafficking and forced labour. It issued similar recommendations with respect to refugees and asylum seekers, requiring of Serbia to ensure access to the asylum procedure to all persons in need of international protection, to refrain from collective expulsion of aliens and ensure adequate conditions in reception centres and ensure that unaccompanied minors received appropriate treatment that took into account the principle of the best interest of the child.

The Committee expressed concern about alleged cases of pressure and retribution exercised by politicians and the media on judges, prosecutors, the High Judicial Council and the State Prosecutorial Council, remaining backlog of court cases and the delays in the adoption of the draft law on free legal aid. It required of Serbia to entrench judicial independence, including by preventing any political interference in the work of the judiciary, take steps to ensure that all cases of political and media pressure on the judiciary and prosecutors were promptly investigated and sanctioned, strengthen its efforts to ensure that trials take place in a reasonable time and reduce the backlog of court cases, and strengthen its efforts to adopt the draft law on free legal aid.

The Committee commented on the freedom of expression and concluded that Serbia should take immediate steps to provide effective protection to media workers from all forms of intimidation, refrain from prosecuting journalists, human rights defenders and other members of civil society as a means of deterring or discouraging them from freely expressing their opinions, take steps to ensure the transparency of media ownership, and review the application of the Public Assembly Act of 26 January 2016 so as to ensure its compatibility with the Covenant all in the light of allegations of public officials publicly vilifying and intimidating media workers and about the narrowing space for debate. The Committee reiterated its concern about the low level of representation of minorities in government bodies and public administration, and especially about the allegations of attacks against political opposition figures and of serious cases of pressure exerted on voters and called on Serbia to ensure that an effective and independent election monitoring body is established and that allegations of attacks on politicians and intimidation of voters are promptly reported, investigated and addressed.

The Committee on the Elimination of All Forms of Racial Discrimination. – adopted its Concluding observations in December 2017[12] on Serbia's second to fifth periodic reports, submitted in late November 2017. It commended Serbia for adopting its Anti-Discrimination Strategy and Action Plan for its implementation, the National Strategy for Combating Violence and Hooliganism at Sports Events, for its efforts to address problems of refugees and internally displaced persons, for the social inclusion of Roma men and women, for prosecuting war crimes and reforming the judiciary.

Concerned about the paucity of information on complaints regarding racial discrimination, the Committee requested of Serbia to provide in its next periodic report statistics and information on the nature and outcome of complaints related to racial discrimination submitted to the national human rights institution. It encouraged Serbia to strengthen and guarantee the independence of the judiciary from political control and interference, and provide in its next periodic report statistics, disaggregated by ethnicity of the victim, concerning investigations, prosecutions, convictions, sanctions and remedies for acts of racist hate speech and incitement to racial hatred. The Committee recommended that Serbia ensure that its laws criminalise incitement to racial hatred, whether or not it incites violence, strengthen measures to ensure that racist hate speech is effectively identified, investigated and punished, take appropriate measures to combat the proliferation of acts and manifestations of racism on the Internet, including by blocking websites devoted to inciting racial discrimination and hatred, combat racist behaviour in sports, ensure that political leaders and educators actively promote inter-ethnic tolerance and understanding, and that persons convicted by the ICTY are not promoted as heroes in any part of the country.

In order to ensure punishment of those perpetrating offences with elements of hate crime, Serbia was called on to ensure that all reported incidents, investigations, prosecutions, sanctions and remedies relating to racist hate crimes are recorded. The Committee requested that Serbia provide detailed statistics, disaggregated by ethnicity, on the number and nature of racist hate crimes reported, prosecutions and convictions and redress provided to victims. It also requested that Serbia provide such detailed statistics with respect to offences of trafficking in persons.

The Committee also devoted a section of its Concluding observations to the status of Roma. It called on the State to put an end to de facto public school segregation of Roma children and ensure access to quality education for Roma children, including through anti-racism and human rights training for school staff and increased employment of Roma teachers. It also urged Serbia to eliminate de facto residential segregation and to vigorously pursue efforts to develop social housing programmes for Roma, and ensure that, where resettlement from informal settlements is necessary as a last resort, residents are consulted in advance and are pro-

12 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSRB%2fCO%2f2–5&Lang=en.

vided with sufficient notice and adequate and appropriate alternative housing, It also requested of Serbia to provide information in its next periodic report on measures taken to achieve these actions and their results.

The Committee recommended to Serbia to ensure that individuals with insufficient means to pay for legal representation have the legal right to free access to legal recourse for acts of racial discrimination. As per migrants and asylum seekers, the Committee requested of Serbia to ensure that all non-citizens, including migrants and asylum seekers, enjoy their human rights and have access to adequate humanitarian services, including food, shelter and health services, timely and fair processing of asylum claims, consistent respect for the principle of non-refoulement and that all children, including migrant children, are enrolled in primary education and implement inclusion programmes in schools to provide the linguistic and other support migrant children need. It also required of Serbia to provide in its next periodic report disaggregated statistics relating to the number and outcome of asylum claims filed.

Finally, the Committee requested Serbia provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 16 and 17 related to the enforcement of Article 54a of the Criminal Code and on detailed statistics on the number and nature of racist hate crimes reported, prosecutions and convictions and redress provided to victims racial hate crimes.

The Committee against Torture. – in its Concluding observations[13] issued after reviewing Serbia's second periodic report in 2015, said that the State should harmonise the provisions of the Criminal Code dealing with torture and align them with the definition in the Convention, ensure that detained persons undergo an independent medical examination out of hearing and out of sight of police staff, reinforce the system of free legal aid to persons deprived of liberty and keep standard and comprehensive custody registers in all places of detention.

The Committee in particular insisted on the adoption of measures necessary to change the culture of impunity of torture, notably, to ensure effective investigations of torture and ill-treatment cases, that the State ensure that complainants and victims are able to exercise their right to an effective legal remedy, that the perpetrators are punished and victims redressed. The Committee also recommended that Serbia continue its efforts to improve the conditions of detention in places of detention, in particular by addressing overcrowding and full access to mental health care services.

The Committee urged Serbia to reinforce the human and material resources of the Office of the War Crimes Prosecutor, and remove the current barriers to the prosecution of crimes under international law, including torture, to ensure that the

13 See: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhskPzZ7qqLIMiSsYYpjvQncppZ1Nq6xPjYePRKLFQ1ZNsnmJYaSrGl46Ce2sCAjC%2B1rN3YxuxGlerpjPEnzqCgPcH4QoyqHape1tU7cDyxfXf.

asylum determination procedure provides for a substantive review of applications that respects the principle of non-refoulement. It, however, also expressed concern about the cases of gender-based and domestic violence, assaults on journalists, human rights defenders and minorities and recommended to the State to ensure effective protection of these groups against threats and attacks and prompt, thorough and effective investigations of all such threats and attacks.[14]

In 2016, Serbia submitted a report[15] to the Committee against Torture, notifying it of the fulfilment of two of its recommendations, Recommendation No. 9 on ensuring that all persons deprived of liberty are afforded legal safeguards against torture, notably independent medical examinations and its Recommendation No. 19 on the State's obligation to publicly condemn threats and attacks on human rights defenders, journalists, LGBT persons and Roma, undertake prompt effective and comprehensive investigations of such cases and measures to counter prejudice and stereotypes since the Committee required of Serbia to provide, by 15 May 2016, follow-up information in response to these recommendations. However, many organisations and associations dealing with the protection of journalists, LGBT persons and Roma disagree with Serbia's claim in its report that it is taking the appropriate measures to fulfil these recommendations.[16]

Serbia is under the obligation to submit its third periodic report on the implementation of the Convention against Torture and the fulfilment of the other Committee recommendations by 15 May 2019.

1.2 Cevdet Ayaz Case – Unlawful Extradition to Turkey

Serbia's extradition of Turkish Kurd Cevdet Ayaz to Turkey in late December 2017 in defiance of its international obligations caused an avalanche of comments and reactions both in Serbia and abroad.[17] Cevdet Ayaz arrived in Serbia in 2016 and sought asylum. Proceedings for his extradition were conducted concurrently with the review of his asylum application. Ayaz was represented by BCHR's legal team in both proceedings.

Serbia did not grant protection, notably refugee status to Ayaz despite the ECtHR's 2006 judgment[18] in which it found violations of his rights under Article 5 of the ECHR and clear indications that the Turkish court's judgment convicting

14 More on torture in II.2.

15 See the State's report, available in Serbian at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/odgovor_na_zakljucna_zapazanja_komiteta_povodom_razmatranja_drugog_periodicnog_izvestaja.pdf.

16 More on pressures and attacks on journalists in III.5, on the status of LGBT persons in IV.2. and the situation of Roma in IV.1.

17 See the *N1* report, available in Serbian at: http://rs.n1info.com/a352816/Vesti/Vesti/Jens-Modvig-Srbija-prekrsila-Konvenciju-protiv-torture.html.

18 See judgment *Ayaz v. Turky*, ECtHR, App. No. 11804/02, 22. June 2006.

Ayaz to 15 years' imprisonment – the grounds for Turkey's extradition request – was based on his confession obtained under torture. The first and second instance asylum authorities, the Asylum Office and Asylum Commission respectively, declared they did not have jurisdiction in this case, claiming that Ayaz had entered Serbia from Montenegro, which Serbia considers a safe third country. The safe third country concept actually serves to enable states to deny access to the asylum procedure to individuals who had failed to seek protection from the states they had been in before entering their territory. Ayaz was extradited to Turkey before the third-instance authority, the Administrative Court, had the last say on his asylum application.

On the other hand, the courts reviewing the extradition request did not even consider violations of Ayaz's human rights and his persecution by the requesting state. Moreover, the competent Serbian authorities violated a number of Ayaz's fundamental rights guaranteed by the Serbian Constitution during the extradition proceedings, which had lasted over one year. For instance, he was arbitrarily and unlawfully deprived of liberty for 25 days after the expiry of the one-year limit for extradition detention and in the absence of a decision he could have challenged with the competent court. The Novi Sad Appeals Court three times overturned the Šabac Higher's Court decision allowing Ayaz's extradition, among other things, because the relevant documents were not properly translated from Turkish into Serbian. The fourth time round, however, the Novi Sad Appeals Court upheld the Higher Court's decision and established that the extradition requirements had been met, although the documents still had not been properly translated.

Justice Minister Nela Kuburović, the highest authority in extradition proceedings, approved Ayaz's extradition despite the UN Committee against Torture's request that Serbia refrain from returning Ayaz to Turkey due to risks that he would be subjected to torture there. All the authorities deciding on and implementing the extradition procedure – the Novi Sad Appeals Court, the Šabac Higher Court, and the Justice and Internal Affairs Ministries – were promptly informed of the Committee against Torture request. None of them, however, evidently paid any heed to Serbia's international obligations. The Justice Ministry publicly came out with contradictory information, claiming that Ayaz had already been returned to Turkey and then that the extradition decision had been signed before the Committee against Torture request arrived.[19] Serbian authorities evidently decided to openly oppose a request by one of the UN's most professional and important mechanisms protecting human rights and fundamental freedoms. Serbia thus violated not only Article 3 of the UN Convention against Torture, prohibiting refoulement of anyone to a country where they are at risk of torture, but also Articles 7 and 10 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights, which include an equivalent prohibition.

19 See the *Insajder* report, available in Serbian at: https://insajder.net/sr/sajt/tema/9107/.

On 25 December 2017, several hours before Ayaz was extradited to Turkey, Committee against Torture Chairman Jens Modvig posted a tweet appealing to Serbia to be aware of its international obligations. Ayaz was nevertheless refouled to Turkey the same evening. Modvig subsequently said that this move by Serbia was extremely concerning, because Ayaz had sought the protection of the UN Committee against Torture and that its protection measures were ignored by Serbia. Ayaz was extradited to the very source of torture and Serbia has thus acted in contravention of the UN Convention against Torture, he was reported as saying.[20]

2. Serbia's Obligations Arising from Council of Europe Membership

2.1. Council of Europe Regional Treaties

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was ratified by the State Union of Serbia and Montenegro (SaM) back in 2004. Serbia has had no reservations on any ECHR provisions since 2011. It ratified Protocol No. 15 to the ECHR in May 2015.[21] Serbian nationals may file applications with the European Court of Human Rights (ECtHR).

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.[22] 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 submission of such complaints. Serbia is also party to the CoE Convention on Action against Trafficking in Human Beings[23] 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.

20 See Modvig's interview to *Radio Free Europe*, available in Serbian at: https://www.slobodnaevropa.org/a/intervju-jens-modvig/28944192.html.

21 *Sl. glasnik RS (International Treaties)*, 10/15.

22 *Sl. list SCG (International Treaties),* 9/03.

23 *Sl. glasnik RS (International Treaties*), 19/09.

The Delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an *ad hoc* visit to Serbia from 31 May to 7 June 2017. The focus of the visit was to examine the treatment of persons deprived of liberty by the police and the practical application of safeguards surrounding their detention. It also looked into the manner in which complaints of ill-treatment of detained persons by police officers were handled, both disciplinary and criminal investigations and proceedings. The delegation visited police stations in Belgrade (PU Stari grad and Novi Beograd), Leskovac, Niš, Novi Sad, Pančevo and Pirot and prisons in Belgrade, Ćuprija, Leskovac, Niš, Novi Sad, Prokuplje, Vranje and Pančevo. At the end of the visit, the delegation presented its preliminary observations to the Serbian authorities. The delegation's report was not made public by the end of 2017.[24]

The European Commission against Racism and Intolerance (ECRI) visited Serbia in September 2016 within the fifth monitoring cycle and published its report covering the period up to 7 December 2016 in 2017. It noted: that progress has been made in a number of fields since the adoption of ECRI's second report on Serbia on 9 December 2010; that the authorities have improved the protection against hate crime through a new provision making racist, homo– and transphobic motivation an aggravating circumstance; that Constitutional Court disbanded one racist, homo– and transphobic organisation; that the Anti-Discrimination Strategy and Action Plan contained measures against hate speech; that press associations adopted a Press Code of Conduct prohibiting hate speech; and that the Press Council was established. It also noted stronger efforts to combat cyber hate speech and visible headway in improving the status of Roma and the LGBT community.

ECRI welcomed these positive developments in Serbia but said that, despite the progress achieved, some issues gave rise to concern. "The adopted text on genocide denial is too narrow. Public authorities are not placed under a positive duty to promote equality and there is no law on free legal aid. ECRI is highly concerned about a continued rise in hate speech in Serbian public discourse, which is amplified by wide media coverage. Politicians and the media use inflammatory, pejorative and nationalistic language. Surveys show high levels of underlying social distance between different parts of the population. Hate speech is increasingly disseminated via the Internet; football hooligans and their organisations also contribute to spreading hatred. The system of (self) regulation of the media is not working properly: the Press Council is too weak and social media operators do not prevent

24 In the course of the visit, the delegation held consultations with Vladimir Rebić, Director of Police; Miloš Oparnica, Head of the Internal Control Sector of the Police; Radomir Ilić, State Secretary of the Ministry of Justice; Milan Stević, Director of the Penal Sanctions Enforcement Administration as well as other senior officials in the above-mentioned Ministries. Meetings were also held with two deputies of the Republic State Prosecutor; Miloš Janković, the Acting Ombudsman and Head of the National Preventive Mechanism and representatives of the Belgrade Centre for Human Rights. See more at: https://www.coe.int/en/web/cpt/-/cpt-visits-serbia-to-look-into-policing-matters-and-the-situation-in-remand-detention.

and remove hate speech. Many offences are not reported to the police and the police are not always open to receiving complaints, in particular from LGBT persons and Roma. The application of the legislation against hate speech and violent hate crime is inefficient and there is no decisive action against the activities of racist, homo– and transphobic hooligan groups. High-ranking persons are not prosecuted and many terrible war crimes remain unpunished. Due to the resulting impunity, people belonging to different communities live in fear of a new wave of such hate crime. LGBT persons face high levels of prejudice and security is a daily concern for them. A considerable proportion of discrimination is committed by civil servants and public officials do not always promote understanding and tolerance towards LGBT persons."

ECRI requested that the authorities take action in a number of areas; in this context, it made a series of recommendations, including the following: "Serbia should bring its criminal, civil and administrative law in line with ECRI's General Policy Recommendation No. 7 and give the Commissioner for the Protection of Equality (CPE) the power to take up issues of discrimination ex officio. The parliament and government should adopt codes of conduct prohibiting hate speech. Moreover, the authorities should initiate training for journalists, develop a strategy on combating cyber hate speech and reinforce (self-) regulation of media in order to prevent hate speech. The police and prosecution should designate contact persons for vulnerable groups, train them and build up regular dialogue with these groups. The recording, investigation and punishment of hate speech and violent hate crime should be improved and racist, homo– and transphobic hooligan groups should be banned. The authorities should efficiently implement the Strategy for the Prosecution of War Crimes and publicly acknowledge that the Srebrenica massacres constituted genocide. The authorities should clearly distribute responsibilities and designate the financial and human resources for the implementation of the Roma strategy. Pre-school and school attendance and completion rates should swiftly be increased; particular focus should also be put on improving the housing conditions of Roma and on hiring a proportionate number of persons with minority background to the public services. Furthermore, the authorities should develop integration indicators and strengthen the collection of equality data. The authorities should introduce registered partnerships for same-sex couples, regulate the change of name and gender of transgender persons, create a safe environment for LGBT persons and promote a culture of tolerance towards them."[25]

The Republic of Serbia was subject to the second evaluation of its enforcement of the CoE the Council of Europe Convention on Action against Trafficking in Human Beings and submitted its replies in February 2017.[26] The Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Serbia on

25 The report is available at: https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Serbia/SRB-CbC-V-2017–021-ENG.pdf.

26 Available at: https://rm.coe.int/16806f7bf9.

6–10 March 2017. In its second evaluation Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Serbia[27] GRETA concluded that the legal and institutional framework has evolved, but that efforts should be stepped up to reduce children's vulnerability to trafficking, having in mind that at the time of the refugee crisis in 2015–2016, there were an estimated 670 to 800 unaccompanied children in Serbia. GRETA urged the Serbian authorities to ensure that specialised support and safe accommodation were provided to victims of trafficking and to facilitate the reintegration of victims of trafficking into society. The Group of experts urged the Serbian authorities to facilitate and guarantee access to compensation for victims of trafficking and to inform them of the right to remuneration and procedures at their disposal.

2.2. European Court of Human Rights and Serbia

The trend of decrease in the number of judgments with respect to Serbia delivered by the European Court of Human Rights (ECtHR) Chambers, evident since 2015, continued in the reporting period. The ECtHR Chambers delivered only five judgments and six admissibility decisions in cases against Serbia in 2017. On the other hand, the ECtHR Committees in 2017 delivered 22 judgments, six decisions declaring the applications inadmissible and 15 decisions striking cases out of its list of cases following the conclusion of friendly settlements between the applicants and Serbia. These statistics reflect the number of cases the Court annually considered in 2015 and 2016, but they also indicate a drop of over 50% over the period preceding 2015, particularly with respect to the most important cases (the ones ruled on by an ECtHR Chamber).

Table: Number of Cases Decided on by the ECtHR, by Type of Decisio and Court Formation

	2009	2010	2011	2012	2013	2014	2015	2016	2017
Grand Chamber Judgments	0	0	0	0	0	2	0	0	0
Chamber Judgments	16	8	11	12	13	10	5	8	5
Chamber Admissibility Decisions	30	17	8	5	19	11	4	3	6
Committee Judgments	0	1	1	0	11	6	12	13	22
Committee Admissibility Decisions	0	3	0	2	5	9	12	17	6
Committee Decisions to Strike the Cases off the List	0	20	57	51	41	88	54	16	15

27 Available at: https://rm.coe.int/greta-2017–37-frg-srb-en/16807809fd.

2.2.1. ECtHR Committee Decisions

The ECtHR Committees in 2017 continued reviewing applications against Serbia claiming violations of the right to a trial within a reasonable time and non-enforcement of national court decisions, including against socially-owned companies. Insufficient compensation for the non-pecuniary damages granted by the domestic authorities was the reason for the Court's finding of a violation of the right to a trial within a reasonable time in most applications claiming overly long proceedings. Given that this has been a recurrent problem for some time now, the Serbian judicial authorities, especially the Constitutional Court, should adopt guidelines ensuring that the courts award just satisfaction for non-pecuniary damages when they find that the applicants' right to a trial within a reasonable time has been violated.

Statistics also showed that the Serbian Government, surprisingly, refused to conclude friendly settlements in as many as 22 manifestly well-founded cases, which the Committees proceeded to rule on and in which it found Serbia in breach of the Convention. Such refusal prolonged the proceedings before the ECtHR unnecessarily. The ECtHR should thus consider ways of influencing the Government to more easily agree to conclude friendly settlements in simple cases ruled on by the Committees and of granting higher amounts of just satisfaction for non-pecuniary damages when the Government refuses to conclude a friendly settlement in a manifestly admissible and well-founded case.

2.2.2. Chamber Decisions

The ECtHR still has not ruled on some very old applications against Serbia. In 2017, it ruled on two applications filed in 2006, three applications filed in 2008 and one application filed in 2009. The ECtHR has, however, dealt relatively speedily with applications claiming extremely grave violations of human rights: two of the cases it ruled on in 2017, concerning breaches of the prohibition of torture (*Krsmanović v. Serbia*) and the right to life (*Fejzić and Others v. Serbia*) had been pending before the Court less than three years.

1. *Fejzić and Others v. Serbia*, App. No. 4078/15, admissibility decision of 26 September 2017

The case regarded a number of unclarified deaths of Moslem men, who, after the Bosnian Serb Army captured Žepa in 1995, crossed into Serbia seeking refuge, where they were taken prisoner by the Serbian army and police. The applicants, close relatives of the victims, complained of the lack of an effective investigation into the deaths of their relatives. By a majority of votes, the Chamber ruled that the applicants should have realised long before they initiated proceedings before the domestic authorities that the latter had no intention of investigating the events and that they should have submitted their application to the ECtHR earlier. It dismissed the application as inadmissible because it fell outside of the six-month limit.

2. *Krsmanović v. Serbia*, App. No. 19796/14, judgment of 19 December 2017

The applicant concerned the physical ill-treatment suffered by Đorđe Krsmanović, a member of the Zemun Clan, after his arrest during the Sabre campaign that ensued after the assassination of Serbian Prime Minister Zoran Đinđić in 2003. The Serbian authorities failed to identify the perpetrators, despite the applicant's detailed accounts of the time, potential perpetrators and clear medical reports on the injuries he had sustained, as well as TV footage of him with visible bruises on his face. The Court found that Serbia violated the procedural limb of Article 3 of the ECtHR because it failed to conduct an effective investigation into the ill-treatment of the applicant.

3. *Mitrović v. Serbia*, App. No. 52142/12, judgment of 21 March 2017

The applicant was sentenced to eight years' imprisonment for murder by "courts" of the so-called Republic of Serbian Krajina (RSK). After the Erdut Agreement was signed, the applicant was informally transferred to a prison in the Republic of Serbia. A warrant for his arrest was issued when he failed to return to prison from his annual leave. He was arrested in 2010 and sent back to prison to serve his sentence. Relying on Article 5 of the ECHR, the applicant complained that there were no legal grounds for his deprivation of liberty since the "RSK courts" were not courts in the meaning of Article 5, as RSK had never been internationally recognised as an entity. The applicant also claimed that his transfer to a prison in Serbia did not fulfil the formal requirements, i.e. that the Serbian courts had never recognised the judgments of RSK courts, as the Criminal Procedure Code in force at the time required. The ECtHR did not review the issue of whether RSK courts could be considered lawful courts in the meaning of Article 5. It did, however, take the view that non-compliance with the domestic procedure for recognising court decisions in criminal matters automatically meant that the applicant's deprivation of liberty had been unlawful. The Court thus found Serbia in violation of Article 5 of the Convention.

4. *Skenderi and Others v. Serbia*, App. Nos. 15090/08 et al, decision of 4 July 2017

This case is a follow-up of the *Grudić* case, in which the Court found a breach of Article 1 of Protocol No. 1 to the Convention due to the unlawful suspension of payments of pensions to pensioners from Kosovo and Article 13 of the ECHR due to the lack of an effective legal remedy to challenge such unlawful suspension. The Court, however, found these applications inadmissible because the applicants had either not filed constitutional appeals with the Constitutional Court before submitting their applications to the ECtHR or were already in possession of domestic court decisions finding violations of their right.

5. *Đorđević and Others v. Serbia*, App. Nos. 5591/10 et al, decision of 17 January 2017

This case regarded the unsuccessful attempts to hold the Pride Parade in 2009, 2011, 2012 and 2013. As opposed to the 2009 Pride Parade, where the authorities ordered its relocation from the centre of Belgrade to a large recreational area, which would have rendered the purpose the event senseless, the other Parades were simply prohibited. The Constitutional Court found a violation of the right to peaceful assembly as regards the 2009 Parade, but did not award any pecuniary or non-pecuniary damages to the organisers. The Constitutional Court, however, failed to review the constitutional appeals concerning the other three Parades, because it held that the applicants could not claim to be victims of the alleged violations because the banned assemblies were organised by an association. The ECtHR decided to strike the applications out of its list because it held that the problem that led to their submission has been resolved in the meantime. It was of the opinion that the change in legislation (1992 Public Assembly Act) at the insistence of the Constitutional Court eliminated the chief cause of the problems regarding the holding of the Parades. It also took the view that the successful holding of the 2014, 2015 and 2016 Parades indicated a positive change in the Government's stance and public perception. It was of the view that the general changes sufficed as satisfaction and refused to review the individual damages claimed by the applicants. It also held that the complaints of discrimination, which were actually the most important part of the applications since the entire problem had arisen from discrimination against LGBT persons, were manifestly ill-founded.

6. *Milisavljević v. Serbia*, App. No. 50123/06, judgment of 4 April 2017

The case concerned a criminal conviction of a *Politika* journalist for her article about human rights activist Nataša Kandić published in that daily in 2003. Kandić sued the applicant for insulting her. The domestic courts held that by failing to put the words 'they called her "a witch and prostitute"' in quotation marks, the applicant had tacitly endorsed them as her own, found her guilty of insult and issued her a judicial warning. The ECtHR did not consider that the sheer absence of quotation marks alone could be regarded as "particularly cogent reasons" capable of justifying the imposition of a penalty on the journalist. The Court seems to have unnecessarily reviewed whether the entire article struck a balance, and found it to be a balanced portrayal of a public figure within the context of the important public debate on cooperation with ICTY. It, therefore, held that the applicant's freedom of expression enshrined in Article 10 of the ECHR had been violated.

3. Human Rights in the National Legislation

3.1. Constitution and International Norms

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. 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 international 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,[28] 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.[29]

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.

28 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?pdffile=CDL-AD(2007)004-e).

29 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.

giving EU law supremacy over national law. It remains to be seen what views the state will take in the constitutional reform process, as it remained unclear until the end of 2017 whether it would opt for adopting a new Constitution or just amending the provisions on the judiciary.

This is particularly important in view of the fact that the practice of applying international treaties and customs before national courts, has not, however, been embraced. Accession to the EU legal system also means that Serbia will directly apply EU regulations, the enforcement of which is overseen and protected by the Court of Justice of the European Union. Therefore, judges in Serbia need to prepare on time and accept the standards and case-law of this Court, which rules on disputes between Member States and European institutions and interprets EU law to ensure its uniform application in all EU Member States.

3.2. Human Rights in the Serbian Constitution

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).[30] Under the Constitution, 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 Constitution contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. Experts have criticised some constitutional provisions on the protection of human rights ever since the valid Constitution was adopted.

As regards the rule of law and compliance with the separation of powers principle, the main problem of the constitutional provisions on the judiciary arises from the influence they let the executive and legislative branches of government exert on the judiciary. 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,[31] performed by the working group charged with analysing the changes of the constitutional framework,

30 More on each right in Chapter II.

31 Available at: http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-ustavnog-okvira.php.

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".

In 2017, the Ministry of Justice launched consultations (which it initially tried to turn into a public debate) on amendments to the constitutional provisions on the judiciary. The consultations were, however, disingenuous and failed to yield any results. The text of the state's preliminary draft amendments to the constitutional provisions on the judiciary, finally published in January 2018, confirmed suspicions of a large share of the civil sector and guild associations that the reform aimed at increasing control over the judiciary by the other two branches of government.[32] Hope remains that the Venice Commission will identify all the weaknesses and dangers of the draft provisions and intervene on time, although the impression is that the Government do not pay much heed to the Venice Commission's opinions, that they forward it translations of the draft legislation which differ from the original Serbian texts, and that the Venice Commission, which deals with the law of other CoE Member States as well, simply cannot react on time on every single occasion and sometimes issues its opinions after the legislation has already been adopted.

Guild and professional associations and human rights defenders issued a number of statements in reaction to the published draft constitutional amendments, warning the Serbian and international public that their adoption would destroy the judiciary in Serbia and abolish its independence in the long-term, perhaps even permanently, and ultimately have far-reaching consequences on the democratisation processes in Serbia.[33]

The constitutional reform should also focus on improving some other provisions nearly as important as those on the status of the judiciary, for instance the ones on human rights protection that 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 dis-

32 More on the judicial reform in IV.1.

33 The press releases are available at the web peages of the Judges' Association of Serbia, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Associations of Judicial and Prosecutorial Assistants, Association of Judicial Advisers, Belgrade Centre for Human Rights and Lawyers' Committee for Human Rights – YUCOM.

crimination 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.[34] The provision prohibiting slavery, status akin to slavery and forced labour in 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 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.[35]

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.[36]

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 the 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 Census[37] confirmed that over 20 ethnic groups live in Serbia.

34 '*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.

35 More under: II.8.

36 See II.4.1.

37 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.

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.

The authors of the constitutional amendments should also analyse the provisions restricting human rights and align them with the ECHR, under which a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.[38]

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 evaluating proportionality are in keeping with the case law of the European Court of Human Rights.[39]

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).[40] This wording provides more leeway for derogations of human rights than the European Convention on Human Rights, which allows derogations "to the ex-

38 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. More in the prior BCHR Annual Reports.

39 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) and *A., B. and C. v. Ireland*, ECtHR, App. No. 25579/05 (2010).

40 Article 202(1) of the Constitution.

tent strictly required by the exigencies of the situation". There are also some gaps in the constitutional list of rights that may not be derogated from (Art. 202(4)).[41]

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.

The 2006 Constitution also missed the opportunity to define and regulate the security system clearly, which enabled the adoption of inconsistent and incomprehensive laws and by-laws resulting in the strengthening of personal and party control over the security institutions. Therefore, with a view to ensuring effective civilian oversight of the security sector, the amendments to the constitutional provisions on security are to provide for democratic and civilian control and oversight of the entire national security system, especially the Serbian army, police, intelligence agencies and other state authorities entitled to use force, and lay down that these issues shall be governed by a separate law.[42]

3.3. Legal Remedies Provided by the Serbian Legal System

Article 2(3) of the ICCPR, Article 13 of the ECHR and 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 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.[43] 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. Court decisions may be re-examined only by the competent courts, in procedures prescribed by law (Art. 145(4)).

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

42 See: the Belgrade Centre for Security Police press release, available in Serbian at: http://www.bezbednost.org/Vesti-iz-BCBP/6659/Sistem-bezbednosti-neophodno-je-definisati-i.shtml.

43 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.

3.3.1. 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).[44] 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)). The eight-day deadline for appeal applies also to decisions on collective agreements, decisions on trespassing, first-instance decisions on small claims disputes and first-instance decisions on consumer disputes (Arts. 446(1), 452(2), 478(3) and 493(2)).

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 judgment and ruled on the parties' claims; in the event the second-instance court upheld the appeal, overturned the judgment and ruled on the parties' claims. The right to file a motion for a review, however, is limited by the CPA. The 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 (Art. 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.

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

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. Grounds for ordering a retrial also exist in the event the Constitutional Court found in its ruling on a constitutional appeal a violation or denial of a constitutionally guaranteed human or minority right or freedom in civil proceedings, which may result in the adoption of a more favourable decision for the applicant (Art. 426(1(12)).

The CPA includes another extraordinary legal remedy, which is rarely, if ever, applied in practice – the motion for the judicial review of a final judgment. Such motions may be filed by the Republican Public Prosecutor with the Supreme Court of Cassation to challenge final decisions violating the law to the detriment of public interest (Art. 421). Importantly, the law does not include any provisions regulating the issue of public interest.

The Criminal Procedure Code (CPC)[45] 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.

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

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 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. This extraordinary legal remedy may be filed by the defendants via their legal counsels or by the Republican Public 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)[46] and the Non-Contentious Procedure Act (NCPA),[47] 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.[48] 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.[49]

The Act on the Enforcement and Security of Claims[50] also envisages legal remedies. 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.[51]

3.3.2. 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 Constitutional Court Act exceptionally also allows the submission of constitutional appeals by applicants, whose right to a trial within a reasonable time has been violated or in the event the law excludes their right to judicial protection of their human and minority rights (Art. 82). This provision provides for filing of constitu-

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

47 *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.

48 Article 27.

49 Article 30z.

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

51 More on problems arising in enforcement in II.11.4.

tional 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 date when the Serbian Constitutional Court's first decisions on the merits of the appeals had been published.[52]

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Serbia.[53] 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.[54]

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.[55] 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

52 *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.

53 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_поступку_испитивања_и_одлучивања.doc.

54 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.

55 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 *Baczkowski 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 and *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08 and 14599/09, of 21 October 2010.

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 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.[56] 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.[57]

In response to BCHR's request for data on the number of constitutional appeals filed with it and its rulings on them, the Constitutional Court referred it to its website, the search engine of which, however, does not allow access to such data.

56 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.

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

II.
INDIVIDUAL RIGHTS

1. Right to Life

1.1. Constitutional and International Legal Framework

The right to life is also protected by Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols abolishing the death penalty (the 1983 Protocol No. 6 and the 2002 Protocol No. 13), as well as by Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which have all been ratified by the Republic of Serbia.

The right to life is enshrined in the Constitution of the Republic of Serbia,[1] which lays down that human life is inviolable, that there shall be no death penalty in the Republic of Serbia and that human cloning is prohibited (Art. 24) and prohibits derogations from this right during a state of war or emergency (Art. 202).

The protection of the right to life has two aspects. The first regards the State's so-called *negative obligation*, entailing the prohibition of endangering or taking the life of another. The case-law of the European Court of Human Rights (ECtHR), which the Serbian authorities must bear in mind when interpreting human rights (under Article 18 of the Serbian Constitution), has also developed the doctrine of the State's *positive obligation*: the State is under the obligation to protect the lives of people within its jurisdiction by taking appropriate measures; the failure to take such measures gives rise to a violation of Article 2 of the ECHR guaranteeing the right to life.[2] These measures primarily regard the adoption and effective implementation of laws[3] prescribing the relevant obligations and prohibitions imposed on the

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

2 Article 1 of the ECHR, under which the Contracting Parties *shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*, is also invoked to substantiate the view on the existence of the States' positive obligation to protect the right to life. See, e.g. the ECtHR's judgment in the case of *Timurtaş v. Turkey*, App. No. 23531/94.

3 In its judgment in the case of *Öneryildiz v. Turkey* (App. No. 48939/99), the ECtHR highlighted that the State's positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entailed above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.

authorities[4] and private individuals[5] with a view to preventing the violations of or threats to the right to life of people, and effective investigations of all cases where there is suspicion that a violation of the prescribed obligations and prohibitions resulted in a breach of the right to life.[6] Positive obligations must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.[7] In that respect, the State's obligation to implement an effective investigation is a so-called obligation of means; the authorities are not under the obligation to ascertain all the disputable facts in each individual case or identify and penalise all those responsible, but they are under the obligation to take all the reasonable legally prescribed measures to achieve these goals.[8] Furthermore, the State is not under the obligation to prevent every act of violence; it is, however, under the obligation to prevent it if there are serious indications that there is the possibility of violence occurring.[9]

4 The State, for instance, is under the obligation to thoroughly plan its armed (usually police and military) operations, in order to minimise both the need to apply lethal force and the possibility of jeopardising the lives of third parties (see the ECtHR's judgments in the cases of *McCann and Others v. the United Kingdom*, App. No. 18984/91, and *Ergi v. Turkey*, App. No. 23818/94). The State is also under the obligation to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual (see the ECtHR's judgment in the case of *Osman v. the United Kingdom*, App. No. 23452/94).

5 In that respect, with a view to protecting the right to life, domestic law puts in place obligations people have towards each other in social interaction (e.g. to drive safely) as well as special obligations individuals have towards specific people – the *status of guarantor* (parent to a child, employer to an employee – to ensure safe working conditions and implement occupational protection measures, et al).

6 An investigation needs to fulfil several requirements to be effective. The persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice (see ECtHR's judgment in the case of *Nachova and Others v. Bulgaria*, App. Nos. 43577/98 and 43579/98). In that sense, the investigation needs to be conducted by an official or body independent from those implicated in the events, hierarchically, institutionally as well as practically (see the ECtHR's judgments in the cases of *Ogur v. Turkey*, App. No. 21594/93; *Avşar v. Turkey,* App. No. 25657/94 and *Ramsahai and Others v. the Netherlands,* App. No. 52391/99). Furthermore, the investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible. The investigation must be launched promptly and implemented with reasonable expedition, and the State bears the burden of its timely initiation whether or not any formal complaints have been lodged, et al (see, e.g., the ECtHR's judgments in the cases of *Hugh Jordan v. the United Kingdom*, App. No. 24746/94; *Ergi v. Turkey*, App. No. 23818/94 and *Timurtaş v. Turkey*, App. No. 23531/94). And finally, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory; and, in all cases, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see the ECtHR's judgment in the case of *Kelly v. the United Kingdom*, App. No. 30054/96).

7 See the ECtHR's judgment in the case of *Osman v. the United Kingdom*, App. No. 23452/94.

8 See, e.g., the ECtHR's judgment in the case of *Avşar v. Turkey,* App. No. 25657/94.

9 See the ECtHR's judgment in the case of *Maiorano and Others v. Italy*, App. No. 28634/06.

According to Article 2 of the ECHR, deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection. Use of lethal force by the state authorities and their representatives must satisfy the *criterion of absolute necessity* and must be *proportionate to the aims* to be achieved. In that respect, the ECtHR has held in a number of its judgments that the circumstances in which deprivation of life may be justified must be strictly construed in view of the fundamental nature of the right to life. In its view, deprivation of life in order to effect a lawful arrest or to prevent the escape of a person lawfully detained is justified only when it is absolutely necessary; in principle, there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost.[10]

When a person is deprived of life by a state authority, the State is under the obligation to provide a plausible explanation of why such an outcome had been absolute necessary (the burden of proof rests on the State).[11] As the ECtHR has noted, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[12]

1.2. Serbian Laws and By-Laws Protecting the Right to Life

1.2.1. Use of Firearms by Public Officials and Private Security Guards

The Police Act[13] lays down that police officers shall exercise their powers in accordance with the law and other regulations and comply with the standards set by the ECHR, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Police Code of Ethics and other international police-related enactments (Art. 65).

The Police Act sets out that police officers may use firearms only if the legitimate aim of the assignment cannot be achieved by use of other means of coercion

10 See the ECtHR's judgments in the cases of *Nachova and Others v. Bulgaria*, App. Nos. 43577/98 and 43579/98 and *Streletz, Kessler and Krenz v. Germany*, App. Nos. 34044/96, 35532/97 and 44801/98.

11 See the ECtHR's judgment in the case of *Salman v. Turkey*, App. No. 21986/93.

12 See the ECtHR's judgments in the cases of *Avşar v. Turkey,* App. No. 25657/94; *Tanli v. Turkey*, App. No. 26129/95 and *Anguelova v. Bulgaria*, App. No. 38361/97).

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

and if absolutely necessary to repel a concurrent unlawful assault jeopardising their lives or the lives of others (Art. 124). Before opening fire, the police officer shall issue an oral warning to the individual in issue; if the individual does not comply, the officer will fire a warning shot into the air, provided he does not threby jeopardise the safety of others. Exceptionally, a police officer may fire at the individual without first warning him orally or by firing the warning shot, if that would compromise his defence from the individual's attack or the elimination of the risk to his life or the lives of others (Art. 125).

The Police Act also prohibits police officers from firing at moving vehicles unless such vehicles are used to jeopardise the lives or safety of the police officers or others, or if the vehicle passengers are firing shots threatening the lives or safety of the police officers or others (Art. 126). Police may use firearms against vessels pursued on inland waterways to stop them and prevent the escape of a person to be brought before the relevant authority only if they were unable to achieve that goal by use of other available means (audio and light signals, oral warnings and orders or warning shots) provided these means do not jeopardise the life of others. However, even in such cases, the police may not use their firearms, if they would thereby jeopardise the lives of others or if their use is not necessary to save or protect the lives of others (Art. 127). When the above requirements for the use of firearms are fulfilled, the police are also entitled to use police dogs (Art. 116), chemical agents (122) and special types of weapons and devices (Art. 123).[14]

Although the Police Act sets out that the by-laws specified therein are to be adopted within one year from the day it enters into force,[15] the by-law on the exercise of police powers (including the use of means of coercion) mentioned in Article 64 has not been adopted yet. Under the old Rulebook on the Technical Features and Manner of Use of Means of Coercion,[16] which will remain in force until the new by-law is enacted, the police shall draw up an operational plan if they become aware that they will face armed resistance from a person they are to exercise their police powers against while performing their statutory police assignments or duties under the CPC. The plan shall specify the required number of officers, their weapons and protection gear, assignments, tactics, firearm security measures and, depending on the assessment, other elements. The plan shall also designate the commanding officer, who will be in charge of implementing the planned measures. The officers participating in the implementation of the plan must be familiar with the assessment of the resistance to be expected, the situation plan and team members' positions and schedule and their assignments, as well as their own; they are allowed to use firearms only on the order of their commanding officer, unless that is their only means

14 Firearms may be used under the same conditions also by Security Intelligence Agency agents. See Articles 12 and 16 of the Security Intelligence Agency Act, *Sl. glasnik RS*, 42/02, 111/09, 65/14 – CC Decision and 66/14.

15 This law entered into force in February 2016.

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

of defence from an immediate attack and danger; in such cases, they may use their firearms before they are ordered to (Art. 16).

The Rulebook envisages an in-house procedure for controlling the justifiability and lawfulness of the use of the means of coercion, which is applied every time firearms are used or the means of coercion caused grave physical injuries or death. In such cases, the police director or chief of the regional police administration, in which the officer, who had used the means of coercion, works, shall establish a three-member commission that shall review the circumstances in which the means of coercion were used, draw up a report on the review and render its opinion on whether the use of the means of coercion was lawful and professional. The opinion shall be forwarded to the police officer designated by the Minister of Internal Affairs to assess the justifiability and lawfulness of the use of means of coercion. In the event the designated officer finds that the use of force was unjustified or unlawful, he shall recommend to the police director to take measures prescribed by law. This officer is also entitled to recommend to the police director to take the relevant measures to improve professionalism and lawfulness related to the use of means of coercion (Art. 25).

The conditions under which firearms may be used in penitentiaries are set out in the Penal Sanctions Enforcement Act (PSEA).[17] Under this law, firearms may be used in the event a concurrent and imminent unlawful attack endangering the life of a prisoner, staff or another person in the penitentiary cannot be repelled otherwise, to prevent the escape of a convict from a maximum security or special security penitentiary, or the escape of a convict serving a minimum 10 years' imprisonment sentence or of a detained defendant charged with a crime warranting more than 10 years' imprisonment during their transfer. The PSEA also lays down that firearms shall not be used if their use would gravely threaten the life of others. If an official action is undertaken under the direct management of the prison warden or chief of security, firearms may be used only on their order (Art. 145).

The person against whom the firearms are to be used shall be warned thereof orally and clearly, except in case of a concurrent or imminent unlawful attack (Art. 144). The warden shall immediately forward notice of the use of firearms and a record of the shot convict's medical examination to the head of the Penal Sanctions Enforcement Administration, the competent public prosecutor and the sentence enforcement judge (Art. 146).

The Rulebook on Measures for Maintaining Order and Security in Penal Institutions[18] elaborates the PSEA provisions on conditions under which firearms may be used (in Arts. 27–29). Pursuant to this Rulebook, the purpose of using firearms is to disable the assailant and the authorised officers shall endeavour not to wound the convicts' vital organs (Art. 25).

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

18 *Sl. glasnik RS*, 105/14.

Private security guards may use firearms under the conditions prescribed by the Private Security Act[19] and the Police Act. Under the Private Security Act, private security guards may use firearms only in self defence and when strictly necessary and they have to clearly warn the individual in issue thereof, unless they would thereby jeopardise their own lives or the lives of the persons they are protecting (Art. 55). Under this law, a private security guard, who had used his firearm, is under the obligation to extend first aid to the individual he shot, immediately call the doctor, immediately notify the relevant police administration that he used his firearm, and submit a report on the use of firearms to his employer's responsible person within 12 hours; the responsible person shall forward the report with his opinion to the police administration within 48 hours (Art. 56). Under the Act, private security guards may use specially trained dogs to secure the facilities and area they are guarding, subdue resistance or repel attacks on other security guards or other individuals present in the facility and area they are guarding in circumstances when they are allowed to use firearms under this law (Art. 54).

The Rulebook on the Use of Means of Coercion by Private Security Guards[20] sets out the obligation of security guards using firearms to preserve the lives of others and specifies the elements reports on the use of firearms must include (Arts. 9 and 10).

1.3. Protection of the Right to Life in Substantive and Procedural Criminal Law

The Criminal Code[21] includes a chapter on crimes against life and limb (Chapter XIII), incriminating various forms of violent deaths, as well as numerous categories of other offences that may threaten human lives and health. It also incriminates offences against human and civil rights and freedoms (Chapter XIV), sexual freedoms (Chapter XVIII), marriage and family (Chapter XIX), human health (Chapter XVIII), general safety of people and property (Chapter XXV), public traffic safety (Chapter XXVI), Serbia's constitutional order and security (Chapter XXVIII) and crimes against humanity and other goods protected by international law (Chapter XXXIV). The severest forms of these crimes warrant up to 40 years' imprisonment.

The Criminal Procedure Code (CPC)[22] allows the application of all the statutory evidentiary actions for identifying and solving crimes against human life. Special evidentiary actions – interception and recording of telephone and other com-

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

20 *Sl. glasnik RS*, 30/15.

21 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

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

munication, covert surveillance and audio and video recording, computer search of data, et al (Art. 162) – may also be applied to solve aggravated murder cases.

Under the Health Care Act,[23] medical examiners performing autopsies of the deceased to ascertain the time and cause of death, irrespective of the place of death, must notify the relevant MIA unit promptly of any suspicions that the death was violent (Art. 220). In case a person deprived of liberty dies, the state is under the obligation to explain the circumstances of his death, wherefore the CPC lays down that the public prosecutor or court will in such cases order the examination and autopsy of the corpse by a medical examiner (Art. 129).

1.4. Right to Life Cases in 2017

Murder of Two Women and a Child in front of the Social Work Centres in Belgrade. – Two women and a child were killed by the women's (former) husbands in front of Belgrade Social Work Centres (SWC) in July 2017. One of the women was killed when she brought her minor children to meet their father under SWC supervision in New Belgrade; after killing her, the perpetrator (her former husband and the children's father) committed suicide.[24] In its report on its *ad hoc* check of the work of the SWC New Belgrade Department, the Ministry of Labour, Employment and Veteran and Social Issues Commission said that it had identified specific deficiencies in the work of this Department, notably, that the staff had failed to fully and timely act and assess all the relevant circumstances relevant to the scope and content of the protection extended to domestic violence victims and the protection of the best interests of the underage children. The Ministry said that these deficiencies were the consequence of the lack of adequate communication among the institutions in different systems, charged with domestic violence and child abuse. The Committee instructed the Director of the Belgrade City SWC to take measures to ascertain the liability of the head of the SWC New Belgrade Department and staff directly working on the case. The Ministry also said it had forwarded the report on the *ad hoc* check to the relevant prosecution service.[25]

Several days after the incident, a man seriously wounded his four-year-old son, who succumbed to his wounds, and then killed his wife in front of the SWC Rakovica Department. Three SWC members of staff were also wounded in the incident.[26] The Minister of Labour, Employment and Veteran and Social Issues said

23 *Sl. glasnik RS*, 107/05, 72/09, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15, 106/15 and 105/17 – other law.

24 See more in Serbian at: http://rs.n1info.com/a281075/Vesti/Vesti/Muz-ubio-zenu-u-Centru-za-socijalni-rad-na-Novom-Beogradu.html.

25 See more in Serbian at: www.minrzs.gov.rs/lat/pres/saopstenja/nadzor-nad-gradskim-centrom-za-socijalni-rad-novi-beograd.html.

26 See more in Serbian at: http://www.rts.rs/page/stories/sr/story/135/hronika/2801736/muskarac-ubio-zenu-i-dete-u-centru-za-socijalni-rad-u-rakovici.html; https://insajder.net/sr/sajt/vazno/5831/.

that the SWC professionals had not recognised the existence of domestic violence in this case and treated it as a controllable conflict between parents fighting for custody in court. After an *ad hoc* check of the work of the SWC Rakovica Department, the Minister said that there were deficiencies in the work of institutions, notably the police, tasked with notifying the Rakovica SWC of the domestic violence and extending aid and support in assessing it. He also said that the commission of the psychiatric establishment "Laza Lazarević" had failed to recognise that the perpetrator was suffering from a dysfunctional personality disorder. He said he had adopted binding instructions on the fulfilment of SWCs' obligations under the Domestic Violence Act.[27] Several members of the Rakovica SWC staff rallied in front of their workplace after the tragic incident, protesting because their demand to place security guards at the entrances to all the SWCs was still unheeded.[28]

Pending High-Profile Cases. – The trial of the assassins of journalist Slavko Ćuruvija by the Belgrade Higher Court Special Department, which opened three years ago, was not completed by the end of 2017. The first-instance judgment is expected in the first half of 2018, almost 20 years since Ćuruvija was killed. No light has been shed yet on the murders of Yugoslav United Left senior official Zoran Todorović (killed in 1997), former FRY Defence Minister Pavle Bulatović (killed in 2000), the former Director of the national airline JAT Živorad Petrović (killed in 2000), police General Boško Buha (killed in 2002), state security agent Momir Gavrilović (killed in 2001) and journalist Dada Vujasinović (killed in 1994). The case of the death of Belgrade District Court judge Nebojša Simeunović, who died 17 years ago, is still in the preliminary investigation stage. So is the case of the two soldiers killed in the Topčider army barracks in Belgrade 13 years ago.

The case of the death of Fedor Frimerman in front of the "Sound" raft café in Belgrade in July 2013 was not closed either. In March 2017, the Belgrade Appeals Court overturned the first-instance judgment finding the defendants guilty and ordered a retrial.[29]

In November 2017, the Belgrade Higher Court delivered a first-instance judgment convicting anesthesiologist Stanoje Glišić to three years' imprisonment for negligent treatment of three-year-old Anja Grahovac, who died after a cataract operation at the "Perfekta" clinic in 2007.[30]

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27 See more in Serbian at: www.b92.net/info/vesti/index.php?yyyy=2017&mm=07&dd=20&nav_category=11&nav_id=1284519.

28 See more in Serbian at: http://rs.n1info.com/a282855/Vesti/Vesti/Ubio-zenu-u-Centru-za-socijalni-rad-u-Rakovici.html.

29 More is available in Serbian at: http://www.bg.ap.sud.rs/cr/archive/dk-donete-odluke/2017/4; https://www.blic.rs/vesti/hronika/prvooptuzeni-za-ubistvo-fedora-frimermana-priznao-da-je-lagao-tokom-prethodnog/th19tne.

30 See the *RTS* report, available in Serbian at: http://www.rts.rs/page/stories/ci/story/134/hronika/2952227/tri-godine-zatvora-lekaru-perfekte-zbog-smrti-anje-grahovac.html.

2. Prohibition of Ill-Treatment[31]

2.1. Legal Framework

The Republic of Serbia has ratified all international instruments[32] guaranteeing the absolute prohibition of torture and inhuman or degrading treatment or punishment, which has become a peremptory norm of general international law *(jus cogens*). In addition, part of the Chapter 23 Action Plan, in which Serbia has spelled out the obligations it has assumed in the fields of the judiciary and fundamental rights in the EU accession process, is devoted to measures aimed at ensuring full respect of the prohibition of ill-treatment.[33] The Action Plan, however, has not recognised all the problems in this area, clearly described by international bodies.[34]

Serbian legislation also prohibits ill-treatment, starting with Articles 25–27 of the Constitution. Ill-treatment is also prohibited by Serbian laws[35] and by-laws.[36] Serbia, however, failed to eliminate the shortcomings in its substantive law in 2017; notably it did not define torture as a separate criminal offence in its Criminal Code (CC).[37] The Criminal Code still comprises two overlapping articles incriminating torture: Article 136 prohibits the extortion of confessions and Article 137 prohib-

31 The term "ill-treatment" is used generically in this Report to denote torture and inhuman or degrading treatment or punishment.

32 ECHR, ICCPR, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

33 The Chapter 23 Action Plan was adopted in April 2016. Measures related to the prohibition of ill-treatment are listed in the section "Fundamental Rights" (Chapters 3 and 3.1), available at: https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023%20Third%20draft%20-%20final1.pdf.

34 A series of systemic and/or individual recommendations aimed at improving national law and practices have been issued to Serbia in the concluding observations of UN contracting bodies (the Human Rights Committee (HRC), the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CaT)) and in the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

35 Criminal Code (*Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16), Criminal Procedure Code (*Sl. glasnik RS*, 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), Penal Sanctions Enforcement Act (*Sl. glasnik RS*, 55/14) and Police Act (*Sl. glasnik RS*, 6/16) are just some of the regulations reflecting the degree of alignment of Serbian law with international standards relevant to the prohibition of ill-treatment.

36 Rulebook on the Technical Features and Manner of Use of Means of Coercion (*Sl. glasnik RS*, 19/07, 112/08 and 115/14, hereinafter Means of Coercion Rulebook), Instructions on the Treatment of People in Police Custody (*Sl. glasnik RS*, 101/05, 63/09 – CC and 92/11, hereinafter: Instructions), etc.

37 During the HRC's review of Serbia's third periodic report in March 2017, the state failed to provide an answer or explanation why it had failed to act on the HRC's prior recommendation to include a definition of torture in line with Article 1 of the Convention against Torture, wherefore the HRC reiterated it in its Report of 10 April 2017. See: CCPR/C/SRB/CO/3, available at:

its torture and ill-treatment. It is unclear why the legislator incriminated extortion of confessions as a separate criminal offence, given that there is no difference between the simple and qualified forms of extortion of confessions (paras. 1 and 2 of Art. 136, CC) and the qualified form of torture and ill-treatment perpetrated by a public official (Art. 137, para. 2 in conjunction with para. 3) and that extortion of confessions is an act of torture/ill-treatment. On the other hand, the CC lays down different penalties for practically identical crimes: extortion of confessions warrants maximum 10 years' imprisonment, while torture and ill-treatment warrant maximum eight years' imprisonment, giving rise to the risk of unequal treatment in identical cases.[38]

The Committee against Torture also alerted to this problem quite precisely in 2015,[39] wherefore it is unclear why a period of over two years was not enough for the Serbian legislature to align the provisions, notably merge the two articles into one comprising all elements of the definition of torture under Article 1 of the Convention against Torture.[40]

The status of perpetrators of ill-treatment and torture under Article 137 of the Criminal Code is also not in line with international standards. The definition of these offences indicates that they may be perpetrated by anyone, both by private individuals and public officials, although both the definition of torture in Article 1 and Article 16 of the Convention against Torture explicitly require some form of involvement of a public official for any form of ill-treatment to exist.[41] Consequently, Serbian courts have been ruling on scores of cases in which private individuals have been charged with torture or ill-treatment, acts which cannot be subsumed under ill-treatment in the meaning of Articles 1 and 16 of the Convention against Torture, irrespective of their gravity. On the other hand, such acts by private individuals can be subsumed under an entire set of other offences unjustifiably interfering in the physical and psychological integrity of others and incriminated by the Criminal Code.[42] Therefore, the state needs to consistently apply

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http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SRB/CO/3&Lang=En, paras. 26–27.

38 See the *2016 Report*, II.2.2.2.

39 See: CAT/C/SRB/CO/2*, 3 June 2015, para. 8.

40 Under Article 1 of the UN Convention against Torture "[...] the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

41 I.e. that the ill-treatment is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

42 E.g. infliction of light or grave bodily injuries (Arts, 122 and 123, CC), unlawful deprivation of liberty (Art. 132, CC) or endangerment of safety (Art. 138, CC).

the international standard in this part as well, as already noted by UN contracting bodies.[43]

As per the valid national penal policy, it needs to be noted that penalties for crimes under Articles 136 and 137 of the Criminal Code with elements of torture in the meaning of Article 1 of the CaT range from one to ten years' imprisonment. The analysis of the concluding observations of the Committee against Torture and the Human Rights Committee leads to the conclusion that these offences should warrant between six and twenty years' imprisonment.[44] The same conclusion may be drawn from the Serbia Progress Reports, in which the European Commission has repeatedly qualified penalties for torture and ill-treatment as inadequate.[45]

Serbia in 2017 yet again failed to eliminate the statute of limitations applying to torture, as recommended by UN contracting bodies.[46] Consequently 17 cases of torture and ill-treatment against 35 public officials charged with violating Articles 136 and 137 of the CC became time-barred from 1 January 2010 to 31 December 2016.[47]

2.2. Serbia's Legislation and Prosecution of Perpetrators of Ill-Treatment

In 2017, the BCHR successfully completed a two-year project entitled *Imprisonment as Ultima Ratio – Absolute Prohibition of Ill-Treatment*,[48] within which it collected and analysed over 90% of the decisions of Basic Courts and over 70 decisions of Basic Public Prosecution Services (BPPS) regarding cases against public officials (police officers, prison guards, et al) suspected of/charged with extortion of confessions and ill-treatment. The analysis of the collected material[49] leads to the conclusion that the procedural aspect of the prohibition of ill-treatment is violated in

43 See the *2016 Report*, II.2.2.2. See also: CAT/C/SRB/CO/2* of 3 June 2015, para. 8; CAT/C/SRB/CO/1, of 19 January 2009, para. 5; and CCPR/C/SRB/CO/3 of 10 April 2017, paras. 26–27.

44 See: CCPR/C/SRB/CO/3 of 10 April 2017, paras. 26–27; CCPR/C/SRB/CO/2 of 20 May 2011, para. 11; CAT/C/SRB/CO/2 of 3 June 2015, para 8; and CAT/C/SRB/CO/1 of 19 January 2009, para. 5.

45 More in "Serbia 2016 Report", the European Commission, SWD (2016) 361 final, Brussels 2016, p. 61.

46 See: CCPR/C/SRB/CO/3 of 10 April 2017, paras. 26–27; CCPR/C/SRB/CO/2 of 20 May 2011, para. 11; CAT/C/SRB/CO/2 of 3 June 2015, para. 8; and CAT/C/SRB/CO/1 of 19 January 2009, para. 5.

47 See the *2016 Report*, II.2.2.2. and *Pădureţ v. Moldova*, ECtHR, App. No. 33134/03 (2010), paras. 73 and 75.

48 More information about the project is available in Serbian at: http://www.bgcentar.org.rs/zatvaranje-kao-krajnja-mera-potpuna-zabrana-zlostavljanja/.

49 Including direct work with judges and prosecutors.

Serbia,[50] notably, that the competent judicial authorities have not been conducting efficient and effective investigations into arguable claims of ill-treatment by public officials and that the penalties levelled against those proven guilty do not correspond to the gravity of the offences.[51] In other words, Serbia has a problem arising from the impunity of public officials for torture, inhuman or degrading treatment or punishment, as noted, inter alia, in the reports by CAT[52] and HRC[53] since 2000.

The situation in this area aggravated in particular on 1 October 2013, when the new Criminal Procedure Code (CPC) came into force. It introduced the prosecutorial investigation in Serbian criminal law, entrusting both the preliminary and investigative stages of criminal proceedings to the public prosecutors. Since the prosecutors have not been provided with adequate technical and organisational resources, only a negligible number of torture and ill-treatment cases made it to the trial stage since the new CPC entered into force.[54] If one also bears in mind the fact that the prosecutors' managerial role *vis-à-vis* the police has not been legally elaborated and that the prosecutors rely on no other than the MIA[55] in 90% of the proceedings against police officers, it may be concluded that preliminary and investigative proceedings are neither independent nor impartial.[56]

On the other hand, the status of victims of torture and ill-treatment has further been exacerbated by the fact that Article 52 of the CPC repealed the institute of subsidiary prosecutor, i.e. the possibility of the injured party proceeding with criminal prosecution in the event the public prosecutor decided against initiating criminal proceedings or abandoned prosecution prior to the confirmation of the motion to indict.[57] Injured parties are now only allowed to file objections against the prosecutors' decisions with the immediately superior public prosecution services,[58] which are as a rule dismissed with regard to cases concerning violations of Articles 136 and 137 of the CC.[59] Consequently, only a negligible few torture and ill-treat-

50 More about the procedural aspect of the prohibition of ill-treatment in the ECtHR's judgment in the case of *Manzhos v. Russia*, App. No. 64752/09 (2016), para. 33.

51 More on the standard developed in ECtHR's case-law in its judgment in the case of *Ateşoğlu v. Turkey*, ECtHR, App. No. 53645/10, paras. 22–30.

52 See CAT/C/SRB/CO/2* of 3 June 2015, para. 10; and CAT/C/SRB/CO/1 of 19 January 2009, para. 10.

53 See: CCPR/C/SRB/CO/3 of 10 April 2017, paras. 26–27; and CCPR/CO/81/SEMO of 12 August 2004, paras. 13–14.

54 More in the *2016 Report,* II.2.2.3.

55 Most often the MIA units in which the alleged perpetrators are working, resulting in *colleagues investigating colleagues*.

56 See, e.g. the ECtHR's judgments in the cases of *Đurđević v. Croatia,* App. No. 52422/09 (2011), para. 85 or *Mihhailov v. Estonia*, App. No. 64418/10 (2016), para. 130.

57 More in the *2016 Report*, II.2.2.3.

58 Article 51, CPC.

59 None of the decisions the BCHR obtained from the public prosecution services upheld the injured parties' objections, i.e. resulted in the confirmation of the motion to indict.

ment cases have entered the trial stage since the new CPC came to force, actually boiling down to a statistical error. This had not been the case when the old CPC was in force; it had entitled the injured parties to assume criminal prosecution at any stage of the proceedings.

Furthermore, Article 495 of the CPC provides for summary proceedings (i.e. proceedings in which the prosecutors do not have to conduct investigations and may order specific evidentiary actions) for all criminal offences warranting up to eight years' imprisonment. The Committee against Torture[60] also drew attention to these provisions, as did the CPT in 2015, when it requested of the Serbian Government to comment why the law now limited the possibility of the injured party to initiate criminal prosecution before the confirmation of the motion to indict.[61]

The fact that 90% of the criminal reports against policemen and penitentiary staff – filed from 1 October 2013, when the new CPC entered into force, to 31 December 2016 – have been dismissed leads to the conclusion that such a system facilitates avoidance of liability of public officials, who had committed ill-treatment.

2.2.1. BPPS' practice re extortions of confessions and torture and ill-treatment since the new CPC came into force

According to the material collected during the implementation of the project, the BPPS have conducted a total of 240 (preliminary) criminal proceedings regarding torture and ill-treatment (para. 3 in conjunction with paras. 1 and 2 of Art. 137) from 1 October 2013 to 31 December 2016. It may be presumed that the number of criminal reports against public officials entitled to use force is lower than 240 given that the prosecution services do not draw a distinction between the perpetrators and register in their records violations of this Article also by public officials not authorised to apply force, e.g. directors of public and utility companies, kindergarten and school teachers, et al.[62]

Out of the 240 criminal proceedings, 151 ended with a final decision in the (preliminary) investigation stage or were in the trial stage, while 89 were pending.[63] Thirteen of the 151 completed proceedings (i.e. 8% of all criminal proceedings) were in the trial stage, i.e. the motions to indict have been upheld. The prosecutors issued 131 rulings dismissing the criminal reports and deferred criminal reports in

60 See CAT/C/SRB/CO/2* of 3 June 2015, para. 10.

61 "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, para. 20.

62 BCHR expects to collect from the BPPS the files on all Articles 136 and 137 cases in which final decisions have been taken by the end of 2018 and set up a single database of proceedings conducted against public officials accused of ill-treatment.

63 BCHR was unable to ascertain the total number of defendants in these proceedings due to the fact that not all the BPPS responded to BCHR's requests for access to information of public importance.

seven cases – after the defendants fulfilled an obligation laid down in the CPC, the prosecutors issued rulings dismissing the criminal reports (4.6%).

Out of the 132 cases involving 274 public officials the BCHR perused, 104 cases involving 222 public officials ended with the dismissal of the criminal reports. Criminal prosecution was deferred in five cases regarding six public officials and the motions to indict were confirmed in four cases involving five public officials. Another 19 proceedings involving 41 public officials were under way. Most of the criminal reports had been filed in Belgrade (59), Novi Sad (20), Jagodina (16), Zrenjanin (15), Leskovac (13), Niš (10), Loznica (10), Kraljevo (10), Kruševac (9) and Kragujevac (9).[64]

The BPPS conducted another 18 (preliminary) criminal proceedings re extortion of confessions under Article 136 of the CC in the same period. The criminal reports were dismissed in 14 cases and the proceedings were pending in four cases.

The BCHR collected the decisions and other relevant documents regarding 13 cases. On the other hand, the Public Prosecution Services, which had not forwarded the case files, notified the BCHR of the number of cases and the number of accused they were handling. In view of the above, a total of 35 public officials were accused in 17 cases given that the Subotica BPPS did not forward data on one pending case (BCHR has obtained its registration number). Most of the criminal reports (four) were filed in Belgrade.

2.2.2. Basic Courts' Articles 136 and 137 Case-Law in the 2010–2016

Serbian Basic Courts held 149 trials for torture and ill-treatment (under Article 137, paragraph 3 in conjunction with paragraphs 1 and 2, CC) from 1 January 2010 to 31 December 2016. The project statistics cover only the 140 cases, the files of which were available to BCHR.[65]

Like the Prosecution Services, the Basic Courts do not distinguish between perpetrators of offences incriminated by this Article of the Criminal Code, wherefore BCHR analysed only the proceedings regarding individuals with the status of police officer or prison guard and other officials vested with the power to apply force (e.g. communal policemen).

Final decisions were delivered in 119 of the 140 criminal proceedings, while 21 trials were pending: i.e. the cases were in the main hearing stage in the first or

64 Some Public Prosecution Services forwarded only the case registration numbers and the number of the accused; these data lead to the conclusion that a total of 203 criminal reports against 420 public officials were filed in the period. The Services did not forward any data apart from the registry numbers of 37 cases; it may be presumed that the number of public officials against whom criminal reports have been filed is at least 37, i.e. that criminal reports have been filed against a total of 457 public officials.

65 The Bor and Lazarevac Basic Courts ignored BCHR's requests while the 1st and 3rd Belgrade Basic Courts and the Bujanovac and Paraćin Basic Courts were expected to forward several more cases or decisions.

second instance. A total of 261 defendants, over 95% of them police officers, have been indicted in these proceedings.

Sixty-five (46%) of all the proceedings entered the trial stage after the injured party initiated criminal prosecution in the capacity of subsidiary prosecutor.

Of the 119 final decisions:

- 30 were acquittals – 55 public officials;
- 33 were convictions – 45 public officials;
- 39 were rulings discontinuing criminal proceedings – 81 public officials;
- 8 were rulings dismissing motions to indict – 23 public officials;
- 9 were rulings dismissing the motions to indict on the merits – 17 public officials.

The following penalties were pronounced in 33 cases in which 45 police officers were found guilty (none of the charged prison guards were found guilty):

- 25 conditional sentences – 33 police officers;
- 3 deferrals of criminal prosecution – 6 police officers (fines);
- 2 imprisonment sentences – two police officers (one was sentenced to eight months' and the other to four months' imprisonment);
- Home incarceration – 2 police officers;
- Community service – 1 police officer;
- Plea bargain – 1 police officer.

Of the 39 decisions discontinuing criminal proceedings, 16 (involving 31 public officials) were taken due to the expiry of the statute of limitations, 17 because the injured parties abandoned prosecution (most often due to their unjustified failure to appear in court) and six because the public prosecutors abandoned prosecution.

Seventeen trials (against a total of 40 defendants) for extortion of confessions have been conducted before Serbian Basic Courts from 1 January 2010 to 31 December 2016.[66] Fourteen of the 15 trials ended with a final decision, one was pending. As many as 13 cases entered the trial stage after the injured parties initiated criminal proceedings as subsidiary prosecutors.

Of the 14 final decisions:

- 5 were acquittals – 11 public officials;
- 2 were convictions – 3 public officials;
- 3 were rulings discontinuing criminal proceedings – 8 public officials;

66 Only 15 cases were covered by the analysis. The files of case K 1320/16 of the 2nd Belgrade Basic Court and case K 1098/13 of the 3rd Belgrade Basic Court were due to arrive by the end of 2017.

- 2 were rulings dismissing motions to indict – 11 public officials;
- 2 were rulings dismissing motions to indict on the merits – 4 public officials.

Two public officials convicted in one trial were given conditional sentences and the third public official in the second trial was sentenced to one year home incarceration. One case against four police officers became time-barred.

Due to the fact that the findings of UN contracting bodies during their periodic reviews of Serbia's reports are more or less the same (impunity of public officials perpetrating ill-treatment) and the large number of allegations of ill-treatment noted by the CPT during its regular visit in 2015,[67] which have not been investigated thoroughly, impartially, independently or efficiently, the CPT decided to conduct its first *ad hoc* thematic visit in its history to Serbia to assess the judicial authorities' handling of extortion of confessions, torture and ill-treatment cases.[68] The CPT report is due in the first quarter of 2018.

2.3. Guarantees against Ill-Treatment – Rights to Third Party Notification, an Attorney and an Independent Medical Examination

Guarantees against ill-treatment are enshrined in both CPT standards and Serbian law. Everyone deprived of liberty by the police is entitled to: a lawyer, to notify a third party of his choice of his deprivation of liberty and to an independent medical examination. However, the enjoyment of these three rights by persons deprived of liberty in Serbia may be brought into question in practice, not only because the valid laws and by-laws do not provide sufficiently strong safeguards, but also because of the issues arising with respect to the assignment of assigning *ex officio* lawyers to persons deprived of liberty or the doctors' failure to perform their job properly, even when persons bearing visible traces of violence are brought in for an examination.

The greatest problem arising with respect to the right to a defence arises from the passive attitude of *ex officio* defence counsels assigned to represent persons deprived of liberty of poor financial standing. The CPT drew attention to this problem in all four Reports on its visits to Serbia in the 2004–2015 period.[69] The

67 "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, page 6 and para. 14.

68 "CPT visits Serbia to look into policing matters and the situation in remand detention", 31 May 2017, available at: https://www.coe.int/en/web/cpt/-/cpt-visits-serbia-to-look-into-policing-matters-and-the-situation-in-remand-detention.

69 CPT/Inf (2006) 18, paras 49 and 50; CPT/Inf (2009) 1, paras. 23 and 24; CPT/Inf (2012) 17, para. 22; and CPT/Inf (2016) 21, para. 26, all available at: https://www.coe.int/en/web/cpt/

Reports quote persons deprived of liberty as telling the CPT delegations they had been advised by their *ex officio* counsel to admit the crimes they were charged with, that they did not insist that their clients are examined by a doctor despite visible traces of abuse, or that they showed up and counselled them just before they were to be brought before a judge or prosecutor.[70] This is why a system for assigning *ex officio* counsels needs to be established to prevent that persons deprived of liberty are assigned lawyers who are closely connected to the police or lack the skills and knowledge to defend persons accused of criminal offences.[71] The Committee against Torture made a similar assessment and recommendation to the state in 2015.[72]

The right to a thorough, independent and impartial medical examination is not adequately governed by law. Namely, paragraph 26.3 of the Instructions on the Treatment of People in Police Custody lays down that police officers must attend the medical examinations of all persons in police custody. It is quite difficult to expect of a person deprived of liberty to have the courage to relate all the details of his ill-treatment in the presence of a police officer, who may have himself taken part in it. The same considerations apply to persons ordered pre-trial detention. Namely, the prison doctors continue to describe the injuries found on the inmates in a superficial manner, and mostly merely note their injuries (size and shape) but do not go into detail (colour, symmetry of the lesions, et al). Furthermore, only a few prison doctors take the statements of inmates with injuries, and even fewer of them[73] draw causal links between the described injuries and the statements of the alleged torture victims.[74] And, last, but not the least, not one prison in Serbia, regardless of how their doctors perform their medical examinations, notify the relevant prosecutors of cases clearly indicating that the newly admitted inmates had been abused by the police.[75]

2.4. Respect of the Non-Refoulement Principle

The *non-refoulement* principle prohibits returning a person to a country (of origin or a third country) where he is at risk of treatment in contravention of the

serbia.

70 After the police already interrogated them and perhaps extorted their confessions.

71 More in Jugoslav Tintor, "Proposal for the Improvement of *Ex Officio* Defence," OSCE, Belgrade, 2016, available in Serbian at: http://akpozarevca.rs/resursi/uploads/2015/11/TINTOR-Predlog-za-unapre%C4%91enje-sistema-slu%C5%BEbene-odbrane-1.pdf.

72 Concluding Observations on the second periodic report of Serbia, CAT/C/SRB/CO/2*, 3 June 2015, para. 9.

73 The Belgrade District Prison's medical examinations of new arrivals have fulfilled all the relevant criteria for several years now.

74 Concluding Observations on the second periodic report of Serbia, CAT/C/SRB/CO/2*, 3 June 2015, para. 9; Concluding observations on the initial periodic report of Serbia, CAT/C/SRB/CO/1, 19 January 2009, para. 6.

75 CPT/Inf (2016) 21, para. 22.

prohibition of torture or inhuman or degrading treatment or punishment. Therefore, every time they implement a procedure that may ultimately result in a decision to expel a person, states are under the obligation to perform rigorous scrutiny in order to ascertain whether there is a risk that he will be ill-treated in the country of return.[76]

Serbian Misdemeanour Courts have often penalised aliens who entered Serbia illegally and ordered their removal to countries they had come from, pursuant to Article 65 of the Misdemeanour Act.[77] They have not reviewed the possibility that these aliens may be in need of international protection. Furthermore, aliens are rarely provided with legal aid and interpreters for languages they understand, wherefore they are unable to explain why they had irregularly entered the country or present their arguments why they should not be expelled.

The same problem has arisen in some police stations which issue rulings ordering aliens to leave the country, under Article 35 of the Aliens Act[78] and rulings on their unlawful presence, under Article 43 of that Act, without providing them with the opportunity to put forward (with the help of a lawyer and interpreter for the language they understand) the reasons why they believe they are at risk of refoulement to a third country or their country of origin. Furthermore, appeals of such rulings do not fulfil the criteria of an effective legal remedy under Article 13 of the ECHR because they do not have suspensive effect. In addition, arbitrary interpretation of Articles 22 and 23 of the Asylum Act[79] has resulted in the authorities ordering aliens attempting to seek asylum (i.e. to access the asylum procedure) to leave the country or depriving them of the possibility of seeking asylum.[80] In such cases, the migrants' representatives have asked the European Court of Human Rights to indicate interim measures; one such case regarded a minor from Afghanistan, who was at risk of refoulement to Bulgaria,[81] and the other a Syrian national detained in the Aliens Shelter pending his deportation to Montenegro, where he would be at risk of chain refoulement to Albania and onwards to Greece.[82]

A number of migrants tried to enter Serbia via Belgrade airport Nikola Tesla. Some of them, who may have been in need of international protection but did not fulfil the requirements to enter Serbia, were detained by the police in the airport transit zone pursuant to Article 11 of the Aliens Act; the police, however, do not consider them deprived of liberty and return them to their countries of origin or

76 *J.K. and Others v. Sweden,* App. No. 59166/12, (2016), para. 83 and *F.G. v. Sweden,* App. No. 43611/11, (2016), para. 115.

77 *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.

78 Article 35 of the Aliens Act, *Sl. glasnik RS*, 97/2008.

79 *Sl. glasnik RS*, 109/07.

80 More in the BCHR's *2016 Right to Asylum in the Republic of Serbia Report*, 2017, pp. 34–35.

81 BCHR lawyers asked the ECtHR to indicate interim measures. See *Wais v. Serbia,* ECtHR, App. No. 70923/17.

82 See *Othman v. Serbia*, ECtHR, App. No. 27468/15.

third countries without reviewing the risk of their refoulement.[83] As of November 2013, the BCHR was forced to intervene in over 200 cases (to facilitate the migrants' access to Serbian territory and the asylum procedure) and in three cases asked the ECtHR to indicate interim measures to prevent the return of the migrants detained at the airport to Greece,[84] Somalia[85] and Turkey.[86] The CPT also criticised the practice of the Belgrade airport border police station in its 2015 Report.[87]

The asylum procedure may also end in a decision to deport the applicant, either to his country of origin (if his application was dismissed on the merits) or to a third country (usually a neighbouring country) qualified as a safe third country by the Asylum Office.[88] The dismissal of asylum applications in the latter cases, under Article 33(1(6)) of the Asylum Act, is incompatible with the Article 3 standards developed by the ECtHR, as noted by CAT[89], HRC[90], as well as ECRE[91] and BCHR in its annual reports on the right to asylum.[92] Apart from the noted deficiencies in the practice of the asylum authorities,[93] the BCHR was forced to ask the ECtHR to indicate interim measures to prevent the forced returns of refugees to the Former Yugoslav Republic of Macedonia[94] and Libya.[95]

3. Right to Liberty and Security of Person

3.1. Legal Framework

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

83 More in the BCHR's *2016 Right to Asylum in the Republic of Serbia Report*, 2017, pp. 31–33.

84 *P. S. v. Serbia,* App. No. 90877/13.

85 *Ahmed Ismail (Shiine Culay) v. Serbia*, App. No. 53622/14.

86 *Arons v. Serbia*, App. No. 65457/16.

87 Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2*, 3 June 2015, para. 14.

88 A safe third country denotes a country in which the asylum seeker had been before coming to Serbia and where he is able to obtain effective international protection.

89 Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2*, 3 June 2015, para. 15.

90 Concluding observations on the third periodic report of Serbia, UN Human Rights Committee, CCPR/C/SRB/CO/3, 10 April 2017, paras. 32 and 33.

91 Serbia: Country Report 2016, European Council on Refugees and Exiles (ECRE), AIDA database, Brussels, 2017, pp. 28–30.

92 More in the BCHR's *2016 Right to Asylum in the Republic of Serbia Report*, 2017, pp. 57–67.

93 Above all due to the automatic application of the safe third country concept.

94 *Kandafru v. Serbia*, App. No. 57188/16 and *M.H. v. Serbia*, App. No. 62410/17.

95 *Ben Rfad v. Serbia*, App. No. 37478/16.

liberty. The International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) 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 (Art. 9 of the ICCPR and Art. 5 of the ECHR).

Articles 27–31 of the Constitution of the Republic of Serbia guarantee the right to liberty and security of person. As opposed to most of the other rights it enshrines, the Constitution does not lay down the grounds for restricting the right to liberty and security of person; Article 27 merely sets out that deprivation of liberty shall be allowed on the grounds and in a procedure stipulated by the law. However, the law may restrict the right to liberty and security only on the grounds and in a procedure not in contravention of ratified international treaties, given that Article 194 of the Constitution lays down that ratified international treaties and generally recognised rules of international law are part of Serbia's legal order and that Serbian laws may not be in contravention of them.

Restrictions of the right to liberty and security are provided in a set of criminal law regulations as well as in laws governing some other procedures.

The Criminal Code (hereinafter: CC)[96] envisages terms of imprisonment (that may be enforced in a penitentiary or in the convict's home),[97] and other measures restricting the right to liberty and security of convicted felons and individuals who committed a crime in a state of diminished capacity (security measures of mandatory psychiatric treatment and institutionalisation, and of mandatory treatment of alcoholism and drug addiction).[98] The Juvenile Justice Act (JJA)[99] lays down the requirements for ordering juvenile imprisonment and individual measures involving the deprivation of liberty of juvenile criminal offenders (e.g. their referral to a juvenile home or to a specialised treatment and rehabilitation institution).[100] The Criminal Procedure Code (CPC)[101] sets out a number of measures restricting the freedom of movement, primarily of suspects;[102] some of these measures amount to deprivation of liberty (e.g. pre-trial detention, house arrest – with or without electronic

96 *Sl. glasnik RS*, 85/05, 88/05 – corr., 107/05 – corr., 72/09, 111/09, 121/12, 104/13, 108/14 and 94/16.

97 Article 45, CC.

98 See Arts. 81–84, CC. Articles 83 and 84 on the latter two security measures are entitled *Mandatory Treatment of Alcoholics* and *Mandatory Treatment of Drug Addicts*. Not only do these titles amount to labelling; they also fail to reflect the actual content of the measures, the purpose of which is to eliminate the circumstances or conditions potentially influencing the offenders to commit criminal offences in the future (Art. 78, CC). The BCHR therefore suggests that the titles of these articles be rephrased into *Mandatory Treatment of the Alcohol Use Disorder* and *Mandatory Treatment of the Substance Use Disorder*.

99 *Sl. glasnik RS*, 85/05.

100 See Articles 21–23 and 28–32, JJA.

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

102 See, e.g. Articles 288–290, CPC.

surveillence, maximum 48-hour police custody of suspects).[103] Apart from police arrests, the CPC provides for the institute of citizen's arrest, authorising anyone to arrest a person they catch committing a crime prosecuted *ex officio*.[104]

The police have other important powers interfering in the right to liberty and security in addition to the ones vested in them with respect to preliminary investigation proceedings. For instance, the Police Act[105] authorises the police to bring individuals in,[106] hold them in custody and temporarily restrict their freedom of movement;[107] the Misdemeanour Act[108] allows the police to bring individuals in and hold them in custody;[109] the Road Traffic Safety Act[110] entitles the police to hold drivers under the influence of alcohol or psychoactive substances for up to 12 hours and drivers caught committing a misdemeanour and expressing the intention of continuing to commit it for up to 24 hours.[111] The Police Act and the Act on the Protection of Persons with Mental Disabilities govern the mandatory hospitalisation of persons with mental disabilities in the relevant health institutions.[112] The Domestic Violence Act[113] authorises police officers to bring in domestic violence suspects to the relevant police units and hold them in custody for up to eight hours.[114]

The Aliens Act[115] provides for the deprivation of liberty of aliens in the MIA-run Aliens Shelter, pending their deportation, to establish their identity or on other grounds laid down in other laws.[116] Such deprivation of liberty may last up to 90 days and may be extended another 90 days. Similarly, the Asylum Act[117] allows the deprivation of asylum seekers in the Aliens Shelter for up to three months; their detention may be extended another three months.[118] Although both the Asylum and Aliens Acts lay down that the decisions on the deprivation of liberty may be appealed with the competent higher court, the mandatory court reviews of such

103 See Articles 208–223 and 294, CPC.

104 Article 292, CPC.

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

106 Communal policemen are entitled to take individuals, whose identity they cannot establish, to the police for identification. See Article 20 of the Communal Police Act, *Sl. glasnik RS*, 51/09.

107 Articles 82–90, Police Act.

108 *Sl. glasnik RS*, 65/13, 13/16 and 98/16 – CC Decision.

109 Articles 190–193, Misdemeanour Act.

110 *Sl. glasnik RS*, 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law and 9/16 – CC Decision.

111 Articles 283 and 284, Road Traffic Safety Act.

112 See Article 56 of the Police Act and Articles 21–37 of the Act on the Protection of Persons with Mental Disabilities, *Sl. glasnik RS*, 45/13.

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

114 Article 14, Domestic Violence Act.

115 *Sl. glasnik RS,* 97/08.

116 Articles 49–50, Aliens Act.

117 *Sl. glasnik RS,* 109/07.

118 Articles 51–52, Asylum Act.

decisions appear not to be held within the statutory deadline. Article 29 of the Constitution specifies that persons deprived of liberty in the absence of a court decision shall be brought before the competent court promptly, within a maximum of 48 hours, or released. Aliens and asylum seekers have often been detained in the Shelter for much longer than 48 hours (sometimes even over a month) in the absence of a court decision, due to the failure of both the Asylum and Aliens Acts to impose the obligation to bring individuals deprived of liberty before the competent court; this amounts to an unconstitutional restriction of their right to liberty and security.

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 funamental 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.[119] The Instructions on the Treatment of People in Police Custody (hereinafter: Instructions)[120] 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 or detained, that he has the right to remain silent, 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.[121]

In 2017, the National Preventive Mechanism (NPM) visited the Belgrade municipal police stations Stari grad and Savski venac, to monitor their fulfilment of its recommendations issued in its 2013 Report on the Visit to the Belgrade City Police Administration and the recommendations the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made in its Report on its visit to Serbia in 2015. The NPM found that the police had not given written factsheets of their rights to all the persons they had brought in and held in custody.[122]

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119 See, e.g. the CPT's 2nd General Report [CPT/Inf (92) 3], para. 36.

120 *Sl. glasnik RS*, 101/05, 63/09 – CC Decision and 92/11.

121 Instructions, para. 4.

122 Report on the Monitoring of the Implementation of the NPM's Recommendations in Its 2013 Report on the Visit to the Belgrade City Police Administration and the CPT's 2015 Recommendations to Serbia, Protector of Citizens – NPM, Ref. No. 281 – 59/17, of 21 September 2017, p. 5, available in Serbian at: http://npm.rs/attachments/article/738/Izvestaj.pdf.

3.2.1. Deprivation of Liberty in the Belgrade Airport Nikola Tesla Transit Zone and in the Aliens Shelter

Belgrade Border Police Station (hereinafter: Belgrade BPS) officers in 2017 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, which is in contravention of the ECtHR's and CPT's views.[123]

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 had flown 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 2017 intervened in dozens of cases to ensure that aliens reasonably assumed to be in need of international protection were 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 to enjoy the other rights granted to people deprived of liberty.

One of the aliens assisted by the BCHR was a national of China, M.A., who was detained in the Airport transit zone from 30 September to 3 October 2017. He alleged he had expressed the intention to seek asylum to the Belgrade BPS officers, but that they had refused to issue him a certificate of intent to seek asylum. The authorities notified the Chinese Embassy in Serbia of his detention in the transit zone without his consent. M.A. refused to talk to the Embassy officials, due to his well-founded fear of persecution and the threats he had been subjected to in China. After numerous telephone conversations between the BCHR and the BPS officers, M.A. was issued a certificate of intent to seek asylum and transferred to the Aliens Shelter in Padinska Skela.

The NPM visited the Airport BPS in October 2017, with a view to monitoring its fulfilment of the recommendations it had issued earlier. In its report on the visit, the NPM among other things concluded that: (1) the MIA had not yet prepared the factsheet on the rights of aliens denied entry into Serbia; (2) there were prob-

123 More in the *2016 Report*, II.3.2.1.

lems in communication between the aliens not speaking English and the BPS officers, which may result in the failure of the latter to understand the intention of the former to seek asylum in Serbia; (3) the poor hygiene conditions and ventilation in the room where the aliens denied entry into Serbia are detained, their lack of access to fresh air, the fact that they are allowed to smoke in the room, and the overcrowding may amount to *inhuman treatment*; (4) some of the migrants interviewed by the NPM team said that they had expressed the intention to seek asylum in Serbia but had not received any feedback on the next steps and that they feared for their lives because the BPS officers had told them they would be deported to Turkey, where they risked deportation to Iran and thus *chain refoulement*. The NPM also said that 498 foreign nationals had been denied entry into Serbia in the first half of 2017. Most of them were nationals of Turkey (112), Tunis (56) and Mongolia (54).[124]

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).

In its Report on its visit to the Aliens Shelter in Padinska Skela published in June 2017, the NPM reiterated its recommendation to the MIA to provide aliens deprived of liberty in the Shelter with written factsheets about their legal status and rights as soon as they were admitted.[125]

3.3. Major Developments with Respect to the Right to Liberty and Security in the Republic of Serbia in 2017

Life Imprisonment. – The issue of introducing life imprisonment was again raised in 2017. The Tijana Jurić Foundation[126] collected around 158,000 signatures in over 40 Serbian cities and municipalities in October 2017, supporting its initiative to amend the Criminal Code and introduce life imprisonment as a penalty for the perpetrators of the gravest crimes resulting in the death of minors or pregnant women.[127] The Speaker of the National Assembly forwarded the submitted civic initiative to the Government, asking it and the relevant ministry to analyse it, draft the

124 Report on the Visit to the Belgrade Border Police Station at Airport Nikola Tesla, Protector of Citizens – NPM, Ref. No. 281–81/17 of 13 October 2017, available in Serbian at: http://www.npm.rs/attachments/article/734/37664.pdf.

125 Report on the Visit to the Aliens Shelter in Padinska Skela, Protector of Citizens – NPM, Ref. No. 281–50/17 of 20 June 2017, available in Serbian at: http://npm.rs/attachments/article/730/Izvestaj%20Prihvatiliste.pdf.

126 The Foundation was launched by the parents of 15-year-old Tijana Jurić, who was brutally murdered near the Vojvodina village of Bajmok in July 2014.

127 In its explanatory note, the Tijana Jurić Foundation said that the National Assembly should also review the possibility of prescribing life imprisonment for perpetrators of incest if their crime had grave consequences or resulted in the death of the juvenile victims. See more in Serbian at: http://tijana.rs/kazna-dozivotnog-zatvora/.

amendments to the Criminal Code and submit them to parliament for adoption.[128] At a round table held in late November 2017, the Justice Minister said that there were *no constitutional obstacles to introducing the penalty of life imprisonment in Serbia's criminal law*, adding that *the authorities should first examine the adequacy of the current national penal policy, which regulations had to be amended if life imprisonment was introduced and how much time it would take to prepare the judicial and penal systems for the introduction of such a penalty*.[129]

Large-Scale Arrest Campaigns. – The police organised a number of large-scale arrest campaigns against individuals suspected of committing a variety of criminal offences in 2017. One hundred people suspected of tax evasion, abuse of office, economic crimes, fraud, embezzlement, misuse of budget funding, forging official documents and grand larceny were arrested in the Pluto and Pluto 2 campaigns in March 2017.[130] The arrests were made in Belgrade, Pančevo, Novi Sad, Sremska Mitrovica, Sombor, Zrenjanin, Subotica, Valjevo, Smederevo, Jagodina, Užice, Kragujevac, Kraljevo, Niš, Leskovac, Vranje, Pirot, Prokuplje and Novi Pazar.[131] Seventy-four people suspected of, inter alia, money laundering, tax evasion, fraud, abuse of post, giving and taking bribes and money counterfeiting were arrested during the police campaign Signal in 19 Serbian cities in June 2017.[132] Another 573 people were arrested the following month, within the campaign Ares, which was launched across the country; the arrested individuals have been charged with various crimes, such as illegal drug production and trafficking, attempted murder, rape, prohibited sexual acts, child pornography, torture and ill-treatment, extortion, abduction, aggravated robbery, etc.[133] Large-scale arrests continued in November 2017, when the police arrested 93 people suspected of corruption, economic crimes, as well as common crimes-general criminal offences in a number of separate campaigns.[134] These arrests were heralded by the Serbian President, who announced that a major campaign of arresting people suspected of crime and corruption would be conducted before the end of the year.[135]

128 See more in Serbian at: http://rs.n1info.com/a342241/Vesti/Vesti/Maja-Gojkovic-uputila-Ani-Brnabic-inicijativu-Fondacije-Tijana-Juric.html.

129 See more in Serbian at: https://www.mpravde.gov.rs/vest/17245/ministarka-kuburovic-nema-ustavnih-prepreka-za-uvodjenje-kazne-dozivotnog-zatvora.php.

130 See more in Serbian at: https://www.krik.rs/mup-u-akciji-pluton-2-uhapseno-47-osoba/.

131 See more in Serbian at: http://mondo.rs/a988179/Info/Crna-Hronika/Pluton-2-Velika-akcija-policije-protiv-korupcije.html.

132 See more in Serbian at: http://rs.n1info.com/a274372/Vesti/Vesti/Uhapsene-74-osobe-u-19-gradova-u-Srbiji.html.

133 See more in Serbian at: http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:675925-Uhapseno-360-osoba-zbog-vise-krivicnih-dela-medju-njima-i-Mladjan-Micic-Pacov.

134 See more in Serbian at: http://www.blic.rs/vesti/hronika/velika-akcija-policije-uhapsene-93-osobe-medu-njima-direktor-azotare-i-celnik/6l9yxx5.

135 See more in Serbian at: http://rs.n1info.com/a343733/Vesti/Vesti/Masovna-hapsenja-i-pompezna-najavljivanja-u-medijima.html.

Under the Criminal Procedure Code,[136] the police may arrest a person if there are grounds to order his pre-trial detention or if they catch him committing a criminal offence prosecuted *ex officio*.[137] Pre-trial detention is the harshest measure ensuring the defendant's presence and unhindered conduct of criminal proceedings, which is to be applied exceptionally, in the event the purpose of pre-trial detention cannot be achieved by the enforcement of a more lenient measure and the nature of the reasons for which it is ordered indicates that the measure is to be applied without delay, as soon as the reasons for ordering it occur (to prevent the defendant from absconding, destroying evidence or traces of crime, influencing witnesses, accomplices and accessories after the fact, the recurrence of the crime or completion of the attempted crime, et al.). Two questions thus arise with respect to the large-scale arrest campaigns conducted by the police in 2017: 1) the simultaneous arrest of a large number of persons across Serbia, who are suspected of very different crimes (wherefore it is quite unlikely that they are interconnected as accomplices or members of an organised (crime) group), within one and the same police campaign may indicate that the police and prosecution services had for some time been aware of the reasons to order the pre-trial detention of most of these people, who were arrested subsequently (that they had been planning and organising to escape, destroy traces of crime and evidence, influence witnesses, accomplices and accessories after the fact, again commit the crimes or complete their commission, et al) but had not deprived them of liberty until a specific moment, which was publicly presented as the completion of the police campaign. Apart from undermining the likelihood of successfully completing the criminal proceedings, such timing also put at risk the public order, i.e. the protection of the citizens' rights by the timely prevention of crime. On the other hand, the announcements of the arrests by the politicians created the impression that the "completion of the police campaigns" was tailored to politicking needs.

Maximum 48-Hour Police Custody of Suspects. – In November 2017, the Protector of Citizens submitted to the Government and the National Assembly an initiative to amend the CPC provisions on the maximum 48-hour custody of suspects in the preliminary investigation stage. He noted that the law should set out that the rulings ordering the suspects' custody had to specify the legal grounds for their detention or the postponement of their interrogation for a maximum of 48 hours. Having reviewed the lawfulness of the MIA's work, the Protector of Citizens noted that these rulings on the custody of suspects issued by this administrative authority, with the consent of the public prosecutors, had not specified the legal grounds for holding the suspects in custody or postponing their interrogation for a maximum of 48 hours, and that no other preliminary investigation activities had been conducted prior to their interrogation. The Protector of Citizens underlined that a public prosecutor's decision to hold a suspect in custody up to 48 hours amounted

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

137 Articles 291 and 292, CPC.

to a restriction of the suspect's constitutionally guaranteed right to liberty and security i.e. to his deprivation of liberty, wherefore every custody of a suspect that was unnecessary in terms of the scope and purpose of the restriction amounted to a violation of his human rights. The Protector of Citizens also noted that every decision depriving someone of liberty had to be reasoned, i.e. specify the legal grounds for restricting his right to liberty and security in order to ensure that the powers of law enforcement authorities, including to deprive suspects of liberty in the preliminary investigation stage, are applied restrictively, and in accordance with the Constitution and the CPC, and to protect the citizens from arbitrary deprivation of liberty.[138]

The case of two police officers of the MIA Criminal Administration Observation and Documentation Department, who claimed they had been given an illegal assignment at the 2015 commemoration in Potočari (Bosnia and Herzegovina), which was attended by the then Serbian Prime Minister, is a good illustration of such deficient custody orders. They claimed they had been ordered not to carry their official IDs and weapons, just bring their covert surveillance equipment.[139] After they made these allegations in public and filed criminal reports against their superiors, they were arrested on 31 December 2016 and held in custody up to 48 hours on suspicion of disclosing an official secret. The rulings on their custody, issued with the consent of the public prosecutor, did not specify the reasons for their custody, which constituted the grounds for their arrest.[140]

Enforcement of Prison Sentences in Serbia Ordered in Judgments Delivered by Republic of Serbian Krajina Courts. – In its judgment in the case of *Mitrović v. Serbia*,[141] the European Court of Human Rights (ECtHR) found a violation of Article 5(1) of the ECHR. The applicant had been convicted for murder and sentenced to eight years' imprisonment by the Beli Manastir District Court; his sentence was upheld by the Supreme Court of the Republic of Serbian Krajina and he began serving his sentence in the Beli Manastir District Prison. All of these institutions were at the time under the control of the Republic of Serbian Krajina, an internationally unrecognised self-proclaimed entity established on the territory of the Republic of Croatia during the wars in the former Yugoslavia. The entity, never recognised as a state by Serbia, ceased to exist after the adoption of the *Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium* of 12 November 1995, by which the Republic of Croatia assumed sovereignty over its entire territory.

138 See more in Serbian at: www.ombudsman.rs/index.php/zakonske-i-druge-inicijative/5547-inici-iv-z-d-punu-z-ni-rivicn-p-s-up-u. http://www.ombudsman.org.rs/attachments/article/138/INITIATIVE.pdf.

139 See more in Serbian at: https://www.krik.rs/optuznica-protiv-policajaca-zbog-odavanja-sluzbene-tajne/

140 See more in Serbian at: http://www.ombudsman.rs/index.php/2012–02–07–14–03–33/5548-u-r-sh-nji-z-drz-v-nju-su-njic-nih-nisu-br-zl-z-ni-r-zl-zi-z-pri-v-r.

141 See more in Serbian at: www.zastupnik.gov.rs/cr/articles/presude/u-odnosu-na-rs/presuda-u-predmetu-mitrovic-protiv-srbije-od-21.-marta-2017.-godine-predstavka-broj-52142–12.html.

After the adoption of the Agreement, on June 1996, the applicant was transferred to the Sremska Mitrovica prison at the request of the Beli Manastir District Court. "Security concerns" were quoted as the reason for the transfer. No proceedings for the recognition and enforcement of a foreign prison sentence were conducted by the authorities of the Republic of Serbia. The applicant remained in the Sremska Mitrovica prison until 5 February 1999, when he was released for annual leave until 15 February 1999. Due to the applicant's failure to return to the prison on the specified date, a warrant for his arrest was issued. On 7 July 2010, the applicant was arrested when he attempted to enter Serbia from Croatia. He was sent to the Sremska Mitrovica prison to serve the remainder of his sentence. The applicant remained in prison until 15 November 2012, when he was pardoned by the President of the Republic of Serbia and released.

Serbia denied the applicant's claims that his right to liberty and security had been violated and quoted the arguments in the reasoning of the Constitutional Court's Decision dismissing his constitutional appeal.[142] The ECtHR noted in its judgment that the applicant had been convicted for murder by a "court", which had operated outside the Serbian judicial system, that he was then transferred to a Serbian prison to serve his sentence and that the Serbian authorities had conducted no proceedings for the recognition of a foreign decision as prescribed by the relevant provisions of the Criminal Procedure Code then in force. Turning to the Serbian Constitutional Court's argument in the reasoning of its Decision, that the lack of a procedure for the recognition of a foreign judgment was proportionate to the State's obligation to enforce a prison sentence for murder, the ECtHR noted that, even if proportionality was a factor which should be taken into consideration when assessing whether a deprivation of liberty satisfied the requirements of Article 5(1) of the Convention, it would be relevant only subject to the precondition that such deprivation of liberty was lawful. In that respect, the Court noted that detention on the basis of a decision of a foreign court, which had not been recognised by Serbian authorities in an appropriate procedure, was *ipso facto* unlawful under the rules of domestic law and that, in the present case, the domestic authorities had not implemented the appropriate procedure required by domestic law for the recognition of a foreign decision in criminal matters. The Court found that, given that the applicant had been detained on the basis of a non-domestic decision, which had not been recognised domestically, and in the absence of any other basis in domestic law for the detention, the requirement of lawfulness contained in Article 5(1) had not been met and that the applicant's right to liberty and security had been violated by the respondent State.

In 2017, the Protector of Citizens found that an inmate in the Sremska Mitrovica prison was unlawfully serving a sentence delivered by the Beli Manastir District Court and a violation of his right to liberty and security. He recommended

142 See more in Serbian at: www.ustavni.sud.rs/page/predmet/sr-Cyrl-CS/7072/?NOLAYOUT=1.

to the Penal Sanctions Enforcement Administration to release the inmate without delay, to notify him in writing of his right to claim damages for unlawful deprivation of liberty and of the compensation procedure, to ascertain whether any other individuals convicted by Republic of Serbian Krajina courts were serving their sentences in Serbian prisons, release them without delay and notify them of their right to claim damages for unlawful deprivation of liberty and of the compensation procedure. In his response, the Director of the Penal Sanctions Enforcement Administration notified the Protector of Citizens that he had issued a ruling ordering the early release of the individual serving his sentence in the Sremska Mitrovica prison handed down by a Republic of Serbian Krajina court "in view of the absence of a decision by a court or another competent authority pursuant to which this individual is to be released before serving his full term of imprisonment". He also said that he had acted on the Protector of Citizens' recommendation and instructed the Sremska Mitrovica prison warden to withdraw his instructions to issue a warrant of arrest of another individual, who had also been serving his sentence handed down by the Beli Manastir District Court and who was "at large", and notify the relevant authority thereof.[143]

Information collected from the penitentiaries in Sremska Mitrovica and Sombor and the District Prison in Novi Sad, which were asked to provide information on the number of people, who have been serving prison sentences handed down by the courts of the Republic of Serbian Krajina (RSK) in Serbian penitentiaries since 1996 and on how many years they have spent in prison altogether, shows that at least 53 people deprived of liberty were transferred in 1996 from the Beli Manastir (RSK) District Prison to Serbian prisons. "Security concerns" were quoted as the reason for their transfers, which were conducted pursuant to rulings classified as strictly confidential and issued by the then Serbian Assistant Justice Minister.[144] Forty-five of these inmates altogether spent slightly over 118 years in Serbian penitentiaries.

3.4. Measures Ensuring the Defendants' Presence at Trials and Unhindered Conduct of Criminal Proceedings

The BCHR in 2017 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

143 See more in Serbian at: http://www.ombudsman.rs/index.php/2012–02–07–14–03–33/5271-gr-d-nin-n-z-ni-izvrsh-v-d-s-g-dishnju-znu-z-v-r-u-srbi-i.

144 Serbian Justice Ministry strictly confidential rulings, Nos. 8/96, 9/96 and 10/96 of 19 June 1996.

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 Pre-Trial Detention and Alternatives to Pre-Trial Detention Ensuring Their Presence and Unhindered Conduct of Criminal Proceedings from 2013 to 30 June 2017[145]

Measures	1 October 2013 – 1 November 2014	2015	2016	1 January – 30 June 2017
Pre-Trial Detention	4,926	4,549	5,634	3,212
Bail	44	29	31	13
House Arrest	319 (200 of which under electronic surveillance)	295 (152 of which under electronic surveillance)	428 (215 of which under electronic surveillance)	389 (283 of which under electronic surveillance)
Prohibition of Leaving One's Place of Residence	214	426	612	262
Restraining Order	104	276	372	263

Table: Number of Defendants in Pre-Trial Detention at the End of the Year[146]

2012	2013	2014	2015	2016	2017
2,532	1,894	1,593	1,539	1,736	1,577

3.4.1. Damages for Unlawful Pre-Trial Detention

The following Table provides an overview of the data on claims seeking damages for unlawful detention submitted to the Ministry of Justice Damages Commission and obtained in response to BCHR's request for access to information of public importance:

145 The data reflect the case-law of over 90% Basic and Higher Courts that responded to BCHR's request for access to information of public importance.

146 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 unlawful detention claims	No. of claims reviewed by the Commission	Number of settlements	Total amounts of damages awarded in settlements (in RSD)
2012	607	342	51	6,424,000
Until 1 October 2013	658	408	45	25, 045,000
			40	22,528,000
2014	913	208	19	1,669,000
Until 30 June 2015	450	172	20	1,939,500
2016	940	243	61	15,485,000
2017	815	235	38	10,747,500
Total	4,383	1,608	274	83,838,000 (around 700,000 EUR)

The above Table shows that 4,383 damage claims for unlawful deprivation of liberty were filed with the Justice Ministry Damages Commission in the 2012–2017 period, that the Commission reviewed 1,608 claims and concluded settlements with 274 of the claimants.

The number of days of unlawful deprivation of liberty cannot be precisely ascertained, since the Commission has not kept such records since 2014.

The available data do, however, show that the Damages Commission paid a total of 83,838,000 RSD (or around 700,000 EUR) in damages in the 2012–2017 period.

As far as damage claims over wrongful detention ruled on by civil courts are concerned, the Solicitor General Offices' data show that 593,977,496 RSD (or slightly less than five million EUR) were awarded by the courts from 1 November 2013 to 31 December 2017.

Thirty-three judgments upholding damage claims over unlawful deprivation of liberty became final in 2017. The plaintiffs had spent a total of 8,732 days incarcerated and were altogether awarded 40,631,000 RSD (slightly under 340,000 EUR).

3.5. *Penal Policy and Its Effects on the Enjoyment of the Right to Liberty and Security of Person*

The Serbian penitentiaries were still overcrowded in 2017. The Justice Minister said in September 2017 that around 10,700 people were incarcerated in Serbian prisons, which have the capacity to hold around 9,600 people.[147] The reason for this situation may 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.

The new admission department was opened in the Niš penitentiary in 2017.[148] The reconstruction of the Special Prison Hospital in Belgrade and seven of the twelve pavilions of the Belgrade District Prison was completed at the end of the year, raising the capacity of this establishment by around 33%.[149] The construction of the new penitentiary in Pančevo was near completion at the end of the reporting period.[150] The Justice Minister said in June 2017 that it would be built by February 2018 and that the inmates would be referred to it as of mid-2018.[151] The renovation of the Požarevac women's prison also began in 2017.[152]

Statistical Data on Terms of Imprisonment Imposed in the 2012–2016 Period[153]

Duration	2012	2013	2014	2015	2016	Total
1–3 Months	1,907	1,947	2,529	1,194	1,293	8,870
3–6 Months	2,701	3,003	3,772	2,116	2,269	13,861
6–12 Months	2,225	2,728	3,184	2,422	2,423	12,982
1–2 Years	1,485	1,536	1,631	1,438	1,520	7,610

147 See the *N1* Report, available in Serbian at: http://rs.n1info.com/a316674/Vesti/Vesti/Novo-prijemno-odeljenje-u-niskom-zatvoru.html.

148 *Ibid.*

149 See the *Novosti* report, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:705859-Specijalna-zatvorska-bolnica-kompletno-renovirana.

150 See the report, available in Serbian at: https://013info.rs/vesti/drustvo/pancevo-novi-zatvor-gotov-na-prolece-stari-zatvor-predaju-gradu-da-postane-muzej.

151 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/hronika/iz-novog-zatvora-u-pancevu-bekstvo-ce-biti-nemoguce-a-tajna-se-nalazi-ispod-zemlje/h428g0r.

152 See the *N1* Report, available in Serbian at: http://rs.n1info.com/a242052/Vesti/Vesti/Pocinje-sredjivanje-zenskog-zatvora.html; https://www.blic.rs/vesti/drustvo/renoviranje-i-novi-paviljon-za-zenski-zatvor-u-pozarevcu/kfj9sjm.

153 See the Statistical Office of the Republic of Serbia website: www.stat.gov.rs.

Duration	2012	2013	2014	2015	2016	Total
2–3 Years	850	993	947	875	930	4,595
3–5 Years	722	665	677	550	705	3,319
5–10 Years	232	260	191	171	192	1,046
10–15 Years	46	48	59	34	49	236
15–20 Years	30	14	23	3	24	94
30–40 Years	12	9	11	13	9	54
40 Years	2	1	2	4	5	14
Total	10,212	11,204	13,026	8,820	9,419	52,681

Statistical Data on the Number of Convicts Admitted to Penitentiaries to Serve Their Terms of Imprisonment in the 2012–2017 Period[154]

Duration	2012	2013	2014	2015	2016	2017	Total
> 3 Months	1,295	1,350	1,455	1,365	1,246	1,007	7,718
3–6 Months	1,330	1,505	1,429	1,377	1,123	1,216	7,980
6–12 Months	1,370	1,233	1,263	1,353	1,190	1,151	7,560
1–2 Years	1,440	1,051	1,083	934	1,037	1,048	6,593
2–3 Years	785	754	693	675	678	716	4,301
3–5 Years	1,153	785	755	633	763	736	4,825
5–10 Years	586	504	328	331	340	290	2,379
10–15 Years	179	138	67	49	54	70	557
15–20 Years	77	33	38	18	21	19	206
30–40 Years	55	16	/	24	15	18	118
40 Years	8,270	7,369	7,111	6,759	6,467	6,271	42,247

154 Data obtained from the Penal Sanctions Enforcement Administration.

Table: Number of Inmates in Serbian Penitentiaries at the End of the Year[155]

Year	2012	2013	2014	2015	2016	2017
Convicted prisoners	6,952	7,330	7,737	7,670	7,958	8,081
Remanded prisoners	2,532	1,894	1,593	1,539	1,736	1,577
Security measures	232	213	387	425	489	549
Juvenile prison	22	24	14	17	19	20
Correctional measures	210	215	228	194	200	192
Inmates Serving Misdemeanour Prison Sentences	278	355	329	219	267	349
Total	10,226	10,031	10,288	10,064	10,669	10,768

Table: Number of Conditional Sentences (with or without protective supervision) Imposed in the 2012–2016 Period[156]

2012	2013	2014	2015	2016
17,169	17,152	18,307	19,290	17,514

Table: Number of Conditional Sentences under Protective Supervision Imposed in the 2012–30 June 2017 Period[157]

2012	2013	2014	2015	2016	1 January – 30 June 2017	Total
11	14	29	57	42	14	167

155 *Ibid*.

156 See the SORS website: www.stat.gov.rs.

157 Data obtained from Basic and Higher Courts in response to requests for access to information of public importance.

Table: Community Service Sentences Imposed in the 2012–30 June 2017 Period[158]

Year	2012	2013	2014	2015	2016	1 January–30 June 2017	Total
Number of imposed sentences	365	348	371	353	329	143	1,909
Number of served sentences	209	253	351	285	127	71	1,296

Table: Number of Home Incarceration Sentences Imposed in the 2012–30 June 2017 Period[159]

2012	2013	2014	2015	2016	1 January – 30 June 2017	Total
610	725	627	1.567	2.411	1.131	7.065

Table: Number of Parole Decisions in the 2012–2017 Period[160]

2012	2013	2014	2015	2016	2017
581	1,036	1,243	1,583	1,539	1,560

Table: Number of Early Release Decisions in the 2012–2017 Period[161]

2012	2013	2014	2015	2016	2017
213	41	20	10	45	21

The above statistical data lead to the conclusion that national courts prefer sentencing convicted felons to short prison sentences rather than to alternative sanctions. They imposed a total of 52,681 prison sentences in the 2012–2016 period. Of this number, 47,918 (circa 91%) of the convicts were sentenced to terms of imprisonment not exceeding three years, 43,323 (around 82%) to sentences not exceeding two years' imprisonment and 35,713 (around 68%) to prison sentences not exceed-

158 Data obtained from the Penal Sanctions Enforcement Administration and the Basic and Higher Courts in response to requests for access to information of public importance.

159 *Ibid*.

160 Data obtained from the Penal Sanctions Enforcement Administration in response to a request for access to information of public importance.

161 *Ibid*.

ing one year. On the other hand, the courts imposed 5,940 home incarceration sentences and community service in 1,766 cases.

In light of the above statistics and the fact that home incarceration may be imposed for offences warranting up to one year imprisonment[162] and that community service may be imposed for offences warranting up to three years' imprisonment[163], 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 since 2016 and the number of those admitted to prison to serve their sentences since leads to the conclusion that several thousand felons sentenced to imprisonment by a final decision have not begun serving their sentences yet.

The data indicate a mild increase in the number of releases on parole and a fluctuation of the number of early releases from one year to another.

4. Equality before the Court and Fair Trial

4.1. Fair Trials and Court Efficiency

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 safeguards 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. Under these provisions, everyone is entitled to a public hearing before an independent and impartial tribunal within a reasonable time, which shall pronounce judgement on their rights and obligations. 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 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.

The public character of court hearings is a general rule in national criminal, civil, misdemeanour and administrative law, as is the exclusion of the public from all proceedings involving minors. All procedural laws lay down that the rulings

162 Article 45(5), CC.

163 Article 52, CC.

excluding the public must be reasoned and made public.[164] Civil and criminal law sets out that the enacting clauses of the judgments shall always be read out publicly, whether or not the public had been excluded from the proceedings, but allows the courts to decide whether to exclud the public from the reading of their reasoning.[165]

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 2017.

Serbia is the only country in Europe that has not enacted a free legal aid law, wherefore the most vulnerable categories of the population are still waiting for the lawyers and CSO representatives to find a compromise that will allow them to enjoy this right. Free legal aid has so far been extended to the most vulnerable individuals who cannot afford a lawyer by NGOs, legal clinics and local self-government units. This is why NGOs have held that they, too, should be entitled to extend such aid under the future law. Bar chambers have, however, vehemently disagreed, even threatening to stage a strike in the event the legislator does not limit the right to extend free legal aid only to lawyers.[166]

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,[167] 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.

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.

This prompted the Supreme Court of Cassation to adopt the Amended Backlog Reduction Programme for the 2016–2020 period[168] in August 2016.[169] According to

164 More in the *2016 Report*, I.4.7.

165 Article 353 of the Civil Procedure Act and Article 425 of the Criminal Procedure Code.

166 See more in the *Danas* report, available in Serbian at: https://www.danas.rs/drustvo/nvo-i-advokati-se-otimaju-oko-besplatne-pomoci/.

167 The Report is available at: http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/REPORT%20ON%20THE%20CURRENT%20STATE%20IN%20THE%20JUDICIARY.pdf.

168 Available at: http://www.vk.sud.rs/sites/default/files/files/ResavanjeStarihPredmeta/Unified%20Backlog%20Reduction%20Plan%20Final%20Translation%20ENG.pdf.

169 More in the *2016 Report,* II. 4.4.2.

the semi-annual court performance report, 2,615 judges resolved a total of 163,613 old cases in the first half of 2017: 255 judges dealt with 64,809 enforcment cases and 2,360 judges with 98,805 cases in other areas of law.[170] Report on the Implementation of the Chapter 23 Action Plan No. 3/2017 said that the enforcement cases were handled at regular intervals, without systemic legal impediments, but noted that a large number of cases in this area were expected to be solved in the latter half of the year, due to the electronic migration of cases between Belgrade courts, the public utility company "Infostan" and other public companies in Belgrade.[171]

Mediation is one of the measures that can help relieve the judiciary of its backlog. In June 2017, the Supreme Court of Cassation President and Justice Minister enacted the Guidelines for Enhancing the Use of Mediation in the Republic of Serbia.[172] The Guidelines qualified as unsatisfactory the results of the enforcement of the Act on Mediation in Dispute Resolution,[173] which came into effect on 1 January 2015, and said that systemic measures needed to be enacted to ensure that courts, too, substantially support mediation as an alternative mode of dispute resolution. The Guidelines set out 22 measures for enhancing the use of mediation. Mediation is not mandatory in Serbia and the courts offer it in case the parties wish to take care of their interests on their own, rejecting a judge's verdict. It is used mainly in cases that concern property rights; family relations, such as inheritance, divorce or co-ownership; but also in commercial and financial issues, such as debt restructuring.[174]

The backlog courts have been struggling under have led to violations of the right to a trial within a reasonable time. Under the Constitution, everyone is entitled 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.[175]

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170 The Report is available at http://www.vk.sud.rs/sites/default/files/attachments/6-month%20Report%20on%20the%20Work%20of%20Courts%202017_0.pdf.

171 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, p. 111, available at: https://www.mpravde.gov.rs/files/Report%20no.%203–2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

172 The Guidelines are available at: https://www.mpravde.gov.rs/files/20170628%20Joint%20Guidelines%20for%20Enhancing%20the%20Use%20of%20Mediation%20SCC%20MoJ%20HCC.PDF.

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

174 Despite the potential savings of both time and money, mediation is seldom used in Serbia. According to the Ministry of Justice, in 2016 only 260 cases were solved through mediation. As a natural consequence of this situation, the courts are put under a lot of strain. According to the Ministry of Justice, there are more than one million pending cases in Serbian courts, some of which could be resolved through out of court agreements with the help of a mediator, spending less time and money. See more on: https://europa.rs/mediation-an-alternative-way-for-a-faster-judicial-process-in-serbia/?lang=en.

175 Article 32(1).

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.[176] This law provides for the judicial protection of the right to a trial within a reasonable time of all parties to the proceedings, apart from the public prosecutors. Proceedings on violations of this right are urgent and free of charge.[177] Parties that prove within the statutory timeframe that their right to a trial within a reasonable time had been violated are entitled to just satisfaction. The Act provides for three types of just satisfaction: right to pecuniary compensation, right to the publication of a written statement by the Solicitor General's Office finding a violation of the party's right to a trial within a reasonable time and the right to the publication of the judgment finding a violation of this right. Parties are entitled to file claims seeking financial compensation (ranging from 300 to 3000 Euro) within a year from the day they acquire the right to just satisfaction.

Although the Act entered into force two years ago, 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 High Judicial Council's data for the first nine months of 2016 showed that Serbia paid 141.5 million RSD in damages for violations of the right to a fair trial.[178] 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. The Supreme Court of Cassation President said in June 2017 that the practical enforcement of this law was still unsatisfactory because enforcement proceedings took a long time and the judiciary had a backlog of a million cases.[179]

Dismissal of cases due to the expiry of the statute of limitations is another major problem the Serbian judiciary has been facing for years now. Many of the cases covered by the media were dismissed as out of time.[180] The data on the performance of Misdemeanour Courts published in March 2017 indicate that 35,468

176 *Sl. glasnik RS*, 40/15.

177 More in the *2016 Report*, II.4.3.

178 "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.

179 "Effects of the Trial within a Reasonable Time Act," *RTS*, 9 June 2017, available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2763011/sta-je-doneo-zakon-o-sudjenju-u-razumnom-roku.html.

180 More in the *2014 Report*, III.5.4.2. and the *2016 Report 2016*, II.4.3.

cases in the Belgrade Court, 6,893 cases in the Novi Sad Court, 6,611 cases in the Niš Court and 3,917 cases in the Kragujevac Court – or 30% of their entire workload – were dismissed on this ground in 2016.[181]

Court and prosecutorial inefficiency are cited as the main reason for the dismissal of cases because the statute of limitations expired. This problem is exacerbated by abuses of the right to a defence, notably trial adjournments, numerous evidentiary motions and ill-founded motions to recuse the judges or the prosecutors.[182] The judges and prosecutors, however, claim that they are not intentionally protracting the proceedings and that they last so long because of the courts' and prosecution services' huge workloads. The President of the Misdemeanour Appeals Court said that each misdemeanour judge, both those in Belgrade and elsewhere in the country, processed between 1,200 and 1,700 cases a year.[183] The Association of Prosecutors of Serbia said that the prosecution services did not have enough deputy public prosecutors and that the introduction of prosecutorial investigation has not been accompanied by sufficient staff recruitment. The prosecutors also complained that they were unable to effectively and efficiently control the work of the police.[184]

The consequences of the dismissal of cases as out of time are borne by the tax-payers. Under the Criminal Procedure Code and the Misdemeanour Act, the courts that conducted the proceedings are under the obligation to compensate the costs and expenses sustained by the parties, whose criminal or misdemeanour cases have been dismissed as out of time. Considering the length of, above all, the criminal proceedings and the gravity of the crimes the defendants had been charged with, the state pays them huge amounts of money in respect of the costs of their defence counsels every year.

4.2. 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.

181 The 2016 Misdemeanour Court Performance Report is available in Serbian at: http://pkap.sud.rs/documents/izvestaj-o-radu-prekrsajnih-sudova-u-rs-u-2016.pdf.

182 "Why Cases are Dismissed as Out of Time and Who's to Blame," *RTS*, 17 May 2017, available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2738279/zasto-sudski-procesi-zastarevaju-i-ko-je-za-to-odgovoran.html.

183 "Why Misdemeanour Cases are Dismissed as Out of Time," *Politika*, 14 May 2017, available in Serbian at: http://www.politika.rs/sr/clanak/378572/Zasto-prekrsaji-zastarevaju.

184 "Why Cases are Dismissed as Out of Time and Who's to Blame," *RTS*, 17 May 2017, available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2738279/zasto-sudski-procesi-zastarevaju-i-ko-je-za-to-odgovoran.html.

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.[185] A case law database allowing courts insight in the judgments of other courts would facilitate the alignment of case law.[186]

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. Report on the Implementation of the Chapter 23 Action Plan No. 4/2016 ascribed the failure to implement the activities to the need to appoint new Working Group members and for it to start work, due to the changes in the top echelons of the Ministry of Justice, the High Judicial Council and the State Prosecutorial Council.[187] However, the 3/2017 Report, published almost a year later, also noted that this activity has not been implemented yet.[188]

4.3. Presumption of Innocence and Other Guarantees for Criminal Defendants

There are three forms of punishable offences in Serbian law: criminal offences, misdemeanours and economic offences. Under Article 33(8) of the Constitution, all natural persons charged with punishable offences shall enjoy all the rights afforded to criminal defendants. The Constitution and other relevant laws 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

185 Act on Organisation of Courts, Article 24(3).

186 More on the database in Serbian at: http://www.bgcentar.org.rs/konsultativni-proces-izrada-preporuka-za-vodjenje-jedinstvene-sudske-statistike/.

187 Report on the Implementation of the Chapter 23 Action Plan No. 4/2016, available at: https://www.mpravde.gov.rs/files/Report%20no.%204–2016%20on%20implementation%20of%20Acti%20on%20plan%20for%20Chapter%2023.pdf.

188 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, available at: https://www.mpravde.gov.rs/files/Report%20no.%203–2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. There are, however, problems in ensuring 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,[189] 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.[190] 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 Article 140 cases by the Supreme Court of Cassation.[191]

According to Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, the Misdemeanour Courts instituted ten misdemeanour proceedings for violation of Article 140 of the Public Information and Media Act in the first nine months of the year and four of them were completed in that period; the Report specifies that one of the them had opened in 2016, but does not specify when the other three were opened. All the Article 140 cases were ruled on by the Belgrade Misdemeanour Court, while the other misdemeanour courts again did not have any such cases. The Misdemeanour Appeals Court reviewed only one Article 140 case in the period. The 03/2017 Report states that, given the small number of Article 140 cases, the misdemeanour courts have not identified any special challenges in handling them.[192]

189 *Sl. glasnik RS,* 83/14, 58/15 and 12/16 – authentic interpretation.

190 Article 140 Public Information and Media Act.

191 Chapter 23 Action Plan, p. 47.

192 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, p. 41.

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 by the end of 2015. The Code of Conduct was, however, adopted only on 20 July 2017.[193] It, *inter alia*, lays down that deputies shall not refer in their public statements to criminal defendants or individuals, against whom preliminary actions, such as arrest, interrogation or detention, have been taken, as perpetrators. Furthermore, during criminal proceedings, deputies may not publicly express information or their ideas or opinions on the anticipated course or outcome of the proceedings or assess the procedural value of the evidence, which has been or will be presented, in a manner that may prejudice the outcome of the criminal proceedings.

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.[194] However, although such behaviour is prohibited by the parliamentary and government Codes of Conduct, the public was in 2017 again inundated on a daily basis by statements and actions of government members and parliamentarians violating the presumption of innocence. In view of the fact that neither Code lays down penalties for non-compliance, the many violations of their provisions went unpunished. The HJC in October 2017 issued a press release noting, inter alia, that politicians and state officials were violating the presumption of innocence on a daily basis by their public statements.[195]

In addition to the presumption of innocence, the Constitution also entitles all persons accused of crimes 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). 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.[196] The Report on the Implementation of the Chapter 23 Action Plan

193 *Sl. glasnik RS*, 71/17.

194 See more in *Report 2016*, I.4.9.

195 See more in III.1.6.

196 Chapter 23 Action Plan, pp. 228 and 298.

No. 3/2017, however, notes that the first activity has partly been implemented but that the second has not been implemented at all, specifying that their implementation was impossible because the Criminal Procedure Code was not amended in 2017.[197]

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. 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.[198] 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.

4.4. Notaries Public

The 2011 Notaries Public Act entered into force on 1 September 2014. It was amended several times, with the most recent amendments entering into force on 29 December 2015.[199] The work of the notaries public did not provoke any major polemics in 2017, 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.[200]

According to the Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, 163 notaries public were operating in Serbia on 2. September 2017 and 37 assistant notaries public were entered in the relevant register. The list of all notary public offices is available on the Notary Chamber's website.[201]

The most important change in the work of notaries public in 2017 arose from their exclusive authority to certify signatures, manuscripts and transcripts as of 1 March 2017.[202] The courts and municipal administrations continued performing these duties in cities and municipalities in which notaries public had not been appointed by that date.[203]

197 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, pp. 402 and 565.

198 Article 33(3), Constitution of the Republic of Serbia.

199 *Sl. glasnik* RS, 31/11, 85/12, 19/13, 55/14 – other law, 93/14 – other law, 121/14, 6/15 and 106/15.

200 More in the *2014 Report*, III.5.4.3. and the *2015 Report*. II.4.4.5.

201 See: http://beleznik.org/images/pdf/spisak/spisak_javnobeleznickih_kancelarija.pdf.

202 Article 29, Act on Certification of Signatures, Manuscripts and Transcripts, *Sl. glasnik RS*, 93/14 and 22/15.

203 See the Ministry of Justice press release: https://www.mpravde.gov.rs/en/vest/15722/changes-to-the-verification-of-signatures-handwritings-and-transcripts-as-of-1-march-2017.php.

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.[204]

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 comprehensive analyses and reports of major importance, such as the ones submitted to numerous international bodies.

According to the Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, 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.

Both the 2013–2018 National Judicial Reform Strategy (NJRS)[205] 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.[206]

A case weighting programme, prerequisite for including case complexity among the assignment criteria, was not introduced in 2017 either, wherefore

204 See more in *Report 2016*, I.4.6.

205 *Sl. glasnik RS,* 57/13.

206 See more in *Report 2016*, I.4.6.

a number of other Chapter 23 Action Plan activities were not implemented in the reporting period.[207] 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,[208] but did not include any of the amendments envisaged by the Action Plan.

5. Right to Privacy and Confidentiality of Correspondence

5.1. Legal Framework

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.[209] According to ECtHR case law, privacy encompasses, inter alia, the physical and the moral integrity of a person, sexual orientation,[210] relationships with other people, including both business and professional relationships.[211] 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.[212]

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,[213] 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 rati-

207 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, pp. 62–64.

208 *Sl. glasnik RS*, 39/16, 56/16 and 77/16.

209 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).

210 See *Dudgeon v. the United Kingdom*, ECtHR, App. No. 7275/76 (1981).

211 See *Niemitz v. Germany*, ECtHR, App. No. 13710/88 (1992).

212 See *Costello–Roberts v. the United Kingdom*, ECtHR, App. No. 13134/87 (1993) and *K. U. v. Finland*, ECtHR, App. No. 2872/02 (2008).

213 *Sl. list SRJ (International Treaties)*, 1/92 and *Sl. list SCG*, 11/05.

fied,[214] 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,[215] enshrined in Article 23 of the Constitution.

The Constitution guarantees the right "to be informed" in Article 51, which lays down 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 lays down 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 be entitled to be notified of the personal data collected about them, in accordance with the law, and the right to court protection in case of their abuse (Art. 42).

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).

Intensive efforts have over the past years been invested in adapting the legal frameworks, both national and international, to technological development and evolving circumstances affecting all walks of life. Adequate responses to the numerous challenges to the right to privacy in the "digital age" have been sought within universal (UN) and regional (Council of Europe) mechanisms. The UN Special Rapporteur on the right to privacy presented his report[216] to the UN General As-

214 *Sl. glasnik RS (International Treaties)*, 98/08.

215 CC Decision No. Už–3238/2011, p. 9.

216 Available at: https://iapp.org/media/pdf/resource_center/A-72–43103_EN.pdf.

sembly in October 2017. One of the main goals of his mandate is to submit proposals and recommendations to the Human Rights Council, including a set of principles and model provisions that could be integrated into the national legislation of the UN Member States. This includes a proposal of mechanisms for their enforcement and oversight of compliance with the privacy principle. The Special Rapporteur is also tasked with providing Member States with a number of options to be considered to help plug the gaps and fill the vacuum in international law and particularly those relating to privacy and surveillance in cyberspace. This is particularly important in view of his warning that there are serious obstacles to the enjoyment of the right to privacy due to the gaps in international law with respect to privacy and surveillance in cyberspace.

The Special Rapporteur noted that it has long been recognised that one of the few areas in which the right to privacy cannot be absolute is that of the detection, prevention, investigation and prosecution of crime, as well as in national security, but that preservation of democracies required checks and balances to ensure that any surveillance was undertaken to protect a free society. He concluded that prior authorisation of surveillance and the subsequent oversight of surveillance activities was a key part of the rules, safeguards and remedies needed by a democratic society in order to preserve its defining freedoms.

5.2. Confidentiality of Correspondence – Legal Framework

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 Decision.[217]

Provisions of laws[218] governing the surveillance of communication have been the subject of many polemics in the recent years. In the past five years, the Constitutional Court of Serbia declared unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency, the Electron-

217 CC Decision IUz 1245/10.

218 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).

ic 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.[219] Furthermore the National Assembly brought the impugned provisions of the Criminal Procedure Code in conformity with the Constitution on its own motion, without waiting for the Constitutional Court to rule on their constitutionality.

The protection of the right to privacy has been addressed by EU authorities as well. Following a series of terrorist attacks in London and Madrid, the European Union in 2006 adopted the Data Retention Directive 2006/24/EC,[220] which, *inter alia*, lays 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. In April 2014, the EU Court of Justice declared Directive 2006/24/EC invalid and took the view that retention of communication data under the Directive interfered in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data.[221]

5.3. Retention of the Users' Data and Communication Data – Access to Retained Data

Although more than three years have passed since the CJEU 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 Electronic Communications Act[222] introduced the obligation of electronic communication operators to retain communication data, 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 period that elapsed from the day the data were retained to the day access to them was sought under Article 128(2) of the Electronic Communications Act.[223]

219 See *2014 Report*, II.6.4.

220 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF.

221 Available at: http://curia.europa.eu/jcms/upload/docs/application/pdf/2014–04/cp140054en.pdf.

222 Article 130a of the Electronic Communications Act.

223 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.

The Report on the Analysis of Retained Data in Serbia[224] published by the Share Foundation, shows the extent and manner in which the operators and state authorities fulfilled their obligation to forward records on retained data in the 2014–2016 period. All three cell phone operators (Telekom Serbia, Telenor, and VIP Mobile) forwarded the reports to the Commissioner. The quality of their reports, however, differs greatly. In its report, Telenor listed three types of approach to the retained data: state authorities (MIA, SIA, VBA and the courts) filed their requests by e-mail or in writing or accessed the data directly, through the Monitoring Centre. The three-year period corroborates that state authorities had been filing fewer and fewer requests to Telenor to access the retained data: 4,611 such requests were registered in 2014, 2,287 in 2015, and only 356 in 2016. It may be concluded that the trend is not the consequence of the state authorities "lesser interest" in the retained data, but that it is due to the establishment of the Monitoring Centre, i.e. implementation of a new information system facilitating direct access to such data. This conclusion is corroborated by the fact that the state authorities directly accessed data through the Monitoring Centre 293,244 times in 2016 alone. Telenor was the only operator that published data on direct access in its reports.

VIP Mobile's reports also specified the numbers of received requests for access to retained data: 109 in 2014, 146 in 2015 and 114 in 2016. The greatest number of requests were filed by the MIA and courts, which cited "police powers under Article 286 of the Criminal Procedure Code" as grounds for requesting access (however, in the vast majority of cases, the state authorities did not specify the legal grounds for seeking access to the retained data).

The meagre reports submitted by the most popular Serbian cell phone operator according to RATEL's data, Telekom Serbia, merely specified the number of requests it received and the number of those it acted on. Neither VIP Mobile nor Telekom Serbia specified in their reports how many times the competent authorities directly accessed the retained data.

Under the Electronic Communications Act, operators are under the obligation to retain data 12 months from the day of communication and thereafter delete them. The Act, however, obligates operators to permanently keep data the state authorities had sought access to. These data have been used either during investigation or trial, wherefore access to such data pursuant to a court decision after the 12-month deadline expires must also be enabled. However, in somce cases, requests to access retained data cover a much broader scope of data than those requisite for e.g. conducting an investigation against a particular individual. For instance, the authorities may seek access to all data registered by a base station in a particular time period. Thus, in addition to data on communication by one or more investigated individuals, the base station also retained the data of all individuals, whose cell phones were connected to that base station during that period, i.e. data on communication by

224 Available in Serbian at: https://labs.rs/sr/zadrzavanje-podataka-o-komunikaciji-u-srbiji/.

individuals who were not under investigation. The Electronic Communications Act does not lay down the obligation to delete the data covered by the requests that are deemed irrelevant after the expiry of the 12-month deadline.

In view of the fact that the relevant authorities mostly opt for accessing directly the retained data on the communication of users of services of the three cell phone operators, via the Monitoring Centre, the following paragraphs will be devoted to its legal status. Under Article 127 of the Electronic Communications Act, the operators are obligated to enable the competent authorities to lawfully intercept electronic communication and to provide the technical and organisational prerequisites (equipment and programme support) for lawful interception, at their own expense. The relevant state authorities lawfully intercepting data are under the obligation to keep records of intercepted electronic communication, which shall, in particular, specify the legal grounds for the interception and time, place and manner of interception, and to maintain the confidentiality of such records pursuant to the law on confidentiality of data.

The Act charges the Ministry of Trade, Tourism and Telecommunications with governing in detail the requirements regarding the equipment and programme support and the technical requirements for fulfilling the data retention obligation. In 2015, the Ministry adopted the Rulebook on Technical Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication and Retention of Electronic Communication Data.[225] All three cell phone operators fulfilled the technical and organisational requirements specified in Articles 3 and 4 of the Rulebook. The Monitoring Centre is now located in the Security Intelligence Agency, until "premises under constant surveillance of the relevant state authorities are provided". Pursuant to the Rulebook, all relevant state authorities shall be granted autonomous and unimpeded access to the Centre. Both the Act and the Rulebook include the obligation of the operators and relevant authorities to keep records of access to the retained data and the forwarded retained data which shall, in particular, include: the court decisionS constituting legal grounds for accessing or forwarding the retained data, the time and place of access to or forwarding of the retained data; the confidentiality of such records shall be maintained pursuant to the law on confidentiality of data.

The relevant authorities must be facilitated uninterrupted lawful interception of electronic communications, as long as the court decisions constituting grounds for lawful interception are in effect. The question of the lawfulness of interception of electronic communications i.e. the existence of legal grounds for it, inevitably arises In view of the fact that the Monitoring Centre enables the state authorities to access databases on retained data at all times and that Telenor alone registered 300,000 accesses by these authorities in 2015 and again in 2016. Furthermore, neither the Act nor the Rulebook envisage a mechanism that would be charged with

225 *Sl. glasnik RS,* 88/15.

overseeing the use of the Monitoring Centre. All this leads to the conclusion that the data on the electronic communications of all users are not protected at all and may be subject to abuse. Given that the draft of the new electronic communications law states that a separate law will govern the lawful interception of electronic communication and retention of data, the legislator needs to ensure that it eliminates the shortcomings in the valid Act and provides for the establishment of an effective mechanism that will oversee access to the retained data.

The Government endorsed the Draft Electronic Communications Act in Ocrober 2017. However, although the Draft Act largely aligns the national provisions with the *acquis*, attention needs to be paid to several issues directly affecting the right to privacy. Namely, the Draft states that data retention shall be governed by a separate law. The Draft includes a number of provisions which explicitly state that data retention shall be governed by a separate law. Furthermore, in its transitional and final provisions, it lays down that the provisions of the valid Electronic Communications Act on retention of data shall be in effect until the separate law regulating the matter is adopted.

The deadline by which such the separate law is to be adopted has not been defined, which means that the disputable provisions of the valid Act and the Rulebook will be in force even after the new law on electronic communications is enacted. Furthermore, in view of the legislator's practice to date and intentions, there are concerns that this law on interception of electronic communications and data retention will mirror the valid provisions or even reduce the existing level of guaranteed rights and vest the state authorities with powers to interfere in the privacy of Serbia's population to an even greater extent.

Article 144 of the Draft Electronic Communications Act, under which operators have to register the SIM card users before they start to extend them cell phone services, was also criticised by experts. The following data are to be registered: first and last names of natural persons or names of legal persons; ID or passport numbers of natural persons or company registration numbers of legal persons; addresses and assigned numbers or identifications. The registration procedure is to be regulated in an enactment adopted by the ministry charged with telecommunications pursuant to a draft prepared by the Regulatory Agency for Electronic Communication and Postal Services (RATEL).

As the Draft Act does not specify which SIM card users are at issue, it may be concluded that prepaid SIM card users are to be registered. Since mitigation of security concerns and addressing criminal and anti-social behaviour is one of the most frequently quoted reasons for mandatory registration of prepaid SIM card users, it needs to be noted hat there has been no empirical evidence that mandatory SIM registration directly leads to a reduction in crime,[226] giving rise to doubts about the justifiability and expedience of processing such data. The Commissioner also commented the Draft Act and drew attention to several issues regarding the

226 See the GSM Association 2016 Report, available at: https://www.gsma.com/publicpolicy/wp-content/uploads/2016/04/GSMA2016_Report_MandatoryRegistrationOfPrepaidSIMCards.pdf.

registration of prepaid SIM card users, inter alia, that it was was unclear when the registration obligation would come into force. He disputed the transitional and final provisions of the Draft Act under which the operators are under the obligation to reregister the SIM card users within nine months and cancel the numbers of those who fail to reregister.[227] The nine-month deadline shall be reckoned from the day the Ministry rulebook on technical registration requirements enters into force; the Draft Act, however, does not specify the deadline by which the Ministry is to adopt the rulebook. The way in which the registration of existing prepaid SIM card users and registration of new ones will be conducted may prove controversial – prepaid SIM cards can be bought not only in the shops of the operators, but at many other unrelated sales points as well, such as kiosks, shops, et al, wherefore the question arises whether their staff will be entitled to ask the buyers to show their IDs and keep and process their data. That would be impermissible, because it would mean that many people not trained in personal data protection would be entrusted with personal data processing duties.[228]

5.4. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.[229] It comprises a series of relationships, such as marriage, children, parent-child relationships,[230] and unmarried couples living with their children.[231] Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.[232] Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,[233] parents and adopted children, grandparents and grandchildren.[234] 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 the existence of a genuine family life, strong personal relations and the duration of the relationship.[235]

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227 There are around 4.5 million prepaid SIM card users in Serbia, wherefore it is highly unlikely that the exercise will be implemented without major delays.

228 See the Commissioner's press release, available at: https://www.poverenik.rs/en/press-releases/2690-registration-of-prepaid-sim-card-users.html and the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=360659&title=Poverenik%3A+Ko+registruje+pripejd+korisnike%3F.

229 See *K. v. the United Kingdom*, ECmHR, App. No. 11468/85 (1991).

230 See *Marckx v. Belgium*, ECmHR, App. No. 6833/74 (1979).

231 See *Johnston v. Ireland*, ECmHR, App. No. 9697/82 (1986).

232 See *Keegan v. Ireland,* ECmHR, App. No. 16969/90 (1994).

233 See *Boyle v. the United Kingdom*, ECmHR, App. No. 16580/90 (1994).

234 See *Bronda v. Italy,* ECtHR, App. No. 22430/93 (1998).

235 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

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), "families, 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.[236] 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 extramarital unions, numerous regulations governing individual rights arising from family relations have not been brought in conformity with this legal norm yet.

The provisions of the Family Act[237] 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 that takes 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).

Despite the enhanced supervision of the execution of the judgment in the case of *Zorica Jovanović v. Serbia* by the Council of Europe Committee of Ministers, the Republic of Serbia failed to enforce the part of the decision on the forming of a mechanism to establish the fate of the new-borns believed to have gone

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.

236 CC Decision Už–3238/2011.

237 *Sl. glasnik RS,* 18/05 and 72/11.

missing from maternity wards in Serbia. The Draft Act on the Missing Babies was submitted to parliament for adoption but was withdrawn, pending the election of the new Government, according to the Justice Ministry.[238] In September 2017, the CoE Committee of Ministers adopted an Interim Resolution expressing its grave concern that, despite the Committee's repeated calls and the assurances repeatedly given by the authorities, the draft law aimed at introducing the above mechanism has still not been adopted.[239] At their 7 December 2017 meeting, the Deputy Ministers: noted with profound regret that the authorities have not updated the Committee on the state of play regarding the adoption of the draft law despite the Committee's call expressed in Interim Resolution as well as in its previous decisions; in view of the humanitarian nature of the measures required and the time that has elapsed since babies allegedly went missing in circumstances similar to this case, strongly urged the authorities to take urgent action to ensure that the draft law is adopted without any further delay; and, stressed that the adoption of the draft law was an absolute necessity to ensure that the parents of missing babies were provided not only with information on the babies' fate but also with individual redress.[240]

6. Personal Data Protection and Protection of Privacy

6.1. Normative Framework

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 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)[241] 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 whose data are collected and processed (data subjects), restrictions of personal data protection, the procedure for protecting personal data before the competent authority, data safety, personal data

238 See the *N1* report, available in Serbian at: http://rs.n1info.com/a330272/Vesti/Vesti/Zakon-o-nestalim-bebama-Neispunjena-obecanja-15-godina.html.

239 The Interim Resolution is available at: https://rm.coe.int/168074cb92.

240 See: https://rm.coe.int/compilation-decisions-2014–2018-en-/168077e33a.

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

records, transfer of data outside the Republic of Serbia and monitoring of the enforcement of this law. [242]

However, the reactions of the state, with the exception of the Commissioner for Access to Information and Personal Data Protection (Commissioner),[243] to numerous violations of this right and its frequent failure to protect it continued to give rise to concern in the reporting period. In his 2016 Annual Report,[244] the Commissioner qualified the situation in this area as alarming, emphasising that the inadequate legal framework and numerous unregulated issues have resulted in numerous incidents and violations of the right to personal data protection in practice, some of which were of major relevance. He said that the key reason for the lack of systematic regulation of personal data protection in Serbia lay in the fact that the competent state authorities, in particular the Serbian Government, have persistently, albeit inexplicably, refused for eight years now to take the necessary steps to regulate the legal framework for personal data protection, thus creating the associated adverse consequences.

6.2. Draft of the Personal Data Protection Act

The Chapter 23 Action Plan envisages the preparation of a new Personal Data Protection Act in accordance with the Model Act prepared by the 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.

The adoption of a new Personal Data Protection Act was still pending at the end of 2017, although it was to have been enacted in the fourth quarter of 2015 under the Chapter 23 Action Plan. The preliminary draft presented in 2015 by the Working Group charged with preparing it substantially differed from the Model Act the Commissioner submitted to the Government back in 2014 (although the Chapter 23 Action Plan says that the new law is to be based on the Model Act). The 2015 draft was heavily criticised by the Protector of Citizens and experts during the public debate and withdrawn. In the meantime, the European Parliament in 2016 adopted the Regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,[245] which takes effect in May 2018, and the Directive on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the preven-

242 More on the valid law in the *2016 Report*, II.6.1.

243 More on the work of the Commissioner for Access to Information and Personal Data Protection in II.4.2.

244 The Commissioner's 2016 Annual Report is available at: https://www.poverenik.rs/en/commissioners-report.html.

245 European Parliament Regulation (EU) 2016/679 of 27 April 2016.

tion, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data.[246]

The Commissioner amended the Model Act accordingly and, after a public debate submitted the new Model Act to the Government in July 2017.[247] Numerous organisations and associations took part in the two-month public debate and the Model Act was supported by entities such as the Foreign Investors Council, the American Chamber of Commerce in Serbia, the Association of Banks of Serbia, the IT Society of Serbia, the Judges' Association of Serbia and NGOs.

The Model Act is fully in compliance with the EU General Data Protection Regulation and, importantly, adequately responds to issues the competent authorities have been ignoring despite the Commissioner's warnings, which has resulted in violations of civil rights guaranteed by the Constitution and the law.

The Model Act governs the principles of personal data protection, competences of personal data protection authorities, special processing methods, the rights and protection of the rights of persons in terms of processing, obligations in terms of processing, transfer of personal data abroad and supervision over the implementation of the law. It also governs the principles of transparency, lawfulness and fairness, limitation of purpose, proportionality, accuracy and data safety. It deals with the balance between the right of access to information of public importance and the right to personal data protection and instances allowing restrictions of the right to personal data protection. Its novel provisions deal with legal grounds of personal data processing, special data processing methods and the obligations of data controllers.

Under the Model Act, personal data may be processed in the event such processing is provided for by law or with the consent of the data subject. Consent may be given orally, in writing or by clear affirmative action. Giving consent by clear affirmative action entails performance of one or more clear and unambiguous actions, based on which it may be concluded with certainty that the person consented to processing, e.g. entry into an area under video surveillance upon prior notice, active provision of data via ICT – by ticking a box in an online context, et al.

The Model Act governs the following data processing methods: biometric data processing, video surveillance, direct marketing, processing of data on entering and exiting business offices, processing of personal identification numbers and use of personal ID documents. It devotes a section to personal data processing in the employment context. The staff's personal data of staff (including current, prospective and former workers) may be processed if necessary to take a decision on their employment, for the exercise of their work-related rights or the rights and obligations of organisations advocating workers' rights under the law, employment contracts or collective agreements.

246 European Parliament Directive (EU) 2016/680 679 of 27 April 2016.

247 The Model Act is available in Serbian at: https://www.poverenik.rs/sr-yu/saopstenja/2554-nov-model-zakona-o-zastiti-podataka-o-licnosti.html.

The Model Act elaborates the obligations of personal data controllers, who must protect them adequately from abuse, destruction, loss, unauthorised change or access. Data controllers are under the obligation to take technical, personnel and organisation measures to protect the data. Data controllers, which are public authorities, controllers processing sensitive personal data and controllers processing the personal data of over 250 people, are under the duty to adopt general enactments governing personal data protection. The controllers have to entrust personal data protection duties to one or more members of staff who passed the expert exam to perform such duties or engage a company or entrepreneur licenced to perform personal data protection duties. Controllers of sensitive personal data, controllers which are public authorities and controllers processing the personal data of over 250 people must keep records of personal data processing. The Model Act governs the transfer of personal data abroad in detail as well.

The adoption of the above-mentioned Regulation and Directive by the European Parliament also prompted the Working Group to align the provisions of its Preliminary Draft Personal Data Protection Act, which it publicly presented on 1 December 2017. It may generally be concluded that the Working Group for the most part copy-pasted the provisions of the EU Regulation and Directive, without regard to the specificities of the Serbian legal system and the context in which they are to be applied. Furthermore, the structure and layout of the draft is difficult to follow, even by legal professionals, as it comprises numerous overly long and "ponderous" provisions referring to other provisions of the law, which is in contravention of one of the main principles of the rule of law, that legal provisions must be expressed clearly and precisely if those it applies to are to conform their actions to them.

The Commissioner voiced a number of criticisms of the Preliminary Draft in the extensive comment he sent to the Ministry of Justice.[248] First of all, he noted that the Preliminary Draft did not devote enough attention to so-called special data processing forms. "Only a few short and unfortunately not very clear provisions are dedicated to some of them (archiving, scientific research, processing of the Unique Citizen ID Number, etc.), however, some forms of processing, such as video surveillance or direct marketing, have remained unregulated, even though they are very important and even though they have caused a lot of problems in practice in the past," the Commissioner said.

Article 1(2) of the Preliminary Draft states that this law shall in particular govern the protection of natural persons with regard to personal data processing by the relevant authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as well as the prevention and protection from threats to public and national security. Article (1(2) is mentioned as the exception in as many as 59 of the Articles devoted to the general personal data processing regime, i.e. most of the rules do not apply to cases

248 See: https://www.poverenik.rs/en/press-releases/2756.

when the "relevant authorities" are processing personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as well as the prevention and protection from threats to public and national security.

The Commissioner also criticised the provisions on legal remedies. Article 82 of the Preliminary Act lays down that personal data subjects are entitled to file complaints with the Commissioner if they believe their personal data have been processed in contravention of the law. He said that the legal character of this instrument initiating the protection procedure and the kind of protection procedure at issue were unclear: whether complaints are enactments initiating the appeals procedure or enactments by which the complainants are reporting violations of their rights entitling the Commission to launch a supervisory procedure. Under Article 83 on the right to judicial protection against the Commissioner's decisions, the personal data subjects, controllers, processors or other natural or legal persons the Commissioner's decisions taken pursuant to this law apply to are entitled to launch an administrative dispute challenging such decisions within 90 days of service of the decisions. The first issue that needs to be addressed is who is entitled to initiate the administrative dispute. If the Commissioner's decision regards a controller or processor as the first-instance authority, it is clear that the provision entitling them to initiate an administrative dispute is in contravention of the Administrative Disputes Act. Second, the Preliminary Draft specifies a 90-day deadline for initiating an administrative dispute, whereas the Administrative Dispute Act lays down a 30-day deadline from the day of service of the administrative enactment and a 60-day deadline in case of "silence of the administration".

The Preliminary Draft considerably expands the Commissioner's powers albeit in the absence of an assessment of whether his office has the capacity to take on the new obligations. The Preliminary Draft also abolishes the office of Deputy Commissioner for Personal Data Protection, without any explanation. As far the personality of the Commissioner is concerned, Article 74(2) of the Preliminary Draft prohibits the Commissioner from performing any other activities or duties, either for free or for a fee, or any other public offices, from exercising any other public powers, from being a member of an association or a political party and from involving himself in politics. This provision is directly in contravention of Article 55 of the Constitution, which guarantees everyone the freedom of a political, trade union or other association, as well as the right not to be a member of any association.

The adoption of an action plan for the implementation of the 2010 Personal Data Protection Strategy remained pending in 2017. The valid Strategy has evidently remained a dead letter and no longer responds to the present-day needs and needs to be replaced by a new Strategy. The Chapter 23 Action Plan does not envisage either the adoption of a new personal data protection strategy and its action plan or the adoption of an action plan for the implementation of the valid Strategy.

6.3. Violations of the Right to Personal Data Protection – Practices of Data Controllers

As noted, violations of the right to personal data protection were extremely frequent in 2017. The existing mechanisms for protecting personal data were ineffective and the state's responses to such violations were, as a rule, inadequate.

From January 2009 to June 2017, the Commissioner initiated 159 misdemeanour proceedings over PDPA violations, as many as 100 of them against state institutions, public companies and public officials. According to the data available to the Commissioner, 132 of these proceedings were completed in the given period, 81 resulting in convictions and four in acquittals; six proceedings were terminated and one report was dismissed. The dismissal of 40 reports as out of time is, however, extremely concerning.[249]

There can hardly be any talk of case-law on the crime of unauthorised collection of data.[250] In his 2016 Report, the Commissioner said he had filed 30 criminal reports in the 2010–2016 period, but that only one of them resulted in a conviction, while the courts dismissed 16 of them as out of time or because criminal prosecution was deferred.

The trend continued in 2017. The public authorities' response to violations of the right to personal data protection remained inadequate and violations were frequent.

The misdemeanour charges concerning one of the gravest violations of the right to personal data protection in 2014 were dismissed as out of time in January 2017. To recall, the Commissioner for the Protection of Equality in January 2015 filed a misdemeanour report against the Privatisation Agency and its officials, which had kept the personal data of over five million people with free shares in five public companies posted on its website for as many as 10 months. The Agency was, however, disbanded in February 2016, and the two-year statute of limitations expired in January 2017 wherefore the court decided to terminate the proceedings.[251]

News broke in March 2017 that individuals with access to the National Employment Service (NES) database had made the personal data of people in the NES records available to lawyers, who subsequently offered to represent them in potential lawsuits against the NES[252] for paying out wrongly calculated unemployment

249 See the CINS report, available at: https://www.cins.rs/english/news/article/citizen-privacy-for-disposal-for-years.

250 Article 146, Criminal Code.

251 "Agency Leak Case Dismissed as Out of Time," *N1*, 12 January 2017, available in Serbian at: http://rs.n1info.com/a220880/Vesti/Vesti/Curenje-podataka-iz-Agencije-za-privatizaciju-zastarelo.html.

252 "National Employment Service Shared Personal Data with Lawyers," *Portal 021,* 3 March 2017, available in Serbian at: http://www.021.rs/story/Info/Srbija/157414/Nacionalna-sluzba-za-zaposljavanje-licne-podatke-delila-advokatima.html.

benefits.[253] The Commissioner issued a warning to the NES because of its failure to take the adequate measures to protect the personal data in its electronic database of job-seekers and recipients of unemployment benefits, which gave rise to the possibility of placing such data at the disposal of unauthorised third parties. During his inspection, the Commissioner, inter alia, ascertained that a relatively large number of NES staff had access to the database (which includes the job-seekers' personal data, data on payment of benefits, benefit award rulings, etc.) but that there were no log files based on which it could be established who was liable for unauthorised access to the database and the recipients' personal data, and copying and printing of those data or lists.

The Commissioner ascertained that, apart from NES staff, the database could be accessed by the Postal Savings Bank staff that pays out the benefits under a Bank Services Contract, which does not include any provisions on technical, human or organisational personal data safeguards. The Commissioner also filed a criminal report against unidentified perpetrators for unauthorised collection of data.[254]

The collection, processing and storage of personal data are often inadequate in practice, as illustrated by an incident that occurred in Odžaci in September 2017,[255] when the patients' confidential medical records were found lying around in front of the local factory health unit. The PDPA explicitly lays down that all health professionals and associates are under the obligation to treat such data as particularly sensitive data and confidential, and that all health institutions and other legal persons processing them must put in place and maintain an adequate security system. After the health data of the Odžaci residents appeared in the media and on the Internet, the Commissioner performed an inspection of the Odžaci Out-Patient Health Clinic, during which he ascertained that the patients' health files were inadequately safeguarded and thus made available to an unlimited number of people.

In October 2017, the Commissioner instituted a procedure[256] after the media and the Ministry of Labour, Employment and Veteran and Social Issues on its website published the news that the Serbian Ministers had agreed with the Chinese Ambassador to Serbia and the Director of the Smederevo Ironworks to put in place a mechanism to control sick leaves and its use. The Commissioner emphasised that rules on sick leave were a statutory matter, the different aspects of which were regulated by a number of laws (PDPA, Patients' Rights Act, Labour Act, Health Insurance Act...) and that the rules introduced by these laws formed a system that may not and cannot be changed or based on any arrangements with foreign investors.

253 "Over 200 Residents of Novi Sad Sue National Employment Service," *Portal 021*, 8 November 2016, available in Serbian at: http://www.021.rs/story/Novi-Sad/Vesti/148607/Vise-od-600-Novosadjana-tuzilo-Nacionalnu-sluzbu-za-zaposljavanje.html.

254 See the Commissioner's press release at: https://www.poverenik.rs/en/press-releases/2552-upozorenje-poverenika-nsz-i-krivicna-prijava-zbog-neovlascene-obrade-licnih-podataka.html.

255 See the Commissioner's press release at: https://www.poverenik.rs/en/press-releases/2666.

256 See the Commissioner's press release at: https://www.poverenik.rs/en/press-releases/2679.

The Belgrade City Administration, as a data controller, failed to register its "Senior Citizens' Card" personal data file, as it is obliged to under the PDPA. It also failed to notify the Commissioner in advance of its intention to establish such a file, which is also punishable under the PDPA. The Commissioner initiated an *ex officio* inspection of the enforcement of the PDPA by the Belgrade City Administration.[257]

7. Freedom of Thought, Conscience and Religion

7.1. Legal Framework

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).

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 Communities[258] 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 Communities[259] and the republican Act on Legal Status of Religious Communi-

257 More is available in Serbian at: http://www.poverenik.rs/yu/saopstenja-i-aktuelnosti/2668-postupak-nadzora-nad-primenom-zakona-o-zastiti-podataka-o-licnosti-u-projektu-tzv-qsenior-karticeq.html.

258 *Sl. glasnik RS*, 36/06.

259 *Sl. list FNRJ*, 22/53 and *Sl. list SFRJ*, 10/65.

ties.[260] 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.[261]

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. Representatives of the Islamic Community, Adventist Church, Evangelical Church and Jehovah's Witnesses met in June 2017 to discuss religious freedoms in Serbia and the world, which, in their view, are increasingly jeopardised, while small religious communities face prejudice and restrictions.[262] Although they concluded that religious freedoms were generally respected in Serbia and that small religious communities faced fewer problems than in the past decade or so, the Director of the Centre 9 Department for Tolerance and Inter-Religious Relations, which organised the event, said that the unfavourable status of some religious communities could mainly be ascribed to the vague definitions of the concepts of church, religious community and sect.[263]

The Chapter 23 Action Plan envisages the implementation of a detailed comparative law analysis of the status of churches and religious communities, which will focus on states bordering with the Republic of Serbia that have fulfilled EU accession criteria. The Comparative Law Analysis of Regulations on the Legal Status of and Procedures for Registering Churches and Religious Communities in EU Member States Bordering with Serbia (Analysis)[264] was conducted in 2016. It leads to the conclusion that the legislation and practices of the analysed countries and Serbia do not differ much, that they are actually quite similar. The Analysis includes a number of recommendations to improve the laws and practices affecting the status of churches and religious communities. It says that 25 churches and religious communities are registered in Serbia, i.e. slightly less than the regional average, but also notes that the registration procedure in Serbia is among the simplest and fastest in the region and that the authority charged with keeping the Register has not dismissed a large number of registration applications.[265]

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260 *Sl. glasnik SRS*, 44/77, 12/78, 12/80 and 45/85.

261 A comprehensive overview of the problematic provisions in the Act on Churches and Religious Communities is available in the *2011 Report*, I.4.

262 According to the organisers, the representatives of the Serbian Orthodox Church and Catholic Archdiocese were invited but did not attend the event, while Serbian chief Rabbi Isak Asiel's absence was justified.

263 More is available in Serbian at: http://mondo.rs/a1014875/Info/Drustvo/Skup-verskih-zajednica-u-Beogradu-Nismo-sektasi.html.

264 The Analysis is available in Serbian at: http://www.vere.gov.rs/cir/Siteview.asp?ID=4.

265 *Ibid.*, p. 102. Under the Rulebook on the Register of Churches and Religious Communities, religious organisations founded by 100 or more individuals may be entered in the Register.

7.2. *The Relationship between the State and the Serbian Orthodox Church*

The Statistical Office of the Republic of Serbia data show that Serbia has a population of 7,040,272.[266] According to the 2011 Census, most citizens declared themselves as Serbian Orthodox Christians (84.59%), Roman Catholics (4.97%), Moslems (3.10%) and Protestants (0.99%); 220,735 (3.07%) declined to declare their faith, while 80,053 (1.11%) said they were atheists.[267]

Given that the vast majority of Serbia's population have declared themselves as Serbian Orthodox Christians and that they also account for the majority of the population, the political leaders have traditionally been extremely reverential towards the Serbian Orthodox Church, often seeking its support for key state decisions. Although the Serbian Constitution lays down that Serbia is a secular state and prohibits the establishment of a state religion (in Art. 11), the SOC and its dignitaries have often voiced their opinions on major state issues having nothing to do with church or religion, while state officials have made a point of attending church SOC liturgies.[268]

All religious organisations apart from traditional ones must also submit their statutes or other written documents describing their organisational and management structure, rights and obligations of their members, procedures for founding and dissolving the organisational units, a list of organisational units with the status of legal person and other relevant data. The obligation to submit an outline of religious teachings, religious rites, religious goals and basic activities is particularly problematic as the Act allows administrative authorities to assess the quality of religious teaching and goals, which is absolutely impermissible from the viewpoint of the freedom of thought and religion.

266 Statistical Office of the Republic of Serbia, available at: http://www.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=2.

267 *Religion, Mother Tongue and Ethnicity*, Statistical Office of the Republic of Serbia, Belgrade, 2013, pp. 46–47, available at: http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4_Veroispovest.pdf.

268 E.g. The Christmas liturgy SOC Patriarch Irinej held in a Belgrade church in January 2017 was attended, inter alia, by the then Serbian President Tomislav Nikolić, Army of Serbia Chief of Staff General Ljubiša Diković, Justice Minister Nela Kuburović and former Foreign Minister Vuk Jeremić. See the Politika report, available in Serbian at: http://www.politika.rs/sr/clanak/371589/Danas-je-Bozic. Although Aleksandar Vučić has not met often with the SOC dignitaries, he held a meeting with Patriarch Irinej after winning the presidential elections in April 2017 in his capacity of Prime Minister, at which he said that the SOC played an important role, especially in preserving the Serbian identity in ex-Yugoslav states, and promised that the construction of the St. Sava Temple would be completed soon, more in the *Blic* report available in Serbian at: https://www.blic.rs/vesti/politika/vucic-obecao-patrijarhu-irineju-hram-svetog-save-ce-biti-zavrsen-za-vreme-mog-mandata/epzw9jt. Justice Minister Nela Kuburović also paid a call on the SOC Patriarch in November 2017, see the report available in Serbian at: https://pouke.org/forum/index/. Foreign Minister and SPS leader Ivica Dačić also attended the Easter liturgy in April 2017. More is available in Serbian at: http://www.sps.org.rs/2017/04/17/guzva-u-kripti-hrama-svetog-save-na-liturgiji-prisustvovao-ivica-dacic/.

In March 2017, SOC Patriarch Irinej received presidential candidate Vojislav Šešelj and former Bosnian Serb leader Momčilo Krajišnik, convicted of war crimes to 20 years' imprisonment by the ICTY.[269]

As noted, the state authorities have never reacted to the SOC dignitaries' meddling in state affairs. For instance, the organisers of an Aspic Festival in Rumenka in April 2017 had to cancel the event after SOC Bač Bishop Irinej Bulović openly threatened that "death bells" would accompany this "pagan event" if it was held in the middle of the Lenten fast. His statement was condemned by most analysts and some members of the general public, who concluded that there could be no justification for the SOC's interference in the organisation of such events and that the Church was intentionally and tendentiously scaring the people, because fasting was a personal matter.[270] Such statements by SOC dignitaries also led the Bač Tourist Organisation to move the Second Vojvodina sausage festival (*Kulenijada)* from the first weekend of March to end April, after Easter.[271]

Čovekoljublje is the main SOC charity. This voluntary foundation extends childcare services and provides assistance to the elderly and the ill with its mobile medical house call unit. Its programme of assistance to people living with HIV and terminally ill people had earlier been funded by the Delegation of the European Union to Serbia.[272] A charity by the name of *Versko dobrotvorno starateljstvo*, which also operates under SOC's auspices, extends family counselling and specialist medical services and organises foreign language classes.[273] *Zemlja živih,* a therapeutic community focusing on the psychosocial rehabilitation of drug addicts, and the humanitarian organisation *Majka devet Jugovića,* established to help Serbs in Kosovo also operate under the auspices of the SOC.[274]

Although a number of charities operate under the auspices of the SOC, some analysts believe that the SOC is insufficiently active in this area and note that, although the SOC often underlines that 85% of Serbia's population are Serb Orthodox Christians, it does not care about their social problems. As opposed to abortion,

269 Political analyst Vladimir Goati said that the Patriarch thus implicitly interfered in the election campaign, although he did not publicly voice his support for Šešelj or call on the voters to vote for him; historian Milivoj Bešlin warned that the Patriarch's meeting with a convicted war criminal would have been a first-rate scandal in any normal society. More is available in Serbian at: http://voice.org.rs/ekstremna-desnica-na-srcu-ruka-na-novcaniku/.

270 See: https://www.blic.rs/vesti/drustvo/jedete-pihtije-u-vreme-posta-prokletnici-strucnjaci-objasnjavaju-zasto-u-ovom-slucaju/xvd3l0l.

271 See: https://www.tportal.hr/vijesti/clanak/srpska-pravoslavna-crkva-zabranila-kulenijadu-i-festival-hladetine-20170306.

272 Data accessed on the *Čovekoljublje*'s website http://www.covekoljublje.org/ocove.html, which has not posted any news on its 2017 activities.

273 More about the work of this organisation is available in Serbian at: http://starateljstvo.rs/raspored-aktivnosti-vds-a-za-2017–2018-godinu/.

274 Data accessed on the following website http://www.orthodox-christianity.org/orthodoxy/churches/serbia/serborgs/.

religious instruction or homosexuality, on which it has regularly stated its views, the SOC has never publicly addressed the social problems of the citizens. Nor do they feature in the Patriarch's epistles. The SOC has not reacted publicly to hunger strikes, protests caused by grave social problems, welfare cuts, closure of soup kitchens, public officials' hate speech, the immorality of reality shows, etc.[275]

7.3. Financing of Religious Communities

The Act on Churches and Religious Communities allows the state to extend financial aid to churches and religious communities.[276] The state may grant churches and religious communities funding from the state budget. The 2018 Budget Act[277] earmarked over one billion RSD for the work of the Directorate for Cooperation with Churches and Religious Communities. Of that sum, 62 million RSD were designated to support the work of priests and clerical officers and 260 million RSD for covering their pension, disability and health insurance contributions; 63.5 million RSD were earmarked for supporting the priests and monks in Kosovo and 186 million RSD for the protection of religious, cultural and national identity, while 211 million RSD will be spent on the construction and renovation of religious facilities.

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 second way of the state aid is by subsidising the pension, social and health insurance of the priests and clerical officers.[278] 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. Like the 2017 Budget Act, the 2018 Budget Act set aside over two million EUR for the pension and disability insurance contributions for priests and clerical officers.

Under the Act on Churches and Religious Communities, churches and religious communities may also be exempted from paying taxes.[279] Under the Value

275 More is available in Serbian at: http://voice.org.rs/mocna-korporacija-srpska-pravoslavna-crkva/.

276 Article 28(2).

277 *Sl. glasnik RS*, 113/17.

278 Article 29 (2 and 3).

279 Article 30.

Added Tax Act,[280] 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,[281] only traditional churches and religious communities are exempted from paying VAT.[282] They are not under the obligation to publish their financial statements.[283]

This practice has met with criticism in view of their quite high revenues.[284] 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 SOC's property in kind, but specified the SOC 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.[285]

Verified and accredited religious educational institutions are entitled to budget funding proportionate to the size of their congregations.[286] The Act also allows the authorities to subsidise cultural and scientific institutions and programmes of churches and religious communities.[287] Religious instruction was introduced in schools as an elective subject in 2001. It is governed by the Decree on Religious Instruction and Instruction in the Alternative Subject in Primary and Secondary Schools.[288] Religious instruction is organised and provided by traditional churches and religious communities. The constitutionality of this provision was reviewed by the Constitutional Court in 2003; the Court held that the fact that the state was funding only the religious instruction extended by traditional churches did not place the other communities in an unequal position.[289] However, some experts voiced the view that the privileged status of traditional churches and religious community was precisely reflected by the fact that only their religious instruction was funded by the state.

280 *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.

281 Article 12(1(3)), Property Tax Act.

282 Article 55, Value Added Tax Act.

283 See: http://www.kreativnisvetbalkana.net/srpska-pravoslavna-crkva-dobija-iz-budzeta-a-nece-da-placa-porez/.

284 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.

285 More is available in Serbian at: http://www.kurir.rs/vesti/drustvo/patrijarh-irinej-kad-nam-drzava-vrati-svu-imovinu-placacemo-porez-clanak-2624403.

286 Article 36(2).

287 Article 44.

288 *Sl. glasnik RS*, 119/03.

289 Cases IU 177/01, IU 213/02, IU 214/02, Decision of 4 November 2003.

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.

Another potential source of income of churches and religious communities is the property returned to them in the restitution procedure. Restitution is governed by the Act on the Restitution of Property to Churches and Religious Communities.[290] 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 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.

In early 2017, Strahinja Sekulić, the Acting Director of the Restitution Agency at the time, said that a total of 56,098 hectares of land and 88,884 square metres of houses, apartments and office space had been returned to the churches and religious communities pursuant to the Act. In 2017, the Agency returned 4,800 hectares of land to the churches either in kind or paid compensation for it. Farmland accounted for most of it, around 3,000 hectares. The religious communities were also returned 885 hectares of forests and forest soils, as well as two hectares and 11 ares of construction land. A special unit was formed to return property to Holocaust victims and property was returned to the Jewish Municipalities in Belgrade, Kikinda and Sombor.[291]

7.4. 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.[292] The right to conscientious objection is recognised in CoE Parliamentary Assembly and Committee of Ministers recommendations and resolutions.[293] Mandatory military service was abolished in Serbia in 2011.

The issue of reintroducing mandatory military service was raised in early 2017. The then Defence Minister said that, pursuant to instructions Prime Minister

290 *Sl. glasnik RS*, 46/06.

291 The Serbian Orthodox Church regained its property in the heart of Belgrade; office space in Kralja Aleksandra Boulevard 17, apartments and office space in Kralja Aleksandra Boulevard 20, office space on Terazije 22, apartments in a building at Students' Square, and an office building in Zmaj Jovina Str. In Novi Sad, more is available in Serbian at: http://www.politika.rs/sr/clanak/372331/Za-sest-godina-kraj-restitucije.

292 Article 18 ICCPR and Article 9 ECHR.

293 More on the right to conscientious objection in the *2010 Report*, II.4.8.5.

Aleksandar Vučić gave in his inaugural speech, the Ministry had formed a working group comprising, *inter alia*, representatives of the MIA, SIA and the Ministry of Foreign Affairs, and tasked with reviewing the defence strategy documents and proposing new ones by 1 September 2017; this group was to review the reintroduction of mandatory military service on the basis of the assessed national security threats and risks. The then Prime Minister Aleksandar Vučić said that there was not enough money in the state budget as the reintroduction of mandatory military service would cost the state around 70 billion RSD. [294]

In January 2017, the Ministry of Defence said that it was registering in its records young men born in 1999, who would turn 18 in 2017, and that those who did not fulfil this duty would be either be fined up to 50,000 RSD or sentenced to 60 days' imprisonment. On registration, the young men declare whether or not they are interested in serving voluntary six-month army service.

Aleksandar Vulin, who was appointed Defence Minister in June 2017, said in August that, although the Government was still not discussing the reintroduction of mandatory military army service, because it has not reached a consensus on this issue, the state had to think of ways to prepare the young generations for potential security challenges and that military training should be mandatory for civilians, including first aid and disaster training for all women under 50.[295]

8. Freedom of Peaceful Assembly

8.1. International Standards and the Constitution of the Republic of Serbia

The Republic of Serbia is bound by international documents to protect, respect and ensure the freedom of assembly. This freedom is enshrined in the Universal Declaration of Human Rights (Art. 20), the European Convention on Human Rights (Art. 11) and the International Covenant on Civil and Political Rights (Art. 21).

The freedom of peaceful assembly is also guaranteed by Article 54 of the Serbian Constitution, under which the authorities must be notified of outdoor assemblies. The Constitution, however, states that *citizens* may assembly 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

294 More at: http://rs.n1info.com/a224954/Vesti/Vesti/Vucic-Vojni-rok-nece-biti-vracen.html.

295 More is available in Serbian at: https://insajder.net/sr/sajt/tema/6233/Vojna-obuka-li%C4%8Dna-odluka-ministra-Vulina-ili-strategija-Vlade.htm.

aliens,[296] 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.

The Public Assembly Act does not prescribe any restrictions with respect to the nationality of the public assembly organisers and participants. Rather, it guarantees the freedom of assembly to everyone (in Art. 1). However, assemblies staged by the organisation Falun Gong were prohibited over the past few years, without any clear explanation of the reasons,[297] which may amount to the competent authorities' arbitrary and discriminatory treatment of aliens with respect to their freedom of assembly. This prompted the NGO Committee of Human Rights Lawyers (YUCOM), an NGO that extends aid legal aid to victims of violations of the freedom of assembly free of charge, to file a constitutional appeal with the Serbian Constitutional Court. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association was also alerted to this case in 2017 since the Constitutional Court had not acted at all on the appeal although a year had passed since it was lodged.[298]

The Constitution explicitly lays down that freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia (Art. 54). 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.

8.2. Disputable Legal Provisions and Challenges in Practice

Exercise of the freedom of assembly is governed in detail by the Public Assembly Act,[299] which was adopted in January 2016, after the Serbian Constitutional Court had declared its predecessor unconstitutional in its entirety.[300] The new Public Assembly Act was to have eliminated the shortcomings arising from the *in abstracto* prohibitions of venues and times of public assemblies in the prior law and put in place effective legal remedies. The latter objective was not achieved, however, as

296 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.

297 See the *2016 Report*, II.9.1.

298 Information obtained from YUCOM on 29 November 2017.

299 *Sl. glasnik RS,* 6/16, a thorough analysis of the Public Assembly Act is available in the *2016 Report,* II.9.2.

300 Decision IUz 204/13 of 9 April 2015.

the new law does not stipulate that final decisions prohibiting assemblies have to be adopted before the day of the assembly. Notably, the new Act does not lay down a deadline by which the Administrative Court, the topmost administrative authority, is to rule on a claim challenging the restriction of the freedom of assembly. Nor has the Administrative Court speedily ruled on such claims in practice, which has resulted in the fact that the legal remedies are still *post hoc* in character. For instance, the Administrative Court's review of the claim challenging the ban of Falun Dafa rally in 2016 took three months and was not completed before the scheduled date of the event.[301]

In its 2017 Concluding observations, the Human Rights Committee expressed its concern about the Public Assembly Act which, in its view, "might hinder, not facilitate, protection of the right to freedom of assembly".[302] Articles 19 and 21 of the Act as particularly problematic, as they allow the dispersal of a rally on an order not subject to appeal and the imposition of extremely high fines against the assembly organisers or leaders for failing to comply with the law or act on the orders of the Ministry of Internal Affairs. The organisers may be fined even if they decide not to hold a notified rally, which is absolutely absurd. The Human Rights Committee recommended to the State to review the application of the Public Assembly Act so as to ensure its compatibility with the Covenant.

The ECtHR, however, holds a somewhat different view on the Public Assembly Act. It decided to strike off the list the applications concerning the bans of the 2009, 2011, 2012 and 2013 Pride Parades, because the Constitutional Court declared the prior law (under which these rallies were banned) unconstitutional in its entirety in 2015, thus resolving the structural problems regarding the exercise of the freedom of assembly in Serbia. The ECtHR held that the 2016 Public Assembly Act remedied all the shortcomings of the 1992 law, whereby the issue of the prior prohibitions of the Pride Parades was resolved.[303]

The Public Assembly Act lays down that everyone is entitled to organise and participate in an assembly, wherefore it guarantees the freedom of assembly also to the assembly participants. Consequently, the participants should be entitled to seek the protection of their freedom of assembly in the event they are prevented from participating in a public assembly due to a decision or action of the state authorities. 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

301 Information obtained from YUCOM.

302 Concluding observations on the third periodic report of Serbia, CCPR/C/SRB/CO/3, 10 April 2017, para. 38. See more in I.1.1.2.

303 *Đorđević and Others v. Serbia,* App. No. 5591/10, decision of 17 January 2017.

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 national security. 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, which may result in unlawful restrictions of the freedom of assembly.

Under the Public Assembly Act, outdoor assemblies must be notified to the relevant MIA units. Indoor public assemblies need not be notified, but their organisers may do so in the event they need the police to secure them. Although the Act recognises the advance notice system but not a permission granting system, which is commendable given that the former is precisely to ensure that the police secure the assemblies (if necessary), the Act nevertheless imposes excessive obligations on the organisers, because their notices must include numerous data and accompanying documents they do not necessarily possess and the submission of incomplete notices may result in the prohibition of the assemblies. The organisers of the Pride Parades had to submit numerous documents with their notices in the past. 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.

Furthermore, the Public Assembly Act permits the organisation of spontaneous (unnotified) assemblies and processions. However, its definition of a "spontaneous assembly" is extremely vague. The Act defines such assemblies as those that have no organisers, that take place indoors or outdoors and in immediate reaction to specific events, and at which the assembly participants express their views or opinions on those events. The definition of a spontaneous assembly as an event no-one organises or invites people to attend can in practice result in the relevant authorities' failure to qualify any assemblies as spontaneous because it is hard to imagine the holding of any assembly no-one invited the participants to. The practice of holding spontaneous assemblies and the MIA's interpretation of a spontaneous assembly under the Act indicates lack of understanding of this form of assembly. Furthermore, the Act levies misdemeanour fines against organisers who fail to notify their assemblies (in case their events do not fulfil the spontaneous assembly requirements).

8.2.1. Restrictions of the Freedom of Assembly and Legal Remedies

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 and rights of others, or racial, ethnic, religious or other inequalities, hate or intolerance, as well as assemblies in contravention of this law.

The Public Assembly Act does not recognise any less restrictive measures than the prohibition of public assemblies not organised or conducted in accordance with the law. 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.[304] 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.

The 2016 Public Assembly Act was to have provided effective legal remedies for challenging rulings restricting the freedom of assembly, i.e. extended the deadlines for submitting notices and shortening those by which the authorities are to rule on the appeals in order to ensure that the final decision is rendered before the scheduled date of the event. Many of the rulings prohibiting assemblies in the recent years were not sufficiently reasoned; the relevant authorities merely referred to the article laying down the grounds on which assembly shall be prohibited. NGOs extending legal aid to public assembly organisers and participants have noted that the rulings issued in 2017 were more detailed.[305]

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. 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 claim, which may again result in the *post hoc* character of the legal remedies and, thus, their ineffectiveness.

304 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 39.

305 Information obtained from YUCOM on 18 December 2017.

The deficiencies of the prior law have thus not been eliminated in the new Act, as the Human Rights Committee also noted in 2017.

Organisers may file constitutional appeals against final decisions prohibiting their assemblies or in the event they have no effective legal remedies at their disposal. According to the Constitutional Court's online database, this Court did not rule on any constitutional appeals claiming restrictions of the freedom of assembly in 2017.[306]

In its decision in the case of *Đorđević and Others v. Serbia,* the ECtHR decided to strike off its list of cases the application regarding the bans of the 2009, 2011, 2012 and 2013 Pride Parades, because it held that the redress provided by the Serbian Constitutional Court in those cases was adequate and sufficient.[307] It dismissed as manifestly ill-founded the applicants' claims that the Pride Parade bans were discriminatory. Furthermore, the ECtHR noted the Serbian Constitutional Court's proactive role with respect to the exercise of the freedom of assembly, underlining that that Court had on its motion initiated a review of the 1992 Public Assembly Act and recognised its shortcomings, which were at the core of the applicants' complaints. The Constitutional Court's proactive attitude, the adoption of the new Public Assembly Act in 2016, the fact that the Pride Parades had been held three years in a row without any incidents and under police protection and the apparent positive change in the public perception of the issues concerned led the ECtHR to find that the matter giving rise to these complaints could therefore be considered to be resolved.[308]

8.2.2. Responsibilities of the Assembly Organisers and Counter-Demonstrations

The Public Assembly Act lays down draconic fines to be imposed organisers and leaders of public assemblies defaulting on their statutory obligations. This, too, prompted the Human Rights Committee to recommend the review of the application of this law in its 2017 Concluding observations. 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 notices; fail to notify the public of the prohibition of their assemblies; fail to 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). In addition to assembly

306 Data on the Constitutional Court of Serbia web site.

307 *Đorđević and Others v. Serbia,* App. No. 5591/10, decision of 17 January 2017, para. 58.

308 *Ibid.* paras. 57–58.

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, whose roles are not specified in detail in the Act.

Such cumulative punishment of various actors of an assembly involving sky-high fines amounts to the state's disproportionate interference in the freedom of assembly. Furthermore, misdemeanour proceedings have frequently been used to intimidate organisers of assemblies promoting views critical of the ruling political parties or raising controversial issues.[309]

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.[310]

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 relevant 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 in 2016, despite the fact that the new Act allows spontaneous assemblies and the misdemeanour report had been filed under the prior, unconstitutional law.[311] Anita Mitić was acquitted in 2017.[312]

Numerous spontaneous protests under the slogan "Against Dictatorship" were held across Serbia in the days leading up to and after the presidential elections in April 2017. The students, who took part in them, protested against the way the elections were held, their results and media repression. The protests were mostly organised through social media; they were not notified or officially organised by anyone.[313] The police filed a misdemeanour report against two students of the Bel-

309 See the *2016 Report*, II.9.2.2.

310 Guidelines on Freedom of Peaceful Assembly, OSCE/ODIHR and Venice Commission, Warsaw/Strasbourg 2010, para. 197.

311 Information obtained from YIHR on 20 December 2016.

312 "Anita Mitić Acquitted of Police Charges for Seven Thousand Protest," *N1,* 10 July 2017, available in Serbian at: http://rs.n1info.com/a282587/Vesti/Vesti/Anita-Mitic-oslobodjena-poprijavi-policije.html.

313 "Rebellion as Clear as Day," *Vreme,* No. 1371, 13 April 2017, available in Serbian at: http://www.vreme.rs/cms/view.php?id=1490808.

grade Drama Arts College, whom they identified as organisers of one such assembly (because they were coordinating the procession), charging them with the failure to notify the police of the assembly,[314] although the Public Assembly Act permits unnotified assemblies held in immediate reaction to a specific event. The misdemeanour report, however, did not specify the reasons why this assembly was unlawful, i.e. should not be qualified as spontaneous. Instead, its reasoning referred to the texts on the banners and megaphoned messages criticising Aleksandar Vučić's regime, the Serbian Progressive Party and the Belgrade city authorities, leaving the impression the misdemeanour prosecution was actually aimed at restricting the participants' freedom of expression. Several days after the first protests were held, the Minister of Internal Affairs publicly stated that no-one would prevent the participants in the spontaneous assemblies from expressing their dissatisfaction as long as their assemblies were peaceful and that the MIA would give priority to the civil freedom enshrined in the Constitution. The Minister said the "Against Dictatorship" protests held after the elections were politically motivated and named other organisers, not the ones against whom the misdemeanour report had been filed, wherefore it remains unclear which criteria the police actually used to identify the organisers.[315] During the hearing before the Misdemeanour Court, the students denied they had organised the assembly, specifying they had merely been protesting "against the madness propagated by various regime media".[316]

The Act does not govern the issue of dissenting and simultaneous assemblies at all. At the public debate on the draft 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. For instance, in 2016, the police prohibited the concurrent assemblies of the National Serbian Front and the anti-fascists, as well as the assemblies of rightist organisations on the day of the Pride Parade. In 2017, most of the counter-demonstrations were initially scheduled a few days before the Pride Parade.[317] It, however, remains unclear whether the non-concur-

314 MIA Stari grad Police Station, Reg. No. 3–101-0559/17, misdemeanour report filed with the Belgrade Misdemeanour Court, as BCHR was told by YUCOM.

315 "Minister: Protests against Election Results are Political," *Novosti online*, 5 April 2017, available in Serbian at: http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:658804-Ministar-Protesti-protiv-izbornog-rezultata-su-politicki.

316 "Drama College Students Heard, Defence Asks Court to Hear Witnesses," *N1*, 17 October 2017, available in Serbian at: http://rs.n1info.com/a335515/Vesti/Vesti/Studenti-FDU-na-saslusanju-gradjani-se-okupili-ispred-suda.html.

317 "Anti-Pride Parade Protest in Heart of Belgrade," *B92 online*, 17 September 2017, available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2017&mm=09&dd=17&nav_ca

rent counter-demonstrations had been organised because their participants wanted to hold them or in line with MIA suggestions. In some cases, the police ordered the processions to change route because of counter-demonstrations. This is usually the case when Women in Black organise their rallies, although this NGO always notifies the police in advance of its assemblies and counter-demonstrations.[318]

8.3. Right to Freedom of Peaceful Assembly in 2017

Several events promoting LBGTQI rights were held in Belgrade in 2017.[319]

The "Let's Not Give/Drown Belgrade" Initiative against the Belgrade city authorities and the controversial Waterfront construction project held a number of events throughout 2016. Such assemblies continued in 2017, with their participants calling for the resignation of the Belgrade Mayor, effective investigation and identification and punishment of the perpetrators of the unlawful demolitions in the Savamala quarter in 2016.[320] In March 2017, the police prevented the participants of the "Let's Not Give/Drown Belgrade" event to greet the Mayor in front of the City Assembly by cordonning off the entrance into the building.[321] The police went on to file a misdemeanour report against the assembly organiser for not holding it at the venue specified in the notice.[322]

Over the past three years, misdemeanours reports were filed every time such an assembly was held – either because the assembly was not notified or for acts qualified as misdemeanours in other laws or regulations (e.g. the Road Safety Act,[323] the Public Law and Order Act,[324] Belgrade City Government Decisions on Environmental Hygiene and Advertising, etc.) The police have filed a total of 21 misdemeanour reports against the "Let's Not Give/Drown Belgrade" organisers and participants. Two misdemeanour proceedings were concluded in 2017 – one misdemeanour report was dismissed as out of time and the defendants in the other case were acquitted because they had been prosecuted under the prior assembly law (which was declared unconstitutional). Three misdemeanour proceedings were launched in 2017: one for failure to notify the police of the assembly, one for fail-

tegory=12&nav_id=1304581.

318 Information obtained from YUCOM.

319 See more at: IV.2.3.

320 More on unlawful and violent demolitions in Savamala, Hercegovačka Street, in the *2016 Report*, II.12.4.

321 "Police Prevent "Let's Not Give/Drown Belgrade" to Greet Mayor Mali,", *N1,* 7 March 2017, available in Serbian at: http://rs.n1info.com/a233019/Vesti/Vesti/Policija-sprecila-Ne-da-vi-mo-Beograd-da-docekaju-Malog.html.

322 Information obtained from the "Let's Not Give/Drown Belgrade" Initiative, 20 December 2017.

323 *Sl. glasnik RS,* 41/09, 53/10, 101/11, 32/13 – CC Decision, 55/14, 96/15 – other law and 9/16 – CC Decision.

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

ure to hold it at the venue specified in the notice (under the Public Assembly Act) and the third for violation of the local self-government regulation on environmental hygiene. One of the organisers of "Let's Not Give/Drown Belgrade" assemblies was sentenced to 10 days imprisonment for violating the Decision on Environmental Hygiene. This case is interesting insofar as the organiser was punished for participating in another event because the police saw him holding a placard "Belgrade isn't Small[325]", often carried by participants in "Let's Not Give/Drown Belgrade" assemblies. The organiser challenged the Misdemeanour Court's decision. The court in 2017 also dismissed a criminal report filed against a participant in a "Let's Not Give/Drown Belgrade" event the previous year. He had been charged with violent behaviour.[326] Misdemeanour and criminal prosecution of the "Let's Not Give/Drown Belgrade" organisers and participants is obviously aimed at deterring the participants from freely expressing their opinions on the Belgrade Waterfront project and thus amounts to a gross violation of the freedom of assembly.

In general, citizens and journalists are allowed to report on the freedom of assembly. In addition, there are no restrictions on the monitoring of public assemblies by human rights defenders.[327] Media coverage of assemblies in the year behind us was characterised, on the one hand, by lack of reports on assemblies criticising the ruling party (notably, the "Against Dictatorship" and "Let's Not Give/Drown Belgrade" protests), and their ample coverage of assemblies in support of official policies (e.g. the Pride Parade), as well as of events promoting presidential candidate Aleksandar Vučić, on the other. Events promoting other presidential candidates got hardly any media attention; there were incidents in which journalists not engaged by the pro-regime media were assaulted while they were covering the rallies. The participants in the rallies were thus precluded from conveying their messages to the public at large, rendering senseless the freedom of assembly and bringing into question the existence of the pluralism of thought in the Republic of Serbia.

Two journalists critical of the ruling party were assaulted in front of the National Assembly during the President Aleksandar Vučić's inauguration on 31 May 2017. Footage of the assault was broadcast on *TV N1*'s website. Press associations and numerous NGOs insisted that the judicial authorities respond urgently and effectively investigate the incident. The Belgrade First Public Prosecution Service dismissed the criminal report despite the video recording of the violence against the journalists; it found that there were no indications that "violent behaviour" or "endangerment of security" or any other crimes prosecuted *ex officio* had been committed. Such a decision is extremely unusual given that the MIA submitted two reports after its investigation, in which it specified that the individuals, who had

325 Reference to the Belgrade Mayor's last name Mali, which means small in Serbian.

326 Information obtained from the "Let's Not Give/Drown Belgrade" Initiative on 20 December 2017.

327 Information obtained from YUCOM on 18 December 2017.

participated in the events, had been identified, that statements had been taken both from those who considered themselves the injured parties and the witnesses, and that it had photographs documenting the incident.[328]

8.4. 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 during assemblies provoking fierce reactions and debates, such as the Pride Parades.

The police are present at and secure all politically neutral events, both notified and unnotified, as well as protests resulting in road and public transportation blocks. The police very rarely use force at assemblies they are securing, only in response to violence on the part of the participants. As a rule, every individual injured during a public assembly is extended medical aid on the spot or in the local health institution.

Plain-clothes policemen secure high-risk events and those attended by senior officials who do not wear police uniforms but civilian clothes. The specific question is the authority of the police to record participants of event because the police seem to be recording the participants of assemblies in an extremely arbitrary fashion. That was the case during the public inauguration of President Vučić in May 2017. The assembly participants reported that plain-clothes policemen filmed them on their GoPro cameras; the public camera footage was used to shed light on incidents.[329] On the other hand the Personal Data Protection Act[330] lays down an exhaustive list of grounds on which the authorities are allowed to process the personal data of data subjects without their consent: in order to fulfil their duties, protect national security, prevent crime, identify perpetrators of criminal offences, for the purpose of investigation, criminal prosecution (etc.).

No criminal proceedings were instituted with respect to the over 30 criminal reports filed by the organisers of the "Let's Not Give (Drown) Belgrade" events because of threats against them on social media.[331] They also filed a complaint with the Protector of Citizens, claiming men impersonating police officers and protected and controlled by real police officers showed up at their rallies (one of them tried to ID a participant in a 2016 rally by force). The participants in the rally initially

328 "Journalists' Reports of Assault during Vučić's Inauguration Dismissed," *N1*, 17 October 2017, available in Serbian at: http://rs.n1info.com/a342755/Vesti/Vesti/Odbacene-prijave-novinara-za-napad-tokom-inauguracije-Vucica.html.

329 *Ibid.*

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

331 Information obtained from the "Let's Not Give (Drown) Belgrade" initiative on 20 December 2017.

complained to the police safeguarding the event that the impersonators were endangering their safety but the police did not take any steps to protect the protesters. The protesters also filed a criminal report with the Belgrade First Basic Public Prosecution Service and a complaint against the police to the Protector of Citizens. In March 2017, the Ministry of Internal Affairs notified the Protector of Citizens that it had not identified any irregularities in the work of the officers securing the event, to whom the participants reported their safety was endangered. The Protector of Citizens expressed concern that individuals went unpunished for impersonating the police and provoking them.[332] He noted that the police officer had been ordered by his superior not to take any measures against the individual who had tried to ID the participant in the rally by force and that the statements by the police officers on duty at the time were inconsistent. The Protector of Citizens did not find that the police officers' (in)actions in this case were unlawful despite his opinion that the MIA's actions during the procedure initiated pursuant to the complaint filed with the Protector of Citizens were not in keeping with good governance principles.

As noted, the Public Assembly Act provides the police with broad discretionary powers because it lays down many *in abstracto* grounds for prohibiting assemblies (re the time and place they may be held at) 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 (Art. 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.

9. Freedom of Association

9.1. Legal Framework

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.

332 Protector of Citizens letter to the complainant Ref. No. 13–43–1397/17 of 29 November 2017.

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 guild and professional 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 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 exercise of the freedom of association is governed in greater detail by the Act on Associations[333] and the Act on Political Parties.[334] 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).

9.2. Associations of Citizens (Non-Government Organisations)

The Act on Associations 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.).

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.

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. The procedure under which associations are registered is thoroughly regu-

333 *Sl. glasnik RS*, 51/09 and 99/11 – other law.

334 *Sl. glasnik RS*, 36/09 and 61/15– CC Decision.

lated by the Business Registers Agency Registration Procedure Act.[335] 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.[336]

The Act on Associations thoroughly governs association bodies and their work and sets out that the Articles of Association must specify the Assembly decision-making procedure (Article 12 in conjunction with Article 22). Article 12 of the Act on Associations lays down that the acquisition and termination of membership must by 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.[337] 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 Articles of Association in the event the latter dissolves.

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 interest[338] 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).

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,[339] a company's outlays – in the amount not 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.[340] Serbian tax law in general

335 *Sl. glasnik RS*, 99/11 and 83/14.

336 More on the complaints procedure in the *2016 Report*, II.10.2.

337 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))).

338 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.

339 *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.

340 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

exempts CSOs from paying tax on grants, donations, membership fees and other non-economic sources of income.

9.3. Restrictions and Prohibition of the Work of Associations

In addition to the constitutional restrictions of the freedom of association, the Act on Associations further allows prohibition of associations in the event their 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 is meant by "protection of the rights and freedoms of others", as grounds for prohibiting an association.[341] 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-compliance with this prohibition.

For instance, the members of the *Obraz* movement, the activities of which the Constitutional Court banned, rallied in July 2017, at the time of the Srebrenica genocide, to express their displeasure with an action by the Youth Initiative for Human Rights (YIHR). YIHR organised an action of lighting candles to honour the Srebrenica victims. In reaction to claims that this movement had been banned, its members said that the *Otačestveni pokret Obraz* (Fatherland Movement Honour)

in accordance with the method of acknowledging, measuring and estimating revenue and expenditure.

341 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.

had been, indeed, deleted from the Register pursuant to the Constitutional Court decision, but explained that they its members had formed a new association, *Srbski Obraz* (Serbian Honour) which changed its name to *Otadžbinski pokret Obraz* (Fatherland Movement Honour)) and was headed by Mladen Obradović, acquitted of all charges by the Belgrade Appeals Court.[342]

9.3.1. Prohibition of Events of Neo-Nazi or Fascist Organisations

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia[343] further bans the activities of organisations reaffirming neo-Nazi and Fascist ideas in their Articles of Association 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)).[344] The procedure for prohibiting an association is initiated on the motion of the Government, the Republican Public 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 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, racial, religious and other hate and intolerance or limiting the rights and freedoms of others nevertheless exist in Serbia.

9.4. Impugned Provisions on Associations in the Preliminary Draft of the Civil Code

The 13-member Civil Code Drafting Commission, established in November 2006, has been tasked with codifying civil law and drafting the text of the Civil

342 The *N1* report is available in Serbian at: http://rs.n1info.com/a282891/Vesti/Vesti/Obraz-zvanicno-zabranjen-a-okuplja-se-u-centru-Beograda.html.

343 *Sl. glasnik RS,* 41/09.

344 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 statutory penalty borders on the absurd given that most of the organisations are unregistered.

Code. The decision on its establishment stated that the Commission was under the obligation to submit the text of the Civil Code to the Ministry within one year.[345]

The Government Committee for the Legal System and State Authorities issued a decision on 25 June 2015 opening a public debate on the Preliminary Draft of the Civil Code (hereinafter: Preliminary Draft)[346] and setting out its agenda. Over 200 associations (247 CSOs in 57 cities) submitted their amendments to provisions on associations.[347]

The CSOs, notably, criticised the definition of associations. Under the Preliminary Draft, 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 Preliminary Draft 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 Associations and that the term "social and common non-economic purpose" implied that a common purpose was not social. They are of the view that all purposes for which associations are established are social *per definitionem*. Furthermore, the definition of "non-economic" in the Preliminary 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.

The Preliminary Draft 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 format for developing cross-border and regional cooperation among citizens.

In addition, the Preliminary Draft provisions on these issues are in collision with the Act. For instance, Article 57 of the Preliminary Draft lays down that an

345 The sentence specifying the deadline by which the Preliminary Draft was to be completed was, however, deleted the day after the Commission was set up and no other deadline was given. Given that the public debate on the Preliminary Draft was still ongoing at the end of the reporting period, the Commission members were still being paid monthly fees for their work, which they had not completed. The composition of the Commission changed throughout the 11-year period. It first comprised law school professors, a minister and several lawyers. The Preliminary Draft has 2,838 articles and over 450 alternative provisions, which the Commission will fine-tune before submitting the final text of Code to the Government for endorsement. More in the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/drustvo/10-pitanja-koja-su-podelila-srbiju-istrazujemo-zasto-gradanski-zakonik-nije-donet-vec/qqhsxej.

346 Draft of the Civil Code in Serbian available on: https://www.mpravde.gov.rs/files/NACRT.pdf.

347 More is available in Serbian at: http://civilnodrustvo.gov.rs/upload/documents/Razno/2016/Komentari-nacrt-Gra%C4%91anskog-zakonika.pdf.

association's assembly 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 Preliminary Draft (Art. 62). The extent of the inconsistencies between the Act on Associations and the Preliminary Draft gives rise to the question whether the legislator had consulted the provisions of other laws at all during the preparation of the Preliminary Draft.

The provisions on association membership in the Preliminary Draft 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 Preliminary Draft, association members shall denote the founders and individuals who subsequently join the association pursuant to its 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. The Preliminary Draft allowa associations to engage in economic activities, but does not entitle them to distribute their profits to their members and founders.

Civil society organisations also criticised Article 65 of the Preliminary Draft, which allows associations to dismiss members because of their actions in contravention of the law and morals. In the CSOs' view, allowing for dismissals of members without specifying the grounds for their dismissal may provide room for numerous abuses and unwarranted restriction of the members' rights.

Furthermore *ipso iure* dismissal of members for actions "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.[348]

348 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

The CSOs took the view that *a priori* abjuration of the right to judicial protection against dismissal decisions 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 Preliminary Draft does not specify justified cause for dismissal of a member pursuant to an assembly decision. On the other hand, the Act on Associations lays down that these grounds shall be specified in the associations' Articles of Association. The two pieces of legislation need to be aligned on this matter as well.

9.5. CSOs' Activities and Status in Society

Apart from the comments of the Preliminary Draft by a large number of CSOs, civic associations, aware of the relevance of partnering with the state, were engaged in a number of other legislative reform activities in Serbia during the reporting period. Such cooperation, unfortunately, was not always at a satisfactory level. For instance, some guild associations and NGOs decided to withdraw from the consultations on the amendments to the constitutional provisions on the judiciary, dissatisfied with the way the consultations were organised and the authorities' attitude towards CSO suggestions.[349]

There were, however, occasions when the executive authorities took on board the CSOs' suggestions, For instance, the National Convention on the European Union (NCEU) and representatives of the academia and NGOs called for the withdrawal of the Draft Decree on Scientific and Other Research Relevant to National Defence and the Procedure for Approving Such Research with or for Foreign Persons,[350] warning it would preclude the freedom of research and international cooperation in science and research. The decree adoption process was halted after the associations met with the Minister of Defence.

In September 2017, the Ministry of State Administration and Local Self-Governments and the Government Office for Cooperation with the Civil Sector invited CSOs to take part in online consultations on the preliminary draft amendments to the Decree on funding programmes of public interest implemented by associations[351] and in return received opinions and suggestions of some organisations. The amendments were not enacted by the end of the year.

On the other hand, media campaigns against NGOs, branding them as "foreign mercenaries" persisted in the reporting period. Women in Black sued the Chief

by the provision in the Preliminary Draft allowing the dismissal of a member without specifying the grounds for the dismissal and without providing that member with the chance to argue his case.

349 More in III.1.1.

350 See more at: http://eukonvent.org/eng/initiative-to-withdraw-the-governments-draft-bylaw-which-restricts-research-in-the-field-of-defense/.

351 *Sl. glasnik RS*, 8/12, 94/13 and 93/15.

Editor of the tabloid *Informer* over its 2016 article entitled "Women in Black are the Worst Foreign Mercenaries".[352] This NGO, well-known for its consistent anti-war, anti-Fascist, anti-military and feminist activism, claimed that *Informer* had intentionally published incorrect data on the amounts and manner of funding it was receiving with the aim of insulting it, damaging its reputation and qualifying it as the enemy of the state and the nation. The trial was under way at the end of the reporting period. The Press Council issued a public reprimand to *Informer* finding it in violation of the Press Code of Conduct provisions on accurate reporting because of its article about the activities of the Youth Initiative for Human Rights (YIHR), which was headlined "Steaming Crock: Foreigners Gave It as Many as 1,004,237 EUR to Wreak Havoc across Serbia!" and published on 31 January 2017.[353]

Organisations advocating the prosecution of war crimes and confrontation with the past continued to be under great pressure. In mid-January 2017, YIHR activists showed up at an SNS panel discussion in which Veselin Šljivančanin, who was convicted for war crimes by the ICTY, and held up a banner saying "War Criminals should shut up so we can talk about the victims". The discussion was discontinued and YIHR activists assaulted.[354] Several days later, a group of people posted messages calling YIHR traitors and Soros' mercenaries on the NGO's office front door.

Human rights organisations were threatened on occasion as well. For instance, in response to its public invitation to mark the 20th anniversary since it was founded in October 2017, the Lawyers' Committee for Human Rights (YUCOM) received phone threats from unidentified perpetrators and threats on Twitter from the prohibited association *Obraz*. YUCOM filed a criminal report against the perpetrators claiming they had jeopardised the safety of its activists and persecuted them for advocating equality of men.

Most attacks on CSOs are engineered by extreme right organisations. In mid-2017, rightist organisations interrupted several NGO events they considered "harmful to the state". In late May 2017, *Zavetnici* (the Consecrated) entered the Youth Hall in Belgrade and tried to interrupt the "Merdita – Good Day" annual festival of the Kosovo cultural and social scenes; they also appeared in front of the other venue where the festival was held – the Cultural Decontamination Centre.[355]

The state authorities did not react either to this or other similar incidents. Nor did the public hear them condemn assaults on activists. The prosecutors' years-

352 The *Informer* article is available in Serbian at: http://informer.rs/vesti/politika/299170/zene-u-crnom-najveci-strani-placenici-zapad-im-dao-1587596-evra-da-optuzuju-srbiju-za-ratne-zlocine.

353 The public reprimand is available in Serbian at: http://www.savetzastampu.rs/latinica/odluke/84/2017/03/02/1402/inicijativa-mladih-za-ljudska-prava-protiv-lista-informer.html.

354 See: https://insajder.net/en/site/focus/4273/Youth-Initiative-for-Human-Rights-Attack-on-our-activists-for-war-crimes-discussion.htm. More in III.7.

355 See the *Insajder* report on the activities, organisation and registration of rightist organisations, available in Serbian at: https://insajder.net/sr/sajt/tema/5476/.

long failure to act on criminal reports filed by the Centre for Euro-Atlantic Studies (CEAS) and its Director Jelena Milić for violence, threats, racial and other discrimination against well-known individuals, as well as the hacking of CEAS' website indicate that activists in Serbia do not enjoy efficient protection.[356]

In July 2017, the Belgrade Appeals Court upheld the first-instance judgment acquitting Radomir Počuča of charges that he endangered the safety of Women in Black activists. Počuča was the spokesman of the MIA Anti-Terrorist Unit in 2014, when he posted on his Facebook profile a call to lynch the members of the Women in Black, which had announced it would commemorate the 15th anniversary of the crimes against Kosovo civilians. The court accepted the claims of the defence, explaining the defendant "had clearly and thoroughly stated his main and only motives for publishing such a call, which were patriotic in character and did not indicate that anyone's safety may be jeopardised."[357]

Some state authorities also voiced criticisms about NGOs in 2017. The Memorandum on Cooperation between CRTA and the National Assembly signed in 2013 was broken off after CRTA protested against the lack of a parliamentary debate on the 2018 budget in December by blacking out the Open Parliament portal, on which it had for five years covered and analysed the work of the people's deputies on a daily basis.[358]

On 26 December 2017, the MIA published on its website a press release[359] accusing the Belgrade Security Policy Centre (BSPC) of "continuous negative campaigning against the Ministry of Internal Affairs" and publishing "comments causing public disquiet" and "untrue allegations on various topics", as well as of "malice and tendentiousness". The press release was issued right after the BSPC presented its research on the expediency of public procurements for the police and its study on the incompatibility of policing and other jobs.[360]

Although NGOs have been implementing numerous projects directly or indirectly improving the lives of the population, low public recognition of the usefulness of their can apparently be ascribed to the years-long campaign some media and public figures have been waging against them. A survey conducted by CRTA

356 See: https://www.ceas-serbia.org/en/news/announcements/6784-ceas-press-announcement-the-case-of-the-center-for-euro-atlantic-studies-and-its-director-jelena-milic-confirms-that-serbia-is-not-a-state-with-the-rule-of-law.

357 See the *Politika* report, available in Serbian at: http://www.politika.rs/sr/clanak/382516/Hronika/Pocuca-pravosnazno-osloboden-optuzbi-za-Zene-u-crnom.

358 See: http://otvoreniparlament.rs/ and the National Assembly's response: http://www.parliament.gov.rs/National_Assembly_Speaker_and_Deputy_Speakers_on_Open_Parliament_Blackout.33025.537.html.

359 The press release is available in Serbian at: http://www.mup.gov.rs/wps/portal/sr/aktuelno/saopstenja.

360 The research and study are available at: http://www.bezbednost.org/BCSP-News/6674/Secret-Procurement-of-Police-Vehicles--Example.shtml and http://www.bezbednost.org/BCSP-News/6671/Urgent-regulation-of-jobs-incompatible-with-the.shtml.

showed that public trust in CSOs has been falling in the past few years and that only a third of the population fully understood the NGO's roles and tasks, that another third qualified them as international organisations and the last third as anti-government organisations. CRTA Director Vukosava Crnjanski said that the negative portrayal of CSOs and their leaders, especially by the tabloids, indicated the recurrence of the rhetoric of the 1990s, when they were vilified as traitors.

On the other hand, more and more civic associations are being established – 30,000 of them are operating in Serbia, most of them extending services to the public and support to the state in areas where it is weak. "The political elite should ask itself why the tabloids are portraying CSOs in a negative light when their task is to facilitate Serbia's democratisation as it progresses towards EU accession," said Crnjanski.[361]

9.6. Association of Aliens, Civil Servants and Security Forces

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. 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.

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).

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

361 See the Voice of America report, available in Serbian at: https://www.glasamerike.net/a/opada-poverenje-gradjana-u-nvo-sektor-u-srbiji/3923614.html.

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.

10. Freedom of Expression[362]

10.1. Legal Framework

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.

The Constitution of Serbia guarantees the right to freedom of expression of opinion. It prescribes that freedom of expression may be restricted by law. Freedom of expression may be restricted 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 is 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 a competent court may prevent the dissemination of information. This preventive measure may 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. The Criminal Code incriminates insults, but such offences warrant only fines (Art. 170).

The Serbian media scene is governed by a set of media laws adopted in 2014, notably, the Public Information and Media Act,[363] the Electronic Media Act[364] and

362 More on the media situation and media freedoms in Serbia in 2017 in III.5.

363 *Sl. glasnik RS,* 83/14.

364 *Ibid.*

the Public Media Services Act[365]. While these laws were still in draft format, some experts and media professionals voiced their apprehension about how some of their imprecise provisions would be interpreted and especially about how they would be enforced.[366]

The Public Information and Media Act prescribes that public media services, institutions providing information in national minority languages and to citizens in Kosovo will remain in public ownership. The law also introduces project-based funding of media producing programmes of public interest. The national, provincial and local governments shall ensure the realisation of public interest by encouraging media content diversity, freedom of expression of ideas and opinions, free development of independent and professional media, which shall contribute to fulfilling the citizens' needs for information and content covering all walks of life, without discrimination (Art. 15).

Under this Act, all other outlets are to be privatised and may count only on public funding granted for co-financing their projects. Although this legal solution does not fully eliminate the possibility of exerting inappropriate influence on the outlets' editorial policies, it reduces it to an acceptable extent if it is consistently applied. In order to ensure the full freedom of the media, the state must refrain from inappropriate influence on the outlets' editorial policies. That is precisely why the law prohibits direct and indirect funding of media, to preclude the state from exerting financial pressures on the media and thus influencing the way they report.

The main deficiency of the system established under the law lies in who has the last say on which outlets will be granted funding – the competent ministry and the provincial and local self-governments, that is, political authorities. The main question that arose in the past three years regarded the way in which decisions on project co-funding were adopted, bringing the entire system into question especially since many local self-governments had to cut the amount of funding for the media, thus rendering senseless the project co-funding concept.

The public broadcasting service funding system, introduced by the Public Media Services Act, was undermined at the very start, when the deadline for enforcing its provisions on financing was constantly moved, for the first time during the adoption of this law. In December 2016, the deadline was yet again moved for another two years, when the amendments to the Fee Collection Act were adopted.[367]

The main question regarding these provisions is whether they succeeded in eliminating the possibility of political influence on the appointment and dismissal of the public service broadcasters' Management Board members. The Programme Council is another public media service authority taken over from the Broadcasting Act. Its functions and role in the organisation of public media services is not fully

365 *Ibid.*

366 A thorough analysis of the media laws is available in the *2014 Report*, II.9.2–9.5.

367 *Sl. glasnik RS*, 108/16.

clear.[368] Public media services must, on the one hand, be genuinely separated from centres of political and economic powers whilst, on the other, they must account to the citizens. However, this goal is not achieved in practice, the conclusion of almost all analysis of the work of the public service is that it has not yet become genuine mouthpieces of Serbia's citizens, rather than of its political elites.

The Electronic Media Act introduced numerous new institutes drawing Serbia closer to rules applied in the EU internal market. The chief sections of the new Act regarding the development of freedom of expression are the ones on the organisation of the independent regulator (the Electronic Media Regulatory Authority (EMRA)), the licencing system and restrictions of the powers of the operators (infrastructure owners).[369]

The degree in which media freedoms are exercised depends on the independence of regulation in the electronic media field, wherefore the regulation of EMRA's status is extremely important. Provisions of the State Administration Act impinge on the work of this body. Namely, a regulatory authority does not have inspectorial powers, it performs activities conferred to it, while the competent ministry reviews the constitutionality and lawfulness of its enactments and may take over the performance of the conferred activities.

10.2. Privacy of Public Figures and Holders of Public Office

According to the provision of the Public Information and Media Act information regarding a person's private life or personal records (letters, diaries, notes, digital records, etc.), their images (photographs, drawings, film, video, digital, etc.) and audio recordings (tape-recordings, gramophone records, digital, etc.), may not be published without the consent of the person whose private life the information refers to, or of the person whose words, image or voice it contains, if such publication may lead to the disclosure of that person's identity (Art. 80(1)).

Such interest shall be deemed to exist, inter alia, in the event: the information or record pertains to a person, event, or occurrence of public interest, especially if it pertains to a holder of public or political office and its publication is in the interest of national security, public safety, or economic welfare of the country, in order to prevent disorder or crime, protect health or morals or the rights and freedoms of others (Art. 82(2(2))).

This exception is particularly important as it is much more restrictive than the one in the prior Public Information Act, under which information or records could be published without the individual's consent in the event they pertained to a person, event or occurrence of public interest, especially if they regarded a holder of

368 The provisions of the law on the composition of the Programme Council and appointment of its members are analysed in the *2014 Report*, II.9.4.3.

369 More in the *2014 Report*, II.9.5.

a state or political office and their publication was relevant in view of the fact that the person was exercising that office. Therefore, the prior law set only two requirements: that the information regarded an individual exercising a state or political office and that it was relevant because of that office. It remains unclear why the new Act introduced an additional, third requirement: that the publication of information be in the interest of national security, public safety, or economic welfare of the country, in order to prevent disorder or crime, or protect health or morals or the rights and freedoms of others. The consistent application of this provision risks to impose upon the media the obligation to seek the consent of political and state officials nearly every single time, which will considerably hinder the status and work of journalists and stifle critical journalism.

11. Peaceful Enjoyment of Possessions

11.1. Legal Framework

The right to property is guaranteed by Article 1 of Protocol 1 to the ECHR. This article defines the principle of peaceful enjoyment of possessions, regulates the deprivation of property and subjects it to certain conditions and recognises the right of the state to control the use of property based on public interest. In its case-law, the ECtHR has held that a balance between public interest and the rights of individuals must be found in every case of interference in the right to peaceful enjoyment of property.

Article 58 of the Constitution of Serbia guarantees the right to property. The Constitution is mostly in compliance with international standards, especially with respect to seizure of property, which, as it explicitly prescribes, shall be allowed only in public interest and if the owners are fairly compensated for the property. However, the provision allowing for the restriction of the right to enjoy property does not include a provision on the proportionality of such a restriction, which is in contravention of Serbia's international obligations. Under the Constitution, the seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law.

In addition to the Constitution, the enjoyment of possessions is governed by a number of regulations, either directly or indirectly. The Act on the Bases of Ownership and Proprietary Relations (hereinafter: Property Act) [370] governs the fundamental rights to property and servitudes and easements. This law governs the substance of the right to property, its acquisition and termination, as well as other important property rights. Experts have, however, warned that it suffers from spe-

370 *Sl. list SFRJ,* 6/80 and 36/90; *Sl. list SRJ,* 29/96 and *Sl. glasnik RS,* 115/05 – other law.

cific legal lacunae. The Non-Contentious Procedure Act also includes provisions on property rights.[371]

The Expropriation Act[372] regulates the restriction and deprivation of the right to real estate. Under the law, the Serbian government shall determine the existence of public interest by a decision. These individual decisions may be contested in an administrative dispute.

In addition to the Republic of Serbia, autonomous provinces, cities, municipalities, socially-owned and public companies, beneficiaries of expropriation also include companies established by public companies and companies in which the state has a majority stake and which were established by the Republic, autonomous provinces, cities, the City of Belgrade and municipalities.

The Act does not bind the Serbian government to take into account the interests of the owner of the real estate or to examine whether his or her interest to keep the property and continue his or her activities overrides general interest (Art. 20).

The administration of the municipality where the real estate in question is located shall conduct the proceedings pursuant to the expropriation proposal and render the appropriate order (Art. 29 (1)). Appeals of such orders shall be heard by the Serbian Ministry of Finance (Art. 29 (6)).

Under the Act, the beneficiary of expropriation may take possession before the finalisation of a decision on compensation for the property (i.e. before a contract on compensation is concluded) if the Ministry of Finance considers this necessary because of the urgency of the matter or construction work (Art. 35 (1)). The language of this provision is too general and imprecise to meet European standards. Under the ECHR, the law must, *inter alia*, provide protection from arbitrary decision-making by state bodies.[373]

The Expropriation Act does not provide for any time limit within which the previous owner of the expropriated real estate may file a request for the annulment of an effective expropriation order.

Along with the condition that expropriation be performed in public interest, fair compensation is another prerequisite that must be fulfilled to avoid violation of the right to property. The Expropriation Act stipulates that fair compensation may not be lower than the market value of the real estate. The court shall decide on the compensation if the parties involved are unable to agree on an amount. Due to the length of the proceedings, the awarded compensation often does not reflect the market value of the real estate, because it is set by court experts, who are not always able to follow increases in prices.

371 *Sl. glasnik SRS,* 25/82 and 48/88 and *Sl. glasnik RS*, 46/95 – other law, 18/05 – other law, 45/13 – other law, 55/14, 6/15 and 106/15 – other law. See Articles 155–163 of this Act.

372 *Sl. glasnik RS*, 53/95; *Sl. list SRJ,* 20/09 – CC Decision and *Sl. glasnik RS*, 20/09, 55/13-CC Decision and 106/16– authentic interpretation.

373 See *Kokkiniakis v. Greece*, ECmHR, App. No. 14307/88 (1993) and *Tolstoy Miloslavsky v. United Kingdom,* ECtHR, App. No. 28945/95 (2001).

11.2. Belgrade Waterfront Project and Property Rights – Confiscation or Expropriation

The Expropriation Act precisely specifies in which cases public interest for expropriation may be determined (Art. 20 (1,2)) These cases do not include office and residential facilities built for sale or HORECA facilities. The provisions of the Expropriation Act were, however, practically derogated from by the 2015 Act Establishing Public Interest and Special Expropriation and Building Licencing Procedures to Implement the Belgrade Waterfront Project (hereinafter: Belgrade Waterfront Act),[374] because the Belgrade Waterfront Project envisages the construction of precisely such facilities.[375]

Furthermore, even the Government admitted that expropriation to facilitate the construction of the Belgrade Waterfront complex would be unlawful under the Expropriation Act,[376] 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.

At one of its last sessions in 2016, on 27 December, the National Assembly adopted an authentic interpretation of the Expropriation Act[377] which practically legalised the demolition in Hercegovačka Street.[378] Namely, under Article 1 of the Expropriation Act, real estate may be expropriated or the right of property may be restricted only in public interest prescribed by law, and compensation for expropriated real estate may not be less than its market value. The authentic interpretation, which is automatically part of Serbia's legislation, says that this Article "should be understood in the following manner: the above-mentioned provision regards and applies only to expropriations or restrictions of the right to real property carried out under a procedure and in the manner laid down in the Expropriation Act; the Expropriation Act does not apply to expropriations or restrictions of the right to real property carried out in the absence of the expropriation procedure." The enforce-

374 *Sl. glasnik RS*, 34/15 and 103/15.

375 See: https://www.export.gov/article?id=Serbia-Expropriation-and-Compensation.

376 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-poseban-zakon-za-eksproprijaciju-za-beograd-na-vodi.

377 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2016/RS76–16%20lat.pdf.

378 More on the Savamala case and the demolition in Hercegovačka Street in the *2016 Report*, II.12.3 and II.12.4.

ment of the Expropriation Act has thus been limited in scope; the state is able to usurp private property without implementing the expropriation procedure and their owners are unable to protect their property rights.[379]

In June 2017, the city authorities demolished 1,800 square meters of buildings used as storage space by Belgrade company Nelt Co in Travnička Street. Nelt claimed that it had not received any compensation for the confiscated property and that the expropriation order was issued after 21 August 2015, at the time when the Republic of Serbia was no longer the owner of 100% of the property, and owned just a minority stake of 32% in the company implementing the Belgrade Waterfront project. As of that date, only the private interests of the UAE-based company BWCI, the owner of the company Belgrade Waterfront Ltd, were at issue. In response to these claims, Serbian Minister of Construction, Transportation and Infrastructure Zorana Mihajlović said that the property had been expropriated in accordance with the law.[380]

11.3. Restitution and Compensation of Former Owners

The restitution of property seized from the owners before the ECHR came into force is not an international obligation of Serbia under this international treaty and the state has full discretion to decide whether it will return the property, to whom, under what circumstances and to what extent, how and within which period.[381] The restitution of property appropriated without paying its market value to the owners after World War II should be viewed primarily in the context of Serbia's accession to the European Union. Namely, the provision of full certainty in property relations in Serbia is prerequisite for the participation of Serbian capital in the EU's open market. It goes without saying that the enforcement of the adopted Restitution Act will have to be in accordance with the ECHR.[382]

But, although the state is in no way limited by the ECHR in governing restitution, it cannot regulate it in contravention of its own Constitution, under which everyone shall be equal before the Constitution and the law (Art. 21(1)) and be entitled to equal legal protection (Art. 21(2)).

379 More in the *Danas* report available in Serbian at: http://www.danas.rs/licni_stavovi/licni_stavovi.1148.html?news_id=348481&title=Vu%C4%8Di%C4%87+legalizovao+ru%C5%A1enje+u+Savamali.

380 More in the *Blic* report available in Serbian at: http://www.blic.rs/vesti/ekonomija/saopstenje-kompanije-nelt-o-objektu-u-travnickoj-ulici/pj2qqxl.

381 See the following ECHR cases: *Malhous v. Czech Republic,* ECHR, App. No. 33071/96 (2001*)*; *Kopecký v. Slovakia*, ECtHR, App. No. 44912/98 (2004); *Jantner v. Slovakia*, ECtHR, App. No. 39050/97 (2003); *Bugarski and von Vuchetich v. Slovenia,* ECtHR, App. No. 44142/98 (2001); *Nadbiskupija Zagrebačka v. Slovenia,* ECtHR, App. No. 60376/00 (2004) and *Gavella v. Croatia*, ECtHR, App. No. 33244/02 (2006).

382 See e.g. *Broniowski v. Poland,* ECtHR, App. No. 31443/96 (2004) and *Kopecký v. Slovakia,* ECtHR, App. No. 44912/98 (2004).

The Property Restitution and Compensation Act (hereinafter: the Restitution Act)[383] was at long last adopted in the last quarter of 2011. The right to restitution may be exercised by domestic natural persons, i.e. nationals of the Republic of Serbia who had owned the property at the time it was appropriated and their legal heirs. With the exception of endowments,[384] legal persons are not entitled to restitution under this Act. Foreign nationals are entitled to restitution in accordance with the principle of reciprocity.

Natural persons, who had fought within the occupying forces in the territory of the Republic of Serbia in WWII and their heirs, are not entitled to restitution either. The Act explicitly prohibits the restitution of property to deceased victims of the Holocaust without legal heirs.

The Act gives priority to restitution in kind and lays down that compensation shall be offered only when restitution in kind is impossible. Under the Act, restitution shall apply to movable and immovable property that is the public property of the Republic of Serbia, an autonomous province or a local self-government unit in state, social or cooperative ownership except for the property owned by a co-operative and property in social and cooperative ownership which the holder acquired for a fee. Nationalised real estate shall be subject to restitution too.

The Act enumerates which immovable and movable property, including state companies, shall not be subject to restitution. The former owners of state companies are entitled to compensation, in the form of government bonds of the Republic of Serbia and in cash for the payment of advance compensation.

The Act lays down a restitution/compensation administrative procedure, which is conducted before the Restitution Agency.[385]

The deadline for the fulfilment of these obligations under the Act was extended on several occasions. The Restitution Agency said that 95% of restitution in kind, with the exception of farmland, would be completed in 2018. The latest data show that churches have regained possession of slightly over 58,549 hectares of farmland, woodland and construction land, as well as 90,269 square meters of residential and office buildings. Private individuals regained possession of 101 buildings, 436 facilities, 104 apartments, 231 office premises, around 41 hectares of undeveloped land, 895 hectares of woodland and around 10,309 hectares of plough-land. The Jewish Community regained possession of 53 facilities and around 540 hectares of land under the Redress of Intestate Jewish Holocaust Victims.[386]

Around 11,000 hectares of plough-land were returned to their former owners in 2017. In the view of Restitution Agency Director Strahinja Sekulović, even if the Act and by-laws are not amended to facilitate restitution of plough-land, the Agency

383 *Sl. glasnik RS*, 72/11, 108/13, 142/14 and 88/15 – CC Decision.

384 Article 5(1(2)) of the Act.

385 More on the Act in the *2011 Report*, II.4.12.3.

386 *Sl. glasnik RS*, 13/16.

estimates that all of it can be returned in five years, at the rate of 11,000–12,000 hectares per annum.[387]

The amendments to the Restitution Act moved the deadline for issuing restitution bonds until 15 September 2017 and the date of payment to 15 December 2018. The timeframe within which the bonds are to be paid was shortened from 15 to 12 years. The 2018 Budget set aside two billion RSD for compensation of property that cannot be restituted in kind.[388] The maturity date of bonds issued to people over 65 years is 10 years and of those issued to people over 70 mature five years. Maximum indemnification per owner of seized property was set at 500,000 EUR.[389]

In 2017, the Restitution Agency and the Tax Administration assessed all the property that cannot be restituted in kind and estimated its value at 13.6 billion EUR.[390] The Agency Director, however, said that this amount was extremely high and could not be covered from the state budget, and that the Restitution Act set two billion EUR as the maximum amount of money for this purpose. The state will start out by paying the old owners 10% of the amount specified in the final rulings, which will be deducted from the value of their restitution bonds. Estimates are that between 25% and 35% of the citizens, whose restitution claims have been upheld, will receive compensation. A total of 76,000 restitution claims have been filed with the Restitution Agency to date.[391]

The Act also applies to property seized during the Holocaust committed in the territory of the Republic of Serbia. Serbia is the first country in Europe to have enacted a law on the restitution of property of Jewish Holocaust victims without surviving heirs – the Act on the Redress of Intestate Jewish Holocaust Victims. In 2017, compensation for property of Holocaust victims without surviving heirs was paid to individual Jewish municipalities because the law allows the payment of the compensation only to Jewish municipalities, which are then under the obligation to transfer the funds to any heirs who subsequently appear. The Jewish municipalities are entitled to file claims for the restitution of such property three years from the day the Act came into effect. The Restitution Agency is to rule on them within six months, or, if the case is complicated, within one year. The Act strictly lays down what this money may be used, inter alia, for investigating and documenting the

387 One of the reasons for the slow restitution of arable land lies in the practice of the Agricultural Land Department of the Ministry of Agriculture, to appeal all restitution rulings and thus delay their enforcement. See the *Novosti* report, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:704410-Princu--novac-za-tri-vile-u-Beogradu.

388 The Restitution Agency Director said that 1,000 rulings had been prepared and waiting for the Serbian Government to define the co-efficient. He said there were over 75,000 cases and that, at this pace, the Agency would issue rulings on all of them in five years' time.

389 See the *Business and Finance* report, available in Serbian at: http://bif.rs/2018/01/novac-umesto-imovine-za-restituciju/.

390 At the time the Act was adopted, in 2011, it was initially estimated at 4.5 billion EUR.

391 See the *Novosti* report, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:684451-Restitucija-Naslednicima-prva-rata-do-kraja-godine.

Holocaust, marking anniversaries, commemorations, financial support to surviving Nazi victims, et al.[392] Since the Act sets the annual restitution amount, to be paid over a period of 25 years as of 2017, at 950,000 EUR, the Restitution Agency Director said they had warned the authorities that a supervisory committee that would oversee what was happening with this money had not been set up yet.[393]

11.4. Violations of the Principle of Proportionality in Enforcement Proceedings

Media reports[394] indicate that there have been problems in the enforcement of claims against the debtors' real estate over the past few years. There have been quite a few instances of sales of such property to cover the debts at prices far below those in the real estate market. The Act on Enforcement and Security of Claims[395] lays down that enforcement agents shall ensure that the means and object of enforcement are proportionate to the debtor's debt. The numerous media reports in 2017 on evictions of families from their property, especially if it was also their home, and their sale by the enforcement agents to cover their debts, for a price much lower than the going market rates suggest that these people's right to the peaceful enjoyment of their possessions may have been violated.[396]

The European Court of Human Rights held this view in the case of *Vaskrsić v. Slovenia*,[397] in which it ruled that the sale of the debtor's house to repay his debt, which was much lower than the value of his property, amounted to a breach of his right to the peaceful enjoyment of possessions. While acknowledging that the Contracting States had a wide margin of appreciation in this area and that the aims pursued by the relevant legislation might concern also issues exceeding the mere payment of a particular debt, such as the improvement of repayment discipline in the country concerned, the Court was nevertheless of the view that, given the paramount importance of the enforcement measure taken against the applicant's property, which was also his home, and the manifest disproportion between this measure

392 See: http://www.paragraf.rs/dnevne-vesti/020317/020317-vest11.html.

393 More is available in Serbian at: http://rs.n1info.com/a354688/Vesti/Vesti/Sekulic-Karadjordje vicima-nece-biti-vraceno-skoro-nista.html.

394 See, e.g.: http://www.medio.rs/vesti/srbija/drustvo/kuca-troclane-porodice-u-nisu-prodata-za-7.000-evra-zbog-duga-za-struju_116210.html and http://www.rts.rs/page/stories/sr/story/125/drustvo/1694756/ostali-bez-stana-zbog-neplacenog-grejanja.html.

395 Article 56, Act on Enforcement and Security of Claims, *Sl. glasnik RS*, 106/15 and 106/16 – authentic interpretation.

396 This, for instance, happened to the Havatami family, which lost its apartment in Dubrovačka Street in Belgrade because of a 6,500 EUR debt, although the value of their 60 square metre apartment was much higher – according to the Belgrade City authorities' ruling on average rates per square metre of real estate in Belgrade City zones for the purpose of determining the property tax rates, a square metre in this area cost 1,480 EUR. More is available in Serbian at: https://insajder.net/sr/sajt/tema/5198/.

397 *Vaskrsić v. Slovenia,* ECtHR, App. No. 31371/12.

and the amount of debt it aimed to enforce, the authorities had been obliged to take careful and explicit account of other suitable but less intrusive alternatives. It concluded that, in the present case, it had not been shown that the judicial sale of the applicant's house was a necessary measure to ensure such enforcement and that the State had failed to strike a fair balance between the aim sought and the measure employed in the enforcement proceedings against the applicant. Although it was the courts that implemented enforcement of claims in Slovenia at the time, the obligation defined by the ECtHR should apply to Serbian enforcement agents as well, given that they are entrusted with public powers under Article 468 of the Act on Enforcement and Security of Claims. Therefore, under ECtHR case-law, the enforcement authority is under the duty to ensure that the means and object of enforcement are proportionate to the amount of the claim, reject the creditors' request to seize the debtor's home and seek a less intrusive means of enforcement, whether or not national law explicitly places an onus on it to opt for less intrusive enforcement measures of its own motion or requires of it to reject a request by the creditor if disproportionality arises.

11.5. Đurkić Family Case

Another case that may give rise to a violation of the right to peaceful enjoyment of possessions that made the headlines in 2017 was that of the Đurkić family. The daily *Politika* wrote that this poor family with five young children would have to move out of a shack it itself built around a decade ago on land that used to belong to the Army of Serbia. The Army swapped the land with Novi Sad city authorities, which, in turn, sold it to a private developer. The Novi Sad authorities notified the family it would have to move out because the new owner was planning on building something on it.

This case may engage Article 1 of Protocol No. 1 to the ECHR. given the ECtHR's case-law. In the case of *Öneryıldız v. Turkey,* the Court found that the applicant, who had illegally built and lived in a dwelling on publicly owned land, which the authorities had tolerated for five years, had property interests covered by the concept of possessions within the meaning of Article 1 of Protocol No. 1.[398] Therefore, even if the Đurkićs had built their house unlawfully, which is not explicitly stated in the *Politika* article, the public authorities tolerated the situation and remained passive for around a decade, and since that house is their dwelling, it can definitely be considered their possession they are entitled to within the meaning of Article 1 of Protocol No. 1. It therefore appears that the family's eviction from their home without compensation will constitute a breach of their right to peaceful enjoyment of possessions.[399]

398 *Öneryıldız v. Turkey*, ECtHR, App. No. 48939/99, paras. 105–106 and 124–129.

399 See the *Politika* report, available in Serbian at: http://www.politika.rs/sr/clanak/379218/Durkici-sa-petoro-dece-ostaju-bez-krova-nad-glavom.

11.6. "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*,[400] 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. 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. The Court 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.

Serbia adopted a law governing the payment of "old" foreign currency savings to nationals of former Yugoslav republics with a delay[401] and the Council of Europe was still monitoring the enforcement of the indicated measures at the end of the reporting period. In its Decision, the CoE Committee of Serbia noted that the Serbian parliament adopted the law and by-laws introducing a repayment scheme with a view to allowing the applicants and all others in their situation to recover "old" foreign-currency savings under the same conditions as Serbian citizens who had such savings in domestic branches of Serbian banks, and that Ministry of Finance issued an adequate public call inviting depositors to file their claims. It also noted that the Court held that the law met the criteria set out in the *Ališić and Others* pilot judgment but that it pointed out that it was ready to change its approach as to the potential effectiveness of the remedy in question should the practice of the domestic authorities show, in the long run, that savers were being refused on formalistic grounds, that verification proceedings were excessively long or that the domestic case law was not in compliance with the requirements of the Convention. The Serbian authorities were called on to continue with their efforts to successfully repay the old foreign currency savings and regularly notify the Committee of the enforcement of the and progress in this endeavour.

400 *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia*, ECtHR, App. No. 60642/08.

401 More in the *2016 Report*, II.12.7.

12. Electoral Rights and Political Participation

12.1. General

In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected.[402] ICCPR also acknowledges the rights of citizens to participate in the conduct of public affairs and to have access, on general terms of equality, to public service in their country. These rights may be restricted. The ICCPR insists the restrictions cannot be unreasonable, while the ECtHR found that the right of a citizen to be elected may be subjected to qualification requirements as long as they are not discriminatory.[403]

The Constitution proclaims the sovereignty of the people, and that suffrage is universal and equal (Arts. 2 and 52). Every adult citizen with a working capacity shall be entitled to vote and to be elected (Art. 52 (1)).

The Constitution guarantees all citizens the right to participate in the administration of public affairs, to employment in public services and to hold public office under equal conditions (Art. 53).

The constitutional provision provides concrete principal guarantees of direct democracy and prescribes the popular initiative for adoption of legislation and for amending the Constitution. In Serbia, the right to propose a law, other regulation or general enactment belongs to 30,000 voters (Art. 107). The proposal to change the Serbian Constitution may be submitted by at least 150,000 voters.

12.2. Electoral Rights – Legal Framework

The electoral procedures are governed in detail by the Act on the Election of Assembly Deputies (AEAD),[404] the Local Elections Act (LEA),[405] the Act on the Election of the President of the Republic,[406] and the Decision on the Election of AP Vojvodina Assembly Deputies (DEVD).[407]

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

402 This right is deemed to be implicitly recognised by Article 1 of the First Protocol.

403 *Gitonas v. Greece,* ECtHR, App. Nos. 18747/91, 19376/92, 19379/92, 28208/95 and 27755/95 (1997); *Fryske Nasjonale Partij v. The Netherlands* ECmHR, App. No. 11100/84 (1985) and *Tanase v. Moldavia*, ECtHR, App. No. 7/08 (2010).

404 *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.

405 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

406 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

407 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.

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.[408] 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.[409] Half of the deputies in the Vojvodina Assembly are elected under a proportional and half under the majority election system (Art. 5 (3), DEVD).

Election laws provide for a basic legal remedy that ensures legal protection in the electoral process – the complaint that each voter or participant in the election may lodge with the competent election commission. The AEAD lays down that a complaint shall be filed with the Republican Electoral Commission for "*a violation of the electoral right during the elections or irregularities in the procedure of nomination or election*" (italics added) (Arts. 95 and 52, LEA[410]). Legal protection is linked to the period in which the elections are being held and solely applies to the protection of the right to vote in this process. It does not include the protection of the right to vote outside the election process, e.g. the protection of the passive right to vote in case of the early termination of mandates.

The 24-hour deadline for submitting complaints on an election board decision is reckoned from the moment the decision is reached (Art. 95, AEAD and Art. 52, LEA). Such a short deadline gives rise to concern as the right of complaint may easily be lost in the event the complainant is not informed of the decision on time.

The electoral statutes provide also for the possibility of appeal against the decisions of the competent electoral commissions to dismiss or reject a complaint: to the Administrative Courts through competent electoral commissions. The laws prescribe that procedures before courts are urgent – decisions are taken within 48 hours since the receipt of an appeal.

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408 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 are charged with the implementation of presidential elections (Art. 5, Act on the Election of the President of the Republic).

409 The election threshold of 5% does not apply to national minority political parties.

410 Provisions of the Act on the Election of Assembly Deputies are accordingly applied to the presidential election procedure (Art. 1, Act on the Election of the President of the Republic).

Under the Constitutional Court Act, motions to review election disputes may be filed with the Constitutional Court within fifteen days from the day the challenged election dispute ended. The whole part of the Act devoted to the decision making on these matters is unclear and inapplicable in the present political circumstances given that the Act foresees that "[T]he Constitutional Court shall annul the whole election procedure or part of the procedure, which shall be precisely specified, in the event an election procedure irregularity that significantly affected the election results has been proven" (Art. 77). This provision may lead to additional legal uncertainty of the election process. It is very difficult to imagine the Constitutional Court annulling elections and the whole election procedure being repeated.

12.2.1. Single Voter Register

Whether a person may vote and be elected to a public office depends on whether he is entered in the voter registers. A nationwide register of the nationals of the Republic of Serbia with the right to vote is supposed to be created under the Act on a Single Voter Register.[411] 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.

According to the explanatory note of the Draft Act on a Single Voter Register of 2009, when the Act was adopted,[412] the goal of the Act was to facilitate the establishment of a precise, updated and nationwide register of all voters in Serbia and thus allow all voters to vote anywhere in Serbia on election day. The register was not, however, established until the end of 2017.

Complaints about the updatedness of the voter register are frequent before every election cycle in Serbia. For instance, despite previous OSCE/ODIHR recommendations, voter lists were not displayed for public scrutiny before the 2016 early parliamentary elections or the 2017 presidential elections. Although the law provides for lists to be disclosed at the municipal level, the relevant ministry issued in 2016 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.

12.3. Political Parties

The Act on Political Parties[413] defines a political party as a free and voluntary association of citizens established for the purpose of achieving political aims

411 *Sl. glasnik RS,* 104/09 and 99/11.

412 The Act entered into force eight days upon publication in 2009 but was to have been enforced as of December 2011. However, the single voter register was not completed by the end of 2011.

413 *Sl. glasnik RS*, 36/09 and 61/15 – CC Decision.

by democratically shaping the political will of citizens and participating in elections (Art. 2). The Act defines a political party of a national minority as a party the activities of which are directed at representing and advocating the interests of a national minority, at protecting and advancing the rights of persons belonging to that national minority. A party of a national minority enjoys specific rights: it needs fewer signatures to register, is entitled to use the name of the party in the minority language and to seats in parliament even if it won less than 5% of all cast votes.

A political party shall acquire the status of a legal person by entry into the Register of Political Parties and may begin work on that day (Art. 5). A political party may be established by at least 10,000 adult citizens of Serbia with a working capacity (Art. 8), while a political party of a national minority may be established by at least 1,000 adult citizens of Serbia with a working capacity (Art. 9). The Act explicitly prohibits political party activities aimed at changing the constitutional order by force and violating the territorial sovereignty of the Republic of Serbia, guaranteed human or minority rights or causing and inciting racial, ethnic or religious hate (Art. 4). The Act regulates the entry of a party in the Register of Political Parties and the maintenance of the Register.

Membership in a political party is free and voluntary for all adult citizens of Serbia with a working capacity, with the exception of the Constitutional Court and other judges, public prosecutors, the Protector of Citizens, police and army staff and other persons whose office is incompatible with political party membership under the law (Art. 21).

The procedure to ban a political party shall be initiated at the proposal of the Government, the Republican Public Prosecutor or the ministry charged with administrative affairs. The Constitutional Court shall decide on the prohibition of a political party (Arts. 37 and 38).

12.3.1. Financing of Political Parties

Under the Act on the Financing of Political Activities,[414] political entities may receive funding from public sources (funds allocated for political activities in the budget) and from private ones (membership fees, donations, property-based revenues, inheritance, legacies, loans from banks and other financial organisations in Serbia). All forms of pressure on legal and natural persons while raising funds for political entities are prohibited, as are proxy donations, concealment of the donors' identity or the amounts of donations, as well as promising or holding out the prospect of any privileges or personal gain to persons donating to political entities (Art. 13).

Under the Act, direct public funding standing at 0.105% of the state, provincial and local budgets is provided on a monthly basis to support the regular work of the entities that have won political representation in the state, provincial or local

414 *Sl. glasnik RS,* 43/11 and 123/14.

parliaments. Annual donations from natural and legal persons may not exceed 20 and 200 average monthly wages respectively. All donations exceeding one average monthly wage a year must be published on the political entity's official website (Art. 10(4)).

Parties are under the obligation to keep bookkeeping records and submit financial statements. Furthermore, every political entity running in elections is under the obligation to open a separate account for funds to be used in the election campaign and from which all election campaign funding must be paid. This provision aims at ensuring more efficient control of the campaign revenues and expenses.[415] The Act lays down that 0.7% of the budgetary expenditure shall be designated for funding election campaign costs from public sources in the election year.

The Act introduces "election bonds" deposited by political entities planning on using public source funds to fund their election campaigns and which they must repay if they do not win one percent of the valid votes (0.2% in case of minority political entities). Twenty percent of the total budget funds allocated for funding the campaigns is divided equally among the submitters of the endorsed election tickets which declare that they will use the funds from public sources to cover their election campaign costs when they submit their election tickets. The remaining 80 percent is distributed to the submitters of the election tickets that won seats in proportion to the number of seats they won, regardless of whether they used funds from public sources to fund their election campaigns.

The Act also regulates the activities of other political entities – coalitions and citizens' groups. It entitles them to raise funds, but also imposes on them all the obligations arising from the Act, including those regarding record-keeping and oversight of their revenues and expenditures.

The Act provides lays down penalties for political finance infractions, including the loss of the right to public source funding. After checking a political entity's financial reports, the Anti-Corruption Agency may file a motion with the State Audit Institution (SAI) to audit its reports in accordance with the law governing the powers of the SAI. The Act also defines a series of misdemeanour and criminal offences for which responsible persons in the political entities may be held liable if they raise funds in contravention of the law.[416]

Article 38 defines giving and/or obtaining funds for the financing of a political entity for and on behalf of a political entity contrary to the provisions of this Act as a criminal offence warranting between three months and three years of imprisonment. Proving this crime is hindered by the requirement to prove the existence of the intent to conceal the source of the funds or the amount of funds the political

415 Anti-Corruption Agency Director in September 2011 enacted a Rulebook on Donation and Property Records, Annual Financial Reports and Reports on Election Campaign Costs of Political Entities *(Sl. glasnik RS,* 72/11).

416 Chapter VII (Penal Provisions), Act on the Financing of Political Activities.

entity raised. The qualified form of the crime is committed in the event the value of the funds exceeds 1.5 million RSD, in which case the responsible person (usually the secretary or president of the political party) shall be punished to between six months and five years' imprisonment.

Loss of the right to public source funds (Art. 42) shall be the penalty imposed on those convicted of a crime under Article 38 or a misdemeanour under Article 39. The decision on this measure shall be rendered by the Agency, which may also initiate an administrative dispute against the political entity. The law also introduces a temporary measure suspending transfers of public source funds to a political entity pending a final decision in criminal proceedings or misdemeanour proceedings against it. The decisions to suspend transfers shall be requested by the Agency and rendered by the Finance Ministry, or the competent provincial or local self-government authority (Art. 43). Like in most other countries, the statute of limitations of misdemeanours was extended to five years, which provides enough time for prosecuting them.

12.4. Participation in the Conduct of Public Affairs and Democratisation

The Constitution of Serbia also recognises popular initiative as an instrument for achieving Article 2(2) of the Constitution vesting sovereignty in the people. Under the Constitution, the National Assembly shall call a referendum at the request of the majority of all national deputies or at least 100,000 voters. The Constitution lays down which issues may not be decided at referenda: obligations arising from international treaties, laws relating to human and minority rights and freedoms, tax and other finance-related laws, the budget and annual statements of accounts, introduction of a state of emergency, amnesty and the National Assembly powers related to elections (Art. 108).

Referendums and popular initiatives are governed in greater detail by the restrictive Referendum and Popular Initiative Act,[417] which does not mention all types of referendums mentioned in the Constitution of Serbia. Although the Constitutional Act on the Implementation of the Constitution envisaged the harmonisation of this law with the Constitution by 2009, a new law on referendums and popular initiatives has not been passed yet.[418] A Referendum and Civil Initiative Act, drafted in 2009 and commented by the Venice Commission, but never entered the parliament procedure. The valid law stipulates that thirty thousand signatures need to be collected within seven days for a popular initiative, but does not provide strong guarantees that the Assembly will discuss such an initiative.[419]

417 *Sl. glasnik RS,* 48/94 and 11/98.

418 See Venice Commission Opinion No. 551/2009, CDL-AD(2010)006, 15 March 2010.

419 The Referendum and Popular Initiative Act was adopted back in 1994 and amended only once, in 1998.

The 2003 Liability for Human Rights Violations Act[420] was to have introduced restrictions on the exercise of public offices. The enforcement of the Act was limited to ten years. It aimed at temporarily preventing individuals, who had intentionally violated human rights during the reign of the previous undemocratic regimes, from holding public offices defined by law. The Vetting Commission was charged with checking the candidates' background in the SIA files, and the documents in police, judicial and other official records.

The Vetting Commission, however, never started working due to political disputes and nearly all its members tendered their resignations to the National Assembly in 2004. Their resignations were never discussed by parliament. Since the validity of this law expired in June 2013, a group of 85 Assembly deputies submitted a Draft Act on Liability for Human Rights Violations to the parliament for adoption on 31 December 2013. The law was never reviewed by parliament.

13. Right to Work

13.1. Legal Framework on 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.[421]

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.[422]

Labour law is regulated primarily by the Labour Act[423] and the Employment and Unemployment Insurance Act.[424]

420 *Sl. glasnik RS,* 58/03 and 61/03.

421 Serbia has to date adopted 77 ILO Conventions.

422 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.

423 *Sl. glasnik RS,* 24/05, 61/05, 54/09, 32/13 and 75/14.

424 *Sl. glasnik RS,* 36/09, 88/10 and 38/15.

The National Assembly adopted the amendments to the 2005 Labour Act under an urgent procedure in July 2014.[425] 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*.[426]

Experts and trade unions immediately warned that the amendments left room for abuse by employers and that some of them violated the rights of workers. 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.[427]

The Constitutional Court found that paragraph 3(5) of Article 179 of the Labour Act was not compatible with the Constitution. 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.[428]

The authorities said in 2017 that a new Labour Act would be adopted by the end of 2018. It remained unclear whether they would opt for codifying labour law or another solution. There are apprehensions that foreign investors have major impact on labour law and the labour market, especially in view of the hitherto absence of tripartite talks on draft labour enactments. The workers' representatives voiced their concern over the fact that the Foreign Investors Council (FIC), which publishes the so-called White Book in which it assess the business climate in Serbia and issues recommendations on improving it, said that the misdemeanour penalties levied against offending employers should be reduced, that the law should allow the dismissal of pregnant women as redundant and that the duration of fixed-term contracts should be extended. The FIC also recommended that the possibilities for introducing overtime work be expanded, that the notice period in cases when the workers are giving notice be extended, that the duration of suspension from work be extended, etc.[429] In January 2017, the then Serbian Prime Minister decided to form a working group to implement the recommendations in the White Book; he chaired

425 More in the *2014 Report*, III.13.2.

426 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.

427 *Sl. glasnik RS,* 79/05, 101/07, 95/10 and 99/14.

428 Case IUz-424/2014.

429 See: http://www.fic.org.rs/projects/white-book/white-book.html.

the working group, which also included the representatives of the executive authorities and foreign investors, but not trade unions.[430]

It remains to be seen which course the legislator will take and to what extent the workers representatives will be involved in drafting the legislation.

13.2. European and International Labour Law Standards and Serbia's Obligations

The Employment and Social Reform Programme in the EU Accession Process (ESRP),[431] developed by the Serbian Government at the invitation of the European Commission, pursuant to the 2013–2014 EU Enlargement Strategy, and 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 2016, the European Committee of Social Rights adopted its fifth periodic report on the implementation of the Revised European Social Charter in the 2011–2014 period.[432] The Report focuses on the implementation of the ESC provisions on the right to work (Art. 1), right to vocational guidance (Art. 9), right

430 See: http://radnik.rs/2017/03/radna-prava-po-meri-stranih-investitora/ and http://rs.n1info.com/a168796/Biznis/Efekti-zakona-o-radu.html; http://pescanik.net/paralelni-svetovi-zakona-o-radu/. See also: 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-i-dopuna-zakona-o-radu.pdf.

431 The ESRP is available at: http://socijalnoukljucivanje.gov.rs/en/employment-and-social-reform-programme-esrp-adopted/.

432 See: http://hudoc.esc.coe.int/eng/#{"ESCDcType":["FOND","Conclusion","Ob"],"ESCStateParty":["SRB"]}.

to vocational training (Art. 10), right of persons with disabilities to independence, social integration and participation in the life of the community (Art. 15), right to engage in a gainful occupation in the territory of other Parties (Art. 18), the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex (Art. 20), the right to protection in cases of termination of employment (Art. 24), and the right of workers to the protection of their claims in the event of the insolvency of their employer (Art. 25). The Committee found Serbia in violation of ten of the 19 obligations it assumed under these Articles. It deferred its conclusions on Serbia's fulfilment of three obligations because the state had submitted incomplete information and asked it to supply the additional information. The Committee concluded that Serbia fulfilled six of its obligations.

As regards the state's obligation to ensure the effective exercise of the right to work, the Committee noted that Serbia has not fulfilled its obligation to achieve and maintain as high and stable a level of employment as possible, with a view to the attainment of full employment.[433]

As per the right of the worker to earn his living in an occupation freely entered upon, as an element of the right to work, the Committee emphasised that Serbia had not forwarded it the information it had requested back in 2012 on the number of cases alleging discrimination brought before the courts, as well as the number of findings of discrimination and information on any pre-defined limits to the amount of damages that may be awarded. It pointed out that, should the next report fail to provide the requested information, nothing would prove that the situation in Serbia was in conformity with Article 1(2) of the Charter on this point. The same applies to the prohibition of forced labour, notably the work of prisoners, domestic work, minimum periods of service in the armed forces, requirement to accept the offer of a job or training, where Serbia failed to provide sufficient information, wherefore the Committee deferred its conclusion.[434] As per vocational guidance, training and rehabilitation (Art. 1(4)), the Committee found that Serbia was not fulfilling its obligations, given that it had not been established that the right to vocational guidance within the education system the right of an employed person to an individual leave for training were guaranteed and that the right of persons with disabilities to mainstream education and vocational training was effectively guaranteed.[435]

The International Labor Organization (ILO) in 2017 noted the need to regulate child labour in Serbia. Categories of children particularly vulnerable to child labour abuse are children, especially girls, from the poorest families, Roma children, including children living in Roma settlements, street children, children with disabilities, children in conflict with the law, migrant children (including children

433 See: http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":["2016/def/SRB/1/1/EN"]}.

434 See: http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":["2016/def/SRB/1/2/EN"]}.

435 See: http://hudoc.esc.coe.int/eng/#{"ESCDcIdentifier":["2016/def/SRB/1/4/EN"]}.

returned with their families under readmission agreements) and children in rural areas working in agriculture. The data collected on a sample of rural children between 5 and 17 years of age within a survey conducted by SeConS indicate that 52.4% of them are working, 51.7% of them in agriculture. Under the ILO definitions, half of those activities can be qualified as abuse of child labour, suggesting that the rate of abuse of child labour in agriculture stands at 24.5%. Hazardous work is more often performed by older children, although the survey also registered younger children performing such work. Therefore, another 13.3% children in the sample were qualified as victims of child labour abuse. More boys than girls work, and more of them work in agriculture; boys are also more exposed to child labour abuse; girls are more engaged in domestic work and less active in the fields.[436]

Serbia's Chapter 19 Action Plan is another important document with respect to the alignment of national law with the EU *acquis*. Its adoption was also due in early 2018. Chapter 19 – Social policy and employment is extremely relevant given Serbia's obligations under the Chapter 19 Screening Report,[437] which the EC stated that Serbia could not be sufficiently prepared for negotiations on this chapter and that the opening of this chapter could be envisaged once it was agreed by the EU that the following benchmark was met: that Serbia provides the Commission with an action plan for the gradual transposition of the *acquis* (where necessary) and for building up the necessary capacity to implement and enforce in the *acquis* in all areas covered by Chapter 19. The plan should include: a) a time table; b) the identification of the human resources allocated to each task; c) the identification of the institutions involved, their mandate and role in accession negotiations; and d) the identification of accompanying support actions in the pre-accession context (strengthening of administrative capacity).[438]

13.3. Employment Rates in Serbia

According to the Statistical Office of the Republic of Serbia (SORS) Labour Force Survey (LFS) for the 3rd quarter of 2017,[439] the total employment rate of the population over 15 years of age stood at 48.2% and the inactivity rate at 44.7%. The highest employment rates were registered in the Šumadija and West Serbia Region

436 See an overview of the project Rapid Assessment on Child Labour in Agriculture in Serbia SeConS Development Initiative Group, Belgrade, 2017, available at: http://www.secons.net/project.php?p=164.

437 See: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf.

438 See: http://www.eu-pregovori.rs/files/File/documents/skrining/ENG_Izvestaji_sa_skrininga/PG_19/Outcome_of_the_screening_Ch_19_izmena.pdf.

439 See: http://www.stat.gov.rs/WebSite/repository/documents/00/02/69/68/StatisticalRelease_LFS_2017Q3_322.pdf.

(49.7%) and the lowest in the South and East Serbia Region (45,9%). The percentage of informally employed people stood at 21.8%; nearly two-thirds of them were working in agriculture. The overall unemployment rate stood at 12.9% (12.0% among men and 14.0% among women) and the highest unemployment rate was registered in the South and East Serbia Region (14.1%). Compared to the same quarter of 2016, the number of employed people rose by 67,900 and the number of unemployed fell by 21,900. The greatest drop in the unemployment rate was registered in the 25–34 age category, whereas unemployment of the population over 55 years of age grew. The long-term unemployment rate fell to 7.7%. As opposed to formal employment, which dropped by 49,000, the number of formally employed people over 15 grew by 117,000, the most in the manufacturing industry and in professional, scientific and technical activities.

The Central Mandatory Social Insurance Register (CMSIR) data indicate that informal employment[440] fell by 49,000 over the same period last year and that the rate of informal employment stood at 21.8%. Apart from 628,400 informally employed people, another 207,000 formally employed people are not exercising either their right to health insurance or their right to pension insurance. If the latter were also considered informally employed, pursuant to ILO's general recommendations (given the absence of an official definition of informal employment), the number of informally employed people would stand at 835,400 and the rate of informal employment at 29%.[441]

Data on workers by sector show a high ratio of employment in agriculture, on poorly paid, unpaid and low productivity jobs. Agriculture is the only source of income for over half a million workers, most of whom produce food to feed themselves. The informal employment rate in agriculture stands at 56%. However, the authors of the National Programme for Countering Shadow Economy[442] do not identify informal employment in agriculture as a problem warranting an intervention, despite its proportions. The Action Plan for the Implementation of the Programme does not include any measures or activities to address this problem. A quarter of the workers are employed in the industry sector, for the most part in the manufacturing industry, while 57% are working in the services sector, mostly in trade. The number of workers in the household services sector doubled over the previous year (by 75,000).[443]

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440 The Labour Force Survey defines informally employed workers as those working without written contract, self-employed in unregistered businesses, as well as contributing family workers.

441 See: http://webrzs.stat.gov.rs/WebSite/repository/documents/00/02/37/71/zp22122016.pdf.

442 Available in Serbian at: http://www.mfin.gov.rs/pages/article.php?id=12059&#txt12059.

443 Sarita Bradaš, Analysis "Statistics and Decent Work", Centre for Democracy Foundation, available at: http://www.centaronline.org/en/publication/1766/statistics-and-decent-work.

SORS also collects data on registered employment, wherefore one would expect that the LFS data on formal employment more or less coincide with data on registered employment, as SORS officials claim.[444] That is not, however, the case either with respect to data on the number of employed people or their status, or for that matter, sectoral breakdown of employment. The number of formally employed people according to the LFS is 11,000 higher than the number of employed people in the CMSIR records, and the greatest difference is registered in the number of self-employed people.

Two labour market indicators, used the most frequently as the main indicators, show nominal improvement (higher employment and activity rates and lower unemployment and inactivity rates). It, however, needs to be noted that Serbia significantly lags behind most European countries on these indicators.

Although the LFS preface says that the data obtained through the LFS are comparable with those of other countries in terms of methodology and content and are forwarded to Eurostat, data on Serbia are not available on Eurostat's website[445]; nor do the LFS data allow the monitoring of some of the indicators monitored by Eurostat (e.g. labour market transitions, underemployment, quality of employment).[446]

On the other hand, the Foundation for the Advancement of Economics (FREN) paints a much different picture of the situation in the labour market in its Quarterly Monitor. [447] Cross-referencing of LFS parameters with those on economic growth reveals an inconsistency, because economic growth should be much higher if employment grew as much as LFS says. Namely, official 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 National Employment Service (NES) and report to their NES counsellors at specific intervals, on a particular day every month. They are automatically 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.

13.4. Unemployment Reduction Measures

The Employment and Unemployment Insurance Act[448] governs the work of the National Employment Service (NES). The National Employment Strategy for

444 The SORS Director said in an interview to *Deutsche Welle* that the LFS data "coincided with those of the Social Insurance Register almost to a thousand," see the report available in Serbian at: http://www.dw.com/sr/srbija-statisti%C4%8Dki-balkanski-tigar/a-37324473.

445 See: http://ec.europa.eu/eurostat/web/lfs/data/database.

446 Sarita Bradaš, *op. cit*.

447 Available at: http://www.fren.org.rs/sites/default/files/qm/T3_32.pdf.

448 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

the 2011–2020 Period,[449] which provides the long-term framework for designing employment policies, is operationalised by the adoption and implementation of annual National Action Plans.

The 2017 National Employment Action Plan[450] envisages special measures. 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 2017 National Employment Action Plan, priority shall be given to the coverage of unemployed under 30 years of age – unskilled and low-skilled job-seekers, those looking for a job for over 12 months, those with the status of children of fallen soldiers or children without parental care; job-seekers over 50; workers made redundant; Roma; persons with disabilities; able-bodied welfare beneficiaries; and, human trafficking and domestic violence victims. Furthermore, the active employment policy measures and programmes need to cover other difficult to employ people from particularly vulnerable groups of the unemployed, such as: women, the rural population, refugees and IDPs, returnees under readmission agreements, single parents, spouses in families where neither spouse works, parents of children with disabilities, et al, in a manner ensuring their integration in the labour market and better quality of life.

The 2017–2019 Economic Reform Programme[451] aims at improving the counselling methods and techniques, which is crucial for assessing the employability of every individual job-seeker based on his features (degree of education, years of service, additional skills and knowledge, gender, et al), as well as the features of the labour market, with a view to including them in the active employment policies.

Active employment policy measures and programmes in 2017 included: facilitating the employment of job-seekers; career counselling and guidance; subsidies for employers hiring difficult to employ job-seekers; support to self-employment; additional education and training; incentives for hiring welfare beneficiaries; public works, active employment measures for persons with disabilities; co-funding – from the state budget – of active employment measures or programmes envisaged in local employment action plans; service packages for priority groups of job-seekers; participation in the implementation of projects geared at increasing employment and employability.

The National Employment Service had 2.8 billion RSD at its disposal for the employment programme in 2017. Around 550 million RSD were earmarked for the employment of persons with disabilities. The local self-governments were to have set aside around 700 million RSD for employment programmes. Two hundred thou-

449 *Sl. glasnik RS*, br. 37/11.

450 Available at: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/02/National-Employment-Action-Plan-for-the-Year-2017.pdf.

451 See: http://www.mfin.gov.rs/UserFiles/File/strategije/ERP%202017%20-%202019%20final_Eng.pdf.

sand RSD were allocated for the self-employment of redundant workers, around 53,000 of them, while 180,000 RSD were allocated to support the self-employment of other categories of job-seekers.

In 2017, the Serbian Government continued with its practice of subsidising foreign investors in order to boost employment despite publicly voiced criticisms that such measures privileged foreign investors at the expense of domestic businesses. According to the available data of the State Aid Control Commission, 21 foreign companies have been directly subsidised since 2015: NCR Ltd. Belgrade; Mei Ta; Johnson Electric; Lear Corporation; Delphi Packard Ltd Novi Sad; Aunde; Leoni Wiring Systems Southeast Ltd Prokuplje; ContiTech Fluid Serbia, Subotica; Yura Rača; Yura Niš; Yura Leskovac; Technic Development Ltd (Geox) Vranje; Tibet moda; Tigar Tyres; Falke Serbia; SR Technics Services; Streit Nova; Teklas Automotive; Truck Lite Europe; PKC Wiring System; and Mitros.

In this period, the state granted at least 860 million EUR in subsidies; this is just the amount registered by the State Aid Control Commission registered and the allocation of these funds was insufficiently transparent. The transparency was further undermined by an extremely disputable decision of the State Aid Control Commission, that there was no need for it to comment the subsidies provided under the Decree on Attracting Foreign Investments, even those given in the absence of a public call for proposals. The Commission has not been alerted to subsidies to a number of companies. Some were allocated sums exceeding the statutory limit. No-one has been held liable for this (nor do the regulations include any provisions on the liability of state officials) and the Commission did not issue any rulings ordering them to return the excess funding.

Furthermore, the State Aid Control Commission's legal status is undefined; it is an odd hybrid of a Government working body and independent authority. A by-law governing the procedure for ascertaining the expediency of state aid is still pending although the authorities announced its adoption back in 2013. In addition, since February 2017, the State Aid Control Commission has not declared its views on the admissibility of subsidies to investors, while the excerpts of the prior contracts (cited in its permissibility decisions) can no longer be found on its website.

In addition, there are no mechanisms for monitoring the achievement of the stated goals of extending state aid in cases not covered by regulations on direct investments. The Government, notably its Ministry of Economy, and the Economic Development Council and Development Agency decide who to grant the subsidy/state aid to at their own discretion and are then to themselves control whether the contract they are concluding is in accordance with the rules on state aid control.[452] Despite the political points for attracting foreign investors the authorities have been collecting for years, there was still no register of all the new jobs they created. Nor was there mention that such a register would be set up soon.

452 Subsidies to Investors – Expedient State Aid or Promotion, Transparency Serbia, 2017, available in Serbian at: http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Svrsishodnost-drzavne-pomoci-Transparentnost-Srbija-maj-2017.pdf.

13.4.1. Youth unemployment

Youth unemployment remained a major problem. Serbia dropped from 6th place in 2016 to 12th place on the Trading Economics List of countries with highest youth unemployment rates. According to this List, youth unemployment stood at 28.9% in June 2017.[453] The SORS LFS for the third quarter put the unemployment rate of youths (15–25 years old) at 23.7%. The inactivity rate of this age group fell compared to the same quarter of the previous year due to negative demographic trends, which resulted in the increase of the youth employment and unemployment rates by 1.3%. The youth unemployment rate now stands at 23.7%. The total share of young people neither in employment nor in education, the so-called NEET rate, has fallen, and now stands at 17.1%.[454]

The results of the 2017 survey on the needs of youths were not available at the end of the reporting period,[455] but the data on the evaluation of active employment policy measures conducted in 2017 were. The evaluation indicates that the measures did not achieve major results; namely, fewer youths were covered by these measures because the share of youths in the total number of job-seekers covered by them fell from 51% at the start to u 41% in 2015, which is definitely not what the authors of the measures planned. The coverage of youths by the training and additional education measures also fell, from 26.5% in 2011 to 9% in 2015. The intensity of cooperation with youths, measured against nine available indicators, not only failed to increase, but also fell vis-à-vis the intensity of cooperation with other age groups. As per the NES counselling services and development of individual employment plans, youths were mostly of the view that only a few NES counsellors had interviewed them in a manner ensuring they collected all the relevant information to make a real assessment of their employability. Furthermore, only a small number of youths managed to find a job with the NES' help. All the analysed indicators, as well as the counsellors' statements and conclusions drawn from observing the interviews and development of the individual employment plans indicate that the treatment of and services extended to young job-seekers vis-à-vis those extended to older job-seekers have not improved since 2013.[456]

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. As noted in BCHR's 2016 Report, the World Economic Forum ranked Serbia 137th out of 138 countries for "capacity to retain talent" in its 2016/17 Global Competitiveness Report. Serbia has lost 12 billion EUR since the

453 See: https://tradingeconomics.com/country-list/youth-unemployment-rate.

454 See: http://www.stat.gov.rs/WebSite/public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=4473.

455 More on the results of the 2016 survey on the needs of youths in the *2016 Report*, II.13.3.1.

456 See: Evaluation of Service Packages for Youths and Relevant Programmes and Measures Targeting Youths and Funded from the State l Budget, FREN, Belgrade, 2017. Available in Serbian at: https://www.fren.org.rs/sites/default/files/Izve%C5%A1taj.pdf.

early 1990s due to the departure of well-educated young people, particularly scientists and technical engineers, according to the local media.[457]

13.4.2. Employment services

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. A law on the work of employment agencies was still pending at the end of the reporting period although the working group formed to draft it was expected to complete its work in September 2017.[458]

The Labour Act does not govern the work of agencies leasing workers, wherefore they are established under the Employment and Unemployment Insurance Act and registered in the Register of Companies. According to data of the Ministry of Labour, Employment and Veteran and Social Issues, which issues them licences, 106 agencies mediating in employment were registered in Serbia. They are licenced to: 1) provide information on employment opportunities; 2) mediate in employment; 3) extend career guidance and counselling; and 4) implement individual active employment policy measures. Therefore, these agencies have not been licenced to lease workers.[459]

This, however, does not appear to have affected the practice in this area, because such agencies, as well as other companies, have continued leasing workers. Given that this area is not regulated and, consequently, not explicitly prohibited, and in the absence of a procedure for licencing such agencies, agencies and companies leasing workers have relied on the provisions of commercial law allowing the free performance of activities not prohibited by the law. As per the protection of the leased workers' rights, the key problems arise from the fact that the agencies leasing them have no obligations towards them. In practice, these workers are in a sense discriminated against vis-à-vis their colleagues with whom they share office and work.[460] Numerous illustrations of the diminished rights of leased workers have been published.[461]

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457 See: https://www.yahoo.com/news/balkan-youngsters-emigrate-en-masse-better-prospects-062328437.html.

458 Serbian Government 2017 Operational Plan, p. 659, available in Serbian at: http://www.gs.gov.rs/doc/PLAN_RADA_VLADE_2017.pdf.

459 Moreover, in its Opinion no 011-00–536/2013–24 of 2013 which the Ministry of Labour sent to the Association of Independent Trade Unions of Serbia, the Ministry said that "these agencies cannot temporarily transfer their workers to work for other employers because such transfers are prohibited by the Employment and Unemployment Insurance Act, wherefore the Ministry revokes the licences of agencies performing activities in contravention of the Act."

460 See Regulation of "Labour Force Leasing" in the Republic of Serbia, Centre for Democracy Foundation, Belgrade, 2017, available in Serbian at: http://www.centaronline.org/userfiles/files/publikacije/fcd-trag-izvestaj-regulacija-lizinga-radne-snage-u-republici-srbiji.pdf.

461 See the reports in Serbian at: http://radnik.rs/2017/08/prekovremeni-rad-ali-se-ne-placa/; http://radnik.rs/2017/08/posao-u-klinickom-centru-srbije-samo-za-omladince/; http://radnik.rs/2017

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.[462] 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. Labour Mobility

The Temporary Service Abroad Act[463] allows all companies in Serbia to advertise jobs abroad and send staff to work abroad even if they are not licenced to engage in recruitment by the Ministry of Labour. Most companies advertising jobs abroad are not licenced to recruit workers and explain to the Ministry inspectors that they already have workers in Serbia, whom they are temporarily transferring abroad to work or undergo training. Companies have been using the opportunity provided by the Act to transfer their workers abroad although they do not fulfil any requirements laid down in the Ministry Rulebook on requirements recruitment agencies have to fulfil.[464] Actually, this legal provision allows anyone to register a company with negligible start-up capital and hire people on paper to work in Serbia, whom they then lease to other companies abroad and earn income from their work, although they are not licenced to. The Act formally prohibits leasing of workers since it explicitly says that "employers may not conclude contracts with foreign persons envisaging leasing of workers to them or other foreign persons". Essentially, employers leasing workers to companies abroad are not breaking the law, unless they specify as much in the contracts. Quite a few reports on the abuse of these unclear provisions and the desultory working conditions of Serbs that went to work abroad under these arrangements were published during the reporting period.[465]

Employers hiring aliens have alerted to the complicated administrative procedure under which the work permits are issued. Some situations have not been

/07/iznajmljivanje-radnika-za-otvaranje-ikea-robne-kuce/; and http://www.centaronline.org/user files/files/publikacije/fcd-profil-radnika.pdf.

462 The Directive is available at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008L0104.

463 *Sl. glasnik RS,* 91/15.

464 This Act is particularly intended for companies conducting work abroad and temporarily designating their workers to perform the work or undergo training.

465 See more in the *Radio 021* report, available in Serbian at: http://www.021.rs/story/Info/Srbija/175898/Kako-se-radnici-iz-Srbije-salju-u-Slovacku-na-rad-uz-pomoc-rupe-u-zakonu.html and http://www.alo.rs/agencije-bez-licence-i-garancija-salju-radnike-u-inostranstvo/97161.

regulated clearly, especially when aliens intend to work under service agreements or under other arrangements not constituting employment.[466]

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.

13.6. 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.[467]

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 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.[468]

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

466 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.

467 *Sl. glasnik RS*, 125/04 and 104/09.

468 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.

Country Programme Document 2013–2017.[469] 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 (Arts. 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 disputes, 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,

469 Available at: http://www.ilo.org/public/english/bureau/program/dwcp/download/serbia.pdf.

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.

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.[470]

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 Council[471] established for the territory of the Republic of Serbia shall issue a decision setting

470 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.

471 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.

the 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.[472] The Serbian Government sets the cost in the event the Economic-Social Council fails to reach agreement on it.

In September 2017, the Social Economic Council agreed that the minimum cost of labour in 2018 stand at 143 RSD i.e. around 25,168 RSD a month. This is a 10% increase of the untaxable part of the minimum wage over 2017. Employers were promised that the taxable part of the wage would not increase. The employers agreed to the increase in the minimum cost of labour provided it did not lead to gross wage growth. In other words, the increase in wages will entail proportionate reduction of the taxes and contributions and the gross wages will stay the same. The difference, to be paid by the state, is estimated at 30–40 million EUR.[473]

The 15-dinar increase in the minimum cost of labour over the past five years was publicly presented as a major breakthrough for the large share of the population earning minimum wages. Trade union representatives emphasised that Serbia was among the European countries with the lowest minimum wages.[474] Around 350,000 workers earned the minimum wage amounting to 22,880 RSD in 2017, i.e. they earned 130 RSD per hour in a 176-hour month, for which they could buy 63% of the minimum consumer basket, which stood at 36,090 RSD. Living standards have thus dropped compared to 2012, when 65% of the minimum consumer basket could be bought for the minimum wage.[475] The data on the number of people earning minimum wage appear to have been obtained from the Central Mandatory Social Insurance Register; no data were available on the number of informally employed people earning minimum or below-minimum wages.

472 See Mario Reljanović's article "Minimum Price of Dignity", available in Serbian at: http://pescanik.net/minimalna-cena-dostojanstva/.

473 Although envisaged as an exception, paid over a six-month period in situation when companies are not working at full steam, the minimum wage is increasingly becoming the rule. High unemployment rates have led many people to accept any kind of job, even jobs paid the minimum wage. See: http://www.masina.rs/?p=5315.

474 See: http://www.paragraf.rs/dnevne-vesti/300817/300817-vest13.html.

475 See: http://www.paragraf.rs/dnevne-vesti/130917/130917-vest2.html.

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.

According to a survey conducted across Europe, Serbia ranks among the 10 states with the lowest wages, and thus the 10 poorest states, together with Ukraine, the Former Yugoslav Republic of Macedonia, Belarus and Albania.[476]

The average net wage stood at 48,212 and average gross wage at 66,438 RSD in September 2017. That same month, the average consumer basket cost 69,722 RSD i.e. 1.5 of the average wage. In September, the average pension stood at 25,513 RSD, while retired farmers received 10,663 RSD on average. This means that the average pension did not cover even the minimum consumer basket, which cost 36,090 RSD, let alone the average consumer basket, which equalled 2.5 average monthly pensions.[477] This fact is all the more devastating if one takes into account surveys indicating that decent life in Serbia (including coverage of average household needs, driving a car and going on one vacation a year, trips to the cinema, theatre or eating out twice a month, plus an average 250-EUR loan repayment instalment) costs around 99,000 RSD a month. Only around 177,000 or 2.3% of the people living in Serbia are earning enough money to live a decent life.[478]

Under the 2017 amendments to the Mandatory Social Insurance Contributions Act,[479] the untaxable part of the wages was to increase from 11,790 RSD to 15,000 RSD as of 1 January 2018.[480] Large fiscal charges related to doing business are one of the key reasons why the business sector estimates that as many as 29% of the companies and entrepreneurs decide to operate in the grey zone. Nearly two thirds of the subjects in the NALED survey cite high salary taxes and contributions as the main reason for this, and accordingly, 43% of businessmen see avoiding these obligations as the most frequent form of grey economy. The analysis of tax and non-tax charges for beginners in business, carried out by the NALED in cooperation with the Faculty of Political Sciences, has shown through a simulation of comparable examples that an entrepreneur who keeps business records and pays a minimal salary to themselves needs to set aside as much as 44.22% of the total revenues for taxes and contributions in Serbia.[481]

476 See: http://rs.n1info.com/a348429/Biznis/Srbija-medju-zemljama-sa-najnizim-platama-u-Evropi.html.

477 See: http://www.croso.gov.rs/cir/Statistika/Prosecna_zarada_penzija/.

478 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/ekonomija/istrazujemo-za-pristojan-zivot-plata-99000-dinara/bbgt51w.

479 *Sl. glasnik RS*, 84/04, 61/05, 62/06, 5/09, 52/11, 101/11, 7/12, 8/13, 47/13, 108/13, 6/14, 5/15, 112/15, 5/16, 7/17 and 113/17.

480 More in the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/ekonomija/neoporezivi-deo-zarade-povecan-za-vise-od-3000-dinara-po-zaposlenom/wwkqm6g.

481 This percentage in Croatia is 25%, 25 to 35% in Hungary, whereas, in Germany only 21.13%.

The Serbian Government calculated that this tax incentive would increase tax progressiveness and relieve the businesses' burden by 11.6 billion RSD, providing opportunities for new employment in the private sector. Incentives for start-ups are the key novelty and one of the most important measures of the National Programme for Countering Shadow Economy.[482] Amendments to the Personal Income Tax[483] and the Mandatory Social Insurance Contributions Act will provide further incentives for start-ups, which will be exempted from paying these taxes the year they open for business and the following year. This incentive, developed by a working group of the Ministry of Finance, the Tax Administration and the National Alliance for Local Economic Development (NALED), applies to the wages of the start-up founders and up to nine newly-employed workers, who must also be recent secondary school or college graduates of job-seekers registered with the NES. The measure is to be enforced as of October 2018 and shall apply to the entrepreneurs' personal income payment regime. The NALED Analysis of Tax and Non-Tax Charges of Start-ups[484] indicates that the entrepreneurs will save up to 250,000 RSD a year per worker earning minimum wage. Incentives for employing new workers will remain in force until the end of 2019, which means that the entrepreneurs will be entitled to the reimbursement of up to 65–75% of the taxes and contributions they had paid.[485]

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 wages nor the contributions. Under the 2014 amendments to the Labour 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).[486] 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.

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482 This applies to individuals who graduated from secondary school or college in the past 12 months or have been registered as job-seekers with the NES for over six months.

483 *Sl. glasnik RS*, 24/01, 80/02 – other law, 135/04, 62/06, 65/06 – corr., 31/09, 44/09, 18/10, 50/11, 91/11 – CC Decision, 7/12, 93/12, 114/12 – CC Decision, 8/13, 47/13, 48/13, 108/13, 6/14, 57/14, 68/14 – other law, 5/15, 112/15, 5/16, 7/17 and 113/17.

484 The Analysis is available in Serbian at: http://naled.rs/images/preuzmite/ANALIZA-PORESKOG-I-NEPORESKOG-OPTERECENJA.pdf.

485 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=365217&title=Smanjen+porez+na+zaradu.

486 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.

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.[487]

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[488] 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.

Trade union data indicate that 82,486 workers have reported their companies owed them millions. They include scores of companies that went bankrupt after their privatisation or restructuring failed, including EI Niš, "Građevinar", "Progres", IMT, "Niteks" and other companies in Niš, Belgrade, Aranđelovac, Zrenjanin, Kraljevo, Kruševac, Jagodina, Svrljig, Užice, Apatin, Pirot, et al. Around 3,000 workers of former socially-owned enterprises in Pirot – "Nišavska dolina", "Dragoš", "Polet", "Kartaljević", "Angropromet", "Termomont", "Pobeda", "Piroteks", "Galanteks", "Krznara" and "Progres" – are waiting for the Ministry of Finance and Serbian Government to enforce the court decisions and pay them the outstanding wages their former employers owe them. September 2017 data show that unpaid workers were claiming 350 million EUR from the state at that point in time.[489]

The Constitutional Court of Serbia rendered 10 or so decisions on constitutional appeals filed by around 9,000 former workers of Srbijatrans, ordering the Serbian Government to pay them their outstanding wages and interest rates, ranging from 500,000 to 2,000,000 RSD, and totalling around 4.5 billion RSD. The Court found that the workers' rights to property and a trial within a reasonable time had been violated, as they had been waiting up to ten years for the enforcement of the court decisions on the payment of their wages. After the Constitutional Court adopted its decisions, all workers of bankrupt socially-owned companies, who have final and enforceable judgments ordering the payment of their outstanding wages, as well as former workers of those companies, who have never gone to court but are in possession of the bankruptcy court conclusions specifying they had registered their

487 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-i-dopuna-zakona-o-radu.pdf.

488 *Sl. glasnik RS*, 104/09, 99/11 – other law, 71/12 – CC Decision, 83/14 and 113/17.

489 See: http://www.paragraf.rs/dnevne-vesti/180917/180917-vest13.html.

claims during the bankruptcy procedure, now have the same rights as former Srbijatrans workers. In 2016, the then Prime Minister Aleksandar Vučić said there was money in the budget and promised the former workers of bankrupt socially-owned companies in Niš that their outstanding wages would be paid by the end of the year and those of workers in other cities a bit later. He reneged on his promise and all most of the former workers got was one-off welfare equalling the minimum wage. In February 2017, Vučić said there was no money in the budget and that the state would pay the outstanding wages "commensurate to its capacity".[490] In late 2017, Government officials said that the state did not even have a register of former workers of bankrupt socially-owned companies it owed wages to, although state commissions had been formed since 2014 and the public was reassured that they were working hard on establishing such a register.[491]

In late 2014, the National Assembly adopted two laws[492] 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.[493] 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.[494] The pensions public sector wages cut in November 2014 were increased by 1.25% as of January 2016 and another 1.5% as of January 2017. Their share in the GDP is to fall from 13% (in 2014) to 11% in 2019. Payment of higher pensions will increase budget expenditure by 25 billion RSD, or 0.5% GDP.[495] However, it remained unclear whether the Government was

490 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=355345&title=Dr%C5%BEavi+sti%C5%BEe+novih+4%2C5+milijardi+dinara+da+plati+po+presudama.

491 More on bankrupt socially-owned companies and prior arrangements for paying debts to workers in the *2016 Report,* III.14.1.3 and the *2016 Report,* III.14.2.

492 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.

493 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 were to remain in effect until the end of 2017. Full-time workers with net wages under 25,000 RSD were not affected. Workers, whose net wages would fall below 25,000 RSD if they were cut, were paid 25,000 RSD. The wages of part-time workers were set in proportion to their working hours and their reduction was commensurate to the cut of the wages they would suffer if they worked full time in the given month.

494 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/.

495 See the *N1* and *Danas* reports, available in Serbian at: http://rs.n1info.com/a346174/Biznis/Zabrana-zaposljavanja-u-javnom-sektoru-produzena.html; http://rs.n1info.com/a333544/Biznis/Sto-vlast-kaze-povecanje-a-misli-na-vracanje-plata-i-penzija.html; and: http://www.danas.rs/

raising the cut wages and pensions. The impression was that the changes over the past three years, including the evident price hike, would not result in better living conditions in Serbia.

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 ECHR[496] 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 prohibits 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 did not guarantee the amounts of the pensions; and, measures temporary in character were at issue.[497]

The ban on public sector employment was extended to the end of 2018 under the amendments to the Budget System Act,[498] because, in the view of the Government, this measure yielded excellent results in terms of reducing the budget spending on wages at all government levels and in the entire public sector. The Budget System Act also envisages greater budget wage spending due to the increase of public sector wages of up to 10% in individual areas. The amendments to the Budget System Act also envisage a 5% increase in pensions, as of December 2017 pensions. Assessments are that this increase is fiscally sustainable and that 86.6% of the pensioners (all those with pensions under 37,000 RSD) will now receive pensions higher than those before the austerity measures were introduced.

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 600,000 and 1.5 million RSD. Under the Labour Act amendments adopted at the end of 2017,[499] all employers

ekonomija.4.html?news_id=363918&title=Dr%C5%BEava+u+2018.+vi%C5%A1e+daje+za+plate+i+investicije.

496 More on the violations of the right to property in II.11.

497 Decision of the Constitutional Court, 23, September 2015 No. IУз-531/2014.

498 *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 – corr., 108/13, 142/14, 68/15 – other law, 103/15, 99/16 and 113/17.

499 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13, 75/14, 13/17-CC Decision and 113/17.

must start keeping records of overtime work (Art. 55(6)); those who default on these obligations shall be fined – legal persons between 150 and 300 thousand RSD and entrepreneurs between 50 and 150 thousand RSD. It remains unclear, however, whether the amendments will bring about change in practice since, in the absence of effective oversight mechanisms, employers will have no problems doctoring the books or blackmailing their workers not to report overtime or risk losing their jobs (like they have to date).[500]

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.

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.[501]

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.[502] 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 Health[503] and Convention No. 167 on Safety and Health in Construction.[504] The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.[505]

500 See the text by Mario Reljanović, "(Re)Capitulation", available in Serbian at: http://pescanik.net/re-kapitulacija-2017/.

501 More in the *2015 Report*, II.13.2.

502 *Conclusions XVIII–1*, *Croatia*, p. 116.

503 *Sl. glasnik RS (International Treaties),* 42/09.

504 *Ibid*.

505 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.[506] The Action Plan for its implementation was adopted in July 2014.[507]

Major amendments to the Occupational Health and Safety Act were adopted in November 2015.[508] A new Occupational Health and Safety Act and Strategy, developed for nearly two years by working groups, were not completed by the end of 2017. The grapevine said that the working groups have been disbanded and that it remained unknown when the new ones would be formed.[509]

In October 2017, the Government responded to a request by Hesteel Serbia (owner of the Smederevo Ironworks) to step up oversight of sick leave in this company. The Chinese investor complained of the workers' abuse of sick leave and the Minister of Labour, Employment and Veteran and Social Issues and the Minister of Health said that oversight of sick leave taken by the company workers would be stepped up and that a sick leave oversight pilot project would be implemented, although the Labour Act already includes provisions protecting employers from sick leave abuse and mechanisms for identifying such abuse. Since the oversight of sick leave of workers is not within the remit of the Serbian Government and the state has thus sided with the employers, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić initiated oversight over the implementation of the Personal Data Protection Act in the Ministry of Labour, Employment, Veteran and Social Affairs and the Ministry of Health.[510]

Occupational health and safety at work was the issue least criticised during the talks on Chapter 19 in the past few years because legislation in this area is the most aligned with the EU *acquis*. The Chapter 19 Screening Report[511] says that Serbia indicated that the implementation of risk assessment continued to be a challenge for employers; trade unions have also brought into question the risk assessments. They claim that such assessments are still made without objective consideration

506 More in the *2013 Report*, I.15.3.

507 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.

508 *Sl. glasnik RS*, 91/15.

509 M. Reljanović, *Labour Law in Serbia in 2017,* Centre for Democracy Foundation, Belgrade, 2017, available in Serbian at: http://www.centaronline.org/userfiles/files/preuzimanje/FCD-Mario-Reljanovic-Radno-pravo-u-Srbiji-u-2017-godini.pdf.

510 See: http://rs.n1info.com/a333025/Vesti/Vesti/SabicPostupak-nadzora-zbog-kontrole-bolovanja-u-Zelezari.html.

511 See: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf.

of the risks and in the absence of a specific methodology by private agencies, the number of which is growing, and that the content of the assessment risk enactments is most often dictated by the employers themselves. Although the Act allows at least three representatives of employees in a company to form a board for safety and health at work, such boards exist only in big multinational companies.

No register of injuries at work and occupational diseases is in place yet. Software for registering injuries at work was developed for the Ministry of Health in 2013 and training in its use was organised for occupational physicians but it has been rarely used in practice for incomprehensible reasons. What is particularly concerning is that occupational medicine services will apparently die out; no doctor has been granted specialisation in occupational medicine for seven years now, despite the shortage of experts in this area. The trade unions claim that most injuries at work go unreported and that the state has continued subsidising defaulting employers.[512]

The only Labour Inspectorate data available at the end of the reporting period were those referring to 2016 and published in the spring of 2017. According to the Labour Inspectorate's 2016 Annual Report, its inspectors performed 14,156 checks of health and safety at work covering 178,919 workers in the reporting period, issued 478 rulings prohibiting work at the workplace due to identified risks to the workers' health and safety and another 5,331 rulings ordering the employers to address the shortcomings they had identified. They also performed 900 checks in response to reported injuries at work (29 in response to lethal injuries at work, 20 in response to collective injuries at work, 774 in response to grave injuries at work and 64 in response to light injuries at work). In view of the goal set in the 2013–2017 Strategy – 5% reduction of injuries – it may be concluded that this goal was not fully achieved by the end of 2016, because the number of lethal injuries at work was 18% higher that year than over the previous three years.

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

512 *Ibid.*

of the Right to Organise, ILO Convention No. 11 Concerning Right of Association (Agriculture),[513] ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively[514] and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter[515], ratified by Serbia in 2009, enshrines the right of workers and employers 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, the 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.[516] 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(2) of the Rulebook)[517]. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).[518]

Results of a survey, including a battery of questions on trade unions, which were published in March 2017, showed that 21% of the workers trusted trade unions and 44% did not, while more than a third of the respondents were undecided. Trade union representatives noted that the results actually showed that the workers' trust in trade unions was almost twice as low than the European average of 39%.

513 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

514 *Sl. list FNRJ (Addendum),* 11/58.

515 *Sl. glasnik RS,* 42/09.

516 *Sl. glasnik RS*, 50/05 and 10/10.

517 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.

518 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.

The survey showed that the trade unions enjoyed high trust of only two percent of the respondents, or between 100,000 and 120,000 workers, who actually comprise the core of the trade unions. Eleven percent of the respondents were of the view that trade unions did not protect workers and were pursuing their own interests, 8% thought they were useless, 7% that they were corrupt and under the influence of other stakeholders, and a third of them consequently did not trust them. The workers said they wanted to see the trade unions cooperate and act in concert to a greater extent. Furthermore, as many as a third of the respondents thought that the trade unions were affiliated with politicians and employers and that workers' representatives often used their positions to pursue their own interests and did not care about the interests of the workers.[519]

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 Act[520] 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)).[521]

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. The authorities have been vowing to enact a new Strike Act since 2011. Several working groups were formed to draft the new law. 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.

Different conclusions may be drawn from the strikes that marked 2017. On the one hand, the workers commendably expressed their dissatisfaction by legal and legitimate means. On the other hand, the way in which the strikes were launched, conducted and ended, as well as the conduct of all the stakeholders during them (the

519 See the report, available in Serbian at: https://nezavisnost.org/sta-su-poruke-martovskog-istrazivanja-o-sindikatima/-.

520 *Sl. list SRJ* 29/96 and *Sl. glasnik RS*, 101/05 – other law and 103/12 – CC Decision.

521 More on the right to strike in the *2011 Report*, I.4.17.4.3.

workers, trade unions, employers and state) demonstrate systemic shortcomings and the need to radically reform the way social dialogue is conducted.[522]

Nearly 3,000 factory workers across Serbia were on strike in the summer of 2017.[523] FIAT workers organised a strike in July 2017, demanding higher salaries, reorganisation of shift work and specific labour rights. The strike initially received no media coverage and did not elicit a response from the state. The FIAT management claimed the company in-house regulations prohibited it from negotiating with the workers, although that is in violation of Serbian law and the valid collective agreement. The state initially supported the employer, thus sending an extremely negative message both to workers on strike and all other workers in the country. The trade unions subsequently involved themselves in the strike and started negotiations, sapping the strike of all its energy and setting it on an administrative-political course. One of the two representative trade unions, *Nezavisnost*, was excluded from the talks with the management; the remaining trade union, the Association of Independent Trade Unions of Serbia, reached an agreement with the management, which met hardly any demands of the workers on strike. The agreement includes a clause by which the trade union binds itself on behalf of the workers that it will hereinafter refrain from going on strike. Although this clause is of no legal value (because it is in violation of the Constitution and the law) and is usually included in agreements as a sign of good will and satisfaction with the achieved compromise, its inclusion in this agreement should definitely be taken as a sign of the state's good will to give the employer free rein on everything.[524] The agreement only partly fulfilled the workers' demands, wage increase being the most important of them. Throughout the strike, the workers were subjected to huge pressures by the politicians in power.[525]

The strike in Gorenje coincided with the one in FIAT but took an entirely different course. Although it received scant media coverage, it immediately resulted in the launch of talks between the workers and the management, which ended with an agreement on increasing the workers' wages and improving their working conditions. There were no interventions by the state (nor did either party ask it to), mediation, threats or violations of the law. Essentially, the Gorenje strike was conducted in accordance with all the rules of conduct and culture of social dialogue. Although there is no doubt that not all the workers' initial demands had been fully met, both parties appeared to be satisfied with the outcome and the entire procedure proves

522 More in: M. Reljanović, *Labour Law in Serbia in 2017.*

523 See the *N1* report, available in Serbian at: http://rs.n1info.com/a283856/Biznis/Strajkovi-u Srbiji.html.

524 More in M. Reljanović, *Labour Law in Serbia in 2017*. See also: http://pescanik.net/united-we-stand/.

525 See the *N1* and *Danas* reports, available in Serbian at: http://rs.n1info.com/a284428/Biznis /Prekinut-strajk-u-Fijatu.html; and http://www.danas.rs/ekonomija.4.html?news_id=351050&title=Nezavisnost%3A+Menad%C5%BEment+Fijata+pokazao+aroganciju; and http://rs.n1info.com/a282857/Biznis/Vucic-Ocekujem-skori-prekid-strajka-u-Fijatu.html.

that it is very easy to launch dialogue when the employer treats the workers' rights in line with the law.[526]

The strike of the Goša workers began several months before the above-mentioned strikes. The Slovak owner had transferred all the company earnings, including money set aside for the workers' wages and contributions and income tax, leaving it in financial dire straits and a huge debt to the workers. Goša was taken over by a Cypriot company, which the workers suspect is also owned by the Slovak owner. Criminal reports were filed against the former owner and other responsible persons. The workers refused the trade unions' offers to let them organise the strike, wherefore the latter did not support them during their protest in front of the Serbian Government headquarters in Belgrade. Like the FIAT workers, Goša workers were also subjected to political pressures.[527] The protest ended with the promise that Goša would continue its production. Its creditors filed a bankruptcy motion in November.[528] The criminal reports against the responsible persons were not processed by the end of the year. No light was shed on the identity of the new (old) owner by the end of the year either.

School teachers launched a strike before the new school-year began and during September,[529] and a strike in the Serbian Post Office was organised in autumn.[530]

Some experts have held that trade unions often let the workers down, which confirms the thesis that, under the valid normative framework, they cannot represent a force that will fight for changing the official labour and employment policies at the republican level or the clearly defined interests of workers, including individual employers, at the lower levels. The necessity of reforming the concept of trade unionism is therefore one of the inevitable conclusions drawn from the 2017 strikes.[531]

526 *Ibid*.

527 More in Reljanović's article, available in Serbian at: http://pescanik.net/gosa-je-i-dalje-srbija/.

528 See the *N1* report, available in Serbian at: http://rs.n1info.com/a339212/Biznis/Predlozeno uvodjenje-stecaja-u-Gosu-zaposleni-protiv-toga-kaze-Milan-Vujicic.html.

529 See the *Blic* and *Vesti* reports, available in Serbian at: http://www.blic.rs/vesti/drustvo/u-strajku30000-prosvetara-skraceni-casovi-1-septembra-u-750-skola/32dhgb5 and https://www.vesti.rs/%C5%A0trajk-prosvetara/.

530 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/drustvo/u-posti-srbije-vlada-totalni-haos-a-direktorka-pokusava-da-ga-zaustavi-nanajgori/p1f5k7j.

531 M. Reljanović, *Labour Law in Serbia in 2017.*

15. Right to Social Security

15.1. Legal Framework

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.[532]

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.

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.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act[533] and the Act on Voluntary Pension Funds and Pension Plans.[534] 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 2024[535] when the retirement requirements will be the same for men and women – 40 years of service for which contributions have been paid and 60 years of age.[536] Under the law, the pensions of people who have not filled the age requirement but have the requisite years of ser-

532 See Venice Commission, *Opinion on the Constitution of Serbia*, Opinion No. 405/2006, CDL-AD (2007)004, paragraph 41.

533 *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.

534 *Sl. glasnik RS*, 85/05 and 31/11.

535 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/.

536 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/drustvo/uskoro-ukidanje-penala-na-penziju-zakon-o-penzijskom-osiguranju-bice-zavrsen-do-kraja/8npgqnn.

vice are reduced by 0.34% for each month they are taken before full age retirement, 20.4% at most.[537] This reduction was initially envisaged as a permanent one but the relevant Minister said in May 2017 that the state would comply with IMF instructions and amend the Pension and Disability Insurance Act so that the restriction would apply only until the retirees fulfilled the age requirement – until they turned 65, or 59 in case of those retiring under the reduced service retirement regime – whereupon they would receive their full pensions. These amendments, to have been enacted by autumn, were not adopted by the end of 2017.

Serbia did not adopt amendments to the Social Protection Act and Family Act, the need for which was highlighted by the European Commission in its 2016 Serbia Report, but it did adopt a new Act on Financial Support for Families with Children, which was to come into force on 1 January 2018 and be applied as of 1 July 2018.[538]

15.2. Poverty in Serbia

The UN 2030 Agenda for Sustainable Development[539] sets end to poverty as the first sustainable development goal, corroborating the major importance attached to this aspect of development. In 2015, the Serbian Government formed an Inter-Sectoral Working Group for the Implementation of the UN 2030 Agenda for Sustainable Development. This Group is tasked with adopting a sustainable development vision and contributing to the development of sectoral policies aimed at achieving sustainable development goals. It is also charged with defining a methodology for monitoring progress in the achievement of the goals and submitting periodic progress reports. However, the Serbian Government did not adopt any documents defining the national sustainable development priorities by the end of 2017.

Furthermore, extreme poverty is not calculated regularly or in accordance with the UN Inter-Agency and Expert Group's methodology (proportion of the population living on less than 1.25 USD a day); rather, it is defined as the proportion of the population living on between 80% and 90% of the funds beneath the absolute poverty line (11,946 RSD in 2016).[540] Extreme poverty was halved in the 2006–

537 The law essentially punishes those who had started working earlier, because it reduces their pensions although they had been paying the pension contributions until they fulfilled the full service requirement, and favours those, who had paid them for a shorter period of time but fulfilled the age requirement and are now receiving the full amounts of their pensions for the fewer years they worked.

538 See the Ministry of Labour press release, available in Serbian at: https://www.minrzs.gov.rs/lat/aktuelno/ministar-djordjevic-o-zakonu-o-finansijskoj-podrsci-porodici-sa-decom-i-zakonu-o-radu.html. See also the report available in Serbian at: http://srbijaupokretu.org/bravo-za-mame-mame-u-srbiji-naterale-drzavu-da-promeni-zakon/.

539 See: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

540 See: M. Babović, S. Cvejić, S. Stefanović, *Caution, Poverty! – Monitoring Poverty within the UN 2030 Agenda for Sustainable Development,* European Anti-Poverty Network – Serbia, 2017, available in Serbian at: http://www.secons.net/files/publications/79-publication.pdf.

2016 period. The process was not linear as it was hindered by the 2008 economic crisis but the downward trend was consistent over the past three years. The absolute poverty trend shows a slump in the period preceding the outbreak of the global economic crisis, then some wavering, followed by stabilisation of the absolute poverty level over the past four years.

The consistent level of absolute poverty at nearly 7.5% of the population indicates that Serbia has a relatively stable poverty "core", which is not exposed to the impact of effective poverty reduction policies and measures. The data on the profile of absolute poverty indicate that poverty is twice as frequent in non-urban areas and that it is the most widespread in the South and East Serbia Region. Absolute poverty indicators show that children (0–18), people living in large households and people living in households, the heads of which have low education or are unemployed, are the most vulnerable categories.[541]

On the other hand, available data show that Serbia has the highest rates of people at risk of poverty (AROP) and social exclusion in all European countries in which these indicators are measured. The absolute poverty rate has also been quite high, exceeding 7% for several years now. Furthermore, the AROP rates among single parent families and children are generally higher than the national average. Poverty and risks of poverty and social exclusion are extremely widespread among the Roma population, especially in informal Roma settlements, wherefore coverage by education of these citizens of Serbia is much smaller, they have greater difficulty accessing social services, their children's nutrition is poorer than that of other children in Serbia and their development is slower. Risk of poverty has been gradually growing among the employed population; the high AROP rate is especially striking among the self-employed; the problem is exacerbated by the rise in the share of precarious employment.

The analysis of poverty in Serbia in the 2006–2016 period indicates that poverty remained significant throughout the period and that no noteworthy downward trend was registered. The poverty line stood at 11,694 RSD a month per consumer unit in 2016 – 7.3% of Serbia's population lived on less than this amount of money. Around half a million of Serbia's citizens were unable to meet their basic subsistence needs. The mild fall in the number of poor people in absolute terms was primarily the consequence of the decrease in Serbia's population and, to a less extent, to the reduction of the incidence of poverty. Compared to the research carried out to date, the latest methodological changes did not have a significant impact on the profile of the poor; thus, poverty remained primarily concentrated in non-urban areas, especially in the Southern and Eastern Serbia Region, among individuals living in households whose heads had no/low education, were unemployed and inactive.[542]

541 See: http://socijalnoukljucivanje.gov.rs/wp-content/uploads/2017/09/Poverty-in-the-Republic-of-Serbia-for-the-Period-2006-%E2%80%93–2016-%E2%80%93-Revised-and-New-Data.pdf, 2017.

542 *Ibid*.

There is a real risk of stabilisation of the poverty reproduction mechanism, because data indicate lesser enrolment of children from the poorest families in primary schools, that many of them do not complete it and that hardly any of those who do pursue secondary education. This trend is even more drastic among the Roma population, resulting in the fact that only 2% of the Roma children enrol in college.[543]

A third of the children in Serbia are at risk of poverty, especially children in families with two or more children, where the household heads are unemployed. One out of eight children in Serbia live below the absolute poverty line, which means that they make it through the month with around 8,000 RSD. Child benefits are received by around 28% of the children, i.e. almost one third of all the children. Only 9% of the poorest children and 6% of children living in Roma settlements attend kindergarten, as opposed to 82% of the children from richer households. Measures capable of alleviating the negative consequences of poverty on children have to be introduced given the long-term adverse effects of growing up in deprivation.[544]

15.3. Social Protection

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 Act[545] and the Act on Financial Support for Families with Children[546]. 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 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).

In his 2016 Annual Report, the Protector of Citizens said that the adoption of the Decree on Designated Social Protection Transfers established a system of direct support to local self-government units for poverty reduction, through the provision

543 See: M. Babović, S. Cvejić, S. Stefanović, *op. cit*.

544 See the press release of the Network of Organisations for Children of Serbia on Universal Children's Day, available in Serbian at: http://zadecu.org/svetski-dan-deteta-potrebno-vece-ulaganje-u-decu/.

545 *Sl. glasnik RS*, 24/11.

546 *Sl. glasnik RS*, 16/02, 115/05 and 107/09. The amendments were to enter into force on 1 January 2018 and be applied as of 1 July 2018.

of higher quality protection to vulnerable groups of children, persons with disabilities and the elderly, as well as marginalised groups of citizens, but that the austerity measures and statutory ban on public sector employment precluded the timely and efficient extension of social services, while the lack of social staff threatened to seriously undermine the quality and even the very extension of social services.[547]

In addition to direct payments of maternity leave benefits from the budget, the new Act on Financial Support for Families with Children also increases parental allowances for their first-borns.[548] The amount of the benefits during maternity leave, childcare leave and additional childcare leave will be based on the paid contributions on the beneficiaries' incomes over the previous 18 months. As of mid-2018, this right can be exercised also by women who, at the moment they gave birth, do not qualify for unemployment benefits; are self-employed; have the status of self-employed head of family agricultural household under the law governing personal income taxes; are working under temporary, occasional, service or royalty contracts; and women who are the children's adoptive parents, foster parents or guardians. The right to parental benefits will also be accorded to foreign nationals habitually residing in Serbia provided their children have been born in Serbia.

The VAT refund under the 2002 law will be replaced by one-off 5,000 RSD allowance for each new-born, to avoid situations where some parents used to collect the receipts and exercised the right to VAT refund, while others did not have the time to do that.[549]

The vehemently criticised Decree on the Social Inclusion Measures for Welfare Beneficiaries[550] adopted in 2014 is still in force.[551] 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 provisions of the Decree on the beneficiaries' obligations have also been criticised as extremely vague. The more precise definition of their obligations regarding education, employment and medical treatment has been left to the schools, the NES and the out-patient health clinics. The only defined obligation in the agreement is the one on the welfare beneficiaries'

547 See the Report in Serbian at: http://www.ombudsman.rs/attachments/article/5191/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu%20LATINICA.pdf.

548 From 39,346 to 100,000 RSD. Furthermore, families will also receive allowances for their second, third and other children, but much less than to date. They received 154,000 RSD for their second, 277,000 RSD for their third and 369,000 RSD for their fourth children in the reporting period.

549 See the *Novosti* report, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:683233-NOVI-ZAKON-O-FINANSIJSKOJ-PODRSCI-PORODICAMA-Prvom-detetu-100000-dinara-novac-porodiljama-sa-seoskih-imanja.

550 *Sl. glasnik RS,* 112/14. The Decree is available in Serbian at: http://www.minrzs.gov.rs/cir/aktuelno/item/1319-uredba-o-merama-socijalne-ukljucenosti-korisnika-novcane-pomoci.

551 More in the *2014 Report*, III.15; *2015 Report*, III.15. and *2016 Report*, III.15.2.

community service, volunteering and engagement in public works. The concrete tasks of such work are to be defined by the local self-governments, based on guidance issued by social work centres. No data on the effects of the measures or how many people have been covered by them were available by the end of the reporting period.

When the Decree came into force in 2014, the then Labour Minister Vulin said it was meant as a form of work activation that would help the welfare beneficiaries find a job. The media reported that the Ministry did not have data on how many people had worked pursuant to the Decree, or where or how many of them had found a job this way. However, work and welfare cannot be equated, because, if welfare beneficiaries are registered as employed, the unemployment rate would stand even lower which is far from reality anyway.[552]

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. The Constitutional Court failed to state its view on the motion to review the constitutionality of the Decree in 2017 as well.

15.4. 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 Protection (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.

552 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=343060&title=Moraju+da+rade+za+socijalnu+pomo%C4%87+-+efekti+mere+nepoznati.

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 adoption of the new Act on Financial Support for Families with Children in late 2017, together with an entire set of budget, tax and other laws (26 laws and amendments to laws were adopted on the same day) generally went unnoticed. This is why attention needs to be drawn to the fact that this Act violates ILO Convention on Maternity Protection (No. 183), under which the cash benefit paid during maternity leave should be at least two-thirds of a woman's previous earnings The Act, however, lays down that the cash benefit will be calculated on the basis of the average wage the parent earned in the preceding 18 months.[553]

The new Act limits the right to parental and child benefits to families with four or less children. Families with five or more children are to apply for such benefits with the relevant ministry for social issues; the Act, however, does not specify the criteria the ministry is to be guided by when ruling on their requests. The right to child benefits may be exercised only in the event the children "live, go to school and regularly attend class in the territory of the Republic of Serbia," which is in contradiction with the very purpose of child benefits and may have particularly negatively effects on the Roma in Serbia, many of whom have more than four children.[554]

553 This means that people, who have worked for e.g. six months and earned the average national wage (circa 40,000 RSD), will now receive a third of the maternity or childcare leave than they would have under the prior law, i.e. half the sum specified as minimum in ILO Convention 183. The benefit will practically amount to half the set minimum wage, because people will have to work for 18 months in a row to qualify for benefits equalling their wages.

554 See Mario Reljanović's text, available in Serbian at: http://pescanik.net/depopulaciona-politika/.

The new Act expands the category of single-parent families to single parents who care for the children alone, although the children's other parents are alive, are not deprived of their parental rights but do not fulfil their parental duties – do not pay child maintenance or maintain contacts with their children.[555] This is a welcome novelty given that the 2002 Act does not bestow the right to child benefits to such single parents, accounting for 80% – or 300,000 – of all single parents (most of whom are mothers). The state does not have records on the number of single parents to inform its assistance programmes, which leads to the conclusion that this group had not been recognised as a vulnerable group in the social protection system at all.[556]

An initiative to legally define single parenthood in one of the umbrella laws was forwarded to the ministry charged with social issues back in 2013. The initiative, which summarises the problems of this vulnerable category and sets out recommendations on how to improve the legal framework, has been endorsed and its findings have are reflected in the draft amendments to the Family Act, which were not adopted in 2017 as planned.

A survey published in 2017 showed that single parents faced a multitude of problems, including non-payment of child maintenance, housing problems, unemployment, lack of money and support. Single mothers are more vulnerable than single fathers. For example, 50% of the single fathers and only 27.3% of the single mothers own the homes they live in. The associations of single parents said that that there was a lack of adequate legal provisions and that the valid ones were not fully enforced.[557]

16. Right to Education

16.1. General Features of the Serbian Education System

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.

555 The 2002 Act defines single parents only as those singlehandedly caring for their children because the children's other parents are deceased, unknown or deprived of parental rights.

556 See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo/rodna_ravnopravnost.1186.html?news_id=353245&title=Gde+su+samohrani+roditelji+u+sistemu+socijalne+za%C5%A1tite.

557 *Ibid.*

In mid-2012, the Government of the Republic of Serbia adopted the Education Development Strategy until 2020.[558] The Strategy, however, suffers from specific shortcomings, including the failure to address human rights and rights of the 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 2017 either, wherefore education on the rights of the child is still not available to all children.[559]

Education reform intensified in 2017, facilitated, inter alia, by the 27.4 million Euro grant the EU designated for that purpose. The funds will be allocated for adapting the education system in Serbia to suit the needs of the labour market, for improving the skills of teachers and supporting the education of the most vulnerable minority groups in the country. The EU Commissioner for Enlargement and European Neighbourhood Policy said that around 40,000 teachers in Serbia would be trained according to new modern programmes, which would ensure high-quality lectures for students. The funds will also be used to provide training to 4,000 teachers teaching in minority languages and publish textbooks in minority languages. Particular attention will be devoted to the education needs of Roma children and scholarships will be provided to 700 Roma children.[560]

National experts, however, are of the view that the reforms are implemented extremely fast, without an adequate analysis of the expected results or adaptation of the adopted models to the realities of the Serbian education system, as corroborated by the enactment of systemic education laws under an urgent procedure. The desire to offset the lack of practical skills and knowledge by dual education may result in the large-scale involvement of the private sector in the work of educational institutions, which may seriously jeopardise the autonomy of the universities and academic community. Despite criticisms of the dual education system initiated by the Ministry of Education, Science and Technological Development (MoESTD) and the Serbian Chamber of Commerce, the dual education system has been piloted in 127 schools in Serbia since September 2017.[561]

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

558 *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 to inclusive education and inclusion of children from marginalised groups.

559 More in the *2014 Report*, III.16.1.

560 See the *Tanjug* report of 27 September 2017 at: http://www.mei.gov.rs/eng/news/492/189/335/details/eu-allocates-eur-27–4-million-for-education-reform-in-serbia/.

561 See "Dual Education to be Introduced in 127 Schools in Serbia as of 1 September," *Telegraf*, 12 June 2017, available in Serbian at: http://www.telegraf.rs/vesti/2827410-od-1-septembra-uvodi-se-dualno-obrazovanje-u-127-skola-u-srbiji.

national Education Improvement Institute. The law on the national qualifications framework, announced on a number of occasions in the past two years, was not enacted by the end of 2017. Instead, the MoESTD initiated the forming of a new Inter-Ministerial Group for Establishing and Implementing the National Qualifications Framework in Serbia.[562]

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.[563] The Education Indicators developed by the Social Inclusion and Poverty Reduction Unit (SIPRU) identify the absence of adequate education statistics requiring the aggregation and alignment of the SORS and MoESTD data as the greatest challenge. Absence of data on vulnerable groups, children with disabilities, Roma and children from deprived backgrounds has hindered adequate monitoring of the status of children from vulnerable categories, as well as the adequate development of educational policies aiming to improve it.

The databases of the most vulnerable categories of children need to be increased in the forthcoming period to properly contribute to the elimination of inequalities in the education system. The Multiple Indicator Cluster Surveys need to be implemented regularly by the SORS. The application of the Framework for Monitoring Inclusive Education in Serbia, which includes monitoring indicators and monitoring instruments at the national, local and school levels, is not systematic. There are also specific shortcomings in university education coverage and collection of data on secondary school drop-outs and challenges in the (non-)measurement of adult education indicators (functional literacy and lifelong learning).[564]

The MoESTD in 2017 again 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. The schools' responses to violence were often not in line with the rules and standards applicable to cases of suspected/identified violence and the school inspectorates insufficiently monitored the schools' compliance with those rules and standards.

562 See the MoESTD press release of 13 September 2017, available in Serbian at: http://www.mpn.gov.rs/nacionalni-okvir-kvalifikacija-u-srbiji/. The Working Group includes 46 NQFS experts of 21 institutions.

563 Affirmative measures have been introduced for pupils and students belonging to the Roma national minority and those with disabilities.

564 Marković, Jelena, *Monitoring of Social Inclusion in the Republic of Serbia: Education Indicators*, SIPRU, Belgrade, 2017, available in Serbian at: http://socijalnoukljucivanje.gov.rs/wp-ontent/uploads/2017/10/Pracenje_socijalne_ukljucenosti_u_Republici_Srbiji_trece_dopunjeno_izdanje_Indikatori_obrazovanja.pdf.

In 2017, Council of Europe experts[565] drafted a report entitled Strengthen Integrity and Combat Corruption in Higher Education, Baseline Assessment of Integrity in Higher Education in Serbia,[566] in which they, notably, recommended that the Serbian Government and line ministry commit fully to a range of policies designed to achieve maximum social equity and wider access in higher education admissions, particularly to universities, ensure maximum independence of the National Higher Education Council, and proportionate representation of universities in the Conference of Universities of Serbia.

16.2. Education Law and Its Implementation in Practice

The National Assembly adopted the following systemic education laws under an urgent procedure in the autumn of 2017: the Education System Act,[567] the Dual Education Act[568] and the Higher Education Act,[569] and amendments to the Secondary Education Act.[570]

The Education System Act includes a number of novelties, notably, the possibility of transferring to other schools punished students in exceptional cases and the imposition of other penal measures. For instance, pupils attending 5th to 8th grade may be transferred to another school if they violated a prohibition; the transfer decisions are taken by the teachers' councils and are subject to the consent of the schools the pupils are to be transferred to; the parents/legal guardians of such pupils are merely notified of the transfers and the schools do not have to obtain their consent. The Act introduces the possibility of the schools imposing community or humanitarian service obligations on the pupils, against whom rehabilitation or disciplinary measures have been taken. These new provisions were not, however, accompanied by amendments to the Juvenile Justice Act,[571] which specifies that measures such as community and humanitarian service shall be imposed by a court. The schools' discretionary power to transfer pupils to other schools without their

565 Professors Ian Smith and Tom Hamilton.

566 The Report is available at: http://helix.chem.bg.ac.rs/support/Baseline_Assessment_of_Integrity_in_Higher_Education_in_Serbia--Final_Report.pdf. In their view, the relevant Serbian authorities should commit to replacing as soon as possible the current use of varied specific entrance examinations and procedures operated by individual colleges and universities with a standardised national approach based on the use of a newly-developed and robust national high school-leaving examination. The national authorities are to ensure that the new Draft Act on Higher Education is as clear and transparent as possible on the types of academic posts, the eligibility criteria for these posts, and the method for appointment to them and that the private universities in Serbia are subject to the same legal requirements for integrity plans as the public universities.

567 *Sl. glasnik RS*, 88/17.

568 *Sl. glasnik RS*, 101/17.

569 *Sl. glasnik RS*, 88/17.

570 *Sl. glasnik RS*, 55/13 and 101/17.

571 *Sl. glasnik RS*, 85/05.

parents/legal guardians' consent is questionable also from the perspective of the best interests of the child.

The new Act also introduces 16-digit personal education numbers (PEN), which are assigned to all children/pupils/adults on first enrolment and used throughout their schooling. These PENs aim at preventing early school leaving and facilitating monitoring.[572]

Experts and opposition parties were the most critical of the provisions of the Act allowing the Minister of Education to appoint and dismiss school principals and appoint members of the National Education Council. Under the prior law, the Minister was entitled to dismiss principals only if the school inspectors found that their actions or omissions were in violation of the law. The broader powers of the Minister, i.e. the executive, centralise the appointment of school headmasters and facilitate political appointments. The dismissal of the principal of the Zemun primary school "Svetozar Miletić", opposed by both the pupils, their parents and all the teachers, illustrates the direct influence of the executive.[573]

As noted, the new Act lays down that the National Education Council members shall be appointed by the Minister, whereas, under the prior law, they were appointed by the National Assembly. This change blurred the transparency of their appointment and increased the Council's dependence on the executive. Furthermore, whereas the majority of the Council members came from the academic community and universities under the prior law, it now comprises only three representatives of the Serbian Academy of Arts and Sciences and more representatives of the Chamber of Commerce and trade unions.[574]

The new Act also lays down that the local self-governments shall fund *up to* 80% of the real preschool education costs, whereas, under the prior law, they funded 80% of such costs. This provision may result in increasing the parents' kindergarten costs as the self-governments are now entitled to set aside less funding for kindergartens.

16.2.1. Dual Education Act

The Dual Education Act was adopted in late 2017 after a heated debate in the Assembly. In response to the claims by the Government, which submitted the

572 Article 176, Education System Act.

573 See the *N1* reports, available in Serbian at: http://rs.n1info.com/a330483/Vesti/Vesti/Inspekcija-ponovo-trese-skolu-u-Zemunu.html and: http://rs.n1info.com/a331230/Vesti/Vesti/Roditelji-djaka-OS-Svetozar-Miletic-nezadovoljni-kompromisom.html.

574 See the various reports available in Serbian at: http://rs.n1info.com/a329346/Vesti/Vesti/Dusan-Teodorovic-o-zakonima-o-obrazovanju.html; https://www.slobodnaevropa.org/a/28760731.html; https://www.slobodnaevropa.org/a/intervju-dusan-teodorovic/28765868.html; https://www.youtube.com/watch?v=D9X9BlZM-v0; http://pescanik.net/maloumna-srbija/; and http://rs.n1info.com/a335521/Vesti/Vesti/Srbijanka-Turajlic-i-Milan-Suvakov-gosti-Pressinga.html.

law for adoption, that dual education was a success in many European countries, its critics alerted to the fact that apprentices in those countries attended vocational schools part time while working in companies under slightly modified employment contracts, and that they enjoyed all the benefits, such as their employers paying their social insurance contributions. Under Article 34 of the Dual Education Act, the apprentices shall be paid at least 70% of the minimum wage under the law and their work shall be considered on the job training, not work. Experts have warned that, in countries applying this model, the apprentices are considered company employees, not just apprentices but that in Serbia, the dual education concept excludes the enforcement of the Labour Act. That practically means that children will not enjoy the protection of a series of legal provisions applicable to employed minors. Furthermore, there is a risk that the workers will perceive the apprentices as unfair competition because they will be paid less than the guaranteed minimum wage.[575]

16.2.2. Higher Education Act

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.

Tertiary education is governed by the Higher Education Act, adopted by the National Assembly under an urgent procedure in September 2017. The legislator specified that the new Act aimed to: 1) improve and facilitate continuous alignment with European standards for ensuring and controlling the quality of higher education; 2) improve the relevance of higher education to the economy and society on the whole; 3) facilitate the acquisition of functional skills and competences and greater employability of university and college graduates in Serbia and abroad; 4) improve the IT system in the field of higher education, 5) align the law with the Strategy until 2020 and other regulations in the fields of education, personal data protection and public sector financing.[576] In view of the number of amendments to the prior Higher Education Act, the Government, which submitted the new law for adoption, was of the view that it was more expedient to adopt a new law than amend the one in effect. The adoption of an entirely new law was not justified by the number of new articles; nor did it fulfil the requirements to be adopted under an urgent procedure, without a substantive parliamentary debate. The National Higher Education Council was not provided with access to the final version of the draft before it was submitted to parliament; it had not given its consent even to the previous version, although the law mandates it does so prior to the Assembly debate.

575 See the *RFE* report, available in Serbian at: https://www.slobodnaevropa.org/a/dualno-obrazovanje-srbija/28786194.html.

576 See: http://otvoreniparlament.rs/akt/3397.

One of the key changes introduced by the new law is the performance-based funding of colleges, which replaced the prior model of funding based on the number of students. The legislator underlined that the part of the law on funding was drafted bearing in mind the new law on financing of higher education institutions. The Act lays down that higher education institutions that abolish a study programme are under the obligation to allow students enrolled in it to complete their studies in accordance with that programme and under the rules they had enrolled. Private tertiary education institutions must submit proof of initial capital or bank guarantees ensuring that all students can complete the studies in accordance with the programmes and under the rules they had enrolled. The Act also provides for the introduction of managers at all colleges and universities.

The new Act does not make any changes in the role of the National Higher Education Council, which is still charged with ensuring the development of education and improving the quality of higher education, but it does change its composition. The Council now has 17 members appointed by the Government (Art. 11).[577] Six members are appointed from amongst the ranks of full-time professors, leading experts holding the title of scientific adviser and artists, whose works of art are internationally recognised or acknowledged as a contribution to national culture, and who are nominated by the Conference of Universities; two are appointed from amongst the ranks of applied studies professors nominated by the Conference of Applied Studies and Junior College Academies; seven are appointed from amongst the ranks of leading experts or artists, whose works of art are internationally recognised or acknowledged as a contribution to national culture, whilst ensuring the proportionate representation of arts and sciences, who are nominated by the ministry in charge of higher education; and, two are nominated by the Serbian Chamber of Commerce. The new composition of the Council has been criticised because it strengthens the influence of the executive; under the prior law, the members of this body were appointed by the National Assembly and most of them were nominated by the Conference of Universities, while only a few were nominated by the Government. All the Council members are now appointed by the Government; as many as nine are nominated by the minister or the Chamber of Commerce and only eight by the academia.[578]

The Council members are appointed to four-year terms in office and may be re-elected once. As opposed to its predecessor, the new Act lays down the Council's duty to hold meetings with the Chamber of Commerce at least twice a year and meetings with the National Education Council at least once a year. The Higher Education Act also envisages the establishment of a National Accreditation Body to perform accreditation duties, check the quality of higher education establishments,

577 The Council had 21 members under the prior Act.

578 See the following reports in Serbian: http://rs.n1info.com/a335521/Vesti/Vesti/Srbijanka-Turajlic-i-Milan-Suvakov-gosti-Pressinga.html; https://www.youtube.com/watch?v=D9X9BlZM-v0; and http://pescanik.net/maloumna-srbija/.

evaluate the study programmes and ensure quality higher education. This Body is under the obligation to submit operational reports to the Government at least once a year. It is managed by a seven-member Management Board appointed by the Government and a Director, appointed and dismissed by the Management Board. The Director is appointed to a five-year term in office in an open recruitment process.

The Accreditation Commission is the expert body of the National Accreditation Body tasked with implementing the procedures for accrediting higher education institutions and study programmes and performing external oversight of the quality of higher education institutions. The 17 members of the Accreditation Commission are appointed by the Management Board of the National Accreditation Body.

The Act introduces an additional level of lecturer – Senior Lecturer and an additional assistant title – Assistant with a PhD Degree. It also lays down stricter requirements for conferral of the title of Professor Emeritus.

The Act also provides for a new category of studies – study as you work and for the assignment of nationwide personal education numbers to all students. Under the law, higher education establishments shall enrol in their academic and applied studies applicants with recognised general or vocational graduation exams. They shall themselves set the criteria against which they will classify and select the successful applicants, and rank the applicants enrolling in undergraduate courses on the basis of their four-year secondary school performance, secondary school graduation exam grades, enrolment test grades, or aptitudes and abilities and, where necessary, on the basis of their achievements at national and international competitions.

Some provisions of the Higher Education Act were vehemently criticised by experts and the academia. The Government was unable to provide an adequate answer to the question why a new body was being set up and the outgoing Accreditation Commission dismantled, although it had fulfilled all the requirements and prescribed standards and was registered by the European Accreditation Committee. Experts and academia were also dissatisfied with Article 144 of the Act, under which none of the appointments to managerial positions (university rector and dean) under the prior law were not reckoned although Article 64 lays down that deans and rectors shall be appointed to three-year terms in office with the possibility of one consecutive reappointment.

Furthermore, the Act allows the establishment of employers' councils in all tertiary education institutions and the introduction of industrial lecturers, who are not members of the academia, which gives rise to the question how they will be appointed and their work monitored. The academia also expressed concern about Article 57 of the Act, which allows the Government to change the status of higher education institutions established by the state, and illustrated it with the example of the Belgrade College of Electrical Engineering and the disaffiliation of its Comput-

er Technology Department in order to form a public-private partnership, which may result in the collapse of one of the most successful Belgrade University colleges.[579]

The new Higher Education Act did not aim to find a systemic solution for plagiarised PhD theses or a functional mechanism to punish their authors although the European Parliament expressed concern over the failure of Serbia's state institutions and academic community to address the problem of plagiarised theses in its resolution on Serbia of March 2015. Notwithstanding the above-mentioned recommendations, the new Higher Education Act does not include provisions that will improve academic integrity.

579 See the following reports in Serbian: http://rs.n1info.com/a335521/Vesti/Vesti/Srbijanka-Turajlic-i-Milan-Suvakov-gosti-Pressinga.html; https://www.youtube.com/watch?v=D9X9BlZM-v0; and http://pescanik.net/maloumna-srbija/.

III.
HUMAN RIGHTS IN PRACTICE – SELECT TOPICS

1. Judiciary – Neverending Reform

1.1. Constitutional Status of the Judiciary and Constitutional Reform

Under the Constitution, rule of law shall be exercised in Serbia through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, an independent judiciary and the authorities' observance of the Constitution and the law.[1] Under Article 4 of the Constitution, the government system shall be based on the separation 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.

The main prerequisite for the realisation of these principles 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, yet again, not implemented by the end of 2017.[2] Judicial independence and elimination of political influence on its work are also the key tasks the Serbian state authorities face in the EU accession process.

The National Judicial Reform Strategy (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 Council (HJC) and the State Prosecutorial Council (SPC). 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

1 Article 3.

2 The first reform was launched in December 2009 with the general (re)appointment of the judges 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/.

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. The working group drafted a legal analysis of the constitutional framework on the judiciary in the Republic of Serbia in 2014.[3]

In its 2007 Opinion on Serbia's Constitution,[4] the Venice Commission alerted to problematic constitutional provisions allowing political influence on the judiciary. Its recommendations were fully integrated in the Chapter 23 Action Plan activities, as Serbia decided to amend its Constitution and ensure the judiciary's independence from political influence within the EU accession process.

The Chapter 23 Action Plan envisages a number of activities to be taken with a view to amending the Constitution, notably, that the proposal to amend the Constitution be upheld by the National Assembly in the third quarter of 2016, that the amendments be drafted and publicly debated by the end of 2016, that they be submitted to the Venice Commission for comment in early 2017 and adopted by the end of 2017.[5] None of these activities were, however, implemented by the end od 2017. The Report on the Implementation of the Chapter 23 Action Plan No. 3/2017 specifies that the proposal to amend the Constitution, which was to have been adopted in the third quarter of 2016, has not been submitted to the parliament yet.[6]

In cooperation with the Serbian Government Office for Cooperation with Civil Society, the Ministry of Justice invited civil society organisations to submit their suggestions of amendments to the constitutional provisions on the judiciary.[7]

The first "public consultations" on these provisions were held on 21 July 2017. Only associations that had submitted the amendments they were proposing in writing were given the floor. Each association was given five minutes to present its proposals but the participants were denied the opportunity to debate any of them. The Ministry of Justice did not present its proposed amendments on this occasion, or on any other occasion.

The Ministry of Justice continued the consultations without presenting a draft version of the constitutional amendments or organising a broad public debate that had been expected. It organised five more round tables in the autumn of 2017,[8]

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

4 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?pdffile=CDL-AD(2007)004-e).

5 Chapter 23 Action Plan, p. 31.

6 Report on the Implementation of the Chapter 23 Action Plan No. 3/2017, p. 6.

7 Available in Serbian at: http://www.civilnodrustvo.gov.rs/.

8 The second round table was held in Belgrade on 7 September, the third in Kragujevac on 26 September, the fourth in Niš on 13 October, the fifth on 30 October in Novi Sad and the sixth in Belgrade on 15 November 2017.

at which it provided several professional and non-government associations with the opportunity to present their views on the topics it itself had selected, without enabling any exchange of opinions and arguments or presenting its views. Some of the topics on the agenda were not even constitutional matter. Nor do they strengthen the independence of the judiciary. On the contrary, they provide mechanisms for strengthening political influence on the judiciary.

The round tables showed that the representatives of the legislative and executive authorities did not understand the principles of the separation of powers and rule of law. Some MPs said that the National Assembly and Government were not exerting any pressure on the judiciary and were actually guarantors of its independence.[9] Assistant Justice Minister Čedomir Backović, tasked with managing the EU accession process in the judiciary and state administration fields, and Justice Minister's Adviser Zoran Balinovac said that the other extreme of the courts' independence would be its self-sufficiency and cronyism, that judges and prosecutors wanted a judiciary that would be a dressmaker, "tailoring human destinies as they see fit", that independence has been fetishised, that it was an ideological myth and that judges and prosecutors wanted to take over power.[10]

Professional and civil associations repeatedly warned during the consultation process that the Justice Ministry's approach indicated that the decisions on the constitutional amendments would be taken by a small number of Government officials and that its intention was to present the consultations as a public debate, which they were not, either in scope or in substance. The associations called on the Justice Ministry to publicly present the constitutional amendments it proposed and restore the framework of the debate befitting the importance and seriousness of the topic – amendments to the highest law of the land.[11]

The professional associations of judges and public prosecutors published their joint baseline for the constitutional reform of the judiciary during the consultation process, alerting to the relevance of an independent judiciary for the rule of law and building of a democratic society. They also called on the executive and legislative authorities to openly debate the constitutional amendments and on the media to ensure objective coverage of the constitutional amendment process.[12]

Since the Justice Ministry did not react to civil society's appeals for transparency of the constitutional amendment process, the Judges' Association of Serbia, the Association of Public Prosecutors and Deputy Public Prosecutors, the Judicial Research Centre, the Association of Judicial and Prosecutorial Assistants, the Committee of Human Rights Lawyers (YUCOM) and the BCHR in October 2017 no-

9 Statement by Aleksandar Martinović, the Chief Whip of the Serbian Progressive Party (SNS), the strongest party in the ruling coalition.

10 See the *Peščanik* report, available in Serbian at: http://pescanik.net/bez-napretka-sa-nadom/.

11 The press release is available at: http://en.yucom.org.rs/press-release-on-public-debate-on-amendments-to-constitutional-provisions-on-the-judiciary/.

12 The baseline is available at: http://www.sudije.rs/index.php/en/aktuelnosti/constitution.html.

tified the public and the Ministry of Justice that they were withdrawing from the consultations. They again called on the Justice Ministry to do what all other participants in the consultations already have – present the constitutional amendments it was proposing and facilitate a comprehensive and substantial debate between the state authorities and society and thus provide legitimacy to the process – before it sent the draft to the Venice Commission for comment.[13]

Assistant Justice Minister Backović said that the Ministry would draft the constitutional amendments and submit them to the Venice Commission for comment and that an open and public debate on them would be organised.[14] This would not be in line with the order of the activities set out in the Chapter 23 Action Plan, under which the amendments are to be drafted, publicly debated, and then sent to the Venice Commission for comment. The statement made by Serbian Prime Minister in late December 2017 – that the first draft of the constitutional reform would be sent to the Venice Commission in January 2018 – is particularly concerning because it precludes a serious public debate on such an important legal act in such a short period of time, especially since the draft amendments were not publicly presented by the end of 2017.[15]

1.2. Fulfilment of the Chapter 23 Action Plan Activities Regarding the Judiciary

The Action Plan for Chapter 23 – judiciary and fundamental rights was adopted by the Serbian Government[16] on 27 April 2016, seven months after the European Commission confirmed it. The Chapter 23 Negotiating Group is chaired by the Justice Ministry, notably its Assistant Minister Čedomir Backović. 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.

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

13 The press release is available at: http://en.yucom.org.rs/withdrawal-from-constitutional-consultations/.

14 See the MoJ press release, available in Serbian at: https://www.mpravde.gov.rs/vest/17316/ministarka-kuburovic-sa-ekspertom-venecijanske-komisije-o-promenama-ustava-srbije-.php.

15 See the *B92* report: https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=12&dd=20&nav_id=.

16 The caretaker Government, since the early parliamentary elections were held on 24 April 2016 and the new Government had not been formed yet.

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 drafted three 2017 quarterly reports on the implementation of the Chapter 23 Action Plan until the end of the reporting period.[17]

The Council, however, does not have the capacity to assess the credibility of the data the institutions submit for the quarterly reports. CSOs participating in the National Convention on the EU (NCEU) Chapter 23 Working Group questioned the accuracy of the 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.[18]

Furthermore, the Chapter 23 Action Plan is expected to be amended in 2018 because of the evident delays in the implementation of its activities within the set timeframes. The Justice Minister said that the state may have been ambitious and optimistic in its plans, and that the Action Plan would be revised, but just the part specifying the deadlines.[19] The NCEU, for its part, thinks that the Action Plan also suffers from specific deficiencies in terms of content and set goals and that, rather than merely moving the deadlines by which the activities are to be fulfilled, the Plan should be thoroughly analysed and perhaps undergo comprehensive revision with a view to defining more precisely the goals and criteria against which their fulfilment is measured.

Judicial independence is definitely affected by its financial dependence on other government branches. The transfer of financial administration powers from the Justice Ministry to the High Judicial Council and the State Prosecutorial Council, which was to have been completed in the second quarter of 2016 under the Chapter 23 Action Plan, was postponed yet again.[20] The National Assembly amended the Act on the Organisation of Courts three times in the past two years, each time just the provision on the transfer of the budget-related powers (the transfer was

17 The Council's 03/2017 Report is available at: https://www.mpravde.gov.rs/files/Report%20no.%203–2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

18 See the *2016 Report,* I.5.2.1.

19 See the *Tanjug* report: http://www.tanjug.rs/full-view_en.aspx?izb=371672.

20 In late December 2016, the National Assembly adopted amendments to the Act on the Organisation of Courts, postponing the enforcement of these provisions for a year, until 1 January 2018. The amendments constitute provisions transfering the powers of the Ministry of Justice to the High Judicial Council. The initiator 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-92/2014 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-80/2014 of 21 April 2016, rendering ineffective paragraphs 2, 5 and 6 of Article 73 of the Public Prosecution Services Act.

delayed for the first time in February 2016, from 1 June 2016 to 1 January 2017,[21] then in December 2016, from 1 January 2017 to 1 January 2018,[22] and then again in December 2017, from 1 January 2018 to 1 January 2019).[23]

The initiative to review the constitutionality of the the Act on the Organisation of Courts and the one amending it, filed with the Constitutional Court by SNS Chief Whip Aleksandar Martinović in 2016, was still pending at the end of the reporting period. Martinović 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.[24]

1.3. Organisation of Courts and Judicial Appountments

Judicial powers in the Republic of Serbia are vested in courts of general and special jurisdiction. As of 1 January 2014,[25] the national court network is comprised of the Supreme Court of Cassation, four Appeals Courts, 25 Higher Courts and 66 Basic Courts – courts of general jurisdiction and the Economic Appeals Court, 16 Economic Courts, the Administrative Court, the Misdemeanour Appeals Court and 44 Misdemeanour Courts – courts of special jurisdiction.

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

In its analysis of the court network, the Anti-Corruption Council noted that the competent state authorities had not set clear and objective criteria for determining the number of courts to ensure everyone 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 number of 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.[26]

Under the Serbian Constitution, judges shall be appointed by the National Assembly and the High Judicial Council. The Constitution retained the principle of

21 *Sl. glasnik RS*, 13/16.

22 *Sl. glasnik RS,* 108/16.

23 *Sl. glasnik RS*, 113/17.

24 More in the *2016 Report,* I.5.2.1.

25 Act on the Seats and Jurisdictions of Courts and the Public Prosecution Services, *Sl. glasnik RS*, 101/13, in force since 1 January 2014.

26 The 2016 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.

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 first-time judges are nominated by the High Judicial Council and elected by the National Assembly, while the High Judicial Council appoints judges on permanent tenure.[27]

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. Such an assessment was made also by the Venice Commission which qualified it as a "recipe for the politicisation of the judiciary".[28] The political influence of the National Assembly on the judiciary arises from the very composition of the HJC.

Under the Constitution, 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. 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. With the exception of *ex officio* members, the other HJC members are appointed to five-year terms in office.[29]

Two new HJC members were appointed in 2017 – one to replace a member whose term in office had expired[30], and another, from among the ranks of law school professors, to replace a member who was appointed Constitutional Court judge[31]. The HJC continued operating all year without its 11th member, who is to be appointed from amongst attorneys at law.

27 Articles 146 and 147 of the Constitution. The Screening Report suggests the review of this provision as its authors are of the opinion that the probation period is very long.

28 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) paragraph 70.

29 Article 153 of the Constitution.

30 The press release is available in Serbian at: https://vss.sud.rs/sr-lat/saop%C5%A1tenja/novi-izborni-%C4%8Dlan-visokog-saveta-sudstva-iz-reda-sudija-stupio-na-funkciju-u-savet.

31 The National Assembly decision is available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2017/RS9–17.pdf.

Judicial vacancies were advertised on a number of occasions in the reporting period. By 10 December 2017, the HJC appointed 48 judges,[32] and the National Assembly elected three first-time judges[33] and five court presidents.[34]

The Act Amending the Act on Judges, adopted under an urgent procedure in May 2017,[35] amends the provisions on the duration of the terms in office of court presidents. The provision, under which court presidents were elected to five-year terms in office and could not be re-elected, was replaced by a provision laying down that they shall be elected to a four-year term in office and may be re-elected president of the same court once. The Act on Judges now also includes a brand new article, laying down that court presidents serving their five-year terms in office under the Act on Judges valid at the time of their election[36] shall continue working until their terms in office expire and are eligible for re-election, to a four-year term in office.[37] Article 74 of the Act on Judges was also amended: court presidents, who fulfil the retirement requirements whilst in office, shall continue serving as court president until their terms in office expire.[38]

According to press reports and the parliamentary debate on the amendments, the latter were pushed through because of several specific court presidents, in order to extend their terms in office or allow them to stay on although they fulfilled the retirement requirements.[39] Experts have consistently been warning that it is the court presidents through which the executive authorities usually exert pressure on the courts and that the adoption of these amendments, especially under an urgent procedure, have made the judiciary even more dependent on the executive.[40] The Judges' Association of Serbia expressed concern about the adoption of the amendments under an urgent procedure and in the absence of a proper public debate, noting that the reasons why it had to be adopted so urgently were not apparent in the

32 See the HJC press releases in Serbian at: https://vss.sud.rs/sr-lat/saop%C5%A1tenja/odluke-o-izboru-sudija-donete-na-sednici-visokog-saveta-sudstva-odr%C5%BEanoj-17102017-godine and https://vss.sud.rs/sr-lat/saop%C5%A1tenja/odluka-o-izboru-sudija-doneta-na-sednici-visokog-saveta-sudstva-od-24–10–2017-godine.

33 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2017/RS11–17.pdf.

34 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2017/RS10–17.pdf.

35 *Sl. glasnik RS*, 47/17.

36 *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, 108/13 – other law, 111/14 – US, 117/14, 40/15, 63/15 – CC Decision, 106/15 and 63/16 – CC Decision.

37 Article 3 of the Act Amending the Act on Judges, *Sl. glasnik RS*, 47/17.

38 Article 2, Act Amending the Act on Judges.

39 The *Danas* report is available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/menjali_zakon_samo_zbog_troje_sudija_.1118.html?news_id=302166.

40 The *N1* report is available in Serbian at: http://rs.n1info.com/a248871/Vesti/Vesti/Majic-o-novom-zakonu-o-sudijama.html.

explanatory note to the Draft Act submitted by SNS Chief Whip Aleksandar Martinović.[41]

The problems that arose during the general (re) appointment of all judges pursuant to the Constitutional Act for the Implementation of the Constitution[42] 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.[43] 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.[44]

In July 2017, the Association of Judicial and Prosecutorial Assistants filed an initiative with the Constitutional Court to review the constitutionality of specific provisions of the Act on Judges[45] and the Public Prosecution Services Act.[46] Under the impugned provisions, candidates running for the office of judge in Basic or Misdemeanour Courts or deputy public prosecutor in Basic Prosecution Services, who have completed initial training at the Judicial Academy, are not under the obligation to take the HJC and SPC tests. Their final grades at the Judicial Academy are considered proof of their qualification and competence. Furthermore, these provisions lay down that the HJC and SPC shall draw up the curriculum and the form of the test for assessing the candidates' qualification and competence.

The initiative, inter alia, states that the impugned provisions limit the constitutionally defined jurisdiction of the HJC and SPC, which, as autonomous and independent state authorities, independently nominate candidates running for the office of judge or deputy public prosecutor for the first time. Furthermore, in the opinion of the applicants, they jeopardise the HJC's and SPC's exercise of their constitutional duties to ensure and guarantee the independence and autonomy of judges and the autonomy of public prosecutors and their deputies, because they make the grades the candidates got at the Judicial Academy's initial training binding on these two bodies, defined as independent by the Constitution.[47] The Constitutional Court did not rule on this initiative by the end of the reporting period.

In 2017, the Constitutional Court launched treviews of the lawfulness of two Rulebooks, at the initiative of the Judicial Academy Alumni Club and the Association for the Protection of Constitutionality and Legality. The two associations disputed the lawfulness of the Rulebook on the Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates Running for Deputy

41 The *Blic* report is available in Serbian at: http://www.blic.rs/vesti/politika/drustvo-sudija-negoduje-zbog-izmena-zakona-o-sudijama/k09ytef.

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

43 See the *2012 Report*, II.5.3.1.

44 See the *2016 Report*, I.5.2.4.

45 Article 45a, Act on Judges.

46 Article 77a, Public Prosecution Services Act.

47 Available in Serbian at: http://www.ustp.rs/saopstenja-za-javnost.html.

Public Prosecutorial Office for the First Time[48] and the Rulebook on the Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Judges on Three-Year Tenure.[49] The Constitutional Court suspended the enforcement of individual enactments or actions undertaken pursuant to the impugned Rulebooks pending its final decisions on the initiatives, which it has rarely done to date. The decision suspending the enforcement of individual enactments and actions undertaken pursuant to the Rulebook on the Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates of Candidates Running for Deputy Public Prosecutorial Office for the First Time led to a several-month halt in the work of the SPC.[50]

The decision suspending the enforcement of individual enactments and actions undertaken pursuant to the Rulebook on the Criteria and Standards for Evaluating the Competence, Qualifications and Worthiness of Candidates for Judges on Three-Year Tenure was adopted on 21 December 2017. The very next day, on 22 December, the National Assembly Committee for the Judiciary upheld the HJC's nominations of first-time judges and six court presidents. Several days later, the Committee Chairman said he was sure the National Assembly would not review the HJC nominations due to the Constitutional Court's interim measure. He also asked, as the Chairman of the Committee, an MP and a law graduate, why the Constitutional Court had to wait for the completion of the entire recruitment procedure before deciding to initiate the review of the constitutionality and lawfulness of the Rulebooks and to indicate interim measures. He wondered whether that meant that some Alumni Club candidates or other candidates the offices had been reserved for had not been nominated.[51] The HJC Chairman said the HJC was already developing a new rulebook, which was to be adopted after the Christmas holidays and would unblock the judicial appointment procedure in Serbia and the work of the judiciary.[52]

The Association of Judicial and Prosecutorial Assistants applauded the promptness with which the Constitutional Court ruled on the matter and expressed hope that it would do so with respect to all issues, without exception, adding it expected the Court to rule just as promptly on other initiatives disputing the constitutionality or lawfulness of enactments governing the election of judges and deputy public prosecutors for the first time. In its view, the key reason for the problems identified with regard to the appointment of first-time judges and prosecutors do not lie in the HJC or SPC Rulebooks, adopted pursuant to the Act on Judges and the

48 See III.1.4.

49 Available in Serbian at: http://www.ustavni.sud.rs/page/view/156–102438/informacija.

50 See III.1.4.

51 See the *Politika* report, in Serbian at: http://www.politika.rs/sr/clanak/395345/Izbor-sudija-ipak-blokiran.

52 See the *RTV Vojvodina* report, available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/milojevic-pada-blokada-izbora-sudija_882049.html.

Public Prosecution Services Act respectively, but the provisions of these two laws, which directly discriminate against Serbian citizens applying for judicial office and which are binding on the HJC and SPC, wherefore the Constitutional Court has to review the constitutionality of the impugned provisions as soon as possible so as to enable the HJC and SPC to exercise their powers and nominate deputy public prosecutors and first-time judges without hindrance.[53] The Constitutional Court did not rule on the initiative challenging the constitutionality of the Act on Judges and the Public Prosecution Services Act, which was filed by this Association, by the end of the reporting period.

The Judicial Trainee Employment Rulebook[54] and the Prosecutorial Trainee Employment Rulebook[55] were adopted in October 2017. These Rulebooks lay down that the applicants for trainee jobs in the courts and public prosecution services shall be ranked on the basis of their law school GPA and test results. The Judicial Academy shall conduct the test, which carries more points than the GPA (60 and 40 respectively). The applicants may file a complaint on the number of their points, which shall be reviewed by the Academy Director; his decision is final. This provision violates the applicants' right to a legal remedy and their right to a fair trial before an independent and impartial tribunal established by law. Under these Rulebooks, neither the HJC and SPC, nor the courts and public prosecution services have a say in the selection of judicial and prosecutorial staff because the Judicial Academy will be the one deciding which applicants will be employed as trainees in the courts and prosecution services.

In its letter to the HJC in reaction to the Rulebook,[56] the Judges' Association of Serbia called on it to insist that the regulation of the status of court staff be entrusted to the HJC, as specified in the NJRS implementation plans. The Association of Judicial and Prosecutorial Assistants also reacted to the Rulebooks, warning that the impugned Rulebooks have transferred the testing of the applicants from the courts and public prosecution services to the Judicial Academy, an executive government institution. It alerted to the fact that court presidents and public prosecutors played a merely formal protocolary role in the employment of judicial and prosecutorial trainees, important categories of staff and that their role boiled down to appointing the Commission deciding on the applications and enacting rulings hiring the trainees.[57]

The professional and civil associations, which participated in the consultations on the constitutional amendments, unanimously voiced the view that the Judicial Academy's purpose was to train staff to maintain and/or improve the level of

53 Available in Serbian at: http://www.ustp.rs/saopstenja-za-javnost.html.

54 *Sl. glasnik RS,* 92/17.

55 *Ibid*.

56 Available at: http://www.sudije.rs/index.php/en/aktuelnosti/saopstenja-za-javnost/294-ministry-of-justice-solution-for-admittance-of-assistants-concerning.html.

57 Available in Serbian at: http://www.ustp.rs/saopstenja-za-javnost.html.

expertise of judicial staff. In view of the fact that the Judicial Academy is exclusively an educational institution, it should, as such, serve as a body that assists the the HJC and SPC, and definitely not as a body the activities of which decisively affect their recruitment decisions.

1.4. Public Prosecution Services – Organisation and Appointment of Public Prosecutors and Deputy Public Prosecutors

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.[58] The Serbian public prosecution services comprise the Republican Public Prosecution Service (RPPS), four Appeals Public Prosecution Services (APPS), 25 Higher Public Prosecution Services (HPPS) and 58 Basic Public Prosecution Services (BPPS). There are also two public prosecution services with special jurisdiction – the Organised Crime Prosecution Service (OCPS) and the War Crimes Prosecution Service (WCPS), both of which have jurisdication over the entire territory of Serbia. In addition, the Belgrade HPPS has a Cybercrime Department, which also has jurisdiction over the entire territory of Serbia. The autonomy of public prosecutors and deputy public prosecutors shall be secured and guaranteed by the State Prosecutorial Council, an autonomous authority established under the Constitution.[59]

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 the 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 amended during the revision of the Constitution.[60] 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 Constitution lays down that public prosecutors shall be nominated by the Government and elected to six-year terms in office by the National Assembly; they may be re-elected once. Deputy public prosecutors shall stand in for the public prosecutors in exercising prosecutorial duties and shall be obliged to act according to their instructions. Deputy public prosecutors appointed for the first time are nominated by the SPC and elected to three-year terms in office by the National As-

58 Constitution, Articles 156–165.

59 Constitution, Article 164.

60 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.

sembly. Thereinafter, the SPC appoints the deputy public prosecutors on permanent tenure to the PPS they are working in or to another PPS.[61]

The appointment of prosecutors is governed by the Public Prosecution Services Act.[62] 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.

In May 2017, the National Assembly finally elected the War Crimes Prosecutor and the public prosecutors of 18 Basic and Higher PPS. The term in office of the prior War Crimes Prosecutor, Vladimir Vukčević, expired on 31 December 2015 and the WCPS was managed by Deputy WCPS Milan Petrović as of 1 January 2016.

The National Assembly 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 a special SPC Commission,[63] which reviewed the candidates' programmes. Experts expressed concern about the results of its assessments.[64]

Back in September 2016, the SPC forwarded to the Government its list of nominees for the office of public prosecutors in 30 Basic and Higher PPS, including the three War Crimes Prosecutor nominees who scored the best results during the

61 Constitution, Article 159.

62 *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.

63 This Commission was charged with preparing and grading the written test and evaluating the candidates' organisation programmes and measures they proposed to improve the work of the public prosecution services.

64 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.

evaluation,[65] but it took the Government eight months, until April 2017, to forward the name of the WCPS nominee it endorsed to the National Assembly.[66]

On 16 May 2017, the National Assembly at long last elected the War Crimes Prosecutor[67] and only 18 public prosecutors. Eleven Basic and Higher Public Prosecution Services went on operating without public prosecutors at their helm. The MPs simply did not vote for them – neither for them nor against them, which was qualified as a precedent in the history of Serbia's parliamentarianism.[68]

The Commissioner for the Autonomy of Prosecutors, established under the SPC Rules of Procedure, said that the Assembly had not voted for some SPC nominees without an explanation or good cause, qualifying this as a bad message indicating that politicians were unwilling to give up their influence on the prosecutors despite all stentorian vows to the contrary.[69]

As noted above, 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 also sparked polemics in 2017.[70] The SPC adopted this Rulebook in September 2016 vith a view to introducing clear criteria in the procedure of nominating deputy public prosecutors. The Rulebook set out the eligibility requirements the candidates have to possess to be nominated for the office of deputy public prosecutor by the SPC and the tests based on which they are to be ranked. Members of the Judicial Academy and Association for the Protection of Constitutionality and Legality held that the Rulebook provided the SPC with excessive discretionary powers in ranking the applicants and was in contravention of the Public Prosecution Services Act[71] and filed an initiative with the Constitutional Court in late 2016, asking it to review its constitutionality. On 19 July 2017, the Constitutional Court decided to review the lawfulness of the Rulebook and indi-

65 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/drustvo/vladi-srbije-dostavljen-predlog-sa-tri-kandidata-za-tuzioca-za-ratne-zlocine/r2stmd0.

66 See the *Insajder* report, available in Serbian at: https://insajder.net/sr/sajt/vazno/4343/.

67 As noted in section III.7.4. of this report, the WCPS did not even have an Acting Prosecutor in the period between Vukčević's departure and 31 May 2017, when Snežana Stanojković took office.

68 See the *Blic* and *Večernje novosti* reports published on the website of the Association of Prosecutors and Deputy Public Prosecutors of Serbia, available in Serbian at: http://www.uts.org.rs/index.php?option=com_content&view=article&id=1296:presedan-u-skupstini-srbije-bez-sefa-i-dalje-11-tuzilastava-jer-poslanici-nisu-glasali-ni-za-ni-protiv&catid=56:vesti&Itemid=483.

69 See the *N1* report, available in Serbian at: http://rs.n1info.com/a249140/Vesti/Vesti/Goran-Ilic-Supstina-pokazala-da-tuzioce-bira-politika.html.

70 *Sl. glasnik*, 80/16.

71 These two associations were formed in 2016 and 2017 and have been actively engaged in the judicial reform discussions. They are of the view that only applicants who finish the Judicial Academy should be eligible for judicial offices, that the Judicial Academy should become a constitutional category and that the elected judges should give oath to the President of Serbia, which all guild associations have sharply opposed.

cated an interim measure suspending the enforcement of the Rulebook pending its decision.

The SPC published three announcements for 27 deputy public prosecutor vacancies in the meantime. In May 2017, the Judicial Academy Alumni Club claimed that, although it was well aware of the Constitutional Court's decision, the SPC had nevertheless published such vacancy announcements once a month on average, in order to nominate its favourite candidates for important offices in a legally questionable procedure and before the Court adopted its decision.[72] The Association of Public Prosecutors and Deputy Public Prosecutors, on the other hand, claimed that the Constitutional Court's interim measure suspending the recruitment process pending its decision applied only to future vacancy announcements, not the ongoing ones, which were organised in accordance with the prior Rulebook. The Association also said that the speed with which the Constitutional Court was acting and its interim measure was suprising given that it had not indicated such measures in many other cases when it had been expected to. It quoted in illustration the so-called "judicial reform", when it had refrained from indicating such measures despite the experts' expectations.[73]

The appointment of deputy public prosecutors was unblocked in September 2017, when the SPC adopted a new Rulebook on the Curriculum and Examination for Evaluating the Competence and Qualification of Candidates Running for Deputy Public Prosecutorial Office for the First Time.[74] Although the Judicial Academy Alumni Club said the SPC should have waited for the Constitutional Court's decision on the prior impugned Rulebook,[75] the Association of Prosecutors said that it sometimes took the Constitutional Court several years to rule on a case and that the SPC had to adopt the new rulebook in order to continue fulfilling its main role, notably to nominate deputy public prosecutors.[76]

On 14 December 2017, the SPC rendered a decision nominating 52 first-time prosecutors and submitted it to parliament for adoption.[77] After the decision was published, the Judicial Academy Alumni Club said that their source close to the SPC had forwarded them the list of nominees three days before the SPC's session at which it was adopted and that decisions on who would be nominated were taken elsewhere, not in the institutions. On the other hand, SPC members and representatives of professional associations said they agreed that an inquiry into how the list

72 See the *Danas* report, available in Serbian at: http://www.danas.rs/politika.56.html?news_id=346567&title=Alumni+klub+Pravosudne+akademije%3a+Stopirati+izbor+tužilaca.

73 Available in Serbian at: http://www.uts.org.rs/aktivnosti/vesti/1314-udruzenje-tuzilaca-ustavni-sud-ne-moze-da-blokira-konkurs.

74 *Sl. glasnik,* 82/17.

75 Available in Serbian at: http://www.alumni-pars.rs/novi-pravilnik-o-izboru-tuzilaca-donet-preko-noci/.

76 Available in Serbian at: http://www.uts.org.rs/aktivnosti/vesti/1332-drzavno-vece-tuzilastva-donelo-novi-pravilnik-za-izbor-tuzilaca.

77 Available in Serbian at: http://www.dvt.jt.rs/.

was leaked to the public should ensue but that they considered it part of the material for the SPC session.[78]

1.5. 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. Decisions thereof are taken by the High Judicial Council.[79] 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.[80]

Grounds for dismissal and the disciplinary liability of judges are governed by the Act on Judges.[81] 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 have been 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.[82] 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 2016 Annual Report,[83] published in March 2017, the HJC ruled on 12 appeals of Disciplinary Commission decisions that year. The HJC upheld seven appeals in their entirety and modified the Disciplinary Commission's rulings; in three cases, it upheld the judges' appeals of the severity of the penalty and in two cases the appeals of the Disciplinary Prosecutor. In one case, it found the judge guilty of a grave disciplinary offence and initiated the procedure for his dismissal, whereas, in the other cases it punished them by reducing their wages.

1.6. Pressures on the Judiciary

The integrity, independence and autonomy of action of judges and prosecutors have often been brought into question by the rash, and, on occasion, unlawful

78 See the *N1* report, available in Serbian at: http://rs.n1info.com/a349648/Vesti/Vesti/Odluka-o-kandidatima-za-tuzioce-doneta-van-institucija.html.

79 Constitution, Article 148.

80 More in the *2016 Report*, I.5.2.5.

81 *Sl. glasnik,* 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, 63/15 – CC Decision, 106/15, 63/16 – CC Decision and 47/17.

82 Article 29, Act on Judges.

83 The HJC 2016 Annual Report is available at: https://vss.sud.rs/sites/default/files/attachments/2016%20Annual%20Report.pdf.

actions of state officials and politicians. Announcements of arrests, trial outcomes and violations of the presumption of innocence have become commonplace. Such behaviour by the politicians undermines the already weak public trust in the judiciary and leaves the impression that it is dependent on the executive.

As far as political pressures on public prosecution services are concerned, the Chapter 23 Action Plan provides for the development of a clear procedure by which the SPC will publicly respond to cases of political influence on the work of public prosecution services. Although this activity was to have been implemented in the third quarter of 2016, the new SPC Rules of Procedure were adopted in March 2017.[84] The Rules of Procedure, inter alia, lay down that the SPC shall alert the public to political or other undue influence on the work of the public prosecution services once a year or more often, if necessary. They also set out that the SPC Deputy Chairperson shall alert the SPC of the existence of political or other undue influence on the work of the public prosecution services and that he shall in such cases act in the capacity of Commissioner for Autonomy.

The Commissioner for the Autonomy of Prosecutors shall act on the initiative of a prosecutor, in cases when the latter alerts to actions within the public prosecution services undermining prosecutorial autonomy or integrity. The Commissioner for Autonomy is entitled to act on such actions outside the public prosecution services of his own accord. While exercising his powers, he is entitled to peruse the prosecutors' cases, but only with the consent of the Republican Public Prosecutor. The Commissioner is, inter alia, authorised to take measures to raise awareness of the importance and substance of autonomy and institutional and professional integrity, alert to actions undermining them and propose measures aimed at strengthening them to the SPC, as well as to notify the SPC and public of the existence of political and other undue influence on the work of the public prosecution services.[85]

The Commissioner for Autonomy has to date found that political pressure was exerted on the work of public prosecutors and deputy public prosecutors on several occasions. His reports and recommendations, as well as other enactments of relevance to his work, are publicly available.[86]

Nearly eight out of ten of the 20% of the deputy public prosecutors, who dared take – took part in an anonymous survey conducted by the Association of Prosecutors and Deputy Public Prosecutors of Serbia and OSF, said they felt their work has been politically pressured. Sources of pressure varied, but the majority said that political pressures were most often exerted through the media (44%) or informal suggestions of their superiors (34%). Half of the respondents said politicians

84 *Sl. glasnik RS,* 29/17 and 46/17.

85 The SPC decision is available in Serbian at: http://www.dvt.jt.rs/wp-content/uploads/2017/09/Odluka-DVT-A-br.-39317-od-7.4.2017.pdf.

86 Available in Serbian at: http://www.dvt.jt.rs/poverenik-za-samostalnost/.

in power had commented their cases.[87] As many as 44% of the respondents said that politicians or interest groups were behind the media pressures.[88]

Survey results indicate that judges have been under pressure as well. As many as 44% of the 1,585 judges who had taken part in a survey conducted by the Judges' Association of Serbia,[89] said they had been pressured to render a particular decision. In his comment of the survey results, the President of the Supreme Court of Cassation said that judges under pressure should alert to them publicly, rather than through anonymous surveys, and stressed that no-one had ever complained to him of being under political pressure.[90]

In October 2016, the HJC adopted a decision amending its Rules of Procedure[91] pursuant to the Chapter 23 Action Plan. The Rulebook lays down the procedure for the HJC's public reactions to political influence on the work of courts..[92] In October 2017, the HJC expressed concern because of the unsuitable statements the politicians and state officials were making at the time society was debating amendments to the constitutional provisions on the judiciary. It said in its press release that "despite our obligations under the Act on Judges, Act on the Organisation of Courts, and the Government and National Assembly Codes of Conduct on the limits to which court decisions and proceedings may be commented, we are witnessing, on an almost everyday basis, statements by politicians and state officials in which they are commenting court decisions or proceedings and thus undermining the autonomy and independence of courts and judges, as well as public trust in the judiciary, and, furthermore, violating the presumption of innocence."[93]

Professional and civil associations and media have also been alerting to political pressures on the judiciary for years now, including in 2017. Although state officials have frequently vowed that they did not want to interfere in the work of the judicial authorities, 2017, 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.

An unprecedent attack on judicial independence occurred in late 2017. In his reaction to the first-instance judgment acquitting defendants, including former minister Predrag Bubalo, in the so-called Belgrade Port case that was delivered by the

87 See the *Danas* report, available in Serbian at: www.danas.rs/drustvo.55.html?news_id=359632&title=Policija+slu%C5%A1a+ministra%2C+a+ne+tu%C5%BEioca.

88 Available in Serbian at: http://www.uts.org.rs/aktivnosti/vesti/1398-pritisci-na-tuzioce-uvrede ljivi-statistika-porazavajuca.

89 More in the *2016 Report,* I.5.2.9.

90 See the *N1* report, available in Serbian at: http://rs.n1info.com/a235010/Vesti/Vesti/Milojevic-Sudije-javno-pricajte-o-politickim-pritiscima.html.

91 *Sl. glasnik RS,* 91/16.

92 More in the *2016 Report*, I.5.2.9.

93 Available in Serbian at: https://vss.sud.rs/sr/.

Belgrade Higher Court, Novi Sad Mayor and Deputy President of the ruling Serbian Progressive Party Miloš Vučević lashed out: "Your honours, who do you serve, the people or proven thieves? Who do you give oath to, your honours – the state, the Constitution and Serbia's legal order, or those filling your pockets while they are writing their own acquittals in your name? How much does your justice cost, your honours? How much does you honour cost when you are trying to convince all of us that thieves are not thieves?"[94]

The first to react to the statement were the Chairwoman of the Judges' Association of Serbia and the President of the Supreme Court of Cassation, who said that such an attack on the judiciary had never happened before, that it was all the worse because it was launched by a politician, and with a degree in law at that, and that no-one had ever commented on the work of courts in this way.[95] However, several days after he made the above statement, Miloš Vučević told reporters he had absolutely nothing to add to it, that he stood by his words and that he had said what most of the ordinary citizens were thinking, adding: "Talk about them being independent? Independent from whom? Go ahead, be independent from external power centres and tycoons, do not be independent from the people."[96]

Prime Minister Ana Brnabić also commented Vučević's statement, saying she fully understood his frustration and that this was further proof Serbia was definitely in need of judicial reforms.[97] Serbian President Aleksandar Vučić also commented his party colleague's statement and said he had told the truth about the situation in the judiciary, that some judges were dependent on the former ruling coalition made up of thieves and tycoons, and that they were now trying to convince the people that no-one was guilty because a tycoon got rich at the expense of the people, that this was appropriate and that anyone who said anything against that was guilty.[98]

The Supreme Court of Cassation issued a press release condemning Vučević's statement, specifying he had made it during a court proceeding and with respect to a judgment that was not final and qualified it as unsuitable, insulting, dangerous and harmful, as the grossest form of interference in the work of courts to date, disquieting the public, leading to the intimidation of judges and undermining the fundamental principles of a democratic society, in particular the principle of separation of powers. It recalled that all state authorities and officials were under the legal obliga-

94 See the *N1* report, available in Serbian at: http://rs.n1info.com/a352497/Vesti/Vesti/Izjava-Vucevica-o-sudijama-reakcije.html.

95 See the VoA report, available in Serbian at: https://www.glasamerike.net/a/nezapamceni-napad-na-sudstvo-u-srbiji/4183297.html.

96 See the *N1* report, available in Serbian at: http://rs.n1info.com/a352497/Vesti/Vesti/Izjava-Vucevica-o-sudijama-reakcije.html.

97 See the *N1* report, available in Serbian at: http://rs.n1info.com/a352497/Vesti/Vesti/Izjava-Vucevica-o-sudijama-reakcije.html.

98 See the *N1* report, available in Serbian at: http://rs.n1info.com/a352689/Vesti/Vesti/Vucic-Vucevic-rekao-istinu-o-stanju-u-pravosudju.html.

tion to foster trust in the impartiality and independence of courts and judges through their actions and that the statements by the topmost government officials not condemning Vučević's statements, but rather, expressing understanding for it, were further undermining the reputation of the judiciary on the whole.[99] Vučević's statement was also condemned by the High Judicial Council,[100] the Judges' Association of Serbia, the Serbian Bar Association,[101] and the Belgrade Bar Association.[102]

Serbian President Aleksandar Vučić also commented the status of the judiciary. In one of his public appearances, he said the Serbian judiciary was inefficient and subject to political influence, but that this was the legacy of the previous government. To prove the "brutality of political influence", he said that "Mišković's private judge" had officially become the vice-president or senior official of an opposition political party.[103]

The case of former judge Vladimir Vučinić had however been a synonym for political pressures on the judiciary for over a year. These political pressures were not exerted by the previous government but by the one headed by Aleksandar Vučić, as BCHR wrote in its prior annual reports.[104] Vučinić quit in February 2016 because of pressures exerted on him[105] and has worked as a lawyer since. In May 2017, the Administrative Court voided the HJC decision finding Vučinić's guilty of commenting court decisions in public and referred the case back to the HJC. The Judges' Association of Serbia emphasised that, although he had left the judiciary, Vučinić proved that by advocating his own freedom of expression, he proved that a judge, provided he is impartial and does not leave the impression of partiality, is entitled, like any other citizen, to the freedom of thought, conscience and expression, and that a judge is not only entitled to, but also under the obligation to express, exlusively from a professional point of view, his views on judicial measures and activities regarding the exercise of judicial duties, because that is an issue of public interest.[106]

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99 The press release is available in Serbian at: http://www.vk.sud.rs/sr-lat/saop%C5%A1tenje-op%C5%A1te-sednice-vrhovnog-kasacionog-suda.

100 The press release is available in Serbian at: https://vss.sud.rs/sr/.

101 Available in Serbian at: https://aks.org.rs/aks/wp-content/uploads/2017/12/Saop%C5%A1tenje-AKS-27.12.2017....pdf.

102 Available in Serbian at: https://akb.org.rs/vesti/saopstenje/.

103 Vučić was referring to Vladimir Vučinić, a former judge. After quitting in 2016, Vučinić opened a private law practice and joined the opposition People's Party in December 2017. Vučić's statement is available in Serbian at: https://beta.rs/vesti/politika-vesti-srbija/79678-vucic-neznam-na-koji-model-srbija-treba-da-se-ugleda.

104 More in the *2015 Report*, III.2.8.

105 See the *KRIK* report, available at: https://www.krik.rs/en/what-made-a-serbian-judge-quit/.

106 Available in Serbian at: http://www.sudije.rs/index.php/aktuelnosti/saopstenja-za-javnost/235–2017–07–21-08–11–47.html.

2. Functioning of Political Institutions

2.1. National Assembly – Democracy without Dialogue

During the reporting period, the majority of the National Assembly deputies, elected at the 2016 early parliamentary elections, were part of the ruling coalition led by the Serbian Progressive Party (SNS). The opposition parties in parliament included those urging EU accession and the rightist parties sharply opposing it. Although the latter did not have many seats in parliament, their deputies were extremely vociferous in 2017. The parliament had 14 deputy groups, two clubs of independent deputies and eight deputies, who were not members of any party. Ninety-one of the 250 deputies (36.4%) were women.

Under the law, the Assembly's regular spring sessions begin on the first workday in March. Speaker Maja Gojković did, indeed, schedule the first sitting for 1 March 2017, but it lasted only half an hour. As soon as the agenda was determined, she called a break at the request of the ruling parties, went to consult with the Serbian Government, and, upon return, said that the parliament was in recess until after the April presidential elections, albeit without good cause.[107] The decision caused an outcry among the opposition parties and the public, since it practically suspended the work of the parliament for more than a month, as the Speaker had scheduled the presidential elections for 2 April 2017. This practice was unprecedented in the history of Serbian parliamentarianism. The sitting was adjourned after a 48-day recess, on 19 April.

National Assembly statistics show that the legislature adopted 90 laws and held 10 regular, nine special and two extraordinary sittings in 2017.[108] The functioning of the National Assembly directly affects the democratic processes in the country, the adoption and content of the laws and human rights protection. However, the main impression of the parliament's work in the reporting period is that the deputies did not seriously debate the laws or amendments they were adopting, wasting hours on discussing issues unrelated to the legislative duties of the topmost representative authority in the country, on political self-marketing and on hurling indecent insults at their political opponents. Parliamentary dialogue was drowned out by vehement and unfitting outbursts of some deputies.

The parliament was the scene of innumerable unbecoming events bordering on incidents in 2017. One such incident occurred during the official visit to Serbia by EU High Representative for Foreign Affairs and Security Policy and Vice-President of the European Commission Federica Mogherini in March. Her speech at

107 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/politika/maja-gojkovic-sednica-skupstine-srbije-nastavlja-se-posle-predsednickih-izbora/yfrhnx4.

108 See the *N1* report, available in Serbian at: http://rs.n1info.com/a353833/Vesti/Vesti/Misevi-modrice-i-svadje-obelezili-2017.-godinu-u-Skupstini.html.

a special parliamentary sitting on 2 March was accompanied by interruptions and outbursts by the deputies of the Serbian Radical Party and *Dveri*.[109]

Opposition deputies complained that the way Speaker Maja Gojković was chairing the sessions and behaving contributed to the creation of such an atmosphere in the Assembly. They claimed she was violating the dignity of the deputies and arbitrarily interpreting the Assembly Rules of Procedure and using her office to issue reprimands, predominantly to opposition MPs. The latter allegation is corroborated by National Assembly statistics on penalties –of the 62 reprimands issued since the current deputies took office, only two were issued against deputies of the ruling coalition.[110] The parliamentary Rules of Procedure provide for three penalties that may be imposed on the deputies; all three involve fines deducted from the offending deputies' wages.[111] All the fines are paid into the National Assembly Solidarity Fund and go to charity.[112]

Gojković was also criticised for using the bell to signal to the deputies of the ruling coalition how to vote, as corroborated by the live TV coverage of the sittings.[113] Her conduct demonstrates that the deputies are merely part of the voting machinery, that there is no constructive dialogue in the parliament, that the deputies are not guided by the interests of the citizens who had voted them in and that they do not have due respect for the role of the topmost legislative authority in the country or their own role for that matter. In 2017, the Assembly continued with its practice of adopting laws under an urgent procedure (at the request of the Government) and without adequate public debate, despite its obligation to discuss the bills on the agenda before voting on them.

The National Assembly adopted laws impinging on the exercise of human rights despite the objections of some of the opposition parties. These included a set of laws on education,[114] the judiciary,[115] the national security agencies, et al. The parliament was also criticised for not opening a discussion on constitutional reform, especially in view of the fact that, under the Chapter 23 Action Plan, the amend-

109 See the *B92* report, available at: https://www.b92.net/eng/news/politics.php?yyyy=2017&mm=03&dd=03&nav_id=100671 and video footage of the sitting at: https://www.youtube.com/watch?v=iQDMTxE3ly4.

110 Veroljub Arsić and Aleksandar Martinović, deputies of the ruling SNS.

111 Under the Rules of Procedure, deputies reprimanded once shall be fined 10% of their monthly wage, deputies reprimanded twice 20% of their wage, deputies denied the floor 40% of their wage and deputies expelled from a sitting 50% of their wage. The last, most drastic penalty was imposed only on opposition deputies now sitting in parliament, notably, to three deputies of Enough is Enough.

112 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/politika/poslanike-su-svade-i-prozivke-kostale-700000-dinara-evo-ko-je-najvise-a-ko-najmanje/35tqh6w.

113 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/politika/zvonce-zbunilo-poslanike-vladajuce-vecine-glasali-za-predlog-opozicije-pa-ih-spasla/67g7djy. The video footage of the sittings is available at: https://www.youtube.com/watch?v=60ELC8dDBCk.

114 See more at II.16.2.

115 See more at III.1.

ments to the Constitution (or a brand new Constitution) were to have been adopted by the end of the year. As noted in this Report, the Justice Ministry launched a semblance of consultations on amendments to the constitutional provisions on the judiciary in 2017.[116] Inclusion of the potential constitutional amendments or the new Constitution on the agenda would have demonstrated that the Government was willing to hear what the deputies had to say and to open a frank and constructive dialogue, facilitate media reporting on the process and its own proposals, which will have far-reaching consequences on the citizens' lives and exercise of their fundamental rights, as representatives of international institutions, EU officials[117] and European Parliament members[118] warned as well. The deputies also disregarded their duty under the Chapter 24 Action Plan to review the existence of any potentially corruptive provisions in the laws they were adopting and to discuss how the valid laws affected the fight against corruption. Such analyses have been performed by the Anti-Corruption Agency, but mostly on its own initiative as such an obligation still is not stipulated by the law.[119]

The National Assembly did not review the reports by independent regulatory authorities in plenary session for the third year in a row, thereby clearly demonstrating the ruling majority's lack of understanding of their roles and its utter disrespect of their work, which resulted in undermining their relevance in the public's eye. The Assembly failed to review the Anti-Corruption Agency's Annual Report on the Implementation of the Anti-Corruption Strategy as well. The manner in which the members of the regulatory authorities were elected was also extremely problematic; almost as a rule, candidates nominated by the parliamentary majority were elected to these bodies, with the parliamentary committees refusing to endorse the nominees of the opposition parties, independent bodies or civil society or applying various mechanisms to thwart their election. This was the case several times in 2017, e.g. during the election of the new Protector of Citizens, War Crimes Prosecutor, members of the Electronic Media Regulatory Authority and Anti-Corruption Agency Board, et al.

As opposed to some prior convocations, when most parliamentary committees were chaired by opposition deputies, the deputies of the ruling SNS now chair ten of the 19 Assembly committees; three committees are chaired by opposition deputies and the rest by deputies of parties in coalition with the SNS. Some committees did not hold sessions regularly and opposition deputies did not attend the ones

116 More on the amendments to the constitutional provisions on the judiciary in III.1.

117 See the report on the speech by Bundestag Speaker Norbert Lammert in the Serbian Assembly: http://www.msp.gov.rs/en/press-service/daily-news?year=2017&month=06&day=16&mod id=62 merta.

118 See the *N1* report on the speeches by MEPs at the Assembly session in December 2017, available in Serbian at: http://rs.n1info.com/a350821/Vesti/Vesti/Delegacija-EP-u-Skupstini-Srbije-Skeniranje-napretka.html.

119 See page 21 of the Report, available at: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.

it did hold. The *PrEUgovor* (prEUnup) coalition, which monitors the fulfilment of the EU accession-related Action Plans and the work of the bodies implementing them, said in its report of October 2017 that the committee overseeing the work of security agencies had not held a session since the March recess and that there were no indications whether the opposition deputies had received confirmation on security clearance, wherefore it was quite likely that only the deputies of the ruling party would continue attending the sessions of the Committee, which were held behind closed doors.[120] The Committee for Constitutional Issues and Legislation and the Committee for Administrative Budgetary and Mandate and Immunity Issues were the most active parliamentary committees in terms of the number of sessions they held. The former held 33 sessions, which does not come as a surprise as all bills submitted for adoption have to be endorsed by it before they are voted on.

The deputies' public reputation suffered a blow when the daily *Blic* published the results of its survey showing that one out of five of them were also members of state bodies and authorities, management boards, et al. and receiving high fees for their engagement, in addition to their parliamentary wages.[121] The Assembly's operational costs, which are covered by the state budget, were exorbitant. The data of the Corruption Investigation Centre (CIC) indicated that the holding of one plenary sitting cost around 3.2 million RSD on average.[122] These costs would be warranted if the parliament were doing its job efficiently and fulfilling its most important role – overseeing the executive and adopting high quality laws. Instead, the Serbian tax-payers were paying for sittings used for mutual showdowns.

With the support of the OSCE Mission to Serbia and the Open Parliament Initiative, the Serbian Assembly and the Inter-Parliamentary Union organised an event to mark the International Day of Democracy on 15 September 2017 with a view to bringing the work of the parliament closer to the citizens. Representative of the NGO CRTA, which has been monitoring the work of the parliament and had published information on its work on its website Open Parliament, said that the Serbian Assembly was one of the most transparent institutions in the country, but noted that a survey CRTA conducted in 2017 showed that only a quarter of the citizens were willing to take part in the democratic processes and that half of the respondents learned about the work of the parliament through the media.[123]

120 *Ibid.*, p. 8.

121 See the *Blic* report on the survey, available in Serbian at: https://www.blic.rs/vesti/politika/mesecno-zaradjuju-od-500000-do-24-miliona-ovo-su-funkcioneri-sa-najmanje-dve-drzavne/kkj8r7x.

122 The Assembly was allocated 3.1 billion RSD in the 2017 budget; 613.4 million RSD was set aside for the work of deputies and 1.3 billion RSD for professional and administrative and technical support to the deputies. More on the Assembly's expenses per sitting is available in Serbian at: http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html%3A612486-Svaka-sednica-skupstine-kosta-nas-cak-32-miliona-dinara.

123 The Audit of Political Engagement in Serbia in 2017 is available at: http://crta.rs/wp-content/uploads/2017/12/Audit-of-political-engagement-Serbia-2017.pdf.

Back in 2013, CRTA and the National Assembly signed a Memorandum on Cooperation, which was broken off in December 2017, after CRTA issued a press release saying that the adoption of the most important national law, the one on the state budget, without a debate or discussion of the amendments, continued to undermine the parliament and that the ruling majority abused parliamentary rules and procedures, putting its party interests and daily politics before public interest. CRTA blacked out the Open Parliament website and the Speaker and her three Deputies responded by inviting CRTA to run in elections and check the popularity of its political platform although this association clearly had no intention of fighting for political power, stating its aim was to bring the parliament closer to the citizens and restore public trust in it.[124]

CRTA's press release was issued in reaction to the parliament sitting at which the deputies were to debate the Draft 2018 Budget Act. Namely, there is no doubt that the ruling coalition deputies filed over 300 amendments to the first few laws on the agenda on the rebalancing of the 2017 budget, in order to prevent the opposition deputies from criticising and commenting the Draft 2018 Budget Act. Since deputies are allowed to elaborate each of the amendments they propose for up to two minutes, 600 minutes were spent on explanations of amendments essentially identical in substance to the ones in the draft laws, which clearly demonstrates that the deputies of the ruling coalition abused the opportunity to submit and elaborate on their amendments to prevent a genuine discussion of a law of utmost importance and warranting serious debate in parliament.

The opposition deputies repeatedly warned that the parliament would run out of time to discuss both the amendments and debate the 2018 budget bill, but the Speaker's only response was that she had read the Rules of Procedure and that there would be enough time. When the deputies finally got to the Draft 2018 Budget Act, the parliament was left with 18 minutes to discuss it and the other 26 draft laws on the agenda. SNS Chief Whip Aleksandar Martinović, said that there would always be that many amendments and that time the opposition parties were given in parliament reflected the number of votes they had won at the elections.[125]

One other fact needs to be mentioned in relation to the results of the above-mentioned CRTA survey on low public willingness to engage in democratic processes: direct democracy mechanisms – the citizens' right to file submissions and petitions – are barely developed in the Serbian parliament. The Referendum and Popular Initiative Act was adopted back in 1994 and amended only once, in 1998.[126] Draft laws submitted by NGOs or civic groups were included in the Assembly agenda only several times. Only laws proposed by the Serbian Government made it on the agenda in 2017 as well.

124 See: http://otvoreniparlament.rs/.

125 See the *B92* and *RTS* reports on the sitting, available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2017&mm=12&dd=14&nav_id=1335976 and http://www.rts.rs/page/stories/ci/story/1/politika/2969214/poslanici-o-amandmanima-na-zakon-o-budzetskom-sistemu.htm.

126 See more at II.12.4.

2.2. Government of the Republic of Serbia – Are the Chapter 23 and 24 Action Plans Implemented?

Serbia was ruled by two Governments in 2017, the one headed by Aleksandar Vučić until he became head of state, and the one formed thereinafter, headed by Ana Brnabić. The Government's work was somewhat limited by the presidential elections, but not suspended like that of the parliament. Namely, the then Prime Minister decided to run for president, the election campaign began in March and ended in April, but he stayed on as Prime Minister until outgoing President Tomislav Nikolić's term in office expired.[127] This interim period definitely slowed down the Government's activities, while the controversial statements by Vučić and the members of his party and those in coalition with the SNS created a climate in which some ministers were unsure whether they would stay in office full term.

Finally, after giving his oath and assuming his new office and consulting with all parliamentary parties, President Vučić on 15 June proposed to the National Assembly to elect the then Minister of State Administration and Local Self-Governments Ana Brnabić Prime Minister. Brnabić and her Ministers were sworn in on 29 June, after several days of uncertainty whether she enjoyed the parliamentary support the SNS insisted on.[128] The new Government, essentially the reshuffled cabinet of the former Prime Minister, comprises 18 Ministers, three Ministers without Portfolio and four Deputy Prime Ministers.

The election of the Government clearly demonstrated that it was practically managing the work of the parliamentary majority. This conclusion was reached also by the NGO coalition *PrEUgovor*, which said in its Report on Serbia's Progress in Implementing the Chapter 23 and 24 Action Plans that the way in which the Act Amending the Act on Ministries[129] was adopted testified to the practice of tailoring the structure of the executive to the needs of the coalition partners and personal interests of the Government members, rather than to the application of pre-defined criteria.[130]

The greatest doubts about Brnabić's commitment to the fulfilment of the Chapter 23 and 24 requirements, which are crucial for respect for the rule of law,

127 There is no law specifying the deadline by which the newly-elect President is to give oath, which marks the official beginning of his five-year term in office. The Act on the President of the Republic lays down that the five-year term in office of the President shall be reckoned as of the day he gives oath in the National Assembly and end upon the expiry of his term in office or his resignation or dismissal.

128 The deputies of United Serbia, and the following opposition parties voted against the Brnabić Government: Enough is Enough, Democratic Party, Social-Democratic Party, Serbian Radical Party, Democratic Party of Serbia, the *Dveri* Movement, the Liberal-Democratic Party, the League of Socialists of Vojvodina, the deputies in the New Serbia – Movement for Serbia's Salvation deputy group, the deputies of SDA Sandžak and the New Party.

129 *Sl. glasnik RS*, 62/17.

130 The Report is available at: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.

media freedoms and human rights, arose when she listed digitalisation, education and economic development as her Government's priorities in her speech to the parliament. Progress in these fields is doubtlessly extremely important to overall national development, but so is the fulfilment of the requirements regarding democratisation, consistent fight against corruption, judicial independence, institution building, media freedoms and respect for fundamental rights.

The fulfilment of these requirements imposes upon the Government the obligation to implement the measures set out in the Action Plans for Chapter 23 (Judiciary and fundamental rights) and Chapter 24 (Justice, freedom and security). *PrEUgovor* has been regularly monitoring the fulfilment of these Action Plans, and has concluded that many of the activities they envisage have not been fulfilled at all or have been partly fulfilled.

Chapter 23 is extremely important for ensuring the establishment of an independent judiciary through constitutional reform. However, the Government in 2017 failed to demonstrate it genuinely intended to fulfil this obligation, as both the course of the consultations it organised and the constitutional amendments it drafted showed the tendency to increase the legislature's and executive's influence on judicial institutions.[131]

Chapter 23 also covers anti-corruption policies. However, most of those focusing on this issue pointed out that the activities set out in the Chapter 23 Action Plan and the Anti-Corruption Strategy and its Action Plan have not been fulfilled. The new laws on the Anti-Corruption Agency, origin of property, lobbying, financing of political activities and free access to information were still pending at the end of the year.

The Government's attitude towards its own Anti-Corruption Council was problematic. Rather than strengthening the capacity of this body, the Government's negligence resulted in the Council working with only 5 instead of its full complement of 15 members for a long time; in July, the Government appointed two new members albeit not the ones nominated by the Council.[132] Furthermore, the Government still has not published its follow-up to the 24 reports the Council forwarded it years ago. The Government Coordination Body for the Implementation of the 2013–2018 Anti-Corruption Strategy met extremely rarely. It remained unclear whether it had met at all since Brnabić took office in June 2017.

131 See more at III.1.

132 It was only a few days after the Government adopted its decision on the appointment of the two new members that the Anti-Corruption Council read in the Official Gazette who would be joining their ranks: retired Belgrade Law College Professor Vladan Jončić and retired Niš appeals public prosecutor Edvard Jerin. Jasminka Hasanbegović, a full professor of the Belgrade Law College accused him of plagiarism and resigned from a university council when he was reappointed associate professor. Jončić was one of the 650 signatories supporting Vučić's presidential candidature. See the *Radio Free Europe* report, available in Serbian at: https://www.slobodnaevropa.org/a/savet-za-borbu-protiv-korupcije/28635573.html.

PreEUgovor also said in its Report that the Government tried to demonstrate its commitment to fighting corruption by continuing with its large-scale arrests in 2017.[133] However, individuals suspected of corruption were arrested together with those suspected of other kinds of crimes, mostly economic crimes, and rarely charged with corruption, although it cannot be said the rate of corruption has been falling. Furthermore, statistical data on prosecution for corruption are not reliable, comparable or transparent and hardly any senior officials have been found guilty of corruption, or of violating the Anti-Corruption Agency Act or the Act on the Financing of Political Activities. [134]

PrEUgovor also said that some ministers occasionally came out with information about reported corruption, as did the anti-corruption bodies but that a campaign encouraging the members of the public to report corruption had not been launched. Those monitoring the enforcement of the extremely important Whistle-Blowers Protection Act[135] have assessed that it has not yielded satisfactory results, that it suffers from numerous deficiencies and has to be improved.[136]

PrEUgovor further stated that the number of criminal reports the MIA Internal Control Sector has been filing against police officers has been on the rise since 2008, and commended the arrests of several groups of policemen suspected of corruption, but noted that information on court decisions on these criminal reports was difficult to obtain.[137]

The Ministry of Internal Affairs is charged with the implementation of the Chapter 24 Action Plan, which deals with policies in the fields of justice, freedom and security, i.e. safety of the citizens, migration, asylum, border management and inter-state judicial cooperation.

In 2017, the Government endorsed the Draft Asylum and Temporary Protection Act and the new Aliens Act and submitted them to parliament for adoption. Neither law was, however, adopted by the end of the year, as the Chapter 24 Action Plan envisages. Despite the conclusion that Chapter 24 needs to be revised, it should be noted that some headway has been made in the coverage of migrant children by education, thanks to the excellent cooperation between the civil sector and government bodies.[138]

As regards the requirements with respect to the fight against terrorism, the Government adopted the 2017–2021 National Anti-Terrorism Strategy and its Action Plan. During the public debate on these documents, the CSOs called, inter alia,

133 See more at: II.3.3.

134 See more in: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml, pp. 26 and 27.

135 *Sl. glasnik RS*, 128/14.

136 More about the *Whistle-Blowers Protection Act* in the *2014 Report*, II.4.4.

137 See more in: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml, pp. 26 and 27.

138 More on asylum and migration in: IV.6.

for strengthening the role of local communities in stifling radicalisation and suggested that persons at risk of radicalisation not be limited only to persons in the prison and probation system. The CSOs also criticised the Strategy for focusing only on Islamic extremism and terrorism and neglecting other forms of extremism.[139] They expressed concern that a nationwide database on terrorism had not been set up yet; the state authorities said that the completion of this activity had to be moved to the second quarter of 2018 because the database had to brought into compliance with good personal data processing practices. Some CSO representatives were of the view that the authorities decided to postpone the implementation of this recommendation until the amendment of the Constitution, which lays down that personal data processing may be governed only by a law, not by secondary legislation, and that the constitutional reform may result in the change of that provision to permit the regulation of this area by by-laws.[140]

Some headway has been made in reforming the police. Vacancies (albeit not for all jobs) are published. The non-fulfilment of activities that are to ensure the operational independence of the police from political interests and crime elicited the most criticism, which is apparently justified given that the MIA Internal Control Sector's report on whose orders the police refused to respond to citizens' calls during the illegal demolition in Savamala in 2016 was not available in the public domain by the end of the reporting period, despite the recommendations of the Protector of Citizens.[141]

Chapter 24 also deals with the fight against organised crime, wherefore the Chapter 24 Action Plan accordingly sets out activities the police and prosecution services are to take to ensure effective investigations of crimes with elements of organised crime and the punishment of the perpetrators. Like in many other areas, there have been delays in fulfilling these activities. For instance, the deadline for the establishment of a centralised Criminal Intelligence System has been moved to 2018, which has consequently led to moving the deadlines for fulfilling the recommendation on the forming of strategic and operational groups at all levels (local, regional and central).

Headway was also registered in cooperation among law enforcement institutions, reflected in the improvement and links between databases, but this obligation has not been fulfilled entirely. The same may be said about the fight against cybercrime, where some headway has been made as well.

However, despite some progress in the fight against organised crime, not much has ultimately been done in this area. The mass arrests in 2017 left the im-

139 See more at: http://preugovor.org/Reports/1321/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.

140 See more in: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml, pp. 48.

141 More in the *Insajder* report, available in Serbian at: https://insajder.net/sr/sajt/tema/9183/Izve%C5%A1taj-unutra%C5%A1nje-kontrole-o-Hercegova%C4%8Dkoj-postoji-ministar-tvrdi-da-ne-postoji-jer-se-dopunjava.htm.

pression that the state was seriously combatting organised crime but the problem lay in the fact that many of the cases never made it to court.[142]

The Government was more active in the fight against human trafficking and, years after the prior Human Trafficking Action Plan expired, it at long last adopted the 2017–2022 Strategy for Preventing and Suppressing Trafficking in Humans, Particularly Women and Children, and Protection of Trafficking Victims[143] and its 2017–2018 Action Plan.[144] The Strategy provides for the establishment of an Anti-Human Trafficking Council and a Working Group for the Operational Implementation and Monitoring of the Strategy. Under the Strategy, CSOs shall participate in assessing, monitoring and reporting on the implementation of the Strategy on an equal footing and five organisations selected by the Government Office for Cooperation with Civil Society will take part in this activity.

The CSOs had quite a few objections about the Strategy. One of them regarded the allocation of funding, because a large amount of funds was set aside for the activities of the Ministry of Culture and Information and much less for the Ministry of Internal Affairs and the Ministry of Labour, Employment and Veteran and Social Issues, the state institutions crucial for combatting trafficking in humans. They also criticised some personnel changes: the individual appointed in lieu of the Director of the Centre for the Protection of Victims of Human Trafficking, who was unexpectedly dismissed in August 2017, apparently had no experience either in social protection or in the fight against human trafficking. NGOs specialised in extending assistance to human trafficking victims also said that the Centre continued with its practice of referring the victims to them only when the state was unable to assist them. They also criticised the authorities for failing to open a specialised shelter for the emergency accommodation of human trafficking victims (especially child victims), which was to have been established back in 2012, wherefore child victims were usually sent to orphanages or foster families, where they were not provided with specialist assistance and support in dealing with the traumas they had experienced.[145]

In sum, it may be concluded that there have been major delays in implementing the recommendations in the Chapter 23 and 24 Action Plans and, consequently, in aligning national law and practices with European standards and that the deadlines have been constantly moved. Serbia has to apply to set measures much more seriously, thoroughly and consistently if it really wants to join the EU.

142 See more at II.3.3.

143 *Sl. glasnik RS*, 77/17.

144 This is particularly important if one takes into account that the Strategy was adopted with a six-year delay, which led the State Department to put Serbia on its Watch List in its June 2017 Trafficking in Persons Report, available at: https://www.state.gov/documents/organization/271339.pdf.

145 More on the situation of human trafficking victims and the trials in which they often have to face the traffickers and be exposed to repeated trauma in the *PrEUgovor Report,* available at: http://preugovor.org/Reports/1384/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml, pp. 44–46.

The European Commission came to a similar conclusion in its Non-Paper on the State of Play Regarding Chapters 23 and 24 for Serbia published in November 2017. The EC noted poor progress in the fulfilment of the rule of law obligations in the Action Plans because implementation was still at an early stage in many instances. It noted some headway in the area of the judiciary but said that little concrete progress was made in anchoring an objective and merit-based system for the appointment of judges and prosecutors and a delay in activities aimed at establishing an effective, transparent and country-wide system to process cases. The EC took note that the adoption of the prosecutorial strategy was further delayed, as were other activities aimed at enhancing the output of the Serbian war crimes prosecution. The EC concluded that there was no progress in ensuring effective monitoring in the area of anti-corruption and that there was a serious delay in the adoption of the Anti-Corruption Agency Act and the new Act on the Financing of Political Activities. The Commission commended the achieved progress with providing education in minority languages and Serbian as a second language and the adoption of the Action Plan for the Implementation of the 2016–2025 Roma Social Inclusion Strategy, but noted the delay in the adoption of laws on the status of minorities and their national councils, free legal aid, personal data protection, gender equality and improvement of the public information system.

The EC voiced fewer criticisms about the implementation of the Chapter 24 recommendations, but it did note Serbia needed to adopt an effective asylum procedure in line with the *acquis* and step up efforts in the areas of financial investigations, anti-money laundering and assets' seizure and confiscation.[146]

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

3.1. 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 and the 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

146 The Non-Paper is available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24.1.pdf.

(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)[147] 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.

Nine new Constitutional Court judges were elected in late 2016. Like the previous elections of Constitutional Court judges, these, too, were conducted in the absence of clearly defined rules and criteria. Nor was the Venice Commission's recommendation that the procedure for electing and appointing Constitutional Court judges had to secure guarantees of independence heeded.[148]

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, including a court decision, 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, CCA).

The Constitutional Court has practically assumed 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.

3.2. Reviews of Constitutionality and Legality

The Constitutional Court of Serbia is charged with the judicial control of the compliance of national law with Serbia's international obligations. Under Article 167 (1(1and 2)) of the Constitution, 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 ought to help avoid situations of Serbia violating

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

148 More in the *2016 Report*, I.5.1.1.

its obligations under a treaty it has ratified. Unfortunately, the Court has very rarely made use of this opportunity.

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 promulgated (Art. 169).[149] The Court is not constrained by the submitted initiative and may continue the review even if the initiator abandons the initiative. 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).[150] The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a constitutional right.[151]

In 2017, the Constitutional Court failed to display enough efficiency and rule on some initiatives challenging the constitutionality of laws directly affecting the judicial reform, which should have been the priority. One such initiative, filed back in 2016, challenges the constitutionality of the provisions transferring judicial administration powers, including budget-related powers, to the High Judicial Council; consequently, the parliament again deferred the enforcement of these provisions, this time to 1 January 2019.[152]

Another initiative not ruled on by the Constitutional Court was filed in July 2017 by the Association of Judicial and Prosecutorial Assistants, which challenged the constitutionality of specific provisions of the Act on Judges[153] and the Public

149 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.

150 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.

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

152 See more at III.1.2.

153 Article 45-a, Act on Judges.

Prosecution Services Act.[154] Under the impugned provisions, candidates running for the office of judge in Basic or Misdemeanour Courts or deputy public prosecutor in Basic Prosecution Services, who have completed initial training at the Judicial Academy, are not under the obligation to take the HJC and SPC tests. Their final grades at the Judicial Academy are considered proof of their qualification and competence.

On the other hand, the Constitutional Court displayed commendable efficiency with respect to initiatives filed by the Judicial Academy Alumni Club and the Association for the Protection of Constitutionality and Legality[155] and ordered the suspension of enforcement of individual enactments or actions undertaken pursuant to HJC and SPC rulebooks, which directly impacted on the procedure for the appointment of first-time judges and deputy public prosecutors.[156] Its promptness caused much surprise in view of the fact that the National Assembly Committee for the Judiciary had scheduled, for the following day, its session to discuss candidates for the posts of first-time judges and six court presidents.[157]

The initiative to review the constiutionality of the Budget System Act and Budget Act filed by the leader of the League of Social Democrats of Vojvodina Nenad Čanak was not reviewed by the Constitutional Court in 2017.

The same fate befell the initiative filed with the Constitutional Court by the pensioner's trade union in 2016. Such an initiative was first submitted to the Court as soon as the Provisional Pension Payments Act, [158] under which all pensions over 25,000 RSD were progressively reduced, was adopted. The Constitutional Court reviewed the constitutionality of the law cutting the pensions and held it was not in contravention of the Constitution, which does not guarantee the amounts of the pensions. It justified the Government decision by the need to preserve the financial sustainability of the pension system and ensure the regular payment of the pensions, the fact that the vast majority of pensioners were not affected by the austerity measures and that the measures were provisional in character.[159]

The Constitutional Court did not review the 2016 initiative until the end of the reporting period. The pensioners said they would start filing individual lawsuits

154 Article 77-a, Public Prosecution Services Act.

155 These two associations were formed in 2016 and 2017 and have been actively engaged in the judicial reform discussions. They are of the view that only applicants who finish the Judicial Academy should be eligible for judicial offices, that the Judicial Academy should become a constitutional category and that the elected judges should give oath to the President of Serbia, which all guild and professional associations have sharply opposed.

156 See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=365813&title=Ustavni+sud+blokirao+izbor+sudija.

157 See more at: III.1.3. and III. 1.4.

158 *Sl. glasnik RS*, 116/14 and 99/16.

159 See more in the *2015 Report*, I.4.5.1.

with the domestic courts and, if the initiative was dismissed, complain to the European Court of Human Rights.[160]

The Fiscal Council, which agreed that the reduction of the pensions could contribute to financial consolidation in 2014, at the time the austerity law was enacted, said on the eve of the adoption of the 2018 Budget Act that the measure had achieved its purpose, that the crisis that was looming has been avoided and that it was now possible to make the first step towards permanently ordered public finances; it said that growth of pensions and salaries in the public sector in 2018 was economically justified, but should not be higher than 5% on average.[161]

4. Independent Regulatory Authorities – Independent or Not?[162]

The Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for the Protection of Equality, the State Audit Institution and the Anti-Corruption Agency presented their 2016 Annual Reports at the sessions of the National Assembly Committees. However, the reports of the independent regulatory authorities 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.

160 See the *N1* report, available in Serbian at: http://rs.n1info.com/a347184/Vesti/Vesti/Penzioneri-traze-pravdu-na-sudu.html.

161 See the Fiscal Council's document Fiscal Trends in 2017 and Recommendations for 2018, available at: http://www.fiskalnisavet.rs/doc/eng/Summary%202017.pdf. Fiscal Council Chairman Pavle Petrović said that pensions were an acquired right and linked to contribution payments and that if the austerity measures were successfully challenged in court, the state would have to bear additional costs in the future. More on the pension cuts in Istinomer's report, available in Serbian at: https://www.istinomer.rs/clanak/2120/Koliko-su-penzioneri-platili-konsolidaciju.

162 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. It 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 submitted to the National Assembly every March and published on their websites.

4.1. Protector of Citizens of the Republic of Serbia

Under the Constitution and the Protector of Citizens Act,[163] the Protector of Citizens shall be an autonomous and independent state authority charged with protecting and improving civil rights and freedoms, minority rights 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.[164] The Protector of Citizens shall account for his work to and be elected and relieved of duty by the National Assembly.

The Republic of Serbia also has a Vojvodina Provincial Ombudsman, who has a General Deputy and three Deputies charged specifically with the rights of the child, gender equality and minority rights. Zoran Pavlović assumed the office of Provincial Ombudsman in November 2016.[165]

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 authorities, with the aim of fostering the exercise of fundamental human rights and freedoms.[166] 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 members of the public may contact by e-mail.[167]

Saša Janković resigned from his second five-year term in office as Protector of Citizens[168] on 7 February 2017, when he officially began preparing his campaign for the presidential elections held in April.[169] Some representatives of the ruling majority derided and tried to discredit Janković when he decided to run for president. Like in 2016, in particular, he was again the target of similar attacks and frequent accusations in the pro-regime media, this time because he was allegedly abusing his office in pursuit of his political ambitions.[170]

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

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

165 The Provincial Ombudsman and his Deputies are nominated by the Protector of Citizens and elected to six-year terms in office by the Vojvodina Provincial Assembly.

166 Protector of Citizens Act, Article 34.

167 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.

168 The Protector of Citizens has four Deputies, charged with protecting the rights of the child, of persons with disabilities, of persons deprived of liberty, of national minorities and gender equality. They are nominated by the Protector of Citizens and elected by the National Assembly.

169 "Saša Janković Resigning Tomorrow," *Danas*, 6 February 2017, available in Serbian at: http://www.danas.rs/politika.56.html?news_id=338068&title=Sa%C5%A1a+Jankovi%C4%87+u+utorak+podnosi+ostavku.

170 More in the *2014 Report*, II.4.4.2., *2015 Report*, III.3.3.2. and *2016 Report*, I.5.3.1.

The election of the new Protector of Citizens was quite politicised as well. After Saša Janković stepped down, the Office was temporarily run by his Deputy Miloš Janković, charged with the rights of persons deprived of liberty. Miloš Janković was one of the four candidates who ran for the office of Protector of Citizens; his nomination by several opposition parties was supported by over 80 human rights NGOs.[171] However, the National Assembly Constitutional Issues and Legislation Committee (CILC), to which the party caucuses submit their nominations, proposed that the National Assembly elect, under an urgent procedure, Zoran Pašalić, the then President of the Misdemeanour Appeals Court, nominated by the caucuses of three parties in the ruling coalition, the SNS, the SPS and the Movement of Socialists.[172] Pašalić was the only candidate the Assembly discussed since the CILC dismissed the other nominations.[173] Public apprehension that the ruling parties would make sure an individual affiliated with them would be appointed Protector of Citizens led to a heated debate at the CILC session whether this authority would remain independent and whether the candidates were essentially loyal to the parties that had nominated them, a commonplace occurrence on Serbia's political stage.

Article 5 of the Protector of Citizens Act lays down the requirements the Protector of Citizens must fulfil: he must have a degree in law, at least ten years of experience in legal matters of relevance to performing the duties within the purview of the Protector of Citizens, superior moral and professional qualities and prominent experience in human rights protection. Some experts and opposition parties criticised Zoran Pašalić's election, because, apart from holding a degree in law, he, in their view, did not fulfil the chief requirements for holding this important office and had no experience in human rights protection. In their opinion, he was elected just because he had been nominated by the deputies of the ruling parties.[174]

The CILC's dismissal of the nomination of the civil society's candidate caused much concern. Miloš Janković has been the Deputy Protector of Citizens and involved in human rights protection and promotion for years and his results have been acknowledged internationally as well – he is a member of the UN Subcommittee on Prevention of Torture. During that time, the Office of the Protector of

171 "DS and SDS Nominate Miloš Janković Protector of Citizens, *N1*, 11 July 2017, available in Serbian at: http://rs.n1info.com/a282549/Vesti/Vesti/Milos-Jankovic-kandidat-za-ombudsmana.html.

172 "Zoran Pašalić Running for Ombudsman," *Politika*, 14 July 2017, available in Serbian at: http://www.politika.rs/sr/clanak/384899/Zoran-Pasalic-kandidat-za-novog-Ombudsmana.

173 Serbian Radical Party nominated Ekaterina Marinković and Enough is Enough Vojin Biljić, more is available in Serbian at: https://insajder.net/sr/sajt/vazno/5864/Odbor-predlo%C5%BEio-da-Pa%C5%A1ali%C4%87-bude-izabran-za-za%C5%A1titnika-gra%C4%91ana-po-hitnom-postupku.htm.

174 The opposition fiercely criticised Zoran Pašalić's election, noting that it took him 13 years to graduate from college and that his GPA stood at 6.7 (on a scale of 6 to 10, six being the lowest grade), that he had ties with the Partizan and Red Star soccer clubs and that he had no experience in human rights. More is available in Serbian at: http://www.blic.rs/vesti/drustvo/kaznio-tadica-zbog-sampanjca-na-stadionu-13-godina-studirao-prosek-673-sta-sve-znamo/8866ve0.

Citizens succeeded in preserving its integrity and impartiality despite all the challenges, public criticisms, attacks and difficulties it faced and to perform its duties in the interests of those it was established for in the first place – the citizens and the protection of their rights. This is why the civil society expressed its deep apprehension that the independence of the Protector of Citizens Office, as well as its endeavours to put pressure on and oversee the executive, would diminish and that it would come under the influence of the ruling clique.

The National Assembly elected Zoran Pašalić the Protector of Citizens in July 2017. Soon after he was sworn in, he focused on meeting and talking with people in Serbia, first in Belgrade and then elsewhere. Pašalić introduced the practice of receiving members of the public every last Friday of the month. Soon after he took over, he held meetings with civil sector representatives, who alerted him to the most frequently violated rights in Serbia and the problems their organisations faced. The Protector underlined the importance of cooperating with NGOs, which play an important role in the protection of human rights and freedoms.[175] He said a nationwide database of NGO expert papers and analyses of laws and by-laws affecting human rights would be set up, inter alia, to facilitate the general public's and the human rights experts' access to this material.[176]

In the light of the pending amendments to the Protector of Citizens Act, one of Serbia's obligations under the Chapter 23 Action Plan, the Protector of Citizens in 2017 established cooperation with the Ministry of State Administration and Local Self-Governments, which cooperated on the implementation of the TAIEX Expert Mission.[177] The Mission focused on the legislative framework governing the work of the Protector of Citizens. The Mission experts concluded in their Visit Report that the work of the Ombudsman was well-accepted among people and gaining in recognition. They, however, noted certain disputes in relations between the Ombudsman and the lawmaker, and specified that the "fact that the Parliament has not put on the agenda the Ombudsman's annual report for two years and that they have not acquainted themselves with the situation of human rights and freedoms nor with proposals and recommendations put forward by the Ombudsman is unacceptable for democratic decision-making."

The authorities said they expected that the work on amending the Protector of Citizens Act would be completed by December 2017. Zoran Pašalić said he expected that the amendments would extend the powers of the Protector of Citizens,

175 More is available on the Protector of Citizens' website in Serbian see, e.g.: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5388-yucom-a.

176 More is available on the Protector of Citizens' in Serbian at: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5429-z-sh-i-ni-gr-d-n-z-f-r-ir-nj-b-z-p-d-s-rucnih-r-d-v-u-bl-s-i-ljuds-ih-pr-v.

177 The Report on the visit, which took place in March 2017, is available at: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5311-d-s-vlj-n-izv-sh-p-s-i-sp-r-p-v-d-n-vlj-nih-iz-n-z-n-z-sh-i-ni-u-gr-d-n.

and that the salaries of his staff would be raised and his salary cut.[178] The ruling parties' criticisms of the high salary Saša Janković was receiving was qualified as sheer populism by the opposition.[179]

The amendments to the Protector of Citizens Act are to guarantee and further strengthen the independence of this authority, which is essential for its proper and unobstructed work. Pašalić invited civil society organisations to take part in the legislative process and forward their observations and suggestions.[180] In his view, the involvement of the representatives of human rights NGOs is crucial, because their professional and credible opinions can help improve the quality of the amendments. The draft amendments were not, however, publicly available by the end of the reporting period although the Ministry of State Administration and Local Self-Governments said in its letter,[181] in which it commented the Protector of Citizens' 2016 Annual Report, that it had formed a Working Group charged with drafting the amendments on 3 November 2016. A serious public debate should be conducted once these amendments are tabled, especially if the legislator upholds the Protector's idea to extend his powers to cover oversight of the judiciary, a point most professional and civic associations disagree with.[182]

As noted also by the TAIEX mission, the National Assembly has failed to review the Protector of Citizens' Annual Reports, which include data on the work of the Office, the number of complaints it received and processed, assessments of the state of human and minority rights and areas in which they are violated the most frequently, the problems and deficiencies in the work of administrative authorities and suggestions on how to address them. In 2017 again, the Acting Protector of Citizens Miloš Janković submitted the 2016 Report[183] by the statutory deadline, but the National Assembly, for the third year in a row, failed to fulfil its legal obligation and review it. The Ministry of State Administration and Local Self-Governments was the only authority to have sent the Protector of Citizens its responses to the sections of the Report referring to its purview.[184]

178 "Ombudsman Pašalić Wants Lower Salary, but More Powers," *N1*, 31 July 2017, available in Serbian at: http://rs.n1info.com/a287688/Vesti/Vesti/Ombudsman-zeli-sira-ovlascenja.html.

179 The monthly wage of the Protector of Citizens is laid down in the Protector of Citizens Act, under which it shall equal that of the President of the Constitutional Court.

180 "Invitation to Civil Society Organisations to Involve Themselves in the Protector of Citizens Act Amendment Procedure," 3 October 2017, more is available in Serbian at: http://www.ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5465-p-ziv-rg-niz-ci-civiln-g-drush-v-d-s-u-ljuc-u-p-s-up-iz-n-z-n-z-sh-i-ni-u-gr-d-n.

181 The Ministry's letter is available in Serbian at: http://www.ombudsman.rs/attachments/article/5302/odgovor%20ministarstva%20drzavne%20uprave%20.pdf, p. 1.

182 See: http://www.blic.rs/vesti/politika/pasalic-treba-menjati-zakon-o-zastitniku-gradana/8v2w8fp.

183 The Protector of Citizens 2016 Annual Report is available at: http://ombudsman.rs/attachments/article/5189/Godisnji%20izvestaj%20Zastitnika%20gradjana%20za%202016.%20godinu.pdf.

184 The Ministry's letter is available in Serbia at: http://www.ombudsman.rs/attachments/article/5302/odgovor%20ministarstva%20drzavne%20uprave%20.pdf.

The Serbian Government initiated the establishment of a special Ombudsperson for the Rights of the Child,[185] an idea discussed in 2016 as well. Its main argument was that the establishment of such an Ombudsman would ensure stronger oversight of the administration's protection of the rights of the child. Miloš Janković qualified the move in the 2016 Report as yet another form of threat to and pressure on the Protector of Citizens institution and aimed at undermining its importance and diminishing its competences.[186]

Media continued reporting on the controversial 2016 Savamala scandal in 2017 as well. The opposition and civic groups continued mounting various campaigns and appealing to the authorities to pressure the relevant bodies into finally resolving the case and punishing those responsible for it. In September 2017, Zoran Pašalić said that he had not yet received from the Ministry of Internal Affairs the report on the case prepared by the MIA Internal Control Sector and that he would react accordingly once he did, but that this case was not a priority.[187] Moreover, Pašalić qualified this burning issue as "too politicised",[188] which gives rise to suspicions that he will not pressure the authorities into solving it or oversee the executive. He explained that the Protector of Citizens could only issue recommendations to the relevant institutions to correct their mistakes and, if they went unheeded, recommend the dismissal of the public officials who had made them. Under Article 17 of the Protector of Citizens Act, the Protector is vested with the following powers: to control respect for civil rights by the national administrative authorities, establish violations of national laws, other regulations and general enactments resulting from the actions, non-actions and enactments of the administrative authorities and oversee the lawfulness of their work.

During his checks of the lawfulness of the work of the Ministry of Education, Science and Technological Development the Čačak City Administration, and secondary Medical and Culinary-Hospitality Schools, the Protector of Citizens found that they had failed to take the measures within their remit to protect the pupils, who reported abuse, ill-treatment and harassment by their teachers. Only the Ministry of Education took measures[189] recommended by the then Acting Protector

185 "Children, Too, Will Have Their Ombudsman," *Politika,* 3 March 2017, available in Serbian at: http://www.politika.rs/sr/clanak/373477/I-deca-ce-imati-svog-ombudsmana.

186 A Deputy of the Protector of Citizens has been charged with and, indeed, successfully protected the rights of the child ever since this authority was established ten years ago.

187 "Pašalić: Protector Has Not Received the MIA Internal Control Sector's Report on Savamala," *Blic,* 8 September 2017, available in Serbian at: http://www.blic.rs/vesti/drustvo/pasalic-zastitnik-nije-dobio-izvestaj-unutrasnje-kontrole-mup-a-o-savamali/yejwmph.

188 See the Blic report of 8 August 2017, available in Serbian at: https://www.blic.rs/vesti/politika/pasalic-slucaj-savamala-previse-politizovan/j7ekmgv.

189 See the Protector of Citizens opinion and recommendations (in Serbian) at: http://ombudsman.rs/index.php/2012–02–07–14–03–33/5161-n-dl-zni-nisu-pr-duz-li-r-p-v-d-pri-v-uc-ni-d-su-d-ziv-li-s-su-ln-zl-s-vlj-nj-zl-up-r-bu-i-uzn-ir-v-nj-d-s-r-n-n-s-vni.

of Citizens and introduced some additional measures,[190] which is definitely a good practice example to be followed by all state authorities.

In August 2017, the Protector of Citizens found that the Serbian Chamber of Commerce made 80 staff redundant under invalid criteria, on the pretext that there were justified reasons to abolish their jobs; soon afterwards, however, the Chamber adopted a new Internal Organisation and Staffing Rulebook envisaging a greater number of jobs and hired new staff to perform them.[191] In November 2017, the Protector of Citizens found that the Ministry of Mining and Energy had violated the good governance principles and the complainant's rights, because it had inadequately responded to his numerous written petitions.[192]

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.

In August 2017, the Protector of Citizens appealed to the Health Ministry to change the name of the Republican Expert Commission for the Treatment of Transgender Disorders into the Republican Expert Commission for Transgender Conditions and to the Republican Health Insurance Fund (RHIF) to do the same in its Rulebook on Exercise of Mandatory Health Insurance Rights. The Protector said that such a move would help reduce the stigmatisation and improve the status of trans persons and the degree in which they exercised their rights and that the new name would be in keeping with generally accepted international rules and standards.[193] The Health Ministry and RHIF replied to the Protector of Citizens in October 2017, specifying they had acted on his recommendations.[194]

The Protector of Citizens issued his opinions on a number of draft laws in the reporting period. He, inter alia, reviewed the Preliminary Draft Act on Public Service Staff, which the Ministry of State Administration and Local Self-Governments submitted to him for comment. The Protector found that the Preliminary Draft did not specify clearly enough who it applied to, that it lacked a provision specifying that the General Administrative Procedure Act applied accordingly to actions by

190 The Ministry's letter is available in Serbian at: http://ombudsman.rs/attachments/article/5520/odgovor%20organa.pdf.

191 See the Protector of Citizens findings and recommendations, available in Serbian at: http://ombudsman.rs/index.php/2012–02–07–14–03–33/5409-privr-dn-r-srbi-prv-d-l-z-v-li-br-u-z-p-sl-nih-p-ubrz-z-p-slil-n-v-r-dni.

192 More is available in Serbian at: http://ombudsman.rs/index.php/2012–02–07–14–03–33/5530-inis-rs-v-rud-rs-v-i-n-rg-i-d-s-izvini-pri-uzi-cu-sh-ni-dg-v-ril-n-nj-g-v-br-c-nj.

193 The Protector's opinion is available in Serbian at: http://ombudsman.rs/index.php/2011–12–11–11–34–45/5417-iz-ni-i-n-ziv-s-rucnih-l-r-di-d-s-ig-iz-ci-lgb-i-s-b

194 See the Ministry and RHIF replies, available in Serbian at: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5507-p-s-up-nj-p-pr-p-ru-z-sh-i-ni-gr-d-n-rg-ni-u-njili-s-ig-iz-ci-u-r-ns-s-b

staff, that the new concepts it introduced were not defined precisely, which could lead to diverse interpretations, actions and application of the law, etc.[195] The Protector also issued his Opinion on the Preliminary Draft Act on the National Academy for the Advanced Professional Training of Public Administration Staff, the Preliminary Draft Act Amending the Civil Servants Act, and the Preliminary Draft Act Amending the Act on Autonomous Province and Local Self-Government Staff[196], on which the Ministry of State Administration and Local Self-Governments had launched a public debate.

When the provisions of the Act on Certification of Signatures, Manuscripts and Transcripts, fully transferring these duties from the basic courts and municipal administrations to the notaries public, entered into force on 1 March 2017, the Protector called on the notaries to exercise particular vigilance and responsibility in performing their duties, in order to preserve legal certainty and the importance of certification for the unobstructed implementation of legal procedures and realisation of civil rights.[197]

In September 2017, the Protector of Citizens presented his Special Report on Councils for Inter-Ethnic Relations. The survey conducted by the Protector of Citizens showed that not all the Councils were operational or met regularly. Only 53 of the 72 Councils have been formed in inter-ethnic cities and municipalities, although such an obligation is laid down in the Local Self-Government Act, which was adopted a decade ago. The Report qualifies as one of the greatest problems the fact that local self-government units have a hard time recognising which decisions affect inter-ethnic equality and concludes that the concept of equality and what it regards and which issues fall within the remit of the Councils need to be regulated in greater detail to facilitate their operations in the future. Back in 2010, the Protector of Citizens issued recommendations to local self-governments with ethnically mixed populations to establish their Councils for Inter-Ethnic Relations, if they already have not. The existence and work of such councils is also an obligation Serbia assumed within the EU accession process.[198]

195 The Opinion is available in Serbian at: http://ombudsman.rs/attachments/article/5501/Mislje nje%20Zastitnika%20gradjana.pdf.

196 The Opinion is available in Serbian at: http://ombudsman.rs/attachments/article/5352/mislje nje%20nacionalna%20akademija.pdf.

197 See the Protector of Citizens press release, available in Serbian at: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5158-s-psh-nj-z-vn-s-z-sh-i-ni-gr-d-n-p-v-d-pr-s-n-n-dl-zn-s-i-sn-vnih-sud-v-i-psh-ins-ih-upr-v-z-v-r-v-nj-p-pis-ru-pis-i-pr-pis.

198 More is available in Serbian at: http://ombudsman.rs/index.php/2011–12–25–10–17–15/2011–12–26–10–05–05/5433-pr-ds-vlj-n-p-s-b-n-izv-sh-z-sh-i-ni-gr-d-n-s-v-i-z-dun-ci-n-ln-dn-s.

4.2. 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)[199] and the Personal Data Protection Act (PDPA).[200] Rodoljub Šabić was first elected Commissioner in 2004 and re-elected to a seven-year term in office in 2011. His term in office expires in 2018.

Under the FAIPIA, the Commissioner is, inter alia, charged with monitoring the state 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 state authorities with a view to improving their work, and reviewing complaints against the state authorities' decisions violating the rights governed by this law. Under the PDPA, 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 again extremely active and committed to performing his activities prescribed by law in 2017. However, like all other independent regulatory authorities in Serbia, he, too, was frequently ignored by the administrative authorities, which did not react adequately to many of his recommendations. This is also illustrated by the fact that 2016 was the first year in which the percentage of his successful interventions fell, rather than grew, from 96% in 2015 to 92% in 2016. The difference, however small, gives rise to concern. The number of cases submitted to the Office of the Protector of Citizens, however, remained very high. Its statistics showed it was handling 4,167 cases at the end of 2017 and had already processed 58,249 cases.

Furthermore, for the third year running, the National Assembly failed to review the 2016 Annual Report[201] the Commissioner submitted within the statutory

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

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

201 The Commissioner's 2016 Annual Report is available at: https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2016/enizvestaj2016.pdf.

timeframe. His 2016 Report was not reviewed even by the parliamentary Culture and Information Committee, for the first time since the authority of Commission was established. The legislature thus directly violated its legal obligations and yet again demonstrated its lack of understanding of the essence of the institution – that it is an independent oversight authority, not a political organ serving the opposition (or the Government for that matter).

The Commissioner publicly alerted to the problems in the protection of personal data on a number of occasions in 2017, especially several cases in which such protection was inefficient and human rights were violated. In April, for instance, the Commissioner launched a check of the way the Ministry of Internal Affairs enforced the Personal Data Protection Act, because the police station in Kikinda asked the local health institution to forward it data of citizens treated under code "F". Code F covers a large number of diseases and disorders, from Alzheimer's and depression to bulimia and anorexia. The Commissioner issued a press release saying that the personal data processing at issue was extremely problematic, both in terms of purpose and proportions, and especially in terms of lawfulness.[202] In August, at the request of a group of staff members of the Clinical Centre of Serbia Psychiatric Clinic, the Commissioner checked how this institution enforced the PDPA, notably its video surveillance.[203] The Commissioner appealed to the Health Ministry to urgently take measures to ensure that video surveillance was conducted in accordance with the law and its actual purpose.[204]

The Commissioner called for the amendment of the disputable Integrated Health Information System (IHIS) a number of times during the reporting period. In 2016, he issued a warning to the Health Ministry, in which he indicated the irregularities he had identified during his check of IHIS.[205] The Commissioner underlined that the patients' personal data had to be protected from unauthorised access and all other abuses and that the only legally valid way to regulate IHIS was by law.[206]

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202 More is available in Serbian at: http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2588-i-slucaj-qfq-dijagnoza-ilustruje-nedopustivo-los-odnos-drzave-prema-zastiti-podataka-o-licnosti.html.

203 The Commissioner ascertained that the video surveillance cameras were deployed in all rooms in which the patients spent time in, including in their rooms, the day and work therapy rooms, halls, even in the toilets.

204 "Šabić: Cameras in Toilets of Belgrade Psychiatric Clinic," *Blic,* 15 August 2017, available in Serbian at: http://www.blic.rs/vesti/drustvo/sabic-kamere-u-toaletima-klinike-za-psihijatriju-u-beogradu/rh2x1zx

205 There is no law in place providing for the establishment of the IHIS, a centralised electronic database the Ministry of Health uses to process the personal data of the patients (including "particularly sensitive data" under the law) and the staff of 451 health institutions.

206 "Legal and Actual Shortcomings in the Functioning of the Integrated Health Information System (IHIS) Must be Eliminated," 13 January 2017, available at: https://www.poverenik.rs/en/press-releases/2519-otkloniti-pravne-i-fakticke-nedostatke-u-funkcionisanju-integrisanog-zdravstvenog-inform-sistema.html.

The Commissioner issued several opinions on the amendments to the Act on Health Documentation and Health Records[207] to the Health Ministry, which had been drafting them. His main concern was that the amendments, submitted to Government for approval, still did not resolve the core problem of IHIS personal data processing, i.e. the legal grounds under which the system is established. The Serbian Government ignored the Commissioner's objection.[208]

In his letter to the Chairpersons of the parliamentary Defence and Internal Affairs and Human and Minority Rights and Gender Equality Committees, the Commissioner also reacted to the Draft National DNA Register Act, which the Government approved and forwarded to the National Assembly for adoption. He said he had alerted the legislator to its deficiencies and non-compliance with the main European and international standards on the processing of genetic data.[209] His objections and suggestions appear to have fallen on deaf ears.

The situation in the field of free access to information of public importance is unsatisfactory and concerning. This is reflected the most in the state authorities' lack of reaction to the Commissioner's rulings, many of which are ignored, resulting in many cases in the expiry of the statute of limitations and the Commissioner's inability to take further steps. The growing number of complaints filed with the Commissioner demonstrate the public's trust in the work of this independent authority. However, the large number of complaints filed with the Commissioner and the inability of his Office to rule on all of them within the statutory framework are a direct consequence of the authorities' lack of liability for violations of the complainants' rights. Problems in exercising the right to know still exist; the open Savamala and Helicopter cases are just two of the many illustrations of this devastating fact.

In February 2017, the Commissioner imposed fines on the Belgrade Higher Prosecution Service for failing to act on its rulings regarding three cases in which the Service denied access to information about the Savamala case.[210] Rather than acting on the ruling, the Belgrade Higher Prosecution Service notified the Commissioner it had forwarded the entire case file to the Belgrade Appellate Prosecution Service, which is not a procedural act envisaged the FAIPIA, which led the Commissioner to conclude that the Higher Prosecution Service had tried to "establish"

207 *Sl. glasnik RS*, 123/14, 106/15 and 105/17.

208 "Processing of Personal Data in the Health Sector – A Problem which Calls for Serious Solutions, not Improvisation," 13 November 2017, available at: https://www.poverenik.rs/en/press-releases/2730-processing-of-personal-data-in-the-health-sector.html.

209 "Draft Law on National DNA Register – Many Disputable Issues," 18 September 2017, available at: https://www.poverenik.rs/en/press-releases/2665.

210 The cases concern denial of access to the following information: the CV of the prosecutor handling the case; whether criminal proceedings have been instituted against individuals who had not acted on the prosecutors' orders during the investigation; and, whether disciplinary proceedings have been instituted against these individuals, and if so, what are the registration numbers of their cases.

a new, non-existent legal mechanism to betray the rights of the public, whereby it directly committed a misdemeanour.[211]

Several months later, the Commissioner sent a letter to the Republican Public Prosecutor,[212] in which he specified a number of reasons why the Prosecution Service was required to review its attitude towards the right of free access to information and to the right to personal data protection, as well as towards the activities of the Commissioner, who is legally vested with the powers to protect them. The Commissioner wrote the letter in response to the lawsuit the Republican Public Prosecutor filed against the Commissioner, seeking the invalidation of his ruling "which was violating the law to the detriment of public interests", because the ruling ordered the prosecutors to provide public access to the CV of the prosecutor acting on the Savamala case.

In September 2017, the Commissioner instructed the Belgrade First Basic Public Prosecution Service to provide the reporter of the Crime and Corruption Investigation Network (*KRIK*) copies of the reports on the Savamala case, which the police had submitted to the Belgrade Higher Public Prosecution Service and which the latter forwarded to the Belgrade First Basic Public Prosecution Service. The Basic Prosecution Service refused to provide access to the information sought by the *KRIK* reporter under the pretext that the ongoing preliminary criminal proceedings might be jeopardised if she were provided with access to such information. To recall, the buildings in Hercegovačka Street were demolished in April 2016 and the public had expected the preliminary criminal proceedings to have been completed; furthermore, as the Commissioner noted, the public interest in this case was absolutely justified, as corroborated by the civic protests, dissatisfaction expressed in traditional media outlets and on social networks, and last but not the least, the European Parliament's Resolution on the EC 2016 Report on Serbia of June 2017[213], in which it expressed concern about the events in Hercegovačka Street and the fact one full year had passed without any advances in the investigation, and called for its swift resolution and for full cooperation with the judicial authorities in the investigations to bring perpetrators to justice.[214]

A journalist of the anti-corruption portal *Pištaljka (Whistle-Blower)* in 2016 filed a request with the Anti-Corruption Agency, seeking access to information about

211 See more in Serbian at: http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2545-slucaj-qsava malaq-poverenik-izrekao-kazne-visem-javnom-tuzilastvu.html.

212 Commissioner's Letter to the Republican Public Prosecutor, available at: https://www.poverenik.rs/en/press-releases/2592-preispitivanje-odnosa-tuzilastva-prema-zastiti-prava-gradjana-nuzno.html.

213 The European Parliament Resolution of 14 June 2017 is available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017–0261.

214 "Savamala Case – of More than Obvious Legitimate Public Interest," 14 September 2017, available at: https://www.poverenik.rs/en/press-releases/2664.

Belgrade Mayor Siniša Mali's assets and income following media reports alleging he owned 24 apartments in Bulgaria.[215] The Agency rejected the request in its entirety, claiming that some of the documents were classified as "strictly confidential" pursuant to Article 38 of the Classified Information Act,[216] the protection of which required that the Commissioner personally access them in the Agency premises and with prior notice, which is absolutely in contravention of the standards of cooperation state authorities must adhere to. The Commissioner fined the Agency because it refused to comply with his ruling in its entirety and noted that the "the status "secret" has inevitably become much more reminiscent of the cover-up of some suspicious activities rather than of the protection of the proceedings, which the Anti-Corruption Agency and other competent authorities should be aware of."[217]

The process of amending the FAIPIA, launched in 2011, had been unjustifiably delayed and at one point terminated. In September 2017, the Commissioner met with the Minister of State Administration and Local Self-Governments, who said that the final draft of the amendments would be submitted to parliament for adoption by the end of the year. The two officials also discussed the importance of cooperation between the state authorities and the Commissioner's Office and reviewed the development of a single electronic state administration information booklet, pursuant to the law, with a view to increasing its transparency and public outreach.[218]

Like in the past, the Commissioner's activities were often misconstrued in the reporting period, as the number of lawsuits filed against him and the media attacks and attempts to discredit his work corroborate. He refuted media speculations he would be running for Belgrade Mayor.[219] As his term in office expires at almost the same time, some government officials accused him of partiality and interfering in politics. When he launched a check of the Belgrade city authorities' enforcement of the PDPA with respect to the "Senior Citizens' Card" in October 2017, Belgrade City Manager Goran Vesić qualified him as a "political lackey of loser opposition parties," noting that "what else can be expected of a man who said he would run

215 See more at: https://www.occrp.org/mayorsstory/The-Mayors-Hidden-Property/index.html.

216 *Sl. glasnik RS*, 104/09. Under Article 14 of the Act, data classified as "strictly confidential" are those the disclosure of which would result in "grave harm to the interests of the Republic of Serbia". It is hardly conceivable that the disclosure of information on the assets and income of any public official, including the Mayor, can jeopardise national interests so "dramatically".

217 See the Commissioner's press release of 25 May 2017, "'Secret' Ought to be Used to Protect Important Legitimate Interests, not to Cover up Suspicious Actions," https://www.poverenik.rs/en/press-releases/2595-secret-used-to-protect-important-legitimate-interests,-not-to-cover-up-suspicious-actions.html.

218 "Commissioner and Minister on Activities Aimed at Developing Open Administration," 7 November 2017, available in Serbian at: http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2646-poverenik-i-ministar-o-aktivnostima-u-cilju-razvoja-otvorene-uprave.html.

219 "Šabić: Opposition's Chances of Winning Belgrade Elections are not Unrealistic," *Danas,* 20 July 2017, available in Serbian at: http://www.danas.rs/politika.56.html?news_id=351578&title=%C5%A0abi%C4%87%3A+%C5%A0anse+opozicije+u+Beogradu+nisu+nerealne.

for Mayor just a few months ago".[220] The same month, some media twisted the Commissioner's tweet about a patrol of uniformed people that knocked on his door, qualifying their spin as yet another attack and deliberate attempt to destabilise the Commissioner as an independent institution.[221]

The Commissioner was awarded the ISO 27001:2013 (Information Security Management System) Certificate in 2017.[222] Information security is of crucial relevance to the Commissioner, given that he is charged with both access to information and personal data protection. This certificate is confirmation of the quality protection of all data the Commissioner deals with. "Unfortunately, in reality, personal data are unlawfully used and confidential information is "leaked" by various state authorities. The Commissioner hopes to encourage, by his own example, other state authorities to introduce this standard and pass the audit, in particular the authorities whose competence, as well as the scope of work, involves the handling of personal data and confidential data."[223] The same applies also to the individual who will succeed Rodoljub Šabić as Commissioner when his term in office expires in 2018. It is crucial that the next Commissioner also perseveres in his efforts to preserve the independence of this institution.

4.3. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality was established pursuant to the Anti-Discrimination Act[224] 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 complainants' consent. 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

220 "Storm over senior citizens' cards – Šabić: Oversight Procedure Launched. Vesić: Acts Like a Political Lackey," *Blic*, 31 October 2017, available in Serbian at: http://www.blic.rs/vesti/beograd/bura-oko-penzionerskih-kartica-sabic-pokrenut-postupak-nadzora-vesic-ponasa-se-kao/7782yrp.

221 See the Commissioner's press release at: https://www.poverenik.rs/en/press-releases/2683.

222 The high standard for establishing and managing information security was established by the International Standardization Organization (ISO). This certificate is issued only after an organisation's information system is successfully audited by authorised auditors. It entails the adoption and implementation of a number of procedures, specific and technical protection measures, and training and familiarisation of all staff with changes to their work to ensure data protection.

223 "Commissioner Awarded Information Security Management System Certificate," 20 October 2017, available at: https://www.poverenik.rs/en/news/2682.

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

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 the state authorities and others.

The National Assembly elected Brankica Janković Commissioner for the Protection of Equality in May 2015. The working conditions of the Equality Protection Commissioner's Professional Service were improved in late 2016, facilitating the public's access to this authority.

Like in the past, the greatest number of complaints of discrimination filed in 2017 regarded discrimination in recruitment and at work. At a conference on the status of women in late November, the Commissioner said that many women were paid less than men for work of equal value, that employers often transferred them to inferior jobs and that they were discriminated against in the labour market.[225] To address this issue, the Commissioner's Professional Service drafted a guidebook "Anti-Discrimination Code of Conduct for Employers," a tool to be used by employers to ensure equality and equal opportunities for everyone.[226]

Domestic violence and violence against women were the gravest problems the Commissioner alerted to during the reporting period. Although the new Domestic Violence Act,[227] which came into force in mid-2017, introduced major novelties and has had positive effects in practice, the problem will evidently persist for quite a long time. On the International Day for the Elimination of Violence against Women, the Commissioner called for the continuous improvement of the gender-based violence prevention and protection system by a whole range of available mechanisms. She also noted that reports on family and intimate partner violence by some media were still unprofessional, sensationalist and in violation of the press ethics and the Serbian Press Code of Conduct.[228]

In 2017, the Commissioner reacted to several grave violations of equality and cases of discrimination. She recommended a number of measures for achieving equality to the state authorities. In November, for instance, she issued recommendations to the Ministry of Health, the Republican Health Insurance Fund, and the Special Hospital in Vrnjačka Banja after she reviewed a complaint by a civil society organisation and found that the Hospital, although it had dialysis equipment, did not

225 "Discrimination against women in Serbia. Employers dismiss them more easily, they sleep less and earn 10,000 RSD less than men," *Blic,* 7 November 2017, available in Serbian at: http://www.blic.rs/vesti/drustvo/diskriminacija-zena-u-srbiji-poslodovci-lakse-otpustaju-zaposlene-dame-krace-spavaju/r7pxxds.

226 See the Commissioner's press release at: http://ravnopravnost.gov.rs/en/we-dont-discriminate-anti-discrimination-code-of-conduct-for-employers-presented/. The Code is available at: http://ravnopravnost.gov.rs/en/equality-code/.

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

228 The Commissioner's press release is available in Serbian at: http://ravnopravnost.gov.rs/rs/saopstenje-povodom-medunarodnog-dana-borbe-protiv-nasil%D0%88a-nad-zenama/.

extend such services, wherefore persons with disabilities in need of dialysis were deprived of this service.[229] In May 2017, she issued general recommendations to the Ministry of Education, Science and Technological Development after reviewing a number of complaints filed by private individuals and ascertaining that some local self-governments and parents of children with disabilities had many dilemmas about the introduction and provision of additional support to children and pupils with disabilities.[230]

Immediately after the International Day of Tolerance was marked in November 2017, the Commissioner warned that treatment of specific social groups by some media was degrading and humiliating. She quoted the example of the Belgrade daily *Alo*, which published a photograph of a naked women and the text of the death threat message she got. The Commissioner sharply condemned the act, qualifying it as disquieting, unseemly and verging on the threat of violence.[231] Earlier in 2017, in June, an incident broke out in the Belgrade primary school yard, when a group of 8th graders bear up a 7th grader just because he is Roma; the Commissioner vehemently condemned the incident and demanded that all the relevant authorities respond urgently.[232]

On European Day of Solidarity between Generations, the Commissioner was awarded a certificate by the Belgrade Gerontology Centre for her contribution to improving the living conditions of the elderly.[233] She was also awarded, by the Elderly Health Office, the Belgrade City Public Health Institute and the magazine *Pension*, a diploma conferring on her the status of "Friend of the Health of the Elderly" at the 55+ Fair in May 2017, for her contribution to the fight against the discrimination against the elderly, fostering equality and promoting and developing intergenerational cooperation and solidarity.[234] On International Right to Know Day, the by the Commissioner for Free Access to Information and Personal Data Protection awarded the Commissioner for the Protection of Equality a Certificate in

229 The recommended measures are available in Serbian at: http://ravnopravnost.gov.rs/rs/preporuka-mera-ministarstvu-zdravlja-rfzo-i-specijalnoj-bolnici-v-b-za-ostvarivanje-ravnopravnosti-u-oblasti-pruzanja-zdravstvenih-usluga/.

230 The recommendations are available in Serbian at: http://ravnopravnost.gov.rs/rs/opsta-preporuka-ministarstvu-prosvete/.

231 "Warning re the Daily *Alo* Front Page," the Commissioner's press release of 17 November 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/upozorenje-povodom-naslovne-strane-dnevnog-lista-alo/

232 "Warning re the Assault on the Roma Pupil," the Commissioner's press release of 13 June 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/upozorenje-povodom-napada-na-romskog-ucenika/.

233 "Press Release on the Certificate for Contributing to Intergenerational Solidarity Awarded to the Commissioner," 29 April 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/priznanje-za-medjugeneracijsku-solidarnost-poverenici/.

234 "Commissioner Brankica Janković Awarded "Friend of the Health of the Elderly" Diploma," 25 May 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/povelja-prijatelj-zdravlja-starih-poverenici-brankici-jankovic/.

recognition of her contribution to reaffirming the right of free access to information of public importance and transparent work of her office.[235]

For her part, the Commissioner in 2017 awarded the third consecutive Annual Media Tolerance Awards. Many of the winners came from the interior of the country, which is a positive aspect of the fight against stereotypes and prejudice against minority and marginalised social groups; this struggle should spread to the entire state, especially given the impact media can have on the building of a tolerant society respecting human rights and freedoms.[236]

Like in the past, the Commissioner and her Office were not obstructed by the representatives of the ruling parties; nor did they face other problems on the part of the executive, as opposed to the other analysed independent regulatory authorities.

4.4. Anti-Corruption Agency

The Anti-Corruption Agency (Agency) is an autonomous and independent state authority established under the Anti-Corruption Agency Act (ACA)[237] to monitor the implementation of the National Anti-Corruption Strategy[238] and its Action Plan,[239] issue recommendations and opinions on the enforcement of ACA and institute procedures and impose measures against those who violate this law.

Although this institution should play an important role in the prevention of and fight against corruption, most of those following its work are of the view that it has never been sufficiently effective in combatting corruption and that its influence has been further undermined in the reporting period. Although the Agency issued some recommendations in 2017, the general impression is that the state and local authorities are insufficiently complying with its findings. The situation was exacerbated in the year behind us, primarily because of the delays in the appointment of the Agency Director and Board members and the three-year delay in the adoption of a new law on the Agency, which would provide it with powers to perform its duties more effectively.

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235 "Commissioner Awarded Certificate in Recognition of Her Contribution to Reaffirming the Right of Free Access to Information of Public Importance and Transparent Work of Her Office," 28 September 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/poverenik-dobitnik-priznanja-za-doprinos-afirmisanju-prava-na-slobodan-pristup-informacijama-od-javnog-znacaja-i-transparentnost-u-radu/

236 "2017 Annual Media Tolerance Awards", 15 November 2017, Commissioner's press release available in Serbian at: http://ravnopravnost.gov.rs/rs/dodeljene-godisnje-medijske-nagrade-za-toleranciju-za-2017-godinu/.

237 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 and 8/2015 – CC Decision.

238 The 2013–2018 National Anti-Corruption Strategy is available at: http://mpravde.gov.rs/tekst/38/ protiv-korupcije.php.

239 *Ibid.*

The Working Group charged with drafting the new law, chaired by the then Agency Director, was formed two years ago. The public debate on the draft law opened in October 2016 but it was not adopted by the end of 2017.

4.4.1. Appointment of the Agency Director and Board Members

Under the ACA, the Agency shall be managed by its Director and a nine-member Board. The Board is elected by the National Assembly and the Director is appointed by the Board. The Agency, however, operated without a Director and with a rump Board for almost the whole year. The previous Agency Director Tatjana Babić resigned in December 2016.[240] Her Deputy soon followed suit. Verka Atanasković was appointed Acting Director. The two recruitment rounds were unsuccessful. The first was held in February 2017 but none of the applicants won the sufficient number of Board votes.[241] Since the terms in office of its four members expired by the end of the second round, the Board was left with only two members, who could not vote in the new Director.[242]

The Agency's work was hindered by the fact that the Board operated without all its members, and, notably, was unable to vote in the new Director. Under Article 9 of the ACA, the Serbian President, the Government and the National Assembly each nominate one member of the Board, while the other six are nominated by independent regulatory authorities and guild associations.[243] Although most of these bodies nominated their candidates, the National Assembly did not vote on some of them. At its session in July 2017, the Assembly Committee for the Judiciary, State Administration and Local Self-Governments sent three nominations back to the bodies, explaining that the circumstances had changed due to the presidential elections. One of the nominees was former Supreme Court President Vida Petrović-Škero, who was jointly nominated by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection back in 2015. Her nomination was ignored until 2017, when it was returned because, in the view of the Assembly Committee Chairman, the Acting Protector of Citizens might disagree with his predecessor's nomination.[244] This act is nothing less than yet another

240 Tatjana Babić ran the Agency since 2013 and resigned when she was appointed Constitutional Court judge.

241 The then Board member Božo Drašković told *Peščanik* that the recruitment process had failed, inter alia, because the applicant, who had won the most votes of the Agency Board was affiliated with the ruling Serbian Progressive Party. The applicant at issue is Ljiljana Blagojević, Belgrade City Solicitor and erstwhile Deputy to former Justice Minister Nikola Selaković.

242 The successful applicant needs to win the votes of at least five Board members.

243 The Supreme Court of Cassation; the State Audit Institution; the Protector of Citizens and the Commissioner for Information of Public Importance (jointly); the Social-Economic Council; the Serbian Bar Association; and the national press associations (jointly).

244 The Commissioner for Information of Public Importance and Personal Data Protection, Rodoljub Šabić, most vehemently condemned the Assembly move, recalling that the nomination was not

type of control over and stifling of independent institutions in Serbia, including the Agency, which was left without a Director for six months and whose rump Board lacked the minimum five-vote majority to take decisions.[245]

The National Assembly elected four Agency Board members in late July 2017[246] and the Board had the requisite six members[247] enabling it to appoint the Director. The Assembly deputies, however, reneged on their statutory obligation and did not elect the applicants nominated by the independent authorities and associations. The Board held its constituent session in August 2017, and its three-member recruitment commission interviewed all the applicants who fulfilled the requirements.[248] The new Agency Director Majda Kršikapa, was unanimously elected Director on 6 September 2017. Prior to her appointment, Kršikapa was HJC Secretary and had earlier worked in the Supreme Court of Serbia and Supreme Court of Cassation.

After the new Director took office, the Agency initiated several important procedures, such as spot checks of the assets and income[249] of Belgrade Mayor Siniša Mali, former Serbian President Tomislav Nikolić, and another 11 officials, in response to media reports about their assets not corresponding to those they had declared to the Agency.[250] It transpired that Siniša Mali had violated the ACA three

made by individuals (Saša Janković and Rodoljub Šabić), but by the independent institutions of the Protector and Commissioner in their entirety.

245 "Another Step Backward in the Fight against Corruption," Centre for Investigative Journalism in Serbia (*CINS)*, 8 July 2017, available in Serbian at: https://www.cins.rs/srpski/news/article/novi-korak-unazad-u-borbi-protiv-korupcije.

246 The Assembly voted in: Jelena Stanković, nominated by the State Audit Institution; Miloš Stanković, nominated by Serbian President Aleksandar Vučić; Slobodan Gazivoda, nominated by the Supreme Court of Cassation; and, Ivan Kovačević, nominated by the Social-Economic Council. The deputies voted against Živojin Rakočević, who had been nominated by the press associations. See the CINS report of 31 July 2017, available in Serbian at: https://www.cins.rs/srpski/news/article/narodna-skupstina-izabrala-je-cetiri-clana-odbora-agencije-za-borbu-protiv-korupcije.

247 The requisite majority was achieved by electing the four new members, in addition to the two "old" members, Prof. Dr. Dragan Mitrović, a full professor of the Belgrade University Law School and Acting Chairman of the Board, and Danica Marinković, retired Kragujevac Appeals Court judge. The other three members are nominated by independent institutions and associations.

248 Article 16 of the ACA lists the eligibility requirements: fulfilment of the general requirements for employment in state authorities, degree in law, minimum nine years of experience, no criminal record rendering the individual unworthy of holding the office of Director. The Director may not be a member of a political party or political entity and shall be subject to the same obligations and limitations applicable to officials under this Act.

249 The Agency performs regular checks of data in public officials' asset declarations in accordance with its Annual Declaration Oversight Plans, as well as ad hoc checks, more is available in Serbian at: www.acas.rs/саопштење-о-ванредној-провери-података/.

250 "Spot Checks of Asset Declarations of 13 Politicians in Serbia," *Al Jazeera Balkans*, 27 October 2017, available in Serbian at: http://balkans.aljazeera.net/video/vanredna-kontrola-imovine-za-13-politicara-u-srbiji.

times and that the Agency had issued him warnings, the most lenient penalty, every time, since the law does not provide for the possibility to impose heavier penalties against reoffending public officials, i.e. the publication of the recommendation to dismiss them or the publication of the decisions finding them in violation of the law.[251]

During the new Director's term in office, the Agency published a report on the financing of political parties during the 2017 presidential election campaign,[252] in which it noted that the political parties raised 54 times more from donations of private individuals than in 2012.[253] The Report also shows that most SNS donors donated identical sums to that party – 40,000 RSD.[254] The same conclusion was reached by the Balkans Investigative Reporting Network (*BIRN*), which investigated the individual donations to the presidential candidates made by almost 7,000 people. The *BIRN* investigation showed how SNS party had used proxy donors to disguise the true source of campaign gifts – which are illegal under Serbia's Act on the Financing of Political Activities.[255] One clue to the organised nature of the donations was the fact that almost all the donors, 98 per cent, gave the SNS exactly the same amount: 40,000 dinars. This flood of uniformly sized donations contributed more than two million Euro to Vučić's presidential election campaign – more than a third of his overall war chest of 6.5 million Euro.[256]

The Agency sent a letter to the Anti-Laundering Administration on 16 October 2017, asking it to check the SNS transactions, due to suspicions that the funds donated in the run up to the presidential elections had been acquired through illegal activities (inter alia, money laundering).[257]

The new Director, however, tendered her irrevocable resignation on 13 November 2017.[258] Majda Kršikapa did not specify why she resigned or whether her

251 "CINS: Siniša Mali Gets Lightest Penalty for Violating the Law," *N1*, 13 November 2017, available in Serbian at: http://rs.n1info.com/a341767/Vesti/Vesti/CINS-Sinisi-Malom-najblaze-kazne-za-krsenje-Zakona-o-Agenciji-za-borbu-protiv-korupcije.html.

252 Report on the Costs of the 2017 Presidential Election Campaign", available in Serbian at: www.acas.rs/агенција-објављује-извештај-о-трошко/.

253 The Report states that the most funds were donated during the election campaign to Aleksandar Vučić – around 270 million RSD, and Vuk Jeremić – around 220 million RSD.

254 The Agency also asked the Anti-Laundering Administration to check the transactions of the National Freedom Movement and its presidential candidate Miroslav Parović. It specified in its Report that this party raised slightly two million RSD from 63 donations – 28 of which stood at 30,000 RSD each and 18 of which stood at 40,000 RSD each.

255 *Sl. glasnik RS*, 43/11 and 123/14.

256 See more on: http://www.balkaninsight.com/en/article/serbian-president-claims-clean-campaign-finances-10–18–2017.

257 "BIRN: SNS Suspected of Illegal Donations During Campaign," *N1*, 25 December 2017, available in Serbian at: http://rs.n1info.com/a351855/Vesti/Vesti/BIRN-SNS-se-sumnjici-za-nelegalne-donacije-u-kampanji.html.

258 "Anti-Corruption Agency Director Resigns," *Nedeljnik*, 13 November 2017, available in Serbian at: www.nedeljnik.rs/politiko/portalnews/direktorka-agencije-za-borbu-protiv-korupci

resignation had anything to do with political pressures by interest groups.[259] In its press release on her resignation, Transparency Serbia said that "it is definitely important, both for the citizens and the future candidates for the post of Director, to hear the reasons why the recently appointed Director decided to take such a step, if they have anything to do with the status and working conditions of the key anti-corruption state authority". Transparency Serbia praised Kršikapa's work finding that the transparency of this independent authority had increased significantly while she ran it.[260]

The Board accepted Majda Kršikapa's resignation and again appointed Verka Atanasković the Acting Director at its phone session. The vacancy was published on 22 November and, at their session on 27 December 2017, the Board and recruitment commission shortlisted 10 candidates to be interviewed in the new year and published the names and CVs of nine of them (one candidate did not consent to the publication of his name and CV).[261]

4.4.2. Agency Activities in 2017

As provided for by the ACA, the Agency published its opinions on draft laws in the reporting period. In July 2017, it rendered its opinion on the Dual Education Act, which it qualified as inadequate because it lay down a negligible few obligations to be fulfilled by the employers and did not impose on them the obligation to provide the students with dignified working conditions, while, on the other hand, it provided the Chamber of Commerce with excessive powers.[262] The Agency also criticised the Draft Healthcare Act, saying it left a lot of room for corruption and did not fully regulate a number of issues, such as the doctors' private practice in addition to their jobs in state health institutions, recruitment, evaluation of the quality of professional papers, approval of specialisations et al.[263]

In 2017, the Agency continued monitoring the case of Serbian Defence Minister Aleksandar Vulin, against whom it filed a criminal report back in 2015. Vulin failed to prove the origin of the 200,000 Euro he paid for an apartment in the heart of Belgrade, giving a lame explanation to the Agency that he had borrowed the

je-podnela-ostavku/.

259 "Unclear why Anti-Corruption Agency Director Resigned", *CINS*, 13 November 2017, available in Serbian at: https://www.cins.rs/srpski/news/article/nejasni-razlozi-za-ostavku-direktorke-agencije-za-borbu-protiv-korupcije-.

260 "More Data Available on Anti-Corruption Agency's Work," Transparency Serbia, 29 October 2017, available in Serbian at: www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9496-dostupno-vise-podataka-o-radu-agencije-za-borbu-protiv-korupcije.

261 See the Agency's press release, available in Serbian at: http://www.acas.rs/.

262 "Anti-Corruption Agency Criticises Dual Education Law," *Radnik.rs*, 28 July 2017, available in Serbian at: http://radnik.rs/2017/07/agencija-za-borbu-protiv-korupcije-kritikuje-propis-o-dualnom-obrazovanju/.

263 "What Was Said and What Was Left Unsaid," *RTS*, 30 October 2017, available in Serbian at: http://www.rts.rs/page/radio/sr/story/24/radio-beograd-2/2919488/receno-i-precutano.html.

money from his wife's aunt who lived in Canada. The prosecutor dropped the case in 2017. The details of the Agency report refuting Vulin's proof of the origin of the money were published by the Crime and Corruption Investigation Network (*KRIK)* in 2017.[264]

The Commissioner for Information of Public Importance and Personal Data Protection fined the Agency because it refused to provide the *Pištaljka* (Whistle-blower) portal with access to the documents on Belgrade Mayor Siniša Mali's assets.[265] The Agency said that the documents were classified as confidential, which was disputable, and that none of its staff were authorised to access them. It rejected *Pištaljka*'s request, on the grounds that the disclosure of the documents would "undermine the course of the procedure" it was conducting and the "protection of the Mayor's privacy". The Commissioner said it was incomprehensible how information about money laundering suspicions implicating any public official could be classified as "strictly confidential".[266]

MP and leader of the Liberal Democratic Party Čedomir Jovanović also found himself under the scrutiny of the Agency, which launched an *ad hoc* check of his assets after the media wrote that the port authorities on the Croatian island of Vis had prohibited his yacht from sailing because of its "illegal use".[267] The Agency also issued a press release that it had started checking the assets of the then Director of the Ethnographic Museum in Belgrade, Mirjana Menković; the Museum *Nezavisnost* trade union branch alerted to her abuse of post and suspicions of corruptive activities in 2016, which led to her arrest at the time.[268]

In late October 2017, the Agency initiated the dismissal of Jasminka Bjeletić from the post of Director of *Belgrade Pharmacies* with the Belgrade City Assembly. The Agency found Bjeletić had violated the ACA because she signed contracts with the company *Velexfarm* when she was Acting Director of *Belgrade Pharmacies*, with which this public company had not cooperated before she took office and in which her son was working.[269] In November 2017, the Agency recommended to

264 "Aunt in Canada' Paid Vulin's Apartment," *KRIK*, 18 September 2017, available in Serbian at: https://www.krik.rs/tetka-iz-kanade-platila-vulinu-stan/.

265 "Šabić: No Legal Grounds for Agency to Hide Data on Mali," March 2017, available in Serbian at: https://www.krik.rs/sabic-agencija-neosnovano-prikrila-podatke-o-malom/.

266 "Commissioner Fines Anti-Corruption Agency Again," *N1*, 25 May 2017, available in Serbian at: http://rs.n1info.com/a251204/Vesti/Vesti/Poverenik-kaznio-Agenciju-za-borbu-protiv-korupcije.html.

267 "Anti-Corruption Agency Investigating Čeda Jovanović's Yacht," *Nezavisne novine*, 16 October 2017, available in Serbian at: https://www.nezavisne.com/novosti/ex-yu/Agencija-za-borbu-protiv-korupcije-istrazuje-jahtu-Cede-Jovanovica/447450.

268 "Ethnographic Museum – Agency Acts on Trade Union Application," available in Serbian at: www.acas.rs/етнографски-музеј-поступање-агенциј/.

269 "Agency Seeks Dismissal of Belgrade Pharmacies Director for Concluding Contracts with Company Employing Her Son," *Insajder*, 24 October 2017, available in Serbian at: https://insajder.net/sr/sajt/vazno/7787/.

the Belgrade City Assembly to dismiss its Secretary Svetislava Bulajić, because it established she approved her own per diems and overtime fees.[270]

In late 2017, anti-corruption champions and the public called on the Agency to check the disputable public procurement of an 83,000 Euro Christmas tree and contract the City of Belgrade concluded with the company "Keep Light", which has for years been commissioned to put up Christmas lights in the city. The Agency did not act on these requests.[271]

5. Media Freedoms – Do They Exist?

5.1. Assessments of Media Freedoms in Serbia

The situation in the media in 2017 was mostly assessed as negative, as all the factors that resulted in their difficulties were still present. Trends impinging in media freedoms, greater pressures and increasingly frequent attacks on and insults of journalists, as well as lack of court protection, led most observers to conclude that the situation in this area has deteriorated.

Such a conclusion was drawn also by Freedom House, which has been monitoring the situation in the media across the world for years. In its 2017 report entitled Press Freedom's Dark Horizon, it listed Serbia among the seven countries that suffered the largest declines. It noted that the Serbian authorities were evidently attempting to influence the news by exerting political pressures on the outlets, extending support to outlets positively reporting on their activities and simultaneously investing huge efforts in driving critical media out of the market.[272]

European Federation of Journalists (EFJ) Chairman Morgens Blicher Bjerregard qualified Serbia as the worst example of media freedom violations in the Balkans, while EFJ General Secretary *Ricardo Gutierrez* said that it was obvious that media in Serbia did not enjoy support, that politicians were actively working against them and even encouraging hate of the media and journalists in their public appearances.[273]

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270 "Agency Seeks Dismissal of Assembly Secretary: Sent Herself on Business Trips, Approved Her Own Per Diems and Overtime Fees," *Blic*, 29 November 2017, available in Serbian at: https://www.blic.rs/vesti/politika/agencija-trazi-smenu-sekretarke-skupstine-sama-sebe-slala-na-put-dodeljivala-dnevnice/5w4tfbd.

271 "Vasilić: Mayor Mali Must Have Known about the Christmas Tree Contract," *Danas*, 23 December 2017, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=365992&title=Vasili%C4%87%3A+Gradona%C4%8Delnik+Mali+morao+da+zna+za+ugovor+za+jelku.

272 See more at: https://freedomhouse.org/report/freedom-press/freedom-press-2017.

273 Bjerregard's interview to *Radio Free Europe* is available in Serbian at: https://www.slobodnaevropa.org/a/intervju-nedelje-bjeregard-mediji-u-srbiji/28791711.html.

Amnesty International said in early 2017 that pro-government media continued attacking independent journalists. Reporters without Frontiers (RSF) ranked Serbia 66th on the list of 180 countries on its 2017 World Press Freedoms Index, i.e. Serbia slipped seven places in one year.[274] Serbia was awarded 1.78 out of a maximum four points on the IREX 2017 Media Sustainability Index, which indicates that its fulfilment of media sustainability goals was minimal, that parts of the legislative and executive authorities were against the system of media freedoms, wherefore it was ranked in the same group as Azerbaijan, Russia, FYROM, Kazakhstan and Belarus.[275]

In its report for the European Commission, a Technical Assistance and Information Exchange (TAIEX) expert mission for the protection of journalists under criminal law said that the Serbian media were under constant pressure from the authorities. TAIEX said that sources of independent and impartial information were scarce and that it was difficult for them to stand out in an extremely fragmented media market. It also said that numerous cases of obstruction of the journalists' work were registered, from denying them access to press conferences to concealing information of public importance.[276] *Article 19* also concluded in its analysis covering 172 countries that Serbia was one of the European states that was most frequently referred to as a country with a concerning retrogression of democracy.[277]

The European Commission devoted part of its Non-Paper on the State of Play Regarding Chapters 23 and 24 for Serbia,[278] which was published in November 2017 to fundamental rights, including, notably, the right to freedom of expression. It concluded that Serbia continued to face important challenges as regards establishing an enabling environment for a pluralistic media landscape and noted that media legislation still needed to be fully implemented. It singled out the following issues: transparent ownership and funding of private media; that state funding of media outlets and co-financing of media content needed to be effectively monitored, including at the local level, and implemented according to existing legislation; that the regulator's (EMRA's) independence, capacities and mandate had to be strengthened to ensure that broadcasters met their programming obligations; that reported attacks on, and intimidation of journalists required more comprehensive protection of journalists; problems in the development of a new Media Strategy.

274 RSF has been monitoring the media situation on all continents since 2002, judging it against the following indicators: pluralism, media independence, environment and self-censorship, legislative framework, transparency and quality of infrastructure supporting the production of news and information. See: https://rsf.org/en/serbia.

275 See: https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2017-full.pdf.

276 See: http://safejournalists.net/european-commission-media-serbia-constant-pressure-authorities/.

277 See the *Beta* report, available in Serbian at: https://beta.rs/vesti/drustvo-vesti-srbija/78910-istrazivanje-pad-slobode-izrazavanja-u-srbiji-odraz-nazadovanja-demo.

278 The Non-Paper is available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24.1.pdf. More in III.2.2.

Most domestic observers and analysts were critical of the media situation in Serbia as well. The Group for Media Freedoms, rallying scores of press and civil society organisations and eminent public figures, asked for and was granted a meeting with Prime Minister Ana Brnabić in mid-November 2017, at which it presented her a list of its 13 demands – activities that have to be implemented to ensure full media freedoms.[279] Brnabić replied to the demands in December. She said that the Government did not draw any distinctions between journalists and that it was looking for the best way to resolve the issue of Tanjug's legal status "to maximally satisfy the interests of the public". In her replies Brnabić also said that the relevant authorities were "actively working" on improving the safety of journalists and that the Draft Public Information Development Strategy would "definitely be publicly available, open to comments and suggestions and subject to a public debate."[280]

Government representatives, on the other hand, denied pressures on journalists, accusing some of the media criticising their work as being in the service of foreign powers and interests and aiming at topple the government, instead of publishing professional and impartial reports. For instance, in response to qualifications of media freedoms in Serbia as very concerning by some MEPs during a discussion in the European Parliament Committee on Foreign Affairs, Prime Minister Brnabić said that the situation was not that bad. She added that there was no objective journalism in Serbia and that the media were deeply divided into pro– and anti-government media, but that they could say whatever they liked, whereby she showed a lack of understanding of the meaning of objective reporting.[281] She again openly criticised the media at the end of the year, saying that "so-called investigative media are dredging through the assets of senior officials without any responsibility", obviously forgetting that the task of investigative journalists is precisely to reveal what the politicians are trying to hide, usually the property they acquired thanks to the office they hold.[282]

Brnabić expressed a similar view in the Serbian Assembly in October, when she qualified the situation in the media as good, twice as good than before Vučić became Prime Minister, that she was proud to be the Prime Minister and formerly a Minister in his Government, which always invited all journalists to all events and replied to all their questions.[283] Minister for EU Integration Jadranka Joksimović

279 See: http://www.srbija.gov.rs/vesti/vest.php?id=125282.

280 The Prime Minister's answers are available in Serbian at: http://www.euractiv.rs/mediji/12154-premijerka-odgovorila-na-zahteve-grupe-za-slobodu-medija.

281 She added that all weeklies in Serbia were vehemently against the Government and the President and that three of the dailies were against the Government and one was more or less objective. See: http://novaekonomija.rs/vesti-iz-zemlje/ana-brnabi%C4%87-u-srbiji-nema-objektivnog-novinarstva-jer-je-malo-objektivnih-novinara. The Group for Media Freedoms qualified Brnabić's statement as groundless and invited her to engage with them in a public dialogue.

282 *Dana*s, 14 December 2017, p. 7.

283 See the *B92* report, available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2017&mm=10&dd=26&nav_category=11&nav_id=1318650.

went a step further. She said that the media situation in Serbia was not the worst, that it was actually better than in many other countries in the region, perhaps even in some EU Member States.[284]

Public opinion surveys on trust in the Serbian media speak to the contrary. Based on Eurobarometer's data, the European Broadcasting Union published an analysis of public trust in the media in 33 European countries, which shows that most Serbian citizens mistrust the media. Serbia ranked second to last on trust in radio, third from the bottom on trust in the written press and fourth from the bottom on trust in TV.[285]

A recent survey performed by the Belgrade-based Institute of Social Sciences showed that only two out of ten citizens trusted the media. It also showed that the circulation of all Serbian dailies together was lower than 400,000, as opposed to 600,000 at the beginning of the decade.[286] A survey conducted by Ninamedia showed that nearly half of Serbia's population did not read the papers and that seven percent did not watch TV. Most of those who did watch TV trusted the public service broadcaster *RTS* the most. *RTS* is under major government influence as it is predominantly funded from the state budget.[287]

5.2. Problems in the Work of the Working Group Developing the New Media Strategy

Lack of understanding of the role of media in a democratic society was exhibited also by the Ministry of Culture and Information, which formed a working group to develop the new media strategy, comprising six representatives of the state, six experts and only four representatives of media associations.[288] The prior Media Strategy expired at the end of 2016, but the document which is to lay down the main strategic course of development of the media scene over the next five years was not adopted by the end of the reporting period. The National Programme for the Adoption of the EU Acquis 2014–2018 is one of the rare documents specifying the deadline by which the new media strategy was to have been completed – the last quarter of 2016.[289] This official deadline was obviously not met.

The Working Group charged with drafting the media strategy was formed in 2017. The representatives of the Journalists' Association of Serbia (JAS), the Coali-

284 Independent Journalists Association of Serbia, 27 October 2017.

285 See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=349014&title=Gra%C4%91ani+ne+veruju+medijima.

286 *Danas*, 17 August 2017, p. 9.

287 *Danas*, 4 May 2017, p. 8.

288 See the *N1* report, available in Serbian at: http://rs.n1info.com/a336467/Vesti/Vesti/Radna-grupa-za-Medijsku-strategiju-bez-predstavnika-medijskih-udruzenja.html.

289 See more at: http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_eng__2014_2018.pdf.

tion of Press and Media Associations (Association of Independent Electronic Media (ANEM), Independent Journalists' Association of Serbia (IJAS), Independent Vojvodina Press Association (NDNV), Local Press and Association of Online Media (AOM)) and the Association of Media also took part in its work at the outset. Their members left the Working Group for various reasons in October 2017. The first to resign was JAS Chairwoman Ljiljana Smajlović, after the Government decided to appoint Aleksandar Gajović, whom JAS had accused of "propagating chauvinistic prejudices against women", Media State Secretary. The next to withdraw its representative was the Association of Media, because of the working group's inefficiency. The Coalition of Press and Media Associations followed suit, because, in its view, the entire process was rendered meaningless; it suggested that a new working group be formed. The last to leave the Working Group was one of the independent experts, who thought his participation was senseless given that decisions were to be taken "on the environment in which the journalists will be working the next five years in the absence of the chief press associations, who left the Group several weeks ago". The "rump" Group nevertheless continued its work.

5.3. Financing Content of Public Interest

No major changes have been made in the area of project co-funding since 2015 and the same problems have recurred year in and year out. A mere glance at releases issued by press and media associations demonstrates the frequency of abuse of the project co-funding system and violations of the media laws.[290] Problems have been identified in all stages of the co-funding process, from the absence of analyses of needs for specific media content of public interest, the publishing of the public calls for proposals, the work of the expert commissions and decisions approving funding, to the lack of efficient monitory mechanisms, objective evaluations of whether public interest was achieved and penalties for abusers.

The general consensus is that the project co-funding system, launched in 2015, has not fulfilled its main purpose, partly because the regulations are vague, but for the most part due to the lack of genuine (political) will to implement the system properly. Project co-funding has thus served to keep the media "afloat" or indirectly fund media that do not criticise political and social developments at all. This system of "awarding" the loyal media, coupled with the non-existence of a media market, has turned the media into propaganda machines, preventing them from performing their real job: providing objective, true and timely information.

Press associations have initiated several administrative lawsuits, claiming the funds for project co-funding had been illegally granted to media close to the ruling SNS. For example, such media were granted 70% of the funding in Niš, 50% of

290 See the press release of the coalition of press and media associations, available in Serbian at: http://bit.ly/2BDrl1U.

the funding in Apatin, Belgrade and Vranje and 100% of the funding in Jagodina and Trstenik.[291] Most of the funds in Belgrade went to the pro-government tabloids *Informer*, *Srpski telegraf* and *Alo* and pro-government *RTV Studio B*, the very same outlets that topped the list of media violating the Press Code of Conduct.[292]

Funds set aside for co-funding media content of public interest have frequently been granted also to obscure media companies, registered just before or even after the public calls for proposals were published. The relevant authorities often failed to publish the names of the commission members reviewing the project proposals or the commissions' decisions on the applications, comprising information on the projects and specifying the grounds that had led them (not) to grant them financial support. Furthermore, the commissions have often been staffed by "media experts" without any media experience. Some of them were municipal staff, e.g. the Chief of Cabinet of the Knjaževac Mayor, which is against the law.[293]

The situation with media co-funding in Vojvodina was similar, where the same people were frequently appointed to various commissions. For instance, Vladimir Jovanović was appointed member of the commissions of as many as 16 local self-governments (i.e. over a third of LSGs that published calls for proposals in Vojvodina) in his capacity of representative of the Association of Travel Writers and Journalists of Serbia (FIJET Serbia, established in 2012).[294] Vladan Stefanović was also a member of the commissions in 15 municipalities and represented as many as three different associations.[295] The commissions granted over 413 million RSD for co-funding media projects of public interest in Vojvodina.[296]

5.3.1. Transparency of Data on Media Outlets

The general impression was that the Media Register has not fulfilled its statutory purpose (yet).[297] The legal analysis of the transparency of state funding granted to the media sector, developed within the "Public Money for Public Interest"

291 *Danas* extensively reported on this issue.

292 In addition, *Informer* and *Srpski telegraf* earned over 120 million RSD from advertisements in the first nine months of the year. Advertising is also under the Government's thumb, see *Danas*, 13 November, p. 7.

293 See the IJAS press release, available in Serbian at: http://www.nuns.rs/info/statements/23086/-neprihvatljivo-objasnjenje-rukovodstva-opstine-knjazevac.html.

294 Jovanović quit his job at Novi Sad TV in 2017 and set up Media Info Centre, which was granted eight million RSD within four calls for proposals in 2017.

295 Through the companies VTV ComNet and magazine *Dani*, the Stefanović family controls *Radio Subotica*, *Subotica TV*, the magazine *Dani*, *TV Bačka* (Vrbas), *TV Novi Bečej*, *TV Bečej* and, as of 2017, the bilingual paper *Novobečejski dani*. Vladan Stefanović is listed as the Chief Editor of all these outlets in the Media Register.

296 More on the allocation of funding in Vojvodina in the *Cenzolovka* report, available in Serbian at: https://www.cenzolovka.rs/drzava-i-mediji/pozovi-v-radi-deobe-novca-za-medije/.

297 Under Article 7 of the Public Information and Media Act, information about media shall be made publicly available to enable the citizens to form their own opinions about the credibility and reliability of information, ideas and opinions published in the media, in order to be able

project jointly implemented by the Balkan Investigative Reporting Network (*BIRN*), the Slavko Ćuruvija and IJAS,[298] maps the problems in the Media Register, including: dispersion of data on allocated funding in various registers, lack of overviews of data on allocations to media in the Media Register, outdatedness and lack of monitoring mechanisms and efficient penalties.

Although these shortcomings regard only the funding granted to the media by public entities, they apply to the entire Media Register, particularly in the context of outdatedness. The publicly available Media Register data do not allow those perusing them even to conclude how many media are active, rendering everything else senseless and precluding any serious attempts to analyse the situation in the media sector.

5.4. Electronic Media Regulatory Authority

The Electronic Media Regulatory Authority (EMRA) was "drowned" in the general bleakness of the media scene in 2017. The legitimacy of this authority is extremely questionable, given that its main body, the EMRA Council, operated without three (of its nine) members. EMRA's legal status is vague as well; perhaps it is best described as a body "levitating" between an administrative and independent regulatory authority. Furthermore, some laws (above all the Electronic Media and State Administration Acts) include mechanisms facilitating the legislative and executive authorities' influence on its work, notably allowing them to undermine its financial independence (as its financial plans have to be endorsed by the parliament) and its organisation and operations (through e.g. the election of the EMRA Council members).[299]

EMRA's failure to monitor compliance with electronic media regulations during the presidential election campaign, the central political event in 2017,[300] needs to be singled out. It merely reacted to complaints about specific pre-election programmes and, instead of analysing all electronic media programmes on elections, it produced a report providing a mere numerical overview of campaign messages in all the programmes and percentages of airtime given individual candidates, etc.[301] The data in its report were insufficient for ascertaining whether the media outlets fulfilled their statutory obligation set out in Article 47(1(5)) of the Electron-

to identify the potential influence of the media on public opinion and in order to protect media pluralism.

298 Available in Serbian at: https://kazitrazi.rs/wp-content/uploads/2017/11/TRANSPARENTNOST-PODATAKA-DRZAVNA-POTROSNJA.pdf.

299 The election of new Council members in 2016 proved that not only the theoretic possibility of influence was at stake; the National Assembly simply refused to elect the candidates nominated by CSOs.

300 More on the 2017 elections in III.5.

301 EMRA's report is available in Serbian at: http://bit.ly/2GsMYFV.

ic Media Act, under which media service providers shall "respect the prohibition of political advertising outside of political campaigns and, during such campaigns, enable the representation, without discrimination, of registered political parties, coalitions and candidates". EMRA's failure to analyse programme content during the election campaign was merely the consequence of the years-long undermining of its independence, which can partly be attributed to the legal regulations but even more to the lack of a real desire to provide this body with genuine independence from political and economic power centres.

5.5. Financial Status and Consequences of Privatisation of the Media

The plight of media outlets has been exacerbated by the unregulated media market, greatly affected by years-long negative trends, as well as by increasingly strong political influence on their editorial policies and high concentration of ownership undermining media pluralism and the functioning of the media market in Serbia. ANEM data indicate that 1,850 media outlets, including 130 TV and 330 radio stations, were registered in Serbia in 2017. Four TV stations with national coverage had a 62% share of the TV audience and four companies publishing newspapers had a 63% share in the print media market. A survey conducted by *BIRN* and Reporters without Frontiers showed that 8 of the 15 media in the sample were owned or under the control of individuals well-known for they affiliation with the politicians in power. The ownership of seven outlets, including the two leading dailies, *Politika* and *Večernje novosti*,[302] was not transparent. These two papers were effectively owned by the state.[303]

The negative effects of the 2015 privatisation of media outlets were still visible in 2017. The erstwhile state news agency, *Tanjug*, which was officially closed in late 2015, continued operating thanks to the state's financial support and creating losses.[304] The 2015 privatisation of *Radio Television Kragujevac (RTK)*, one of the leading electronic media outlets in Central Serbia, was voided in early 2017 because the new owner had defaulted on his obligations.[305] The station's equipment was bought by the Kragujevac City Administration, which took charge of *RTK* for a six-

302 The disputed privatisation of *Večernje novosti* has been stuck in the preliminary investigation stage for seven years now. More on the situation in this daily in the JAS report, available in Serbian at: http://www.uns.org.rs/sr/desk/media-news/46754/dugovi-gase-vecernje-novosti.html.

303 The survey is available at: www.serbia.mom-rsf.org.

304 More on the status of the news agency *Tanjug* and calls for its abolishment and deletion from the Register in the *2016 Report*, II.8.2. and the *2015 Report*, II.8.2.3. More about Tanjug's in the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=362642&title=Nepostoje%C4%87a+agencija+Tanjug+napravila+milionske+dugove.

305 The annulment of the privatisation contract was followed by the departure of RTK staff, who filed lawsuits claiming their 12 wages and the auction of the seized equipment. More in the 2016 Report, pp. 208–209.

month period pursuant to a Government decree, until the next attempt to privatise it. The City Administration, which had not published any media co-funding calls for proposals for three years running, although it was under the statutory obligation to do so, granted all the funds allocated for that purpose in 2017 to *RTK*. It also spent nearly 110 million RSD to pay the outstanding wages to *RTK* staff, owed them by former owner Radoica Milosavljević, closely affiliated with the authorities. The whole operation cost the City 155 million RSD.[306] The privatisation of Radio Valjevo was annulled in August 2017, also because its buyer defaulted on his obligations,[307] while the privatisation of *Niška TV(NTV)* was contested before the Constitutional Court.[308]

The financial and other difficulties faced by media outlets, especially those critical of the government, were exacerbated by the latter's influence on advertisers (NB the state and its authorities were also the main advertisers in the media); the unregulated media market and further tabloidisation of the media; and, numerous violations of the press code of conduct that went unpunished.

5.6. Assaults and Pressures on Journalists in 2017

According to the IJAS database of assaults on journalists going back to 2008,[309] the number of physical assaults on journalists fell in 2017, but the instances of threats against them and their intimidation continued growing, impinging on their exercise of their freedom of expression. IJAS data show that journalists were victims of 84 assaults and incidents in 2017 (over 250 in the past five years).[310]

Given that the safety of journalists and absence of efficient proceedings are one of the key problems alerted to in nearly all national and international reports on media freedoms in Serbia, the representatives of the Republican Public Prosecution Service, the Ministry of Internal Affairs and press and media associations (JAS, IJAS, NDNV, ANEM, AOM and Association of Media) signed an Agreement on Cooperation and Measures to Increase the Level of Safety of Journalists in December 2016.[311] The Agreement, which has also been envisaged in the Chapter 23 Action Plan, aims at ensuring efficient criminal law protection of journalists and sets out a series of concrete measure and activities to put in place a coherent register of assaults on journalists, improve communication between the state authorities and media associations and provide comprehensive safety protection training.[312]

306 *Cenzolovka,* 23 November 2017 and *Politika*, 25 November 2017, p. 21.

307 *Politika*, 25 August 2017, p. 8.

308 *Danas*, 14 August 2017, p. 5.

309 Available in Serbian at: http://www.bazenuns.rs/srpski/napadi-na-novinare.

310 *IJAS*, 27 December 2017.

311 More in the *2016 Report*, II.8.9.

312 The Agreement provides for, *inter alia*, the establishment of a Standing Working Group, development of the Agreement implementation plan, obligation of the prosecutors and police

The work of the Standing Working Group, established under the Agreement, was, however, fraught with lack of understanding between the representatives of the media, on the one hand, and the prosecutors and police, on the other. The prosecutors' and courts' case law[313] demonstrates that they consider that a threat has to be serious and feasible, wherefore they did not react when the individual threatening a journalist used the conditional ("I'd shoot you") or indirectly threatened him ("You won't forget me" or "I know where you live"). All this brings into question the purpose of incriminating threats, particularly if one bears in mind that the point of the offence is to protect journalists from risks they are exposed to whilst performing their duties in public interest.

Unfortunately, this was not the only problem in the work of the Standing Working Group. It did not even draft its own Rules of Procedure. The data on incidents against the safety of journalists are not uniform or precise. Furthermore, it transpired that there is no protection under criminal law in case of one of the rare offences recognising journalists as the objects of protection (qualified form of the crime of endangerment of safety under Article 138(3) of the Criminal Code). Under this provision, a term of imprisonment ranging between six months and five years shall be imposed on anyone who endangers the safety of an individual performing duties in public interest, manifested by "a threat of an attack upon the life or limb of that individual or a person close to him".

All these issues have given rise to the question whether the conclusion of the Agreement and the establishment of the Standing Working Group, envisaged in the Chapter 23 Action Plan, have really been aimed at improving the safety of the journalists or at merely formally fulfilling a government obligation.

The relationship between the members of the Standing Working Group deteriorated at the end of 2017 after the Belgrade First Basic Public Prosecution Service decided to dismiss a criminal report about incidents that occurred during the inauguration of the new President in April 2017, when the SNS security guards and sympathisers assaulted six journalists[314] and prevented them from doing their job, i.e. filming their removal of a member of the public who was peacefully protesting.

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to immediately act on crimes against journalists, establishment of cooperation and coordination mechanisms, registration of crimes affecting journalists, the Republican Public Prosecutor's obligation to set up a separate register of crimes against journalists and traditional and online media, an analysis of criminal law and actions by the relevant authorities to identify any needs for amending the criminal law, an analysis of communication between the state authorities and media to date and the authorities' responsiveness to the media, basic training of media owners and journalists in IT safety and use of basic anti-hacking measures and training of prosecutors and police to improve the efficiency of their responses when the safety of journalists is at risk.

313 See, e.g., the Supreme Court of Cassations judgments in the cases of Kzz 691/2017 of 11 July 2017 and Kzz 1203/2015 of 20 January 2016.

314 Journalists working for *Danas*, *Tanjug*, *Radio Belgrade, Vice Serbia, Insajder* and *Ekspres* were assaulted. See more at: http://www.balkaninsight.com/en/article/serbian-officials-defend-thugs-from-the-vucic-s-sworn-in-ceremony-06–14–2017.

The policemen who were present at the scene and saw the incident did not react to calls for help.

The criminal report was filed against the assailants several days later, when the media published their photographs and they were identified. The First Basic Public Prosecution Service dismissed the report, explaining that the citizens at the scene had been provoked by the clear demonstration of political views contrary to those of most of the people there and that the security guards removed the journalists in a pleasant and decent manner, thus preventing them from being lynched and violence from escalating.[315] The explanation shows that prosecutors obviously consider the seizure of equipment, choking and "transportation" of the journalists to an "appropriate" location to be acceptable and lawful conduct and peaceful expression of different opinions and the journalists' attempts to film it a provocation.

Press and media associations[316] vehemently reacted to the decision, and some even suspended their work in the Standing Working Group, saying they might return after meeting with Republican Public Prosecutor Zagorka Dolovac. Although the Belgrade Higher Prosecution Service appealed the decision,[317] the impression was that the relationship between the "two parties" was quite strained. It remained uncertain whether and how the original members of the Group would continue working together in 2018.

The authorities did not treat all the assaulted journalists equally, as corroborated by their reactions to injuries sustained by two reporters of *TV Pink*, a station that airs only positive reports on government activities and extremely negative reports, frequently spiced up by insults, about the opposition and public figures critical of the government. The incident occurred in front of the station's building during a protest staged by *Dveri*. It was condemned by state officials, opposition parties and JAS and IJAS.[318]

The state officials and pro-government media said the two journalists had sustained grave physical injuries, Serbian President Aleksandar Vučić paid them a visit in the Belgrade Emergency Centre, the assailant was arrested and his trial was scheduled for February 2018. However, the court expert refuted the published findings and said that they had sustained light physical injuries, which led the pro-government media to accuse him and the daily *Danas*, which quoted him, of supporting

315 See the *N1* report, available in Serbian at: http://rs.n1info.com/a342783/Vesti/Vesti/NUNS-i-NDNV-Sramna-odluka-Tuzilastva-o-odbacivanju-krivicnih-prijava-protiv-napadaca-na-novinare.html.

316 See the IJAS and NDNV press release, available in Serbian at: http://bit.ly/2mG4W1w, and AOM's press release, available in Serbian at: http://bit.ly/2AZN84G.

317 See the *N1* report, available in Serbian at: http://rs.n1info.com/a347182/Vesti/Vesti/Vise-tuzilastvo-se-zalilo-zbog-odbacivanja-prijava-za-napad-na-novinare.html.

318 See the *RTS* report, available in Serbian at: http://www.rts.rs/page/stories/ci/story/1/politika/2872344/incident-na-protestu-pokreta-dveri.html.

violence against journalists of pro-government media and *Danas* of using the "battered journalists in its dirty war against the government."[319]

The government representatives' attitude towards the few media publishing objective reports, including information critical of some actions by the officials, was extremely negative in 2017. They publicly criticised journalists of some media, calling them foreign mercenaries and accusing them of betraying national interests. Such criticisms were voiced against the cable TV channel *N1*, a partner of CNN, frequently described by Aleksandar Vučić and his associates, as well as pro-government tabloids, as a hostile and American station aiming to topple the Serbian government; they have also exerted pressures on cable TV operators not to include this station in their packages.[320]

Last but not the least, no information on the course of investigations of the many murders and assaults on journalists in the recent and more distant past has been published. Many of these cases are still in the investigation stage, which indicates either that the investigating authorities are unable or unwilling to collect the evidence. The few cases that made it to court were still pending at the end of 2017.[321]

5.6.1. Lawsuits against and Trials of Journalists

Lawsuits against and trials of journalists were numerous in 2017. Government representatives filed libel suits against media investigating corruption and other violations of the law, accusing them of damaging their honour and reputation and seeking damages.

The prosecutors' and courts' case law on libel has not been consistent. Courts dismissing lawsuits public figures filed against journalists have been criticised on occasion. Such criticisms were voiced, for instance, by *TV Pančevo,* which is controlled by the SNS, against a judge of the Pančevo Higher Court after she quashed a judgment of the Vršac Basic Court and ordered a retrial. The latter Court had found journalist Stefan Cvetković guilty and sentenced him to two years and three months imprisonment for libel and ordered him to pay 17,000 EUR in damages to the local SNS officials, whose work he had criticised.[322] The Belgrade Appeals Court also got its share of criticism when it overturned the first-instance judgment in a lawsuit Minister of Internal Affairs Nebojša Stefanović filed against the weekly *NIN.*[323] In November 2017, the Belgrade Higher Court dismissed the lawsuit filed by the

319 See the N1 report, available in Serbian at: http://rs.n1info.com/a345285/Vesti/Vesti/Vestak-Novinarke-Pinka-nisu-zadobile-teske-telesne-povrede.html.

320 *Danas*, 8 November 2017, p. 7.

321 More in BCHR's prior annual reports, in which it consistently called on the authorities to seriously review the circumstances, collect the evidence, identify the perpetrators and bring them to justice.

322 *Fonet*, 23 March 2017; *Beta,* 12 April 2017 and *IJAS*, 1 April 2017.

323 More in the *2016 Report*, I.5.2.9.

company JRB and its Director against the daily *Danas* for publishing that trade union representatives had filed over 20 criminal reports accusing the company management of wheeling and dealing in fuel, fraud, granting benefits to the Director's closest associates and of illegal dismissals.[324]

Courts also upheld claims against journalists when they found that the plaintiffs' honour and reputation had been damaged. One such decision was taken against the pro-government *TV Pink,* who was sued by the former leader of the opposition Democratic Party and Belgrade Mayor Dragan Đilas. *TV Pink* was ordered to pay him 475,000 RSD in damages and read the entire judgment in its prime-time news. The station did not fulfil the latter obligation.[325]

On the other hand, there were instances of prosecutors dismissing criminal charges by journalists claiming they had been gravely assaulted and their performance of their professional duties undermined. For instance, the Belgrade Higher Public Prosecution Service dismissed a lawsuit filed by journalists and actors against the editors of *Informer*, *TV Pink* and some other pro-government newspapers, which had accused them of conspiracy against the government, disruption of the constitutional order and even of putting at risk the life of Serbian President Aleksandar Vučić.[326] This Service also dismissed a lawsuit filed by Nataša Jeremić, a journalist and wife of an opposition leader, against a senior SNS official, who had called her the Serbian drug boss during the election campaign.[327]

The Belgrade Higher Court acquitted Ivan Ivanović, the leader of the rightist organisation *SNP Naši*, whom the prosecution service charged with discrimination after he drew up a list of "Serb haters" and traitors, which included the names of public figures critical of the government.[328]

The final decision of the Novi Sad Appeals Court, which found a violation of the law and ordered that Slobodan Arežina be reinstated to the post of RTV Vojvodina Programme Director, was one of the rare positive outcomes of proceedings initiated by journalists. Arežina was illegally dismissed in May 2016.[329] The RTV

324 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=361423&title=Sud+presudio+u+korist+novinarke+Danasa.

325 See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=362395&title=Dragan+%C4%90ilas%3A+TV+Pink+ne+po%C5%A1tuje+sudske+odluke+i+ponavlja+iste+la%C5%BEi.

326 See *Danas*, 8 and 10 August 2017.

327 *Fonet*, 23 March 2017 and *Beta*, 17 November 2017.

328 The list published by Ivanović included, among others: actors Mirjana Karanović and Nikola Đuričko, B92 Director Veran Matić, Peščanik Editor Svetlana Lukić, singer Jelena Karleuša, journalist Nenad Lj. Stefanović, theatre director Gorčin Stojanović, media expert Nebojša Krstić, retired university professor Srbijanka Turajlić, et al. More is available in Serbian at: http://www.vesti-online.com/Vesti/Srbija/673967/Ivanovic-oslobodjen-optuzbi-zbog-spiska-srbomrzaca.

329 *RTV* Director Srđan Mihajlović and Novi Sad TV Channel 1 Chief Editor Marjana Jović resigned after Arežina was dismissed. A large number of staff were dismissed from *RTV*. The

management, however, issued a ruling appointing two other Programme Directors and ordered the staff to sign them in the credits.[330]

5.7. Violations of the Press Code of Conduct

The unprofessionalism of some journalists and outlets frequently made the headlines in 2017 as well. The results of the survey entitled "Extreme Speech in the Media: Generation of the Culture of Fear in Serbia" showed that extreme speech was present in one out of four reports of the most popular media in Serbia. Elements of extreme speech were found in over 9,400 of nearly 37,000 analysed media reports published by 16 print, electronic, online media and news agencies. Misogyny was identified in 25% and intolerance in 15% of the reports. The analysis showed that the media publishing such reports aimed at achieving drama and sensationalism at all costs, disseminating insecurity and intolerance along the way. Extreme news are irrelevant from the perspective of information but they cause negative emotions, generate fear and are clearly used as political and propaganda tools. Print media in Serbia have thus facilitated the generation of a climate or culture of fear in society.[331]

The authors of the analysis concluded that pressures on the media were greater in Serbia than in the region or the rest of Europe, that censorship and self-censorship were all pervasive, that Serbian government representatives perceives media critical of their work as their political opponents and anti-regime activists, that the editorial policies of the most popular print media were characterised by strong anti-European, anti-American and anti-Western sentiments and that the tabloids in Serbia differed from classical tabloids in European countries inasmuch as they openly served as political propaganda tools and for showdowns with political opponents. This has resulted in the blatant relativisation and even challenging of Serbia's (declarative) foreign policy goal of joining the EU. Russian President Vladimir Putin is the most popular politician in such media, since he is perceived as a rival of the West and the "friend" of Serbia and Serbian people.[332]

Articles published by the pro-government daily *Informer* in 2017 are an excellent illustration. This paper announced 9 wars on 12 of its front-pages in the first few months of 2017. Its unnamed sources, both Americans and Russians, were quoted as saying that Serbia would be attacked by ISIS, that wars in the Balkans would be launched, inter alia, by Albanians, and aided and abetted by Croatia, Tur-

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sacked journalists and editors of the Vojvodina public broadcaster established the movement Support RTV, which organised street protests and other campaigns to alert to the political background of the dismissals. The protests were jointed by large numbers of Novi Sad residents, as well as residents of some other towns.

330 See the *B92* report, available in Serbian at: https://www.b92.net/info/vesti/index.php?yyyy=2018&mm=01&dd=26&nav_category=12&nav_id=1351459.

331 The survey, conducted by CNM Liber in 2017, is available in Serbian at: http://www.blogopen.rs/wp-content/uploads/2017/11/Rezultat-istrazivanja-ekstemnog-govora-u-medijima.pdf.

332 *Ibid*, pp. 23 and 24.

key, Albania, George Soros and Serbian opposition leaders.[333] *Informer's* owner, whom the Press Council found in breach of the Press Code of Conduct many times, said he was concerned about the fate of journalism and would establish a new press association, to protect "Serbian President Vučić from attacks by tabloids" and qualified the existing press associations as "para-political" organisations.[334]

According to the data of the Press Council, the eight Serbian dailies violated the Code of Conduct in 4,717 articles in the April-November 2017 period (it identified such violations in 4,402 articles in the same period in 2016). Most of these articles (3,305) were published in the pro-government tabloids *Srpski telegraf*, *Alo* and *Informer*. The situation was even worse as regards online media; they violated the Press Code of Conduct 4,344 times during a nine-week period covered by a survey. Most of their violations concerned the failure to name their sources, breaches of the right to privacy and presumption of innocence and disrespect for the culture of the public word.[335]

The Press Council said that the number of violations was constantly increasing, that some media violated the Press Code of Conduct on purpose and that it had received 43 complaints about the media by mid-September 2017. Its representatives specified that the Council acted only on complaints, but that it also monitored the media and that the results of its monitoring were devastating: it identified between 20–25 evident breaches of the Code just in the eight dailies on a daily basis.[336] The following paragraphs will single out just some of the innumerable violations of the Code and examples of unprofessional reporting in 2017 noted by the Press Council.

The daily *Politika* published two misogynous and anti-feminist articles it ascribed to two university professors, who, as it transpired subsequently, did not exist. The articles were illustrated by their photographs that turned out to be the photographs of German actors. *Politika* did not apologise when the scandal broke; rather, it said that the whole case was an attempt to discredit it, masterminded by foreign mercenaries. One of the actors, Andreas Kaufman, sued *Politika*.[337]

TV stations with national coverage continued violating professional codes frequently in 2017, especially in their reality shows rife with violence, sex, hate speech, quarrels and indecent language. *Happy TV* "stole the show" in that respect, prompting the network Women against Violence to sue it for qualifying an attempted rape of a female participant in its reality show as a "passionate relationship". This TV station also broadcast pornography late at night. [338] However, what gives

333 See the *Cenzolovka* report, available in Serbian at: https://www.cenzolovka.rs/etika/informer-u-akciji-proizvodnje-sukoba-ove-godine-12-ratova-na-naslovnoj/.

334 Media & Reform Centre, Niš, 1 July 2017.

335 *Beta*, 20 December 2017.

336 *TV N1*, 15 September 2017.

337 *JAS,* 7 August and 1 September 2017 and *Vreme*, 27 July 2017, p. 26.

338 See more in Serbian at: https://www.pulsonline.rs/aktuelno/rijaliti-na-udaru-traze-zabranu-parova/862ed6y.

rise to the greatest concern is the lack of reaction on the part of EMRA, which is tasked with monitoring the content broadcast on electronic media.

6. Elections in Serbia

6.1. Brief Overview of Elections until 2017

Serbian voters went to the polls every other year on average during the past five years. Local, parliamentary and presidential elections were held in 2012. The Socialist Party of Serbia (SPS) and the Serbian Progressive Party (SNS) and their partners, the Party of United Pensioners of Serbia (PUPS) and United Regions of Serbia (URS), formed a majority coalition in the National Assembly, which voted in the new Government in July 2012. SPS President Ivica Dačić was elected Prime Minister and SNS leader Aleksandar Vučić First Deputy Prime Minister.

Although parliamentary elections are to be held every four years under the law, the ruling parties announced early parliamentary elections already in late 2013. The decision to call early parliamentary elections was taken by the SPS and SNS presidencies, under the explanation that "the will of the people has to be verified". The Serbian Government adopted the official motion to call early parliamentary elections and forwarded it to Serbian President Tomislav Nikolić, who on 29 January 2014 called the elections for 16 March. That was the last day on which the parliamentary elections were to have been scheduled if they were to be held simultaneously with the Belgrade local elections, after the new majority in the Belgrade City Assembly voted no confidence in Belgrade Mayor Dragan Djilas on 24 September 2013. Belgrade was run by a caretaker government until the new councillors were elected in March 2014. The SNS-led coalition won 158 out of 250 seats in the National Assembly at the March elections (enough to form a Government by itself) and Nikolić designated Aleksandar Vučić prime minister. The new Cabinet was formed in April 2014.

Early parliamentary elections were again one of the main topics in 2016. The then Prime Minister Aleksandar Vučić 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 going back to 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 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. The April 2016 early parliamentary elections were scheduled to coincide with the regular local and provincial elections. This was the eleventh election since the multi-party system was

introduced in Serbia in 1990, the third time parliamentary elections were held in the previous five years and the second time they were held before the parliament's term in office expired.

The breakdown of deputies in the National Assembly changed after the 2016 elections. SNS won 27 votes less than in 2014. Two parties opposing Serbia's accession to the EU entered the parliament: the Serbian Radical Party (SRS), won 8% of the votes, 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 accession (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 OSCE/ODIHR Limited Election Observation Mission concluded that while fundamental freedoms were respected, biased media coverage, undue advantage of incumbency and a blurring of distinction between state and party activities unlevelled the playing field for contestants.[339]

6.2. 2017 Presidential Elections

Regular presidential elections were held on 2 April 2017. Eleven candidates ran in the election. The then Prime Minister Aleksandar Vučić won 2,012,788 (55.08%) votes at 8,396 polling stations on 2 April, and at repeat elections at eight and three polling stations on 11 and 17 April respectively.[340]

Saša Janković, the former Protector of Citizens who ran as a candidate of a civic group and enjoyed the support of several opposition parties and the For Serbia without Fear movement, came in second, with 16.36% of the votes, while Luka Maksimović aka Ljubiša Preletačević Beli came in third with 9.43% votes. His result caused the most surprise because he first appeared on the political stage during the 2014 Belgrade local elections, when he won enough votes to partake in running the Mladenovac municipality. Both his local and presidential campaigns were based on witticisms and parodying the political system.[341] His campaign was covered by many national and foreign media; Serbian analysts and public perceived his campaign, as well as the large number of votes he won, as the people's message to the ruling echelons about what thez really thought of their actions. A number of poltical analysts were surprised by Beli's results, since he won many more votes that former

339 Available on: http://www.osce.org/odihr/elections/serbia/256926?download=true.

340 See the *N1* report, available in Serbian in: http://rs.n1info.com/a243598/Vesti/Vesti/RIK-konacni-rezultati.html.

341 His main message was that he wanted to win the elections for his own personal gain and to give the people money so that he could stay in power for 50 years.

Serbian Foreign Minister Vuk Jeremić or SRS leader Vojislav Šešelj, both of whom have been actively involved in politics for years.

Of the 6,724,949 voters entered in the voter register, 3,655,365 went to the polls; 3,593,636 votes were valid and 60,378 invalid. Individual cases of irregularities registered at 3% of the polling stations on election day did not significantly affect the regularity of the process or the election results, as the NGO CRTA and the Citizens on Watch observer mission noted.[342]

The NGO Transparency Serbia warned that the presidential elections had been called although the outstanding issues that arose during the prior parliamentary elections had not been addressed and although the regulations on election campaigns and camapign finance have not been harmonised.[343] The single voter register was again criticised. Citizens on Watch filed three criminal reports on election day against unidentified perpetrators in Temerin, Novi Sad and Beočin with the relevant Novi Sad Public Prosecution Service suspecting them of receiving and offering bribes in connection with voting and "buying votes". Allegations of "vote buying" characterised the election campaign period as well.[344]

Not many international observers monitored the 2017 elections in a systematic and comprehensive manner. The OSCE Office for Democratic Institutions and Human Rights deployed a six-member expert team to Serbia to monitor the elections,[345] but its report did not warrant the attention it deserved. The authors of the report said that the long-standing OSCE/ODIHR recommendations calling for a comprehensive review of the legislation to address existing shortcomings remained to be implemented. They also criticised the election cycle, stating that the prevalence of representatives of the governing coalition in the permanent composition of the Republic Electoral Commission (REC) resulted in concerns of a lack of impartiality by several OSCE/ODIHR EAM interlocutors, that the campaigns of the opposition candidates, constrained by limited financial resources, did not match in scope and intensity with that of the candidate from the governing coalition. The authors of the report also said that, despite some positive changes introduced in the legal framework, regulation and oversight of party and campaign finance stood to be further improved in line with previous OSCE/ODIHR recommendations. In addition, the lack of a possibility for public scrutiny over voter lists contributed to a continued lack of trust and challenges the transparency of the process. The mission

342 CRTA's press release is available in Serbian at: http://crta.rs/izborni-dan-u-skladu-sa-proceduralna-kampanja-neravnopravna/.

343 See the TS press release at: http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-issues/9040-one-more-election-campaign-in-an-incomplete-legal-framework.

344 See: http://www.gradjaninastrazi.rs/wp-content/uploads/2017/05/CRTA-GNS-Izvestaj-2017-Final.pdf.

345 See the *N1* report, available in Serbian at: http://rs.n1info.com/a233493/Vesti/Vesti/Predsednicki-izbori-bez-posmatraca-OEBS-a.html and http://preugovor.org/upload/document/predsedniki_izbori_-_sprovoenje_zakona_i_evropske_.pdf, p. 11.

also noted that the overall climate of undue political and economic influence continued to challenge editorial freedom and independence. As a result, the environment was marked by widespread self-censorship and limited analytical and critical reporting, reducing voter access to impartial editorial information. In the view of the mission, the law does not create a legal basis for citizen and international election observation.[346] The report was presented to the relevant institutions in November 2017 and its criticisms and recommendations were picked up by media publishing critical views of political reality in Serbia.[347]

According to a survey on the coverage of the presidential candidates by the main TV channels conducted by the Bureau for Social Research (BIRODI), they devoted the most airtime to Vučić (61.2%), Jeremić (6.4%), Janković (5.9%) and Šešelj (5.3%).[348] CRTA conducted a survey of the print media and found that Vućić featured on 147 of 251 front-pages devoted to presidential candidates; 118 of the front-pages presented him in a positive light. Janković appeared on 79 front-pages, but was presented in a negative light on 39 of them. Jeremić appeared on the front-pages 64 times, 39 times in a negative light.[349]

The election campaign lasted only 30 days and was short and intensive. Thirty days is the statutory minimum, but these were regular elections and Article 4(2) of the Act on the Election of the President of the Republic[350] lays down that elections shall be called 90 days before the expiry of the term in office of the outgoing President and be completed within 60 days. The deadline negatively reflected on the presidential candidates as well, because the law transferring all verifications of signatures supporting nominations from courts and municipalities to notaries public came into force on 1 March 2017. Although not all notaries public were appointed by that time, all the candidates managed to collect the statutory 10,000 signatures supporting their nominations and verify them on time.

Public attention focused on the single voter register during these elections as well. CRTA Citizens on Watch said that it was not updated but that, as opposed to the 2016, most questions by the members of the public concerned the possibility of voting abroad, change of polling station between two rounds, service of election notice slips and the possibility of amending the data in the voter register.[351]

346 Available at: http://www.osce.org/odihr/elections/serbia/322166.

347 See: http://preugovor.org/Policy-Papers/1399/Presidential-Elections-Law-Enforcement-and.shtml.

348 See the BIRODI report, available in Serbian at: http://www.birodi.rs/wp-content/uploads/2017/08/Mediji-javnost-izbori-2017.pdf.

349 See the Citizens on Watch Report, available in Serbian at: http://www.gradjaninastrazi.rs/wp-content/uploads/2017/05/CRTA-GNS-Izvestaj-2017-Final.pdf.

350 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

351 See: http://www.gradjaninastrazi.rs/wp-content/uploads/2017/05/CRTA-GNS-Izvestaj-2017-Final.pdf.

6.2.1. Potential Conflict of Interest

Aleksandar Vučić was at a major advantage over the other presidential candidates as he was the Prime Minister and the candidate of the ruling coalition. Although he said on *RTS* that he would campaign in his "spare time",[352] the line between the activities he conducted as the Prime Minister and as presidential candidate was blurred. Although Article 6 of the Serbian Constitution, which prohibits conflict of interest and lays down that no-one may perform a state or public office in conflict with their other offices, occupations or private interests, was not a constitutional obstacle precluding Vučić from campaigning in his capacity of Prime Minister, it definitely increased his chances of winning the elections.

The Anti-Corruption Agency Act[353] lays down that public officials shall not subordinate public interests to their private interests and prohibits them from using their office to acquire any benefit or advantage for themselves. This law defines conflict of interest as any situation where an official has a private interest that affects, may affect or may be perceived as affecting his discharge of office or official duty in a manner compromising public interest.[354] The perception that there may be conflict of interest suffices; it does not have to materialise.[355]

As Transparency Serbia recalled in its press release,[356] Article 29 of the Anti-Corruption Agency Act prohibits direct use of public resources for implementing political activities (e.g. going to campaign rallies in official vehices, albeit this does not apply to public officials with round the clock security detail). However, neither this nor any other law limit the public officials' meetings with representatives of other important countries; Vučić, for instance, met with German Chancellor Angela Merkel during the campaign.[357]

The Anti-Corruption Agency confirmed to the daily *Danas* that it was checking whether Vučić had violated the Anti-Corruption Agency Act provision prohibiting public officials from "using public resources and events and meetings they are participating in in an official capacity to promote their political parties or entities". The Agency has quite limited legal measures it can take against Vučić if it finds him

352 See the *RTS* report, available in Serbian at: http://www.rts.rs/page/stories/sr/story/9/politika/2631643/vucic-za-rts-ponosan-sam-na-posao-premijera-postignuti-su-znacajni-rezultati.html.

353 *Sl. glasnik RS,* 97/08, 53/10, 66/11 – CC Decision, 67/13 – CC Decision, 112/13 – authentic interpretation and 8/15 – CC Decision.

354 *Sl. glasnik RS*, 55/05, 71/05 – corr., 101/07, 65/08, 16/11, 68/12 – CC Decision, 72/12, 7/14 – CC Decision and 44/14.

355 See the *Peščanik* report, available in Serbian at: http://pescanik.net/izborni-rezultat-razlozi-za-brigu/.

356 See the TS press release at: http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-isues/9040-one-more-election-campaign-in-an-incomplete-legal-framework.

357 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/politika/sastanak-u-berlinu-merkelova-vucicu-srbija-je-na-pravom-putu/vntnytc.

in breach of the law – it may issue him a warning measure or publish a recommendation for his dismissal; it is further constrained by the fact that Vučić is no longer Prime Minister.[358]

6.2.2. Campaign Finance

Under the Act on the Financing of Political Activities, statutory restrictions and rights and obligations of the nominators regarding campaign finance apply only to the period from the day the elections are called until the day they are held. On the other hand, no law prohibits the candidates from conducting a "campaign before the campaign" except for the airing of paid advertisements on TV and radio station. The 2013 Anti-Corruption plan set out that these outstanding issues would be addressed by the end of 2014 but they are still pending.[359]

Campaign finance is an issue that is regularly raised in public because many are of the view that it is insufficiently transparent. The candidates' reports on campaign costs indicate that the citizens of Serbia prevailed among their donors and that only a few companies extended them financial support.

The 2017 Presidential Election Campaign Costs Report[360] shows that 22% more funds were spent on this campaign then in 2012. Vučić's campaign funds accounted for over 60% of all funding raised by the presidential candidates. Second best Jeremić raised just a third of the funds.[361] The report on Vučić's campaign finance says that only one company supported him and specifies that 6,940 private individuals donated funds, most of them identical amounts – 40,000 RSD. Such donations need not be reported ordinarily because they do not exceed the average wage in Serbia. Vučić, however, did not explain the origin of a large number individual 40,000 RSD donations, as the Anti-Corruption Agency stated in its report to the Higher Public Prosecution Office.[362]

6.2.3. Election Oversight and Activities of Independent Regulatory Authorities

Just like over the past 16 years, the National Assembly again failed to fulfil its statutory obligation to form an Oversight Committee to monitor the aspects of

358 See the *Danas* report, available in Serbian at: http://wwww.danas.rs/drustvo.55.html?news_id=353416&title=Vu%C4%8Di%C4%87+pod+istragom+Agencije+za+borbu+protiv+korupcije.

359 See the TS press release at: http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-isues/9040-one-more-election-campaign-in-an-incomplete-legal-framework.

360 Available in Serbian at: http://www.acas.rs/wp-content/uploads/2011/05/Izvestaj-kampanja-2017.pdf.

361 Aleksandar Vučić spent a total of 794,209,207.92 RSD, Vuk Jeremić 261,794,608.12 RSD, and Saša Janković 30,924,604.29 RSD on the campaign. The third-based candidate, Luka Maksimović, reported he had spent 2,511,152.91 RSD on his campaign.

362 See more at IV.4.4.2.

the campaign no other state authorities are responsible for overseeing.[363] In addition, Assembly Speaker Maja Gojković called a recess of the parliament at the very beginning of the spring session, which begins on 1 March under the law.[364] She told the reporters that she wanted to preserve the dignity of the Assembly and democracy[365] and referred to the provision in the Assembly Rules of Procedure allowing her to call a recess.[366] Opposition deputies sharply reacted to her decision, claiming she had violated the Constitution, the law and the Rules of Procedure, which allow recess for technical reasons.[367]

The election conditions were also influenced by the conduct of the independent institutions charged with overseeing the election process – the Anti-Corruption Agency and the Electronic Media Regulatory Authority (EMRA), whose capacity and oversight were limited.[368] Although EMRA is tasked with monitoring the work of media service providers and ensuring the consistent enforcement of regulations under which electronic media are to provide airtime to registered political parties, coalitions and candidates without discrimination, this authority decided to limit its oversight to the candidates' campaign advertising but not their coverage.[369]

The Anti-Corruption Agency, as an autonomous and independent regulatory authority, plays one of the chief oversight roles during the election process. However, it was provided with much less money for overseeing campaign finance in 2017 than in 2012.[370] The Agency had fewer observers than during prior elections (only 44),[371] claiming they sufficed because only presidential elections were being held.[372]

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363 See the *Peščanik* report, available in Serbian at: http://pescanik.net/izborni-rezultat-razlozi-za-brigu/.

364 See the New Serbian Political Thought report, available in Serbian at: http://www.nspm.rs/hronika/suspendovan-rad-skupstine-zbog-bojazni-rezima-da-njeno-prenosenje-ne-utice-na-predizbornu-kampanju.html.

365 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/politika/maja-gojkovic-sednica-skupstine-srbije-nastavlja-se-posle-predsednickih-izbora/yfrhnx4.

366 Perusal of the data on the Assembly sessions since 2000 showed that her claim that the Assembly ordinarily went on recess during presidential election campaigns was untrue. The Assembly held not only old regular sessions during presidential campaigns, but extraordinary ones as well, e.g. in 2004. See more at: http://pescanik.net/izborni-rezultat-razlozi-za-brigu/.

367 See more at: http://mondo.rs/a986612/Info/Srbija/Skupstina-Srbije-Gojkovic-prekinula-sednicu-opozicija-burno-reagovala.html.

368 See the TS press release at: http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-isues/9040-one-more-election-campaign-in-an-incomplete-legal-framework.

369 *Ibid*.

370 See: http://preugovor.org/upload/document/predsedniki_izbori_-_sprovoenje_zakona_i_evropske_.pdf.

371 The 2017 Presidential Election Campaign Costs Report, available in Serbian at: http://www.acas.rs/wp-content/uploads/2011/05/Izvestaj-kampanja-2017.pdf.

372 See more at: http://preugovor.org/upload/document/predsedniki_izbori_-_sprovoenje_zakona_i_evropske_.pdf, p. 22. More on problems in the work of the Agency in III.4.4.

6.3. Local Elections in 2017

Local elections were held in a small number of Serbian municipalities in 2017. The reports about assaults on activists of parties running in the elections and intimidation of political opponents, definitely not a feature of free and fair elections, were concerning.

Elections in five Serbian municipalities were held right after the presidential elections, on 24 April 2017. The elections in Kovin and Kosjerić were regular and the ones in Zaječar, Vrbas and Odžaci were early. The SNS-led tickets won the most votes in Vrbas, Kosjerić, Kovin and Odžaci; "Boško Ničić – Movement for Krajina" ticket won the most votes in Zaječar.[373] Procedural irregularities were registered during these elections, but the reports that political party (usually SNS) activists from other towns appeared in these municipalities and assaulted activists of other parties gave rise to serious concern.

Citizens on Watch reported irregularities in Zaječar, where seven of the opened 69 polling stations had not been arranged in accordance with the statutory procedures, and registered grave irregularities at four polling stations. This observer mission alerted to irregularities regarding the arrangement of the polling booths and that the election boards gave suggestions to the voters who to cast their ballots for. On the other hand, a number of people were seen gathering in front of the polling stations; they were in contact with some members of the election boards and monitored who was coming to vote.

CRTA's observers also saw a number of vehicles without licence plants and Raška, Kosovska Mitrovica, Negotin and Bor licence plates on election day. The CRTA observer, who was trying to photograph the events in front of the SNS municipal headquarters, where a large number of people had rallied and cars with out of town licence plates were parked, was assaulted by several young men, who seized his cell phone and deleted his photographs, warning him "Just don't photograph us and you won't have any problems. The Zaječar police were notified of the incident.[374]

A similar incident happened in Vrbas. The police were asked to send in extra patrols after vehicles with out of town licence plates and unidentified people showed up at the homes of some of the councillors on election day, as confirmed by Marija Maraš of the SPS election headquarters. The local SPS committee also issued a press release saying that its two activists, Martin Samardžić and Dado Milović, had been assaulted in front of a polling station. They were first stopped on the road by a dozen vehicles with licence plates of various towns in Vojvodina and beaten up so gravely that one of them had to seek medical aid.[375]

373 More on the election results in the *RTS* report, available in Serbian at: http://www.rts.rs/page/stories/ci/story/1/politika/2710558/rezultati-lokalnih-izbora.html.

374 See: http://crta.rs/na-lokalnim-izborima-u-zajecaru-glasalo-432-gradana-najvise-glasova-osvojila-lista-bosko-nicic-pokret-za-krajinu/.

375 See: http://www.mojnovisad.com/vesti/pretuceni-aktivisti-sps-u-vrbasu-id15694.html.

Local elections were held in December 2017 in another five municipalities, notably Negotin, Pećinci, Preševo, Kostolac and Mionica. These elections were also characterised by tensions and assaults on some voters, as well as on CRTA election observers. The most dramatic incident occurred in Pećinci, where local observers were prohibited from monitoring the elections for the first time since 2000. CRTA specified that the Municipal Election Commission did not permit its observers to monitor the work of the election boards and the Municipal Election Commission because, as it said "CRTA does not fulfil the election observation requirements". CRTA filed criminal reports against the Commission Chairwoman, for abuse of post, and against the Commission's Secretary, for dereliction of duty.[376]

Representatives of some opposition parties also reported assaults and threats they had been subjected to on election day. The Chairwoman of the New Party Municipal Committee and Deputy Chairwoman of at a polling station election board in Pećinci Jelena Grujić reported that she had been verbally and physically assaulted by SNS activistss because she was photographing a car in which, she claimed "people holding voter registers were sitting and controlling turnout".

Instead of his ballot, local Pećinci resident Nenad Vladisavljević stuffed into the ballot box the money he claimed he had got from SNS activists to vote for the ticket headed by that party.[377]

CRTA observers were also assaulted in Pećinci, which led them to stop monitoring the elections for security reasons; several groups of men they did not know stopped them on the road on a number of occasions to photograph them and their vehicle[378]

In addition to the criminal reports against the Pećinci Municipal Election Commission, CRTA also initiated a proceeding before the Administrative Court, which ruled that the Municipal Election Commission had not acted in accordance with the law when it issued an unreasoned decision rejecting the complaint challenging its decision not to let CRTA monitor the elections.[379]

European Parliament MEP Tanja Fajon twitted that she was concerned by the violence and undemocratic atmosphere at the local elections in Pećinci.[380]

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376 See: http://crta.rs/upravni-sud-presudio-oik-pecinci-prekrsila-zakon-kada-je-odbila-prigovor-na-odbijanje-crte-da-posmatra-izbore/.

377 He said both he and his wife had been given 20 EUR each to go to the polling station and vote for the Aleksandar Vučić-SNS-SPS-Ivica Dačić election ticket.

378 See: https://www.slobodnaevropa.org/a/srbija-vanredni-lokalni-izbori/28935838.html.

379 See:http://crta.rs/upravni-sud-presudio-oik-pecinci-prekrsila-zakon-kada-je-odbila-prigovor-na-odbijanje-crte-da-posmatra-izbore/.

380 See: http://www.danas.rs/politika.56.html?news_id=366076&title=Fajon+zabrinuta+zbog+nedemokratske+atmosfere+u+Pe%C4%87incima.

7. Confrontation with the Past – Transitional Justice

Transitional justice is a new discipline within the broader framework of human rights. It deals with the challenges faced by societies with a legacy of massive human rights violations, both societies in transition from an autocratic to democratic system and post-conflict societies. Such societies have to achieve specific goals: confront the past, establish rule of law and reinforce the possibilities to preserve peace, reconciliation and prevent the recurrence of massive human rights violations.[381]

7.1. The Judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY)

The Serbian authorities were in 2017 relieved of the responsibility to extradite the people accused of war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY)[382] because the last of them, Ratko Mladić, the Bosnian Serb Army Commander in Chief from 1992 to 1996, was extradited back in 2011. However, the Serbian regime, as well as all political and social stakeholders, still face the tasks of condemning war crimes, strengthening the judicial authorities conducting proceedings against perpetrators of war crimes and crimes against humanity, and openly discussing and clearly condemning the developments during the armed conflicts in Croatia, Bosnia and Herzegovina (BiH) and Kosovo.

This is particularly important if relations and cooperation among the states in the region are to improve, in view of the fact that the wars in the former SFRY, although they ended two decades ago, are still impinging on the relations between the Balkan political elites. The year behind us was important for several reasons, first, the ICTY ceased to exist in December 2017 and, second, any new trials for war crimes committed in the 1990s will hereinafter be conducted exclusively by the national courts of Serbia, Croatia, BiH and the newly-formed Kosovo War Crimes Tribunal.

Since it opened, the ICTY indicted 161 people for gross violations of the 1949 Geneva Conventions, violations of the laws and customs of war, crimes against humanity and genocide. A total of 90 indictees were convicted, 19 were acquitted, the cases of 13 indictees were transferred to the national courts, charges against 30 indictees were dropped and 17 of the indictees died before the first-instance proceedings were completed. ICTY's jurisdiction was assumed by the Mechanism for

381 Mark Freeman, *What is transitional justice?*, FHP, available at: http://www.un.org/en/peacebuilding/pdf/doc_wgll/justice_times_transition/26_02_2008_background_note.pdf.

382 The UN Security Council established the Tribunal in 1993 with the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.

International Criminal Tribunals (MICT), which will conduct appeals proceedings in the cases of *Karadžić*, *Mladić* and *Šešelj,* and retry the *Stanišić and Simatović* case.[383]

In November 2017, the ICTY delivered two judgments: the first-instance judgment in the *Mladić* case and the final judgment in the case of *Prlić and Others.* The judgments and developments in the ICTY courtroom caused tumultuous reaction in the Western Balkan countries.

The ICTY Trial Chamber found Mladić guilty on 10 out of 11 charges. [384] It found that he had taken part in four joint criminal enterprises (JCE), i.e. the Overarching JCE, aimed at permanently removing Bosnian Moslems and Croats from Bosnian Serb-claimed territory; the Sarajevo JCE to establish and carry out a campaign of sniping and shelling, aimed to spread terror among the civilian population of Sarajevo; the Srebrenica JCE, aimed at eliminating Bosnian Muslims in Srebrenica, and the Hostage-taking JCE, the goal of which was to take hostage UN personnel to compel NATO to abstain from conducting air strikes against Bosnian Serb targets.

7.2. Reactions to the Mladić Judgment in Serbia and the ICTY

The Serbian authorities' reactions and attitude towards the first-instance judgement sentencing Mladić to life imprisonment prison are worth a mention. They missed yet another opportunity to finally condemn the crimes Mladić was convicted for. Nor did the judgment change the minds of those considering him a hero. Serbian President Aleksandar Vučić avoided stating his view on the judgment, remarking that such a judgment had been expected and that "one should look at the future, not the past".[385] Pro-regime media, however, published mostly negative comments of the judgment and the ICTY's work, assessing the Tribunal had been established to put the Serbs on trial. A similar view was expressed also by the Serbian Orthodox Church (SOC) Patriarch, who described the judgment as an act of the devil,[386] and representatives of some political parties, who emphasised that Serbs accounted for most of the indictees and that the Tribunal had been set up to present the Serbs as a genocidal nation.[387] On the other hand, the representatives of two opposition par-

383 More on the ICTY trials is available at: http://www.icty.org/en/cases/key-figures-cases.

384 Notably, genocide; persecution as a crime against humanity; extermination, as a crime against humanity; murder as a crime against humanity; murder as a violation of laws and customs of war; deportation, as a crime against humanity; inhumane act of forcible transfer, as a crime against humanity; terror, as a violation of laws and customs of war; unlawful attacks on civilians, as a violation of laws and customs of war; and, hostage taking, as a violation of laws and customs of war. Like Karadžić, Mladić was found guilty of genocide in Srebrenica but acquitted of the charge of genocide in other BiH municipalities.

385 *Politika*, 23 November 2017, p. 3, more is available in Serbian at: http://rs.n1info.com/a343888/Vesti/Vesti/Vucic-i-funkcioneri-o-presudi-Mladicu.html.

386 See the *Blic* report available in Serbian at: http://www.blic.rs/vesti/hronika/patrijarh-irinej-presuda-mladicu-je-delo-davola/8c34ztw.

387 *Politika*, 23 November 2017, p. 3.

ties – the Liberal Democratic Party and the Democratic Party – said that justice had been served and called on the authorities to familiarise the public with the crimes that had been committed.[388]

The ICTY's closure in 2017 sparked a debate on the role of this court and its results. The leading government officials criticised it, claiming that it had selectively indicted people and neither brought justice to the victims nor contributed to reconciliation in the region. Serbian President Aleksandar Vučić said: "Everyone was convicted for something, but no-one was convicted for any crimes against Serbs."[389] Serbian Prime Minister Ana Brnabić said that the ICTY had not only failed to contribute to reconciliation, but had contributed to aggravating tensions in the region. She said Serbia had fared the worst in ICTY, both in terms of the total years of imprisonment Serb indictees had been sentenced to and in terms of the number of indictees who died while on trial in The Hague.[390] Her statement, that she did not think genocide had been committed in Srebrenica, that it was a horrible crime that made her feel bad and ashamed because it had been committed in the name of Serbs and created an unwelcome image of the Serbs as conservative and homophobic people[391] provoked a lot of negative reactions in the region because Mladić was found guilty precisely of genocide in Srebrenica.

National Assembly Speaker Maja Gojković also reiterated that the ICTY had not achieved the set goals of regional reconciliation and bringing justice to all victims.[392] Justice Minister Nela Kuburović said the "Tribunal is now a thing of the past but its legacy lives on. Has it served its purpose? Unfortunately, from our perspective, the statistical overview of its decisions reinforces the impression that it meted justice selectively." She added that the selective structure of the indictees, judgments and penalties, coupled with violations of the right to a trial within a reasonable time and non-compliance with procedural guarantees, were also the ICTY's legacy.[393]

On the other hand, ICTY's representatives did not deny the Tribunal had not contributed to reconciliation, which was not the reason why it was established in

388 *Dnevnik TV N1*, 22. November and *Politika,* 23. November 2017.

389 See the report available in Serbian at: https://www.intermagazin.rs/vucic-pobesneo-niko-nije-osudjen-za-zlocine-nad-srbima-da-nisu-krajisnici-sami-sebe-ubijali/.

390 See the report available in Serbian at: http://rs.n1info.com/a338934/Vesti/Vesti/Brnabic-Haski-tribunal-nije-doprineo-pomirenju-u-regionu.html.

391 See the following reports in Croatian media and on *Radio Free Europe*: https://www.24sata.hr/news/premijerka-srbije-ne-mislim-da-je-u-srebrenici-bio-genocid-555908;https://www.nacional.hr/brnabic-ne-mislim-da-se-u-srebrenici-dogodio-genocid/; https://dnevnik.hr/vijesti/svijet/srbijanska-premijerka-ana-brnabic-za-radio-economist-ne-mislim-da-je-u-srebrenici-bio-genocid-502609.html; and https://www.slobodna-bosna.ba/vijest/69203/premijerka_srbije_ana_brnabic_ne_mislim_da_se_u_srebrenici_dogodio_genocid.html.

392 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/politika/gojkovic-odluka-suda-ocekivana-srbija-privrzena-stabilnosti/440hxgc.

393 See the *N1* report, available in Serbian at: http://rs.n1info.com/a347477/Vesti/Vesti/Kuburovic-Selektivna-pravda-Haskog-tribunala.html.

the first place. They noted, as one of its greatest achievements, that it fulfilled the mandate the UNSC entrusted it with – to bring to justice people the most responsible for violations of international humanitarian law committed in the territory of the former Yugoslavia,[394] and contributed to the establishment of facts, development of international law and strengthening the rule of law.[395]

7.3. War Crime Proceedings in Serbia in 2017

The Serbian National Assembly in 2003 enacted the Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings,[396] which governs the establishment, organisation, jurisdiction and powers of state authorities and their units regarding the identification of perpetrators of war crimes, and their criminal prosecution and trials. The War Crimes Prosecution Service (WCPS), a public prosecution service with special jurisdiction and covering the entire territory of the country, is charged with the criminal prosecution of perpetrators of war crimes both in first instance and appeals proceedings. The War Crimes Department of the Belgrade Higher Court is charged with trying war crime defendants in the first instance while appeals of its decisions are reviewed by the War Crimes Department of the Belgrade Appeals Court.

The WCPS filed indictments against 189 people charged with war crimes since it was established in 2003; its indictments were subsequently confirmed by the court. Only one indictment against one perpetrator (in the case of *Sanski Most – Lušci Palanka*) was confirmed in 2017. The Belgrade Higher Court War Crimes Department delivered one judgment and the Belgrade Appeals Court War Crimes Department ruled on two appeals of first-instance judgments in 2017.

In its judgment of December 2017, the Belgrade Higher Court War Crimes Department acquitted Marko Pauković and Dragan Bajić, who had been charged with war crimes against the civilian population. The two men, former Bosnian Serb Army 6th Sana Brigade military policemen, had been indicted for killing five Bosnian Moslem civilians – Hasan Rahić, Minka Jusić, Munira Hotić, Đemila Behar and Safeta Behar – in Kamičak (BiH) on 10 October 1992.

In February 2017, the Belgrade Appeals Court War Crimes Department upheld the first-instance judgment in the *Gradiška* case.[397] The first-instance court had acquitted Goran Šinik, a former Bosnian Serb Army soldier, who had been

394 See: http://www.icty.org/en/press/prosecutor-serge-brammertz-addresses-the-united-nations-security-council-1.

395 See: http://www.icty.org/en/about/tribunal/achievements.

396 *Sl. glasnik RS*, 67/09, 135/04, 61/05, 101/07, 104/09, 101/11– other law and 6/15.

397 See the overview of the Belgrade Appeals Court War Crimes Department case law, available in Serbian at: http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2–5–16.html.

charged with killing a Croatian civilian Marijan Vištica in Gradiška (BiH) in September 1992.[398]

In March 2017, the Appeals Court War Crimes Department modified the first-instance court's judgment delivered after a retrial of the *Bosanski Petrovac* case and acquitted the defendants.[399] Neđeljko Sovilj and Rajko Vekić, former Bosnian Serb Army troops, had been sentenced by the first-instance court to eight years' imprisonment each for killing a Bosnian Moslem civilian Mehmed Hrkić in Bosanski Petrovac (BiH) in December 1992.[400]

The Belgrade Higher Court War Crimes Department in 2017 upheld the indictment in the case of *Sanski Most – Lušci Palanka.* Milorad Jovanović, a reserve Bosnian Serb policemen at the material time, has been charged with war crimes against civilians in June and July 1992 – with unlawful custody and torture of Bosnian Moslem civilians in the Sanski Most (BiH) area and with killing one of them.[401]

In February 2016, the Government of the Republic of Serbia adopted the National Strategy for the Prosecution of War Crimes for the 2016–2020 Period.[402] The Working Body[403] charged with monitoring the implementation of the Strategy, was constituted and held its constituent session in September 2017. It adopted its first report in late January 2018. In December 2017, the NGO Humanitarian Law Centre (HLC), which has for decades focused on war crimes and confrontation with the past, published its Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes[404] in which it concluded that, no significant progress in war crimes prosecution could be reported in the one and a half years since its adoption and that, quite the reverse contrary, the situation had deteriorated even further in some respects. It went on to say that not only had its implementation started with an enormous delay, but that some key activities have not been implemented

398 See the first-instance judgment in the *Gradiška* case (Kž1 Po2 5/16), available in Serbian at: http://www.hlc-rdc.org/wp-content/uploads/2016/12/Prvostepena_presuda_13.10.2016..pdf.

399 See the appeals court's judgment in Serbian at: http://www.hlc-rdc.org/wp-content/uploads/2017/05/Drugostepena_presuda_27.03.2017..pdf.

400 See the first-instance court's judgment in the *Bosanski Petrovac* case (Kž1 Po2 4/16), available in Serbian at: http://www.hlc-rdc.org/wp-content/uploads/2017/08/Prvostepena_presuda_u_ponovljenom_postupku_30.06.2016..pdf.

401 The Cantonal Prosecution Office of the Una-Sana Canton Bihać ceded the criminal prosecution of the defendant in this case to the Serbian authorities via the BiH and Serbian Justice Ministries, since Jovanović is a national of Serbia and lives in Serbia.

402 *Sl. glasnik RS*, 19/16.

403 The Working Body is chaired by Justice Minister Nela Kuburović. The Body also comprises Judicial Academy Director Nenad Vujić, the Deputy Chairman, and the following members: Assistant Justice Minister and Head of the Chapter 23 Negotiating Team Čedomir Backović, MIA State Secretary Biljana Popović Ivković, War Crimes Prosecutor Snežana Stanojković, Chairman of the Commission for Missing Persons Veljko Odalović, representatives of the Belgrade Appeals Court, Belgrade Higher Court.

404 See: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf.

at all yet. HLC specified that the prosecutorial strategy had not been adopted, that only eight indictments had been filed, that war crimes trials continued to be unduly delayed, that no progress had been made regarding the victims' procedural rights, that the search for missing persons continued to be inefficient, that cooperation with the ICTY has been discontinued, and that the relevant international governmental and non-governmental organisations had negative opinions about Serbia's progress in the prosecution of war crimes.

The HLC observed that Serbia's evident regression in war crimes prosecution and in dealing with the past clearly demonstrated that the mere adoption of a national strategy was not enough to address the numerous outstanding problems in this area. It concluded that all reforms were doomed to fail and that the identified problems would remain unsolved without genuine commitment and political will. The HLC also warned that the National Strategy would remain a mere dead letter until it expired in 2020 unless some critical steps were taken immediately.

7.4. State's Attitude towards the War Crimes Prosecution Service

As noted above, the WCPS filed indictments against 189 people charged with war crimes since it was established in 2003; its indictments were subsequently confirmed by the court.

The WCPS has been criticised the most for not investigating senior officers of the Serbian armed forces, primarily the erstwhile Army of Yugoslavia (VJ), for war crimes in Kosovo in 1998 and 1999. Such criticisms somewhat subsided in 2014, when the WCPS ordered the investigation of former VJ 125th Motorised Brigade Commander General Dragan Živanović[405], who had been in charge of the zone in which mass crimes against Kosovo Albanians had been committed, as confirmed by the first-instance judgment in the *Ćuška* case.[406] HLC, which represented the victims, also took part in the investigation, a possibility provided by the CPC. However, on 1 March 2017, the WCPS ordered that the investigation against Živanović be terminated due to lack of evidence to indict him, but failed to notify the HLC thereof, thus preventing it from filing an objection by the statutory deadline.

Under Article 51 of the CPC, prosecutors are under the obligation to notify the injured parties within eight days of their decision to terminate the investigation and of their right to file an objection to the immediately superior public prosecutor within eight days from the day of service of the notice. Injured parties, who are not notified of the prosecutor's decision, are entitled to file an objection within three months from the day the prosecutor terminated the investigation.

405 See: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/general-%C5%BEivanovi%C4%87-to-face-investigation-for-kosovo-metohija-war-crimes.

406 See: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/court-passes-first-instance-judgment-for-%C4%87u%C5%A1ka-pavlan-ljubeni%C4%87-and-zaha%C4%8D-crimes.

It was not until 16 November 2017 that HLC was notified that the investigation had been terminated, by which time all the deadlines for filing an objection had expired. It nevertheless filed the objection with the Republican Public Prosecutor on 24 November 2017; the decision on the objection was still pending at the end of the reporting period.[407]

The WCPS' decision to terminate the investigation and its failure to notify the victims' representatives thereof within the statutory timeframe reinforces the credibility of criticisms that it is unwilling to conduct effective investigations of high-ranking Serbian army officers. Furthermore, the WCPS has not fulfilled the criterion for setting priorities specified in the National War Crimes Prosecution Strategy – that the prosecutor should give priority to cases against high-ranking suspects, *de jure* or *de facto*.[408]

7.4.1. 17-Month Delay in the Appointment of the War Crimes Prosecutor

One of the greatest problems in the WCPS' prosecution of war crimes arose from the fact that this Service did not have a War Crimes Prosecutor at its helm from 1 January 2016 to 31 May 2017. This brought into question the lawfulness of the activities undertaken in that period by the Deputy War Crimes Prosecutors, including their indictments.

To recall, the National Assembly failed to appoint a new War Crimes Prosecutor when the term in office of the prior War Crimes Prosecutor Vladimir Vukčević expired on 1 January 2016. The Republican Public Prosecutor failed to apply Article 36(1) of the Public Prosecution Services Act[409] and appoint an Acting War Crimes Prosecutor. Instead, she issued a decision under which the WCPS was *managed* by the eldest Deputy Prosecutor pending the election of the new Prosecutor. It was only in May 2017 that the National Assembly elected Snežana Stanojković the War Crimes Prosecutor. She took office on 31 May 2017.

The disputed (non-)action of the Republican Public Prosecutor especially impinged on the *Štrpci* case.[410] To recall, the first indictment in this case was filed back in 2015, but the Belgrade Higher Court War Crimes Department referred it back to the WCPS several times, requiring of it to supplement its investigation and clarify specific issues. The WCPS filed the latest version of the indictment on 6 April 2017 and the Higher Court War Crimes Department confirmed it on 21 August 2017. The defendants then appealed the decision confirming the indictment

407 See: http://www.hlc-rdc.org/?p=34560&lang=de.

408 2016–2020 National War Crimes Prosecution Strategy, p. 20, available at: https://www.mpravde.gov.rs/files/National%20Strategy%20for%20the%20Prosecution%20of%20War%20Crimes.pdf.

409 Under this provision, the Republican Public Prosecutor shall appoint an Acting Public Prosecutor until the new Public Prosecutor takes office, for a period of up to maximum one year.

410 See the *Politika* report, available in Serbian at: http://www.politika.rs/scc/clanak/312947/Slucaj-Strpci-uspeh-posle-20-godina-zataskavanja.

with the Belgrade Appeals Court War Crimes Department, claiming it had been filed by an unauthorised prosecutor, since the War Crimes Prosecutor still had not been elected and the WCPS did not have an Acting Prosecutor in April 2017.

The Appeals Court War Crimes Department upheld the appeal and dismissed the April 2017 indictment.[411] It held that public prosecution services were autonomous authorities and that the relevant duties were performed by public prosecutors, be they elected or appointed. In its view, although deputy prosecutors do not need special authorisation to undertake all the actions within the remit of the public prosecutors, they are entitled to undertake them only in the event their public prosecution service is headed by an elected or appointed prosecutor. Since this was not the case in the WCPS in April 2017, the Appeals Court War Crimes Department dismissed the indictment because it had been filed by an unauthorised (deputy) prosecutor, noting that this procedural setback could be remedied and that the proceedings at hand could continue after the indictment was filed by the authorised prosecutor. The fact that the WCPS was not headed by a prosecutor from January 2016 to May 2017 also impinged on other cases and led to significant delays in war crimes proceedings.

7.5. Truth Commission (RECOM) – Transitional Justice Mechanism

The Coalition for RECOM is a network of civil society organisations in post-Yugoslav countries, which was formed in 2008 and advocates the establishment of an official Regional Commission for the establishment of facts about war crimes and other grave violations of human rights committed in the former Yugoslavia from 1 January 1991 to 31 December 2001 (RECOM).[412] The Coalition is of the view that RECOM's primary mission is to name all the victims, both civilian and military, to establish the circumstances of their deaths or disappearances, and to create a registry of all wartime detention sites and prison camps.[413]

The representatives of the Coalition for RECOM continued calling on the heads of post-Yugoslav states to sign an agreement establishing RECOM[414] and collecting signatures for the establishment of the Commission.[415] The petition was signed by 580,000 people in post-Yugoslav countries by March 2017.[416] In 2015, Aleksandar Vučić, who held the office of Serbian Prime Minister at the time, met

411 Belgrade Appeals Court War Crimes Department Ruling Kž2 Po2 12/17 of 2 October 2017.

412 See: http://recom.link/sta-je-rekom/.

413 See: http://recom.link/sign-the-petition-6/.

414 See: http://recom.link/coalition-recom-calls-leaders-post-yugoslav-states-establish-regional-commission/.

415 See: http://recom.link/sr/sign-the-petition-4/?utm_source=google&utm_medium=cpc&utm_term=rekom&utm_campaign=rekom_srb&gclid=Cj0KCQiAyNjRBRCpARIsAPDBnn2fUeDJMNXK5QlK_4MW9R-BxP8_LV93XuLVk0PwM30dHqCWegNe-xEaAj6JEALw_wcB.

416 *Ibid.*

with the Coalition for RECOM and expressed his support to the initiative to establish the facts about war crimes.[417]

In its 2016 Report on Serbia, the European Parliament reiterated its support for the initiative to establish the regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia and urged the Serbian Government to take the lead on its establishment.[418] In March 2017, the Coalition for RECOM said that the main reason why the process of establishing transitional justice in post Yugoslav states was undergoing a serious crisis lay in the lack of political will among the newly-elected administrations across the region, with the exception of Montenegro, to prosecute war criminals and the EU's inconsistent support for transitional justice in the Balkans.[419] In December 2017, however, the Coalition for RECOM said that the Presidents of Serbia, Montenegro, FYROM and Kosovo and the Bosnian member of the BiH Presidency appointed their personal envoys to draft the Agreement Establishing the RECOM together with the Coalition.[420]

7.6. Institutional Reform, Vetting and Public Perceptions of War Criminals

Institutional reform is prerequisite to prevent the recurrence of future large-scale human rights violations. Vetting members of the public service, particularly in the security and justice sectors, is critical to facilitating this transformation, by removing from office or refraining from recruiting those public employees personally liable for gross violations of human rights. The goal of this mechanism is to put in place conditions ensuring that crimes do not recur and that public trust in those institutions is restored. Vetting is an extremely important step for ensuring rule of law and reconciliation.[421]

Some political events in 2017, however, demonstrated lack of political will in Serbia to confront the legacy of mass crimes. One of them was the lecture given at the Belgrade Military Academy in October 2017 by Vladimir Lazarević, the Commander of the VJ Priština Corps during the armed conflict in Kosovo, who had been convicted by the ICTY to 14 years' imprisonment for crimes against humanity

417 See: http://www.hlc-rdc.org/?p=29561&lang=de.

418 See the European Parliament's resolution of 14 June 2017 on the 2016 Commission Report on Serbia, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017–0261.

419 See: http://recom.link/obstruction-blockade-transitional-justice-post-yugoslav-countries/.

420 See: http://recom.link/westernbalkanleadersappoint/.

421 Guidance Note of the Secretary General of the UN, United Nations Approach to Transitional Justice, March 2010, available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

committed against Kosovo Albanians in 1999.[422] Commenting the choice of lecturer, Defence Minister Aleksandar Vulin said: "We introduced the rule to give the most eminent commanders during the wars behind us room at the Military Academy to give lectures to the cadets and current generations of officers, in order to right the wrongs done to them over the previous years in a way."[423] Prime Minister Ana Brnabić said Lazarević was not a lecturer at the Military Academy and had been invited to give one lecture and that "he had served his sentence and is a free man today".[424]

The reception organised by the Army of Serbia to mark Veterans Day on 4 December 2017 was attended, inter alia, by Vladimir Lazarević, as well as Dragoljub Ojdanić, who was the VJ Commander in Chief in 1999 and had also been convicted by ICTY to 15 years' imprisonment for crimes against humanity committed against Kosovo Albanians in 1999.

On the same day, the Socialist Party of Serbia (SPS), a member of the ruling coalition, appointed to its Presidency Nikola Šainović, who had been convicted by ICTY to 18 years' imprisonment for crimes against humanity committed against Kosovo Albanians in 1999.[425] SPS Deputy President and Serbian Minister Slavica Đukić Dejanović explained that Šainović had served the sentence imposed by ICTY and that he was now a citizen who had all civil rights and that prohibiting his involvement in politics would amount to discrimination.[426]

Such events undermine the credibility and legitimacy of the institutions and relativise the crimes Lazarević, Ojdanić and Šainović had been found guilty of. They are likely to reinforce the distrust towards the institutions of the Republic of Serbia and doubts that the Serbian authorities are willing to sincerely engage in the process of reconciliation in the region.

Veselin Šljivančanin, who had also been convicted to a ten years' imprisonment sentence by the ICTY for crimes against Croatian POWs at the Ovčara farm near Vukovar, often appeared as a guest at SNS events in 2016 and 2017.[427] A panel discussion in which he took part was held in the Beška Culture Hall in January 2017, despite NGO requests to cancel it; Youth Initiative for Human Rights (YIHR) activists, who held a banner saying "War Criminals should shut up so we can talk about the victims" were thrown out of the Hall and assaulted. The criminal

422 See the *N1* report, available in Serbian at: http://rs.n1info.com/a335737/Vesti/Vesti/Lazarevic-ce-biti-predavac-na-Vojnoj-akademiji.html. More on how the Serbian state leaders welcomed General Lazarević on return from serving his sentence in the *2015 Report*, II.1.3.

423 *Ibid.*

424 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/politika/premijerka-lazarevic-je-odlezao-kaznu-pozvan-je-da-odrzi-jedno-predavanje-na-vojnoj/0tzc7g2.

425 See the *Radio 021* report, available in Serbian at: http://www.021.rs/story/Info/Srbija/177211/Djukic-Dejanovic-Diskriminacija-Sainovicu-ne-dopustiti-da-se-bavi-politikom.html.

426 *Ibid.*

427 Šljivančanin actively participated in the parliamentary election campaign, promoting his book at panel discussions organised by SNS in Velika Plana, Smederevska Palanka and Inđija in 2016.

report they filed against unidentified assailants was dismissed by the Stara Pazova Basic Public Prosecution Service, which, in turn, filed a criminal report against nine YIHR activists. When the latter was dismissed by the court, the Service in November filed a misdemeanour report against the activists, accusing them of indecent, insolent and ruthless behaviour, insults and violence.[428]

In his address to the UN Security Council in December 2017, ICTY Chief Prosecutor Serge Brammertz commented the absence of true reconciliation in the former Yugoslavia today, noting that "convicted war criminal continue to be seen by many as heroes, while victims and survivors are ignored and dismissed." The reason, he said, is that "there is still no true will within the region to accept the immense wrongdoings of the past and move forward, sadly most of all among the political leadership." As the Prosecutor reported to the Security Council, "Unfortunately, too many listen to war criminals who hide behind claims of collective responsibility."[429]

The research and publishing Centre Demostat in 2017 conducted a public opinion survey on the level of awareness of Serbia's citizens of the wars in the 1990s, war crimes and war crime trials, which involved face to face interviews with 1,202 respondents. Most of the respondents (58%) qualified their awareness of war crime trials as poor, while 54% thought they did not need to be informed about them. Only 11% of the respondents said they wanted to know more about war crimes. The respondents had extremely negative views about the ICTY.

Fifty-three percent of the respondents were of the opinion that war crime trials should continue before domestic courts, 31% qualified the work of state authorities charged with war crimes as poor, 30% as average and 15% as good.

On the other hand, a large number of respondents were opposed to the political rehabilitation of war crime suspects, indictees and convicts. As many as 71% of them thought they should not be allowed to hold state offices while 7% thought they should. Seventy-seven percent of the respondents thought it unacceptable that war crime convicts take an active part in Serbia's political life; four percent thought it acceptable and 19% were undecided.[430]

7.7. Attitude towards Victims – Reparations

Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. Reparations can

428 See YIHR's publication on the state authorities' views on war crimes, available in Serbian at: http://www.yihr.rs/wp-content/uploads/2017/12/Ratni-zlocinci-WEB-radna-verzija.pdf.

429 See: http://www.icty.org/en/press/prosecutor-serge-brammertz-addresses-the-united-nations-security-council-1.

430 The survey is available at: https://www.danas.rs/wp-content/uploads/2017/12/Public-opinion-research_War-crimes-trials1.pdf.

include monetary compensation, medical and psychological services, as well as official public apologies, et al.[431]

The Humanitarian Law Centre (HLC), which has for years been representing victims seeking to acquire the status of civilian victims of war, published in August 2017 a comprehensive analysis of the rights of civilian victims of war in its report "Legal and Institutional Framework Regarding the Rights and Needs of Civilian Victims of War".[432] The authors of the Report note that there are tens of thousands of people living in Serbia who are civilian victims of the wars in the former Yugoslavia or relatives of civilian victims of war but that they have been deprived of their rights due to the discriminatory character of the provisions of the Act on the Rights of Civilian Invalids of War.

The Act on the Rights of Civilian Invalids of War[433] recognises three categories of people entitled to the rights provided by this law,[434] but their definitions greatly narrow the scope of people suffering from grave physical and psychological consequences of war. Namely, under this law, only persons with physical injuries can qualify as civilian invalids of war, meaning that it disqualifies people suffering from grave psychological consequences of war, such as, e.g. victims of rape and sexual abuse, if the degree of physical harm they had sustained is below the statutory 50% threshold.

The Act suffers from a number of legal lacunae as well. It does not define the concepts of war, enemy, or conduct of war operations, resulting in different interpretations of its provisions in practice. It is also unclear whether the Act applies only to harm sustained in Serbia or in the former Yugoslav republics as well. The authorities initially upheld applications of applicants injured outside of Serbia, but changed their practice in 2012 and have since upheld only applications filed by those injured in Serbia.[435] The definition of a civilian victim of war is disputable as well, as it encompasses only people who were killed or died. This is why family members of persons considered missing cannot exercise the right to a monthly cash allowance until their missing family members are declared deceased in a non-contentious procedure.[436]

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431 Guidance Note of the Secretary General of the UN, United Nations Approach to Transitional Justice, March 2010, available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf.

432 Available at: http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf.

433 *Sl. glasnik RS*, 52/96, this law replaced the 1975 Act on the Protection of Civilian Invalids of War.

434 1) Civilian invalids of war; 2) Family members of civilian invalids of war and 3) Family members of civilian victims of war.

435 See: http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf.

436 *Ibid.*

Three organisations, the Centre for Advanced Legal Studies, Human Right Defenders and the Humanitarian Law Centre in 2015 drafted a Model Act on Right of Civilian Victims of Human Rights Violations Committed During and in Connection with Armed Conflicts in the 1991–2001 Period.[437] The Model Act aims to satisfy the needs of the victims and address the deficiencies of the Act on the Rights of Civilian Invalids of War and the obstacles the victims have faced in exercising their rights. None of the authorities publicly commented the Act.

The HLC filed an initiative in May 2016 with the Constitutional Court of Serbia to review the constitutionality of the Act on the Rights of Civilian Invalids of War and its compliance with ratified international treaties, in view of the discriminatory character of its provisions and their non-compliance with social justice principles enshrined in the Constitution. A year later, the Constitutional Court rejected this initiative, taking the view that the Act was not discriminatory on any grounds and that it was entirely within the powers of the legislature to prescribe the realisation of social policy in accordance with financial realities.[438] YIHR said that the Constitutional Court had not properly reviewed the existence of direct and indirect discrimination against some victims on grounds of their personal characteristics, despite obligations arising from national legislation and standards the ECtHR developed in its case law.

437 The Model Act is available at: https://cups.rs/wp-content/uploads/2015/04/Model-Law-of-the-Rights-of-Civilian-Victim.pdf.

438 See the *Danas* report, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=345374&title=Ustavni+sud+tvrdi+da+civilne+%C5%BErtve+rata+nisu+diskriminisane.

IV.
PROTECTION AND REALISATION OF RIGHTS OF SPECIFIC CATEGORIES OF THE POPULATION

1. Status of Roma

Roma are one of the most vulnerable categories of the population in Serbia. Their status has for years now been qualified as desultory. 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.[1] Other sources, however, cite different figures. For instance, the European Commission's Roma Integration 2014 Assessment: Questions and Answers[2], prepared by the Support Team of the CoE Secretary General's Special Representative for Roma Issues in 2013, puts the average estimated number of Roma in Serbia at as many as 600,000.

1.1. Measures for Improving the Status of Roma

The 2013–2018 Strategy for the Prevention of and Protection from Discrimination[3] 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 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

1 See the Statistical Office of the Republic of Serbia publication: http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf.

2 Roma Integration – 2014 Commission Assessment: Questions and Answers, European Comm ission, 4 April 2014, available at: http://europa.eu/rapid/press-release_MEMO-14–249_en.htm.

3 *Sl. glasnik RS*, 60/13.

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 Serbia[4] 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.

In March 2016, the Serbian Government adopted the national 2016–2025 Strategy for the Social Inclusion of Roma Men and Women (Roma Social Inclusion Strategy). This Strategy was adopted with the aim of improving the socio-economic status of Roma, suppressing discrimination against them and ensuring respect for their human rights, in order to ensure their social inclusion in all segments of society. This strategic document covers five priority areas, which are also the EU Roma integration goals: education, housing, employment, health and social protection, and defines measures by which improvements in these areas can be made. 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 have been charged with the development and implementation of the Roma Social Inclusion Strategy.

In March 2017, the Serbian Government adopted a decision to set up a Coordination Body to monitor the implementation of the Roma Social Inclusion Strategy.[5] This Body is charged with coordinating the state administrative authorities performing duties relevant to the social inclusion of Roma, fostering inter-departmental cooperation in the field, issuing recommendations on the resolution of urgent situations that may negatively affect Roma, as well as suggest ways of implementing the prescribed and additional measures and activities fostering the social inclusion of Roma. The Coordination Body set up a Professional Group, which deals with ongoing Roma social inclusion issues and is charged with monitoring the work of Roma coordinators and mobile teams tasked with improving the status of Roma at the local level.

The 2017–2018 Action Plan for implementing the Roma Social Inclusion Strategy,[6] adopted in June 2017, spells out the activities to be implemented to achieve the Strategy goals, notably: inclusion of Roma children and youths in the education system, improvement of Roma housing conditions, inclusion of Roma job-seekers in the formal labour market, improvement of health among Roma and their easier access to social protection services. The Action Plan is to be reviewed after the first year of implementation, on the basis of a consultative process with

4 *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.

5 *Sl. glasnik RS*, 81/07.

6 2017–2018 Action Plan for the Implementation of the 2016–2025 Strategy for the Social Inclusion of Roma Men and Women, June 2017, available at: http://www.rcc.int/romaintegration2020/docs/40/action-plan-2017–2018-serbia.

Roma, civil society organisations focusing on the above issues, the Roma National Minority Council, relevant state and independent institutions, as well as regional and international organisations. The Action Plan defines the goals, measures, activities, indicators, deadlines and resources needed to achieve the goals.

The Committee for the Rights of the Child reviewed Serbia's second and third periodic report on the implementation of the Convention on the Rights of the Child in January 2017 and adopted its Concluding observations.[7] The Committee, *inter alia*, expressed its concern over discrimination against Roma children in all areas of life, especially with regard to access to education, health care and adequate housing, The Committee said it was deeply concerned that stigmatisation of and discrimination against Roma people, including children, were still widespread, resulting in violence and hate speech against them and recommended that Serbia conduct campaigns aimed at addressing the negative attitudes towards the Roma in society at large and take effective measures to prevent violence and hate speech against Roma. It also noted the necessity of improving Roma access to health care and quality education and of poverty reduction. The Committee also noted that the participation of Roma children, particularly girls, in preschool, primary, secondary and vocational education remained low, with many Roma children continuing to face segregation in the school system. In its view, it is crucial to facilitate the participation and inclusion of Roma children in education at all levels, and raise awareness among educators about the culture of Roma people, which calls for strengthening measures for the integration and inclusion of the Roma minority. The Committee expressed its concern about instances of arranged child marriages in some Roma communities.

The Committee noted that there were still approximately 8,500 persons who were not registered at birth, with the vast majority declaring themselves as Roma. The Committee was concerned that those people have limited access to the enjoyment of basic rights, including to health care, education and social protection and recommended that the State party ensure full implementation of the new regulations that enable immediate birth registration of children whose parents do not have personal documents, and initiate procedures to establish the nationality of children born to stateless parents or those whose nationality is unknown.

1.2. Status of the Roma Community and Serbia's EU Accession Obligations

Given that the Roma status issue directly affects the process of Serbia's accession to the EU, the European Commission in October 2017 held a seminar on

7 Concluding observations on the combined second and third periodic reports of Serbia, Committee on the Rights of the Chid, 7 March 2017, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/SRB/CO/2–3&Lang=En.

social inclusion of Roma men and women,[8] which noted the importance of implementing measures for Roma integration and achieving headway in the fields of education, health, employment, documentation and housing, conditions which EU candidate states have to fulfil. The achievement of these goals calls for the involvement of all state authorities at all levels of government, i.e. the Serbian Government and its ministries and local authorities, in their implementation, as well as cooperation among the local authorities, Roma community and civil society.

The EU has demonstrated major interest in improving the status of Roma, as corroborated by the fact that it has donated over 5.4 million Euro to support measures for the social inclusion of vulnerable groups, above all Roma, within the project "EU Support for Inclusive Society", the implementation of which was completed in November 2017. Roma and other persons belonging to vulnerable categories were the direct beneficiaries of the programme and nearly 10,000 disadvantaged people directly benefited from its implementation.[9]

The Roma Integration 2020 Task Force of the Regional Cooperation Council has been entrusted with developing standards of Roma integration budget policies in cooperation with the governments in the region and public budgeting for Roma integration policies.[10] Roma Integration 2020 is a follow-up of the 2005–2015 Decade of Roma Inclusion. This project is regional in character and rallies EU candidate states. It aims to address outstanding issues impinging on the status of Roma communities and to ensure that state policies and requisite reforms are responsive to Roma interests. Its ultimate goal is to achieve the integration of Roma in society and reduce the gap between the Roma and non-Roma populations, given that the fulfilment of these requirements is prerequisite for accession to the EU.[11]

The European Commission against Racism and Intolerance (ECRI), which also focuses on the status of Roma, published its report in May 2017. It stressed that affirmative action was particularly needed in the field of employment to end the structural discrimination demonstrated by the fact that not a single Roma person was employed in important public service institutions.[12] ECRI also cited sta-

8 Social inclusion of Roma is part of the European integration process, 19 October 2017, available at: http://europa.rs/social-inclusion-of-roma-is-part-of-the-european-integration-process/?lang=en.

9 Final Conference on the Project "EU Support for Inclusive Society," 14 November 2017, see: https://europa.rs/fabrizi-the-eu-donated-eur5–4-million-to-serbia-in-support-of-social-inclusion/?lang=en.

10 Roma Integration 2020, *ROMinfomedia*. 21 September 2017, available in Serbian at: http://rominfomedia.rs/rm/integracija-roma-2020-godine/.

11 Roma Integration 2020: New Project for Western Balkans Launched, *Telegraf*, 9 June 2016, available in Serbian at: http://www.telegraf.rs/vesti/politika/2185969-integracija-roma-2020-pocinje-novi-projekat-za-zapadni-balkan. See also: http://www.rcc.int/romaintegration2020/home.

12 ECRI Report on Serbia, 16 May 2017, p. 32, available at: https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/serbia/SRB-CbC-V-2017–021-ENG.pdf.

tistical data indicating the unsatisfactory status of the Roma population. These data show that only 46% Roma children complete primary school and that merely 13% of all Roma and 7% of all Roma girls complete secondary education. The Report says that 7% of Roma children are affected by school segregation, and that Roma are still overrepresented in special education, often due to insufficient mastery of the language of instruction.[13] ECRI also described the housing conditions of many Roma as distressing. As many as 72% Roma settlements are informal, 37% of all Roma households do not have adequate access to drinking water at home, 67% are not connected to the sewage system, 11% do not have an electricity supply, and 49% have to cook on wood fires.[14]

1.3. Discrimination against Roma

Roma are still discriminated against although the state has taken specific measures to combat this phenomenon. Discrimination is widespread in the fields of labour and employment. A survey conducted by a Roma NGO corroborates that Roma job-seekers are still discriminated against.[15] On the other hand, the generally very low level of education among Roma is a major obstacle to their employment. According to the data of the Roma Women's Network Bibija, 89% of Roma of working age are unqualified workers and only 0.4% have university degrees.[16]

Not only do Roma have difficulties accessing education; they face discrimination throughout their schooling as well. 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 in them has fallen, but is still too high. The drop-out rate of Roma children remains high as well. Poverty and migration are the main reasons for their truancy.

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 University School of Languages and to introduce Roma Language as an elective subject in primary schools.

13 *Ibid*., p. 30.

14 *Ibid*., p. 31.

15 "Roma Have a Hard Time Finding a Job – Various Explanations Given for Not Hiring Them," *N1*, 6 August 2017, available in Serbian at: http://www.danas.rs/drustvo.55.html?news_id=352808&title=Otvorena+diskriminacija+Roma+i+Romkinja.

16 See "Devastating Data: Child Marriages in Serbia Steadily Increasing, Youngest Bride was only 11", *Blic*, 11 October 2017, available in Serbian at: http://www.blic.rs/vesti/drustvo/porazavajuci-podaci-decji-brakovi-u-srbiji-u-stalnom-porastu-najmlada-mlada-imala-je/zhm6ktg.

With a view to improving Roma children's school performance and preventing them from leaving school early, professional training was organised in 2016 for pedagogical assistants extending support to Roma and other pupils from socially disadvantaged groups. Their work in the schools has also helped suppress discrimination and prejudices against Roma.[17] Health mediators are also helping out in out-patient health clinics across Serbia.

Apart from the other problems Roma face, the CoE Secretary General singled out segregation, low quality education, and special schools as problems disproportionately affecting Roma. Together with the Special Representative for Roma Issues, the Council of Europe set 10 goals for improving the status of Roma, including, among others, the reduction of Roma infant mortality, increasing vaccination of Roma children and the number of Roma children going to school.[18]

Several incidents in the Belgrade suburb of Vidikovac indicate that assaults on Roma have continued. The incidents were caused by a group of people and an investor who tried to evict two Roma families from the barracks they were living in. At one point, they succeeded and destroyed the barracks and the families were forced to live in the streets until civic activists repaired them.[19]

Intolerance against Roma is widespread as well, as corroborated by anti-Roma graffiti on the facades of some buildings in the Belgrade municipality of Čukarica,[20] Kragujevac,[21] and elsewhere. The Kragujevac city administration reacted promptly and whitewashed the graffiti the same day it appeared.[22]

Independent regulatory authorities (albeit not all) have reacted to some cases, but state authorities, government representatives and the judiciary have stayed mum.

The Equality Protection Commissioner's Office intervened after receiving a complaint against weekly *E.* claiming discrimination on grounds of sexual orientation and ethnicity in an article published on 2 June 2017. The Commissioner held

17 "Quality Education for All," *Glasnik*, No. 7, November 2016, available in Serbian at: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/ovde_smo_zajedno_glasnik_broj_7.pdf.

18 "Protector of Citizens: Roma Face Poverty and Discrimination Every Day," *N1*, 7 April 2017, available in Serbian at: http://rs.n1info.com/a240542/Vesti/Vesti/Zastitnik-Siromastvo-i-diskriminacija-romska-svakodnevica.html.

19 "Fresh Assault on Roma in Belgrade Suburb Vidikovac," *Radio Free Europe*, 21 October 2017, available in Serbian at: https://www.slobodnaevropa.org/a/28807893.html.

20 "Hate Speech Graffiti against Roma Whitewashed," *RTS*, 19 June 2017, available in Serbian at: http://www.rts.rs/page/stories/ci/story/124/drustvo/2774318/uklonjeni-grafiti-govora-mrznje-prema-romima.html.

21 "Roma in Kragujevac Threatened by Racist Graffiti," *N1*, 13 November 2017, more is available in Serbian at: http://rs.n1info.com/a341739/Vesti/Vesti/Grafit-protiv-Roma-u-Kragujevcu.html.

22 "Hate Graffiti Shocking Kragujevac Residents," *RTV*, 24 November 2017, available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/grafiti-mrznje-u-kragujevcu-sokiraju-gradjane_872930.html.

that the ideas and views expressed in the article were unnerving and humiliating and amounted to a violation of the dignity of LGBT persons and Roma, creating an offensive and degrading setting for persons belonging to these groups, in contravention of Article 12 of the Anti-Discrimination Act.[23] She recommended to the weekly to publish an apology and refrain from publishing articles violating the dignity of Roma women.[24]

In her opinion on a complaint filed against a worker of the Gerontology Centre, claiming discrimination on grounds of ethnicity, the Commissioner said that the worker had disturbed the complainant and violated her dignity because he had referred to the personal features of her father, a Roma, in breach of the Anti-Discrimination Act. She instructed the Gerontology Centre worker to apologise to the complainant in writing for the discriminatory statement and make sure he did not violate the anti-discrimination law with his statements and actions in the future.[25]

In her opinion on the complaint against the Zvezdara Department of the Belgrade SWC claiming discrimination on grounds of sex and Roma ethnicity, the Commissioner said that the refusal of the SWC officers to receive R.K.'s report of domestic violence gave rise to multiple discrimination against her because of her personal features – sex and ethnicity. She recommended that the SWC take all measures to eliminate the effects of the discriminatory treatment of R.K. and required it to write a letter of apology to her and organise training for all staff to sensitise and train them to work with the Roma population.[26]

In June 2017, the Commissioner also issued a public warning in reaction to news that a group of 8th graders in a Belgrade primary school beat up a 7th grader because he was Roma.[27]

The Protector of Citizens commended the headway in facilitating the Roma's registration in birth and other registers. He noted that additional efforts needed to be invested in facilitating their access to health care and education and in protecting Roma women from discrimination in employment, health care and education. He in particular warned that practices, such as the erection of a cement wall around the

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

24 Complaint by NGOs D. and B. against weekly *E.* for discrimination on grounds of sexual orientation and ethnicity in the field of public information, available in Serbian at: http://ravnopravnost.gov.rs/rs/prituzba-nvo-d-i-b-protiv-nedel%d1%98nika-e-zbog-diskriminacije-po-osnovu-seksualne-orijentacije-i-etnickog-porekla-u-oblasti-javnog-informisanja/.

25 S.S.' complaint against N.S. claiming discrimination on grounds of ethnicity in the field of labour, available in Serbian at: http://ravnopravnost.gov.rs/rs/prituzba-s-s-protiv-n-s-zbog-diskriminacije-po-osnovu-nacionalne-pripadnosti-u-obalsti-rada/.

26 A.'s complaint against the Social Work Centre claiming discrimination on grounds of sex and ethnicity in the field of services, available in Serbian at: http://ravnopravnost.gov.rs/rs/prituzba-a-protiv-centra-za-socijalni-rad-zbog-diskriminacije-po-osnovu-pola-i-etnicke-pripadnosti-u-oblasti-pruzanja-usluga/.

27 Warning Regarding an Assault on a Roma Pupil, available in Serbian at: http://ravnopravnost.gov.rs/rs/upozorenje-povodom-napada-na-romskog-ucenika/.

Roma settlement Marko Orlović in Kruševac, gave rise to concern and risked to result in the ghettoization and segregation of the Roma community.[28]

Roma returnees from Western Europe, who failed to obtain asylum, are a particularly vulnerable group. Given that returnees under readmission agreements are not recognised as a particularly vulnerable group of the population, 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. It is important to underline that these statistical data were not final because neither Serbia nor the European Union had full data on the number of returnees.

1.4. Statelessness and Legally Invisible Persons

According to a 2016 UNHCR report[29] 2,700 people at risk of statelessness live in Roma settlements. A report prepared by the European Roma Rights Centre (ERRC), the European Network on Statelessness and the Institute on Statelessness and Inclusion, entitled "Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine",[30] which was published in October 2017, synthesised the findings of a project exploring the nexus between statelessness, discrimination and marginalisation of Roma in EU candidate states. In addition to multiple discrimination, statelessness is an additional yet often neglected discriminatory factor that results in the inability to exercise fundamental rights, such as the right to health care, education, work and housing. The Report lists as the main causes of statelessness, forced displacement as a result of the conflicts, the lack of civil documentation and the inheritance of statelessness.

According to the Report, two areas in which Roma appear to face particularly strong challenges in relation to civil documentation are birth registration and permanent residence. Roma face particular challenges with regard to registering their residence, because they are often unable to produce a certificate or contract of property ownership or a verified lease agreement. The amendments to the Non-Contentious Procedure Act[31] have resulted in the increase in the number of Roma registered in birth and other registers, but the implementation of this law is still not satisfactory.

Bureaucracy and poverty also undermine the issuance of personal documents, because many Roma cannot afford the high fees. The discriminatory view

28 More in the *2016 Report*, III.2.2.

29 Cvejić, S, "Persons at Risk of Statelessness in Serbia, Progress Report 2010–2015", UNHCR, Belgrade, June 2016. Available at: http://www.refworld.org/docid/57bd436b4.html, p. 13.

30 *Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, available at: https://www.statelessness.eu/resources/roma-belong-statelessness-discrimination-and-marginalisation.

31 *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.

that Roma are indifferent to being documented and are thus themselves responsible for their own lack of documentation is widespread. Even if that were true, and it is not, the state authorities are under the duty to address the issue. Not having documents has various effects on the Roma; one of them is psychological – the feeling of rejection by the majority community, but there are others that directly impinge on the Roma's everyday lives and needs. Namely, without personal documents, they cannot access health care, attend school, work. The Report says that interviewees had recognised that measures to prevent statelessness and increase documentation have been taken and adopted in legislation, but suggested that social exclusion and discrimination were still presenting barriers to their implementation. Its authors suggest that the resolution of the statelessness issue would put in place conditions for addressing problems in other areas given that Roma are victims of multiple discrimination and excluded from society.[32]

1.5. 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.

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 EU designated 3.6 million Euro for the implementation of the first stage of the project "Livelihood Enhancement for the Most Vulnerable Roma Families in Belgrade" (Let's Build a Home Together), launched in February 2013. The funds were used to build three social housing buildings, in which 59 families were accommodated, and to buy rural households for 41 families, while 10 families were extended support in reconstructing their homes. The first stage was implemented in partnership with the Belgrade city authorities, the Office of the UN High Commissioner for Human Rights (OHCHR) through the Human Rights Adviser at the Office of the UN Resident Coordinator in Serbia, and the project partners: the Danish Refugee Council (DRC), the Housing Development Centre for Socially Vulnerable Groups (Housing Centre), the OSCE and the UN Serbia team.

32 *Statelessness, Discrimination and Marginalisation of Roma in the Western Balkans and Ukraine*, October 2017, available at: https://www.statelessness.eu/resources/roma-belong-statelessness-discrimination-and-marginalisation.

The second stage of the project commenced on 1 March 2017. The EU allocated 1.5 million Euro for the provision of housing for up to 50 Roma families from mobile settlements until end February 2019. The project envisages the construction of one social housing building with a maximum of 23 apartments in Belgrade to accommodate as many families, while 27 families are to move to houses in villages.[33] The second stage is implemented by United Nations Office for Project Services (UNOPS) in partnership with the Belgrade city authorities.

"For Each Rom to Have a Home" is a project launched by Housing Centre and the Odžaci municipal authorities. The EU funding will be spent on building 34 apartments in Bogojevo, Karavukovo, Bački Brestovac, Bački Gračac and Lalić by the end of February 2019 for families to be displaced from the substandard settlement Novo naselje in Bogojevo and for the construction of a water supply system, public lighting and access road in the settlement of Čerga in Deronje near Odžaci.[34]

The EU is also funding the construction of new apartments for the residents of the Roma settlement Čerga in Bačka Palanka. The construction is to begin in the spring of 2018.[35]

Nine Roma families moved from containers to new homes in the Vladičin Han local community Prekodolce, within the EU programme of assistance to flood-affected areas in Serbia.[36]

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. A project entailing the

33 EU Support for Quality Housing of Additional 50 Roma Families, 13 April 2017, available at: http://www.sagradimodom.org/vest/566/Podrska-EU-za-kvalitetno-stanovanje-dodatnih-50-romskih-porodica/http://www.sagradimodom.org/vest/566/Podrska-EU-za-kvalitetno-stanovanje-dodatnih-50-romskih-porodica/.

34 "The Realization of the Project 'For Each Rom to Have a Home' has Started," Housing Center, 6 June 2017, available at: http://www.housingcenter.org.rs/en/index.php/vesti-housing-centar/262–06062017-the-realization-of-the-project-for-each-rom-to-have-a-home-has-started.

35 "From Tents to Apartments," *RTV*, 20 November 2017, available in Serbian at: http://www.rtv.rs/sr_lat/vojvodina/backa/iz-cerge-u-stanove_871780.html.

36 "New Homes for Nine Roma Families in Vladičin Han," 26 April 2017, available at: http://europa.rs/new-homes-for-nine-roma-families-in-vladicin-han/?lang=en.

installation of firefighting equipment and training Roma to use it was launched in 10 Southern Serbian municipalities due to frequent fires in Roma settlements, which have claimed the lives of several children.[37]

1.6. Child Marriages

Arranged and child marriages are frequent among the Roma in Serbia. They are the direct consequence of their poverty and living conditions, as well as tradition. As many as 57% of the Roma girls marry before they turn 18 and nearly one out of five before they turn 15. Five percent of Roma girls marry and have their first baby before they turn 15 and 38% of them before they turn 18. The fact that the number of arranged and child marriages is on the rise is particularly concerning.[38]

The ethnographic survey "Child Marriage among the Roma Population in Serbia,"[39] conducted by the Roma Women's Centre *Bibija*, the Serbian Academy of Arts and Sciences Institute of Ethnography and UNICEF in November 2017, shows that many child marriages are concluded in Roma communities (over 50% of the girls marry before they turn 18). This practice persists, although it is prohibited by the law, especially in the Roma communities, where child marriages are concluded for various reasons, such as the poor social and economic status of the Roma and the social, cultural and societal norms affecting the lives of the children. In other words, poverty, education level, place of residence, as well as accepted cultural, religious and social practices, values and customs all contribute to the prevalence of child marriages.

The research highlighted the fact that the practice of child marriages persisted, inter alia, because of the marginalisation of the Roma and absence of external influence, or systemic response endeavouring to change this negative practice. Discrimination and marginalisation constitute fundamentally limiting factors preventing Roma from overcoming the constraints imposed by the community they live in. Efforts need to be invested in learning about and understanding the diversity, values, and social and cultural norms of the Roma community.

Child marriages have major impact on the children's lives and constitute a violation of their rights. They result in early school leaving and affect their health, development, safety, et al. The suppression of child marriages requires concerted efforts by various local Roma community stakeholders, as well as by institutions and organisations of the majority population.

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37 "Roma Settlements in Southern Serbia Receiving Firefighting Equipment," 19 January 2016, available at: http://socijalnoukljucivanje.gov.rs/en/roma-settlements-in-southern-serbia-receiving-firefighting-equipment.

38 "Devastating Data: Child Marriages in Serbia Steadily Increasing, Youngest Bride was only 11", *Blic*, 11 October 2017, available in Serbian at: http://www.blic.rs/vesti/drustvo/porazavajuci-podaci-decji-brakovi-u-srbiji-u-stalnom-porastu-najmlada-mlada-imala-je/zhm6ktg.

39 Available at: https://www.unicef.org/serbia/Child_marriage_among_the_Roma_population_in_Serbia_web.pdf.

2. LGBTI Rights

2.1. Normative Framework

The ECHR and ICCPR do not explicitly mention sexual orientation as grounds on which discrimination is prohibited but they leave the possibility open as they specify that discrimination is prohibited on any ground or status in addition to the listed ones, thus allowing for such an interpretation of Article 1 of Protocol No. 12 to the ECHR and Article 26 of the ICCPR.

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.[40] The Anti-Discrimination Act prohibits discrimination on grounds of sexual orientation (in Art. 2) but makes no explicit mention of gender identity.[41] 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 discrimination.[42]

Neither the rights of transgender persons, including the right to change the sex designation in their personal documents and access documents, nor the rights of same-sex partners are regulated at all by Serbian law.

The LGBTI community has for several years now called on the state authorities to adopt the Anti-Homophobia Declaration. The Declaration was not adopted by the end of 2017 although, 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[43] 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.

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40 Although the Constitution does not explicitly mention discrimination on grounds of sexual orientation, it prohibits discrimination on any grounds and on grounds of personal characteristics, which include sexual orientation, as the Constitutional Court confirmed in its decision in the case Už–1918/2009 of 22 December 2011.

41 More in the *2009 Report,* I.4.1.2.

42 E.g., the Labour Act prohibits discrimination on grounds of sexual orientation and the Act on Youths prohibits discrimination on grounds of gender identity.

43 See the *N1* Report, available in Serbian at: http://rs.n1info.com/a192039/Vesti/Vesti/Predlogda-Skupstina-usvoji-Deklaraciju-protiv-homofobije.html.

2.2. Discrimination, Violence and Hate Crimes against LGBTI Persons

In the reporting period, the equality of sexual minorities still was not fully achieved in practice despite the satisfactory normative framework prohibiting discriminatory treatment of persons of a different sexual orientation. There are still individuals and groups in Serbia who do not accept diversity and believe that the recognition of the rights of LGBTI persons undermines the "real values", children and families, the pillars of every society.[44] Election of Ana Brnabić, the first female official to publicly state she was not heterosexual, to the post of Prime Minister in late June 2017 provoked various reactions; some media and individuals highlighted her sexual orientation as one of her most relevant features[45] and commented it negatively.[46]

The assessment of the Commissioner for the Protection of Equality that the rights and status of the LGBTI community were improving is belied by surveys that have for years now indicated that it is one of the most discriminated against minority community in Serbia.[47] The Commissioner for the Protection of Equality in 2017 rendered decisions on two complaints of discrimination on grounds of sexual orientation, one in a news article,[48] published on the website of a daily and in reaction to a complaint by organisation D. to the relevant inspectorate and the other with respect to an SNS election campaign spot containing a slogan insulting the LGBT population.[49]

Discrimination in the education system is prohibited by numerous regulations, including the Anti-Discrimination Act (Art. 19), the Primary Education Act (Art. 9)[50], the Higher Education Act (Arts. 4 and 8)[51], the Textbook Act (Art.

44 Blogger Aleksandar Lambros published on his Facebook profile a photograph of a signboard in front of a café in the heart of Belgrade, clearly prohibiting entry to gay couples and the letters "4S". See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/beograd/homofobija-u-centru-beograda-kafic-zabranio-ulaz-gej-parovima/bqhbg4f.

45 See the *Optimist* report, available in Serbian at: http://www.optimist.rs/ana-i-mediji-gej-premijerka-smanjila-penzije/.

46 See, e.g. the *Kurir* report, available in Serbian at: http://www.kurir.rs/zabava/pop-kultura/2872941/sramota-bora-djordjevic-javno-prozvao-anu-brnabic-draga-ne-budi-perder.

47 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. See more at: ravnopravnost.gov.rs.

48 Opinion No. 07–00–521/2016–02 of 3 February 2017.

49 Opinion No. 07–00–101/2017–02, of 3 July 2017.

50 *Sl. glasnik RS,* 55/13.

51 *Sl. glasnik RS,* 76/05, 100/07, 97/08, 44/10, 93/12, 89/13, 99/14, 45/15, 68/15, and 87/16.

11),[52] etc. The 2016 Rulebook on Detailed Criteria for Recognising Forms of Discrimination in Education Institutions by Staff, Children, Pupils or Third Parties[53] specifies sexual orientation among the grounds on which discrimination is prohibited and enumerates in Article 10 the forms of expression that constitute hate speech.

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. However, 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.[54]

The NGO *Da se zna* registered cases reported by victims of hate crimes in 2017. These cases are registered in a separate database and classified by the sources of information, types of violation, the violated rights, the victims and their age, gender, and sexual orientation and published on the NGO's website.[55] This NGO registered 20 crimes motivated by homophobia or transphobia, two cases of discrimination on grounds of sexual orientation and gender identity and five cases of hate speech against persons belonging to the LGBTIQ community in the March-October 2017 period.[56]

Five young men on 30 April 2017 assaulted a transwoman Leona, and kicked her, hit her with their belt buckle, threw cement cubes at her, and cursed and insulted her. Leona ran to a cab station and tried to get into a cab, but the cab driver drove away. Another cab driver first refused and then agreed to give her a ride, but threw her out after 40 metres, because she was attacked by two young men as she was entering his vehicle. The cab driver refused to call the police and report the incident. Some five or six cabs arrived and one of the drivers shouted "We don't drive transvestites, faggots and people covered in blood!".[57]

An unidentified young man, between 20 and 23 years old, assaulted a transwoman Lela and her friend at a pizza stand on Belgrade's main square in Belgrade on 8 May 2017. While they were waiting for their pizzas, two men came up and one of them started abusing Lela because she is transgender. As she was paying for the pizza, the unidentified man came up to her from behind and started hitting her on

52 *Sl. glasnik RS*, 68/15.

53 *Sl. glasnik RS,* 22/16.

54 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, Belgrade 2014, available at: http://labris.org.rs/en/wp-content/uploads/2014/04/Hate-Crimes-Publication-English.pdf.

55 See the press release available in Serbian at: https://dasezna.lgbt/cases.html.

56 Information obtained from *Da se zna*.

57 See the *Da se zna* press releases, available in Serbian at: https://dasezna.lgbt/case/DSZ_047/uskra%C4%87ivanje_prevoza_pretu%C4%8Denoj_trans_%C5%BEeni.html and https://dasezna.lgbt/case/DSZ_033/fizi%C4%8Dki_napad_na_trans_%C5%BEenu_u_centru_beograda.html.

the head and in the face with his fists and then kicking her. Lela fell on the floor and fainted from the blow to her head. Her friend was injured as well.[58]

2.3. Events Organised by the LGBTI Population

Pride Week was organised on 11–17 September 2017, a week before the Pride Parade, to increase the visibility and recognition of problems faced by the LGBTI community. Pride Week was opened by an exhibition of the works of illustrator Mirko Ilić and included film screenings, literary and other discussions and 30 or so other events that passed without any incidents.[59] No incidents occurred during the Pride Parade held in Belgrade on 17 September 2017 for the fourth year in a row. This Parade, too, was heavily guarded by the police. In addition to Prime Minister Ana Brnabić, the Parade was attended by other government representatives and Serbian and international public figures, LGBTI activists and ordinary citizens. The speakers emphasised that, in addition to the freedom of assembly, LGBTI persons should also enjoy other rights they are occasionally deprived of and on an equal footing with others.[60] The Pride Info Centre operated in Belgrade from 27 August to 25 September to raise the visibility of the activities implemented during Pride Week and of the Pride Parade.[61]

A group of 20 or so people protested on Belgrade streets against the Pride Parade on the day it was held. They carried a large Serbian Orthodox cross and a banner saying "Immorality and Gay Shame – Never Again in Public Life" and sang spiritual songs. No incidents occurred during their protest.[62]

Another Pride Parade under the slogan "Let All Our Voices Ring" was held in a park in the heart of Belgrade on 24 June, within the Pride Weekend organised on 23–26 June 2017 by the associations Egal, Loud & Queer and the Gay Lesbian Info Centre. The organisers said they wanted to alert to frequent assaults on trans people. No incidents occurred during the event, which passed without strong police presence.[63]

Public campaigns in support of LGBTI persons were organised outside Belgrade for the first time in May 2017. Apart from Belgrade, the International Day

58 See the *Da se zna* press release, available in Serbian at: https://dasezna.lgbt/case/DSZ_035/nano%C5%A1enje_telesnih_povreda_trans_%C5%BEeni_u_beogradu.html.

59 See the report, available in Serbian at: https://www.danubeogradu.rs/2017/09/pride-week-2017-od-11–17-septembra/.

60 See the *N1* report, available in Serbian at: http://rs.n1info.com/a318651/Vesti/Vesti/Uz-premijerku-u-prvim-redovima-odrzana-Parada-ponosa.html.

61 See the press release, available in Serbian at: http://parada.rs/2017/08/31/otvoren-prajd-info-centar-u-beogradu/.

62 See the *N1* report, available in Serbian at: http://rs.n1info.com/a318623/Vesti/Vesti/Protest-protiv-parade-ponosa.html.

63 See the *N1* report, available in Serbian at: http://rs.n1info.com/a277851/Vesti/Vesti/Parada-ponosa-24.-juna.html.

Against Homophobia, Transphobia and Biphobia (IDAHOT) was marked also in Novi Sad, Niš, Subotica, Pančevo, Novi Pazar and Kragujevac on 17 May. The association Labris, state institutions and local CSOs jointly organised the events, with a view to raising public awareness of the status of the LGBTI population. These seven cities have Local Networks for the Prevention of Discrimination against and Support to LGBT Persons, in which representatives of LGBT associations and state institutions (the police, prosecution services, city administrations, social work centres and others) participate on an equal footing and monitor and react to cases of discrimination against this minority group.

Labris marked IDAHOT also by staging a public show of support to LGBT persons on Belgrade's main square, while the accounts of LGBT persons were read out in the Belgrade City Assembly. A video campaign was launched in Subotica and activists in Niš started a park of tolerance by planting the first trees on the Fort. A street campaign was organised in Kragujevac and a press conference was held in Pančevo. The Local Network for the Prevention of Discrimination against and Support to LGBT Persons in Novi Pazar presented its work publicly for the first time.[64]

2.4. Rights of Same-Sex Partners

Serbian law does not entitle same-sex partners to marry,[65] or register as civil partners.[66] 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. However, such laws were not drafted by the end of the reporting period.[67] The Centre for Advanced Legal Studies (CUPS) has already drafted a model law on registered same-sex partnerships.[68]

The LGBTI community called on the government to legally regulate same-sex marriages. The article allowing registration of same-sex unions in the Preliminary Draft of the Civil Code, which has been publicly debated for several years

64 Labris conducted campaigns to mark IDAHOT in cooperation with over 80 partners (66 institutions and 22 CSOs).

65 Article 62(2) of the Serbian Constitution defines marriage as a union of a man and a woman.

66 Decision in Case No. IU-347/05, of 22 July 2010. More in the *2013 Report*, III.4.2.

67 Anti-Discrimination Strategy Action Plan, points 4.3.2. and 4.3.3.

68 See: http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-registrovanim-istopolnim-zajednicama.pdf.

now, was deleted in early 2017. Since the public debate has not been completed, the provision can be reintroduced in the future Civil Code, especially since the ECtHR, although it does not hold that same-sex marriages are protected under the Convention,[69] has ruled that such partnerships have to be legalised;[70] it is, however, hardly likely that such partnerships will be legalised in Serbia any time soon, because that would require amending the Constitution.[71]

2.5. Status of Trans[72] Persons

The Serbian legal system does not recognise trans persons. The health system recognises only transgender, which it categorises as a mental disorder.[73] 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.

The civil sector prepared two texts, a Model Act on the Recognition of the Legal Consequences of Sex Change and Determination of Transsexualism[74] in 2012 and the Model Gender Identity Act[75] in 2016.

The Anti-Discrimination Strategy Action Plan envisages two more measures addressing this issue: the first measure involves the drafting of a law on gender

69 See e.g. *Hämäläinen v. Finland,* App. No. 37359/09, Grand Chamber judgment of 16 July 2014.

70 See *Oliari and Others v. Italy*, App No. 18766/11 and 36030/11, judgment of 21 July 2015, where 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, *Vallianatos and Others v. Greece,* App. Nos. 29381/09 and 32684/09, the Grand Chamber 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.

71 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/drustvo/srbija-je-mogla-da-odobri-gej-brakove-ali-se-pre-nekoliko-dana-desilo-ovo/2kjg002.

72 Trans is an umbrella term for people whose gender identity/ies differ/s from sex/gender assigned at birth.

73 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.

74 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: ttp://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-priznavanju-pravnih-posledica-promene-pola-i-utvr%C4%91ivanja-transeksualizma.pdf.

75 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.

identity to improve the status of transgender persons until mid–2016[76] and the second the preparation of a draft sex change law, which would subsequently serve as the basis for amending other relevant laws. A sex change law was not, however, adopted by the end of 2017 either.

2.6. People Living with HIV/AIDS

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.[77] The number of programmes implemented by NGOs[78] plunged after the withdrawal of the Global Fund to Fight AIDS, Tuberculosis and Malaria.

The Commissioner for the Protection of Equality ruled on a complaint filed against a physical therapy organisation that refused to render its services to a person living with HIV. She found the organisation had directly discriminated against the complainants on grounds of his health and a violation of Article 6 of the Anti-Discrimination Act.[79]

2.7. Intersex[80] Persons

There are no specific regulations in Serbian law on intersex persons. Intersex variations are still considered medical disorders.[81] No data are available on the number of "normalising" operations performed on intersex children in Serbia. The NGO Gayten LGBT formed a group to extend support to intersex persons in Serbia.[82]

In October 2017, the Parliamentary Assembly of the Council of Europe (PACE) adopted a Resolution promoting the human rights of and eliminating discrimination against intersex people.[83] The Resolution devotes attention to children's right to physical and mental integrity and bodily autonomy; the need for psychological support of the family, society, CSOs to intersex people: the legal status and rec-

76 Anti-Discrimination Strategy Action Plan, point 3.1.6(4).

77 M. Anonijević Priljeva, "Silence – Death HIV EPIDEMIC", *Optimist,* 29 April 2016.

78 *Ibid.*

79 Opinion No. 07–00–218/2016–02 of 7 July 2016.

80 "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.

81 *Ibid.,* p. 144.

82 See: http://www.transserbia.org/interseks/595-podrska-i-poziv-interseks-osobama.

83 PACE Resolution 2191 (2017) of October 2017, available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24232&lang=en.

ognition of gender identity; prohibition of discrimination against intersex people in anti-discrimination law and raising awareness among lawyers, police, prosecutors, judges and all other relevant professionals; the need for collection of more data and implementation of further research into the situation and rights of intersex people, including into the long-term impact of sex-"normalising" surgery, sterilisation and other treatments. In this Resolution, the PACE invited the national parliaments to work actively, with the participation of intersex people and their representative organisations, to raise public awareness about the situation of intersex people in their country and to give effect to its recommendations. Serbia has to act on the recommendations in this Resolution given that it is a member of the Council of Europe and that PACE's recommendations apply to it as well.

3. Human Rights of Persons with Disabilities

3.1. Legal Framework

By ratifying the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD)[84] and its Optional Protocol in 2009, the Republic of Serbia assumed the international obligation "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".[85] Under Article 15 of the Revised European Social Charter (hereinafter: ESC), which Serbia ratified in 2009,[86] persons with disabilities are entitled to independence, social integration and participation in the life of the community. Another document relevant to Serbia as an EU candidate country is the European Disability Strategy (2010–2020), adopted with a view to achieving the full economic and social inclusion of persons with disabilities is the is of relevance to Serbia.

The Constitution of the Republic of Serbia prohibits all forms of discrimination, especially discrimination on grounds of physical or mental disability. The universal standards laid down in the CRPD and ILO Convention No. 159 concerning vocational rehabilitation and employment of persons with disabilities[87] were integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities[88] and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.[89]

84 *Sl. glasnik RS (International Treaties)*, 42/09.

85 Article 1 of the CRPD, the Act Ratifying the CRPD was published in *Sl. glasnik RS (International Treaties)*, 42/09.

86 *Sl. glasnik RS (International Treaties)*, 42/09.

87 *Sl. glasnik SFRJ (International Treaties)*, 3/87 and *Sl. glasnik RS*, 36/09 and 32/13.

88 *Sl. glasnik RS*, 33/06.

89 *Sl. glasnik RS*, 36/09 and 32/13.

The Act on the Prevention of Discrimination against Persons with Disabilities obliges state bodies to provide persons with disabilities access to public services and facilities and prohibits discrimination in specific areas, such as employment, health and education (Arts. 11–31). It includes significant provisions obliging state and local self-government authorities to undertake special measures to encourage equality of persons with disabilities (Arts. 32–38).

The most relevant provisions in the Act are the ones introducing special regulations in civil suits initiated for the protection from discrimination on grounds of disability (Arts. 39–45). The plaintiffs are entitled to ask the court to prohibit an act that may result in discrimination, to prohibit the further commission or repetition of an act of discrimination, to order the defendant to take action to eliminate the effects of discriminatory treatment, to establish that the defendant treated the plaintiff in a discriminatory manner and to order the compensation of material and non-material damages (Arts. 42 and 43).

3.2. Realisation of the Rights of Persons with Disabilities

According to 2011 Census in Serbia, 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 have encountered numerous difficulties in their everyday lives, although nearly every enactment adopted by the National Assembly of the Republic of Serbia devotes at least one article to their rights.

In November 2017, UNICEF and the National Organisation of Persons with Disabilities presented their analysis of the situation of children with physical and/or intellectual disabilities in Serbia and the realisation of their rights. They concluded that such children still faced numerous difficulties in and obstacles to exercising their rights. The situation analysis covered the status of children with disabilities in the following six areas: discrimination, poverty and social security, education, social protection and family living, health care and protection from violence and abuse. According to the analysis, 45% of the parents of children with disabilities said they or their children had been insulted, humiliated or harassed because of the children's disabilities. The analysis also identified problems in benefits parents of such children should be accorded: in 24% of the families, one parent had to quit work to care for child. Their situation is further exacerbated by the fact that no financial assistance has been envisaged to protect children with disabilities and their parents from poverty. The analysis data confirmed reports by other organisations that 22% of children with disabilities were in the alternative care system, while 72% were in residential care.[90]

90 The authors of the analysis prepared clear guidelines and recommendations for advocating the rights of children with disabilities and for developing new strategic and legal documents in this

Eighty-two complaints of discrimination on grounds of disability were filed with the Commissioner for the Protection of Equality in 2016. The share of these complaints (12.9%) in 2016 was approximately the same as in the previous years (11.3% of all complaints in 2015 and 10.1% of all complaints in 2014). This ground was among the top four grounds claimed in the complaints of discrimination over the previous years. Most of the complaints – 24 – regarded discrimination in the area of education and vocational rehabilitation, followed by complaints of discrimination due to the inaccessibility of public services or facilities (18), discrimination in recruitment or at work (14), and discrimination in procedures before public administration authorities (9); fewer complaints claimed discrimination in other areas. Both the Commissioner's findings and surveys by international organisations and local CSOs and institutions show that persons with disabilities are discriminated against the most in accessing their education, employment and labour rights and public areas, services and facilities.

3.2.1. Independent Living and Community Inclusion

Persons with disabilities living in Serbia continued experiencing problems in exercising their right to live in the community. Although Serbia has committed to deinstitutionalisation in principle, the number of institutionalised persons with disabilities has been increasing every year. In its Submission to the UN Human Rights Council for the briefing on the Republic of Serbia,[91] Mental Disability Rights Initiative (MDRI-S), said that, due to exclusion, discrimination, and poverty, more than 11,000 persons with disabilities in Serbia were placed in large residential and psychiatric institutions. It noted that, despite the comprehensive reforms in the areas of social protection, education, health, and fundamental rights in the Republic of Serbia in the previous decade, the situation of persons with mental disabilities, especially those placed in residential and psychiatric institutions, have not improved significantly and that the system did not yet offer satisfactory alternative solutions.[92]

According to the Republican Social Protection Institute 2016 Annual Report, 83% of the beneficiaries living in institutions for children and youths in 2016 suffered from some form of disability. Children and youths accounted for more than half of the institutionalised persons, as many as 60%. The high share of institutionalised persons with physical or mental disabilities is, inter alia, due to the fact that the specialised foster care system and other services supporting children with disabilities and their families does not respond to the needs of this population of children.

area, especially to improve the education, health, social inclusion and anti-violence policies. More is available in Serbian at: http://www.unicef.rs/deca-sa-smetnjama-i-invaliditetom-suocena-sa-poteskocama-i-preprekama-u-ostvarivanju-svojih-prava/.

91 See: https://www.mdri-s.org/03_02_2017_-mdri-s-submission/.

92 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.

Women with disabilities in residential and psychiatric institutions are at increased risk of abuse, sexual assaults, rape by other clients and/or staff because of their specific vulnerability. In addition, they are victims of forced abortions, arbitrary separation from a child, and administration of contraceptives without informed consent or understanding. In 2016, MDRI-S conducted several interviews with over 30 women with disabilities in four residential institutions. The preliminary results showed that the majority of women, due to their very specific position and isolation from the outside world accepted violence as an inevitable part of their daily lives in the institutions. Furthermore, they did not know to whom and/or how to report violence, especially when it was committed by the institution staff, wherefore MDRI-S concluded that the institutions did not afford adequate protection against violence, neglect and abuse of their residents.[93]

In paragraphs 13 and 14 of its Concluding Observations, the Committee on the Rights of Persons with Disabilities[94] 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 Protection Act[95] prohibits the placement of children under three years of age in residential institutions. The Committee 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 intervention and development services, initiate education programmes for the staff in institutions and develop efficient community-based care services for those leaving institutions." It also called on Serbia to adopt a comprehensive strategy and measures for effective deinstitutionalisation, and ensure no investment was made for new institutions.

The Republican Social Protection Institute stated in its 2016 Annual Report that children under three were living in only two institutions: the Belgrade Centre for the Protection of Infants, Children and Youths in Zvečanska and the *Kolevka* (Cradle) Home in Subotica. The number of children under three living in these institutions did not change much from 2015 to 2016; 36 were living in them in 2016, 29 in December 2016.

3.2.2. Inclusive Education

Exercise of the right to education by persons with disabilities was also restricted in 2017. The discriminatory practice of excluding children with disabilities from the formal mainstream education system was applied in Serbia until 2009

93 More on the situation of women in: https://www.mdri-s.org/03_02_2017_-mdri-s-submission/.

94 See: UN doc. CRPD/C/SRB/CO/1, available at: file:///C:/Users/Vesna/Downloads/G1610077.pdf.

95 *Sl. glasnik RS*, 24/11.

when inclusive education was introduced by the new Education System Act[96] that launched a long-term reform of the education system. 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.[97] Under the Act, school principals shall form professional inclusive education teams. 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.

An Individual Education Plan (IEP) is an instrument introduced to tailor the education process to children with disabilities. IEP shall be drawn up by the expert inclusive education team or the team extending additional support 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 or psychologist).[98]

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. 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.

Children with disabilities living in residential institution have especially had problems in exercising this right. Over 80% of all institutionalised children in Serbia are children with disabilities. Exclusion from education amounts to the violation of the children's right to education and to discrimination on grounds of disability. They are denied the possibilities of desegregation, inclusion, contact and interactions with peers without disabilities, and are ill-prepared for community living. The situation varies across different institutions and reflects the opinions and attitudes of the institutions' management and expert team. As MDRI-S stated in its submission to the UN Human Rights Council, the prevalent reason for exclusion of children with disabilities from education is the decision or the 'assessment' of the expert team in institutions not to enrol children in school based on their diagnosis and type of disability, which is in violation of national education and anti-discrimination

96 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation, 68/15 and 62/16 – authentic interpretation.

97 Article 6, Education System Act.

98 More in the *2016 Report*, III.4.5.

laws. MDRI-S did note progress in providing access to education for children transferred from large residential institutions to small group homes where all children are included in the local special schools for children, but warned that they remained completely segregated in special units in the special schools.[99]

According to the data of the Republican Social Protection Institute, 84% of children and youths in child and youth institutions and only 30% of those in institutions for children and youths with disabilities attend some form of education. Their exclusion from education fully excludes them from society and the community and, in the long-term, renders them wholly dependent on the institutions they are residing in, excluded and deprived of any resources.

3.2.3. Equal Recognition before the Law and Legal Capacity of Persons with Disabilities

Legal capacity is the main prerequisite for exercising other rights. Deprivation of legal capacity[100] greatly impacts the everyday life and the rights 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. In their rulings on partial deprivation of legal capacity, the courts determine the type of actions the persons 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 persons in question cannot take any decisions or exercise their rights.

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.

Although there were no statistical data on the number of adults deprived of legal capacity for 2017, it may be presumed that their number was similar to the one in 2016 – 13,030. Ninety-three percent of them were fully and 7 percent partly deprived of legal capacity.

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

99 See: https://www.mdri-s.org/03_02_2017_-mdri-s-submission/.

100 Deprivation of legal capacity is governed by the Family Act and the Non-Contentious Procedure Act.

marry and have a family. Persons deprived of legal capacity are explicitly deprived of their voting rights. Article 18 of the Serbian Constitution, and consequently the election laws,[101] entitle every citizen of age and with legal capacity to vote and be elected. Not only are persons deprived of legal capacity unable to find employment; in specific situations, they cannot work as volunteers either.[102]

In its Concluding Observations, the Committee on the Rights of Persons with Disabilities 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. ECtHR case-law also requires 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.[103]

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 Disabilities[104] 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 freedom and security of person and urging Serbia to repeal this law and prohibit impairment-based detention of children and adults with disabilities.

3.2.4. Accessibility

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.

The 2006 amendments to the Planning and Construction Act[105] 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

101 The Act on the Election of the President of the Republic and the Act on the Election of Assembly Deputies.

102 Article 12(2(3)), Volunteer Act, *Sl. glasnik RS*, 36/10.

103 More in the *2016 Report*, III.4.3.

104 *Sl. glasnik RS*, 45/13.

105 *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.

Standards Rulebook[106]. Most buildings housing the public administration and public institutions,[107] new and old alike, are inaccessible to persons with disabilities.

Under the Air Transportation Act,[108] 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,[109] 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 (Art. 87).

The Land Transportation Act[110] 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. In October 2017, Belgrade Mayor Siniša Mali said the city had bought 10 new buses accessible to and with seats for persons with disabilities.[111]

Under Article 12 of the Public Information and Media Act[112] "[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[113] dealing with basic universal services, such services shall include special measures providing persons with disabilities with equal access to publicly

106 *Sl. glasnik RS*, 46/13.

107 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.

108 *Sl. glasnik RS*, 73/10, 57/11, 93/12 and 45/15.

109 *Sl. glasnik RS*, 45/16 and 91/15.

110 *Sl. glasnik RS*, 46/95, 66/01, 61/05, 91/05, 62/06, 31/11 and 68/15 – other laws.

111 See the press release available in Serbian at: http://www.osi-press.com/2017/10/18/jos-10-novih-autobusa-na-ulicama-beograda/.

112 *Sl. glasnik RS*, 83/14, 58/15 and 12/16 – authentic interpretation.

113 *Sl. glasnik RS*, 83/14 and 6/16 – other law.

available telephone services, including calls to emergency services. Such services shall be rendered to persons with disabilities at lower rates.

The amendments to the Customs Act[114] adopted in early 2017 abolished the possibility of importing used or new cars and equipment for persons with disabilities. The Ministry of Finance said that the amendments brought the national law in compliance with the *acquis*. Organisations protecting persons with disabilities criticised the decision, depriving persons with disabilities of the opportunity they had had under the law to save several thousand EUR on vehicles meeting their needs and not manufactured in Serbia.[115] The Act exempts persons with disabilities and their organisations from paying import duties on objects intended for the education, employment or improvement of the social situation of persons with disabilities, as well as on spare parts, components and add-ons for those objects (Art. 216(1(11a)).

Despite better accessibility of state institutions to persons with disabilities, quite a few institutions still have not put in place ramps for people with physical disabilities at their entrances, wherefore they are practically out of reach of wheelchair users. The representatives of organisations extending assistance to persons with disabilities say that the absence of ramps at social work centres is the greatest problem since persons with disabilities exercise most of their rights through these centres. A large number of schools are also inaccessible, as are health institutions, which should by definition be fully accessible to all their patients. Public transportation in cities is also problematic. Most of the bus wheelchair ramps are not operational; the trams can be accessed at only a few stations in Belgrade, where the sidewalks were built bearing in mind the needs of people using wheelchairs.[116]

3.2.5. Work and Employment

The Act on the Professional Rehabilitation and Employment of Persons with Disabilities is the first law to comprehensively govern the employment of persons with disabilities and it gives precedence to the employment of persons with disabilities in the open labour market over alternative models of employment. The Rulebook on the Procedure, Costs and Criteria for Evaluating the Abilities and Opportunities for the Employment and Retention of Employment of Persons with Disabilities[117] lays down that the relevant authority shall assess how a person's illness or disability affects his ability to work, find a job and retain it, wherefore it has the discretion to find a person totally incapable of being involved in any employment measures either under general or special conditions on the basis of a very vague and elusive standard.

114 *Sl. glasnik RS*, 18/10, 111/12, 29/15, 108/16 and 113/17 – other law.

115 See the *Radio 021* report, available in Serbian at: http://www.021.rs/story/Info/Srbija/153908/Osobe-sa-invaliditetom-placace-carinu-na-uvoz-automobila-i-opreme.html.

116 See the press release, available in Serbian at: http://www.osi-press.com/2017/10/19/otezan-pristup-institucijama/.

117 *Sl. glasnik RS,* 36/10.

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). Employers defaulting on the obligation to hire persons with disabilities under Article 24 are under the obligation 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 Obligation,[118] 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.

3.2.6. Health Care and Social Protection

Under Article 20 of the Health Care Act,[119] 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 mobility aids, and sight, hearing, and speech aids (hereinafter: medical-technical aids). The Rulebook on Medical Rehabilitation in Specialised Rehabilitation Institutions[120] 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 covers between 60 and 100 percent of the costs of the medical-technical aids.[121]

The 2011 Social Protection Act lays down that "all individuals and families in need of social assistance and support to address their social and existential difficulties and create conditions for satisfying their basic needs" shall be entitled to

118 *Sl. glasnik RS*, 33/10, 48/10 – corr. and 113/13.

119 *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.

120 *Sl. glasnik RS*, 75/16.

121 More in the *2016 Report,* III.4.8.

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 the engagement of personal assistants.[122] The Rulebook on Detailed Social Protection Service Provision Conditions and Standards[123] 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.

4. Special Protection of Women and Gender Equality

4.1. General overview

Gender equality denotes equal access by women and men to resources and opportunities, including involvement in the society's economic life and decision-making processes. Empowerment of women and their participation in all walks of public and private life is essential to their realisation of human rights. The women's full involvement in economic and political life is prerequisite for the development of a society.

Enjoyment of equal rights, regardless of gender, sex or another personal feature, is guaranteed by all international instruments ratified by Serbia. Gender equality and the development of the equal opportunities policies are among the seventeen principles enshrined in the Serbian Constitution. Principles of non-discrimination and gender equality have been introduced in all national laws and by-laws. The Gender Equality Coordination Body, operating within the Serbian Government and headed by Deputy Prime Minister Zorana Mihajlović, was established to guide the work of public administrative authorities and other institutions with a view to promoting the status of women and men in Serbia. In addition, the Anti-Discrimination and Gender Equality Promotion Sector was set up within the Ministry of Labour, Employment and Veteran and Social Issues in May 2017. The National Assembly of the Republic of Serbia has a standing Committee on Human and Minority Rights and Gender Equality. Local self-governments have also established their gender equality mechanisms. Gender equality is also within the remit of two independent

122 Public Call for the Engagement of Personal Assistants Call Published, May 2016, available in Serbian at: http://www.beograd.rs/lat/beoinfo/1724166-psrozrsms-isbms-msasbjs-zs-odjprnjmskmdj-srzrsdjmsdj/.

123 *Sl. glasnik RS*, 42/13.

regulatory authorities, the Protector of Citizens and the Equality Protection Commissioner.

Serbia has made some progress in aligning its law with international standards and the EU *acquis* in the reporting period. The obligation to introduce gender responsive budgeting[124] was introduced for the first time in late 2016 and is to be fulfilled by authorities at all levels by 2020 at the latest, to ensure that the spending of public resources is in the interest of women and men alike. The 2016–2020 National Gender Equality Strategy[125] and its Action Plan were adopted, the Domestic Violence Act[126] entered into force and the National Action Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security in the Republic of Serbia until 2020[127] was adopted. All this has led the World Economic Forum to rank Serbia 40th on the list of 144 countries in its 2017 Global Gender Gap Report, up from 48th place the previous year. Serbia made slight headway on the Health and Survival, Educational Attainment and Political Empowerment sub-indexes, but retained its 2016 ranking on the Economic Participation and Opportunity sub-index.[128] A new gender equality law, drafted for three years now, was not enacted by the end of the reporting period and the 2009 Gender Equality Act[129] remains in effect.

The problems in applying the protective provisions of laws and by-laws in practice and effecting the actual changes the adopted regulations bring to the everyday lives of women persisted in 2017. Women's and men's contributions are still not valued the same and, in many communities, it goes without saying that the property is registered in the men's name and that they take the important household decisions. 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.[130] Even emancipated women, fully exercising their right to work and equal wages, generally spend several hours a day after work doing the household chores, often without the help of their male partners. For the situation to change, efforts need to be simultaneously invested in the women's economic empowerment, in dispelling the stereotypes about female work through educational programmes and in the development of an efficient system protecting women from violence, which is the greatest obstacle to their pro-

124 Gender responsive budgeting entails gender mainstreaming of the budget process, including gender analysis of the budget and restructuring of income and expenditures in order to advance gender equality. The budget system should achieve the efficient allocation of budget resources with a view to fostering gender equality.

125 *Sl. glasnik RS*, 4/16.

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

127 *Sl. glasnik RS*, 53/17.

128 See more at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf.

129 *Sl. glasnik RS*, 104/09.

130 More in the *2016 Report*, III.5.

gress. Furthermore, as the new Gender Equality Strategy notes, focus on women needs to move from women as victims to women and men as equal factors and decision-makers in society.

4.2. Equality and Non-Discrimination

The principle of the prohibition of discrimination is proclaimed in numerous international instruments ratified by Serbia. The ICCPR imposes the obligation of States to ensure equal access to rights to women and men, which means that they should not only refrain from discriminatory practices (a negative obligation), but also that they should adopt positive measures in all areas so as to achieve the effective and equal empowerment of women (positive obligation).[131] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also lays down the States' obligation not only to prohibit all discrimination against women (Art. 2) but also to take all appropriate measures to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (Art. 3).

The Serbian Constitution guarantees equality before the law and prohibits direct and indirect discrimination on any grounds, including sex and gender (Art. 21). The anti-discrimination provisions, including affirmative measures, exist in various laws governing labour, employment, family relations, health care and social protection, political and civil rights, et al.

The UN Human Rights Committee also noted that patriarchal cultural patterns and stereotypical gender roles of women and men remained prevalent in Serbian society and called on Serbia to pursue efforts to raise awareness of women's equality with a view to combating all prejudices and stereotypes against women.[132]

4.3. Exercise of the Right to Work and Just Remuneration

Article 23(3) of the Universal Declaration of Human Rights guarantees everyone who works the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. Article 7 of the ICESCR also recognises the right of all workers to fair wages and equal remuneration for work of equal value without distinction of any kind.

The Serbian Constitution guarantees women special protection at work and special working conditions in accordance with the law (Art. 60). The Labour Act[133]

131 UN Human Rights Committee, General Comment No. 28, available at: http://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/b)GeneralCommentNo28Theequalityofrightsbetweenmenandwomen(article3)(2000).aspx.

132 Concluding observations on the third periodic report of Serbia, UN Human Rights Committee, 10 April 2017, available at: http://www.refworld.org/docid/591e9c4b4.html.

133 *Sl. glasnik RS,* 24/05, 61/05, 54/09, 32/13, 75/14 and 13/17 – Constitutional Court Decision.

includes provisions prohibiting discrimination on grounds of sex against workers and job-seekers. The 2014 amendments to the Labour Act, which are in keeping with International Labor Organization (ILO) Maternity Protection Convention (Convention No. 183),[134] 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 Anti-Discrimination Act[135] expressly prohibits discrimination in the spheres of labour and employment. Under Article 16(1) of that law, any violation of equal opportunities for entering into employment or enjoying any labour rights under the same conditions, such as: the right to work, free choice of a profession, promotion at work, professional development and rehabilitation, equal remuneration for the work of equal value, fair and satisfying working conditions, vacation, establishment of workers; and employers; associations and accession to them, as well as the right to protection against unemployment, shall be deemed discrimination. However, data of specific state institutions and independent regulatory authorities, as well as results of surveys conducted to date, indicate that women still are not equal to men and that they face various forms of discrimination when seeking employment and at work.[136] Furthermore, the number of complaints filed with the Commissioner for the Protection of Equalityevery year testifies that women have been exposed the most to discrimination in the fields of labour and employment for several years in a row (between 34 and 38 percent of the complaints concerned such discrimination).[137]

Working women are discriminated against because of their gender and the stereotyped role ascribed to them. They have complained because they were passed up on a promotion or because they had been dismissed or reassigned to inferior, less-paying jobs while they were on maternity leave (pursuant to Art. 12(3) of the Labour Act). Pregnant women and young mothers are discriminated against the most. So are young women, who are often offered fixed-term contracts, which are extended until they get pregnant. Quite a few women were directly asked by their future employers about their marital status and family plans. Some women have been forced to sign undated termination of employment and mutual release agreements at the time they signed their employment contracts, which their employers

134 *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."

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

136 See more in Serbian at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/06/kodeks-ravnopravnosti-smernice-za-izradu-kodeksa-antidiskriminacione-politike-poslodavaca-u-srbiji-pojmovnik.pdf.

137 See more at: http://ravnopravnost.gov.rs/rs/misljenja-i-preporuke-lat/misljenja-i-preporuke-u-postupku-po-prituzbama-lat/.

activate when they become pregnant.[138] Many women have tacitly agreed to such conditions both because of the long and expensive court proceedings and their slim chances of finding another job, wherefore it is reasonable to assume that the scale of this problem is much greater than the available data indicate.

The extent of discrimination against women in the labour market are reflected in the data of the Statistical Office of the Republic of Serbia (SORS): the number of working women in the second quarter of 2017 was as much as 14% lower than that of working men.[139] Furthermore, all mechanisms for the protection of the right to work apply only to formal employment, wherefore the women's unpaid household work remains invisible and unprotected. This is particularly concerning in view of the fact that women spend several hours a day doing unpaid work in an informal, household setting, as indicated by the available statistical data. In its recent publication "Women and Men in the Republic of Serbia," SORS said that women accounted for 25% less of the economically active population than men and that seven times more women than men were performing only unpaid household work. This problem is especially pronounced in rural areas, but is not rare in cities either. The 2016 survey on use of free time in Serbia[140] also showed major differences in the workloads of women and men, especially with respect to unpaid household work. Both women who have jobs and those who do not spend twice as much time performing unpaid household chores, e.g. preparing food, cleaning, caring for children or adult family members, et al. Women in general spend 40% more time than men doing unpaid chores every day.

The greatest gender gap in the labour market has been registered in the 55–64 age category, where the employment rate of women stands at 32.5% and the employment rate of men at 52.8%.[141] The situation in the field of entrepreneurship is similar: twice as many men as women are self-employed (28% v. 13%).[142] Data on the pay gaps between women and men are devastating. These pay gaps are absolutely in contravention of the Constitution and the prohibition of discrimination on grounds of sex and gender. Data indicate that men with secondary education earn as many as 10,000 RSD more than women with secondary education, while average male university graduates earn around 35,000 RSD more than women with university degrees.[143] What is concerning is that such discrimination is so pronounced in

138 "Pregnancy Punished with Pink Slip," *Deutsche Welle,* 7 March 2017, available in Serbian at: http://www.dw.com/sr/trudno%C4%87a-se-ka%C5%BEnjava-otkazom/a-37826706.

139 Labour Force Survey, SORS, August 2017. Available in Serbian at: http://webrzs.stat.gov.rs/WebSite/repository/documents/00/02/57/18/ARS_2017Q2.doc.

140 Use of Time in the Republic of Serbia 2010 and 2015, SORS, 2016, available at: http://pod2.stat.gov.rs/ObjavljenePublikacije/G2016/pdfE/G20166006.pdf.

141 Women and Men in the Republic of Serbia, SORS, November 2017, p. 62, available in Serbian at: http://www.stat.gov.rs/WebSite/userFiles/file/Aktuelnosti/Zene%20i%20muskarci%20u%20Republici%20Srbiji_web_2017.pdf.

142 *Ibid*.

143 *Ibid.*

the academic community, which ought to champion gender equality and value people's professional excellence regardless of their sex or gender. It therefore comes as no surprise that the risk of poverty rate is 3.6% higher among women over 65 years of age than among men in the same age category.[144]

The new 2016–2020 Gender Equality Strategy has recognised the feeble effects of the prior measures aimed at boosting women's employment, entrepreneurship and economic empowerment, as well as those aiming to improve the status of groups facing discrimination on multiple grounds. In order to ensure the enforcement of the law in practice, the supervisory role of the labour inspectorate needs to be strengthened but more efficient court protection and free legal aid also need to exist. In addition, all the institutions and individuals need to constantly and persistently strive to dismantle the deeply rooted traditional gender divisions and stereotypes.

4.4. Women's Right to Health Care and Social Protection

Article 12 of CEDAW imposes upon the States Parties the duty to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. States Parties also have to ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. The Health Care Act (HCA)[145] and the Health Insurance Act (HIA)[146] provide for free health care to all insured persons, as well as children, pregnant women and young mothers whether or not they have health insurance. In reaction to the problems in practice, the Protector of Citizens has been consistently reiterating in his annual reports his recommendations to the relevant authorities to take the appropriate measures to ensure all women have access to health services at all levels of health care. However, not enough attention is devoted to prevention and raising women's awareness of reproductive health issues. Only 6.3% of the women see their gynaecologists every year and the incidence of abortions is high.[147]

The right to social protection is recognised and protected by key international human rights instruments ratified by Serbia. Under Article 69 of the Serbian Con-

144 *Ibid*, p. 90.

145 *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.

146 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – Constitutional Court Decision, 119/12, 99/14, 126/16 – Constitutional Court Decision, 106/15 and 10/16 – other law.

147 "Gender Equality and Women's Health," *RTS*, 15 December 2016. Available in Serbian at: http://www.rts.rs/page/magazine/sr/story/2523/nauka/2560545/rodna-ravnopravnost-i-zdravlje-zene-1-deo.html.

stitution, all individuals 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 rights of working women are governed by the Labour Act. Under Article 94 of this law, working women are entitled to three-month pregnancy leave, which they have to take maximum 45 and minimum 28 days before their estimated delivery date. Article 94a of this law entitles working women to take two-year maternity leave to care for their third and all subsequent children. Article 4 of the Rulebook on the Requirements and Procedure for Exercising the Right of Families with Children to Financial Support[148] sets out that, after the expiry of pregnancy leave, working women are entitled to 12-month, and in some cases, 24-month maternity leave from the day they went on pregnancy leave.

Under the 2014 amendments to the HIA, 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 wage reimbursements 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 wage reimbursements out of their own accounts and then seek reimbursements from the state. In June 2017, the Belgrade city authorities adopted a Decision on Additional Forms of Protection of Young Mothers in the Territory of the City of Belgrade,[149] under which unemployed young mothers are entitled to one-off cash benefits amounting to 25,000 RSD, provided that the total monthly income per member of their household (including the new-born infant) did not exceed 10,000 RSD in the previous quarter.[150] Working young mothers are also entitled to one-off cash benefits in the amount of 10,000 RSD.

Problems with the payment of pregnancy and maternity leave benefits have often arisen in practice. Quite a few women found out that their employers had not been paying their contributions only when they went on pregnancy leave.[151] Many have, however, been dismissed as soon as they returned from maternity leave, because the law does not protect them any longer.[152] Such scenarios have occurred not only in the private, but in the public sector as well. There have also been frequent

148 *Sl. glasnik RS*, 29/02, 80/04, 123/04, 17/06, 107/06, 51/10, 73/10 and 27/11 – CC Decision.

149 *Sl. glasnik RS*, 44/17.

150 See more in Serbian at: http://www.beograd.rs/index.php?lang=cir&kat=beoinfo&sub=1459789%3F.

151 "While State is Calling on Women to Have Children, Woman in Niš Barely Managed to Go on Maternity Leave" *Južne vesti*, 28 August 2017, available in Serbian at: https://www.juznevesti.com/Drushtvo/Dok-drzava-poziva-zene-da-radjaju-Nislijka-jedva-otvorila-porodiljsko.sr.html.

152 "Pregnant Women and Young Mothers Dismissed in Public Sector as Well, Employers Found Legal Lacuna," *Radio 021*, 6 November 2017, available in Serbian at: http://www.021.rs/story/

delays in the payments of the benefits, especially the part paid by the state. For instance, the delay in the payment of the benefits in the autumn of 2017 was caused by the inadequate plan on payments of funds designated for this purpose, which had been drawn up by the prior RHIF management.[153]

Irregularities in determining the base for calculating the benefits by the Ministry of Labour, Employment and Veteran and Social Issues have been identified as well. The Protector of Citizens performed a check of the Ministry's work in response to complaints,[154] filed by three young mothers, and found that the Ministry had not applied the methodology for determining the base to calculate the benefits set out in the Act on Financial Support for Families with Children.[155] Under Article 11 of that law, the benefit shall amount to the average base wage over the preceding 12 months, increased by a maximum of five average monthly wages in Serbia depending on years of service. In this particular case, the first-instance authorities had not *recognised* the wages paid to the complainants and had themselves determined the base for calculating the wage by referring to the company CEO's wage, i.e. the minimum wage. The Ministry reviewed the complainants' appeals and upheld the first-instance rulings. The Protector of Citizens issued a recommendation to the Ministry to void the impugned rulings and instruct the first-instance authorities on steps to take in such cases, send written apologies to the complainants and thereinafter conduct procedures to identify shortcomings resulting in the violations of the young mothers' rights or of public interests and take measures against the responsible persons.

4.5. Gender-Based Violence against Women

In paragraph 10 of its General Recommendation 35 on gender-based violence against women, adopted in July 2017, the Committee on the Elimination of Discrimination against Women reaffirmed that "gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated." Under the Convention and international law, States parties are responsible for preventing these acts or omissions by their own organs and to investigate, prosecute and apply appropriate legal or disciplinary sanctions, as well as provide reparation in all cases of gender-based violence against women (para. 22).[156]

Novi-Sad/Vesti/175253/Trudnice-i-porodilje-otpustaju-i-u-javnom-sektoru-poslodavci-nasli-rupu-u-zakonu.html.

153 "Payment of Pregnancy Leave Benefits," *Mondo*, 29 November 2017, available in Serbian at: http://mondo.rs/a1060962/Info/Drustvo/Naknade-za-trudnicko-bolovanje.html.

154 Ref. No. 13–1–871/17 of 26 November 2017, available in Serbian at: http://www.rodna ravnopravnost.rs/attachments/article/274/Preporuka%20ZG.doc.

155 *Sl. glasnik RS*, 16/02, 115/05 and 109/09.

156 Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf.

Although a number of new laws have been adopted and the existing ones amended, the impression remains that there is no efficient protection from domestic and partner violence. Estimates are that one out of two women in Serbia are subjected to some form of violence. Unemployed and financially dependent women are at greater risk of abuse. Over 330 women were killed in domestic violence incidents since 2006 and the Social Work Centres received nearly 19,000 reports of gender-based violence in 2015 alone. The number of reports of violence against women has been doubling every year; 46% of the women were subjected to brutal physical violence.[157]

The deficient coordination of the police, prosecutors and social services over the past few years is corroborated by the fact that most of the women had reported domestic violence before they were killed.[158] Two women were killed in Belgrade Social Work Centres when they brought their children to see their violent fathers under SWC supervision in just one week in July 2017. In the first case, the perpetrator killed his ex-wife in front of their children and, in the second case, the perpetrator first suffocated his four-year old son and then stabbed his ex-wife to death.[159]

Similar crimes had occurred in the past as well, wherefore the Protector of Citizens conducted supervisory checks and identified deficiencies in the work of 12 relevant public services and authorities and issued 45 systemic recommendations to the Ministry of Internal Affairs, the Vojvodina Social Policy Secretariat, the Ministry of Labour, Employment and Veteran and Social Issues and the Ministry of Health.[160] Unfortunately, it was only in the face of tragedy that the authorities realised that they needed to improve their assessments of risks of violence and murder.

In 2013, Serbia ratified the Council of Europe Istanbul Convention on Preventing and Combatting Violence against Women and Domestic Violence in October 2013,[161] the so-called Istanbul Convention, which is the first and only legally binding document at the European level that regulates violence against women. 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). [162] When it ratified the Convention, Serbia reserved the right

157 "327 Women Perished in Domestic Violence Incidents in Serbia over Past Decade," *Blic*, 13 November 2017, available in Serbian at: http://www.blic.rs/vesti/hronika/u-srbiji-za-deset-godina-u-porodicnom-nasilju-ubijeno-327-zena/r8kfcmt.

158 "Reporting Domestic Violence Prevents Homicide," *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.

159 "New Tragedy in Social Work Centre: Man Kills Wife and Child, Three People Injured," *Blic online*, 12 July 2017, available in Serbian at: http://www.blic.rs/vesti/hronika/nova-tragedija-u-centru-za-socijalni-rad-muskarac-ubio-zenu-i-dete-ranjene-tri-osobe/r2yr2em. More in I.1.4.

160 The Report and recommendations are available in Serbian at: http://www.rodnaravnopravnost.rs/attachments/214_Sistemske%20preporuke.doc.

161 *Sl. glasnik RS (International Treaties)*, 12/13.

162 Article 66 of the Istanbul Convention.

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 aligned its criminal legislation with the relevant provisions of the Convention.

The Criminal Code was amended in November 2016 with a view to aligning national law with the Istanbul Convention. The new provisions, notably, envisage harsher penalties for crimes against sexual freedoms and incriminate new acts, including stalking (Art. 138a). Another 20 or so articles of the Criminal Code, including the definition of the criminal offence of rape, need to be amended for this Code to be fully in line with the Istanbul Convention.[163] Furthermore, an efficient mechanism of legal and psychosocial support for victims of all forms of violence covered by the Convention needs to be established.

The Domestic Violence Prevention Act,[164] adopted in November 2016, came into force on 1 June 2017. This law was adopted with a view to fulfilling the standards set by the Istanbul Convention and governs the organisation and activities of state authorities aimed at preventing domestic violence and extending adequate protection and support to victims of domestic violence (Art. 2). The Act defines domestic violence as every "act of physical, sexual, psychological or economic violence against an individual with whom the perpetrator has been in a marital, extramarital or partnership relationship, or is the perpetrator's consanguineous lineal or lateral kin to the second degree, a relative by affinity to the second degree, adoptive or foster parent or child, or any other individual with whom the perpetrator has lived with." The authorities and institutions charged with preventing domestic violence and extending support to the victims comprise the police, public prosecution services, courts of general jurisdiction and misdemeanour courts, as well as Social Work Centres. From 1 June 2017, when the Act came into force, to 15 November 2017, 3,424 domestic violence crimes were reported and the police imposed 10,504 urgent measures; as many as 67.5% were temporary restraining orders and only 32.5% involved removal of the perpetrators from their homes.[165] On the other hand, at least 26 women were killed since the beginning of the year; NGOs have continued drawing up reports on domestic violence on the basis of media reports.

One of the obligations Serbia assumed by ratifying the Istanbul Convention was to set up state wide round the clock telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention (Article 24 of

163 The Analysis of the Compliance of the Criminal Code with the Istanbul Convention is available in Serbian at: http://www.potpisujem.org/srb/882/analiza-uskladenosti-zakonodavnog-i-strateskog-okvira-sa-standardima-konvencije.

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

165 "[Minister of Internal Affairs] Stefanović: 26 Women Killed in Domestic Violence Incidents This Year," *Blic online*, 24 November 2017, available in Serbian at: http://www.blic.rs/vesti/hronika/stefanovic-ove-godine-ubijeno-26-zena-u-porodicnom-nasilju/9qbbymj.

the Convention). It was only in November 2017, i.e. with a six-year delay, that the Ministry of Labour, Employment and Veteran and Social Issues published a call for bids for the extension of hotline services to women with experience of violence but no organisation in Serbia fulfilled one of the requirements (was in possession of a licence issued by the Ministry) on the day the call was published.[166] Civil society organisations alerted to the absence of a system for licencing such services, the fact that the valid by-laws did not specify which documents organisations had to submit to enter the licencing process and that the Republican Social Protection Institute had until recently held the view that hotlines for women could not be licenced.[167] It needs to be noted that, in 2016, the Ministry of Justice did not uphold any CSO projects on the prevention of violence against women or support to women victims of violence within its call on the financing of projects from its fund exceeding three million Euro, which were collected through the enforcement of the institute of deferral of criminal prosecution.[168] The Ministry granted funding to only one CSO – to extend free legal aid to women victims of violence – within its 2017 call for bids.[169]

Non-government organisations have set up 26 specialised hotlines for women and children victims of violence in 18 cities; only nine have been supported from the local budgets, by an average of 150,000 RSD a year, which is in itself insufficient to keep the services going.[170] The NGO hotlines were called up 12,780 times in 2016, which clearly indicates the extent of the problem of domestic violence.[171] The European Commission also noted that the number of shelters was insufficient[172] and that there was no state-run centre for victims of sexual violence or national helpline lack of safe havens for the victims.[173]

166 Press Release: "Hotline Licencing – Mission Impossible, Licence Prerequisite for Applying with Ministry", Autonomous Women's Centre, November 2017. Available in Serbian at: https://www.womenngo.org.rs/vesti/1082-saopstenje-za-javnost-licenciranje-sos-telefona-nemoguca-misija-a-licenca-uslov-konkursa-ministarstva.

167 *Ibid*.

168 "Serbia: Without Support to Women Victims of Violence," *Al Jazeera.* 27 May 2017, available in Serbian at: http://balkans.aljazeera.net/vijesti/srbija-bez-podrske-zenama-zrtvama-nasilja.

169 Source: Ministry of Justice, available at: https://www.mpravde.gov.rs/vest/16387/-ministarka-kuburovic-sistem-podrske-zrtvama-jedan-od-vaznijih-zadataka.php.

170 Available in Serbian at: http://www.astra.rs/saopstenje-za-javnost-povodom-rezultata-konkursa-ministarstva-pravde-za-dodelu-sredstava-prikupljenih-po-osnovu-odlaganja-krivicnog-gonjenja/.

171 "Why Doesn't Serbia Have a National Hotline for Victims of Violence Yet?" *RTS*, 16 May 2017. Available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2735948/zasto-srbija-jos-nema-nacionalni-sos-telefon-za-zrtve-nasilja.html.

172 SWC-operated shelters exist only in Belgrade, Kragujevac, Leskovac, Novi Sad, Pančevo, Priboj, Smederevo, Sombor, Sremska Mitrovica, Vranje, Jagodina, Šabac, Niš, Majdanpek and Zrenjanin.

173 Serbia 2016 Report, pp. 62–63.

4.6. Women's Participation in Political and Public Life

Women's direct participation in decision-making in all walks of life and at all levels of government is of major importance for the realisation of gender equality. Women's involvement in the adoption and implementation of policies contributes to the change of political priorities with regard to specific problems, values and experiences of women. The Beijing Platform for Action aims at inducing governments to take measures to ensure women's equal access to and full participation in power structures and decision-making. The Convention on the Political Rights of Women, which Serbia ratified in 1954, entitles women to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination. By ratifying the CEDAW, Serbia assumed the obligation to take all appropriate measures to involve women in the political and public life of the country and entitle them to participate in the formulation and implementation of government policy and to hold public office and perform all public functions at all levels of government (Art. 7).

Under Article 37(2) of the Gender Equality Act,[174] the gender equality principle shall be complied with in all nominations of candidates for posts and appointments to posts in the public authorities and financial and other institutions. Given that the number of women appointed to public office is still much smaller than the number of men and that the law does not prescribe a protection quota, the preliminary draft of the new Gender Equality Act[175] sets out that women shall account for at least 40% of members nominated or appointed to Serbia's delegations representing it before international bodies. The same quota is set for managerial and supervisory bodies of political parties, trade unions and guild associations. The Act on the Election of Assembly Deputies[176] 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).

Serbia has 190,000 more women than men, but only six cities and municipalities have female mayors, as the data in the 2017 Women and Men in the Republic of Serbia publication show. No women hold managerial positions in the Ministry of Foreign Affairs Security Police Sector. There are 20% fewer female than male public prosecutors in all the public prosecution services; the fewest women prosecutors are working in the Higher Public Prosecution Services (32%). Sixty-eight percent of the female judges work in courts of general jurisdiction, two-thirds of them in Basic Courts. Men account for as many as 90% of the members of the Serbian Academy

174 *Sl. glasnik*, 104/09.

175 The preliminary draft is available in Serbian at: http://paragraf.rs/nacrti_i_predlozi/300817-nacrt_zakona_o_rodnoj_ravnopravnosti.html.

176 *Sl. glasnik*, 35/00, 57/03 – CC Decision, 72/03 – other law, 75/03 – corr., other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – CC Decision, 36/11 and 104/09 – other law.

of Arts and Sciences. This institution has never been headed by a woman since it was founded 176 years ago.[177] Women appear in one out of four media stories, most of which are sensationalist in character; hardly any focus on the women's careers and achievements.[178]

Although women are underrepresented in Serbia's political and public life, some headway has been made, mostly at the national level. A woman was elected Assembly Speaker following the 2016 parliamentary and local elections; women account for 34.54% of the deputies. There is no legal obligation to entrust the vacated parliamentary seat of a female deputy to the next female candidate who ran on the same ticket. This has in practice frequently led to male deputies replacing the outgoing female deputies, a problem recognised also in the new Gender Equality Strategy. The Strategy sets out that special measures and quota for women must be prescribed to ensure equitable participation of women in all the executive authorities at all levels, as well as in public companies and financial and other institutions.

All female deputies, regardless of political colour, are members of the Women's Parliamentary Network, an informal group supporting the promotion and advancement of the gender equality policy by submitting amendments to laws and through other activities. The Network's priorities include also raising awareness of female solidarity and encouragement of women in Serbia to participate in public and political life to a greater extent.

Serbia got its first female Prime Minister in history, Ana Brnabić, after the then Prime Minister, Aleksandar Vučić, won the presidential elections in May 2017. However, the impression prevails that the work of the Government and the Prime Minister is overshadowed by the Serbian President, who appears in the media four times more often than they do.[179] The new Government has four women ministers; one of them is also a Deputy Prime Minister and the Chair of the Gender Equality Coordination Body.

As far as the women's role in local governments is concerned, it needs to be noted that only 46 local self-governments signed the European Charter for Equality of Women and Men in Local Life. Only one of the 11 members of the Vojvodina government is a woman; women account for 35.8% of the Vojvodina parliament deputies, which is in accordance with the statutory quota. Out of 158 local self-governments, only 7.6% are headed by women mayors; 13.3% of the city or municipal assemblies are headed by women.[180] On the other hand, more women than men

177 The publication is available in Serbian at: http://www.stat.gov.rs/WebSite/userFiles/file/Aktuelnosti/Zene%20i%20muskarci%20u%20Republici%20Srbiji_web_2017.pdf.

178 Reaction to New Media Attacks on Women, Women's Leadership Academy, 17 October 2017, available in Serbian at: http://www.liderke.org/en/reagovanje-na-nove-medijske-napade-na-zene/.

179 "Findings of the Monitoring on the Presence of the Serbian Government in Prime Time News", Birodi, 18 November 2017, available in Serbian at: http://www.birodi.rs/nalazi-monitoringa-o-predstavljanju-vlade-srbije-u-centralnim-informativnim-emisijama.

180 "Gender Equality in Local Self-Government Units", Equality Protection Commissioner, November 2017, pp. 8–9, available in Serbian at: http://ravnopravnost-5bcf.kxcdn.com/wp-content/uploads/2017/11/Rodna-ravnpravnost-u-JLS.pdf.

hold the job of local assembly secretary. As far as the ratio of women councillors in the local assemblies is concerned, their shares do not satisfy the statutory quotas in as many as 59 (37.5%) of the cities and municipalities.[181] Only 50% of the local self-governments set up standing gender equality mechanisms provided for by Article 39(4) of the Gender Equality Act; most of these mechanisms were established in the form of gender equality commissions or councils and women account for 80% of their members.[182]

4.7. Discrimination against Rural Women

Rural women are one of the most vulnerable groups in terms of exercising their human rights and the equal opportunities policy. Women account for 55% of the unemployed rural population; 74% of the rural women fall into the category of unpaid farm hands and 12% of them do not have even basic health insurance.[183] This can be ascribed to the patriarchal way of life and stereotyped roles of women, wherefore women for the most part have limited access to revenues, do not inherit property and do not decide on household matters. Enjoyment of the right to property is often prerequisite for accessing economic rights and earning one's livelihood. Restrictions of this right in practice irreparably impinge on the well-being of women, their children and their families. Rural women in Serbia now own only 17% of the property,[184] while over 80% of them do not own any land, i.e. the situation has not improved at all since 2009.[185]

Women working the land are in particularly dire straits, as they mostly do unpaid work, wherefore they are not recognised either as working women or as entrepreneurs. Consequently, rural women do not enjoy social security and around 60% of them are not entitled to a pension.[186] In its Fourth Periodic Report on the Implementation of CEDAW, Serbia said that credit support measures designated for female farm owners have been implemented since the beginning of the year, that women living on farms would from now on be paid maternity leave benefits and that tax incentives were offered to couples who jointly registered their real property.[187] These measures have been adopted in order the economically empower rural

181 *Ibid*.

182 *Ibid*, pp. 15–16.

183 The gender equality data of the Protector of Citizens are available at: www.rodnaravnopravnost.rs.

184 "Discrimination against Rural Women," *RTV*, 1 March 2017, available in Serbian at: http://www.rtv.rs/sr_ci/ekonomija/aktuelno/diskriminacija-zena-na-selu_804157.html.

185 "Invisible Overtime," *Vreme*, 26 November 2009, available in Serbian at: http://www.vreme.com/cms/view.php?id=899138.

186 "Three out of Four Rural Women Working for Free," *B92*, 16 October 2017, available in Serbian at: http://www.b92.net/biz/vesti/srbija.php?yyyy=2017&mm=10&dd=16&nav_id=1314611.

187 Fourth Periodic Report on the Implementation of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the Serbian Government at its session on 27 July 2017, available at: http://www.ljudskaprava.gov.rs/sh/node/19867.

women and achieve gender equality. The new National Action Plan for the Implementation of UN Security Council Resolution 1325 on Women, Peace and Security in the Republic of Serbia until 2020 highlights the importance of preventive action and of protecting women from risks affecting women discriminated against on multiple grounds, including rural women. In the forthcoming period, particular attention needs to be paid to improving the health care of rural women.

5. Health Care and Elderly Care

5.1. Legal Framework

The right to physical and mental health is enshrined in Article 12 of the IC-ESCR.[188] The right to health care guarantees everyone access to the relevant facilities and services for the diagnosis, treatment and prevention of illnesses. Health is a fundamental human right indispensable for the exercise of other human rights, wherefore the states are under the obligation to secure everyone the availability of and unobstructed access to acceptable and quality health care.[189]

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.[190] The Republican Health Insurance Fund (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.

Under the Health Care Act,[191] 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

188 More on the standard in General Comment No. 14, UN doc. E/C 12/2000/4.

189 CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), available at: http://www.refworld.org/pdfid/4538838d0.pdf.

190 *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.

191 *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.

categories are exempted from co-paying (war military and civilian invalids, other persons with disabilities, blood donors, et al).

Although the Serbian Government said new laws on health insurance and health care would be adopted by the end of 2017, their drafts were not submitted to the National Assembly for adoption by the end of the reporting period.[192]

The Assembly adopted the Medical Equipment Act[193] and an amendment to the Act on Health Documentation and Records.[194] The former law is to preclude the import of poor quality and unsafe medical equipment and the latter specifies that the data in the national Integrated Health Information System (IHIS) shall be managed by the Public Health Institute.

5.2. Access to Health Care

Serbia's health system scored 673 of 1000 points and ranked 20th on the list of 35 states on the latest, 2017 Euro Health Consumer Index (EHCI).[195] ECHI said that the major part of the impressive climb, from last place in 2015, was the effect on Waiting Times by licensing and implementing the IHIS system for direct specialist care booking, plus e-Prescriptions, but that the full effect had not materialised fully by the time of EHCI 2017 publication. It said that, in order to obtain the full effect, the implementation of *Moj Doktor* booking had to be mandated for all Serbian hospitals, which had not yet happened at the time of publication of this report. Serbia was also slowly improving on clinical results and expanding radiation treatment capacity.

Treatment of patients, especially children, suffering from rare diseases has been plaguing Serbia for years now, since its health system lacks the funding, equipment and medications for treating such diseases. Humanitarian drives to raise funds for treatment abroad, including through text messages, continued in the reporting period, eliciting criticisms that it was the state's to provide treatment to these people.[196] The situation improved to an extent since the Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia was established, but there is room for improvement. Around 500 children were sent abroad to be diagnosed and treated since the Budget Fund was set up. The problem is that the procedure for approving the funds can take months and that time is often of the essence in the treatment of grave and rare diseases.[197]

192 See the *Blic* report, available in Serbian at: https://www.blic.rs/vesti/drustvo/novi-zakon-o-zdravstvenom-osiguranju-donosi-sest-vaznih-promena/cdn05he.

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

194 *Sl. glasnik RS*, 123/14, 106/15 and 105/17.

195 See: https://healthpowerhouse.com/files/EHCI-2017/EHCI-2017-report.pdf.

196 See, e.g. the *N1* report on the case of Teodora Vranješević, available in Serbian at: http://rs.n1info.com/a247935/Vesti/Vesti/Decu-i-dalje-lecimo-SMS-om-a-sta-radi-Budzetski-fond.html.

197 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=351115&title=Svaku+tre%C4%87u+medicinsku+uslugu+sami+pla%C4%87amo.

The Health Minister said that major progress has been achieved in this area and that the money in the Fund has been increasing every year; 1.1 billion RSD were set aside for this purpose in the 2017 Budget. Budget Fund Chairman Veran Matić concurred. In May 2017, he said that the Fund had 246 million RSD at the moment, that the Committee never dismissed an appeal, that over 40 doctors sitting on various commissions reviewed the applications for the children's treatment abroad and that the institutions treating them repaid the money they had not spent.[198]

Despite official data on headway in the Serbian health system, particularly with respect to the accessibility of health services and the increase in the number of innovative medications, especially in the most problematic area, oncology, more and more people have decided to entrust their health to private health institutions. Lack of physicians and corruption persisted. Of all health costs in Serbia, 60% are covered by the state and as much as 40% by the patients themselves who go to private health institutions, in order to avoid the less efficient services of the state health system.[199] In addition, a large number of workers are forced to resort to private health insurance schemes since they cannot exercise their right to health care and health insurance because their employers have not been paying their health insurance contributions.

Still, Serbia spends nearly 10% of its annual GDP on health, which, however, nominally boils down to a mere 633 USD *per capita*. [200] Some experts ascribed it to the inefficiency of the healthcare financing system. Lack of a sectoral strategy on health is the main problem. The non-provision of the degree of healthcare given the allocation of such a high share of GDP for this purpose is due to the fact that most of the funding is spent on repaying debts and paying staff wages and less on healthcare and prevention.[201]

The increase in the number of health institutions whose accounts have been blocked also indicates how bad the situation in the health system is. These institutions cannot buy medications, material or cover their operational costs. The Chairman of the Management Board of the Chamber of Health Institutions of Serbia said that the accounts of 18 health institutions were blocked in late 2017 and that their staff's wages were paid out of a special Treasury account. Although the staff have

198 See the *Novosti* report, available in Serbian at: http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:665693-U-inostranstvu-leceno-55-dece-o-trosku-Budzetskog-fonda.

199 See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=351115&title=Svaku+tre%C4%87u+medicinsku+uslugu+sami+pla%C4%87amo.

200 According to the World Health Organisation's latest data, of 2014. On the other hand, Health Minister Zlatibor Lončar said that Serbia spent 1,100 EUR per health insured a year, while their average contributions stood at 200 EUR per annum. See the *Danas* report, available in Serbian at: http://www.danas.rs/ekonomija.4.html?news_id=351115&title=Svaku+tre%C4%87u+medicinsku+uslugu+sami+pla%C4%87amo.

201 *Ibid*.

been paid their dues, the situation is unsustainable in the longer term and precludes regular and efficient extension of health services to the members of the public.[202]

The number of specialist doctors in a healthcare system is one of the criteria of healthcare accessibility. The authorities had over the past eight years held the view that Serbia had too many specialist doctors, which led them to grant specialisations to medical school graduates very rarely. In the meantime, the age breakdown of the doctors changed and Serbia risks lacking specialist doctors in some areas. This is corroborated by the fact that 1,500 general practitioners were registered as unemployed in late 2017, but that no specialist doctors were looking for a job. Experts and medical associations have also been warning that many medical staff were finding jobs in other European countries. Estimates, based on cross-referencing the records kept by trade unions and doctor and nurse chambers, were that nearly 2000 health professionals, 900 of them doctors, moved to other countries in search of work every year. In 2017, the Serbian Medical Chamber issued around 1,000 good practice certificates to licenced doctors, which they need to work as doctors abroad.[203] Statistics show that there are 0.21 doctors per 10,000 citizens, i.e. two times less than in some developed European countries.[204]

A survey conducted by the Serbian Public Health Institute "Dr Milan Jovanović Batut" showed that as many as 25% of the nurses wanted to find a job abroad over the next five years. According to another study, three quarters of the doctors in Serbia have seriously considered emigrating abroad, around 60% of them because of the poor working conditions and low wages. Fewer were thinking of finding a job abroad because of the political situation in the country or the party employment practice.[205]

According to the data of the Organisation for Economic Co-operation and Development, Germany has only 11.3 medical school graduates per 100,000 inhabitants, much less than Serbia, which has 17.[206] All these data lead to the conclusion that medical professionals, future doctors and nurses are educated at the expense of the state, and that many of them will consider pursuing their careers abroad, finding decent jobs affording them a comfortable living, because of the low wages (doctors on average earn 500–700 EUR and nurses around 250 EUR a month) and lack of professional advancement opportunities.[207]

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202 See the *N1* report, available in Serbian at: http://rs.n1info.com/a334484/Vesti/Vesti/Sve-vise-zdravstvenih-ustanova-sa-blokiranim-racunom.html.

203 See the *B92* report, available in Serbian at: https://www.b92.net/biz/vesti/srbija.php?yyyy=2017&mm=12&dd=18&nav_id=1337533.

204 See the *N1* report, available in Serbian at: http://rs.n1info.com/a233729/Vesti/Vesti/Kvalitet-srpskog-zdravstvenog-sistema.html.

205 See: http://healthgrouper.com/documents/4417/Country%20report_RS-final.pdf.

206 See: https://data.oecd.org/healthres/medical-graduates.htm#indicator-chart.

207 See: the *N1* report, available in Serbian at: http://rs.n1info.com/a314324/Lifestyle/Zdravlje/Grujicic-Ovakvim-platama-lekare-ne-mozemo-da-zadrzimo.html.

Waiting times are another criterion against which the accessibility of healthcare is measured. The Integrated Health Information System (IHIS) was introduced to facilitate scheduling of appointments and cut the waiting times for examinations and interventions. However, as noted above, the system of scheduling appointments via the *Moj doktor* (My Doctor) application was not fully operational in all health institutions in the country. The IHIS also aims at abolishing the patients' obligation to obtain referrals for specialist examinations from the general practitioners; the option of directly scheduling an appointment with a specialist doctor will be available once all the health institutions are computerised.[208]

The European Movement in Serbia and the European Policy Centre in 2017 published the results of their 2016 public opinion survey on primary healthcare, which showed that more citizens were satisfied than dissatisfied with the services of the out-patient health clinics. Over 80% of the respondents availed themselves of the services of state-owned out-patient health clinics and 85% of them said they were satisfied with their last visits. The number of citizens who qualified the entire healthcare system as efficient equalled the number of those who described it as inefficient.

Belgrade residents are the least satisfied with primary healthcare, compared with the population in other parts of Serbia. Nearly half (46%) of the respondents said they were satisfied and slightly over a third (32%) that they were dissatisfied with the quality of healthcare provided by the out-patient health clinics. The highest degree of dissatisfaction with the quality of healthcare services was registered in Belgrade (43%). The respondents singled out the following problems in the work of the primary healthcare system: waiting times and lines (24%), inefficient examination scheduling system (14%) and lack of medical equipment in the institutions (8%). They also complained about the doctors' lack of motivation and the way the other health staff communicated with them.

The survey results indicating that the members of the public are insufficiently aware of their rights to health care give rise to concern. For instance, nearly half of the respondents (48%) did not know who to complain to in case they were denied their patient rights. The results varied among the age groups. People between 18 and 29 years of age were better informed and 52% of them said they would complain to the Protector of Patients' Rights whereas only 29% of those over 60 would do the same. Furthermore, nearly 60% of the respondents were unaware that, in the event the public health institutions were unable to extend them specific medical services within 30 days, they were entitled to avail themselves of such services in private institutions and to a refund of their expenses.[209]

208 See: the *N1* report, available in Serbian at: http://rs.n1info.com/a338071/Lifestyle/Zdravlje/Ukidaju-se-uputi-za-specijalisticke-preglede.html.

209 The Survey is available in Serbian at: http://www.zdravlje.gov.rs/downloads/2017/April/analiza.pdf.

5.3. Status of the Elderly – Legal Framework

The Republic of Serbia ratified the Revised European Social Charter.[210] 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.[211]

Under Article 16(2) of the Convention on the Rights of Persons with Disabilities[212] 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.[213] 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.[214]

The international legal framework includes also the following three documents focusing exclusively on older persons, the Vienna International Plan of Action on Aging,[215] United Nations Principles for Older Persons[216] and the Political Declaration and Madrid International Plan of Action on Ageing.[217] In spite of tha 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

210 *Sl. glasnik RS (International Treaties)*, 42/09.

211 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.

212 *Sl. glasnik RS (International Treaties)*, 42/09.

213 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.

214 *Sl. list SFRJ (International Treaties)*, 11/81.

215 Adopted by the UN General Assembly in Resolution 37/51.

216 Adopted by the UN General Assembly in Resolution 46/91.

217 Adopted by the UN General Assembly in Resolution 57/167.

the Madrid International Plan of Action on Ageing[218] (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.[219]

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.[220]

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.[221]

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.[222] 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.[223] 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.[224] 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

218 More at: http://www.un.org/esa/socdev/ageing/documents/papers/guide.pdf.

219 *Ibid.*, p. 11.

220 More at: http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf.

221 More at: http://www.un.org/documents/ga/res/46/a46r091.htm.

222 More at: http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf.

223 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.

224 Political Declaration and Madrid International Plan of Action on Ageing.

enable older people to enjoy rights in accordance with the specific features of their age.[225] The document recognises the importance of eliminating violence and gender-based discrimination.[226]

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".

The Anti-Discrimination Act[227] 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,[228] the Pension and Disability Insurance Act,[229] the Act on the Prevention of Discrimination against Persons with Disabilities,[230] the Health Care Act,[231] the Health Insurance Act,[232] and the Act on the Protection of Persons with Mental Disorders[233] are also relevant to the realisation of the rights of older people.

The principle of the best interests of the beneficiaries laid down in Article 26 of the Social Protection Act[234] 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.[235] 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 at risk due to old age, a disability, illness, or family or other circumstances.

The 2006–2015 National Strategy on Ageing departs from the Madrid Plan recommendations and the regional strategy for its implementation adopted by the

225 *Ibid.*

226 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.

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

228 *Sl. glasnik RS*, 24/11.

229 *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.

230 *Sl. glasnik RS*, 33/06.

231 *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.

232 *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.

233 *Sl. glasnik RS*, 45/13.

234 *Sl. glasnik RS,* 24/11.

235 As well as their sex, ethnic and cultural origin, language, religion and living habits.

UN Economic Commission for Europe.[236] The Action Plan for the implementation of the Strategy had, however, never been adopted; nor was the Strategy replaced by a new one by the end of the reporting period.

5.4. Elderly in the Social Protection System – Residential Homes

The Government is in charge of establishing a system of social protection institutions extending accommodation services[237] to adult and elderly beneficiaries (Art. 63).

The documents entitled Prohibition of the Work of and Extension of Social Protection Services by Elder and Adult Care Homes in the Autonomous Province of Vojvodina (APV)[238] and Prohibition of the Work of and Extension of Social Protection Services by Elder and Adult Care Homes in Serbia Proper[239] said that the inspectors issued rulings prohibiting the work of 11 homes in APV and that some of the owners of the illegal homes had already been prohibited from working (by May 2017). As many rulings prohibiting the work of homes were issued in Serbia proper (by 19 July 2017).[240]

The efficient and regular oversight of elder and adult care homes remained a major challenge, in view of the fact that only 14 social protection inspectors (10 at the national level, 3 in APV and one in Belgrade) are charged with performing such oversight.[241] The 2017 Annual Inspectorial Oversight Plan focuses on spot checks in case of incidents or reports of illegal operation and in order to ascertain whether the applicants fulfil the statutory requirements to be licenced to extend social protection services. The authors of the plan said the inspectorate was understaffed in the whole country and thus unable to perform regular and constant oversight exercises.[242]

The Pančevo Basic Court issued its verdict in the case involving the accident that happened in the illegal old people's home Oasis of Happiness in Pančevo in October 2016 and claimed the lives of three residents. It sentenced defendant Ljil-

236 See: http://www.globalaging.org/elderrights/world/2007/BGSerbia.pdf.

237 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.

238 Available in Serbian at: https://www.minrzs.gov.rs/aktuelno/domovi-za-stare-sa-licencom.html.

239 Available in Serbian at: https://www.minrzs.gov.rs/aktuelno/domovi-za-stare-sa-licencom.html.

240 State and private adult and elder care homes have to fulfil the same standards and criteria, laid down in the Social Protection Act and the Rulebook on the Rulebook on Detailed Standards and Requirements for Extending Social Protection Services. See the *2015 Report*, III.9.5.

241 2017 Social Protection Inspectorial Oversight Annual Plan, Family Care and Social Protection Department, Ministry of Labour, Employment and Veteran and Social Issues, 1 February 2017, p. 2, available in Serbian at: https://www.minrzs.gov.rs/aktuelno/godisnji-plan-inspekcijskih-nadzora-inspekcije-socijalne-zastite-za-2017-godinu.html.

242 *Ibid.,* p. 5.

jana Milošević, who pleaded guilty to the qualified crime of general endangerment, to one-year home incarceration without electronic surveillance.[243] The Vojvodina Secretariat for Social Policy, Demography and Equality said that the home had never been registered and that the inspectors issued three rulings ordering it to shut down.[244]

5.5. Discrimination against the Elderly and Poverty

The data of the Commissioner for the Protection of Equality said that age was the third most frequent ground cited in the complaints she received in 2017. She specified that negative perceptions and stereotypes of and prejudices against the elderly were the most frequent causes of discrimination against people over 65.[245] The Commissioner said that the data in her possession did not fully reflect reality because old people often failed to recognise discrimination, considering it the family skeleton in the closet and protecting their descendants by not reporting the abuse.[246]

The Deputy Protector of Citizens charged with the rights of persons with disabilities and the elderly also warned about the problem of discrimination against the aging and that they were frequently victims of physical, financial and even sexual abuse. The Protector of Citizens therefore decided to form a council to increase the visibility of the difficulties this group of the population was facing and improve coordination with other institutions to address their problems.[247] The elderly in villages in underdeveloped municipalities are particularly at risk, where they have no-one to complain to about abuse due to the lack of support and accessible institutions.

The state authorities exacerbated the vulnerability of this category of the population with the austerity measures that further cut their already low pensions, especially in view of the fact that a large share of the elderly are no longer able to find a job. The likelihood of around 200,000 registered job-seekers over 50 finding a job is slim and banks are extremely reluctant to approve loans to people over 65.[248] The elderly, especially women, work for free, caring for family members, and often accept poorly paid and unattractive jobs, such as selling ice-cream outdoors or working as watchmen.[249]

243 See the *Politika* report, available in Serbian at: http://www.politika.rs/scc/clanak/385219/Za-tragediju-u-ilegalnom-domu-starih-kucni-zatvor.

244 *Ibid.*

245 See the Commissioner for the Protection of Equality press release on International Day of Older Persons, 1 October 2017, available in Serbian at: http://ravnopravnost.gov.rs/rs/saopstenje-povodom-medunarodnog-dana-starijih-osoba-2/.

246 *Ibid.*

247 See the *RTS* report, available in Serbian at: http://www.rts.rs/page/stories/sr/story/125/drustvo/2769336/zastitnik-gradjana-formira-poseban-savet-starijih-osoba.html.

248 See the *Novosti* report, available in Serbian at: http://m.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:684476-Kad-ostaris-svi-ti-okrecu-ledja.

249 *Ibid*.

6. Protection of the Rights of Refugees and Asylum Seekers

6.1. Legal Framework

Serbia has ratified numerous international treaties directly or indirectly relevant to asylum issues, notably the 1995 UN Convention Relating to the Status of Refugees and its 1967 Protocol, the ICCPR, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the ECHR, the CoE Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the UN Convention on the Rights of the Child.

Under the Constitution, all aliens reasonably fearing persecution on grounds of their race, gender, language, religion, ethnicity or association with a group, or political opinion, shall be entitled to refuge in the Republic of Serbia (Art. 57(1)).

The Asylum Act[250] governs the status and protection of asylum seekers, refugees and individuals granted humanitarian protection ('subsidiary protection' under the Act) and includes a number of safeguards protecting their rights. However, some of its provisions are not in line with international standards.

Amendments to asylum and migration law were drafted in 2017. The Draft Asylum and Temporary Protection Act was submitted to parliament for adoption on 12 September 2017[251] and the Draft Aliens Act on 2 December 2017. Neither were, however, adopted by the end of the year. The reporting period was marked by headway in the social inclusion of migrants and refugees, notably the inclusion of migrant children in the education system, notwithstanding their status.

6.1.1. Asylum Procedure

Access to the asylum procedure is governed by Articles 22 and 23 of the Asylum Act.[252] Under these provisions, aliens may access the asylum procedure in the Republic of Serbia by expressing, either verbally or in writing, the intention to seek asylum to the relevant police officer during border control on entry into Serbia or within its territory, in one of the police stations. The police officers register the aliens and enter their data in the OKS and Afis electronic databases.[253] The aliens are then issued certificates of intent to seek asylum and referred to an Asylum or

250 *Sl. glasnik RS*, 109/07.

251 The Draft Asylum and Temporary Protection Act is available in Serbian at: http://www.parlament.gov.rs.

252 *Sl. glasnik RS*, 109/07.

253 OKS stands for Specific Category of Aliens and denotes a database of aliens in Serbia, in which all official measures the MIA has undertaken with respect to them are entered. Such measures include: rulings ordering them to leave the country, motions to initiate misdemeanour proceedings against them and the imposed misdemeanour penalties, rulings referring them to the Aliens Shelter, etc. *Afis* is an MIA database in which data of perpetrators of crimes and misdemeanours in the territory of the Republic of Serbia are entered. Aliens, who have

Reception Centre, which they are to report to within the following 72 hours. Aliens whose identity cannot be established or who are considered a threat to Serbia's security and public order for various reasons were referred to the Aliens Shelter in Padinska Skela.[254]

The Asylum Office, part of the Serbian Ministry of Internal Affairs (MIA) remained the authority reviewing the asylum applications in the first instance. One of the gravest problems identified in 2017 was the lack of agility of the Asylum Office in receiving asylum applications and interviewing the applicants,[255] although the number of migrants who had opted for staying in Serbia grew to their difficulties in accessing EU Member States bordering with Serbia. Furthermore, the Asylum Office did not conduct procedural actions in all the centres housing asylum seekers, only the Asylum Centres in Krnjača, Bogovađa, Banja Koviljača, the Preševo Reception Centre, the Belgrade Border Police Station, the "Padinska Skela" Aliens Shelter and the Subotica District Prison. Asylum seekers at other centres practically had no opportunity to apply for asylum, pursuant to Article 25 of the Asylum Act.

Appeals of negative decisions by the Asylum Office are reviewed by the Asylum Commission, the nine members of which are appointed by the Serbian Government. The Asylum Act does not lay down adequate criteria for their appointment to ensure that the body has the requisite expertise and independence.[256] The CVs of the nine new/old members of the Commission appointed in 2017 do not indicate that these individuals are competent to adequately apply international refugee and human rights law, lying at the core of the asylum procedure.

Unsuccessful asylum seekers may file a claim with the Administrative Court challenging the final decisions on their applications within 30 days from day of service. They may also challenge the Asylum Commission's failure to rule on their applications within the statutory deadline (the so-called silence of the administration) before the Administrative Court. The claims do not have suspensive effect, which means that the enforcement of the impugned administrative enactments is not deferred, but the plaintiffs may exceptionally seek suspension of enforcement pending the completion of the proceedings before the Administrative Court.[257]

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expressed the intention to seek asylum, are also registered in it because it is much more reliable than OKS when it comes to checking data.

254 Article 48, Aliens Act, *Sl. glasnik RS*, 97/08.

255 For instance, seven migrants applied for asylum and one asylum was interviewed in July 2017. Six migrants applied for asylum and 14 asylum seekers were interviewed in August. Only two migrants applied for asylum and five asylum seekers were interviewed in September. In October, 27 migrants applied for asylum and 27 asylum seekers were interviewed.

256 The following may be appointed Commission chairperson or member: nationals of Serbia with a law degree and at least five years of relevant experience, who are familiar with human rights regulations (Art. 20(3), Asylum Act).

257 Article 23, Administrative Disputes Act, *Sl. glasnik RS,* 111/09.

6.2. Realisation of the Right of Access to the Asylum Procedure in the Republic of Serbia

In the experience of the BCHR, the Savski venac Police Station (PS) Department for Foreigners officers continued refusing to issue certificates of intent to seek asylum to migrants with regard to whom the Ministry of Internal Affairs (MIA) had already taken legal actions envisaged by the Asylum Act or the Aliens Act[258] throughout the reporting period.[259] These aliens had either already been issued certificates of intent to seek asylum but had not reported to the Asylum or Reception Centres they had been referred to or were subsequently caught trying to illegally cross Serbia's borders. The MIA officers refused to issue such certificates also to aliens who the courts had found guilty of illegally staying in Serbia and ordered them to leave the country (under Art. 43 of the Aliens Act) or had ordered them to leave the country (under Art. 35 of the Aliens Act). The police appear to have interpreted their denial of access to the asylum procedure in these cases as prevention of abuse of the asylum system. Such conduct, however, is not in accordance with Articles 22 and 23 of the Asylum Act, which do not provide the police with any discretion to rule on the merits of the aliens' intention to seek asylum.

Deficiencies were identified in access to the asylum procedure at Belgrade Airport Nikola Tesla as well. BCHR's lawyers were prevented from accessing the airport transit zone to extend legal advice to the aliens detained there, wherefore they provided such advice by phone. In early October 2017, the National Mechanism for the Prevention of Torture (NPM) paid a visit to the Airport Border Police Station (BPS),[260] to monitor its fulfilment of the recommendations it had issued earlier. Among other things, the NPM said in its report that: the MIA still had not drawn up factsheets on the rights of aliens denied entry into Serbia; that there were problems in communication between aliens who did not speak English and the BPS police officers, which risked to resulting in the latter not understanding the aliens' intention to seek asylum in Serbia; the poor hygiene and ventilation in the decrepit overcrowded room in which aliens denied entry into Serbia are detained, their inability to spend any time outdoors and the fact that they are allowed to smoke in the room may amount to inhuman treatment of these people; some of the detained individuals the NPM Team talked to said they had expressed the intention to seek asylum to the BPS officers, but had not received any feedback and that they feared for their lives, because the BPS officers had told them they would be deported to Turkey, where they risked chain *refoulement* to Iran.

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258 BCHR lawyers were unaware whether that was the practice in other police stations in Serbia as well.

259 *Right to Asylum in the Republic of Serbia – Periodic Report for January-March 2017,* BCHR, April 2017, available at: http://azil.rs/en/wp-content/uploads/2017/05/periodic-report-january-may-2017-fin.pdf.

260 See the NPM Report Ref. No. 37664 of 13 October 2017, available in Serbian at: http://www.npm.rs/attachments/article/734/37664.pdf.

6.3. Practice of the Asylum Authorities

In 2017, the Asylum Office registered only 244 of the 6,199 potential asylum seekers and issued 217 asylum seeker IDs to them. It interviewed 106 of the 236 aliens who had applied for asylum. Most asylum applications were filed by nationals of Pakistan (49), Afghanistan (48), Iraq (30), Cuba (30) and Syria (16). It upheld 14 applications, dismissed 11 on the merits and dismissed the remaining 56. It decided to grant subsidiary protection in 11 cases. Asylum was granted to nationals of Afghanistan, Syria and Burundi and subsidiary protection to 9 nationals of Libya, one national of Ukraine and one national of Nigeria. Most of the dismissed applications had been filed by nationals of Afghanistan (16), Iraq (9) and Russia (4).

The Asylum Office continued dismissing asylum applications exclusively on the ground that the applicants had passed through or stayed in states designated as safe third countries in the 2009 Government Decision.[261] Furthermore, the Asylum Office failed to obtain guarantees from the states the asylum seekers were to be returned to that they would take them back and provide them with access to their asylum procedures.

In 2017, the second-instance asylum authority, the Asylum Commission, commendably adopted decisions rectifying the work of the first-instance authority. Although Article 2(1(11)) of the Asylum Act specifies that safe third countries denote countries through which the asylum seekers had passed or resided in *immediately* before arriving in the Republic of Serbia, the Asylum Commission overturned the first-instance decisions, requiring of the Asylum Office to explain why it had not also qualified the other countries the asylum seekers had passed through or resided in as safe under the 2009 Government Decision on Safe Countries of Origin and Safe Third Countries.

The Administrative Court adopted two important, positive decisions, in September 2017.[262] Both of them regarded Cuban nationals, who had left their country of origin in fear of persecution on grounds of their sexual orientation. The Administrative Court voided the Asylum Commission's decisions rejecting the appeals and remitted the cases. It said that the Government List of Safe Countries of Origin and Safe Third Countries could not be applied automatically and that the asylum authorities had to peruse UNHCR reports on the states' compliance with the Convention Relating to the Status of Refugees, as well as NGO reports on the protection of refugee rights in those states. The Administrative Court thus went a step further than the Constitutional Court,[263] which is of the view that the asylum authorities are to take into consideration UNHCR reports during their enforcement of the Asylum

261 Serbian Government Decision on Safe Countries of Origin and Safe Third Countries, *Sl. glasnik RS*, 67/07.

262 Administrative Court Judgments 3 U.11867/17 and 3 U 11868/17 of 7 September.

263 Serbian Constitutional Court decisions Už-1286/2012 of 29 March 2012 and Už-5331/2012 of 24 December 2012.

Act, i.e. are not to dismiss asylum applications filed by individuals coming from countries designated as safe third countries in the Government Decision in the event these countries enforce their asylum procedures in contravention of the Refugee Convention. In the two judgments, the Administrative Court also said that reports on the protection of refugee rights in the relevant states had to be taken into account by the asylum authorities.

6.4. Situation of Refugees and Migrants

The number of refugees and migrants taking the so-called Balkan land route to EU Member States increased in 2014 and 2015. The endeavours to close the route were partly successful, and around 6,000 people were "stuck" in Serbia at the end of 2017 in the hope of continuing their journey to EU Member States.

The vast majority of migrants were living in the 18 Asylum and Reception Centres operating in Serbia. Those accommodated in the Reception Centres were unable to express their intention to seek asylum for two reasons: the Asylum Office performed asylum-related activities only in Asylum Centres and the police referring the migrants to one of the Centres or to the Reception Centres did not perform individual assessments of whether they were in need of international protection and referred some of them to the Reception Centres.

Serbian authorities should not use the fact that most migrants in need of international protection still do not perceive Serbia as a country of refuge, mostly because countries with better developed asylum systems provide better conditions for the refugees' integration and decent life, as pretext for not providing all migrants with access to a fair and efficient asylum procedure and establishing an effective integration system. Given that irregular migrants staying in Serbia – whose number has grown since the Hungarian Government decided to close the border with Serbia and to let the refugees and migrants on the informal list trickle through one of the two transit zones – are unsure if and when they will be able to continue their journey to the countries where they want to seek asylum, they have to be provided with access to the national asylum procedure in the event they ultimately decide to seek international protection in Serbia.

Hence the need to as soon as possible regulate the status of these migrants, to ensure they cannot be deported or *refouled* from Serbia and to put in place opportunities for them to exercise their social and economic rights. Like in the previous years, there were instances of pushbacks of migrants to the neighbouring countries. Again, many migrants were not provided even with the basic information on the asylum procedure in Serbia.

The year behind us ended with an unprecedented extradition, on 25 December 2017, of a Turkish Kurd Cevdet Ayaz, who had been waiting for a final decision on his asylum application. Ayaz feared persecution because of his political opinions

and faces a 15-year prison sentence handed down pursuant to a judgment based on a confession he had apparently given under torture. The Serbian authorities extradited Ayaz despite all the arguments put forward by his BCHR legal representatives and the request the UN Committee against Torture made to Serbia to temporarily refrain from *refouling* Ayaz to Turkey due to the real risk of torture or other cruel, inhuman or degrading treatment he might face there.

6.5. Integration

Most refugees and migrants continued perceiving Serbia as a transition country and planning on continuing their journey to West Europe. However, the number of aliens staying on and seeking international protection in Serbia was expected to rise due to the neighbouring countries' restrictive admission policies and forced returns of the migrants back to Serbia. Thirteen asylum applications were upheld in 2017 – asylum was granted in three cases and subsidiary protection in 10 cases, bringing the number of people granted international protection in Serbia up to 103 since the Asylum Act entered into force.

The Asylum Act lays down the general obligation of the state to, commensurately with its capacities, create conditions for the inclusion of refugees in its social, cultural and economic life, and enable their naturalisation.[264]

The Serbian Government in December 2016 adopted the Decree on the Integration of Aliens Granted Asylum in the Social, Cultural and Economic Life of the Republic of Serbia (Integration Decree).[265] The Decree, however, applies only to people recognised the status of refugee. The Decree does not recognise the other categories of migrants; nor are there any other regulations governing the integration of migrants in Serbia who have note been recognised as refugees. Interest in attending the Serbian language lessons for successful asylum seekers organised by the Com missariat for Refugees and Migration in the summer of 2017 pursuant to the Decree was, however, low.

The Commissariat also involved in its programme refugees the Decree does not apply to, i.e. the ones granted asylum before the Decree came into effect. Under the contract the Commissariat concluded with a language school in Belgrade, the latter shall also hold Serbian language classes for refugees living in other towns.

However, the development of the system for integrating aliens granted international protection was at the very beginning and the state was yet to develop procedures regarding naturalisation, habitual residence, family reunification and issuance of travel documents.

Major integration-related changes occurred in 2017, notably in education: all refugee and migrant children of primary school age, regardless of their legal status,

264 Article 46, Asylum Act.

265 *Sl. glasnik RS*, 101/16.

have started attending Serbian state schools. In May 2017, the Ministry of Education, Science and Technological Development adopted Professional Guidance on the Inclusion of Asylum-Seeking Pupils in the Education System.[266] The Guidance has served as a basis for preparing the staff of school administrations charged with the regions, in which the Asylum and Reception Centres are situated, for giving instructions to schools on how to develop plans of support to the new pupils and for establishing the Professional Guidance Implementation Monitoring Working Group.[267] Around 400 teachers in nine school administrations with jurisdiction over schools near Asylum and Reception Centres were trained in August and September. [268] The school administrations were assigned mentors – external associates, tasked with monitoring the process and issuing regular progress reports.

In general, the integration of refugee and migrant children in Serbian schools was not accompanied by major problems or community protests in the reporting period, except in Šid, where the parents explained they had nothing against migrant children going to school but that they were concerned whether the quality of education of their children would be maintained by the already overburdened school system in their community. The problem was resolved after the competent school administration discussed it with the parents and the municipal authorities.

266 Available in Serbian at: http://www.mpn.gov.rs/wp-content/uploads/2017/06/Obrazovanje-ucenika-izbeglica-trazilaca-azila-u– Srbiji.pdf.

267 Monthly Report on the Human Rights of Migrants, Refugees and Asylum Seekers in Serbia and Macedonia, Ana and Vlade Divac Foundation, August 2017.

268 *Ibid.*

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 Health Documentation and Health Records, *Sl. glasnik RS*, 123/14, 106/15 and 105/17.
- 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, 63/15 – CC Decision, 106/15, 63/16 – CC Decision and 47/17.
- 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 Ministries, *Sl. glasnik RS*, 62/17.
- 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, 108/16 and 113/17.
- 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, 99/11 – other law, 71/12 – CC Decision, 83/14 and 113/17.
- Budget Act for 2018, *Sl. glasnik RS*, 113/17.
- Budget System Act, *Sl. glasnik RS*, 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13 – corr., 108/13, 142/14, 68/15 – other law, 103/15, 99/16 and 113/17.
- 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.
- Code of Conduct, *Sl. glasnik RS*, 71/17.
- 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.
- Customs Act, *Sl. glasnik RS*, 18/10, 111/12, 29/15, 108/16 and 113/17 – other law.
- 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*, 44/17.
- 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 Disibursement 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.
- Dual Education Act, *Sl. glasnik RS*, 101/17.
- Education Development Strategy until 2020, *Sl. glasnik RS*, 107/12.
- Education System Act, *Sl. glasnik RS*, 88/17.
- 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 – autentic 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, 88/10, 99/10, 57/11, 119/12, 45/13 – other law, 93/14, 96/15, 106/15 and 105/17 – other law.
- 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*, 88/17.
- Housing and Maintenance of Residential Buildings Act, *Sl. glasnik RS,* 104/16.
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Serbia's political life in 2017 was characterised by topics that have for years dominated its public discourse and greatly affected its endeavours to join the European Union, notably: the normalisation of relations between Belgrade and Priština, EU accession, definition of the national foreign policy, regional cooperation and, on the domestic plane, presidential elections, the forming of the new Government and reforms that must be implemented in all areas pursuant to the requirements in the adopted national strategies and action plans.

There was no real public debate and the proposed amendments to the constitutional provisions on the judiciary, authored by the Justice Ministry and finally published in late January 2018, confirmed that the government did not genuinely wish to put in place safeguards of full judicial independence, as corroborated by the criticisms voiced both by the representatives of the judicial authorities and civil society and numerous constitutional law experts and professors.

The strong monolithic government fully controlled most of the media, using them for its own political promotion; while on the other hand, the few media professionally doing their job were under constant pressure of the government, accused almost on a daily basis of being in the service of foreign interests and working against the state.

From Summary

Serbia's extradition of Turkish Kurd Cevdet Ayaz to Turkey in defiance of its international obligations caused an avalanche of comments and reactions both in Serbia and abroad. Cevdet Ayaz arrived in Serbia in 2016 and sought asylum.

Proceedings for his extradition were conducted concurrently with the review of his asylum application. The courts reviewing the extradition request did not even consider violations of Ayaz's human rights and his persecution by the requesting state. Moreover, the competent Serbian authorities violated a number of Ayaz's fundamental rights guaranteed by the Serbian Constitution during the extradition proceedings, which had lasted over one year. He was arbitrarily and unlawfully deprived of liberty for 25 days after the expiry of the one-year limit for extradition detention and in the absence of a decision he could have challenged with the competent court. The Novi Sad Appeals Court three times overturned the Šabac Higher's Court decision allowing Ayaz's extradition, among other things, because the relevant documents were not properly translated from Turkish into Serbian. The fourth time round, however, the Novi Sad Appeals Court upheld the Higher Court's decision and established that the extradition requirements had been met, although the documents still had not been properly translated.

On 25 December 2017, several hours before Ayaz was extradited to Turkey, Committee against Torture Chairman Jens Modvig posted a tweet appealing to Serbia to be aware of its international obligations. Ayaz was nevertheless refouled to Turkey the same evening. Justice Minister Nela Kuburović, the highest authority in extradition proceedings, approved Ayaz's extradition despite the UN Committee against Torture's request that Serbia refrain from returning Ayaz to Turkey due to risks that he would be subjected to torture there. All the authorities deciding on and implementing the extradition procedure were promptly informed of the Committee against Torture request. The Justice Ministry publicly came out with contradictory information, claiming that Ayaz had already been returned to Turkey and then that the extradition decision had been signed before the Committee against Torture request arrived.

Serbian authorities evidently decided to openly oppose a request by one of the UN's most professional and important mechanisms protecting human rights and fundamental freedoms. Serbia thus violated not only Article 3 of the UN Convention against Torture, prohibiting refoulement of anyone to a country where they are at risk of torture, but also Articles 7 and 10 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights, which include an equivalent prohibition.