

HUMAN RIGHTS IN SERBIA

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HUMAN RIGHTS IN SERBIA 2015
LAW, PRACTICE AND INTERNATIONAL
HUMAN RIGHTS STANDARDS

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Abbreviations

- 2008–2014 Reports – BCHR Annual Reports on Human Rights in the Serbia
2015 Progress Report – European Commission Staff Working Document Serbia
2015 Report Accompanying the Document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions
- ANEM – Association of Independent Electronic Media
APV – Autonomous Province of Vojvodina
CaT – UN Committee against Torture
CC – Criminal Code
CCA – Constitutional Court Act
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
- CoE – Council of Europe
CPA – Civil Procedure Act
CPC – Criminal Procedure Code
CPT – CoE Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
doc. UN – UN document
DS – Democratic Party
EC – European Commission
ECHR – European Convention on Human Rights
ECmHR – European Commission of Human Rights
ECtHR-ECHR – European Court of Human Rights
EMRA – Electronic Media Regulatory Authority
ESC – European Social Charter (Revised)
EU – European Union
FA – Family Act

- FRY – Federal Republic of Yugoslavia
- FNRJ – Federal People’s Republic of Yugoslavia
- GDP – Gross Domestic Product
- GSA – Gay Straight Alliance
- HCA – Health Care Act
- HIA – Health Insurance Act
- HJC – High Judicial Council
- ICCPR – International Covenant on Civil and Political Rights
- ICESCR – International Covenant on Economic, Social and Cultural Rights
- IJAS/NUNS – Independent Journalists’ Association of Serbia
- ILO – International Labor Organization
- IMF – International Monetary Fund
- JAS/UNS – Journalists’ Association of Serbia
- LA – Labour Act
- LGBT – Lesbian Gay Bisexual Transgender
- MIA – Ministry of Internal Affairs
- NCPA – Non-Contentious Procedure Act
- NES – National Employment Service
- NGO – Non-government organisation
- NPM – National Preventive Mechanism
- ODIHR – Office for Democratic Institutions and Human Rights
- OSCE – Organization for Security and Cooperation in Europe
- PSEA – Penal Sanctions Enforcement Act
- RBA – Republican Broadcasting Agency
- RHIF – Republican Health Insurance Fund
- RS – Republic of Serbia
- RTS – Radio Television of Serbia
- RTV – Radio Television of Vojvodina
- SAI – State Audit Institution
- SaM – Serbia and Montenegro
- SFRJ/SFRY – Socialist Federal Republic of Yugoslavia
- SIA – Security Intelligence Agency

- Sl. glasnik – Official Gazette (of the SRS and, subsequently, the RS)
- Sl. list – Official Herald (of the SFRY and, subsequently, SaM)
- SNS – Serbian Progressive Party
- SORS – Statistical Office of the Republic of Serbia
- SPS – Socialist Party of Serbia
- SRJ/FRY – Federal Republic of Yugoslavia
- SRS – Socialist Republic of Serbia
- UN – United Nations
- UNESCO – United Nations Educational, Scientific and Cultural Organization
- UNHCR – United Nations High Commissioner for Refugees
- VBA – Military Security Agency
- Venice Commission – European Commission for Democracy through Law of the Council of Europe
- VOA – Military Intelligence Agency
- YUCOM – Lawyers’ Committee for Human Rights

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. They, notably, include Pavle Kilibarda, Nikola Kovačević, Bogdan Krasić, Anđelka Marković, Nikolina Milić, Nevena Nikolić, Nataša Nikolić, Gojko Pantović, Lena Petrović, Vesna Petrović, Dušan Pokuševski, Dragan Popović, Ivan Protić, Jelena Radojković, Bojan Stojanović, Miloš Stojković, Anja Stefanović, Duška Tomanović, Ana Trkulja and Danilo Čurčić.

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 second 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.

Editors
Vesna Petrović
Dušan Pokuševski

Research Methodology

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

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

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

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

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

The laws, which are still in force but were adopted before 2015, were analysed in the prior BCHR Annual Reports and are referenced for further perusal.

Analysis of Information Obtained through Media Monitoring

BCHR has been monitoring information published in the media and comparing it with other information it has obtained in order to comprehensively analyse the exercise of human rights in practice. In 2015, BCHR regularly monitored reports in five national dailies, *Politika*, *Danas*, *Večernje novosti*, *Blic* and *Kurir*; and two

weeklies, *Vreme* and *NIN*, the *Tanjug* and *BETA* wires, the press associations press releases, *ANEM*'s Legal Monitoring of the Serbian Media Scene bulletins, and reports published on numerous news portals.

A total of 7,651 media reports were perused during the preparation of this Report. Like in the previous years, most of them, 19.9%, regarded political rights and democracy. The analysis of these reports shows they boiled down to pick-ups of press releases and statements by leading Serbian politicians and parties, which were apparently waging a kind of election campaign all year round.

Reports regarding the freedom of expression ranked second (15%), for the first time since 1998, when the BCHR first published its Annual Report. This can probably be ascribed to the increasing pressures on the media, the grave financial difficulties the media and journalists have been experiencing, the frequent attacks on journalists, as well as the fact that the enforcement of the new media laws adopted in August 2014 began in 2015.

Reports on the right to a fair trial ranked third (13.6%). The media mostly reported on trials against specific public figures, war crime trials and the huge court backlogs further undermining public trust in the judiciary.

The numerous violations of and threats to social and economic rights did not warrant much media attention – only 13.3% of the reports touched on this category of human rights. The reason why this important topic did not feature much in the media is not patent, but its neglect definitely cannot be ascribed to economic prosperity and better living standards.

Given that sensationalism and tabloidisation have been a prominent feature of Serbian media for several years now, it comes as no surprise that reports on violence ranked fifth (11.26%). Their share increased by 2% over 2014. The media, however, have not focussed to a greater extent on this issue in order to alert to unfavourable trends or higher crime rates. Rather, some of the media, especially the tabloids, actually promoted violence in these articles. Their interest in the topic was apparently spurred by their desire to improve their ratings, as well as to avoid skating on thin political ice by writing about highly-charged social topics. Furthermore, many of them violated professional standards in their reports on violence.

Reports on confrontation with the past ranked sixth (8.93%). The 2% increase in their share over 2014 can be ascribed to the proceedings on the rehabilitation of WWII Fascist collaborators, war crime trials in Serbia, the return of Serbian Radical Party leader Vojislav Šešelj from The Hague and the 20th anniversaries of the Srebrenica genocide and the Storm operation.

Reports on independent regulatory authorities ranked seventh, their share rising from 4.5% in 2014 to 6.5% in 2015. Unfortunately, the reason for the increase does not lie in the outlets' greater interest in their work, but in the fierce campaigns waged against them, especially against Protector of Citizens Saša Janković.

The increase in the number of reports on asylum seekers and refugees, which almost doubled over 2014, comes as no surprise in the context of the grave refugee

crisis and the thousands of people who passed through Serbia on route to the EU in the latter half of 2015. Reports on these developments ranked eighth (5%).

Reports on discrimination ranked ninth (2.4%), followed by reports on human trafficking (1.5%) and minority rights (0.8%). These percentages demonstrate the extent to which the Serbian media have ignored important social topics underpinning the exercise of human rights, especially when one recalls the many reports on the status of minorities and discrimination alerting to the existence of discrimination and the need to take serious steps to eliminate it.

The fact that reports on NGOs ranked 12th (0.64%) can be ascribed to media pick-ups of statements by public officials frequently accusing NGOs of involvement in “anti-state” activities. Only a few reports focused on CSO drives and campaigns to improve the situation in society, distribute aid, advance education, advocate better enforcement of the law or on their many other worthy activities.

Reports on Serbia before international bodies, including applications filed against Serbia with the European Court of Human Rights, on the reform of the Criminal Code and the judicial reform ranked last – their shares stood at 0.28%, 0.24% and 0.08% respectively.

The analysis of the perused media reports on human rights indicates that nearly half of them, 42% to be exact, were devoted to political rights and democracy, the right to a fair trial, media rights and confrontation with the past and that violence was the topic of one out of nine reports (most of them sensationalist and unprofessional). Hence the conclusion that the vast majority of the media did not publish serious human rights reports or analyses, with the exception of several outlets, mostly weeklies, which have been seriously and analytically reporting on social topics that also reflect on the exercise of human rights. The fact that the circulations of these few newspapers are small, whereas the circulations of the tabloids are much higher, leads to the conclusion that Serbia’s citizens lack interest in these topics.

On the other hand, reports on issues directly related to human rights, such as discrimination, the status of particularly vulnerable groups, rights of minorities and religious communities, the judicial reform, education, social and economic rights together account for less than 19% of the perused media reports in 2015.

Introduction

Serbia's social and political agenda was in 2015 again dominated by the following topics: EU accession, relations with Priština, regional cooperation and the foreign policy orientation of the political stakeholders, economic reforms, living standards, institution building, judicial and state administration reforms, the fight against corruption, privatisation and freedom of the media, or, rather, lack of it.

The coalition of parties that won the 2014 early parliamentary elections continued ruling Serbia in 2015. Although the Government was comprised of several parties, the Serbian Progressive Party (SNS) clearly had the main say, while its coalition partners had little or no influence on the crucial decisions. Prime Minister Aleksandar Vučić reigned supreme on the political stage, making no pretence, even in his public appearances, of not holding all the power levers or of consulting with his coalition partners, the Government ministers or the party bodies on major decisions.

Although Vučić claimed that calling early parliamentary elections would be irresponsible in the autumn of 2015, he said in January 2016 that they would nevertheless be held simultaneously with the regular local and Vojvodina elections in the spring, under the explanation that he wanted to check whether he really enjoyed support for the reforms his Government was planning on implementing. If held, these will be the third parliamentary elections in the past five years, although it is obvious that, with its two-thirds majority in the National Assembly, the Government can count on parliamentary support for all its decisions and that early elections are unnecessary in such ideal circumstances for the SNS.

Serbia's foreign policy orientation remained vague. Although accession to the European Union remained its top foreign policy priority, the key statesmen appeared to have different views on Russia. Namely, Serbian President Tomislav Nikolić maintained much more intensive contacts with Russian officials than Prime Minister Vučić, leading the public to speculate of rifts in the ruling political echelons.

Serbia's citizens are not unanimous on which foreign policy road Serbia should take either. Public opinion surveys show that the majority is for EU accession, but that it perceives Russia as Serbia's greatest friend and ally on the international stage. The duration of the accession process and the uncertainty of its outcome have dented public support for EU membership. Probably aware of this fact, senior European officials have been extending almost undivided support to the Government of Serbia and Vučić. Their deliberations of EU's Balkan enlargement seem to be guided by the presumption that Serbia will play the key role in the proc-

ess and that its continuing pro-accession policy will help stabilise the situation in the entire region.

Given that regional cooperation is an EU priority at the moment, it has been displaying quite a tolerant attitude towards the internal developments in Serbia, particularly the state of human rights, and refraining from voicing sharp criticisms about the increasingly serious undermining of the institutions and the principle of the rule of law, the delays in the enforcement of numerous laws, the covert (and prohibited) influence of politics on the media and, notably, increasingly grave suspicions of huge political influence on the judiciary.

The European Union was preoccupied by its own problems and disagreements about the major issues that arose in 2015, including, notably the refugee crisis and the defence of the Schengen borders, which seriously weakened its communitarian foundations. EU member states have not, however, abandoned their encouragement of regional cooperation in the Balkans, as demonstrated by the Western Balkan Summit initiated by Berlin in 2014 and the 2nd summit of Western Balkan states in Vienna in August 2015. The participants in the latter adopted a Declaration, in which the regional leaders expressed their willingness to continue cooperating with each other. This cooperation will best be boosted by projects of interest to all the countries in the region, primarily infrastructural investment projects, which can be funded from European coffers. Essentially, the idea is to focus on economic interests and economic cooperation, which will facilitate the normalisation of political relations in the region.

The Vienna Summit was preceded by a round of talks between Priština and Belgrade after the enforcement of the 2013 Brussels Agreement almost ground to a halt. The EU capitals commended the outcome of the dialogue, in which a number of relevant agreements were reached – on telecommunications and energy, freedom of movement across the Ibar River bridge dividing the two communities in Kosovska Mitrovica and on the general principles for establishing a community of Serb-majority municipalities in Kosovo. The full implementation of the agreements, however, remained pending at the end of the year. EU officials have continuously been highlighting commitment to dialogue and progress in this area as prerequisite for both Serbia's and Kosovo's EU accession efforts. The importance the EU has been attaching to the normalisation of these relations was reaffirmed in December 2015, when it decided that the first accession chapters it would open talks with Serbia on would be Chapter 35 on the normalisation of relations with Priština, and Chapter 32 on the financial control of budget spending. The talks on these two Chapters marked the launch of the process of Serbia's alignment with EU norms and standards.

Serbia now faces hard work. It is to adopt and implement numerous regulations, change its Constitution and strengthen its administrative capacities. It will face even greater challenges once talks on the two most important Chapters – 23 and 24 – are opened. The European Commission published its 2015 Report on the

progress Serbia made with respect to 33 Chapters on 10 November. In his address to the European Parliament Foreign Policy Committee, EU Enlargement Commissioner Johannes Hahn said that Serbia had taken major steps on its EU path. A similar opinion was voiced by European Parliament Rapporteur on Serbia David McAllister. Serbia's position on the sanctions the EU introduced against Russia over Crimea remained a relevant accession-related issue in 2015 as well.

The migrant crisis that rocked Europe in 2015 did not bypass Serbia. On the contrary, huge numbers of refugees passed through Serbia on their way to the EU. The EC praised Serbia for its constructive role in the crisis, particularly after Hungary built a fence on its border with Serbia in mid-September. On 25 October 2015, the European Commission President hosted a summit in Brussels, which was attended by the Heads of State or Government of Albania, Austria, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Romania, Serbia and Slovenia, in the presence of the President of the European Parliament, the President of the European Council, the current and incoming Presidencies of the Council of the EU, as well as the United Nations High Commissioner for Refugees. In their joint Statement on migration flows along the Western Balkan route, the leaders agreed on the principles of further action, including a plan to provide temporary shelter to 100,000 refugees in the winter months, to 50,000 in the Western Balkans.

The fulfilment of these agreements will largely depend on the financial capacities of the Western Balkan states. The Presidents of the European Council and European Commission said that the EU would provide an additional 17 million EUR to help Serbia and FYROM cope with the refugee crisis. Serbia's population exhibited a large degree of solidarity with and benevolence towards the refugees, who were passing through the country in 2015, but a large inflow of refugees intent on staying in Serbia would probably lead to a change in public attitudes.

Many workers in Serbia lost their jobs in 2015. Around 400 state-owned companies were shut down and over 20,000 workers took their severance pays. Many of them, still of working age, found themselves back in the labour market. The number of strikes, mostly over financial difficulties and dismissals, increased. More and more of Serbia's population is impoverished. The country's economic growth has been hampered by a number of factors, including insufficient foreign investments and a serious lack of public investments.

All this has reflected on the full enjoyment of social and economic rights of Serbia's citizens. The unemployment rate remained high in 2015. Statistical data indicated rising employment, but only because the labour force survey methodology was changed and now everyone, who worked at least one hour during the survey week, is considered employed. The situation is even more alarming when one takes into account the data on the large shares of people working in the informal economy. Not only are they deprived of their fundamental work- and labour-related

rights; their employers are not paying their contributions and taxes into the depleted state budget and funds.

The at risk of poverty rate, which has been growing for years now, is particularly concerning, as is the fact that only a small share of the population at risk of poverty is exercising the right to welfare. The organisation of health care is not at a satisfactory level either. The national health fund has been experiencing financial difficulties for years and many workers have been unable to exercise their rights to health care and health insurance because their employers, including the state, have not been paying their health contributions. Such developments have further aggravated the exercise of social and economic rights by particularly vulnerable groups.

The people's preoccupation with making ends meet and increasing disappointment in the outcome of the democratic changes have also diminished their readiness to involve themselves in processes that would help improve the situation, strengthen democratic procedures, ensure full respect for civil and political rights and strengthen resistance to the ruling parties' monopoly in public life. This general disillusionment and disinterest is compounded by the lack of room for any genuine public debate on topics regarding human rights, media freedoms and democratic pluralism. The halt in the building of democratic institutions and the extremely successful campaign launched by the SNS, when it came to power a few years ago, and Vučić, especially when he took over as Prime Minister, have resulted in the weakening of both the political and all other kinds of opposition in Serbia.

Even a cursory analysis of the 2015 media reports leads to the conclusion that most of the outlets were favourably inclined toward the ruling coalition and reported positively on the activities of the Government and the Prime Minister. On the other hand, the latter displayed blatant hostility towards critically oriented and investigative journalism. Nearly all press questions or data bringing into question the justifications for specific decisions or indicating wheeling and dealing met with the authorities' attacks and accusations that the journalists were on the payroll of foreign powers and wanted to topple the Government and the Prime Minister. In any normal country, the courts and prosecutors would react to press allegations of misconduct by public officials. Outcomes of investigations into the veracity of such claims, if conducted at all, have not been made public.

The gravest doubts in the judiciary's independence have been caused by the fact that there have been only a few proper and effective investigations, indictments and trials of high-profile corruption or wrongdoing. The election of public prosecutors in 2015 raised quite a few eyebrows, especially given that criminal investigations are conducted by the prosecutors and that most analyses of the Serbian judiciary published in the past few years alert to the risk of political influence on their work and decisions. The prosecutorial election process suffered the same fate that had already befallen the judiciary and the judges, when the much criticised (and still ongoing) judicial reform was launched.

Under the Constitution and the law, public prosecutors are nominated by the Government and elected by the National Assembly. The Government cannot nominate anyone not included in the list of candidates forwarded by the State Prosecutorial Council (SPC), which first checks the competence, qualifications and worthiness of the applicants. Since public prosecutors in 30 or so prosecution services were not elected, according to the Assembly reports, the Chief State Prosecutor, Zagorka Dolovac, appointed deputy public prosecutors to the vacancies, thus effectively taking over the parliament's jurisdiction. In addition, quite a few of the prosecutors nominated by the Government and elected by the Assembly, including the Organised Crime Prosecutor, were rated more poorly on the SPC list than the unsuccessful applicants.

Furthermore, the failure of the Assembly to elect the new War Crimes Prosecutor and of the Chief State Prosecutor to appoint an Acting War Crimes Prosecutor by the end of 2015 partly illustrates the authorities' policy on war crimes committed in the former Yugoslavia in the 1990s. The attitude of all the states in the region, including Serbia, towards the past and their will to confront it and identify, find and punish the perpetrators of war crimes have been questionable since the wars ended. Prime Minister Vučić should definitely be commended for attending the 20th anniversary of the Srebrenica genocide on 11 July 2015. His decision was interpreted by the international community as an important token of his commitment to regional stability and reconciliation.

On the other hand, reports by observers of trials before the War Crimes Department indicate that these trials are inefficient, which can be ascribed to a number of reasons. What must be borne in mind is that there must be political will to prosecute and punish perpetrators of grave international crimes. Lack of such will was substantiated and clearly demonstrated to the Serbian public by the welcome Vladimir Lazarević received when he arrived in Belgrade after serving a prison sentence for crimes against humanity in Kosovo. He was greeted by the Justice, Defence and Labour Ministers, the Army of Serbia Commander-in-Chief and other senior officials.

Chronic inefficiency does not plague only war crime trials, but the entire judiciary as well. The trials last for years and, once they are completed, many of the judgements remain unenforced, as corroborated by the fact that most applications filed with the European Court of Human Rights allege violations of the right to a fair trial. Judicial inefficiency and lack of independence have further undermined the people's trust in courts, which should be the main protectors of their rights, as evidenced by the fact that the citizens have been increasingly turning to alternative mechanisms for protecting their rights and filing complaints with the independent regulatory authorities.

Trust in these authorities has been growing, as substantiated by the increasing number of petitions seeking protection of rights, access to information, protection of personal data and alerting to corruption and discrimination. These independent bod-

ies have been subject to frequent criticisms by the executive and legislative authorities in the past few years. The intensification of these criticisms, especially against the Protector of Citizens, in the year behind us, however, has neither changed the public impression of their work, nor, more importantly, discouraged these bodies from actively and boldly pursuing their activities, alerting to oversights, making suggestions and launching initiatives to improve the respect for human rights in the country.

And, last but not the least, the promised fight against corruption has not yielded satisfactory results. The numerous arrests, which were announced beforehand – a problem in its own right, resulted in a very small number of indictments and even fewer verdicts in 2015. The ruling SNS and its partners are likely to make fresh promises about fighting corruption in their 2016 election campaign, like they did in 2014. It remains to be seen what the campaign will look like and whether it, too, will be tainted by threats and intimidation, such as the ones accompanying the early local elections in some towns in 2015.

EXECUTIVE SUMMARY

Serbia and Its International Obligations

1. Serbia has ratified all universal international human rights treaties apart from the Convention on the Rights of All Migrant Workers and Their Families. Serbia ratified the European Convention on Human Rights back in 2004, when it was still part of the State Union of Serbia and Montenegro, and the Revised European Social Charter in 2009. Serbia is also State Party to nearly all other Council of Europe Conventions.

2. Serbia did not submit any reports on the fulfilment of its obligations under international treaties to the relevant UN Committees in 2015, but it is due to submit its reports to the Committee for the Rights of the Child, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities in 2016. It submitted its fourth periodic report on the implementation of the Revised European Social Charter to the European Committee of Social Rights (ECSR) with a several-month delay in February 2015, and the ECSR adopted a report concerning Serbia the same year.

3. Serbian nationals are entitled to file individual complaints to all UN Committees charged with considering such submissions, with the exception of the Committee on Economic, Social and Cultural Rights because Serbia has not ratified the Optional Protocol to the ICESCR yet. Serbian nationals have been entitled to file applications with the European Court of Human Rights since 2004.

Applications against Serbia before the European Court of Human Rights in 2015

1. In 2015, the European Court of Human Rights ruled on 2,612 applications against Serbia and declared inadmissible or struck out 2,491 of them. The ECtHR delivered 17 judgments with respect to Serbia and, in 16 of them, found Serbia in violation of at least one right under the Convention. Most of the judgments the ECtHR delivered against Serbia in 2015 regarded the non-enforcement of domestic court decisions and free enjoyment of possessions. The ECtHR has not yet ruled on 1,142 applications against Serbia.

2. Serbia in 2015 paid circa 460,000,000 RSD to applicants who had successfully claimed violations of the ECHR before the Court.

Human Rights in National Legislation

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

2. The Constitution lays down conditions under which human and minority rights may be restricted, but does not allow such restrictions to impinge on their essence and lays down the obligation of the state authorities to take into account the essence of the right subject to restriction, the importance of the purpose of restriction, the nature and scope of the restriction, the proportionality of the restriction vis-à-vis its purpose, as well as consider the possibility of fulfilling this purpose by a lesser restriction of the right.

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

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

Right to Life

1. Thirty-four women lost their lives in domestic violence incidents in 2015. The Ministry of Justice prepared the Baseline for the Systemic Suppression of Crimes against Sexual Freedoms and Crimes against Marriage and Family, which envisages a number of measures and activities. Although the valid criminal law does not hinder effective investigations of crimes against life, serious problems have often arisen in practice regarding investigations of violent deaths and grave threats to human life.

2. Numerous crimes during the armed conflicts in Croatia, Bosnia and Hercegovina and Kosovo have not been investigated or prosecuted yet. The War Crimes Prosecution Service in 2015 filed only two indictments charging 13 people with war crimes. These indictments have not been confirmed yet. Three new war crime trials opened in 2015, on charges raised in 2014.

3. The working group charged with drafting a National Strategy for the Prosecution of War Crimes in the 2016–2020 Period was set up in March 2015. The War Crimes Prosecution Office prepared the first draft of the Prosecutorial Strategy on War Crimes Investigation and Prosecution in Serbia and submitted it for review to

the Working Group. Although the adoption of both strategies had been planned for the last quarter of 2015, only a draft of the 2016–2020 Strategy for the Prosecution of War Crimes was published by the end of the year.

4. The Government, however, apparently sent a totally opposite message from the one embodied in its Draft Strategy by the official welcome it organised for Vladimir Lazarević on his return to Serbia after serving a sentence of imprisonment for crimes against humanity in Kosovo. Lazarević was met upon arrival by the Justice, Defence and Labour Ministers, as well as the Army of Serbia Commander-in-Chief and other senior officials.

5. The trial of people accused of killing journalist Slavko Ćuruvija in 1999 began at long last in 2015, albeit at a very slow pace. No light has been shed yet on the assassinations of journalists Dada Vujasinović and Milan Pantić or on who is behind the attempted murder of journalist Dejan Anastasijević, although a special commission tasked with investigating all the circumstances regarding these murders of journalists was set up. Many other assassinations from the 1990s remain unsolved as well.

6. The investigation of an Army helicopter crash, resulting in the death of seven people, including the critically ill baby transferred to Belgrade, left some questions unanswered as well. The expert commissions set up to investigate the crash concluded that the helicopter crew leader and members were responsible for the accident. They also found oversights in the work of the operational team on duty and elements of responsibility of the military organisation in the preparation and fulfilment of the mission. Neither commission, however, reviewed the liability of Defence Minister Bratislav Gašić, who had acted in contravention of the standard operating procedure and called up the Air Force Brigade Commander requiring of him to arrange the urgent transportation of the baby whose life was in danger. The Prosecution Service upheld the Commissions' findings and laid the responsibility for the crash primarily on the helicopter crew, noting that there was reasonable doubt that a number of active Army of Serbia officers were partly to blame and that there were indications that a number of civilians were also to blame. It said it would investigate a number of people to establish all the relevant facts regarding the incident, but the case did not proceed further than the preliminary investigation stage by the end of 2015.

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

1. Serbia has not yet aligned its definition of the crime of torture with the UN Convention against Torture and incriminates torture and ill-treatment and extortion of statements. The Criminal Code incriminates everyone who commits torture or ill-treatment, not only public officials or other persons acting in an official capacity or third persons who commit this crime at the instigation of or with the consent

or acquiescence of a public official or another person acting in an official capacity. The penalties these crimes carry are much too lenient. The statutes of limitations are too short as well. In the 2012–2014 period, the absolute statute of limitations expired in four cases, all regarding police officers charged with ill-treating persons deprived of liberty.

2. Under the Criminal Procedure Code, prosecutors are under the obligation to conduct investigations only into aggravated forms of the crime of extortion of statements, whereas they can undertake individual investigation actions in the other cases of torture and ill-treatment. Injured parties cannot take over criminal prosecution in the capacity of subsidiary prosecutors for crimes prosecuted *ex officio* unless the indictments have been confirmed; they can only file complaints with the immediately superior public prosecutors in the event the prosecutors had abandoned criminal prosecution before the indictments were confirmed.

3. A total of 259 criminal reports against 417 people claiming torture and ill-treatment (121 of which against police officers and prison guards) and eight criminal reports against 19 people claiming extortion of statements were filed with the Basic Public Prosecution Services in the 1 October 2013–30 June 2015 period. Of them, criminal proceedings regarding 34 criminal reports were pending at the end of the year. Eighty criminal reports were dismissed, six motions for indictment were submitted and one plea bargain was concluded. Similarly, seven of the eight criminal reports against 19 police officers suspected of extorting statements were dismissed; the criminal proceedings against three people, who had allegedly committed this crime, were under way.

4. Serbian penitentiaries are still overcrowded, especially the penitentiaries in Sremska Mitrovica, Požarevac and Niš, as well as the Belgrade District Prison, the conditions in which can be qualified as inhuman and degrading.

Right to Liberty and Security of Person

1. The UN Committee against Torture in April 2015 reviewed Serbia's second periodic report on its compliance with its obligations under the UN Convention against Torture and issued its Concluding Observations, in which it noted what the state needed to align its law and state authorities' practices with the UN Convention against Torture standards. It commented on the moment as of which deprivation of liberty is reckoned, the inadequate procedure for the forcible removal of aliens, who are illegally present in Serbian territory, from the Belgrade airport transit zone or the Aliens Shelter. The European Committee for the Prevention of Torture (CPT) also paid its regular visit to Serbia in 2015, but its report was not published by the end of the reporting period.

2. The National Preventive Mechanism also identified specific irregularities in the treatment of persons in police custody in 2015. It found that the police in

many cases failed to provide persons deprived of liberty with information sheets on their rights and that police departments differently interpreted the moment as of which deprivation of liberty is reckoned.

3. Many of the thousands of refugees passing through the Republic of Serbia on route to the EU have over the past few years been treated as irregular migrants, deprived of liberty and found guilty of illegal entry or presence by the misdemeanour courts. Over 13,000 misdemeanour motions were filed against them in the first nine months of 2015 alone. Furthermore, aliens, who, in the view of the police, do not fulfil the requirements for entering Serbia and are to be returned to their country of origin or a third country, are not treated as persons deprived of liberty, wherefore they are not entitled to challenge their detention before the competent courts, hire a lawyer, notify a third party of their deprivation of liberty or be examined by a doctor.

4. Statistical data indicate that courts continued ordering pre-trial detention to ensure the presence of defendants and unhindered criminal proceedings in 2015, while measures alternative to pre-trial detention accounted for 18% of the orders they issued to that end. The significant increase in the number of restraining orders and the mild increase in the number of house arrests (with or without electronic monitoring) in 2015 are encouraging. However, the courts very rarely ordered bail or prohibited the defendants from leaving their places of residence.

5. The Damages Commission received 7,232 claims over unlawful detention in the 1 January 2005–30 June 2015 period. It reviewed 3,561 claims (49%) but reached settlements only with 1,165 (16%) claimants. The available data show that the Damages Commission awarded a total of 265,708,880 RSD (2,214,240 EUR) from 2005 to 1 June 2015. The Serbian courts (minus the incomplete data supplied by the Solicitor General's Offices in Niš, Zaječar and Novi Sad) awarded damages amounting to 201,907,788 RSD (circa 1.7 million EUR) in civil proceedings over unlawful detention in the 1 November 2014–30 June 2015, i.e. in less than two years.

6. The large prison population can be ascribed, inter alia, to the courts' reluctance to order non-custodial sentences. For instance, in the 2010–2014 period, they imposed 43,997 sentences of imprisonment lasting between one and three months and only 4,165 non-custodial sentences.

7. There was a mild increase in the number of decisions on conditional release, from 1,243 (28.14%) in 2014 to 778 (34.48%) in the first six months of 2015. The number of decisions on parole (taken by the PSEA Director) has, however, fallen compared to the 2011–2012 period – only 20 convicts were released on parole in 2014 and another four in the first half of 2015, while the PSEA Director upheld 244 parole applications in 2011 and 213 such applications in 2012. The number of conditional sentences under protective supervision has, commendably, increased in the first half of 2015 over 2014 (48 vis-a-vis 29).

Equality before the Court and Fair Trial

1. The lack of an adequate free legal aid system is one of the problems undermining the fairness of proceedings in Serbia. The Government adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period but the adoption of the law on free legal aid was still pending at the end of the reporting period.

2. Judicial efficiency has been criticised for years, since the courts' backlog is measured in millions, although, according to the Serbia Judicial Functional Review, the number of incoming cases in Serbian courts stands at 13.8 per 100 inhabitants, which is slightly lower than the European average. On the other hand, Serbia, with 39 judges per 10,000 inhabitants, has nearly double the judges-to-population ratio than the EU average, wherefore it may be concluded that the reasons do not lie in the numbers of judges or cases, but in systemic problems and the way the judicial system operates.

3. The Supreme Court of Cassation adopted a “Special Set of Measures to Solve the Backlog of Enforcement Cases in the Courts of Serbia” for the 2015–2018 period, with a view to reducing the backlog of cases older than two years nationwide by 80% by the end of 2018. All courts formed backlog reduction teams in 2015 and the mechanism was tested in ten courts in Serbia. Six Serbian courts cut their case backlogs in half.

4. The National Assembly adopted the Act on the Protection of the Right to a Trial within a Reasonable Time, which came into force on 1 January 2016. This law envisages judicial protection of the right to a trial within a reasonable time of all parties to the proceedings. This right is not afforded to public prosecutors in criminal trials. Proceedings on violations of this right are urgent and free of charge. The Act provides for three legal remedies protecting the right to a trial within a reasonable time: a complaint with a view to aimed at expediting the proceedings, an appeal and a just satisfaction claim.

5. The 2013–2018 National Judicial Reform Strategy envisages the establishment of a nationwide e-Justice system, with the aim of improving the efficiency, transparency and consistency of the judicial process. A comprehensive analysis of the judicial hardware and software was conducted to that end in February 2015. The Court Rules of Procedure were amended twice in 2015, but did not include the amendments envisaged by the Action Plan. The introduction of the electronic case management system in the misdemeanour courts was the main step towards e-Justice that was taken in 2015.

6. Frequent violations of the presumption of innocence by the topmost state officials have given rise to doubts about the independence of the judiciary and lack of influence on the judges ordering pre-trial detention. The Independent Journalists Association of Serbia repeatedly alerted to media violations of the presumption of innocence in 2015.

Right to Privacy and Confidentiality of Correspondence

1. Relatively few criminal proceedings have been conducted before Serbian courts over violations of the right to privacy, i.e. the following crimes: disclosure of someone's personal and family circumstances, the inviolability of the home, unauthorised photographing, violations of the confidentiality of letters or other correspondence, unauthorised wiretapping and recording, unauthorised publication and presentation of another's text, portrait or recording, unauthorised collection of personal data, unlawful search and unauthorised disclosure of secrets. A total of 304 trials for these crimes had been conducted or were still under way in the 1 January 2013–1 October 2015 period.

2. The alignment of the relevant legal framework with Article 41 of the Constitution has undoubtedly put in place all the legal grounds for the unhindered realisation of the right to confidentiality of letters and other means of communication. Problems have, however, still been arising in practice, notably, in the enforcement of the above-mentioned laws by the state authorities and other entities under the obligation to comply with them.

3. The Commissioner for Information of Public Importance and Personal Data Protection in 2015 again reacted with respect to the actions by the Security Intelligence Agency (SIA) and the Military Security Agency (VBA), the work of which is closely linked to the respect of the right to confidentiality of correspondence. The VBA did not reply to a request for access to information of public importance filed by the SHARE Foundation, explaining it was under no obligation under the law to keep records of the enforcement of measures by which the VBA derogated from the constitutionally guaranteed right to confidentiality of letters and other means of communication according to its legal powers and that it did not possess the required information. The Youth Initiative for Human Rights filed a similar request to SIA, seeking information on the number of natural and legal persons subjected to measures derogating from the principle of confidentiality of letters and other means of communication. SIA failed to reply to the request as well, but both agencies subsequently communicated the required information after the Commissioner issued a ruling ordering them to comply.

4. The security agencies are still extremely reluctant to provide access to information of public importance requested and appear to be unaware that they, too, are under the obligation to respect the Free Access to Information of Public Importance Act. The VBA and SIA have dismissed nearly all requests for access to information of public importance submitted to them, either without giving any explanation at all or providing hardly convincing reasons. As a rule, they forward the information requested only after they are ordered to do so by the Commissioner.

5. The issue of the agencies' powers to intercept electronic communication arose again in 2015, when the Draft Rulebook on Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication

and Technical Requirements for the Fulfilment of the Obligation on the Retention of Electronic Communication Data appeared. Not only is the Draft Rulebook largely incompatible with the Electronic Communications Act and the Personal Data Protection Act. Some of its provisions are also in contravention of the Constitution, under which the collection, keeping, processing and use of personal data shall be governed by a law and derogations from the guaranteed right to confidentiality of letters and other means of communication may be provided for only by the law. The Commissioner relayed his opinion to the relevant Ministry that the adoption of the Draft Rulebook would definitely result in the violation of the right to privacy of a large number of citizens and that a broader public debate on it had to be initiated to reach agreement on its amendments or the adoption of a new Electronic Communications Act.

6. The National Assembly Security Services Control Committee paid five oversight visits to the security agencies in 2015. In its replies to questions on the effects of these visits, it said that its members had perused the documentation on an *ad hoc* basis and concluded that the security agencies had acted in accordance with the law; it also said that the attitude of all the agencies during the visits had been constructive and transparent and that none of the officers refused to answer its questions.

Personal Data Protection and Protection of Privacy

1. The adoption of the Action Plan for the Implementation of the Personal Data Protection Strategy is six years overdue. Many provisions of the laws adopted before the Personal Data Protection Act have not been aligned with the latter. The Ministry of Justice formed a working group charged with drafting a new Personal Data Protection Act back in 2013, but it was not until mid-2015 that news of its establishment were made public. The Draft Personal Data Protection Act, published on the Ministry of Justice website in early October, does not take into account the Model Personal Data Protection Act prepared by the Commissioner in 2014, although the Chapter 23 Action Plan envisages that the new PDPA will be developed in accordance with the Model Act. Furthermore, the government Draft substantively differs from the Model Act.

2. Although the 2009 Classified Information Act envisages the adoption of a number of decrees prerequisite for its enforcement within six months from the day it enters into force, only one decree was adopted by that deadline, while a number of other by-laws were adopted with years-long delays. Although the Classified Information Act lays down the obligation of state authorities to process and review data and documents classified as confidential under the previous regulations within two years from the day of its adoption, there is still a large number of classified documents the designation of which has never been reviewed.

3. The media have over the past few years been in the habit of publishing the personal data of citizens, mostly for daily politicking reasons, even data qualified as particularly sensitive by the law. Given that most personal data controllers are employed in the state bodies and institutions, it is evident that civil servants are liable for the disclosure of personal data. However, the information BCHR obtained from courts in response to its requests for access to information of public importance shows that they have not found any civil servants guilty of this offence incriminated in Article 146 of the Criminal Code.

4. In July 2015, the Commissioner presented his Report on Oversight of the Implementation and Enforcement of the Personal Data Protection Act by the Electronic Communication Operators Extending Internet Access Services and Internet Services. It confirmed that personal data protection in the field of electronic communications, especially Internet services, was extremely concerning and that the state was mainly responsible for the situation. The Commissioner forwarded his draft recommendations on the improvement of the situation in this field to the Government and the National Assembly.

5. The Commissioner launched the oversight of the enforcement and implementation of the Personal Data Protection Act by seven joint stock companies that had published the names, addresses and personal identification numbers of their stock holders and the number of their votes and stocks on their websites.

6. In addition to a number of provisions in the Draft Personal Protection Act jeopardising the independence of the Commissioner, there were quite a few attempts by senior state officials and representatives of the ruling parties to publicly discredit the independent regulatory authorities, including the Commissioner, in 2015.

Freedom of Thought, Conscience and Religion

1. The Directorate for Cooperation with Churches and Religious Communities conducted an analysis of the state of religious rights, in which it concluded that the recommendation in the Screening Report – to ensure state neutrality towards the internal affairs of religious communities – has been fulfilled within the reform process and during the preparation of the Action Plan. However, the authors of the (EU) Expert Report on the situation of minority rights in the Republic of Serbia noted that there had been no significant changes to the legal situation concerning religious affairs. They also said that states were responsible for ensuring that individuals may exercise their fundamental human right to attend religious services in their mother tongue if they so wished and that this assessment was of particular relevance for the situation in East Serbia concerning religious services in the Romanian and Vlach languages.

2. The law sets an excessively high threshold of founders needed for the registration of a religious community in the Register since all religious communities

except traditional ones need to supplement the decision on their establishment with a list of the signatures of the founders accounting for at least 0.001% of Serbia's adult citizens residing in Serbia according to the official census of the population, or of foreign nationals permanently residing in the territory of the Republic of Serbia.

3. The religious communities must also submit overviews of their main religious teachings, religious rites and religious goals, whereby they are practically forced to declare their religious beliefs. Furthermore, the law provides the executive authorities with the opportunity to assess the quality of the religious teachings, rites and goals during the registration procedure, which is absolutely inadmissible from the viewpoint of the freedom of thought and religion and has a restrictive effect on the freedom of religious organisation.

4. A total of 1.023 billion RSD were earmarked for churches and religious communities in the 2015 Serbian state budget, i.e. more than in 2014, to cover the pension/disability and health insurance contributions of priests and religious officials that had not been paid since 2012. 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%).

5. The Serbian Genuinely Orthodox Church (so-called zealots) again organised a Youth Camp in early May, where children dressed in military uniforms underwent firearm training. The Minister of Internal Affairs explained that only the public prosecutor could prohibit such a camp, while the Bor Public Prosecution Service claimed that the prohibition of the camp was under the jurisdiction of the Ministry of Internal Affairs and that the investigation showed that there were no elements of crime in holding it.

6. Serbian Orthodox Church (SOC) officials have often been making political statements, although the church is separated from the state under the Serbian Constitution. The decision by UNESCO's Executive Council to include in its session agenda Albania's initiative to admit Kosovo to this organisation provoked numerous criticisms of the public authorities, political parties and individuals, including the SOC Holy Synod, which wrote a letter to the UNESCO Director-General. SOC Patriarch Irinej also reacted to the inclusion of Kosovo's admission to UNESCO on the agenda.

7. Clashes between the two Islamic Communities (the Islamic Community in Serbia and the Islamic Community of Serbia) continued in 2015. Both Islamic Communities in May condemned the construction of a number of mosques in Sandžak (in Sjenica, Tutin, and the Novi Pazar settlements of Varevo, Pobrđe, Barakovac and Osoje). According to their builders, these "neutral mosques", as they dubbed them, are to provide all Moslems (of both Islamic Communities) with places of worship. The Islamic Community in Serbia Chief Mufti condemned the construction of such mosques, claiming their builders were abusing donations and that the mosques were staffed by incompetent and dubious people.

Freedom of Expression

1. The numerous problems that have already surfaced during the almost 16-month-long implementation of the 2014 media laws can be ascribed to the lack of political will to implement them in practice, to the fact that they fail to fully elaborate some of the key areas and to the absence of adequate oversight mechanisms and penalties for violations of their provisions. The National Assembly already amended two of the newly adopted laws in 2015: the Public Information and Media Act – extending the deadline by which the media had to be privatised, and the Public Media Services Act – extending the budget funding of the public service broadcasters' core activities. The National Assembly also adopted a *lex specialis* – the Act on the Temporary Regulation of Public Media Service Licence Fee Collection.

2. Non-transparent government advertising, one of the main tools for exerting pressure on the editorial independence of the media, remains totally unregulated. The new Draft Advertising Act, presented at a public debate in January, which was negligibly changed before it was submitted to parliament for adoption on 6 November 2015, even explicitly lays down that it shall not apply to advertising (public informing) by public entities funded from public funds (the national, provincial and local authorities, public companies – their non-commercial activities, institutions and other public entities).

3. One of the main goals of media project funding has not been achieved since the implementation of relevant provisions of the law on project co-funding demonstrated the lack of will of the authorities, particularly at the local level, to relinquish their mechanisms for economically pressuring the media. Many of the media project co-funding calls for proposals published by the local self-governments were not in compliance with the law, particularly with respect to the composition of the commissions reviewing the project proposals. The decision-making process was essentially non-transparent. The practice of funding erstwhile publicly-owned media continued and they were granted excessively high amounts from the local budgets. These issues are best illustrated by the developments in the cities of Kragujevac, Belgrade and Kruševac.

4. The process of privatisation of erstwhile publicly owned media was completed by the end of October 2015. Two media privatisation models were selected: sale at public auctions and, in case the outlets were not sold at the auctions, the distribution of the shares to the workers free of charge. However, the numerous controversies that accompanied the privatisation gave rise to doubts that the buyers of the media were not driven by market logic and the wish to pursue media activities, but to ensure that politicians still influenced the outlets through the new owners, despite the change in the ownership structure of the media. For example, eight outlets were bought by a Radojica Milosavljević, who had not been involved in the media business at all, but has been actively involved in politics as the Kruševac Deputy Mayor and SPS member. Some media linked him to the then Defence Minister Bratislav Gašić as well.

5. Suspicions that political influence buying was at issue deepened when the Kragujevac city authorities earmarked 30 million RSD in their rebalanced 2015 budget for the already privatised RTK, when RTV Kruševac, bought for 14,000 EUR, was granted 17,000 EUR for project co-funding, and when RTV Studio B was granted 23 million EUR from the Belgrade city budget. These developments corroborate that privatisation has not led to the elimination of the practice of exerting influence on the outlets' editorial policies through the owners' links with the ruling parties.

6. The privatisation of the state news agency Tanjug also caused many dilemmas in the public. Shares in the agency were to have been distributed to its staff free of charge since no-one wanted to buy it in the two public auction cycles held by 31 October. The Government, however, skipped this privatisation stage and on 3 November issued a Decision stating that Tanjug ceased to operate on 31 October, that its assets would be taken over by the Republican Property Agency, that its archives would be taken over by the Archives of Yugoslavia, that it would pay all its arrears to the staff and that, once the arrears were paid, its Director would apply for Tanjug's deletion from the Business Entities Register. Tanjug continued operating into 2016 although it no longer existed formally. It was not deleted from the Media Register or the Business Entities Register by the end of the reporting period either.

7. Two of the most influential news companies, which publish the dailies *Politika* and *Večernje novosti*, had not been privatised before the expiry of the privatisation deadline. *Politika* PLC was exempted from privatisation under a Serbian Government Decision on the Privatisation of Entities of Strategic Importance of 29 May 2015, in which it was designated as such an entity and its privatisation deadline was postponed until 1 June 2016. *Večernje novosti* is published by *Novosti* PLC Belgrade, in which the state has a minority stake (29% of the shares directly and another 7% of the shares owned by the Pension and Disability Insurance Fund). In 2011, the Securities Commission revoked the right to vote of businessman Milan Beko, who then owned over 62% of the shares in *Novosti* PLC, because he did not make a public offer to buy all the other shares, and limited his ownership of shares to 25%. This is why the state, although a minority shareholder, has practically continued exercising its managerial rights, while the majority shareholder cannot exercise his voting rights or affect the company's decisions. *Večernje novosti* is among the 24 controversial privatisations, the re-examination of which was sought by the European Commission. The case of this company was mentioned in the Anti-Corruption Council's reports on the media as well.

8. The media concentration restrictions under the 2014 media laws are much more liberal than the ones laid down in their predecessors. These laws, however, do not take into account the qualitative (programme) aspect of media service provision at all. Serbia ranks first in Europe with 1,400 media outlets, but their number is inversely proportional to the diversity of the sources of information and media programmes.

9. The year that has passed since the establishment of the Media Register has shown that the availability of data on media is far from ideal in practice. The Media Register merely took over the data in the erstwhile Register of Media, without checking their accuracy, wherefore it cannot be definitely determined how many of the registered outlets actually exist in practice. In conclusion, this area remains unregulated despite the formal existence of a legal framework.

10. The independence of the Electronic Media Regulatory Authority (EMRA) is proclaimed by law but undermined by the State Administration Act, which provides state administration authorities with strong oversight mechanisms allowing them to affect the way the conferred powers are exercised and even to revoke them. Furthermore, the EMRA's Financial Plans have to be voted in by the National Assembly but the law fails to specify what happens if the National Assembly votes against it or if the vote on it is delayed. For instance, the EMRA was still funded under a temporary regime (the 2014 Financial Plan) at the end of 2015. Political bodies have ample opportunity to influence EMRA Council appointments and EMRA professional staff are treated as civil servants, which undermines their autonomy.

11. Although the media laws envisage that public service broadcasters will be funded from several sources (licence fees collected from citizens, revenue from commercial activities, limited budget funding of projects of public interest, etc.), the full implementation of this funding system was postponed until 1 January 2016 and, in 2015, to the end of 2016. The Act on the Temporary Regulation of Public Media Service Licence Fee Collection, adopted in 2015, further undermined the established funding system, as it set the licence fee at 150 RSD. The adoption of this special law was preceded by an announcement by Serbian Prime Minister Aleksandar Vučić, who said that the licence fee would be 150 RSD and that four billion RSD would be allocated in the budget for co-funding RTS and RTV in 2016.

Freedom of Public Assembly

1. The Constitutional Court of Serbia declared the 1992 Public Assembly Act unconstitutional in April 2015. It suspended the publication of its decision for six months to give the Ministry of Internal Affairs (MIA) time to draft a new Public Assembly Act, organise a public debate on it and submit it to the National Assembly for adoption. Given that the MIA failed to act on the Constitutional Court's decision within the specified deadline, the Public Assembly Act ceased to be valid on 23 October 2015, when the Constitutional Court decision was published in the Official Gazette.

2. A group of NGOs and the Protector of Citizens warned that the absence of positive regulations governing the exercise of the freedom of assembly could give rise to situations potentially endangering public law and order and the realisation of the freedom of assembly. The draft law was ultimately published in October and put up for public debate.

3. The Draft provisions on suitable public assembly venues are quite restrictive, as they do not allow the holding of public assemblies at locations which would disrupt public traffic, in the vicinity of hospitals, kindergartens, schools and protected facilities. It allows local self-government units to draw up lists of dangerous sites but does not lay down their obligation to reason their decisions or publish them. Furthermore, the Draft lays down that assemblies may be held only from 8 am to 10 pm. Although the Draft envisages that public assemblies shall be pre-notified rather than subject to approval, it nevertheless imposes excessive obligations on the organisers with respect to the filing of notices, which may be interpreted as amounting to a *de facto* approval system. It especially remains unclear how the organiser is to submit information regarding the safe and unobstructed holding of the assembly.

4. The grounds for the prohibition of assemblies in the Draft are the same as the ones in the Act declared unconstitutional by the Constitutional Court. Furthermore, they do not correspond fully to the legitimate grounds for restricting the freedom of assembly under the Constitution and the ECHR. A lot of caution needs to be exercised in regulating this area, as there have been instances in which the freedom of assembly was restricted due to the local self-governments' misinterpretation of their powers and positive regulations. This happened, for instance, to the initiators of "Let's Not Give/Drown Belgrade", who were distributing a newsletter by the same name in front of the Belgrade City Assembly in March 2015. They were asked by the communal police to show their IDs and the city communal inspectors later said they had filed misdemeanour reports against them for "distributing advertising material" in violation of the law although the assembly had been pre-notified in due time and in accordance with the Act and the material cannot be qualified as advertising under the law.

5. Six rallies were prohibited in the Belgrade, two in the Novi Pazar and one in the Sremska Mitrovica police jurisdictions from January to November 2015. The one complaint filed with the Ministry of Internal Affairs in the period was rejected.

6. Since the Constitutional Court declared the prior Public Assembly Act unconstitutional, *inter alia*, because of the ineffectiveness of the legal remedies it provided, the authors of the Draft endeavoured to eliminate these deficiencies and laid down shorter deadlines for decisions on appeals of rulings prohibiting assemblies. Such short deadlines should provide for the effectiveness of the legal remedies. Six constitutional appeals claiming violations of the right to freedom of peaceful assembly were filed with the Constitutional Court in the first eleven months of 2015. The Constitutional Court dismissed one appeal in that period and did not deliver any decisions on the other constitutional appeals in which it found a violation of the right to freedom of peaceful assembly.

7. The Draft does not govern the issue of counter-demonstrations at all. The authorities have to date allowed only the assemblies that were first pre-notified to proceed and prohibited all other events subsequently scheduled at the same time and the same place. Although this position most probably aims to protect the par-

ticipants of one assembly from the participants of the counter-protest, it should not be applied in practice, because the fact that one assembly was pre-notified before another cannot constitute legitimate grounds for prohibiting the latter. Moreover, since the organisation of counter-demonstrations is very important in a democratic society, because it provides for pluralism of opinion, the law should definitely regulate this matter in greater detail.

8. Although the police are to issue individualised and reasoned rulings on all assemblies they prohibit, the Minister of Internal Affairs Nebojša Stefanović said at a news conference that the police prohibited all five rallies that had been scheduled in front of the National Assembly to mark the 20th anniversary of the Srebrenica genocide. These rallies had been scheduled for the same day, 11 July, but different times by the Serbian Patriotic Movement *Zavetnici*, the *Dveri* movement, the NGOs Women in Black and Youth Initiative for Human Rights, the Association of Families of Kidnapped and Missing Persons from 1998 to 2000 and by a private individual Nikola Aleksić. The NGOs had also invited the National Assembly deputies and Government members to take part in the “Seven Thousand” drive on 11 July and thus show their compassion for the Srebrenica victims and human and civic solidarity with their families, together with other citizens of Serbia. The Minister’s practice of publicly prohibiting assemblies is not laid down in positive regulations.

Freedom of Association

1. The exercise of the freedom of association is governed in greater detail by the Act on Associations and the Act on Political Parties. The Preliminary Draft of the Civil Code, prepared in 2015, governs the status of associations differently than the valid law in Section 2 of Chapter II. It includes very general provisions on the status of associations and their structure and membership. It, however, remains unclear what the relationship between it and the Act on Associations, which governs this field in detail, will be, given that some of the provisions in the Preliminary Draft are in collision with the valid Act.

2. An initiative was filed with the Constitutional Court challenging an article of the Act on Associations, under which socially-owned real estate under the usufruct of social organisations, associations or federations of associations headquartered in the Republic of Serbia shall become state property under the usufruct of the local self-governments in the territory of which they are located on the day this Act comes into effect. The Constitutional Court in 2015 dismissed the initiative, because the initiator had not specified the reasons why it believed the article was unconstitutional and said it had already stated its view on it.

3. According to the Draft 2015 Budget, 5,860,686,000 RSD were allocated under budget line 481 for civic associations i.e. two million less than in 2014. Some media in 2015 reported on misappropriation of budget funds allocated to associations of citizens. Media quoted whistle-blower website *Pištaljka* as saying that 145

million RSD had been paid to the Association of National Parks and Protected Areas of Serbia from the Serbian state budget in 2014, qualifying this association as phantom and specifying that it was not operating at its registered headquarters and that the name of its responsible person was unknown.

4. The tax laws still have no provisions providing for tax relief to donors, i.e. direct tax deductions for companies donating funds to associations of citizens. Civil society organisations have filed amendments to the Draft Act Amending the Corporate Profit Tax Act, which had not been adopted by the time this Report was finalised.

Electoral Rights and Political Participation

1. The National Assembly of the Republic of Serbia has 250 deputies and the Assembly of the Autonomous Province of Vojvodina has 120 deputies. They are directly elected by secret ballot to four-year terms in office, under the proportional election system. The Constitution entitles national deputies to irrevocably place their mandates at the disposal of the political parties on whose election tickets they ran under legally defined circumstances.

2. The Act on Political Parties defines a political party as a free and voluntary association of citizens established for the purpose of achieving political aims by democratically shaping the political will of citizens and participating in elections. The Act provides a separate definition of political parties of national minorities, which enjoy special rights, notably: to seats in parliament even if they won less than 5% of all cast votes, a threshold non-minority parties have to pass.

3. The modes of funding political parties are governed by the Act on the Financing of Political Activities, which specifies the maximum amounts of donations by natural and legal persons. Political entities are under the obligation to submit their annual regular funding reports and reports on their election campaign costs to the Anti-Corruption Agency.

4. The regular provincial and local elections are to be held in the spring of 2016. The Prime Minister said early parliamentary elections would be held simultaneously with them, although they are not due before the spring of 2018. Most political analysts opined that there were no rational reasons for calling early elections and interpreted the Prime Minister's decision by his wish to extend his mandate another four years because the SNS' rating and popularity were falling and by his wish to help his party achieve better results at the Vojvodina elections through the parliamentary election campaign, because he was unsure it could win an absolute majority at the provincial level.

5. Numerous irregularities and violence registered at local elections in the past characterised 2015 as well. Opposition parties and non-government organisations increasingly alerted to the irregularities at the local elections held in some

local self-governments in the past few years. The European Commission, too, noted in its 2015 Progress Report, that certain municipal elections and other local events had been marred by violence and claims of intimidation and irregularities, which were not adequately investigated.

Right to Work and Just and Favourable Conditions of Work

1. The European Committee of Social Rights in January 2015 published its third periodic report on Serbia's implementation of the Revised European Social Charter. The Committee lacked information to assess Serbia's fulfilment of 11 obligations, concluded that it had fulfilled another eight of them and violated three of its obligations under the Revised ESC.

2. According to the Labour Force Survey, conducted by the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia stood at 17.9% in the second quarter of 2015. The Statistical Office applies the methodology, under which everyone who worked for at least an hour in the week in which the survey is conducted is considered employed, whether or not they were paid for such work. Youth unemployment is very high – it stands at 18.6%. Half of the unemployed are under 35 years of age and 54.03% youths registered as unemployed have been looking for a job over a year. Despite available statistical data showing that 117,000 people are no longer registered with the National Employment Service and an increase in employment, official data still evidence that there is a huge number of people working in the grey economy.

3. The effects of subsidies to foreign investors for opening new jobs have proven weak, because none of the companies that received over 7,000 EUR for every job they opened have hired as many people as they had obligated themselves. The state spent over 300 million EUR but succeeded in preserving only around 18,000 jobs. It has, nevertheless, vowed to continue subsidising foreign investors.

4. Oversight of the implementation of the Labour Act is performed by the Labour Inspectorate, which stepped up its activities, resulting in the reduction of the informal employment rate. According to the data of the Ministry of Labour, Employment and Veteran and Social Affairs, the Inspectorate performed 79,081 checks in the past two years, i.e. 18% more than in the past.

5. The Government had set the 2015 net minimum cost of labour in Serbia at 121 RSD per hour, which cannot cover the minimum subsistence and social needs of the workers and their families expressed in the value of the minimum consumer basket. The Serbian government decision to keep the minimum hourly rate at 121 RSD in 2016 dealt another blow to the workers' living standards, as their already low earnings will further fall in real terms due to inflation. With a minimum monthly wage of 174 EUR, Serbia is at the bottom of the list in the region; the minimum wages are lower only in the Former Yugoslav Republic of Macedonia and Albania.

6. Serbia's population was further impoverished when the laws cutting public sector staff wages and pensions were adopted, especially in view of the size of the public sector staff and the high share of pensioners. 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. Some experts are of the view that this Constitutional Court decision allows for the submission of applications to the ECtHR, since all the available legal remedies at the national level have been exhausted.

7. Trade union data indicate that around 600,000 workers in the private sector are paid their salaries with one- or two-month or even greater delays and that as many as 50,000 workers are not paid at all. In the first four months of 2015, the labour inspectors performed 12,368 checks of the employers' compliance with work-related rights, issued 1,088 rulings over their failure to pay wages and filed around 700 misdemeanour reports against offending employers. The employers have for years now been quoting the high taxes and contribution rates, which are among the highest in Europe and amount to as many as 64% of the net wages, as the reason why they have been defaulting on their obligations. Former workers of socially-owned companies, whom the state has not paid their wages since 2000, are also in dire straits.

8. The National Assembly adopted major amendments to the Occupational Health and Safety Act improving the situation in this area in November 2015. The Occupational Health and Safety Directorate said that the number of accidents among construction workers and the number of fatal accidents had fallen in the past few years. The gravest occupational accident in the past few years occurred in Pirot, where three workers were killed and another three injured. In the first four months of the year, the labour inspectors issued 33 misdemeanour fines and filed 1,327 misdemeanour motions and 19 criminal reports against employers violating the health and safety regulations. Graver accidents also occurred in the *Milan Blagojević* factory, in which four people were injured, and the Valjevo factory *Krušik*, in which seven people were injured.

Freedom to Associate in Trade Unions and Right to Strike

1. Hardly any headway was made in social dialogue in 2015. The influence of the Social Economic Council is limited, because it does not fully participate in reviewing draft laws and other enactments of relevance to the financial and social status of workers and employers. Many of the Council's opinions have not been taken on board, including its suggestion that the remuneration of NES Management

Board members be abolished and that this Board comprise equal numbers of state and social partner representatives. Social dialogue at the local level is also under-developed, as corroborated by the fact that only 19 local social economic councils have been established in 2005.

2. A new law on strikes is long overdue. The Draft Strike Act, prepared back in 2011, was aligned with ILO Conventions. The Draft has not entered the parliament pipeline yet although a public debate on it was organised in July 2013. Under the valid Strike Act, the right to strike is limited by the obligation of the strikers' committee and workers participating in the 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 resume upon the termination of the strike. The Act also establishes a special strike regime: "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", but does not specify these services.

3. Like 2014, 2015 was characterised by a large number of strikes: by teachers, scientists, policemen and health professionals. Workers of unsuccessfully privatised companies and companies undergoing restructuring staged strikes as well.

Right to Social Security

1. Only 15% of the population at risk of poverty exercise the right to financial benefits. The at-risk-of-poverty rate, which increased from 24.6% in 2013 to 25.6 % in 2014, as well as the fact that the availability and quality of local community services are uneven, give rise to concern. The provision of social services is further compromised by the lack of implementing regulations and ineffective distribution of budget funds, as the EC noted in its 2015 Progress Report.

2. The 2014 Decree on the Social Inclusion Measures for Welfare Beneficiaries is still in force, although it has provoked sharp public criticism because it lays down that welfare centres shall conclude agreements with welfare beneficiaries, under which the social welfare centres are entitled to reduce or revoke the beneficiaries' right to financial benefits in the event they fail to fulfil their obligations under the agreement without good cause.

3. The Constitutional Court failed to respond in 2015 to the Protector of Citizens initiative to review the provisions of this Decree prescribing medical treatment and community service as forms of activating the beneficiaries to address their economic difficulties and the provisions on the reduction or revocation of their right to financial benefits in case of non-compliance with their agreements with the welfare centres, which may stipulate medical treatment or community service. In the view of the Protector of Citizens, the mandatory medical treatment obligation is in contravention of the constitutionally guaranteed right of people to freely decide on

anything regarding their lives or health and their right not to be subjected to medical treatment against their own will. He has also held that volunteering (community service), by its legal nature, was in contravention of social inclusion measures, as it entailed work for which the volunteers were not remunerated, wherefore it did not help improve their financial situation.

4. Welfare beneficiaries receive an average of 6,400 RSD a month. This amount is aligned with the consumer price index twice a year. The family members of the beneficiaries are entitled to a half or a third of this amount. The additional welfare eligibility requirements, which have to be fulfilled by people who have the capacity to work but fall in the category of extremely low income earners, have practically excluded all such people from the financial support system.

Right to Education

1. The document entitled National Qualifications Framework in Serbia, covering the national qualifications system levels I-V, was prepared in 2015. The national qualifications framework for higher education had been adopted earlier. However, a single, integrated national qualifications framework, including all levels and types of qualifications, regardless of the way they are acquired or at what age, needs to be established to facilitate the integration and coordination of the existing qualifications systems in Serbia.

2. The education system in Serbia mostly boils down to formal education and concentrates on the transfer of academic knowledge, devoting hardly any attention to the development of critical thinking. The depopulation trend has hit the education system as well – the number of pupils has been declining at a rate of 2% per annum. The education system's 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.

3. The educational levels of various ethnic communities are extremely divergent as well – e.g. 87% of the Roma population have incomplete primary education or only primary education and less than 1% have completed higher education. The educational breakdown of persons with disabilities is also unfavourable: 52.7% of them over 15 years of age have not completed primary school or have no more than primary education and only 6.5% have completed higher education.

4. The Education System Act was amended in late July 2015 to respond to the need to provide children, pupils and adults with disabilities, regardless of their financial status, with the possibility of accessing all levels of education and to reduce the rate of early school leavers, especially among vulnerable categories of the population and those living in underdeveloped areas, persons with disabilities and other persons with specific learning difficulties.

5. The law has been aligned with the Council Directive 77/486/EC of 25 July 1997 on the education of the children of migrant workers and the obligation of the

host state to provide them with assistance in learning the official language spoken in that country to ensure their access to the education system as soon as possible.

6. The new Textbook Act adopted in 2015 specifies that the Minister shall set the maximum price of the textbooks, envisages the adoption of a new plan of textbooks, and lays down the obligation of the state textbooks publisher to prepare all the textbooks in national minority languages and for children with disabilities.

7. The Serbian National Assembly adopted amendments to the Higher Education Act in July 2015 and debated the amendments proposed by the opposition parties in September 2014 in reaction to the increasing number of plagiarised PhD theses. Unfortunately, these amendments were not voted in, as only 19 of the 152 deputies present in the Assembly hall voted for it.

Health Care

1. The sustainability of the health sector has been brought into question by the shortage of funds in the public health fund. Lack of staff in the medical institutions also undermines access to health care, especially in rural areas. Serbia has 310 doctors per 100,000 residents, which is below the regional and EU average. Coverage of the population by medical staff is even lower – it stands at 632 per 100,000 residents (as opposed to an average of 836 per 100,000 residents in the EU). The age breakdown of the health professionals is concerning – 28% of all doctors with specialist degrees are over 55 years of age. On the other hand, over 2,000 doctors, 80 doctors with specialist degrees and over 13,000 nurses and medical technicians are registered as unemployed with the National Employment Service.

2. Many workers are unable to exercise their rights to health care and health insurance because their employers have not been paying their health contributions. Only one out of five residents of Serbia have mandatory health insurance in accordance with the Mandatory Social Insurance Act.

3. Republican Health Insurance Fund data show that 1,317,482 people fulfil the requirements for the validation of their health cards – they are, notably, people who do not exercise their health insurance rights on grounds of employment, retirement, performance of independent services or engagement in agricultural activities and belong to the socially vulnerable groups or to groups at greater risk of falling ill. The funds allocated in the budget for them are far from sufficient. People over 65 in rural areas, Roma, persons with disabilities, refugees and internally displaced persons are particularly vulnerable.

4. The Serbian Government in 2014 adopted a decision establishing a Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia, with a view to enabling Serbia's citizens to avail themselves of medical treatment abroad in the event it is unavailable in Serbia. Its potential beneficiaries have, however, faced problems in exercising the rights they are guaranteed as soon as the enforcement of this praiseworthy decision began.

Refugee Crisis

1. The number of foreign nationals expressing the intent to seek asylum in Serbia started growing in May 2015. Their number stood at 13,148 in first four months of the year and then started soaring: 9,034 in May, 15,209 in June, 29,037 in July, 37,463 in August, 51,048 in September, 180,307 in October, 149,923 in November and 92,286 in December, i.e. 577,995 people expressed the intent to seek asylum in 2015. In 2014, a total of 16,490 people expressed the intent to apply for asylum in Serbia. As of April 2015, the refugees on average spent two or three days in Serbia (i.e. the period coinciding with the validity of their certificates of intent to seek asylum), or even less.

2. In response to the developments, the Serbian authorities in July opened a Reception Centre in Preševo, where the refugees could register and be provided with basic humanitarian aid. Apart from the Preševo Centre, the Serbian authorities opened temporary reception centres also at Miratovac (also close to the border with FYROM), Kanjiža and Subotica (near the Hungarian border), and subsequently in Adaševci, Šid and Principovac (near the Croatian border), but the refugees could only register at the Preševo Centre. The number of refugees living in Belgrade streets and parks plummeted after Hungary closed its border in mid-September and most of them headed towards Croatia, going directly from Preševo to Šid.

3. In August 2015, the BCHR, UNHCR Belgrade Office, the Adventist Development and Relief Agency (ADRA) in Serbia, the Savski venac municipal authorities and the Klikaktiv organisation opened an Asylum Info Centre in the heart of Belgrade, near the venues where most of the refugees rally.

4. The treatment of the refugees by the relevant Serbian authorities during most of the year can be qualified as adequate in the context of the large-scale influx of refugees. The “open borders” policy led to a significant drop in the number of allegations about various forms of forcible removal of non-nationals entering Serbia. Under the Convention Relating to the Status of Refugees and the Serbian Asylum Act, asylum seekers shall not be punished for illegal entry or presence in the Republic of Serbia, but the misdemeanour courts in 2015 continued imposing sanctions against such aliens. In the first half of 2015, they imposed misdemeanour fines on 10,696 non-nationals and issued 830 orders ordering them to leave the country. The courts commendably changed their practice, wherefore 489 aliens, who had expressed the intention to seek asylum during the misdemeanour proceedings, were exempted from punishment for illegal entry or presence.

5. The provision allowing the Government to unilaterally define safe third countries in a decision, remained problematic. The valid Decision was adopted in 2009 and has not been revised since. In August 2015, the UNHCR published its Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, in which it concluded that the FYROM did not as yet meet international standards for the protection of refugees, and did not qualify as

a safe third country and advised all states to refrain from returning or sending asylum seekers to it. It remained unclear how the competent Serbian authorities would take this document into consideration during the implementation of the asylum procedure. It needs to be noted that the Asylum Office commendably abandoned the automatic application of the safe third country concept in several cases in 2015 and upheld the applications of asylum seekers although they had *in casu* transited through FYROM or another country considered safe.

6. A total of 10,642 unaccompanied minor asylum seekers were registered in the Republic of Serbia in 2015. The actual number of unaccompanied minor asylum seekers, who had passed through Serbia, was probably much higher given the difficulties the relevant authorities have faced in registering the asylum seekers, the lack of a developed procedure for identifying minors and the fact that many of the refugees and migrants lacked personal documents.

7. Under the Action Plan for Chapter 24 (Justice, Freedom and Security), which covers asylum, a new Asylum Act is to be adopted in the first quarter of 2016. The authorities, however, have not yet adopted integration programmes that would benefit people already granted refugee status or subsidiary protection.

8. A joint 17-point statement was adopted by the representatives of the EU, UNHCR and the leaders of the countries along the Western Balkan refugee route in Brussels in October 2015. The statement is insufficiently concretised, impeding clear and comprehensive insight in the development of the Western Balkan states' asylum and migration policies.

Status and Reform of the Judiciary

1. The final version of the Chapter 23 Action Plan, which takes on board the National Judicial Reform Strategy (NJRS), was published in September 2015. The two documents provide for different deadlines by which specific activities are to be implemented. For instance, the NJRS states that all preparations for amending the constitutional provisions on the judiciary are to be completed by end 2018, whereas the Action Plan lays down that a new Constitution is to be adopted by end 2017.

2. The National Assembly adopted a number of new laws and amendments to laws on the judiciary in 2015. In May, it adopted the Act on the Right to a Fair Trial within a Reasonable Time, which comes into force on 1 January 2016. It adopted a set of nine judicial laws at the end of 2015.

3. The High Judicial Council issued a decision on the number of judges in each court in October 2015. Under the Chapter 23 Action Plan, a mid-term assessment of the new court network in terms of costs, current state of infrastructure, efficiency and access to justice is to be performed in the 2nd and 3rd quarters of 2016.

4. The constitutional provisions on the judiciary, especially on judicial appointments, need to be amended, in order to ensure the independence and impar-

ality of the courts. The High Judicial Council and the State Prosecutorial Council need to be empowered with leadership and the power to manage the judicial system. They should have a pluralistic composition, without the involvement of the National Assembly, with at least 50% of members stemming from the judiciary and representing different levels of jurisdiction. The Serbian authorities took on board these recommendations in the Chapter 23 Screening Report in their documents.

5. The National Assembly's role in the election and dismissal of judges, court presidents and the President of the Supreme Court of Cassation poses a direct risk to judicial independence. Under the valid system, its influence is dominant, as it directly elects eight out of 11 HJC members, and indirectly elects the three *ex officio* members as well (the Minister of Justice, the President of the Supreme Court of Cassation and the Chairman of the Assembly Judicial Committee, who are also voted in by the parliament).

6. The election of HJC members from among ranks of judges on permanent tenure was held at 49 polling stations on 21 December 2015; 2,459 judges on permanent tenure were entitled to vote. The HJC forwarded the list of nominated candidates to the National Assembly, which is to issue a decision on their appointment.

7. The HJC in May 2015 adopted amendments to its 2014 Rulebook on the Criteria, Standards and Procedure for Appraising the Performance of Judges and Court Presidents and the Authorities Performing the Appraisal Procedure. The rulebook on the criteria, standards and procedure for appraising the performance of judicial assistants, ensuring a fair and transparent system for evaluating their work, which was to have been adopted by the end of 2015 under the Chapter 23 Action Plan, remained pending.

8. The 2015 amendments to the Act on Judges afford privilege to candidates for first-time judgeships, who have completed the initial Judicial Academy training. Namely, they do not have to take the tests organised by the HJC and their competence is rated by taking into account their final Judicial Academy grades.

9. Specific decisions on the assignment of judges in the Belgrade Higher Court War Crimes Department indicate a new practice – of reassigning judges before the expiry of their six-year tenures to other positions without any explanation – which has significantly prolonged the duration of the war crime trials. The presiding judges usually need a lot of time to acquaint themselves with the case files. In practice, such trials, especially of complex and voluminous cases, are usually reopened.

10. The prosecutorial election process in late 2015 prompted lots of criticism among experts. The vacancies for the offices of Organised Crime Prosecutor, War Crimes Prosecutor and for offices in 25 Higher and 58 Basic Public Prosecution Services were published in September 2015. The SPC drew up the final list of nominees for 50 out of the 85 prosecution services ranked by their qualifications, competence and worthiness to the Government. Its failure to specify any legal grounds why it had not put forward any nominees for the remaining 30 offices led

to suspicions about political influence on the election. Zagorka Dolovac, who was re-elected Chief State Prosecutor in July, assumed the jurisdiction of the National Assembly and appointed deputy public prosecutors to the 30 vacancies.

11. The National Assembly failed to elect the War Crimes Prosecutor in 2015. The Chief State Prosecutor did not appoint an Acting War Crimes Prosecutor. This will hinder the work of the War Crimes Prosecution Service and adversely affect its already slow and inefficient prosecution of war crimes.

12. Judicial dismissal grounds are vague and need to be defined more precisely. Regulations on recusal *inter alia* lay down that judges and lay-judges may be recused if circumstances give rise to doubts about their impartiality, but do not specify which circumstances are at issue, wherefore this institute may be abused in practice. In May 2015, the High Judicial Council enacted a Rulebook on Disciplinary Proceedings for Establishing the Disciplinary Liability of Judges and Court Presidents, which defines in greater detail the obligations of the Disciplinary Prosecutors and their Deputies and the members of the Disciplinary Commission. It also governs the disciplinary liability of court presidents, which its predecessor did not.

13. The valid constitutional and legal frameworks provides room for unjustifiable political influence on the judiciary, especially on the election and dismissal of judges and prosecutors. The conclusion that the independence of the judiciary is at risk is corroborated by the practice of the executive to publicly comment ongoing trials and investigations and announcing arrests, in violation of the presumption of innocence. The judiciary's independence is, without doubt, also undermined by its financial dependence on other branches of government. The Chapter 23 Action Plan commendably envisages the full transfer of the judicial budget from the Ministry of Justice to the HJC and SPC in the second quarter of 2016.

Independent Regulatory Authorities

1. The campaign the executive authorities launched against the Protector of Citizens began in 2014, but culminated when he presented his 2014 report in 2015. He was soon the victim of a defamation campaign over a 1993 suicide committed with a handgun which he had allegedly owned illegally. Numerous statements by officials implying the man was murdered rather than killed himself were made during the days-long campaign against Saša Janković, during which the deputies of the ruling party on several occasions threatened to initiate his dismissal.

2. An extremely dangerous precedent was created by the conduct of the Ministry of Internal Affairs, which selectively published documents from the 22-year-old case file. The crucial documents, confirming that the case was closed and that Saša Janković was not involved in it at all were published only after he himself published the copies in his possession. Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Šabić sharply criticised the behaviour of the police. The international community reacted to the drastic

pressures on the Protector. The OSCE Mission to Serbia expressed its concern, as did the European Union.

3. Šabić was not spared from media attacks either. Some senior state officials publicly criticised his activities and status. These criticisms gained in intensity whenever he reacted to the state authorities' refusal to provide access to data they are under the obligation to provide under the law. The national telecommunications company Telekom Serbia continued with its practice of filing numerous lawsuits against the Commissioner.

4. The adoption of the Commissioner's 2014 Report by the National Assembly was delayed in May 2015, after the SNS members of the Culture and Information Committee walked out of the session at which a conclusion on the Report was to have been adopted, because they had not been consulted about it in advance. Some state authorities took on board the Commissioner's views in 2015. For instance, in December 2015, the Ministry of Internal Affairs acted on the Commissioner's warning and destroyed records with data on people who had purchased tickets for "high risk" sports events.

5. The Commissioner repeatedly alerted to the existing and potential shortcomings in the work of the state authorities in 2015 and filed misdemeanour motions against individual civil servants after performing checks of the state authorities. In 2015, he again called for the adoption of a Decree on the Archiving and Special Measures for the Protection of Particularly Sensitive Data, which was to have adopted by May 2009.

6. The number of complaints filed with the Protector of Citizens and the Commissioner testifies to the public trust they enjoy. In the year behind us, the Protector of Citizens was contacted by 14,169 citizens and received 5,890 complaints, an increase over 2014. This authority issued 382 recommendations, 266 of which were implemented. The Protector of Citizens filed a number of legal initiatives and draft amendments to valid laws, as well as motions for the review of constitutionality of specific laws. The Commissioner also reviewed a large number of cases. In the January-November 2015 period, he had received 5,198 cases regarding free access to information of public importance and 2,200 cases regarding personal data protection. He ruled on 4,948 of the former and 2,073 of the latter. These numbers testify to the continuous deficiencies in the work of the state authorities, primarily with regard to their respect of the rights guaranteed under the Free Access to Information of Public Importance Act, although this law has been in force for a decade now. According to the Commissioner's 2014 Report, published in March 2015, his office found violations of the right of free access to information of public importance in over 90% of the complaints reviewed in 2014.

7. The term in office of the first Commissioner for the Protection of Equality, Nevena Petrušić, expired in May 2015 and Brankica Janković was elected in her stead. The independent authority was very busy in 2015. The Commissioner filed a motion with the Constitutional Court to review the constitutionality of the

Maximum Number of Public Sector Staff Act, rendered a number of opinions on draft laws and issued recommendations to state administration authorities. The Commissioner noted an increase in the number of complaints filed with her office in 2015, specifying she had received 898 until November 2015 and that most of them claimed violations of the freedom from discrimination on grounds of sex and national affiliation.

8. Although the Anti-Corruption Agency issued numerous recommendations and alerted to various problems in 2015, the general impression is that the state authorities, both at the local and the national levels, have failed to act on its findings sufficiently. The Agency nevertheless reviewed several high profile cases in 2015 and found violations of the Anti-Corruption Agency Act. In a case concerning the Defence Minister, it found that he had violated the regulations on conflict of interests when he was the Mayor of Kruševac, because he concluded contracts with the companies owned/co-owned by his wife and son. The Agency also opened proceedings to establish whether the Belgrade Mayor, Siniša Mali, had violated the regulations on conflict of interests after allegations surfaced that he was the Director of two offshore companies headquartered in the Virgin Islands and whether his income statement was accurate in view of indications that he possessed real estate of significant value in Bulgaria.

9. The fierce reactions of the executive, and, quite often, the legislative authorities to these independent bodies' reports, initiatives and observations and their public qualifications of them as "attacks on the state" at the behest of "foreign paymasters" give rise to concern. They demonstrate that these authorities are insufficiently cognizant of the roles the independent bodies are playing and that they need to seriously review the irregularities identified by them and address all deficiencies and bad practices.

National Minorities and Minority Rights

1. A number of processes that are expected to result in the formulation of a (new) minority policy and regulate the realisation and protection of national minority rights were launched in 2015. The final version of the Chapter 23 Action Plan was published in September. As envisaged in the Chapter 23 Screening Report, the first activity the Action Plan provides for is the establishment of a working group that will draft an Action Plan on the Realisation of National Minority Rights, i.e. specify activities for implementing the normative framework in this field, taking into account the recommendations in the Third Opinion on Serbia of the CoE Advisory Committee on the Framework Convention.

2. This activity aims at ensuring the full implementation of the Framework Convention. The Action Plan also defines the activities in each of the areas facilitating the improvement of the status and rights of national minorities, including in the fight against discrimination, and in the fields of media, culture, education, of-

ficial use of scripts and languages, the representation of national minorities in state authorities, etc. In late March 2015, the Ministry of State Administration and Local Self-Governments issued a ruling establishing a multi-sectoral working group to draft an Action Plan on the Realisation of National Minority Rights. The adoption of the final version of this Action Plan by the Government remained pending at the end of the reporting period.

3. The Ministry of State Administration and Local Self-Governments set up working groups to draft amendments to the Minority Protection Act and the National Councils of National Minorities Act. It is unclear why civil society organisations were not invited to take part in the drafting of these amendments, especially given that these two laws are the main laws governing the status of national minorities.

4. In early April 2015, the Serbian Government rendered a Decision on the Establishment of the Republican National Minority Council. The Council held three sessions in 2015, but no conclusions can yet be drawn about the concrete effects of its work, i.e. whether it helped improve the status of national minorities and the authorities' communication with the representatives of national minorities.

5. The Chairwoman of the Slovak National Minority Council alerted the public to a grave incident that occurred in Kovačica in 2015. The Mayor of this municipality, a member of the Serbian Progressive Party, resorted to blackmail, threats and promises to persuade the members of the Slovak National Minority Council to sign documents forming a new majority in the Council that would oust its current Chairwoman. This is yet another example corroborating that the National Minority Councils are under the strong influence of political parties, that their work is largely guided by the political views of one or more parties crucially influencing them and that therein lies the main reason for their inability to adequately deal with the preservation of national, cultural and linguistic identity, for which they are empowered by the Constitution and the NCNMA.

Status of Roma

1. According to the most recent Census, conducted by the Statistical Office of the Republic of Serbia in 2011, 147,604 (2%) of Serbia's nationals declared themselves as Roma. The 2015–2025 Strategy for the Improvement of the Status of Roma in the Republic of Serbia and its Action Plan were to have been adopted by the end of 2015, with a view to improving the status of Roma, singled out in most analyses as the most discriminated category of Serbia's population.

2. In addition to the Commissioner for the Protection of Equality, who has frequently alerted to discrimination against Roma, the Protector of Citizens also held the view that Roma were the most vulnerable minority group in Serbia and that the hitherto activities implemented to improve their status have not eliminated the key obstacles to their integration, because affirmative education measures are insuf-

ficiently applied. He also warned that the ethnic distance towards the Roma had not been reduced. Roma have trouble accessing the education system. The state initiated the requisite system reforms by amending the Education System Act but the number of Roma children in the so-called “special schools” is still much too high. As is the share of early school leavers among Roma children.

3. The decision of the Belgrade University School of Languages to establish a Roma Language Group and the introduction of Roma Language as an elective subject in primary schools are definitely a step forward given that language is a major obstacle to Roma education. The establishment of the Roma Language Group finally provides teachers with degrees the opportunity to obtain Roma Language certificates and start holding class in this language. Furthermore, the decision to establish this Group finally equated Roma with other national minority languages taught at the Belgrade University School of Languages.

4. The Chapter 23 Action Plan envisages the resolution of the issue of the informal Roma settlements by the legalisation of all sustainable settlements. Roma living in the numerous informal settlements are still exposed to high levels of discrimination. The living conditions in these settlements are below the threshold of human dignity. Most of them lack electricity and running water and the hygiene in them is appalling.

5. The Zemun municipal authorities attempted to evict the informal Roma settlement Grmeč, in which over 50 Roma families, most of them displaced from Kosovo, are living. The Commissioner for the Protection of Equality issued a warning about the eviction and the Lawyers’ Committee for Human Rights filed an application with the European Court of Human Rights, asking it to issue an interim measure to halt the eviction. The municipal authorities reacted and issued new rulings, in which they directly applied the International Covenant on Economic, Social and Cultural Rights and quashed the initial rulings pending the provision of adequate alternative accommodation for the residents of this settlement. To the best of BCHR’s knowledge, this is the first time an administrative authority in Serbia directly applied an international human rights treaty and its practice expected to affect the new regulations governing this field.

People of Different Sexual Orientation or Gender Identity

1. The status of persons of different sexual orientation is still extremely unfavourable and they are subject to discrimination. There has been no change in the treatment of same-sex orientation in the high-school textbooks in 2015 although numerous organisations alerted to the fact that negative prejudices against LGBT persons were supported in biology, psychology and medical textbooks.

2. A complaint was filed with the Commissioner for the Protection of Equality against SNS deputy Aleksandar Martinović, who had made numerous discrimi-

natory remarks about LGBT persons during the parliament debate on the election of the new Commissioner for the Protection of Equality. The Commissioner, however, issued a conclusion discontinuing the review of the complaint against Martinović because he has parliamentary immunity. She simultaneously appealed to MPs and other public officials to bear in mind the role they were to play in promoting equality and tolerance.

3. Threats were voiced against the Pride Parade organisers again in 2015. The MIA High Technology Crime Department found that 30 people had threatened the organisers of the 2015 Pride Parade and spread hate speech on social networks. There are no centralised official data on the number of crimes motivated by hate of LGBT persons. LGBT persons, for their part, rarely report hate crimes out of fear of stigmatisation and further violence.

4. Several assaults targeting LGBT activists occurred in the run up to the 2015 Pride Parade. The Parade was nevertheless held for the second consecutive year on 20 September 2015, under strong police security. The various departments issued their certificates of consent to the event the day before the Parade, although the organisers had applied for them several months earlier. The Pride Parade organisers said that the presence of a large police force protecting the Parade participants hindered the latter's access to the event venue. No incidents occurred during the parade, although a counter-protest was held at the same time. The chants of the 70 or so counter-protesters, led by clerics, clearly amounted to hate speech against people of non-heterosexual orientation. The Trans Pride parade was held in a nearby park on the same day. Its participants called for the amendment of the Vital Registers Act. The Trans Pride was also safeguarded by a strong police force. The first Roma Parade was held in Belgrade in September 2015, with the aim of alerting to the problems the Roma community in Serbia faced.

Status of Persons with Disabilities

1. According to the 2011 Census, 7.96% of Serbia's citizens (571,780) declared themselves as persons with disabilities. Most of them said they had problems walking and the fewest reported communication problems. Women account for more persons with disabilities than men (58.2% v. 41.8%). Women with disabilities are 69 and men with disabilities are 64 years of age on average.

2. Persons with disabilities still encounter problems in exercising their rights despite the many laws envisaging the improvement of their status. There are only 30 sign language interpreters in Serbia. The realisation of the right to court-sworn sign language interpreters is practically impossible only eight such interpreters have been appointed to the Serbian courts altogether: five in Belgrade, one in Niš, one in Novi Pazar and one in Kragujevac. The reason most probably lies in the lack of formal training of court-sworn sign language interpreters; most of the ones now

rendering such services were born to deaf parents or work as teachers in schools for deaf children.

3. Although public service media 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. Lack of suitable textbooks, physical access and transportation to educational establishments are just some of the problems persons with disabilities encounter on a daily basis in their attempts to access education.

4. There are no precise data on the number of children with disabilities excluded from the education system, but estimates are that many such children are not covered by any form of social care or activities. According to the Social Protection Institute, two-thirds of the children with disabilities living in residential homes are fully excluded from the education system. In addition, the awareness of the citizens in Serbia about the educational needs of children with disabilities is still very low. Nearly 80% of Serbia's citizens believe that children with sensory and physical disabilities attending mainstream schools have negative impact on other children, while 65.2% believe the same applies to children with intellectual disabilities. Fewer than 500 youths with disabilities go to college. There is still some resistance to inclusive education among teachers and professional associations.

5. The data of the Ministry of Labour, Employment and Veteran and Social Affairs show that there are around 300,000 people with disabilities of working age but that only 13% have jobs. Persons with disabilities are discriminated against in the labour market, despite the positive headway made thanks to the adoption of the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities. The following obstacles to their recruitment have been identified: lack of access to the physical environment, public transportation, information and communication, workplaces, and the underdeveloped support system and services.

6. According to the data of the Ministry of Labour, Employment and Social and Veteran Issues, the employment rate of persons with disabilities has increased by 39% in the first eight months of 2015. People with disabilities have priority when applying for active employment measures laid down in the 2016 National Employment Action Plan, in accordance with their needs, assessed vocational abilities and capacity to work and the identified labour market needs.

7. The high shares of children with disabilities among the wards of residential institutions for children and youth can be ascribed to the underdeveloped specialised foster care and system of community services supporting children with disabilities and their parents. According to the Republican Social Protection Institute data, the predominant reasons for institutionalisation include the families' lack of will to look after the wards (28.6%) and the fact that the wards have no next of kin; only 1.6% of the wards have decided to live in an institution of their own free will. Most of the wards (71%) have been institutionalised over six years, half of them

over 10 years, while nearly a quarter of them have lived for over 20 years in institutions for adults.

8. The conditions in some institutions for children and adults have been characterised as inhuman and degrading treatment that can amount to torture. UN Special Rapporteur on Adequate Housing Leilani Farha said in her preliminary report on the situation in Serbia, that the state that Serbia needed to accelerate the process of deinstitutionalisation albeit at a pace ensuring that no one who was deinstitutionalised was rendered homeless, inadequately housed or without support and adequate care; to develop alternative community-based support services to reduce the number of institutionalised persons with mental and psycho-social disabilities, with a view to enabling persons with disabilities to live independently in their own homes.

9. A large number of persons with disabilities in Serbia are deprived of legal capacity. The regulations governing the status of these persons and the procedure for depriving people of legal capacity and appointing their guardians have not improved the situation much in practice. Many such persons are placed in specialised institutions. The facts that the number of incapable adults under guardianship has hardly changed since 2012, that hardly any of them have been deinstitutionalised and that 79% of them have died in these institutions are disquieting.

Gender Equality and Special Protection of Women

1. A new gender equality law was not adopted by the end of 2015 as planned. The valid Gender Equality Act is not in compliance with international standards. Serbia ranked 45th on the list of 145 states in the World Economic Forum Global Gender Gap Index. The 2015 Index included nine more states than in 2014, when Serbia was ranked 54th. Serbia ranked 74th on economic participation and opportunity, 52nd on educational attainment, 79th on health and survival and 43rd on political empowerment.

2. The results of a gender pay gap survey showed that women in Serbia were on average paid 11% less than men doing the same jobs and had a harder time getting a promotion. Conclusion of fixed-term employment contracts is the most widespread form of discrimination employers resort to when they hire young women. Women rarely decide to seek their rights in court, due to high court fees, fear that they will lose their jobs and because they are insufficiently aware of their rights.

3. The payment of the 35% of the pregnancy cash benefits paid out of the state budget was temporarily suspended in February 2015. Furthermore, there were delays in the payment of the 65% of the benefits by the RHIF, prompting over 300 pregnant women to file complaints with the Protector of Citizens. One of the austerity measures adopted by the Government involved the reduction of one-off benefits to young mothers by over 50% and the abolition of cash benefits for their third, fourth and fifth children in 2015.

4. Serbia does not ensure efficient protection of women from domestic violence. Although the amendments to the Criminal Code lay down stricter penalties for perpetrators of domestic violence, cases of such violence are rarely reported in practice, and even more rarely end up in court. Estimates are that every other woman in Serbia is subjected to some form of violence. As many as 34 women were killed in domestic violence incidents in 2015, i.e. 26% more than in 2014. Unemployed and economically dependent women, 56% of all Serbia's women according to the 2011 Census, are at greater risk of domestic abuse.

5. Under the Act on the Election of Assembly Deputies, 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 but women are seriously underrepresented in national and local public sector offices that have actual impact on decision-making. Women account for 84 (34%) of the 250 deputies in the National Assembly. An Open Parliament survey showed that as many as 22% of them had been the subject of discriminatory comments, jokes and indecent offers of their male colleagues.

6. Four of the 18 Government Ministers and two of the Deputy Prime Ministers are women. Women account for only 15% of Serbia's ambassadors. Only one of the eight state universities in Serbia – the University of Arts – has a female rector. The Serbian Academy of Arts and Sciences, established 128 years ago, has never been headed by a woman. The Army of Serbia has slightly more than 200 women officers, but none of them hold the highest rank of general. Only three women hold the rank of colonel.

Status of the Elderly

1. According to the 2011 Census, 17.40% of Serbia's population is over 65 years of age. Around 145,000 people are over 80 years of age, i.e. account for 3.59% of the total population. The Census registered 430,000 elderly households; over half of them were single elderly households.

2. Although there are no legally binding international treaties guaranteeing special rights to the elderly, there are several "soft law" instruments focusing exclusively on older persons, notably, the Vienna International Plan of Action on Aging, the United Nations Principles for Older Persons and the Political Declaration and Madrid International Plan of Action on Ageing.

3. The Constitution of Serbia does not recognise the elderly as a distinct social group, but the articles of specific laws govern their rights. An Action Plan for the implementation of the 2006–2015 National Strategy on Ageing has never been adopted.

4. Surveys on domestic violence in Serbia show that women, children and the elderly are groups that are the most vulnerable to domestic violence. Three of

the 34 women killed in domestic violence incidents in 2015 were between 56 and 65 years of age and nine were over 65 years old. The widespread abuse of older people in Serbia has been registered also in a survey of elder abuse conducted in August and September 2015, which showed that 19.8% of the respondents (68.6% of them women and 31.4% of them men), aged 73 on average had experienced some form of abuse in their life (financial, physical, psychological, verbal or sexual abuse or neglect) and that 5.5% of them had been subjected to multiple forms of abuse. Financial abuse is the most widespread (11.5%); 13.5% of the respondents said they did not dispose of their funds freely.

5. According to a Republican Social Protection Institute 2014 report on adult beneficiaries, 60.6% of the beneficiaries in the residential homes for adults and the elderly are fully dependent on others, 20.2% are partly dependent on others and 19.2% are independent, while 46.7% of them have been diagnosed with pathological changes in their mental health. Furthermore, older people in rural areas do not enjoy equal access to social welfare services, including accommodation in residential homes; nor does the law devote any particular attention to them.

I

LEGAL PROVISIONS RELATED TO HUMAN RIGHTS

1. International Human Rights Treaties and Serbia

1.1. Universal Human Rights Treaties

All major universal human rights treaties are binding on Serbia, including the International Covenant on Civil and Political Rights and 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,

Serbia did not submit any reports on the fulfilment of its obligations under international treaties to the relevant UN Committees in 2015, but it is due to submit its reports to the Committee for the Rights of the Child, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities in 2016.

The nationals of Serbia 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 Committee on the Rights of the Child because Serbia has not ratified Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

In December 2014, the Government of the Republic of Serbia enacted a decision forming a Council for the Monitoring of the Implementation of Recommendations of United Nations Human Rights Mechanisms.² The Council members are appointed by the Government. The Council is charge with proposing measures to be taken for the implementation of the recommendations; voicing its opinions on the progress made in the field of human rights during the reporting period and providing expert explanations of the state of human rights and of the results achieved by implementing the recommendations.

1.2. Council of Europe Regional Treaties

SaM ratified the European Convention for Human Rights (ECHR) and the 14 Protocols thereto on 26 December 2003. Serbia has not had any valid reservations to the ECHR since 2011. Serbia adopted Protocol No. 15 to the ECHR in May 2015.³ Serbia's citizens are entitled to file applications with the European Court of Human Rights.

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

Serbia ratified in 2009 the Revised European Social Charter accepting 88 of its 98 paragraphs, the CoE Convention on Action against Trafficking in Human Be-

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 deposited notification of succession of the former SFRY on 26 April 2001 and continued membership in international treaties. The Republic of Serbia, as the legal successor of the State Union of Serbia and Montenegro, 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 *Sl. glasnik (International Treaties)* 10/15.

ings 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.

The CoE Committee of Ministers adopted a resolution in 2015⁴ after examining the Advisory Committee's third opinion on Serbia's implementation of the Framework Convention for the Protection of National Minorities and the written comments of the Government of Serbia received in June 2014.

Serbia is under the obligation to submit periodic reports to the European Committee of Social Rights on the implementation of the Revised European Social Charter every five years. The deadline for submitting the 4th report was 31 October 2014 and Serbia submitted it on 26 February 2015. The European Committee of Social Rights adopted a report concerning Serbia in 2015.⁵

The nationals of Serbia are not entitled to file collective complaints to the European Committee of Social Rights under the Revised European Social Charter because Serbia has not agreed to the filing of this type of complaints.

1.3. Applications against Serbia before the European Court of Human Rights in 2015

1.3.1. Statistics

The European Court of Human Rights (ECtHR) in 2015 ruled on 2,612 applications against Serbia and declared inadmissible or struck out 2,491 of them. The ECtHR delivered 17 judgments with respect to Serbia and found Serbia in violation of at least one right under the Convention in 16 of them.⁶ Most of the judgments the ECtHR delivered against Serbia in 2015 regarded the non-enforcement of domestic court decisions and free enjoyment of possessions. The ECtHR has not yet ruled on 1,142 applications against Serbia.⁷

According to Serbia's Agent before the ECtHR, Serbia in 2015 paid circa 460,000,000 RSD to applicants who had successfully claimed violations of the

4 Resolution CM/Res CMN(2015)8, adopted by the Committee of Ministers on 1 July 2015 at the 1232nd meeting of the Ministers' Deputies. More at: <https://wcd.coe.int/ViewDoc.jsp?Ref=CM/ResCMN%282015%29&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>.

5 Conclusions and reports are available at www.coe.int/socialcharter. More on the Committee's conclusions in Chapter II.12–15.

6 Statistics of cases before the ECtHR are available at http://www.echr.coe.int/Documents/Stats_analysis_2015_ENG.pdf; http://www.echr.coe.int/Documents/Stats_violation_2015_ENG.pdf.

7 *Ibid.*

ECHR before the Court. Of that amount, 109,225,039 RSD were paid to compensate for non-pecuniary damages, mostly in cases regarding the non-enforcement of domestic court decisions. The remaining 350,000,000 RSD were paid to compensate for pecuniary damages – employment-related arrears awarded to former workers of companies predominantly comprised of socially-owned capital in final judgments, which had not been enforced.⁸

1.3.2. ECtHR Judgments with Respect to Serbia Delivered in 2015

EVT Company v. Serbia⁹. – The applicant complained to the ECtHR about the non-enforcement of the national court’s final judgment rendered in its favour in 2005, ordering the respondent company (the debtor) to settle its debt by paying the applicant a specific amount of money. The property of the enforcement debtor was inventoried and seized during the enforcement proceedings but was returned to the debtor at its request, because it claimed it belonged to a third person and offered other assets in its stead. The seized property was returned to the debtor, although no replacement assets were seized. The applicant proposed different means of enforcement, but its request was rejected and the final judgment remained unenforced. The ECtHR found that the length of the enforcement proceedings in the instant case was unreasonable, that the seized property had been returned to the debtor in contravention of the law. Since no further attempts were made to make an inventory of the debtor’s movable assets and to execute the enforcement order and the enforcement proceedings were not terminated on the grounds of the debtor’s indigence, the ECtHR found a violation of Article 6(1) of the Convention and Article 1 of Protocol No. 1. The ECtHR also held that the State was to ensure that all necessary steps were taken to allow the domestic proceedings to be concluded as speedily as possible and that it was to pay the applicant company 3,600 EUR in respect of non-pecuniary damage.

Nuhović and Kurtanović v. Serbia¹⁰. – The four applicants complained to the ECtHR about the non-enforcement of a final court judgment to the benefit of their deceased wife and mother, which was delivered in 2004. The court judgment had ordered the company predominantly comprised of socially-owned capital, in which their wife and mother had worked, to pay her salary arrears, social insurance contributions and the costs of proceedings. The State claimed that the application should be declared inadmissible as the proceedings on the inheritance of the alleged victim were still under way and the applicants have not been explicitly recognised as her heirs yet. The ECtHR, however, said it had previously accepted that the late applicants’ close relatives could maintain applications with complaints concerning various aspects of Article 6 of the Convention provided they had a sufficient interest in so

8 See the *Večernje novosti* article of 3 January, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:584279-Srbiju-sada-sve-manje-tuzakaju-u-Strazburu>.

9 ECtHR, App. No. 8024/08, judgment of 13 January 2015.

10 ECtHR, App. No. 57252/13, judgment of 24 February 2015.

doing. It went on to say that, “[I]n the cases where the applicant is a close relative of a direct victim and lodged the application to the Court after the direct victim’s death, the Court has also recognised the standing of such an applicant if the following criteria were fulfilled: the transferability of the right, the legitimate interest and the direct effect on patrimonial rights” and declared the application admissible. The ECtHR departed from the fact that the applicants belonged to the first order of heirs, as well as to the compulsory heirs of late Fatima Nuhović and that the application with no doubt concerned transferable rights, that the applicants had a “definite pecuniary interest” in the proceedings at issue and that the alleged violation of Article 6 of the Convention and Article 1 of Protocol No. 1 could have a direct effect on the patrimonial rights of the applicants.

The ECtHR found breaches of Article 6 of the Convention and Article 1 of Protocol No. 1 and considered that the Government should pay the sums awarded in the final domestic judgment, as well as the established costs of the enforcement proceedings, less any amounts which may have already been paid on this basis, to the estate of late Fatima Nuhović. Furthermore, the ECtHR considered that the applicants sustained some non-pecuniary loss arising from the breaches of the Convention found in this case and awarded 2,000 EUR to cover any non-pecuniary damage, as well as costs and expenses.

Raguž v. Serbia¹¹. – The applicant complained to the ECtHR about the non-enforcement of a final domestic court judgment rendered in his favour in 2003, ordering the debtor to settle his debt by paying the applicant a specific amount of money. Following several unsuccessful attempts to enforce the judgment, the enforcement proceedings were terminated due to the debtor’s death. The ECtHR reviewed all the circumstances of the case and found that the State had not acted diligently or taken sufficient steps to execute the final judgment. The ECtHR found, *inter alia*, that the national court had failed to inform the deceased debtor’s heirs, the names and addresses of which had been apparently known to it, about the enforcement proceedings or else, to appoint them a temporary representative. The ECtHR found a violation of Article 6 of the Convention and Article 1 Protocol No. 1, held that the State should ensure, by appropriate means, the full execution of the final judgment and awarded the applicant 1,500 EUR in respect of non-pecuniary damage.

Rafailović and Stevanović v. Serbia¹². – The two applicants separately filed applications with the ECtHR complaining about the non-enforcement of domestic court judgments. Given the same factual and legal backgrounds of the cases at issue, the ECtHR decided to join the applications and render one decision on them. The applicants had service provision agreements with municipal sub-units, the so-called, local communities, which had failed to fulfil their contractual obligations. After the court issued an enforcement order in enforcement proceedings in the Rafailović

11 ECtHR, App. No. 8182/07, judgment of 7 April 2015.

12 ECtHR, App. Nos. 38629/07 and 23718/08, judgment of 16 June 2015.

case, the account of the debtor was frozen and the applicant was registered as a second-class priority creditor. The case was, however, archived as terminated after a specific period of time and subsequently destroyed, wherefore the final judgment in favour of the applicant remained unenforced.

In the case of Stevanović, the court had issued an enforcement order on the seizure of the funds in the bank account of the debtor, the local community, and their transfer to the account of the applicant. However, given that there were hardly any funds in the account of the debtor, and there were indications that the debtor had been running its activities through other accounts to deceive the applicant, the applicant requested the change of means of enforcement. None of the courts at any level responded adequately to her requests, wherefore her claim remained unenforced.

The ECtHR departed from its case law, under which States are liable for the debts of municipalities and other entities or companies controlled by the local authorities. The ECtHR found a violation of Article 6(1) of the Convention and Article 1 of Protocol No. 1 in both cases as the enforcement judgments at issue had remained unenforced for years and the domestic authorities had impaired the essence of the applicants' "right to court" and prevented them from receiving the money they had legitimately expected to receive. The ECtHR held that the State was to pay the amounts specified in the final judgments to each applicant and awarded them each 4,800 EUR in respect of non-pecuniary damage and 600 EUR in respect of costs and expenses.

Grujović v. Serbia¹³. – The applicant alleged, in particular, that his pre-trial detention and the criminal proceedings against him had been excessively long. He also maintained that the Serbian authorities had hindered his right to individual petition to the ECtHR. The ECtHR found that that the applicant's detention exceeding seven years was extended beyond a reasonable time as there were no exceptional circumstances in the present case that could justify such lengthy proceedings. The ECtHR was not persuaded by the State's arguments about the complexity of the case because it found that the present case did not involve complex legal or factual issues which would justify such an excessive length. It said that the domestic authorities were required to organise the trial efficiently and ensure that the Convention guarantees were fully respected in the proceedings but was not satisfied that the conduct of the authorities was consistent with the fair balance, which has to be struck between the various aspects of this fundamental requirement. The ECtHR also bore in mind the fact that that the trial court scheduled in total forty-two hearings, of which nineteen were adjourned, mainly for different procedural reasons and that the trial had to start anew six times because the presiding judge and/or the composition of the trial chamber changed.

The ECtHR found a violation of Articles 5(3) and 6(1) of the Convention and awarded the applicant 4,500 EUR in respect of non-pecuniary damage and 1,500 EUR in respect of costs and expenses.

13 ECtHR, App. No. 25381/12, judgment of 21 July 2015.

Jovičić and Others v. Serbia,¹⁴ *Lučić v. Serbia*,¹⁵ *Gavović v. Serbia*,¹⁶ *Tomović and Others v. Serbia*,¹⁷ *Rakić v. Serbia*,¹⁸ *Šerifović and Others v. Serbia*,¹⁹ *Rakić and Sarvan v. Serbia*,²⁰ *Milenković and Veljković v. Serbia*,²¹ *Dragi Pretrović v. Serbia*,²² *Ljajić v. Serbia*²³. – In all these cases, the applicants had complained to the ECtHR about the non-enforcement of domestic final judgments rendered in their favour and against companies predominantly comprised of socially-owned capital. The final judgments had awarded the applicants specific amounts in respect of salary arrears, social insurance contributions and costs of proceedings. Relying on its well-established case law in similar cases,²⁴ the ECtHR held that the state had not taken the requisite measures to ensure the enforcement of these judgments and thus violated the applicants' right to the peaceful enjoyment of possessions guaranteed by the Convention.

In all these cases, the ECtHR found a violation of Article 6 (1) of the Convention and Article 1 of Protocol No. 1 and held that the Government should pay the applicants the sums awarded in the final domestic judgments, less any amounts which may have already been paid on this basis, and awarded each of them 2,000 EUR in respect of non-pecuniary damage and costs and expenses.

*Simonović and Others v. Serbia*²⁵. – The applicants complained to the ECtHR over the duration of enforcement of final judgments rendered in their favour

- 14 ECtHR, App. Nos. 37270/11, 37278/11, 47705/11, 47712/11, 47725/11, 56203/11, 56238/11 and 75689/11, judgment of 13 January 2015.
- 15 ECtHR, App. No. 13344/11, judgment of 24 February 2015.
- 16 ECtHR, App. No. 13339/11, judgment of 24 February 2015.
- 17 ECtHR, App. Nos. 5327/11, 5352/11, 5364/11, 5370/11, 5381/11, 5389/11, 5390/11, 13351/11, 13353/11, 17353/11, 17376/11, 17396/11, 17399/11, 17404/11, 17418/11, 17420/11, 17422/11, 17427/11 and 17434/11, judgment of 24 February 2015.
- 18 ECtHR, App. No. 78761/12, judgment of 28 April 2015.
- 19 ECtHR, App. Nos. 5928/13, 32514/13 and 68065/13, judgment of 20 October 2015.
- 20 ECtHR, App. Nos. 47939/11 and 56192/11, judgment of 20 October 2015.
- 21 ECtHR, App. Nos. 7786/13 and 47972/13, judgment of 20 October 2015.
- 22 ECtHR, App. No. 80152/12, judgment of 20 October 2015.
- 23 ECtHR, App. No. 58385/13, judgment of 21 July 2015.
- 24 *R. Kačapor and Others v. Serbia*, ECtHR, App. Nos. 2269/06, 3041/06, 3042/06, 3043/06, 3045/06, 3046/06, judgment of 15 January 2008; *Crnišaniin and Others v. Serbia*, ECtHR, App. Nos. 35835/05, 43548/05, 43569/05 and 36986/06, judgment of 13 January 2009; *Marinković v. Serbia*, ECtHR, App. No. 5353/11, judgment of 22 October 2013; *Adamović v. Serbia*, ECtHR, App. No. 41703/06 judgment of 2 October 2012; *Marčić and Others v. Serbia*, ECtHR, App. No. 17556/05 judgment of 30 October 2007 and *Rašković and Milunović v. Serbia*, ECtHR, App. Nos. 1789/07 and 28058/07 judgment of 31 May 2011.
- 25 ECtHR, App. Nos. 52590/10, 55386/10, 55816/10, 56627/10, 56707/10, 56744/10, 57773/10, 58872/10, 60251/10, 60310/10, 65431/10, 67399/10, 67452/10, 75335/10, 75400/10, 75403/10, 578/11, 13912/11, 15407/11, 15418/1, 17227/11, 22522/11, 27883/11, 28214/11, 28297/11, 28337/11, 28353/11, 28358/11, 31710/11, 31771/11, 31778/11, 31781/11, 33864/11, 33885/11, 33906/11, 37183/11, 37195/11, 37655/11, 37698/11, 38065/11, 41378/11, 41384/11, 41413/11, 41414/11, 41416/11, 41417/11, 41419/11, 41428/11, 41502/11, 41630/11, 41674/11, 41692/11,

against a former socially-owned company and ordering the payment of their salary arrears and various social insurance contributions. The ECtHR did not accept the State's argument that the applicants no longer had the status of victim because all the judgments had been enforced. It found a violation of Article 6(1) of the Convention, noting that the applicant may still claim to be a victim of an alleged violation of the rights guaranteed by Article 6(1) in relation to the period during which the decision of which he complained remained unenforced. Relying on its case law, it reiterated that the execution of a judgment given by a court had to be regarded as an integral part of the "trial" for the purposes of Article 6 and that a delay in the execution of a judgment may be justified in particular circumstances, but that it may not be such as to impair the essence of the right protected under Article 6(1). The ECtHR did not award any compensation to the applicants as they had submitted their just satisfaction claims after the expiry of the time-limit fixed for that purpose.

*Stanković and Trajković v. Serbia*²⁶. – The applicants complained to the ECtHR about the inconsistent domestic case-law as regards the payment of non-pecuniary damages to individuals whose family members had disappeared or been kidnapped in the aftermath of the North Atlantic Treaty Organisation's intervention in Kosovo in 1999. They claimed that their right to a fair trial enshrined in Article 6(1) of the Convention had been violated because the domestic courts had rejected their claims for compensation of damages due to the disappearance of their husbands, while claims by other plaintiffs in identical situations had been upheld. Although the ECtHR concluded that the domestic courts had upheld claims similar to those filed by the applicants in the 2006–2010 period and that their claims were the only ones that were rejected, it nevertheless found no violation of Article 6(1) of the Convention. The ECtHR relied on its case law, under which only "profound and long-standing differences" in the case-law of the domestic courts amount to a breach of Article 6(1) of the Convention, and that this was not the case in the circumstances. The ECtHR noted that the possibility of conflicting court decisions was an inherent trait of any judicial system based on a network of trial and appeal courts with authority over a certain area, that such divergences may also arise within the same court, and that this, in itself, however, could not be considered to be in breach of the Convention.

2. Correlation between National and International Law

The 2006 Constitution of the Republic of Serbia²⁷ includes provisions defining the correlation between international and national law. Under Article 16(2) of the Constitution, the generally accepted rules of international law and ratified

42549/11, 42613/11, 42884/11, 42886/11, 43052/11, 43056/11, 44315/11, 44348/11, 44378/11, 44545/11, 44586/11, 44618/11, 44702/11, 45408/11, 47543/11, 50125/11, 50134/11, 50138/11, 50166/11, 50374/11, 65908/11 and 65914/11, judgment of 17 November 2015.

26 ECtHR, App. Nos. 37194/08 and 37260/08, judgment of 22 December 2015.

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

international treaties shall be an integral part of the national legal system and applied directly. The Constitution uses the term “ratified international treaties”, which covers the international treaties the Serbian National Assembly ratified by law. It is, however, unclear what the authors of the Constitution imply under “generally accepted rules of international law” – just the rules of international customary law or the general international law principles as well.

The constitutional provisions dealing with the hierarchy of legislation stipulate the compliance of the ratified international treaties with the Constitution (Art. 194 (4)) and the compliance of laws and general enactments with ratified 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 it is not in compliance with the Constitution. The European Commission for Democracy through Law (Venice Commission) alerted to this risk in its Opinion on the 2006 Constitution²⁸, 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 Constitutional Court of Serbia is charged with the judicial control of the compliance of Serbia’s law with its international obligations. Under Article 167 (1(1 and 2)), this Court shall rule on “compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties” and “compliance of ratified international treaties with the Constitution”. Article 169 of the Constitution allows the Constitutional Court to review the constitutionality of a law ratifying an international treaty before it comes into effect, which will help avoid situations of Serbia violating its obligations under a treaty it has ratified.

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](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-e)).

29 Under 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.

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 generally recognised rules of international law and ratified international treaties (Art. 142). The practice of applying international treaties and customs before national courts, has not, however, been embraced.

3. Human Rights in the National Legislation

3.1. *Constitution of the Republic of Serbia and Provisions on Human Rights, Human Rights Restrictions and Derogations*

Section II of the Constitution of Serbia³⁰, adopted in 2006 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).

The Constitution contains a broad catalogue of human rights but some human rights provisions are deficient or ambiguous. For example, 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 and does not deal with discrimination against women appropriately. 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.³¹

When imposing restrictions on human and minority rights and interpreting these restrictions, all state agencies, courts in particular, are obliged to take into account the essence of the right subject to restriction, the importance of the purpose of restriction, the nature and scope of the restriction, the relationship between the restriction and its purpose, as well as consider the possibility of fulfilling this purpose by a lesser restriction of the right, while the restrictions should never infringe on the essence of the guaranteed right (Art. 20), but the Constitution does not explicitly state that the aim of the restriction must be legitimate.³² This shortcoming

30 *Sl. glasnik RS*, 83/06.

31 More on each right in Chapter II.

32 In its *Opinion on the Constitution of Serbia*, the Venice Commission commented Article 20 of the Constitution related to restrictions of human and minority rights (paras. 28–30 of the Opinion). Apart from criticising this provision for not requiring the existence of a legitimate aim for the restrictions to be allowed, the Commission also opined that the excessively complicated

can be partly overcome by a general interpretation clause in Article 18, under which “[P]rovisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards on human and minority rights, as well as the practices of international institutions which supervise their implementation”. Given the ECtHR’s case law, a legitimate aim would have to be prerequisite for a human rights restriction to be acceptable.

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

The Constitution does not explicitly state which rights may or may not be exercised directly and leaves that assessment to the legislature. This may create potential for abuse and the restriction of directly exercisable rights by laws. The Constitution explicitly prescribes that a law regulating the realisation of a specific right may not infringe on the substance of that right.

Pursuant to Article 18(2) of the Constitution, the manner of exercising certain freedoms and human rights may be prescribed by law – when so explicitly envisaged by the Constitution and when necessary to ensure the exercise of a specific right owing to its nature. This provision provides for the regulation by law of specific rights, which are not directly implementable in the view of the authors of the Constitution. The Constitution does not explicitly state which rights may or may not be exercised directly and leaves that assessment to the legislature. This may create potential for abuse and the restriction of directly exercisable rights by laws. The Constitution explicitly prescribes that a law regulating the realisation of a specific right may not infringe on the substance of that right.

This does not necessarily imply a restriction of rights, although the fact that the Constitution leaves it to laws to elaborate how specific rights are exercised allows for limiting the scope of the enjoyment of such rights.

Article 20 of the Constitution clearly 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 Constitution strictly lays down the principle of proportionality. The standards for evaluating proportionality are in keeping with the case law of the European Court of Human Rights.³³

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.

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

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

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

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

3.2. Constitutionality and Legality

3.2.1. Constitutional Court of Serbia – Composition, Election of Judges and Jurisdiction

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

34 Article 202(1) of the Constitution.

35 See the 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, paragraphs 97–98.

(4)). Judges shall be appointed from amongst “prominent lawyers” who are at least 40 years of age and have at least 15 years of experience in practicing the law (Art. 172 (5)). 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)³⁶ failed to lay down clear and efficient rules on the appointment of the Constitutional Court judges or proper guarantees of the Court’s independence, which was not rectified by the Act Amending the Constitutional Court Act either although that was recommended by the Venice Commission.

In its 2015 Progress Report, the European Commission said that some constitutional provisions remained to be put in line with the recommendations of the Venice Commission, in particular concerning the role of parliament in judicial appointments³⁷. This deficiency was similarly commented in the Chapter 23 Screening Report on judiciary and fundamental rights.³⁸

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

The Constitutional Court rules in Large and Small Judicial Chambers. Small Judicial Chambers, comprising three judges, are entrusted with rendering specific decisions and conclusions that are procedural in character. In the event a Small Judicial Chamber is unable to reach agreement on a matter within its jurisdiction, the decision on it is taken by a Large Judicial Chamber. The Court has two Large Judicial Chambers, each comprising a chairperson and seven judges. Large Judicial Chambers adopt their decisions unanimously; matters that do not receive unanimous support are referred for review to the plenary session of the Court. The most important decisions, such as decisions on the merits in cases involving reviews of constitutionality and legality, on the prohibition of political parties, trade unions, civil associations or religious communities and on violations of the Constitution by the President of Serbia, are still rendered by the Court in plenary sessions.

36 *Sl. glasnik RS*, 109/07, 99/11, 18/13 – Constitutional Court Decision.

37 The 2015 Progress Report is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

38 See more on: <http://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20%283%29.pdf>.

Under Article 3 of the Constitutional Court Act, the Court shall ensure the transparency of its work by publishing its decisions and communiqués after sessions on its website, holding public hearings and hearings in proceedings before the Court, issuing press releases, holding news conferences and in other ways. The public shall be excluded only in order to protect the interests of national security, public order and morality in a democratic society or to protect the interests of minors or the privacy of participants in the proceedings (Art. 3(3)).

3.2.2. Reviews of Constitutionality and Legality before the Constitutional Court of Serbia

The Constitutional Court shall rule on the compliance of laws and other general enactments with the Constitution, generally accepted rules of international law and ratified international treaties and on the compliance of the ratified international treaties with the Constitution (Art. 167 of the Constitution). Every natural or person is also entitled to initiate a procedure for a constitutionality or legality review. The Court may also rule on the constitutionality of a law that has been adopted but not yet promulgated at the request of at least one-third of the National Assembly deputies (Art. 169). The procedure for reviewing constitutionality or legality may be initiated by the Constitutional Court, state authorities, provincial and local authorities or at least 25 National Assembly deputies (Art. 168(1)).

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

The Court may notify the National Assembly of the situation and problems regarding the realisation of constitutionality and legality, render its opinions and indicate the necessity to adopt new or amend existing laws. The Constitutional Court, however, still cannot order the legislator to adopt regulations ensuring respect of a

constitutional right. The National Assembly has, unfortunately, in most cases not taken further steps to have the disputed provisions amended. Neither has the Government, which has tabled nearly all the laws subject to this procedure before the Constitutional Court.³⁹

4. Legal Remedies for the Protection of Human Rights Provided by the Serbian Legal System

4.1. *General*

Article 2(3) of the ICCPR, Article 13 of the ECHR and provisions of some other international treaties impose upon the state the obligation to ensure legal remedies. Article 22 of the Constitution of Serbia sets out that everyone shall have the right to judicial protection in case any of their human or minority rights guaranteed by the Constitution have been violated or denied and the right to the elimination of the consequences of such a violation. It also provides everyone with the right 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.⁴⁰ The Constitution guarantees the right to rehabilitation and compensation of damages to persons unlawfully or groundlessly deprived of liberty, detained or convicted for a punishable offence and compensation to persons who had suffered pecuniary or non-pecuniary damages inflicted on them by the unlawful or inappropriate work of the state authorities (Art. 35). Article 36 guarantees everyone the right to file an appeal or apply another legal remedy against any decisions on their rights. Apart from the Constitution, several other laws also envisage the rights to reparations, rehabilitation and compensation of damages.

4.2. *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).⁴¹ Article 367 of the CPA deals with appeals of judgments and Article 399 governs appeals of deci-

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

40 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.

41 *Sl. glasnik RS*, 72/11, 49/13 – Constitutional Court Decision and 74/13 – Constitutional Court Decision.

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

A motion for the revision of a final judgment is an extraordinary legal remedy envisaged by the CPA (Art. 403). International human rights protection bodies generally treat such revisions as effective and ordinary legal remedies. The right to file a motion for a revision, however, is limited considerably by the CPA. The Act does not allow revisions of final judgments in property disputes when the claims regard the right of ownership of real estate or pecuniary claims, transfers of property or performance of other obligations in the event that the value of the subject matter in the impugned part of the judgment does not exceed the equivalent value of 100,000 EUR at the average exchange rate of the National Bank of Serbia on the day the claim is filed (Art. 403(3)). Furthermore, a motion for a revision may only be filed by a litigant's representative from among the ranks of lawyers (Art. 410). Finally, a motion for a revision 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 revision are reviewed by the Supreme Court of Cassation.

The Criminal Procedure Code (CPC)⁴² 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 the 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 European

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

Court of Human Rights (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 situation in practice does lead to situations in which the injured parties are deprived of the right to launch criminal proceedings due to the negligence or ill-will of the public prosecutor, restrictions of the private citizens' right to access criminal courts in the capacity of prosecutors are not considered a violation of the right to an effective legal remedy.

The General Administrative Procedure Act⁴³ and the Non-Contentious Procedure Act⁴⁴ include similar provisions on the right of appeal. Judgments rendered in administrative disputes may not be appealed. Administrative disputes may only be instituted against decisions on matters previously reviewed in administrative proceedings.⁴⁵

The provisions of the General Administrative Procedure Act, under which an appeal shall not stay enforcement (Art. 221(1)) affect the effectiveness of legal remedies greatly. This law is, e.g. applied in court reviews of appeals of decisions on asylum applications usually ordering the unsuccessful applicants to leave the territory of the Republic of Serbia. For a remedy to be deemed effective in such proceedings in the meaning of ECtHR case law, the suspensive effect of an appeal must be automatic, rather than resting solely on the discretion of the domestic authority considering the individual's case.⁴⁶ Although the Administrative Court has not suspended the enforcement of a final administrative enactment in any asylum case to date, the Constitutional Court nevertheless took the view that an appeal filed with the Administrative Court was an effective legal remedy, which is not in accordance with ECtHR case law.⁴⁷

This principle is critical also in eviction cases in which the non-suspensive effect of appeals is one of the reasons why the vast majority of the residents of informal settlements have been discouraged from appealing the eviction orders. Since appeals do not stay eviction, most rulings on the few appeals that had been filed were issued after the evictions.⁴⁸

43 Articles 12, 123 (appeals), Article 239 (retrials); *Sl. list SRJ*, 33/97, 31/01 and *Sl. glasnik RS*, 30/10.

44 The Act governs the right of appeal for each type of non-contentious procedure.

45 Article 7, Administrative Disputes Act, *Sl. glasnik RS*, 111/09.

46 See *Right to Asylum in the Republic of Serbia 2013*, BCHR, 2014, available at http://www.azil.rs/doc/Right_to_Asylum_in_the_Republic_of_Serbia.pdf.

47 *Ibid.*

48 "Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing", Praxis, 2013, available at http://www.praxis.org.rs/images/praxis_downloads/Report_right_to_adequate_housing.pdf.

4.3. *Impact of ECtHR Case Law on the Jurisprudence of Serbian Courts of General Jurisdiction*

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

The Criminal Procedure Code (CPC) 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 Chief State Prosecutor and it is ruled on by the Supreme Court of Cassation.

4.4. *Constitutional Appeals*

Constitutional appeals may be filed against individual enactments or actions by state bodies or organisations exercising public authority 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 also allows for the filing of a constitutional appeal in the event the appellant's right to a fair trial was violated or in the event the law excluded the right to the judicial protection of his human and minority rights and freedoms (Art. 82)). This provision provides for the filing of a constitutional appeal 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 Constitutional Court's first decisions on the merits of the appeals had been published.⁴⁹

The appellants may seek the protection of all human rights enshrined in the Constitution or another international instrument binding on the Republic of Ser-

49 *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.

bia.⁵⁰ The 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.⁵¹

All natural or legal domestic or foreign persons who are holders of the constitutionally guaranteed human rights and freedoms are entitled to file a constitutional appeal.⁵² A constitutional appeal is not an *actio popularis*, and it needs to be noted that the potential appellant must have personally been the victim of a breach of a constitutionally guaranteed human right or freedom. Other persons (natural persons, state authorities or organisations charged with the monitoring and realisation of human rights) may file a constitutional appeal on behalf of a person whose right or freedom was violated only with his written consent.

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

50 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.

51 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.

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

dividual 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 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.

The Constitutional Court may overturn decisions of lower courts when it finds them in violation of human rights.⁵³ 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.⁵⁴

4.5. Selected Constitutional Court Decisions Delivered in 2015⁵⁵

4.5.1. Review of the Constitutionality of the Provisional Pension Payments Act

In late September 2015, the Constitutional Court issued a ruling⁵⁶ dismissing the initiative to review the constitutionality of the Provisional Pension Payments Act⁵⁷, under which all pensions over 25,000 RSD were progressively reduced. In its reasoning, the Constitutional Court said that although the pensions acquired in accordance with the law constituted the pensioners' possessions, the Constitution did not guarantee their amounts. Furthermore, it held that both the Constitution and the ECHR allowed restrictions of pension-related rights under specific conditions.

The Constitutional Court dismissed the allegations of the authors of the initiative that the Act was incompatible with the Constitution and international treaties, explaining that the pension cuts were governed by a law rather than subsidiary legislation, that the Act did not impinge on the right to a pension, that the measures were laid down to pursue the legitimate aim of ensuring regular payments of (albeit lower) pensions, and that the measures were temporary in character and affected pensioners depending on the amounts of all the pensions.

53 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.

54 See Article 33(3) of the Act Amending the Constitutional Court Act and Article 89(3) of the Constitutional Court Act.

55 A review of the Constitutional Court decisions before 2015 is available in Serbian at: <http://www.bgcentar.org.rs/praksa-usravnog-suda-rs/>.

56 Constitutional Court Ruling, Case No. IUz 531/2014.

57 *Sl. glasnik RS*, 116/14.

4.5.2. Review of the Constitutionality of the Act on the Method for Determining the Maximum Number of Public Sector Staff

The National Assembly adopted the Act on the Method for Determining the Maximum Number of Public Sector Staff⁵⁸ that came into effect on 12 August 2015. Under Article 20 of this Act, all public sector staff fulfilling the pensionable age and years of service requirements shall automatically retire during the validity of this Act.

The Pension and Disability Insurance Act lays down the general age pension eligibility requirements (65 years of age and 15 years of service or 45 years of service) without distinguishing between men and women, but it also allows women to take their age pensions when they turn 60.

The legislator has discriminated against women working in the public sector by laying down in the Act on the Method for Determining the Maximum Number of Public Sector Staff that public sector staff must retire as soon as they fulfil the age and service requirements as long as this Act applies.

A motion⁵⁹ and initiatives to review the constitutionality of Article 20 of the Act on the Method for Determining the Maximum Number of Public Sector Staff were submitted to the Constitutional Court.

Although the review of the constitutionality of this Act has not been completed yet, the Constitutional Court issued a ruling⁶⁰ in which it held that “the prescription of a legal requirement to terminate employment of people when they reach a specific age, which applies only to women working in the public sector, and the indirect transformation of a legal right (right to an age pension under more favourable age-related conditions) into grounds for termination of employment is constitutionally disputable given the constitutionally guaranteed prohibition of ... discrimination on any grounds, notably..., on grounds of sex, and, indirectly, given the right enshrined in the Constitution, under which all jobs shall be available to everyone under equal conditions”.

By its ruling, the Constitutional Court suspended the enforcement of any individual enactments or actions adopted or undertaken pursuant to the impugned provisions pending its final decision on the constitutionality of Article 20 of this Act.

58 *Sl. glasnik RS*, 68/15.

59 The press release on the motion to review the constitutionality of Article 20 of the Act, submitted by the Protector of Citizens and the Commissioner for the Protection of Equality, is available at: <http://www.ravnopravnost.gov.rs/en/news/the-commissioner-for-protection-of-equality-and-the-protector-of-citizens-have-filed-the-proposal-for-assessment-of-constitutionality-of-the-regulations-of-the-law-establishing-the-maximum-number-of-employees-in-the-public-sector>.

60 IUz-144/2015.

4.5.3. Review of the Constitutionality of the Act Amending the Act on Judges

The Constitutional Court issued a decision⁶¹ declaring unconstitutional the 2012 Act Amending the Act on Judges.⁶² As opposed to the original Act on Judges, the impugned provision in the 2012 Act laid down that the performance of first-time judges appointed to three-year tenures did not have to be appraised i.e. that the High Judicial Council would appoint them on permanent tenure without first appraising their performance.

In the reasoning of its decision, the Constitutional Court said that the National Assembly had been forced to adopt such a provision to avoid the non-appointment of judges on permanent tenure after the expiry of the three-year tenure of first-time judges. It noted that the executive had been forced to intervene because the High Judicial Council had failed to adopt enactments governing the appraisal of judicial performance. It held that, in this case, the judiciary had been undermined by itself, not by the legislative authorities and that this was why the impugned Act had been adopted, in order to eliminate such a threat. Thus, although this Act per se constituted interference in another branch of government, it had not precluded the judiciary from being independent and independently appointing judges.

In the view of the Constitutional Court, the fact that the High Judicial Council had failed to act in accordance with the Act on Judges, i.e. that it had failed to adopt the criteria for appraising judicial performance, amounted to a violation of the rule of law principle.

61 IUz-156/2014.

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

II INDIVIDUAL RIGHTS

1. Right to Life

1.1. General

The right to life is enshrined in Article 6 of the ICCPR and Article 2 of the ECHR, and their Protocols abolishing capital punishment. The Constitution of the Republic of Serbia affords protection to the right to life in Article 24, which lays down that human life is inviolable and that there shall be no death penalty in Serbia. Neither the relevant international treaties nor the Constitution (Art. 202) allow derogations from the right to life.

The right to life entails not only the state's obligation to refrain from deprivation of life, but also its obligation to take appropriate measures to protect life, which, above all, includes the adoption and effective enforcement of laws and the obligation to conduct effective investigations into deaths caused by use of force or the state's failure to protect the right to life.

1.2. State's Obligations with Respect to the Right to Life

The state's obligation to refrain from deprivation of life is not absolute as deprivation of life resulting from the use of force, which is no more than absolutely necessary, is not considered in breach of the ECHR.

Serbia's laws specify which state agents may use lethal weapons and in which situations, pursuant to this provision of the European Convention. Police and Security Information Agency (SIA) officers may use means of coercion, including firearms, under the conditions and in the manner laid down in the Police Act¹ and the Rulebook on the Technical Features and Manner of Use of Means of Coercion.² Under Article 12 of the Security Information Agency Act (SIAA)³ specific Agency

1 *Sl. glasnik RS*, 101/05, 63/09 – Constitutional Court decision and 92/11.

2 *Sl. glasnik RS*, 19/07 and 112/08.

3 *Sl. glasnik RS*, 42/02 and 111/09.

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

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

The Penal Sanctions Enforcement Act (hereinafter: PSEA)⁴ and the Rulebook on Measures for Maintaining Order and Security in Penal Institutions⁵ specify under which conditions means of coercion may be used in penitentiaries. Private security guards may use firearms in accordance with the Private Security Act⁶ and the Police Act.

The Police Act lays down when firearms may be used, notably in order to: protect the lives of people; prevent the escape of a person apprehended during the commission of a crime but only “if there is an imminent threat to life”; prevent the escape of a person lawfully deprived of liberty or against whom an arrest warrant was issued for a crime “if there is an imminent threat to life”; to repel an immediate attack threatening the life of an officer or another person (Art. 100). These provisions are in accordance with ECHR standards and the principle of proportionality.⁷

Use of firearms is not permitted if it may jeopardise the lives of people not threatening the lives of other people. Furthermore, the Police Act lays down that an officer shall exercise police powers, in accordance with, *inter alia*, the “standards set in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officers” (Art. 31(5)).

The Rulebook on the Technical Features and Manner of Use of Means of Coercion sets out that the police will prepare an action plan before they exercise their powers against a person in the event they have information indicating that

4 *Sl. glasnik RS*, 85/05 and 72/09.

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

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

7 See, e.g. the ECtHR judgments in the following cases *McCann and Other v. United Kingdom*, ECtHR, App. No. 18984/91 and *Makaratzis v. Greece*, ECtHR, App. No. 50385/99.

the person will offer armed resistance (Art. 16).⁸ Article 25 of the Rulebook prescribes a special internal audit procedure for reviewing whether the use of means of coercion was justified and lawful; such a procedure is conducted whenever firearms were used or when the application of the means of coercion resulted in grave physical injuries or death (Art. 25). In such cases, the Police Director or the head of the relevant regional police directorate in which the police officer who used the means of coercion works, sets up a commission which reviews the circumstances in which the means of coercion were used, makes a record of the review and renders its opinion on whether the use of means of coercion was lawful and professional.⁹ An authorised officer shall “propose to the Police Director to take the measures prescribed by the law” in the event he concludes that the use of means of coercion was unjustified or unlawful (Art. 25(3)). The Rulebook, however, only lays down that “information on cases of unjustified or unlawful use of the means of coercion” shall be an integral part of the MIA annual report to the National Assembly and “publicly available” (Art. 25(4)), which does not rule out the possibility that data on unjustified or unlawful use of means of coercion are left out of the annual reports. The law is silent on the role of the injured parties in the procedure, i.e. whether they can take any part in the review or propose measures to protect their interests.

Regulations governing the use of lethal weapons by the staff of penal institutions are somewhat more detailed than those applying to the police. The Rulebook on Measures for Maintaining Order and Security in Penal Institutions explicitly lays down that the purpose of using firearms is to incapacitate the assailant and that the authorised officer shall endeavour not to injure the convict’s vital organs, i.e. that he will aim at the convict’s legs (Art. 36(4)). The Rulebook distinguishes between the lethal use of firearms, permitted only if human lives are in danger (Art. 36(5)) and the non-lethal use of firearms, permitted also when human lives are not in danger.¹⁰ The main difference between regulations governing the use of firearms by the police and the use of firearms by prison guards is that the former strictly limit the use of firearms to situations in which there is “an imminent threat to life”, while the latter allow the use of firearms also in situations in which no-one’s life is in danger and when there is only the risk of the convict or detainee absconding. This is not,

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

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

10 Under Article 131 of the PSEA, firearms may be used only if it is impossible to otherwise repel a concurrent and imminent unlawful attack endangering human life; prevent the escape of a prisoner from a high security prison; prevent the escape of specific categories of convicts or detainees during their transfer.

however, in contravention of Article 2 of the ECHR, which allows the use of potentially lethal means of force in situations when it is absolutely necessary to prevent an escape and does not condition it by the existence of danger to anyone's life.¹¹

Under the Private Security Act, private security guards may use firearms only in self-defence and when strictly necessary (Art. 55(1)). The law stipulates that any use of means of coercion must be in accordance with the principle of proportionality (Art. 46(4 and 5)). A security guard who used means of coercion must immediately notify the competent police administration thereof (Art. 56(2)) and shall submit his report on the use of the means of coercion to the responsible person in the private security company within 12 hours (Art. 56(3)). The latter shall forward the "report with his opinion" to the police administration within 48 hours (Art. 56(4)). Six rulebooks¹² were adopted by the end of 2015, but they do not include the rulebook on training and licencing companies and individuals extending private security services. Under the amendments to the Private Security Act, companies and entrepreneurs extending private security services on the day the Act comes into force shall bring their work into compliance with the provisions of this law by 1 January 2017.¹³

1.3. Penal Policy and Protection of the Right to Life in Serbian Law

As far as the state's obligation to take the relevant measures to protect human life is concerned, it may be concluded that Serbia's legislation adequately protects the right to life. The Criminal Code includes a chapter on crimes against life and body (Chapter XIII, Arts. 113–127), incriminating various forms of violent deaths as well as numerous categories of other offences that may threaten human lives and health. It incriminates offences against human health (Chapter XXIII, Arts. 246–259), the environment (Chapter XXIV, Arts. 260–277), general safety of people and property (Chapter XXV, Arts. 278–288) and public traffic safety (Chapter XXVI, Arts 289–297). Crimes resulting in the deprivation of or threat to life warrant up to 40 years' imprisonment.

11 See, e.g. the judgment in the case of *McCann and Others v. the United Kingdom*, paragraph 148, and the decision of the European Commission of Human Rights in the case of *Stewart v. the United Kingdom*, ECmHR, App. No. 10044/82, paras. 11–19.

12 Rulebook on Detailed Requirements to be Fulfilled by Legal and Natural Persons Extending Professional Private Security Service Training Services; Rulebook on Private Security Training Curricula and Implementation; Rulebook on the Colours and Parts of Security Guard Uniforms; Rulebook on the Performance of Technical Protection Duties and Use of Technical Devices; Rulebook on Professional Private Security Examinations, Costs of Their Organisation and Holding and Content and Keeping of Records; and, the Rulebook on the Use of Means of Coercion by Private Security Guards. These Rulebooks are available in Serbian at http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/obezbedjenje-akti.h.

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

Several atrocious crimes in 2015 prompted a debate on tightening the penal policy. The Ministry of Justice formed a Working Group that drafted amendments to the Criminal Code prescribing life imprisonment for the gravest crimes and qualified forms of grave crimes.¹⁴ The experts' divided views on life imprisonment voiced at the public debate prompted the Working Group to exclude the provisions on life imprisonment from the draft submitted to the Government and extend the debate on life imprisonment by six months and, depending on its outcome, amend the Criminal Code again.¹⁵

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

Serious problems have, however, arisen in the practical enforcement of legislation aimed at protecting the right to life.

No headway was made in protecting women from domestic violence, despite the activities undertaken by the state authorities in 2015. Thirty-four women lost their lives in domestic violence incidents in 2015.¹⁶ The competent state authorities took steps to suppress domestic violence after a heinous crime in which seven people, four of them women, were killed in Martonoš and Orom at Kanjiža, on 17 May 2015. The representatives of the Ministries of Justice, Internal Affairs, Labour, Employment, Veteran and Social Affairs and the State Public Prosecution Service held a meeting at which they decided to establish an expert commission that will be tasked with suggesting specific steps and measures to combat domestic violence.¹⁷ The National Assembly Committee on Human and Minority Rights and Gender Equality held a public session on the increasingly frequent violence

14 The draft is available in Serbian at <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

15 More in the following articles available in Serbian at: <http://www.novosti.rs/vesti/naslovnadrustvo/aktuelno.290.html:570749-Odlaze-se-dozivotna-robija> and http://www.danas.rs/danasrs/drustvo/bez_dozivotne_robije_u_srbiji.55.html?news_id=309401.

16 See the *Danas* and *Politika* articles, available in Serbian at http://www.danas.rs/danasrs/drustvo/nezainteresovani_da_zastite_zene.55.html?news_id=312625 and <http://www.politika.rs/scc/clanak/346510/Paunovic-U-2015-stradalo-34-zene-zbog-nasilja-u-porodici>. Media reports of the domestic violence death toll in 2015 vary (33 and 36), see the following reports in Serbian at: <http://www.womenngo.org.rs/vesti/423-amandmani-minut-cutanja-za-ubijene-zene-uz-amandmane-za-hitne-mere-zastite> and http://www.danas.rs/danasrs/drustvo/vec_100_zena_trazilo_pomoc_.55.html?news_id=314473.

17 See the *RTV* report available in Serbian at: http://www.rtv.rs/sr_lat/drustvo/nasilnicima-oduzimanje-oruzja-i-lecenje_602185.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3ARtvSveVesti+%28RTV+poslednje+vesti%29.

against women.¹⁸ The Ministry of Justice prepared the Baseline for the Systemic Suppression of Crimes against Sexual Freedoms and Crimes against Marriage and Family, which includes a number of measures and activities.¹⁹ Nearly all the listed activities are laid down in the Special Protocol for the Judiciary in Domestic Violence Cases, albeit in greater detail,²⁰ which the Ministry of Justice and State Administration adopted in January 2014. This yet again indicates that the formal legal framework for effective action exists, but that the problem lies in its enforcement. The representatives of the relevant ministries suggested measures that have already been laid down in the law, as well as those qualified as inefficient and concerning, and with good reason.²¹ The suggestion to amend the Police Act to authorise the police to immediately remove the abusers from the homes for up to 14 days was not upheld²² and the Ministry of Internal Affairs said it would initiate the amendment of the Criminal Procedure Code with a view to authorising judges charged with preliminary proceedings to order the removal of the abusers from the homes as soon as domestic violence is reported.²³ Given the concerningly low percentage of reported domestic violence cases that are prosecuted, it is reasonable to expect that many victims of partner and domestic violence in Serbia will be left without urgent protection.

The Chapter 23 Action Plan²⁴ takes on board the recommendation in the Chapter 23 Screening Report about the need to step up the security of witnesses and informants and improve witness and informant support (Point 1.4.4). To this

18 More at: http://www.parlament.gov.rs/31st_Sitting_of_the_Committee_on_Human_and_Minority_Rights_and_Gender_Equality.25736.537.html.

19 The document is available in Serbian at <http://www.mpravde.gov.rs/files/Predlog%20MP%20-%20porodico%20nasilje.pdf>. It, *inter alia*, envisages the improvement of coordination among the relevant state authorities and forming of joint teams, comprising public prosecutors, MIA and Social Welfare Centres staff, psychologists and doctors, who will work on identifying and prosecuting these crimes in all Basic and Higher Prosecution Services. The document also envisages the specialist training of the members of these teams, cooperation with all the relevant institutions, free legal aid to victims of violence and the forming of an expert commission that will analyse all the relevant regulations and draft amendments aimed at further suppressing these crimes.

20 The Protocol is available in Serbian at <http://www.mpravde.gov.rs/files/Protokol%20p14.%201.%202014.doc>.

21 One of the suggestions was to prosecute as a misdemeanour psychological violence, as a form of violence incriminated by the Criminal Code and also dealt with by the Family Act. More is available in Serbian at: <http://www.srbija.gov.rs/vesti/vest.php?id=238195>.

22 More at http://www.womenngo.org.rs/english/index.php?option=com_content&task=view&id=208.

23 More is available in Serbian at http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=10&dd=09&nav_category=11&nav_id=1049555.

24 Final Version of the Chapter 23 Action Plan, September 2105 available in Serbian at: <http://www.mpravde.gov.rs/tekst/9849/finalna-verzija-akcionog-plana-za-pregovaranje-poglavlja-23-koja-je-usaglasena-sa-poslednjim-preporukama-i-potvrdjena-od-strane-evropske-komisije-ubriselu.php>.

end, the Ministry of Justice initiated the establishment of a Working Group tasked with analysing the hitherto enforcement of Article 102(5) of the Criminal Procedure Code authorising courts and public prosecutors to require of the police to take measures to protect injured parties or witnesses. The Ministry has assumed the obligation to conduct this activity under the Chapter 23 Action Plan.²⁵ Furthermore, as of the last quarter of 2015, the Commission for the Implementation of the Programme for the Protection of Participants in Criminal Proceedings assumed the obligation to continuously perform independent and impartial reviews of the performance of the MIA Unit for the Protection of Participants in Criminal Proceedings.²⁶

The state is under the obligation to conduct effective investigations into all deprivations of life or grave risks to people's lives if there are reasons to believe that they cannot be attributed to natural causes with a view to establishing all the circumstances and identifying and punishing those responsible. An investigation into a potential breach of the right to life is deemed effective in the event it fulfils the following requirements: an investigation cannot hinge on the initiative of the injured party, i.e. the competent authorities must launch it *ex officio*, as soon as they become aware of an event that needs to be investigated; the investigation must be independent from those involved in the event, both *de jure* and *de facto* (this is particularly pertinent in situations in which state agents are involved in someone's death, e.g., in the event that a person was shot dead by the police); the investigation must be capable of resulting in the identification and adequate punishment of those responsible for the offence; the investigation must be conducted without delay; the investigation must be subject to sufficient public scrutiny; the investigation must be conducted in a way ensuring that the injured parties or close relatives of the victims are involved in the procedure to the extent necessary to protect their legitimate interests.²⁷ In principle, Serbia's Criminal Procedure Code provides for effective investigations in the way they are defined in the ECtHR's case law.

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

To sum up, the valid criminal legislation does not *per se* hinder the conduct of effective investigations about crimes threatening human life. However, serious problems often arise in practice with regard to investigations into incidents in which

25 Chapter 23 Action Plan, Point 1.4.4.1.

26 Chapter 23 Action Plan, Point 1.4.4.2.

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

people were deprived of their lives or faced serious life threats. This is corroborated by the ECtHR judgment finding Serbia in breach of Article 2 of the ECHR in 2012, because it failed to effectively investigate and punish the perpetrator of a homicide that occurred back in 1991,²⁸ and its judgment in the case of *Petrović v. Serbia* delivered in 2014. The Constitutional Court of Serbia also delivered a judgment in January 2013 in which it found a violation of the right to life because of the authorities' failure to effectively investigate the deaths of the sons of the applicants who had filed the constitutional appeal.²⁹

The numerous crimes committed during the armed conflicts in Croatia, Bosnia and Herzegovina and Kosovo have not been investigated or prosecuted yet. The War Crimes Prosecution Service in 2015 filed only two indictments charging 13 people with war crimes.³⁰ These indictments have not been confirmed yet. Three new war crime trials opened in 2015, on charges raised in 2014.³¹ A Working Group tasked with drafting the 2016–2020 National Strategy for the Prosecution of War Crimes was formed in March 2015.³² With the support of the International Criminal Tribunal for the Former Yugoslavia, the Mechanism for International Criminal Tribunals and the International Criminal Court, regional prosecutors and non-government organisations, the War Crimes Prosecution Service prepared the first draft of the Prosecutorial Strategy on War Crimes Investigation and Prosecution in Serbia and submitted it for review to the Working Group, with a view to ensuring its alignment with the Draft National Strategy. The Draft National Strategy for the Prosecution of War Crimes in the 2016–2020 Period³³ was published on the Ministry of Justice website by the end of the year, but the adoption of the National and Prosecutorial Strategies was postponed for 2016.³⁴

28 See *Mladenović v. Serbia*, ECtHR, App. No. 1099/08 and the *2012 Report*, II.1.4.

29 The judgment in the case of *Jakovljević and Milovanović* (Už–4527/2011), concerning the still unclarified killing of Dragan Jakovljević and Dražen Milovanović, who lost their lives whilst serving the army in the Topčider Barracks in Belgrade in 2004.

30 One indictment concerns five former Bosnian Serb troops, charged with torturing and killing 20 train passengers in Štrpci (Bosnia and Herzegovina) on 27 February 1993, and the other concerns eight former members of the Bosnian Serb Special MIA Brigade, charged with killing over 1,300 civilians in the *Kravnice* hangar at Srebrenica on 14 July 1995, see http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2015/VS_2015_03_03_ENG.pdf and http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2015/VS_2015_09_10_ENG.pdf.

31 See <http://www.bgcentar.org.rs/bgcentar/eng-lat/strengthening-capacities-civil-society-organisations-take-trial-monitoring/> and http://www.tuzilastvorz.org.rs/html_trz/predmeti_eng.htm.

32 The Working Group comprised the representatives of the Higher and Appellate Courts, the War Crimes Prosecution Service, the Witness Protection Unit, the War Crimes Identification Unit, the Ministry of Justice, expert organisations, the Bar Association and the academic community.

33 The text of the Draft Strategy is available at: <http://www.drzavnauprava.gov.rs/files/National%20Strategy%20for%20the%20Prosecution%20of%20War%20Crimes.pdf>.

34 Chapter 23 Action Plan, Points 1.4.1.1. and 1.4.1.4, more is available in Serbian at: <http://www.mpravde.gov.rs/tekst/9849/finalna-verzija-akcionog-plana-za-pregovaranje-poglavlja-23-koja-je-usaglasena-sa-poslednjim-preporukama-i-potvrdjena-od-strane-evropske-komisije-ubriselu-.php>.

The Government, however, apparently sent a totally opposite message from the one embodied in this Strategy by the official welcome it organised for Vladimir Lazarević, who returned to Serbia after serving a sentence of imprisonment for crimes against humanity in Kosovo.³⁵ Lazarević was met upon arrival by the Ministers of Justice, Defence and Labour, Employment, Veteran and Social Affairs, the Army of Serbia Commander in Chief and other senior officials.³⁶

As per the prosecution of people responsible for assassinations, which, according to popular belief, the state authorities had been implicated in, especially before 2000, the trial of the assassins of journalist Slavko Ćuruvija began in 2015.³⁷ The pace of the proceedings was criticised at the onset of the trial³⁸ and the main hearing was adjourned due to contradictory SIA decisions simultaneously relieving the former Agency officers from the obligation to maintain the confidentiality of state secrets and requiring of the court to exclude the public from the hearings at which they were to be questioned.³⁹ No light has been shed on the assassinations of journalists Dada Vujasinović and Milan Pantić or on who is behind the attempted murder of journalist Dejan Anastasijević, although the Serbian Government set up a special commission tasked with investigating all the circumstances regarding these murders of journalists. Assassinations of Zoran Todorović, member of JUL, a political party, former FRY Defence Minister Pavle Bulatović, judge Nebojša Simeunović, police Generals Radovan Stojičić and Boško Buha, Director of the national air company JAT, Živorad Petrović and state security agent Momir Gavrilović, have remained unsolved as well.

Seven people were killed on the night of 13 March 2015, when an Army of Serbia helicopter transferring a critically ill baby from Novi Pazar to Belgrade crashed near the Belgrade airport.⁴⁰ Two expert commissions were formed imme-

35 The International Criminal Tribunal for the Former Yugoslavia (ICTY) delivered a final judgment on 23 January 2014 convicting Vladimir Lazarević to 14 years' imprisonment for aiding and abetting crimes against humanity. Lazarević, the former commander of the Army of Yugoslavia Priština Corps, was found guilty of aiding and abetting deportations and forced transfers of the civilian Albanian population in Kosovo. More is available at: <http://www.icty.org/sid/11443> and <http://www.icty.org/case/milutinovic/4#pressrel>.

36 See the *Danas* article, available in Serbian at: http://www.danas.rs/danasrs/dijalog/quotsvetli_primerquot_iz_haga.46.html?news_id=312340.

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

38 Svetlana Palić and Tamara Ognjanović, "Reporters' Impression: Slavko Ćuruvija Assassination Trial Will Take Years", *Slavko Ćuruvija Foundation*, available in Serbian at: <http://www.slavkocuruvijafondacija.rs/utisak-izvestaca-sudenje-za-ubistvo-curuvije-trajace-godinama/>.

39 *Ibid.*, pp. 4–5.

40 *Helicopter with Sick Baby Crashes*, weekly *Vreme*. The following perished in the crash: Army of Serbia staff pilot Omer Mehić, Captain Milovan Đukalić, Sergeant Major Nebojša Trajić, Flight Mechanic Sergeant Major Ivan Miladinović; medical staff, Dr. Dževad Ljajić, anaesthetician Miroslav Veselinović; and the Ademović baby. More is available in Serbian at: <http://www.vreme.com/cms/view.php?id=1279840>.

diately after the accident to investigate the crash, which caused much public anxiety.⁴¹ The Commission charged with investigating the cause of the emergency concluded on the basis of the available data and circumstances that the main reason for the crash lay in the inadequate piloting of the aircraft in complex meteorological circumstances⁴² and that there were a number of oversights by those involved in flight planning, organisation and management.⁴³ The Commission said that all the people involved in the rescue operation had been exposed to major pressures and expectations given the urgency of transferring the ill baby to Belgrade for treatment, which was reflected, in particular, on the selection of the landing site (Belgrade Airport).⁴⁴ It said that the three helicopter crew members, the Commander of the 204th Air Force Brigade and the operational team on duty shared responsibility for the crash.⁴⁵ The Commission found that the staff failed to fully implement the prescribed procedures, that there were elements of responsibility of the military organisation in the preparation and fulfilment of the mission, but that these oversights had not directly caused the crash.⁴⁶ Neither Commission reviewed the liability of Defence Minister Bratislav Gašić, who acted in contravention of the standard operating procedure and called up the Air Force Brigade Commander requiring of him to arrange the urgent transportation of the baby whose life was in danger.⁴⁷ The Commissions' reports were forwarded to the relevant Higher Public Prosecution Service in Belgrade on 31 March.⁴⁸ Three days later, the Prosecution Service issued a press release in which it stated that it accepted the Commissions' findings in the current fact finding stage⁴⁹ and laid the responsibility for the crash primarily on

41 The Commission charged with investigating the cause of the emergency – crash of the army aircraft on 13 March 2015, set up by the Army Commander in Chief on 18 March 2015, and the Commission charged with the primary investigation of the crash, formed by the Air Force Command on 18 March 2015.

42 The Commission found that the crew had probably suffered spatial disorientation due to fatigue, emotional stress and compromised attention, and that the presence of alcohol in the crew leader and technician exacerbated their manifestations, more in Serbian: <http://www.mod.gov.rs/multimedia/file/vesti/udes/Izvestaj%20komisije%20rvipvo.pdf>, p. 4.

43 The Commission found that the crew's competence and level of training, weather conditions and the aircraft capacities fell below the level requisite for performing such a complex mission in the particular circumstances, and were not in compliance with the rules, regulations, instructions and orders governing the flight and use of rapid reaction forces, <http://www.mod.gov.rs/multimedia/file/vesti/udes/Izvestaj%20komisije%20rvipvo.pdf>, p. 4.

44 More is available in Serbian at <http://www.mod.gov.rs/multimedia/file/vesti/udes/Izvestaj%20komisije%20rvipvo.pdf>, p. 4.

45 *Ibid.*, pp. 4–5.

46 More is available in Serbian at http://www.mod.gov.rs/multimedia/file/vesti/udes/izvestaj_komisije.pdf, p. 10.

47 More is available in Serbian at <http://www.mod.gov.rs/multimedia/file/vesti/udes/Izvestaj%20komisije%20rvipvo.pdf>, pp. 1 and 2.

48 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/hronika/tuzilastvo-primilo-izvestaj-vojne-komisije-o-padu-helikoptera/hj548sy>.

49 See the *NI* report, available in Serbian at <http://rs.n1info.com/a48793/Vesti/Tuzilastvo-Za-udes-primarno-odgovorni-clanovi-posade.html>.

the helicopter crew, whilst noting that there was reasonable doubt that a number of active Army of Serbia officers were partly to blame and that there were indications that a number of civilians were also to blame, wherefore it decided to investigate a number of people to establish all the relevant facts regarding the incident.⁵⁰ The case was in the preliminary investigation stage at the end of 2015.

Seven residents of the *Dvoje* nursing home in the Čačak settlement of Vranići died of salmonella in April 2015.⁵¹ The Čačak police filed a criminal report against the *Dvoje* Director and head cook, accusing them of grave crimes against human health.⁵² The proceedings were pending at the end of the reporting period.⁵³

Lawyer Vladimir Zrelac was shot to death in front of his Belgrade office in the evening of 1 December 2015.⁵⁴ The Chairman of the Serbian Bar Chamber president said that Zrelac had reported the death threats he had received to the police and sought their protection two weeks before he was killed, but that the relevant authorities had failed to take action.⁵⁵

1.4. Euthanasia

No major changes regarding the issue of introducing the right to euthanasia in Serbia occurred in 2015. The first stage of the public debate on the initial draft of the Civil Code laying this right down (in Art. 87⁵⁶) is to be completed by June 2016.

The ECtHR rendered a judgment in a case regarding euthanasia in 2015. In its judgment in the case of *Lambert and Others v. France* (46043/14), the Grand Chamber found that the decision to withdraw the artificial nutrition and hydration of a 37-year-old hospital patient was not a violation of the right to life under Article 2 of the ECHR.⁵⁷

50 See the *Kurir* report, available in Serbian at <http://www.kurir.rs/vesti/drustvo/tuzilastvo-za-pad-helikoptera-vs-odgovorna-posada-clanak-1725543>.

51 See the *Novosti* report, available in Serbian at: <http://www.novosti.rs/vesti/srbija.73.html:557399-Prijave-protiv-odgovornih-u-Domu-za-stare-u-Vranicima>. See /section III.9 of this Report.

52 *Ibid.*

53 Čačak Basic Public Prosecution Service reply to a request for access to information of public importance No. 10–418/16, Case No. KT 507/2015.

54 See the *Tanjug* report, available in Serbian at: <http://rs.n1info.com/a121251/Vesti/Advokat-Vladimir-Zrelec-podlegao-povredama.html>.

55 “41 Lawyers Assaulted in the Past 15 Years”, see the *Tanjug* report, available in Serbian at <http://www.tanjug.rs/full-view.aspx?izb=217982>.

56 More in the 2014 Report, II.I.1.4.

57 The applicants, four members of the Lambert family, claimed a violation of the right to life because the French *Conseil d'État* ruled that the decision to take their family member Vincent Lambert off life support was lawful. Vincent Lambert sustained head injuries in a road-traffic accident in September 2008, which left him tetraplegic and in a state of complete dependency and receiving artificial nutrition and hydration, administered enterally. The medical team and

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

2.1. General

Serbia is the signatory of all international treaties prohibiting torture and degrading or inhuman treatment or punishment (ill-treatment).

Under the Constitution of the Republic of Serbia, human dignity, life and physical and mental integrity shall be inviolable and no one may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent (Arts. 23–25). Persons deprived of liberty must be treated humanely and with respect to dignity of their person and any violence against them or extortion of statements shall be prohibited (Art. 28). Any person deprived of liberty by a state body shall be informed promptly in a language they understand about the grounds for arrest or detention, charges brought against them, and their rights to inform any person of their choice about their arrest or detention without delay. Any person deprived of liberty shall be entitled to initiate proceedings in which the court shall review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law – the *habeas corpus act* (Art. 27).

The right of persons deprived of liberty to be examined by a doctor of their own choosing is the only one not enshrined in the Constitution.⁵⁸ The Constitution also guarantees the right to effective judicial protection in the event their rights to physical and mental integrity are violated and the right to elimination of consequences arising from the violation, which entails the right to redress for torture and similar treatment, regardless of who committed it (Art. 22).

2.2. Definition of Torture, Penalties and Statute of Limitations for Torture

Serbia in 2015 again failed to act in accordance with Article 4 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and align its definition of the crime of torture with the definition in

Vincent Lambert's wife and six of his brothers and sisters were in favour of withdrawing treatment, while the applicants, his parents, a sister and half-brother, opposed such a move and filed the application with the aim of preventing the withdrawal of treatment. More at: <http://hudoc.echr.coe.int/eng?i=001-155352>.

58 The CPT has from the start attached particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to next of kin or a third party of his choice, the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice. See para. 36 of the CPT 2nd General Report [CPT/Inf (92) 3], available at: <http://www.cpt.coe.int/en/annual/rep-02.htm>.

Article 1 of the Convention. The Criminal Code incriminates torture in two Articles – ill-treatment and torture (Art. 137) and extortion of statements (Art. 136). The problem related to incrimination of torture and ill-treatment arises from the fact that these two offences overlap, i.e. that there is no substantial difference between the aggravated form of ill-treatment and torture committed by a public official (para. 2 in conjunction with para. 3 of Art. 137) and the simple and aggravated forms of the crime of extortion of statements. In other words, extortion of statements, defined as a separate offence, amounts to torture per se. This creates unnecessary confusion and may result in diverse practices, i.e. in qualifying the same offences by different perpetrators as different crimes.⁵⁹

The Criminal Code incriminates everyone who commits torture or ill-treatment, not only public officials or other persons acting in an official capacity or third persons who commit this crime at the instigation of or with the consent or acquiescence of a public official or another person acting in an official capacity.

The ECtHR clearly imposes upon states the obligation to also prosecute perpetrators of torture and ill-treatment who do not have the status of a public official,⁶⁰ but these cases can be subsumed under Criminal Code provisions incriminating other offences, such as grave and light physical injuries (Arts. 121 and 122), unlawful deprivation of liberty (Art. 132), coercion (Art. 135), endangerment of safety (Art. 138), domestic violence (Art. 194) and many other offences against the physical and psychological integrity of individuals. In addition, given that many instances of abuse of women by men are qualified as torture and ill-treatment,⁶¹ the entire incrimination of ill-treatment would be regulated more precisely if the Criminal Code were amended to include a separate offence in which women would be the passive subjects of the crime.⁶²

The Criminal Code lays down lenient penalties for torture and ill-treatment. The UN Human Rights Committee and CAT⁶³ recommended to Serbia to extend the length of the maximum prison term for torture bearing in mind the gravity of the crime. The CAT's views stated in its observations of periodic reports submitted by numerous State parties indicate that the penalties for torture should range from 6

59 The UN Committee against Torture noted all the problems discussed in this and the prior BCHR Annual Reports in its Concluding observations on the second periodic report of Serbia”, UN doc., CAT/C/SRB/CO/2, (of 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, para. 8.

60 *Milanović v. Serbia*, App. No. 41614/07 (2010), para. 83.

61 Sexual abuse, threats and numerous other forms of physical and psychological abuse.

62 More in the *2014 Report*, II.2.1.

63 “Concluding observations of the Human Rights Committee”, UN doc., CCPR/C/SRB/CO/2 (of 20 May 2011), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f2&Lang=en, para. 11 and “Consideration of reports submitted by States parties under article 19 of the Convention”, UN doc., CAT/C/FRA/CO/4-6 (of 20 May 2010), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/FRA/CO/4-6&Lang=En, para. 8.

to 20 years' imprisonment.⁶⁴ In addition, the Criminal Code still includes the provision on the absolute statutory limitation for the crimes of torture and ill-treatment, which was again criticised by the CAT in 2015.⁶⁵ According to the data available to the BCHR, the absolute statutory limitation resulted in the termination of the proceedings on the following four cases in the 2012–2014 period: K 8627/12 (Belgrade Basic Court), K 2450/13 (Kragujevac Basic Court), K 347/10 (Pančevo Basic Court) and K 1339/11 (Stara Pazova Basic Court).⁶⁶ All these cases regarded (11) police officers, charged with ill-treating persons deprived of liberty.

2.3. Legal Framework for the Prosecution of Perpetrators of Torture and Ill-Treatment and the Practices of the Judicial Authorities

The legal framework established by new Criminal Procedure Code (hereinafter: CPC), which came into force on 1 October 2013, is less favourable than the prior one when it comes to the prosecution of perpetrators of torture and ill-treatment. Namely, the new CPC envisages summary proceedings, i.e. excludes mandatory investigation, for crimes warranting up to eight years' imprisonment, such as torture and ill-treatment and the simple form of the crime of extortion of statements.⁶⁷ Therefore, prosecutors are under the obligation to conduct investigations only into aggravated forms of the crime of extortion of statements, whereas they can undertake individual investigation actions in the other cases of torture and ill-treatment at their own initiative or on the order of the court.

Furthermore, the new CPC considerably reduces the role of the injured parties in criminal proceedings. Injured parties no longer have the possibility of taking over criminal prosecution in the capacity of subsidiary prosecutors for crimes prosecuted *ex officio* unless the indictments have been confirmed. They can only file a complaint with the immediately superior public prosecutors in the event the prosecutors had abandoned criminal prosecution before the indictments were confirmed.⁶⁸

This has resulted in the fact that only a few criminal proceedings initiated before the public prosecutors over torture, ill-treatment and extortion of statements reached the main hearing stage, i.e. most ended with the public prosecutors' dis-

64 Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture*, (Oxford University Press, Oxford 2008), p. 250.

65 "Consideration of reports submitted by States parties under article 19 of the Convention", CAT, CAT/C/FRA/CO/4-6 (of 20 May 2010), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/FRA/CO/4-6&Lang=En, para. 8.

66 All data were obtained in reply to requests for access to information of public importance submitted in the 2012–2014 period.

67 Art. 495, CPC.

68 Arts. 51 and 52, CPC.

missal of the criminal reports. A total of 259 criminal reports against 417 people suspected of torture and ill-treatment and eight criminal reports against 19 people suspected of extorting statements were filed with the Basic Public Prosecution Services from 1 October 2013, the day the new CPC entered into force, to 30 June 2015: 121 of the 259 criminal reports were filed against police officers and prison guards.⁶⁹ Of them, criminal proceedings regarding 34 criminal reports (against 66 people) were pending. Eighty criminal reports (against 171 people) were dismissed, six motions for indictment (against seven people) were submitted and one plea bargain was concluded with one perpetrator. Seven of the eight criminal reports against 19 police officers suspected of extorting statements were dismissed; the criminal proceedings against three people who allegedly committed this crime were under way.⁷⁰

As per court case law, i.e. trials for torture, ill-treatment and extortion of statements, the BCHR has at its disposal data regarding the 1 October 2012–31 December 2014 period. In this period, the courts held a total of 252 trials against 369 defendants charged with torture or ill-treatment and one trial against three defendants charged with extortion of statements. Eighty-nine of the 252 trials regarded police officers and prison guards.⁷¹ A total of 172 defendants were facing charges in these 89 trials. Fifty-five of the trials (against 104 defendants) were still under way at the end of the reporting period. Final decisions were delivered in 34 cases (against 68 defendants). Only six of the trials ended in convictions: three defendants in three trials were sentenced to conditional sentences, the criminal prosecution of nine defendants in two trials was deferred and only the defendant in the sixth trial was sentenced to eight months' imprisonment.⁷²

The practices of the courts and prosecution services clearly demonstrate that the status of the injured parties has deteriorated under the new CPC. In other words, from 1 October 2013 to 30 June 2015, the prosecutors received 121 criminal reports against public officials but filed motions for indictment only with regard to six of them, i.e. the criminal proceedings reached the main hearing stage only in those six cases. On the other hand, 57 of the 89 cases (nearly 65%) that made it to trial before the new CPC entered into force, reached that stage of the proceedings after the injured parties took over criminal prosecution in the capac-

69 Ninety-nine percent of the 121 reports regarded policemen and 1% prison guards.

70 The data regard the whole caseloads of 76% of the Basic Public Prosecution Services in Serbia, the partial caseloads of 9% of the Basic Public Prosecution Services (Three Belgrade Basic Public Prosecution Services and the Čačak and Sombor Basic Public Prosecution Services), while 15% of the Public Prosecution Services (in Bečež, Kraljevo, Leskovac, Petrovac na Mlavi, Ruma, Šabac, Ub, Užice and Vršac) failed to submit any data. In any case, the sample suffices to assess observance of the procedural limb of the prohibition of torture in the Republic of Serbia.

71 Out of the 89 complaints, 98% were filed against police officers and 2% against prison guards.

72 These data regard almost the entire case law of the Serbian Basic Courts, as only the Subotica Basic Court failed to forward any data and the Jagodina and Bačka Palanka Basic Courts forwarded partial data.

ity of subsidiary prosecutors. It is reasonable to assume that many more of the cases, in which the prosecutors abandoned criminal prosecution after 1 October 2013, would have been pursued by the subsidiary prosecutors had that possibility not been abolished.

All the above data suggest systemic violations of the procedural aspect of the prohibition of ill-treatment binding the state to investigate arguable claims in independent and impartial proceedings and take reasonable measures that may result in the identification and punishment of the perpetrators. Such a conclusion can be drawn on the basis of both the deficient legislative framework for prosecuting and punishing perpetrators of ill-treatment and the quality of the conducted criminal proceedings and the judiciary's penal policy. All these problems were also noted by CAT in its Concluding observations on Serbia's second report.⁷³

2.4. Use of Force by State Agents

Police officers may use force in the circumstances and in the manner laid down in the Police Act and the Rulebook on the Technical Features and Manner of Use of Means of Coercion, while prison guards may use force in the circumstances and in the manner laid down in the Penal Sanctions Enforcement Act (PSEA) and the Rulebook on Maintaining Order and Security in Penitentiaries. Both the regulations on the police and those on the use of force in penitentiaries lay down that means of coercion shall be applied in accordance with the principle of proportionality (Art. 11(2 and 3) and Art. 36 of the Police Act, Art. 127(2 and 3), PSEA) and that reports shall be prepared on every use of force to ensure that it was lawful; they lay down that policemen and prison guards shall submit these reports to their superiors (Art. 86 of the Police Act and Art. 130(4) of the PSEA) and specify the data that report must include.

The PSEA also lays down that inmates subjected to use of force, with the exception of fixation, must be examined immediately by a doctor. The medical report, including the name and allegations of the inmate subjected to means of coercion, shall include the doctor's opinion on whether his injuries may have been caused by the applied measure. This report is submitted to the prison governor together with the guard unit's report and is forwarded to the Director of the Penal Sanctions Enforcement Administration (Art. 130(3 and 4)).⁷⁴

73 "Concluding observations on the second periodic report of Serbia", UN doc., CAT/C/SRB/CO/2, (of 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, paras. 8–10.

74 The PSEA also lays down that the inmate will be examined again between the 12th and 24th hours since the measure was applied, wherefore the prison governor, and the Director of the Penal Sanctions Enforcement Administration subsequently, are submitted two medical reports together with the prison guards' report.

The Instructions on the Treatment of People Brought in or Detained by the Police (hereinafter: Instructions),⁷⁵ also provide for the obligation of police officers to ensure the medical examinations of people in their custody, whether or not they used means of coercion against them, or the people in their custody who need to see a doctor for another reason: “Ill or injured persons obviously in need of medical assistance and persons exhibiting signs of grave alcohol or other kind of poisoning may not be held in the detention cells”. Under Paragraph 26.1 of the Instructions, police officers detaining such persons must immediately organise the provision of the requisite medical assistance to them and their admission to the appropriate health institutions.

The provision in the Instructions stipulating that the police officers must attend the medical examinations is problematic as it precludes independent and impartial medical examinations in accordance with the topmost international standards on the prevention of torture, above all, the standard under which doctors carrying out the examinations must include in their reports the explanations given by the patients as to how the injuries occurred.⁷⁶ It is very unlikely that a person subjected to (lawful or unlawful) violence on the part of the police officers would be willing or able to relate all the relevant details about the incident in the presence of police officers. Furthermore, Serbian doctors rarely report on whether the injuries are consistent with the explanations in practice despite their obligation to do so under the PSEA. The CAT also noted these deficiencies and made a number of recommendations to Serbia on how to eliminate them.⁷⁷

The Rulebook on the Technical Features and Manner of Use of Means of Coercion envisages an in-house procedure for controlling the justifiability and lawfulness of the use of force involving firearms, resulting in grave physical injuries, or in the event force was used against more than three people. In such cases, the police director or chief of the regional police administration, in which the officer who used the means of coercion works, shall establish a commission of minimum three police staff that shall review the circumstances in which the means of coercion were used, make a record of the review and render its opinion on whether the means of coercion were used lawfully and professionally (Art. 25(1)). The opinion is forwarded to the police officer charged with assessing the justifiability and lawfulness of the use of force. In the event he establishes that the use of force was unjustified or unlawful, he shall propose to the police director to “take the measures set out in the law” (Art. 25(2 and 3)).

75 Adopted pursuant to the Police Act (*Sl. glasnik RS*, 101/05, 63/09 – Constitutional Court Decision and 92/11), and available in Serbian at: <http://media.ssp.org.rs/2013/03/Uputstvo-o-posupanju-prema-dovedenim-i-zadrzanim-licima-LAT.pdf>.

76 Paragraph 26.3 of the Instructions.

77 “Concluding observations on the second periodic report of Serbia”, UN doc., CAT/C/SRB/CO/2, (of 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, para. 9.

The work of the state authorities entitled to use force is also controlled by reviews of complaints. Complaints about police use of force may be filed pursuant to and in accordance with the Police Act (Art. 180) and the Complaints Review Procedure Rulebook, while complaints about the use of force by prison guards are submitted pursuant to Articles 114 and 144a of the PSEA and/or the penitentiary House Rules. Complaints of ill-treatment by the police and prison guards may also be filed with the Protector of Citizens (Arts. 25–31, Protector of Citizens Act), but this form of protection is subsidiary in character and the citizens may submit their complaints to the Protector of Citizens only after they had tried to protect their rights in “appropriate legal proceedings” (Art. 25(3)). The Protector of Citizens may exceptionally initiate a procedure on the complaint before “the exhaustion of all legal remedies”.⁷⁸

Under Article 180(1) of the Police Act, “[E]veryone is entitled to file a complaint to the Ministry against a police officer if they believe that their rights or freedoms were violated by an illegal or improper action of the police officer”. The complaint shall be submitted to the “police or the Ministry” but it must first be reviewed by the head of the unit in which the implicated police officer works or a person designated by the head of the unit. In the event the complainant disagrees with the views of the superior, who reviewed the complaint, or fails to respond to an invitation to an interview, or in the event the complaint gives rise to suspicions that a crime prosecuted *ex officio* had been committed, the entire case file is forwarded to a three-member commission, which then conducts a review of the complaint. Complaint Review Commissions have been established in the Ministry and each regional police administration. Every commission comprises three members (a police officer appointed by the Minister, a representative of the Internal Control Sector appointed by the head of that Sector, while the third “civilian representative” is appointed by the police minister at the proposal of the local self-governments (to the commissions of the regional police administrations) or of the “professional associations and NGOs” (to the Ministry Commission). The Commission sessions are public and the complainants and implicated police officers are invited to them; they may be represented by their lawyers at their own expense and “present documents and other evidence”, but they can only present evidence in the possession of the police.

The head of the unit in which the implicated officer works and the Commission members may order the procurement of the documents and the presentation of the evidence as well. The commissions keep minutes of their sessions,⁷⁹ and the final decisions on the complaints must be reasoned in detail and served on the complainant in writing. All this would lead to the conclusion that the complaints review procedure laid down in the valid regulations is transparent, but this form of

78 That is possible “if the complainant would suffer irreparable damage or if the complaint regards a violation of the good governance principle, notably the inappropriate treatment of a complainant by an administrative authority, its dilatoriness or another violation of the administrative staff code of conduct” (Art. 25(5), Protector of Citizens Act).

79 The content of the minutes is specified in Article 24 of the Complaints Review Procedure Rulebook.

overseeing the lawfulness of police work can hardly be considered independent.⁸⁰ When the decision on the complaint is rendered, the complainants are notified that the complaints review procedure has been completed and that they “have at their disposal all legal and other means to protect their rights and freedoms”.

The MIA received a total of 1,144 complaints alleging police misconduct from 1 October 2012 to 1 November 2014. It found that 72 were them well-founded. According to data forwarded by the MIA, at least 36 disciplinary proceedings had been initiated in that period and 24 officers were found to have committed the offences in 24 cases. They were imposed the following disciplinary measures: salary reduction (in eight cases), reprimand (in 10 cases) and demotion (in one case).⁸¹ Five police officers were dismissed, one because he had committed the crime of extortion of statements (Art. 136(2)).⁸² The MIA Internal Control Sector filed 34 criminal reports in that period: 21 for torture and ill-treatment (Art. 137, CC), three for infliction of light bodily injuries (Art. 122, CC), two for coercion (Art. 135, CC), four for endangerment of safety (Art. 138, CC) and four for extortion (Art. 214, CC).

2.5. Observance of the Non-Refoulement Principle and the Prohibition of Collective Expulsion

Under international human rights law, the principle of non-refoulement absolutely prohibits all countries in the world to return people to any countries where there are substantial grounds for believing that they would be in danger of being subjected to torture or inhuman or degrading treatment or punishment.⁸³ Furthermore, the principle of non-refoulement in refugee law entails the prohibition of re-

80 The procedure definitely cannot be considered independent, at least not in the first stage, when the complaints are reviewed by the heads of the units in which the implicated officers work. In the view of the ECtHR, effective investigations are those in which there are no hierarchical or institutional links between those conducting them and those under investigation, but only provided that the former are actually independent. See, e.g. the ECtHR judgment in the case of *Ergi v. Turkey*, ECHR, App. No. 23818/94, paragraph 83–84. The ECtHR’s judgment in the case of *Poltoratskiy v. Ukraine* (ECtHR, App. No. 38812/97) may be useful in assessing whether the MIA complaints review procedure is independent. In that case, the Court found that the investigation of the applicant’s complaints of ill-treatment conducted by the prison authorities had not been effective, *inter alia*, because no external authority appeared to have been involved in any such investigations since the Court had not seen a single document proving that an investigation had been carried out by any domestic authorities other than those directly involved in the facts of which the applicant’s parents complained. The erstwhile ECmHR also subscribed to this view (see paras. 70 and 126–127 of the judgment). The question remains whether the procedure can be considered independent because the MIA complaints review commissions include “public representatives”.

81 The other proceedings were under way at the time the MIA replied to BCHR’s request for access to information of public importance.

82 Data received from the MIA in response to a request for access to information of public importance Ref. No. 01–12495/14–8 of 12 January 2015.

83 Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 3 of the ECHR.

turning a refugee to the territory of the country in which he may be persecuted on any of the grounds specified in the 1951 Convention relating to the Status of Refugees (hereinafter: Refugee Convention).⁸⁴

Every forced removal – including returning an alien to his country of origin or a third country by air,⁸⁵ removal under readmission agreements or pursuant to a ruling ordering him to leave the country⁸⁶ or pursuant to the protective measure of removing an alien from the territory of the Republic of Serbia issued in a misdemeanour proceeding⁸⁷ – must be governed in a manner providing the alien with the possibility of objecting his removal in a procedure in which he has an interpreter and legal counsel. Furthermore, if the first-instance decision is not in favour of the alien, he must be provided with the possibility of challenging it by filing a legal remedy with suspensive effect. Those conducting the procedure need to ascertain whether the alien would be subjected to torture or inhuman or degrading treatment or punishment if he were returned to his country of origin or a third country. The authorities also need to devote particular attention to aliens reasonably assumed to be in need of international protection, and whether the third country they are being returned to is a signatory of the 1951 Refugee Convention and the 1967 Protocol.⁸⁸

In the context of the large inflow of aliens reasonably assumed to be in need of international protection passing through Serbia on their way to EU countries in the past few years, the competent Serbian authorities have repeatedly forcibly removed aliens they found had unlawfully entered or stayed in Serbian territory. Most aliens forcibly removed in 2015 had been returned by the Belgrade Border Police Station (hereinafter: BPS) at the Belgrade Nikola Tesla Airport because they did not fulfil the requirements for entering the country and from the Aliens Shelter under readmission agreements Serbia signed with the European Community and with countries such as Montenegro and the Former Yugoslav Republic of Macedonia (FYROM).⁸⁹ If one takes into account all the above-mentioned standards, as well as the assessments of numerous international bodies (including, notably, those of CAT in 2015), one may conclude that the valid forced removal procedures in Serbia do not include procedural safeguards against refoulement.⁹⁰

According to the statistical data the MIA – Belgrade BPS forwarded to the BCHR, a total of 520 foreign nationals were returned to their countries of origin or third countries in the first six months of 2015, because the Belgrade BPS police of-

84 Article 1 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

85 Article 22(2) of the Aliens Act, *Sl. glasnik RS*, 97/08.

86 Article 35, Aliens Act.

87 Article 65 of the Act on Misdemeanours, *Sl. glasnik RS*, 65/13.

88 See CPT's 19th General Report [CPT / Inf (2009) 27], available at <http://www.cpt.coe.int/en/annual/rep-19.pdf>, paras. 93–95.

89 Countries from which most people in need of international protection have been entering Serbia.

90 “Concluding observations on the second periodic report of Serbia”, UN doc., CAT/C/SRB/CO/2, (of 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, paras. 14–15.

ficers assessed that they did not fulfil the requirements for entering Serbia. Of them, 69 can be qualified as in need of international protection because they are nationals of the so-called refugee producing countries: Syria, Iraq, Afghanistan, Palestine and Libya. The following were returned in the first half of 2015: 28 Iraqis, seven Syrians and one Afghani to Turkey; two Syrians and one Afghani to Greece; 16 Palestinians to Cyprus; one Afghani and one Iraqi to the UAE; one Syrian to Qatar; seven Syrians and one Libyan to Lebanon; and one Libyan to Montenegro. In addition, 119 people reasonably assumed to be need of international protection were returned from the Aliens Shelter to Bulgaria under the Readmission Agreement with the European Community, in the first four months of the year.

The procedure for forced removal under the readmission agreements does not have a special format. Once the requested state approves the application for the re-admission of an alien found to have unlawfully entered Serbia from one of the neighbouring countries, the alien is transported to the border and handed over to the competent authorities of the requested state.⁹¹ As far as forced removals from the airport are concerned, aliens not fulfilling the requirements for entering Serbia are put on the first available flight back to the country they had come from at the expense of the airlines.⁹² Therefore, neither procedure entails the adoption of an individual decision in a procedure in which an alien can object to his removal in the presence of an interpreter for a language he understands and a legal counsel nor the possibility of him filing an appeal with suspensive effect challenging the decision on his removal.⁹³

The BCHR was forced to apply with the ECtHR three times from November 2013 to the end of 2015 and seek an interim measure to prevent the violation of the non-refoulement principle by the Belgrade BPS and the Aliens Shelter. The ECtHR upheld all three applications and thus prevented the return of the aliens to Greece,⁹⁴ Somalia⁹⁵ and Montenegro.⁹⁶

2.6. Conditions in Penitentiaries, Detention Units and Police Custody

The Serbian penitentiaries are still extremely overcrowded, although the Serbian Government adopted strategies with a view to reducing the number of remanded and convicted prisoners.⁹⁷ The penitentiaries (overcrowded since 2005) have

91 Art. 3 of Serbia's Readmission Agreement with Montenegro, and Arts. 6, 7 and 9 of Serbia's Readmission Agreement with the European Community.

92 Article 22, Aliens Act.

93 The BCHR obtained all the data on the work of the Belgrade BPS and the Aliens Shelter during its implementation of the project Provision of Free Legal Aid to Asylum Seekers, with UNHCR's support.

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

95 *Ahmed Ismail (Shiine Culay) v. Serbia*, App. No. 53622/14, so-called chain refoulement via Abu Dhabi (UAE), Khartoum (Sudan) to Mogadishu (Somalia).

96 *Othman v. Serbia*, App. No. 27468/15.

97 More in II.3.

been able to admit 38,835 convicts to serve their time since 2005. In early January 2015, 9,673 convicts were waiting to go to prison and serve their sentences. These data indicate that the problem of overcrowded Serbian penitentiaries will not be addressed in the upcoming period.

The situation is particularly concerning the biggest penitentiaries, in Sremska Mitrovica, Požarevac and Niš, as well as the Belgrade District Prison, the conditions in which can be qualified as inhuman and degrading.

The living conditions are still the most problematic in the Sremska Mitrovica Pavilion IV and the so-called School Pavilion, as well as in Pavilion VII of the Požarevac penitentiary. Pavilion IV in Sremska Mitrovica, which is over 100 years old, was built for the incarceration of prisoners ordered into solitary confinement for disciplinary infractions. Nowadays, however, it is inhabited by 300 convicts who have no opportunities to engage in meaningful work and have practically no access to reintegration activities.⁹⁸ Three or four prisoners share 8m² cells. The toilets in the cells are not adequately partitioned off from the rest of the cell, wherefore all the cells are stuffy, the hygiene in them is poor and they are permeated by unpleasant odours and tobacco smoke. Furthermore, the electricity installations in the Pavilion are outdated and the convicts only have 60W lightbulbs in their cells, which do not emit enough light for them to read and write without straining their eyes, which may result in the deterioration of their eyesight. The prisoners have been “sharing” their cells with lice and bedbugs for years now, due to the poor hygiene. The Požarevac Pavilion VII was built over seven decades ago and is in a desultory state. Between two and four convicts share 8–9m² cells. The convicts are forced to stay in their cells 22 hours a day, and have no opportunity to engage in meaningful work or access to reintegration activities. The toilets in the cells are not partitioned off, wherefore unpleasant odours permeate all the cells and the hygiene is extremely poor. Last but not the least, the six wards for remanded prisoners in the Belgrade District Prison have not been renovated yet, wherefore these inmates spend 22 hours a day in overcrowded cells without windows, and thus, no access to natural lighting or fresh air.

3. Right to Liberty and Security of Person

3.1. General

The Republic of Serbia has ratified all major international instruments protecting the right to liberty and security of person and has, *inter alia*, bound itself to respect Article 9 of the ICCPR, which imposes upon the states the obligations to protect the right to liberty and ensure guarantees preventing arbitrary and unlawful deprivations of liberty and to precisely define grounds when deprivations of liberty

98 The Sremska Mitrovica penitentiary has one reintegration officer per every 100 or more convicted prisoners.

are justified, as well as to ensure judicial control of the lawfulness of deprivations of liberty. Serbia is also bound by the ECHR, which in Article 5 governs in detail all forms of deprivation of liberty and circumstances in which this right may be limited, as well as the case law of the European Court of Human Rights.

This right is enshrined also in the Constitution of the Republic of Serbia, which regulates it much more broadly than the ECHR.⁹⁹

Article 45 of the Criminal Code (hereinafter: CC)¹⁰⁰ governs the sentences of imprisonment served in prison and in the convicts' homes. The Criminal Procedure Code (hereinafter: CPC)¹⁰¹ governs in detail pre-trial detention (Arts. 210–223), house arrest with or without electronic monitoring (Arts. 208 and 209) and the bringing in of defendants (Arts. 195 and 196). The CPC also governs deprivation of liberty by police officers (with or without the consent of the public prosecutors) with a view to collecting information (Art. 288), questioning (Art. 299), as well as deprivation of liberty at crime scenes (Art. 290), police arrest (Art. 291) and custody of suspects (Art. 293).¹⁰² Articles 53 and 54 of the Police Act¹⁰³ govern the holding and bringing in of persons by the police.¹⁰⁴ The Act on Misdemeanours,¹⁰⁵ and the Road Traffic Safety Act (hereinafter: RTSA),¹⁰⁶ also allow deprivations of liberty by the police, while the Aliens Act¹⁰⁷ governs the deprivation of liberty of aliens in the Aliens Shelter pending their forced removal, in order to establish their identity or on other grounds laid down in other laws,¹⁰⁸ as well as their detention pending deportation.¹⁰⁹

3.2. Deprivation of Liberty by the Police

Persons deprived of liberty by the police or detained on any of the grounds laid down in the relevant regulations enjoy three elementary rights: 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 request a medical examination by a doctor of their own choosing. These rights are the fundamental safeguards against ill-treatment.¹¹⁰

99 More in the *2014 Report*, III.4.1.

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

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

102 More on permitted deprivations of liberty under the CPC in the *2014 Report*, III.4.3.

103 *Sl. glasnik RS*, 101/05, 63/09 – Constitutional Court Decision, 92/11 and 64/15.

104 Articles 49–52, Police Act.

105 Articles 189–192, Act on Misdemeanours, *Sl. glasnik RS*, 65/13.

106 Articles 283 and 294, Road Traffic Safety Act, *Sl. glasnik RS*, 41/09, 53/10, 101/11, 32/13 – Constitutional Court Decision and 55/14.

107 Aliens Act, *Sl. glasnik RS*, 97/08.

108 Articles 49–53, Aliens Act.

109 Article 48, Aliens Act.

110 See, e.g. paragraph 36 of the CPT's 2nd General Report (CPT/Inf (92) 3).

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) developed a standard to ensure that persons deprived of liberty by the police are adequately informed of their rights. Under this standard, the police shall give people they detain or bring information sheets specifying their rights in writing. The list of rights of people deprived of liberty is much longer and includes their right to be informed of the reasons why they are deprived of liberty in a language they understand, the right to remain silent, the right to initiate proceedings before a judicial body to re-examine the decisions depriving them of liberty, etc. With a view to ensuring that this standard is consistently enforced in practice, the Minister of Internal Affairs enacted Instructions on the Treatment of People Brought in or Detained by the Police (hereinafter: Instructions),¹¹¹ which enumerate all the rights of people deprived of liberty in paragraph 4. The CPC, too, lists all the rights of people reasonably suspected of having committed a crime.¹¹²

In 2015, the National Preventive Mechanism against Torture (hereinafter: NPM) published its reports on its visits to eight police departments.¹¹³ The sections of the reports regarding the reading of rights to people deprived of liberty indicate that none of the police departments handed out the information sheets prescribed by the Instructions and the CPC to all the people they took into custody. In addition, during one of its rare unannounced visits, notably to the Požarevac police department,¹¹⁴ the NPM noted that the information sheet in the custody case file had not been signed by the detainee and did not include a statement that he had refused to sign it.

The NPM again noted in 2015 that some police officers did not fully comply with the law because of the way they interpreted the concept of deprivation of liberty and as of when it is reckoned, especially when they issue rulings ordering custody of suspects after having questioned them. Police officers are still unsure when police custody, which may not exceed 48 hours under the CPC, actually begins. Some police departments reckon custody from the moment the suspect is read his rights under Article 69(1) of the CPC, others from the moment he is served a custody order, while others, yet, reckon it from the moment he appears for questioning.

The ECtHR assesses whether or not an individual had been deprived of liberty by taking into account various criteria in each individual case, such as the *type, duration, effects and manner of implementation of the measure in question*.¹¹⁵

111 Adopted pursuant to the Police Act, *Sl. glasnik RS*, 101/05, 63/09 – Constitutional Court Decision and 92/11.

112 Articles 68 and 69, CPC.

113 The Reports on the work of Čačak, Niš, Prokuplje, Leskovac, Požarevac, Kikinda, Kragujevac, Pirot and Kraljevo police departments are available at <http://www.npm.ils.rs/>

114 BCHR's representatives were not in the NPM team that made the unannounced visit to the Požarevac police department.

115 See, e.g., the ECtHR judgments in the cases of *Guzzardi v. Italy*, App. No. 7367/76 (1980), para. 92; *Medvedyev and Others v. France*, App. No. 3394/03 (2010), para. 73; *Creangă v.*

In terms of Article 5 of the ECHR, the objective element regards a person's confinement in a particular restricted space for a not negligible length of time, while the subjective element regards the fact that the person has not validly consented to the confinement. Whereas the subjective element depends on the will of the person deprived of liberty, the fulfilment of the objective element is established by the application of a number of criteria, including, notably: 1) the possibility to leave the restricted area; 2) the degree of supervision and control over the person's movements; 3) the extent of isolation and the availability of social contacts.¹¹⁶

When these standards are applied, it is clear that deprivation of liberty begins the moment a person considered a suspect responded to a summons for questioning i.e. to provide information. This is laid down also in Article 294 of the CPC, under which a suspect may be held in custody for questioning *not more than 48 hours from the time of his arrest, or response to a summons*. In 2015, the NPM noted that the Leskovac and Kraljevo police departments violated this provision because they reckoned custody as of the moment they had read the suspects their rights specified in Article 69(1) of the CPC, i.e. from the moment they served them the rulings ordering their custody.¹¹⁷

During its visits to the police departments, the NPM established that some of them did not allow the people they held in custody to hold on to their custody orders and information sheets on their rights whilst in custody *for security reasons*.¹¹⁸ The NPM also noted that not all the custody orders had been signed by the persons concerned or included statements that they had refused to sign them.¹¹⁹

Many refugees have passed through the Republic of Serbia in the past few years.¹²⁰ Police officers were not prepared for this increasing influx of refugees from the start and, unaware of refugee law, treated many aliens as irregular mi-

Romania, App. No. 29226/03 (2012), para. 91; and the "Guide on Article 5 of the Convention – Right to Liberty and Security", Council of Europe, 2014, pp. 5 and 6, available at http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

116 See, e.g., the ECtHR judgments in the cases of *H.L. v. the United Kingdom*, App. No. 45508/99 (2004) para. 73; *H.M. v. Switzerland*, App. No. 39187/98 (2002), para. 45; *Guzzardi v. Italy*, App. No. 7367/76 (1980), para. 95; and the "Guide on Article 5 of the Convention – Right to Liberty and Security", Council of Europe, 2014, pp. 5 and 6, available at http://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf.

117 More in the Report on the Visit to the Leskovac Police Department of 13 May 2015, available in Serbian at http://ombudsman.npm.rs/attachments/481_Izvestaj%20PU%20Leskovac%20menjan.pdf and the Report on the Visit to the Kraljevo Police Department of 14 April 2015, available in Serbian at [http://ombudsman.npm.rs/attachments/477_Izvestaj%20PU%20Kraljevo%20\(1\).pdf](http://ombudsman.npm.rs/attachments/477_Izvestaj%20PU%20Kraljevo%20(1).pdf).

118 Such practices have been identified in e.g. the Prokuplje, Niš, Kragujevac and Kraljevo police departments (reports are available in Serbian at <http://ombudsman.npm.rs/>).

119 Report on the Visit to the Čačak police department of 14 April 2015, available in Serbian at http://ombudsman.npm.rs/attachments/474_14146%20Izvestaj%20Cacak.pdf.

120 This problem culminated in May 2015, when thousands of refugees and other categories of migrants started entering Serbia on a daily basis. The vast majority of them had come from the Former Yugoslav Republic of Macedonia, and, to a lesser extent, Bulgaria and Montenegro.

grants, depriving them of liberty and charging them with the misdemeanour offences of unlawful entry¹²¹ and residence in the Republic of Serbia.¹²² In the first nine months of 2015 alone, the police filed over 13,000 motions for the initiation of misdemeanour proceedings.¹²³ All these aliens were clearly deprived of liberty before misdemeanour reports were filed against them and they were brought before misdemeanour judges i.e. the vast majority of them were brought in,¹²⁴ and the rest had custody orders issued against them.¹²⁵ As the information sheets on rights of persons deprived of liberty are not translated into languages these aliens understand (Arabic, Farsi, Urdu, et al.), they were not adequately notified of their rights, and practically all other steps in relation to them, including misdemeanour proceedings,¹²⁶ were taken in a language they did not understand. This problem can be addressed adequately by translating the information sheet on the aliens' rights into languages spoken by the majority of the aliens, such as Arabic, Farsi, et al.

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

Belgrade Border Police Station (hereinafter: Belgrade BPS) officers in 2015 continued their practice of not treating as deprivation of liberty the confinement of aliens, who do not fulfil the requirements for entry into the Republic of Serbia and are to be returned to their countries of origin or third countries at the expense of the airlines that flew them in.¹²⁷ These situations have also arisen due to misinterpretations of the concept of deprivation of liberty and the legally binding standards established in ECtHR's and CPT's jurisprudence. Namely, the Belgrade BPS does not issue any decisions on the deprivation of liberty of aliens they confine in the Nikola Tesla transit zone, which the aliens could challenge before the competent court. Furthermore, the aliens are deprived of their right to have the fact of their detention notified to a third party of their choice, the right of access to a lawyer/legal counsel, and the right to request a medical examination by a doctor of their own choosing. To make things worse, there are no interpreters for the languages spoken by most

The expression refugees and other categories of migrants is used in accordance with UNHCR's document <http://www.unhcr.org/49cba1d02.html>.

- 121 Article 65(1), State Border Protection Act, *Sl. glasnik RS*, 97/08 and 20/15 – other law (hereinafter SBPA); Article 84(1(1)), Aliens Act.
- 122 Article 85(1(3)), Aliens Act.
- 123 “Refugees Spending Less Time in Serbia, Borders Still Open”, *Tanjug Online*, (4 October 2015), available in Serbian at <http://www.tanjug.rs/full-view.aspx?izb=203840>.
- 124 Report on the Visit to the Regional Border Police Centre towards Hungary, the Subotica Police Directorate, the Kanjiža Police Station and the Kanjiža and Subotica and Social Welfare Centres.
- 125 Report on the Visit to the Sombor Police Department, p. 3.
- 126 “Concluding observations on the second periodic report of Serbia”, UN doc., CAT/C/SRB/CO/2, (3 June 2015), paragraph 14, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>.
- 127 Pursuant to Article 22 of the Aliens Act.

of these aliens at the airport; the police usually communicate with the aliens in English, wherefore many of them do not understand the legal situation they are in.

The BCHR in 2015 intervened in dozens of cases to ensure that persons reasonably assumed to be in need of international protection are provided with access to the territory of the Republic of Serbia and the asylum procedure and to prevent violations of the principle of non-refoulement. All the aliens BCHR assisted had been confined in the transit zone between several hours and several days, although, as a rule, no decisions on their deprivation of liberty had been issued; nor had they been provided with the opportunity of enjoying the other rights granted to people deprived of liberty.¹²⁸

The UN Committee against Torture in April 2015 reviewed Serbia's second periodic report on compliance with its obligations under the UN Convention against Torture and issued its Concluding Observations, in which it noted that asylum seekers did not enjoy free legal aid or effective information provided through interpretation services about the possibility of seeking asylum or the risk of being expelled. The Committee also notes that asylum seekers detained at Nikola Tesla Airport did not enjoy those rights either and were not provided with a detention order or an expulsion order that they could challenge. CAT recommended to Serbia to establish and ensure the implementation of a standardised and accessible asylum and referral procedure in international airports and transit zones and guarantee access to independent, qualified and free-of-charge legal assistance and interpretation services for asylum seekers throughout the asylum procedure, as well as in misdemeanour proceedings and when they are detained at the airport, in order to enable them to challenge the lawfulness of their deportation and detention orders.¹²⁹ The CPT also paid its regular visit to Serbia in 2015, during which it visited the Nikola Tesla Airport.¹³⁰ The CPT did not publish its report by the end of the reporting period, but, in view of its hitherto jurisprudence, it is quite likely that its comments will be similar to those made by CAT.

3.2.2. Deprivation of Liberty in the Aliens Shelter

The Aliens Act provides for the deprivation of liberty of aliens in the Aliens Shelter pending their forced removal, in order to establish their identity or on other grounds prescribed by another law, such as, e.g., the Asylum Act (Arts. 52 and 53). A number of aliens were referred to the Aliens Shelter in 2015 pending their testimony in criminal proceedings against people reasonably suspected of having committed the crime of illegal state border crossing and human smuggling or the crime of trafficking in humans (Arts. 350 and 388, CC).

128 More in BCHR's report *Asylum in the Republic of Serbia – January-May 2015 Report*, June 2015, p. 6, available at http://www.azil.rs/doc/Report_Jan_May_2015.pdf.

129 "Concluding observations on the second periodic report of Serbia", UN doc., CAT/C/SRB/CO/2, (published on 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>.

130 *Council of Europe anti-torture Committee visits Serbia*, CPT, June 2015, available at <http://www.cpt.coe.int/documents/srb/2015-06-09-eng.htm>.

As testimony in criminal proceedings is not laid down as grounds for depriving aliens of their liberty and their confinement in the Aliens Shelter, and is not envisaged under the CPC either, the need to establish their identity under the Aliens Act has been quoted as the grounds for depriving them of liberty. Testimony in criminal proceedings is not laid down as grounds for deprivation of liberty in any law in Serbia. These people were deprived of liberty arbitrarily and in contravention of the safeguards under Article 5 of the ECHR. The period of their confinement in the Shelter ranged from several days to several weeks, depending on the efficiency of the public prosecutors and the time they needed to hear their testimonies.

In its Concluding observations on Serbia's second periodic report, the CAT expressed concern about Serbia's implementation of its procedures for the forced return of aliens found to be unlawfully residing in it. In other words, the forced return procedure lacks procedural safeguards against refoulement.¹³¹

3.3. *Measures Ensuring the Defendants' Presence at Trials and Unhindered Conduct of Criminal Proceedings, Deferral of Criminal Prosecution, Plea Bargains, Agreements on the Testimonies of Defendants and Convicts*

The BCHR in 2015 continued monitoring the judicial authorities' practices regarding the imposition of measures entailing deprivation of liberty and alternatives to incarceration.¹³² The Serbian prisons are still overcrowded, although the Serbian Government adopted numerous strategies and other decisions with a view to reducing the number of remanded and convicted prisoners.¹³³ The number of people remanded in custody has commendably fallen.¹³⁴ Statistical data on the enforcement of measures aimed at ensuring the defendants' presence at trials and the unhindered conduct of criminal proceedings (Arts. 188–223, CPC), deferral of criminal prosecution (Arts. 283–284) and plea bargains (Arts. 313–319) presented in the tables below indicate that the courts are still loathe to order alternatives to pre-trial detention, which would contribute to addressing the problem of overcrowding. As far as agreements on testimonies by defendants and convicts (governed by Arts. 320–326 and 327–330 of the CPC respectively) are concerned, only the Negotin Basic Prosecution Service concluded one agreement on the testimony by a defendant in the first six months of the year.

131 "Concluding observations on the second periodic report of Serbia", UN doc., CAT/C/SRB/CO/2, (published on 3 June 2015), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/112/60/PDF/G1511260.pdf?OpenElement>, paragraphs 14 and 15.

132 The BCHR began implementing the *Imprisonment – ultima ratio* project in July 2015, within which it continued with its years-long activities focusing on monitoring the judicial authorities' work and imposition of measures aimed at reducing the prison population.

133 More in the 2014 Report, III.4.2.

134 *Ibid.*

Table: Comparative Overview of People Ordered PTD and Alternatives to PTD Ensuring Their Presence and Unhindered Conduct of Criminal Proceedings from 2010 to 30 June 2015¹³⁵

Measures	2010	2011	2012	1 October 2013– 1 November 2014	1 January– 30 June 2015
PTD	4,037	3,246	3,317	4,926	2,363
House arrest and the prohibition of leaving one's temporary place of residence	91	113	145	This measure has not existed since October 2013	This measure has not existed since October 2013
Bail	56	38	52	44	12
House arrest	This measure did not exist until 1 October 2013		319 (of which 200 with electronic monitoring)		191 (of which 91 with electronic monitoring)
Prohibition of leaving one's temporary place of residence	This measure did not exist until 1 October 2013		214		124
Restraining order	This measure did not exist until 1 October 2013		104		100

Table: Deferral of Criminal Prosecution in the 1 January–30 June 2015 Period¹³⁶

Deferral of Criminal Proceedings	
Orders deferring criminal prosecution	11,265
Rulings dismissing criminal reports	7,223 ¹³⁷

¹³⁵ The number of people ordered PTD is higher since some courts specified the number of PTD cases involving more than one person. BCHR obtained all the data by submitting requests for access to information of public importance. The 2010–2014 data reflect the practices of 80% of the Basic and Higher Courts, which had fully replied to BCHR's requests. The 2015 data do not include the statistical data of the Basic Courts in Bečej, Despotovac and Subotica, which refused to respond to the requests.

¹³⁶ The statistical data reflect the practices of all Basic and High Public Prosecution Services, with the exception of the Basic Prosecution Services in Subotica and Petrovac na Mlavi, which refused to forward the information requested.

¹³⁷ Rulings dismissing criminal reports include those issued pursuant to orders made before 1 January 2015 as well.

Table: Number of Plea Bargains in the 1 January–30 June 2015 Period¹³⁸

Plea Bargains	
Proposed	2,183
Upheld	1,742 ¹³⁹
Rejected	37
Dismissed	9

Table: Number of Remanded Prisoners at the End of the Past Five Calendar Years and on 30 June 2015¹⁴⁰

2010	2011	2012	2013	2014	30 June 2015
3,332	3,109	2,532	1,894	1,593	1,632

The significant increase in the number of restraining orders and the mild increase in the number of house arrests (with or without electronic monitoring) in 2015 are encouraging. The courts have, however, rarely imposed measures prohibiting the defendants from leaving their temporary place of residence or ordering bail. Measures alternative to PTD account for 18% of all measures taken to ensure the defendants' presence at trials and unhindered conduct of criminal proceedings. Therefore, the courts ordered PTD in 82% of the cases.

The BCHR started monitoring the practices of the judicial authorities in 2015, wherefore it is too early to assess the enforcement of the provisions on the deferral of criminal prosecution and plea bargain or the quality of the decisions ordering the enforcement of these measures. The obtained statistical data indicate that the prosecutors, who had opted for deferral of criminal prosecution, mostly ordered the suspects to pay specific amounts of money for humanitarian purposes (in 6,222 cases), and, to a much lesser extent, measures that are likely to address the reasons underlying the defendants' criminal conduct (such as, alcohol or drug abuse treatment or psychotherapy to address the causes of their violent conduct).

The further consolidation of the probation offices, established under the Non-Custodial Sanctions and Measures Enforcement Act (hereinafter NCSMEA)¹⁴¹ and in charge of monitoring the enforcement of most of the above measures, will defi-

138 *Ibid.*

139 Upheld plea bargains include those proposed before 1 January 2015.

140 All the data were obtained from the Penal Sanctions Enforcement Administration, in response to BCHR's request for access to information of public importance.

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

nately reassure the judicial authorities of the effectiveness of measures alternative to PTD and encourage them to impose other obligations, not just payment of a specific amount of money for humanitarian purposes, on the suspects whose criminal prosecution is deferred.¹⁴²

3.3.1 Damages for Unlawful Detention

The following table provides an overview of the data on claims submitted to the Ministry of Justice Damages Commission and the Solicitor General Offices' data on civil lawsuits against the Republic of Serbia over wrongful detention and indication of the practices of these two bodies.¹⁴³

Year	No. of filed wrongful detention claims	No. of claims reviewed by the Commission	No. of days of deprivation of liberty in claims reviewed by the Commission	No. of settlements	No. of days of deprivation of liberty in settled claims	Total amount of damages awarded under the settlements (in RSD)
2005	876	496	-	315	17,461	48,155,980
2006	904	405	24,872	170	12,687	40,016,500
2007	698	455	26,913	206	15,930	62,127,000
2008	452	275	27,535	133	6,924	17,581,000
2009	528	237	13,499	63	2,722	7,644,000
2010	572	217	12,071	53	3,051	7,517,500
2011	574	346	22,076	50	4,149	25,061,400
2012	607	342	21,582	51	2,355	6,424,000
1 Jan–1 Oct 2013	658	408	31,591	45	5,419	25,045,000
				40	6,154	22,528,000
2014	913	208		19		1,669,000
1 Jan–30 June 2015	450	172		20		1,939,500
Total	7,232	3,561	180,139	1,165	76,852	265,708,880

¹⁴² More in the *2014 Report*, III.4.2.

¹⁴³ The statistical overview does not include the data of the Novi Sad Solicitor General's Office for the 1 October 2013–1 November 2014 period and the data of the Zaječar and Niš Solicitor General's Offices for the 1 November 2014–30 June 2015 period, wherefore it may be safely assumed that the awarded redress for unlawful PDT is considerably higher.

The above table shows that the Damages Commission received 7,232 damage claims over wrongful detention during the observed period and that it reviewed 3,561 (49%) of them but reached settlements only with 1,165 (16%) claimants. Therefore, 6,067 (84%) of the injured parties have presumably filed civil lawsuits against the Republic of Serbia, in which higher amounts of damages are generally awarded.

The number of days of unlawful PTD cannot be established precisely. According to the data of the Damages Commission regarding the complaints reviewed in the 1 January 2005–1 October 2013 period, the number of days of unlawful PTD stood at 180,139.¹⁴⁴ The fact that the Commission refused to review a number of claims does not mean that these claimants had been lawfully detained. As a rule, unsuccessful claimants file civil lawsuits against the Republic of Serbia with the courts, wherefore it may be concluded that the number of days of unlawful detention is much higher. It is thus extremely difficult to ascertain the precise number of days of unlawful PTD ordered every year. The data will be even more difficult to come by in the future, since the Damages Commission in 2014 stopped keeping records of the number of days of unlawful detention in the claims it has reviewed and on the number of days covered by the settlements it has reached.

The available data show that the Damages Commission awarded a total of 265,708,880 RSD (cc. 2.000.000 EUR) from 2005 to 1 June 2015.

Solicitor General's Office	TOTAL NO OF CASES	NO OF DAYS OF UNLAWFUL PTD	AMOUNTS AWARDED (IN RSD)
Belgrade	137	26,024	146,511,500
Leskovac	30	1,442	5,494,600
Zaječar (no data for the 1 Nov 2014–30 June 2015 period were forwarded)	17 (in the 1 Oct 2013–1 Nov 2014 period)	2,561 (in the 1 Oct 2013–1 Nov 2014 period)	12,242,000 (in the 1 Oct 2013–1 Nov 2014 period)
Zrenjanin	10	307 (one judgment does not specify the number of days)	1,676,188

¹⁴⁴ These data are inaccurate because the Damages Commission did not forward the 2005 data on the number of days of wrongful PTD covered by the claims it reviewed or the October–December 2013 data. The number of days in the claims the Commission reviewed in the 2006–2008 period clearly indicates that it is higher than 20,000, which shows that the number of days of wrongful PTD the Commission reviewed in the 2005–October 2013 period exceeds 200,000.

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Solicitor General's Office	TOTAL NO OF CASES	NO OF DAYS OF UNLAWFUL PTD	AMOUNTS AWARDED (IN RSD)
Kraljevo	28	2,704	9,969,000
Kragujevac	19	1,620	9,817,000
Valjevo	23	1,129	3,960,500
Niš (no data for the 1 Nov 2014–30 June 2015 period were forwarded)	2 (in the 1 Oct 2013–1 Nov 2014 period)	127 (in the 1 Oct 2013–1 Nov 2014 period)	1,160,000 (in the 1 Oct 2013–1 Nov 2014 period)
Novi Sad (no data for the 1 Oct 2013–1 Nov 2014 were forwarded)	6 (in the 1 Nov 2014–30 June 2015 period)	420 (in the 1 Nov 2014–30 June 2015 period)	2,178,000 (in the 1 Nov 2014–30 June 2015 period)
Požarevac	12	504	3,855,000
Subotica	16	1,386	4,604,000
Užice	3	44	440,000
Total		(at least) 38,268	201,907,788 (circa 1,700,000 EUR)

The Serbian courts awarded damages amounting to 201,907,788 RSD (circa 1,700,000 EUR) in civil proceedings over unlawful detention in the 1 November 2014–30 June 2015, i.e. in less than two years (without the incomplete data supplied by the Solicitor General's Offices in Niš, Zaječar and Novi Sad). It may be safely presumed that the awarded damages would amount to 2,000,000 EUR had the Zaječar, Niš and Novi Sad General Solicitor's Offices forwarded complete data to the BCHR.

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

Greater resort to alternatives to PTD is considered one of the best ways to address the overcrowding of penitentiaries. Furthermore, a country's penal policy reflects the character of its judicial authorities and their propensity to respect the principle of proportionality when they limit the right to liberty. The below table provides insight in the penal policy in the Republic of Serbia:

Number of Prison Sentences Imposed in the 2010–2014 Period¹⁴⁵

Prison Sentences by Duration	2010	2011	2012	2013	2014	Total
Under one month	-	-	-	-	-	3 ¹⁴⁶
1–3 months	1,155	1,483	1,907	1,947	2,529	9,021
3–6 months	1,344	2,002	2,701	3,003	3,772	12,822
6–12 months	1,202	1,779	2,225	2,728	3,184	11,118
1–2 years	1,026	1,268	1,485	1,536	1,631	6,946
2–3 years	556	744	850	993	947	4,090
3–5 years	371	599	722	665	677	3,034
5–10 years	156	195	232	260	191	1,034
10–15 years	54	51	46	48	59	258
15–20 years	18	29	30	14	23	114
30–40 years	16	5	12	9	11	53
40 years	10	3	2	1	2	18
Total	5,908	8,158	10,212	11,204	13,026	48,508

Statistical Data on the Number of Convicts and Duration of Their Imprisonment Sentences in the 2010–2014 Period¹⁴⁷

Prison Sentences by Duration	2010	2011	2012	2013	2014	Total
Under one month	476	452	539	-		1,467
1–3 months	896	760	756	1,350	1,455	5,217
3–6 months	1,529	1,806	1,330	1,505	1,429	7,599
6–12 months	1,517	1,486	1,370	1,233	1,263	6,869
1–2 years	1,328	1,436	1,440	1,051	1,083	6,338
2–3 years	802	783	785	754	693	3,817

145 See the Statistical Office of the Republic of Serbia website: <http://webzrs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=145>.

146 No available data.

147 Data obtained from the Penal Sanctions Enforcement Administration annual reports, available in Serbian at: <http://www.uiks.mpravde.gov.rs/cr/articles/izvestaji-i-statistika/>

Individual Rights

Prison Sentences by Duration	2010	2011	2012	2013	2014	Total
3–5 years	625	1,064	1,153	785	755	4,382
5–10 years	344	433	586	504	328	2,195
10–15 years	83	133	179	138	67	600
15–20 years	31	47	77	33	38	226
40 years	29	25	55	16	/	125
Total	7,660	8,425	8,270	7,369	7,111	38,835

Table: Number of Inmates in Serbian Penitentiaries on 31 December 2009–2014 and on 30 June 2015¹⁴⁸

Year	2009	2010	2011	2012	2013	2014	30 June 2015
Convicted Prisoners	7,463	7,167	7,322	6,952	7,330	7,737	7,756
Remanded Prisoners	2,601	3,332	3,109	2,532	1,894	1,593	1,632
Sentenced to Medical Treatment	234	242	208	232	213	387	409
Juvenile Prison	41	36	29	22	24	14	14
Correctional Measures	217	213	218	210	215	228	215
Inmates Serving Misdemeanour Prison Sentences	239	221	208	278	355	329	244
Total	10,795	11,211	11,094	10,226	10,031	10,288	10,270

Table: Conditional Sentences Imposed in the 2010–2014 Period¹⁴⁹

Year	2010	2011	2012	2013	2014
Number of Conditional Sentences	12,833	18,110	17,169	17,152	18,307

¹⁴⁸ *Ibid.*

¹⁴⁹ See the Statistical Office of the Republic of Serbia website: <http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=145>.

Table: Conditional Sentences under Protective Supervision Imposed from 2010 to 30 June 2015¹⁵⁰

Year	2010	2011	2012	2013	2014	30 June 2015	Total
Number of Conditional Sentences under Protective Supervision	3	21	11	14	29	48	78

Table: Community Service Sentences Imposed from 2007 to 30 June 2015¹⁵¹

Year	2007	2008	2009	2010	2011	2012	2013	2014	30 June 2015	Total
Number of Imposed Community Service Sentences	48	35	51	71	357	365	348	371	151	1,426
Number of Enforced Community Service Sentences	–	–	17	17	90	209	253	351		937

Table: Home Incarceration Sentences Imposed from 2011 to 30 June 2015¹⁵²

Year	2011	2012	2013	2014 (by 2 December)	30 June 2015	Total
Number of Home Incarceration Sentences	88	610	725	627	689	2,739

Table: Number of Provisional Release Decisions from 2008 to 30 June 2015¹⁵³

2008	2009	2010	2011	2012	2013	2014	30 June 2015
1,423	1,674	1,646	936	581	1,036	1,243 ¹⁵⁴	778 ¹⁵⁵

150 Data obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

151 Data obtained from the Penal Sanctions Enforcement Administration and the Basic and High Courts in response to BCHR's requests for access to information of public importance.

152 *Ibid.*

153 Data obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

154 Indicating that 29.46% of the provisional release applications were upheld by the competent courts.

155 Indicating that 34.48% of the provisional release applications were upheld by the competent courts.

Table: Number of Parole Decisions from 2009 to 30 June 2015¹⁵⁶

2008	2009	2010	2011	2012	2013	2014	30 June 2015
0	36	38	244	213	41	20	4

The above tables clearly demonstrate the retributive character of Serbia's judicial authorities, which preferred imposing short-term prison sentences to alternative penalties in the 2010–2014 period. The courts imposed a total of 48,508 prison sentences in that period (43,997 ranging from one month to three years).

On the other hand, the courts delivered 4,165 judgments sentencing convicts to home incarceration and community service (including in the first half of 2015 and, in the case of community service, the 2007–2009 period). If one recalls that home incarceration may be imposed for criminal offences punishable by imprisonment up to one year,¹⁵⁷ and community service for criminal offences punishable by imprisonment of up to three years,¹⁵⁸ it is clear that alternative penalties are imposed extremely rarely.

The courts imposed a total of 32,961 prison sentences up to one year in the 2010–2014 period although they probably could have imposed a less restrictive measure in some of these cases (home incarceration or community service) in all those cases. The same applies to the 6,946 cases in which they imposed prison sentences lasting between one and two years, in which they could have ordered community service. Such practice falls short of standards regarding the right to liberty and security of person, particularly when one takes into account that all surveys show that such a penal policy has not led to lower crime rates. In addition, the financial consequences of such a penal policy are measured in millions of Euros, given that every day a prisoner spends in jail costs the state 15 Euros.¹⁵⁹

The data indicate a mild increase in the number of provisional releases ordered by the courts (from 28.14% (1,243) in 2014 to 34.48% (778) in the first half of 2015). The number of decisions on parole (taken by the PSEA Director) has, however, fallen compared to the 2011–2012 period – only 20 convicts were released on parole in 2014 and another four in the first half of 2015, while the PSEA Director upheld 244 parole applications in 2011 and 213 such applications in 2012. The number of conditional sentences under protective supervision has, commendably, increased in the first half of 2015 over 2014 (48 vis-a-vis 29).

156 Data obtained from the Penal Sanctions Enforcement Administration in response to BCHR's request for access to information of public importance.

157 Article 45(5), CC.

158 Article 52, CC.

159 See the article in *Politika*, available in Serbian at: <http://www.politika.rs/search/searchEngine-Landing/article/Srpski-zatvorenik-kosta-15-evra-na-dan>.

4. Equality before the Court and Fair Trial

4.1. Fair Trials

Article 36 of the Serbian Constitution guarantees everyone the right to equal protection of their rights in proceedings before courts, other state authorities, entities vested with public powers and provincial and local self-government authorities, as well as the right to file appeals or other legal remedies challenging decisions on their rights, obligations or lawful interests. Although the Constitution guarantees everyone the right to equal legal protection, without discrimination (Art. 21), this right is not accessible to everyone in Serbia.

The lack of an adequate free legal aid system is one of the problems undermining the fairness of proceedings in Serbia. The Government of the Republic of Serbia adopted the Strategy on the Development of a Free Legal Aid System in the Republic of Serbia for the 2011–2013 Period.

The adoption of the law on free legal aid was still pending at the end of the reporting period although, under the Chapter 23 Action Plan, the National Assembly was to have enacted it in the third quarter of 2015. The latest version of the bill, drafted by the Ministry of Justice, provides for two types of legal aid: primary, which covers the provision of general legal information, initial legal advice, legal advice, and design of legal documents; and, secondary, which includes legal representation, preparation of submissions, defence and mediation. The definition of providers of legal aid is disputable. Under the bill, primary legal aid may be extended by lawyers, notaries public, legal aid departments of local self-governments, other public authorities, associations and law schools. The bill provides for a broad list of legal aid providers, who must have a law degree in order to extend legal aid. Secondary legal aid may be provided by lawyers, notaries public and mediators (within their remit), representatives of legal aid departments of local self-governments, representatives of associations in proceedings before state administrative authorities or organisations conferred public powers, representatives of associations in cases in which they are entitled to file claims alleging violations of rights and liberties of others pursuant to other laws, representatives of associations that may be granted the status of intervening parties in disputes on the rights, freedoms or lawful interests of association members, pursuant to other laws.

This draft was commended by the representatives of civil society organisations, who praised the expansion of the list of legal aid providers and beneficiaries, compared to the previous versions of the bill.¹⁶⁰ The representatives of lawyers, however, expressed their dissatisfaction with the list of legal aid providers, emphasising that this scheme was in contravention of the Constitution and would ad-

160 See the *Vreme* article of 11 June 2015, available in Serbian at: <http://www.vreme.co.rs/cms/view.php?id=1304493>.

versely reflect on the members of the public, who would receive poor advice from insufficiently qualified providers, who had not passed the Bar and have not been sworn in as attorneys.¹⁶¹

4.2. *Court Efficiency*

The new court network was established in order to facilitate access to justice, cut legal costs, and improve court efficiency. According to the Supreme Court of Cassation data, 2,890,417 cases were pending before Serbian courts at the beginning of 2014.¹⁶² Another 1,752,185 cases were received in 2014, wherefore the total number of cases stood at 4,642,602. The courts ruled on 1,793,212 cases in 2014, and carried 2,849,360 cases over to 2015. Although the number of completed cases that year was higher than the number of received cases, the former still accounted for slightly less than 39% of all the cases.

According to the Serbia Judicial Functional Review, the number of incoming cases in Serbian courts stands at 13.8 per 100 inhabitants, which is slightly lower than the European average, while, on the other hand, Serbia, with 39 judges per 10,000 inhabitants, has nearly double the judges-to-population ratio than the EU average. In 2012, for instance, the judiciary received on average 350 incoming cases per judge, whereas the EU average was 840. The authors of the Review state that the caseload figures are inflated because many matters are counted as a ‘case’ that would not be considered as such in other systems¹⁶³, and note a significant decline in the number of cases, which they attribute to the transfer of judicial functions to other private or public actors, wherefore they conclude that reasons lie in the systemic problems and in the way the system operates.

The Supreme Court of Cassation President said that 1,640,000 of the 1,890,000 enforcement cases pending at the end of 2014 were public utility cases.¹⁶⁴ The Supreme Court of Cassation adopted a “Special Set of Measures to Solve the Backlog of Enforcement Cases in the Courts of Serbia” for the 2015–2018 pe-

161 See the *Vesti Online* article of 20 April 2015, available in Serbian at: <http://www.vesti-online.com/Vesti/Srbija/486367/Vlast-opet-sprema-zakon-na-stetu-gradjana>.

162 The Supreme Court of Cassation Report on the work of courts is available in Serbian at: http://www.vk.sud.rs/sites/default/files/attachments/ANALIZA%20rada%20sudova%20za%202014%20%20KONA%C4%8CNI_0.pdf.

163 The Review authors provide the following example: a criminal investigation counts as one case, then the ensuing trial counts as a separate case. If the decision is appealed, the appeal is a separate case, and if the appeal results in a re-trial then that too counts as a separate case. If the criminal trial raises an issue of compensation to the victim, then the compensation aspects is a separate civil case. The Review is available at: <http://mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>.

164 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/drustvo/milojevic-100000-sudskih-predmeta-ceka-izvršenje-duže-od-10-godina/9jx4yqq>.

riod.¹⁶⁵ This programme envisages systemic measures, involving amendments of the Enforcement and Security Act and the provisions on the territorial jurisdiction of private enforcement officers, as well as special measures to be taken by the High Judicial Council, the Supreme Court of Cassation, the Justice Ministry and the courts, each in their respective areas. This Set of Measures, like the Supreme Court of Cassation's 2013 National Backlog Reduction Programme,¹⁶⁶ aims at reducing the backlog of cases older than two years nationwide by 80% by the end of 2018.

All courts formed backlog reduction teams in 2015, as provided for by the National Backlog Reduction Programme.¹⁶⁷ These teams specialise in analysing the reasons for long proceedings and finding adequate solutions to the identified problems. The mechanism was tested in ten courts in Serbia, with the support of the USAID Separation of Powers Program. According to USAID's data, six Serbian courts have cut their case backlogs in half by adopting procedures recommended by USAID.¹⁶⁸

4.3. Trial within a Reasonable Time

Under the Constitution, everyone shall have the right to a public hearing *within a reasonable time* before an independent and impartial tribunal already established by the law, which shall hear and pronounce a judgment on their rights and obligations, grounds for suspicion that led to the initiation of the proceedings and charges against them (Art. 32 (1)). Serbia's Criminal Procedure Code recognises the rights of the defendants to be brought before a court as soon as possible and to a trial without any undue delay and obliges the courts to endeavour to conduct the proceedings without undue delay.

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 of human rights of parties to the proceedings and appraisals of the performance of judges and public prosecutors and has prompted the submission of many applications against Serbia to the ECtHR.

The National Judicial Reform Strategy envisages measures for addressing the problem, including the identification and reassignment of the backlog, electronic case management, horizontal reallocation of judges and court staff whilst respecting the constitutional guarantees and with adequate stimulation; resolution of a significant

165 Available at: http://www.vk.sud.rs/sites/default/files/attachments/BLR%20Strategy_Enforcement%20Cases_ENG.pdf.

166 The Programme is available at: <http://www.vk.sud.rs/en/unique-program-solve-old-cases-re-public-serbia>.

167 As stated in the Chapter 23 Action Plan.

168 See: <http://www.usaid.gov/results-data/success-stories/usaid-cuts-case-backlogs-streamlining-serbian-courts>.

number of cases by enforcement agents and notaries public, amendments of substantive and procedural laws in order to improve the efficiency and legal certainty.

4.4. Violations of the Right to a Trial within a Reasonable Time

The National Assembly adopted the Act on the Protection of the Right to a Trial within a Reasonable Time, which came into force on 1 January 2016.¹⁶⁹ This law envisages judicial protection of the right to a trial within a reasonable time to all parties to the proceedings. This right is not afforded to public prosecutors in criminal trials. Proceedings on violations of this right are urgent and free of charge.

The Act lays down the criteria by which the length of the trials is assessed. When ruling on legal remedies protecting the right to a trial within a reasonable time, the court shall take into account all the circumstances of the case, above all the complexity of the factual and legal issues, the duration of the proceeding and the actions of the court, public prosecutors or other state authorities, the character and type of the adjudicated or investigated matter, the relevance of the adjudicated or investigated matter to the parties, the conduct of the parties during the trial, especially adherence to procedural rights and duties, adherence to the case review schedule and the legal deadlines for scheduling the hearings and the trial and for drafting the decisions. These criteria do not provide sufficient safeguards protecting this right during the court's consideration of its violation, because they do not lay down any trial time limits. Both the 2015 Progress Report and the Screening Report identify violations of the right to a trial within a reasonable time as one of the gravest problems of the Serbian judiciary and propose the establishment of a relevant methodology for weighting the cases to measure the workloads and ensure a more equitable allocation of cases to judges and prosecutors.

The Act provides for the following three legal remedies protecting the right to a trial within a reasonable time: a complaint with a view to expediting the proceedings, an appeal and a just satisfaction claim.

The proceeding for the protection of the right to a fair trial is initiated by the party's submission of a complaint. The complaint is to be submitted to the court conducting the trial and must include the information specified in Article 6 of the Act. The complaint review procedure is conducted by the court president. There is no oral hearing on the complaint and the court president must adopt a decision on it within two months from the day of receipt. The court president may issue a ruling dismissing or rejecting a complaint that does not include all the mandatory information or in the event the duration of the impugned proceedings is manifestly not excessive. In the event the court president does not dismiss or reject the complaint, he shall launch a review during which he shall require of the judge to submit a report on the proceeding, elaborating the course of the trial and giving an estimation

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

when he will complete it. The court president then issues a ruling either rejecting the complaint or upholding it and finding a violation of the right to a trial within a reasonable time. In the latter ruling, the court president shall specify the procedural actions the judge is to undertake to expedite the trial and the deadline, ranging from a fortnight to four months, by which he is to complete them. Parties, who have failed to appeal rulings rejecting their complaints, may file new complaints after the expiry of four months from the day they are served the rulings.

Parties may appeal rulings rejecting their complaints within eight days from the day of rejection or as soon as the two-month deadline, by which the court president has to rule on it, expires. The appeal must include the same mandatory information as the complaint. It shall be submitted to the court president ruling on the complaint and ruled on by the president of the next highest court. The latter court president shall also issue a ruling, either dismissing or rejecting the appeal, or review it and render a decision on it.

Parties, whose complaints or appeals have been upheld, are entitled to just satisfaction. The Act provides for three kinds of just satisfaction: the right to pecuniary damages, the right to the publication of a written statement by the State Attorney finding a violation of the party's right to a trial within a reasonable time, and the right to the publication of a judgment finding a violation of the party's right to a trial within a reasonable time. The parties may file claims against the Republic of Serbia seeking pecuniary damages within one year from the day they are recognised the right to just satisfaction. The pecuniary damages shall range from 300 to 3,000 Euro and shall be set by the State Attorney and the court, taking into consideration the criteria for assessing the duration of the trial within a reasonable time.

The state is already under major pressure because of the non-enforcement of court decisions, pressure that has increased with every ECtHR judgment and friendly settlement.¹⁷⁰ The EC stated in its 2014 Progress Report that the number of bailiffs increased, but remained insufficient to meet the target set by the law for its implementation. The Screening Report proposed that Serbia consider measures for reducing the case backlog, which may also include using alternative dispute resolution methods (i.e. mediation) in all civil and commercial cases and reducing the backlog of enforcement cases through a number of measures, such as using the services of public notaries and bailiffs. It also suggested “[A]t short notice and in order to be able to strengthen overburdened courts or Prosecution Services, incentive-based measures that would contribute to the voluntary mobility of judges and prosecutors could be considered.”

The Dispute Mediation Act¹⁷¹ came into force on 1 January 2015. This law aligns the regulation of this area with international standards and is likely to contribute to relieving the courts of their caseloads. Mediation shall be conducted on

170 The ECtHR has already rendered many judgments against Serbia regarding the non-enforcement of final court decisions.

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

a voluntary basis, and the mediators shall be neutral and under the obligation to respect the equality of the parties, ensure the exclusion of the public, maintain confidentiality and proceed with urgency. The parties have to personally participate in the mediation procedure. Mediation may be applied in criminal and misdemeanour proceedings regarding proprietary and damage claims. The settlements have the effect of court decisions and the status of enforceable instruments. Mediators shall be licenced by the Ministry of Justice and Public Administration. Individuals holding a university degree (not necessarily a law degree) are eligible to apply. Oversight of the mediators shall be performed by a special commission entitled to revoke their licences.

Expiry of the statutes of limitations has been one of the problems constantly plaguing the Serbian judiciary.¹⁷² For instance, a final judgment was delivered in a criminal case against Stanko Subotić aka Cane and others in 2015. In one part of the judgement, the court acquitted them of the charges, while, in the other part of the judgement, it dismissed the charge against them because of the absolute expiry of the statute of limitations.¹⁷³

Under the CPC, when a trial is discontinued due to the expiry of the statute of limitations, the court is under the obligation to compensate the costs and expenses the defendant suffered during the trial. Given the duration of this trial and the gravity of the crimes the defendants had been charged with, the state will have to pay millions just to cover the costs of their legal counsels.

4.5. Notaries Public Act

The blockade of the judicial system in the last four months of 2014 continued into 2015. The blockade was caused by the months-long strike launched by the Serbian Bar Association due to the entry into force of the 2011 Notaries Public Act, which was amended in 2013, and the amendment of a set of laws aligning them with the Notaries Public Act. The lawyers' strike lasted from 17 September 2014 to 26 January 2015.¹⁷⁴

The strike ended in early 2015 after the representatives of the Serbian Bar Association and the Justice Ministry reached an agreement on the amendment of the Notaries Public Act, the Real Estate Transactions Act, the Non-Contentious Procedure Act, the Inheritance Act and the Family Act. All the amendments were adopted on 21 January 2015.¹⁷⁵ Under the amendments, notaries public will merely notarise contracts drawn up by private individuals or lawyers, with the exception of real estate contracts entered into by individuals deprived of legal capacity, or individuals who are

172 More in the *2014 Report*, III.5.4.2.

173 See the *Politika* article of 24 December 2015, available in Serbian at: <http://www.politika.rs/sr/clanak/345986/Stanko-Subotic-Cane-pravosnazno-slobodan-od-optuzbi-za-sverc-duvana>.

174 More on the disputes between lawyers and notaries public in the *2014 Report*, III.5.4.3.

175 *Sl. glasnik RS*, 6/15.

deaf, mute, blind or illiterate, and care agreements. Furthermore, at the request of the parties, notaries public may draw up mortgage contracts and lien statements that are to have the status of enforceable instruments. Contracts drawn up by private individuals or lawyers no longer need to follow a special format but may be drawn in any format, like before 1 September 2014, when the Notaries Public Act came into force. Notaries public may refuse to notarise documents only in the event their clients are deprived of legal capacity, do not have proper power of attorney or in the event they believe that the contracts are absolutely void. Their clients are entitled to complain to the courts. Judicial oversight of the work of notaries public has thus been ensured (under the prior provisions, the clients could file complaints only to the Notary Chamber).

The appointment of notaries public was also problematic.¹⁷⁶ According to the Rulebook¹⁷⁷ on the provisional number of notaries public and their headquarters under which the first 100 vacancies was published, Serbia is to have a total of 371 notaries public.

Another 63 notaries public were appointed after three rounds of vacancies were published in 2015.¹⁷⁸ According to the list published on the Notary Chamber website,¹⁷⁹ 144 notaries public are currently operating in Serbia.

The Professional Council of the Notary Chamber of Serbia (hereinafter NCS Professional Council) was established in early February in order to extend professional support to the notaries public. Under the Decision on its establishment, it shall be composed of eminent experts in the relevant fields of law, as well as notaries public actively engaged in addressing disputed legal issues. The NSC Professional Council comprises nine members: three notaries public, one full Belgrade University Law School Professor, one Belgrade University Law School Associate Professor, one Belgrade University Law School Assistant Professor, a Supreme Court of Cassation judge, the Deputy Chief State Prosecutor and a State Secretary of the Ministry of Construction, Transportation and Infrastructure.¹⁸⁰ All members, apart from the latter three, shall be remunerated for their work by the Notaries Chamber, in accordance with a decision thereto rendered by the Notary Chamber Executive Committee.¹⁸¹

176 More in the *2014 Report*, III.5.4.3.

177 *Sl. glasnik RS*, 31/12 and 57/14.

178 Forty-eight notaries public were appointed in March 2015 in a procedure conducted in accordance with the call for applications published in the Official Gazette of the Republic of Serbia No 146/14 (<http://www.drzavnauprava.gov.rs/vest/8261/spisak-imenovanih-javnih-beleznika.php>); another eight were appointed in July 2015 after the second call for applications was published (<http://www.drzavnauprava.gov.rs/vest/9497/imenovanje-javnih-beleznika-1.php>); and seven notaries public were appointed on December 2015 after the third call for applications was published (<http://www.drzavnauprava.gov.rs/vest/11588/imenovani-novi-javni-beleznici.php>).

179 The list is available in Serbian at: <http://beleznik.org/images/pdf/spisak-beleznika.pdf>.

180 The Decision on the Establishment of the NCS Professional Council is available in Serbian at: <http://beleznik.org/images/pdf/odluka-o-osnivanju-strucnog-saveta.pdf>.

181 Article 15(6) of the NSC Professional Council Rules of Procedure, available in Serbian at http://beleznik.org/images/pdf/pravilnik_o_radu_strucnog_saveta.pdf.

The Notaries Public Act was again amended at the end of 2015.¹⁸² Under the amendments, the court may entrust the notaries public with conducting a non-contentious procedure or specific non-contentious actions under conditions laid down in the law governing the procedure at issue (Art. 98(1)).¹⁸³ This provision already exists in the Non-Contentious Procedure Act (hereinafter: NCPA) and envisages specific restrictions. Under the NCPA, the courts may not entrust notaries public with conducting proceedings on status-related and family matters, proceedings regarding the setting of the amount of compensation for expropriated real estate, keeping of public books and registers to be kept by courts under the law, with drawing up documents that may be drawn up only by courts under the Non-Contentious Procedure Act or another law, and with conducting inheritance proceedings in which the law of another state applies. Furthermore, the courts shall rule on the expediency of entrusting the notaries public with the conduct of specific proceedings and taking of individual procedural actions within their jurisdiction (Art. 30a).¹⁸⁴ The fees of notaries public conducting proceedings and actions conferred by the courts and the reimbursement of their expenses shall be set in accordance with the notaries' fee schedule and paid by the parties. Decisions on exempting the parties from paying the notaries' fees shall be rendered in accordance with the rules of the procedure the conduct of which had been entrusted to the notaries (Art. 140, Notaries Public Act).¹⁸⁵

The amendments to the Notaries Public Act reduce the period during which notaries are under the obligation to keep notarial deeds, minutes and notarised documents from 30 to 20 years and impose upon them the duty to keep the electronic form of these documents indefinitely. Furthermore, Article 110 of the Act places upon the notaries public the obligation to keep copies of authentications and certificates three years (they were under no obligation to keep these documents at all under the original provisions).¹⁸⁶

4.6. *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

182 *Sl. glasnik RS*, 106/15.

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

184 *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.

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

186 *Ibid.*

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 several systems for electronic registration of data are in use. Almost all of them suffer from specific shortcomings. 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 the database 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 the numerous international bodies. The following steps could be made to improve the electronic system: the adoption of regulations on a uniform method for entering case file data in the database, organisation of additional training for the users of the software, and improvement of the courts' ICT to ensure optimal storage of data in the electronic database.¹⁸⁷

Both the 2013–2018 National Judicial Reform Strategy (NJRS)¹⁸⁸ 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.

A comprehensive analysis of the judicial hardware and software was conducted by USAID and the Justice Ministry in February 2015 and the Ministry planned on conducting a thorough analysis of the courts' technical and human resources by the end of the year.¹⁸⁹ One of the activities 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.¹⁹⁰ The Court Rules of Procedure

187 The BCHR conducted a survey within the project "Protection of Human Rights before Serbian Courts – Contribution to Judicial Reform Monitoring" the results of which are available in Serbian at: <http://www.bgcentar.org.rs/konsultativni-proces-izrada-preporuka-za-vodjenje-jedinstvene-sudske-statistike/>.

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

189 Chapter 23 Action Plan, p. 26.

190 As noted above, in section 4.2 of this Chapter.

were amended two times in 2015,¹⁹¹ but did not include the amendments envisaged by the Action Plan.

The introduction of the electronic case management system in the misdemeanour courts (hereinafter: SIPRES) was the main step towards e-Justice that was taken in 2015. The misdemeanour courts were the only ones without an electronic case management system. The system was first piloted in two misdemeanour courts in 2015 and launched in all of them in January 2016.¹⁹² This system is centralised and all the data are stored on a server in the Justice Ministry; they can be accessed by all departments of all misdemeanour courts. Apart from allowing for the exchange of data among misdemeanour courts, the system is also interlinked with other, external entities. SIPRES is also interconnected with the Treasury, the Interior Ministry's Traffic Police Department and the Central Mandatory Social Insurance Register, with a view to ensuring faster and more efficient exchange of data needed to process misdemeanour orders.¹⁹³

The possibility of monitoring the status of cases on the Portal of Serbian Courts¹⁹⁴ was expanded in October 2015 to include the Supreme Court of Cassation, the Administrative Court and the four Appellate Courts. The Portal now allows for tracking the status of cases before these courts, as well as the courts of general jurisdiction and the Commercial Courts. The Portal facilitates access to information to all interested parties, given that the court registries are no longer the only points of contact where such information can be obtained from.¹⁹⁵

4.7. Public Character of Hearings and Judgments

The Constitution guarantees the public character of court hearings (Art. 32), but it does not explicitly guarantee the public pronouncement of court judgments. The Constitution lists the instances in which the public may be excluded from all or part of the court proceedings in accordance with the law only to protect the interests of national security, public order and morals in a democratic society, the interests of minors or privacy of the parties to the proceedings.

Civil and criminal proceedings are guided by the general rule that hearings and trials are public and may be attended by adults. The CPC envisages that the main hearing may be attended by persons over 16 years of age. Under the CPC, the

191 *Sl. glasnik RS*, 96/15 and *Sl. glasnik RS*, 104/15.

192 See the report of 1 January 2016, available in Serbian at: <http://ozonpress.net/drustvo/startovao-sipres/>.

193 See: <http://en.jrga.org/news/jrga-opens-a-new-chapter-for-efficient-misdemeanor-courts-in-serbia/>.

194 The Portal is available in Serbian at: <http://www.portal.sud.rs/code/navigate.aspx?Id=601>.

195 The Ministry press release is available in Serbian at: <http://www.mpravde.gov.rs/vest/11402/uspostavljanje-pracenja-predmeta-preko-interneta-za-vrhovni-kasacioni-upravni-i-apelacione-sudove.php>.

court may *ex officio* or on the request of a party, but only upon hearing the views of the parties, exclude the public from the entire or part of the trial in order to protect morals, public law and order, national security, minors or the privacy of the parties to the proceedings or to protect justified interests in a democratic society. The public is always excluded from trials of minors (Art. 75, Juvenile Justice Act¹⁹⁶).

Under Article 101 of the Act on Misdemeanours,¹⁹⁷ the public may be excluded from the entire misdemeanour hearing or part of it, if so required to preserve confidentiality, protect morals, interests of minors or to protect other community interests. Exclusion of the public from the main hearing is in contravention of the law, constitutes a grave violation of due process and grounds for appeal (Art. 368 (4), CPC and Art. 361 (2.11), CPA).

The CPA formulates the grounds for excluding the public from a hearing differently: the public may be excluded from a hearing to protect the interests of national security, public order and morals in a democratic society and to protect the interests of a minor or the privacy of the participants in the proceedings (Art. 322). Under the CPA, the public may be excluded from a hearing also in order to maintain order in the court.

All procedural laws stipulate that the decision on the exclusion of the public must be reasoned and public. Both the CPC and CPA lay down that a judgment must always be delivered publicly, notwithstanding whether the public was excluded from the proceedings, but that the court shall decide whether the public will be allowed to hear the reasoning of the judgment. The Administrative Disputes Act¹⁹⁸ specifies that the hearings shall as a rule be public and lists grounds for excluding the public, which are in accordance with the ECHR (Art. 35).

4.8. *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. Many of the applications filed with the ECtHR regard this problem.

In late 2015, the ECtHR delivered its judgment in the case of *Stanković and Trajković v. Serbia*,¹⁹⁹ in which the applicants complained of the violation of their right to a fair trial, due to inconsistent domestic case-law as regards the payment of non-pecuniary damages to individuals whose family members had disappeared

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

197 *Sl. glasnik RS*, 65/13.

198 *Sl. glasnik RS*, 111/09.

199 ECtHR, Apps. 37194/08 and 37260/08, judgment of 22 December 2015.

or been kidnapped in the aftermath of NATO intervention in Kosovo in 1999. The domestic courts had rejected the applicants' damage claims although they had upheld claims by other plaintiffs in similar situations. In the view of the ECtHR, the possibility of conflicting court decisions is an inherent trait of any judicial system, which is based on a network of trial and appeal courts with authority over a certain area, and such divergences may also arise within the same court, but this, in itself, cannot be considered to be in breach of the Convention. The Court therefore found no breach of Article 6 of the ECHR.

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.²⁰⁰ A case law database allowing courts insight in the judgments of other courts would facilitate the alignment of case law.²⁰¹

The Chapter 23 Action Plan envisages a number of activities to be undertaken by 2016 with a view to aligning the case law. They include, inter alia, 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, improvement of the efficiency of the case law departments in all courts, as well as the establishment of publicly available comprehensive electronic databases of the legislation and the case law.²⁰²

Commenting the problem of divergent case law in late November 2015, Justice Minister Nikola Selaković said he was contemplating a reform of the Appellate Courts that would entail abolishing the existing four courts and establishing one, which would be headquartered in Belgrade and have departments in Novi Sad, Niš and Kragujevac. In his view, this would contribute to the harmonisation of the case law.²⁰³ The best way to address this problem is to ensure that the judges continuously familiarise themselves with the case law. The main prerequisites for achieving this include the establishment of adequate and available case law databases and, of course, that the judges are interested in following case law. Another problem highlighted in the Functional Review regards the extremely low level of ICT literacy in the judiciary and the need to provide judges, prosecutors and court staff with basic computer training.²⁰⁴ The reform of the court network cannot, in itself, resolve this problem regarding the uniformity of case law.

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

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

202 Chapter 23 Action Plan, pp. 104–105.

203 See the *RTV* article of 19 November 2015, available in Serbian at http://www.rtv.rs/sr_lat/drustvo/selakovic-neujednacena-sudska-praksa-problem_660993.html.

204 Serbia Justice Functional Review, p. 45.

4.9. Guarantees to Defendants in Criminal Cases

There are three forms of punishable offences in Serbian law: criminal offences, misdemeanours and economic offences. A criminal offence is an offence defined by the law as a criminal offence which is unlawful and committed with a guilty mind (Art. 14, CC). A misdemeanour shall denote an unlawful act defined by the law or another regulation of a competent authority as a misdemeanour and warranting a misdemeanour penalty (Art. 2, Act on Misdemeanours). According to the ECtHR, all these punishable offences fall under the scope of Article 6 of the ECHR. Under Article 33(8) of the Constitution, all natural persons charged with punishable acts shall enjoy all the rights afforded to criminal defendants. The Constitution and the CPC are in compliance with international standards with regard to the following rights guaranteed criminal defendants under Article 6 of the ECHR: to be presumed innocent, to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusations against them, to have the free assistance of an interpreter if they cannot understand or speak the language used in court, to defend themselves in person or through legal assistance of their own choosing, to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. There are, however, problems in ensuring and violations of these procedural safeguards in practice.

Article 34(3) of the Constitution and Article 3 (1–2) of the CPC both prescribe that everyone shall be presumed innocent until proven guilty by a final decision of a competent court. Under the CPC, not only courts, but all other state authorities, media, civic associations, public figures and others as well, are under the obligation to respect the presumption of innocence.

Given that violations of the presumption of innocence are not incriminated, the problem of the respect of this safeguard rests on 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. This Plan includes activities aimed at improving the efficiency of processing misdemeanour cases regarding public violations of the presumption of innocence on the motion of the Ministry of Culture and Information and ensuring the keeping of precise statistics on such proceedings by the Supreme Court of Cassation.²⁰⁵ Under Article 73 of the Public Information and Media Act,²⁰⁶ 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

205 Chapter 23 Action Plan, p. 45.

206 *Sl. glasnik RS*, 83/14 and 58/15.

provision. Oversight of the enforcement of the Public Information and Media Act is entrusted to the Ministry of Culture and Information, which is entitled to react and file misdemeanour reports against print and electronic media outlets that have been clearly violating the presumption of innocence in their reports on an everyday basis.

The Independent Journalists Association of Serbia (hereinafter: IJAS) repeatedly alerted to media violations of the presumption of innocence in 2015. Commenting the media reports on the police campaign dubbed Cutter in late December, the IJAS warned that the publication of the personal data and photographs of the arrested individuals, as e.g. by the daily *Blic*, violated not only their fundamental rights, but the Press Code of Conduct as well. It called on the media to adhere to the presumption of innocence in their reports about people taken into police custody. It also expressed particular concern over the recurrent practice of the dailies *Alo* and *Informer* to pre-announce police arrests.²⁰⁷ Topmost state politicians have violated the presumption of innocence on a daily basis as well. For instance, Prime Minister Aleksandar Vučić said in early December that many genuine hard-core criminals would find themselves behind bars by the end of the year.²⁰⁸ Two weeks later, 80 people were arrested during the Cutter campaign and pre-trial detention was ordered against some of them, including erstwhile Minister of Agriculture, Forestry and Water Management and Democratic Party member Slobodan Milosavljević. Although the Prime Minister had not explicitly said who would be arrested, his statement, in which he called them hard-core criminals, is not only in violation of the presumption of innocence, but also gives rise to doubts about the independence of the judiciary and lack of influence on the judges ordering pre-trial detention.

Under the Constitution, all persons accused of crimes shall have the right to be notified promptly, in detail and in a language they understand of the nature and reasons for the charges laid against them and the evidence against them (Art. 33). This right is guaranteed in Article 68 of the CPC and Articles 93(2) and 94 of the Act on Misdemeanours.

The Constitution guarantees everyone the right to an interpreter free of charge in the event they do not understand the language officially used in court. Deaf, mute and blind persons shall be guaranteed the right to an interpreter free of charge (Art. 32(2)).

The Chapter 23 Action Plan envisages that the police and prosecution services 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 minority national languages in areas populated by national minorities and in English. The authorities are to ensure that suspects and defendants, who

207 The press release is available in Serbian at: <http://www.nuns.rs/info/statements/26377/mediji-duzni-da-postuju-pretpostavku-nevinosti.html>.

208 See the *Informer* article of 9 December 2015, available in Serbian at: <http://informer.rs/vesti/politika/45067/VUCIC-NAJAVIO-UDAR-NA-MAFIJU-Pre-Nove-godine-krupni-kriminalci-otici-ce-u-zatvor>.

do not understand the above-mentioned languages, are provided with translations of the factsheets by the official court translators into languages they understand.²⁰⁹

A problem regarding this right appeared in the Prijepolje Basic Court in 2014, which lacked a Bosnian court-sworn interpreter, wherefore all trials in which an increasing number of parties insisted on interpretation to and from Bosnian were adjourned.²¹⁰ This problem was resolved in mid-2015, when the Minister of Justice advertised the vacancies and appointed five court-sworn Bosnian interpreters to cover the jurisdictions of the Novi Pazar and Užice High Courts.²¹¹ The procedural possibilities for completing a large number of trials were thus put in place.²¹² According to the data of the Bosniak National Minority Council, over 280 trials in these two courts had been pending and ten trials were discontinued due to the expiry of the statutes of limitations due to the absence of Bosnian court-sworn interpreters.²¹³

Under Article 33(2) of the Constitution, everyone charged with a criminal offence shall be entitled to defend himself or through legal assistance of his choosing, to consult freely with his legal counsel and have adequate time and facilities for preparing his defence. Under paragraph 3 of this Article, defendants who cannot afford legal representation are entitled to free legal aid when so required by the interests of fairness and in compliance with the law. The right to defence is guaranteed also by the Act on Misdemeanours (Art. 93) and the CPC (Art. 68(2(7))). The CPC restricts free legal aid to defendants charged with crimes warranting over three years' imprisonment and when so required by the interests of fairness.

This provision will provide ample opportunity for enforcement once the legal aid law is adopted and the system becomes operational.

Under Article 33(5) of the Constitution, all criminal defendants shall be entitled to defend themselves in person or through legal assistance, to present evidence in their favour, to examine witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as the witnesses against them and in their presence. Article 68 of the CPC also guarantees the right of defendants to examine the witnesses for the prosecution and the witnesses for the defence under the same conditions and in their presence.

209 Chapter 23 Action Plan, pp. 223 and 294.

210 See the *Politika* report of 9 March 2014, available in Serbian at <http://www.politika.rs/search/searchEngineLanding/a/Muke-sudstva-u-Prijepolju-zbog-bosanskog-jezika>.

211 See the Justice Ministry press release on the appointments, available in Serbian at: <http://www.drzavnauprava.gov.rs/vest/9529/obavestenje-o-postavljanju-sudskih-prevodilaca-za-bosanski-jezik.php>

212 Under the Act on the Seats and Jurisdictions of Courts and Public Prosecution Services (*Sl. glasnik RS*, 101/13), the Užice Higher Court covers the jurisdictions of the Prijepolje, Priboj and Užice Basic Courts, and the Novi Pazar Higher Court the jurisdictions of the Novi Pazar and Sjenica Basic Courts.

213 See the Legal Portal item of 11 August 2015, available in Serbian at: <http://www.pravniportal.com/sudski-tumaci-za-bosanski-jezik/>.

The CPC does not prohibit the questioning of a police officer in the capacity of a witness on what he had learned in the pre-investigation proceedings. It also allows the court to call to the witness stand persons relieved of the obligation to testify at the request of the defendant or his defence counsel (Art. 93). Persons related to the defendant to a specific degree of kinship are also relieved of the duty to testify, but they may testify if they wish (Art. 94). The CPC also allows witnesses not to answer specific questions if they would thus expose themselves or relatives to a specific degree of kinship to grave humiliation, considerable material loss or criminal prosecution.

Persons testifying in court are under the obligation to tell the truth. Perjury is incriminated by Article 206 of the Criminal Code. The CPC obliges the court to protect a witness from insults, threats or any other attacks. A witness may be granted the status of protected witness in circumstances specified by the law. The CPC also introduces the institute of a particularly vulnerable witness. Apart from the protection afforded by the CPC, the Act on the Protection of Participants in Criminal Proceedings²¹⁴ also envisages witness protection measures under specific conditions.

5. Right to Privacy and Confidentiality of Correspondence

5.1. General

The ECHR and the ICCPR guarantee the right to privacy, which includes the protection of family life, home and correspondence. The ICCPR also guarantees the right to protection of honour and reputation. Although this right is not explicitly listed in the ECHR, the European Court of Human Rights (ECtHR) acknowledged a similar interpretation of the concept of privacy in its judgments.²¹⁵ According to ECtHR case law, privacy encompasses, *inter alia*, the physical and the moral integrity of a person, sexual orientation,²¹⁶ relationships with other people, including both business and professional relationships.²¹⁷ 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.²¹⁸

Serbia is also a signatory of the CoE Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data,²¹⁹ the first bind-

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

215 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).

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

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

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

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

ing international instrument on the protection of personal data. The States Parties to the Convention are obliged to undertake the necessary measures to ensure the legal protection of fundamental human rights with regard to the automatic processing of personal data. The Additional Protocol to the Convention, which Serbia also ratified,²²⁰ 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,²²¹ enshrined in Article 23 of the Constitution.

The Constitution guarantees the right “to be informed” in Article 51, which prescribes that everyone shall have the right to access data in the possession of the state authorities and organisations vested with public powers and lays down that this right shall be exercised “in accordance with the law”, which means that the provisions protecting the right to privacy must be respected.

The Constitution includes a general provision guaranteeing the protection of personal data and prescribing that their collection, keeping, processing and use shall be regulated by the law and explicitly prescribes that the use of personal data for any other purpose save the one they were collected for shall be prohibited and punishable as stipulated by the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia. Under the Constitution, everyone shall have the right to be informed of personal data collected about him, in accordance with the law, and the right to court protection in case they are abused (Art. 42).

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 of someone’s family circumstances that may harm his honour or reputation (Art. 172).

In order to collect information on the number of criminal proceedings conducted against people accused of these crimes, the BCHR sent requests for access to information of public importance to 66 Basic Courts, asking them to provide

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

221 Constitutional Court Decision No. UŽ–3238/2011, p. 9.

data on the number of pending trials and final judgments delivered from 1 January 2013 to 1 October 2015. Eleven of the 60 Basic Courts that replied by the time this Report was finalised said they had not had any such cases in that period. The analysis of the replies of the other 49 Basic Courts leads to the conclusion that they have tried a relatively small number of defendants accused of these crimes given the duration of the period the BCHR request pertained to. Most of their pending or completed criminal proceedings regarded the disclosure of someone's personal and family circumstances (incriminated in Art. 172 of the CC) – 97 and criminal proceedings over violations of the inviolability of the home (incriminated in Art. 139 of the CC) – 87. These courts had ruled on or were still hearing 37 cases regarding unauthorised photographing (under Art. 144 of the CC), 25 cases regarding the violation of the confidentiality of letters or other correspondence (under Art. 142 of the CC), 23 cases regarding unauthorised wiretapping and recording (under Art. 143 of the CC), 17 cases regarding unauthorised publication and presentation of another's text, portrait or recording (under Art. 145 of the CC), 15 cases regarding unauthorised collection of personal data (under Art. 146) and three cases regarding unlawful search (under Art. 140 of the CC). None of the Basic Courts had any cases regarding unauthorised disclosure of secrets (under Art. 141 of the CC).

As provided for in the UN Resolution on the Right to Privacy in the Digital Age,²²² the UN Office of the High Commissioner for Human Rights (UNOHCHR) in June 2014 presented its Report on the right to privacy in the digital age²²³. It concluded that international human rights law provided a clear and universal framework for the promotion and protection of the right to privacy, including in the context of domestic and extraterritorial surveillance, the interception of digital communications and the collection of personal data, but that practices in many States have, however, revealed a lack of adequate national legislation and/or enforcement, weak procedural safeguards, and ineffective oversight, all of which have contributed to a lack of accountability for arbitrary or unlawful interference in the right to privacy.

The United Nations Human Rights Council appointed a Special Rapporteur on the Right to Privacy in the digital age in July 2015. The Rapporteur is authorised²²⁴ to systematically analyse the legal frameworks and government policies of UN member states regarding the interception of digital communication and collection of personal data; to assist the governments in developing good practices ensuring that oversight of communication is in keeping with the rule of law principle; to identify actions violating privacy without reasonable grounds; and to alert to the conformity of the member states' legal frameworks with international standards.

222 The Resolution is available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.45.

223 See: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf.

224 See the UN Human Rights Council Resolution A/HRC/28/L.27, adopted on 26 March 2015, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/L.27.

The Special Rapporteur is to submit annual reports to the UN Human Rights Council and the UN General Assembly.

Although it does not impact directly on Serbia, the European Court of Justice decision²²⁵ in which it declared invalid European Commission Decision 2000/520/EC of 26 July 2000 pursuant to Directive 95/46 on the adequacy of the protection provided by the safe harbour privacy principles, is an important case, in view of the fact that Serbia's EU accession efforts entail alignment of its legal system with EU directives. The safe harbour agreement the EU and USA signed in 2000 allowed companies to transfer data but did not ensure sufficient protection of such data. EU nationals did not have at their disposal an adequate legal remedy to challenge the processing of their personal data transferred to the USA for purposes other than the one they had initially been collected for, wherefore the European Court of Justice concluded that the impugned Decision was in violation of the EU Charter of Fundamental Rights. Namely, the EU private data protection standards provide more guarantees than those applicable in the USA. That is why the European Court of Justice took the view this Decision was not in accordance with EU directives.

5.2. Families and Family Life

According to the ECtHR, family life is interpreted in terms of the actual existence of close personal ties.²²⁶ It comprises a series of relationships, such as marriage, children, parent-child relationships,²²⁷ and unmarried couples living with their children.²²⁸ Even the possibility of establishing a family life may be sufficient to invoke protection under Article 8.²²⁹ Other relationships that have been found to be protected by Article 8 include relationships between siblings, uncles/aunts and nieces/nephews,²³⁰ parents and adopted children, grandparents and grandchildren.²³¹ 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.²³²

225 See the ECJ judgment in the case of *Maximilian Scherms vs. Data Protection Commissioner, European Court of Justice, App. no. C-362/14*. <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5330cd8dea3b04b69b3e0a955caa6ec6f.e34KaxiLc3eQc40LaxqMbN4Oc3mOe0?text=&docid=169195&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=23771>.

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

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

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

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

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

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

232 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), “the family, mothers, single parents and children (...) shall enjoy special protection.”

Article 63 of the Constitution guarantees the right to freely decide whether to have children or not. 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 envisages 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.²³³ These cases also give rise to the problem of recognising the parental rights of the person who had undergone a sex change.

The procedure of entering a marriage in Serbia is administrative in character and relatively simple. Although the Family Act legally equated marital and extra-marital unions, numerous regulations governing individual rights arising from family relations have not been aligned with this legal norm yet.

The provisions of the Family Act²³⁴ are in accordance with international standards in terms of the right to privacy. The Act prescribes that everyone has the right to the respect of family life (Art. 2 (1)). It also guarantees the children’s right to maintain personal relationships with the parents they are not living with, unless there are reasons for partly or fully depriving those parents of parental rights or in case of domestic violence (Art. 61). The children are also afforded the right to maintain personal relationships with other relatives they are particularly close to (Art. 61 (5)). The Family Act is also the first law in Serbia taking into account the parents’ interests in their children’s education, as it entitles them to provide their children with education in keeping with their ethical and religious convictions (Art. 71).

Media have for more than a decade now been extensively reporting about the cases of new-borns “disappearing” from Serbian maternity wards. Parents, who believe that their children had not died and that they had been taken from them as soon as they were born, have not been able to obtain relevant information about their children’s deaths from the maternity wards or from the vital records depart-

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.

233 Constitutional Court Decision UŽ-3238/2011.

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

ments, which are under the duty to register their deaths in the vital records. The prosecutors have been dismissing the parents' criminal charges for lack of evidence. The Inquiry Committee, formed by the National Assembly to investigate these cases, drafted a report in which it recommended a set of measures to pre-empt such incidents in the future. The Protector of Citizens also prepared a report in which he outlined the mistakes and omissions of the state authorities.²³⁵

One such case was communicated to the European Court of Human Rights, which found a violation of Article 8 of the ECHR in its judgment in the case of *Jovanović v. Serbia* back in March 2013.²³⁶ The ECtHR held that the states had the positive obligation to conduct effective investigations into violations of the right to a family life. In the *Jovanović v. Serbia* case, the applicant was not allowed to see the body of her son who had allegedly died after he was born, she was not forwarded a copy of the autopsy report and the prosecutors failed to conduct a proper investigation after they received a criminal report, wherefore the ECtHR found that the applicant had suffered a continuing violation of the right to respect for her family life, on account of the respondent State's continuing failure to provide her with credible information as to the fate of her son. In its judgment, the ECtHR ordered Serbia to take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's within one year from the date the judgment became final and said that this mechanism should be supervised by an independent body, with adequate powers, which would be capable of providing credible answers regarding the fate of each child and awarding adequate compensation as appropriate.

This mechanism has not been established yet although the one-year deadline the ECtHR gave Serbia expired on 9 September 2014. The Draft Act on the Procedure for Establishing Facts about the Status of New-Borns Suspected to Have Gone Missing in the Maternity Wards in the Republic of Serbia²³⁷, which was prepared in 2015, met with numerous criticisms.²³⁸ The text of the Draft demonstrates that the Working Group that wrote it had not taken into account the ECtHR's view that this mechanism, aimed at providing individual redress to all parents in a situation such

235 The Protector of Citizens concluded that the “non-existence or incompatibility of all the requisite administrative procedures and non-abidance by the existing procedure; irresponsible approach to documenting official activities and archiving documentation by individual authorities, organisations and civil servants; passage of time and inconsiderate and bureaucratic treatment of the family members by some civil servants have led to the following situation: without an inquiry by specialised state authorities, one cannot claim reliably today that the babies had not been unlawfully separated from their families”. See the Protector of Citizens Report on “Missing Baby” Cases and his recommendations, Ref. No. 12443, 29 July 2010.

236 *Jovanović v. Serbia*, ECtHR, App. No. 21794/08 (2013). See the *2013 Report*, II.6.2.

237 The draft is available in Serbian at: <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>

238 See the *Politika* and *Al Jazeera* reports, available in Serbian at <http://www.politika.rs/scc/clanak/335839/Roditelji-protiv-nacrta-zakona-o-nestalin-bebama>. <http://balkans.aljazeera.net/vijesti/srbija-usvaja-zakon-o-nestalin-bebama>.

as, or sufficiently similar to, the applicant's, is to be supervised by an independent body. Namely, the Draft lays down that courts shall rule on all redress claims. Since the Protector of Citizens, as an independent regulatory authority, cannot oversee the work of courts, this law clearly precludes supervision by an independent body, as recommended by the ECtHR. Serbia has failed to fulfil its obligation under the ECtHR's judgment in the case of *Jovanović v. Serbia* for nearly 15 months, since the Act on the Procedure for Establishing Facts about the Status of New-Borns Suspected to Have Gone Missing in the Maternity Wards was not adopted by the end of 2015.

5.3. Confidentiality of Correspondence

Article 41 of the Constitution guarantees the right to confidentiality of letters and other means of communication and allows for derogations from this right only on the order of the court and if such derogations are necessary to conduct criminal proceedings or protect the security of the state in the manner prescribed by the law. State interference in the confidentiality of correspondence and other means of communication may be only temporary. The Constitution, unfortunately, does not specify that measures infringing on the confidentiality of communication must be necessary in a democratic society. The Constitutional Court has, however, introduced this standard in the Serbian legal system by referring to Article 8 of the ECHR and ECtHR's case law in its Decision²³⁹.

Provisions of laws²⁴⁰ governing the surveillance of communication have been the subject of many polemics in the past few years. In the past three years, the Constitutional Court of Serbia declared unconstitutional the provisions of the Act on the Military Security Agency and the Military Intelligence Agency, the Electronic Communications Act and the Security Information Agency Act that were not in compliance with the constitutionally proclaimed right to confidentiality of letters and other means of communication. The National Assembly reacted by amending the disputed provisions and bringing them into conformity with the Constitution.²⁴¹ The National Assembly deviated from its practice of waiting for the Constitutional Court to declare legal provisions unconstitutional before amending them and amended the provisions of the Criminal Procedure Code – disputed in an initiative filed with the Constitutional Court in which the applicants claimed that they were incompatible with Article 41 of the Constitution – at its own initiative. These provisions would have most certainly been declared unconstitutional by the Constitutional Court, in view of its case law.²⁴²

239 Constitutional Court Decision IUz 1245/10.

240 The Act on the Military Security Agency and the Military Intelligence Agency (*Sl. glasnik RS*, 88/09 and 55/12 – Constitutional Court Decision), the Electronic Communications Act (*Sl. glasnik RS*, 44/10), the Criminal Procedure Code (*Sl. glasnik RS*, 72/11 and 101/11), and the Security Information Agency Act (*Sl. glasnik RS*, 42/02 and 111/09).

241 See the *2014 Report*, II.6.4.

242 *Ibid.*

The alignment of the relevant legal framework with Article 41 of the Constitution has undoubtedly put in place all the legal grounds for the unhindered realisation of the right to confidentiality of correspondence and other means of communication. Problems have, however, still been arising in practice, i.e. in the enforcement of the above-mentioned laws by the state authorities and other entities under the obligation to act in accordance with them.

For instance, the amendments to the Electronic Communications Act²⁴³ introduced the obligation of electronic communication operators to retain the communication data and the obligation of the competent state authorities accessing them to keep records of requests to access them during the calendar year and their obligation to forward those annual records to the Commissioner by 31 January of the following calendar year at the latest. These records are to specify the number of submitted requests for access to the retained data, the number of granted requests and the time from the day the data were retained to the day access to them was sought under Article 128(2) of the Electronic Communications Act.²⁴⁴

The state authorities with access to the retained data (the Security Information Agency, the Ministry of Internal Affairs and the Military Security Agency) fulfilled their legal obligation in 2015. However, only two of the 207 electronic communication operators retaining communication data (Telenor and Telekom Serbia) forwarded the annual records to the Commissioner for Information of Public Importance (Commissioner) in accordance with the law,²⁴⁵ which prompted the Commissioner to ask the Ministry of Trade, Tourism and Telecommunications, the state authority charged with overseeing the enforcement of the Electronic Communications Act, to implement oversight over the operators, which had defaulted on their legal obligation, and to establish whether they were keeping records of requests for access to the retained data in the first place and why they had not forwarded them to the Commissioner as stipulated by the law. Subsequently, 146 electronic communication operators contacted the Commissioner by 1 June 2015.²⁴⁶

The Commissioner in 2015 again reacted with respect to the actions by the Security Intelligence Agency (SIA) and the Military Security Agency (VBA), the work of which is closely linked to the respect of the right enshrined in Article 41 of the Constitution. Namely, the Share Foundation had filed a request for access

243 Article 130a of the Electronic Communications Act (*Sl. glasnik RS*, 44/10, 60/13 – Constitutional Court Decision and 62/14).

244 Under paragraph 2 of Article 128 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.

245 See: <http://www.poverenik.rs/en/press-releases-and-publications/2019-operatori-elektronskih-komunikacija-moraju-postovati-zek.html>.

246 As the Commissioner's staff told BCHR, 125 of the 146 operators that contacted the Commissioner, said they had not received any requests for access to the retained data and 21 said they had received requests for access to one or more of the retained data.

to information of public importance to the VBA in June 2014, which regarded the enforcement of measures by which the VBA derogated from the constitutionally guaranteed right to confidentiality of letters and other means of communication according to its legal powers.²⁴⁷ In its reply, the VBA said that it had no obligation under the law to keep records of the information of public importance specified in the request and that it did not have documents containing such information. The VBA, however, forwarded the information requested after the Commissioner issued a ruling ordering it to act on the applicant's request.²⁴⁸

The Youth Initiative for Human Rights (YIHR) forwarded the SIA a request for access to information of public importance in March 2015. It sought information on measures derogating from the principle of confidentiality of letters and other means of communication applied by the SIA in 2014 and copies of documents indicating the number of natural and legal persons subjected to such measures. YIHR also asked for copies of documents indicating the number of requests the SIA Director submitted to the Belgrade High Court President seeking consent for the enforcement of such measures against natural, and, in particular, legal persons. SIA dismissed the request, explaining its fulfilment would, *inter alia*, "allow an unlimited number of people, including those constituting a threat to the Republic of Serbia, to become apprised of the data, given that they possess the analytical knowledge to draw specific conclusions from such data, which would provide them with reliable indication of SIA's primary line of action to protect the security of Serbia". After SIA rejected YIHR's appeal of its decision, the Commissioner issued a ruling revoking the SIA ruling and ordering it to act on the request and forward the information requested to the applicant. The SIA complied with the Commissioner's ruling.²⁴⁹

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- 247 The Share Foundation asked the VBA to notify it of the number of submitted and approved requests for the implementation of the secret electronic surveillance of telecommunications and information systems measure in order to collect retained data on telecommunication traffic without insight in their content: the number of submitted and approved requests for the implementation of the measure of secret surveillance of the content of letters and other means of communication, including the secret electronic surveillance of the content of telecommunications and information systems; the number of conducted measures pursuant to the orders by the VBA Director with the prior consent of the relevant High Court judge for implementing the measures under Article 12, item 5 of the Act on the Military Security Agency and the Military Intelligence Agency and the number of implemented measures pursuant to the orders by the VBA Director with the prior consent of the Supreme Court of Cassation President, for implementing the measures under Article 12, items 6–8 of the Act on the Military Security Agency and the Military Intelligence Agency, pursuant to Article 15 of that law, laying down a special urgent procedure for implementing these measures in exceptional circumstances; and the number of daily reports the VBA prepared during the implementation of the secret communication surveillance measure, under Article 168 of the Criminal Procedure Code.
- 248 See <http://www.poverenik.rs/en/press-releases-and-publications/2085-vojnobezbednosna-agen-cija-primena-posebnih-mera.html>. Share Foundation staff told the BCHR that the VBA subsequently, on 18 May 2015, notified the Commissioner that it had forwarded all the information requested to the applicant.
- 249 See <http://www.poverenik.rs/en/press-releases-and-publications/2088-bezbednosno-informa-tivna-agen-cija-primena-posebnih-mera.html>.

To recall, in its 2013 judgement in the case of the *Youth Initiative for Human Rights v. Serbia*,²⁵⁰ the ECtHR held that Serbia had violated Article 10 of the ECHR and that it had to ensure that the SIA forward the information requested to the applicant, which the SIA did. The YIHR had filed an application against Serbia because the SIA refused to provide it with access to information on how many people it had applied electronic surveillance measures against in 2005 notwithstanding a final and binding decision of the Commissioner in YIHR's favour.

The above examples clearly show that the security agencies are still extremely reluctant to provide access to information of public importance requested and are unaware that they, too, are under the obligation to respect the Free Access to Information of Public Importance Act. The VBA and SIA have dismissed nearly all requests for access to information of public importance submitted to them, either without giving any explanation at all or providing hardly convincing reasons. As a rule, they forward the information requested only after they are ordered to do so by the Commissioner.

The Draft Rulebook on Technical Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication and Retention of Electronic Communication Data, which prompted much debate in 2011 and 2012, had not been adopted at the insistence of the Commissioner and some experts, because it relied on the provisions of the Electronic Communications Act that were subsequently declared unconstitutional.²⁵¹ The Commissioner in 2015 criticised this draft by-law, now called the Draft Rulebook on Requirements of the Equipment and Programme Support for the Lawful Interception of Electronic Communication and Technical Requirements for the Fulfilment of the Obligation on the Retention of Electronic Communication Data (hereinafter: Draft Rulebook).

Not only is the Draft Rulebook largely incompatible with the Electronic Communications Act and the Personal Data Protection Act. Some of its provisions are in contravention of Articles 41 and 42 of the Constitution, which lay down that the collection, keeping, processing and use of personal data shall be governed by a law and that derogations from the guaranteed right to confidentiality of correspondence and other means of communication may be provided for only by the law. However, the Draft Rulebook, which is a piece of subsidiary legislation and not a law, includes provisions derogating from these constitutional principles, although the Constitution clearly states that such derogations may only be prescribed by primary legislation, i.e. by laws.

The Draft Rulebook does not govern access to the retained data, although precisely this issue was addressed in the 14-point plan the Commissioner and Protector of Citizens publicly presented back in July 2012.²⁵² The Commissioner re-

250 The judgment is available at: [http://hudoc.echr.coe.int/eng#{"itemid":\["001-120955"\]}](http://hudoc.echr.coe.int/eng#{).

251 See the *2014 Report*, II.6.4.

252 *Ibid.* The measures proposed in the plan listed on page 189 of the Protector of Citizens' 2012 Annual Report, available at http://icoaf.org/docs/Serbia/Annual_Report_2012.pdf.

laid his opinion to the competent ministry, in which he said that the adoption of this text of the Draft Rulebook would definitely result in the violation of the right to privacy of a large number of citizens and that a broader public debate on it had to be initiated to reach agreement on its amendments or the adoption of a new Electronic Communications Act.²⁵³

Article 26 of the Draft Rulebook is also disputable. Under this Article, the “monitoring centre” activities shall be performed in the SIA offices until conditions are in place for the competent state authorities to take over the oversight activities, but the Draft does not specify these conditions or which state authorities will be competent for performing oversight. In the measures he proposed to the Government of Serbia, the Commissioner highlighted the need to put in place an adequate legal framework for the establishment of a single national monitoring centre, which would provide the technical services required for intercepting communication and accessing the retained data to all state authorities authorised to access the retained data.²⁵⁴ The retained data and access to them would thus be centralised, which would definitely reduce scope for abuse of the right to confidentiality of letters and other means of communication enshrined in Article 41 of the Constitution.

BCHR reported on civilian oversight of security agencies, especially the role of the National Assembly, in its previous Annual Reports, in which it noted that efficient oversight was greatly limited by the valid regulations. Hence the following question arises: is there any oversight of their work at all? BCHR sent a request for access to information of public importance to the National Assembly Security Services Control Committee. The questions regarded the Committee’s exercise of its powers laid down in the Decision²⁵⁵ governing its direct oversight of the security agencies. In response to the question on how many oversight visits the Committee members performed from the day this Decision was adopted, the Committee said that they had performed three such visits in 2013 and three in 2014 and five in 2015. The Committee also said that it had upheld all the suggestions to perform oversight visits made by its members. In response to the question on how many of these oversight visits had been performed in response to applications about the work of the security agencies sent to the National Assembly by members of the public, the Committee said that it had not received any such applications. In response to the question on the number of visits that had been aimed at overseeing the lawfulness of the enforcement of special covert data acquisition measures and procedures (both those that have to be based on court decisions and those that do not, as specified in the Decision),²⁵⁶ the Committee replied that its members perused the documen-

253 See: <http://www.poverenik.rs/yu/saopstenja-i-aktuelnosti/2086-presretanje-elektronskih-komunikacija-samo-u-skladu-s-ustavom-i-zakonom.html>.

254 See: <http://www.poverenik.rs/en/press-releases-and-publications/2131-nuzno-unapredjenje-zastite-podataka-o-licnosti-u-sferi-interneta.html>.

255 Decision of 29 March 2013 Ref. No. 02–1322/13.

256 Under Article 41 of the Constitution, derogations of the right to confidentiality of correspondence and other means of communication must be based on court decisions, wherefore para-

tation on an *ad hoc* basis and that the perused case files showed that the security agencies had acted in accordance with the law. The Committee said in its reply that it did not have a document comprising numerical indicators on oversight visits aimed at ascertaining the lawfulness of special covert data acquisition measures and procedures and that it was under no obligation to keep such records under the law. The Committee also said in its reply that the attitude of all the agencies during the visits had been constructive and transparent and that none of the officers refused to answer its questions.²⁵⁷

6. Personal Data Protection and Protection of Privacy

6.1. General

Article 42 of the Constitution of the Republic of Serbia guarantees the protection of personal data and sets out that the collection, storage, processing and use of personal data shall be governed by the law. It further lays down that the use of personal data for any purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia, in 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)²⁵⁸ is the main law regulating this field. This law governs the conditions for collecting and processing personal data, the rights and protection of the persons (data subjects) whose data are collected and processed, restrictions of personal data protection, the procedure for protecting personal data before the competent authority, data safety, personal data records, transfer of data outside the Republic of Serbia and monitoring of the enforcement of this law.

Under the PDPA, personal data shall mean any information about a natural person, regardless of its form or format, the carrier of information (paper, tape, film, electronic medium, et al.) or at whose order, in whose behalf or for whose account

graph 8(3) of the Decision on oversight of special covert data acquisition measures and procedures that do not have to be based on court decisions is unconstitutional. This provision was based on the articles of the Security Information Agency Act and the Act on the Military Security Agency and the Military Intelligence Agency allowing their directors or designated officers to order the enforcement of special covert data acquisition measures and procedures without court decisions, which the Constitutional Court had declared unconstitutional. Therefore, the unconstitutional provisions are no longer part of the legal order and the impugned provision in the Decision has to be amended because it is in contravention of the Constitution.

257 National Assembly Security Services Control Committee reply Ref. No. 3006/15.

258 *Sl. glasnik RS*, 97/08, 104/09 and 68/12 – Constitutional Court Decision.

it is stored. Information about a natural person shall constitute personal data regardless of the time of creation, place of storage or the means by which they were obtained or of any other features of such data.²⁵⁹ The purpose of collecting data must be specified in advance and clearly. The Act distinguishes between processing of personal data with the consent of the data subject and in accordance with an authority's legal remit. The data subject whose consent for processing his data is sought shall be clearly notified in advance of the purpose of the data processing and is entitled to subsequently withdraw his consent. Personal data may be processed without the data subject's consent in specific instances.²⁶⁰ The grounds for processing personal data have been set very broadly and the Act allows public authorities to process personal data without the subjects' consent in a large number of instances.²⁶¹

The realisation of the right to personal data protection has been brought into question ever since the PDPA was adopted in 2009, wherefore it may be concluded that the state is not interested in governing the field of personal data protection in a systemic manner that would allow for the enjoyment of this right enshrined in the Constitution.²⁶² Such a conclusion is corroborated by the fact that the relevant authorities have not adopted an Action Plan for the implementation of the Personal Data Protection Strategy enacted six years ago, that numerous provisions of other laws adopted before the PDPA have not been aligned with it and that many of the personal data controllers and processors lack the knowledge they need to perform their duties adequately.

Section 3.11 entitled Personal Data Protection of the Final Draft of the Chapter 23 Action Plan²⁶³ envisages a set of activities the state must implement in the upcoming period. They include the drafting of a new Personal Data Protection Act in accordance with the Model Act prepared by the Commissioner for Information of Public Importance and Personal Data Protection and by-laws governing in detail

259 Article 3, PDPA.

260 Article 12 of the Personal Data Protection Act allows the processing of a person's data without his consent in three instances: when a vital interest, particularly the life, health or physical integrity of the data subject or another person prevails, for the purpose of fulfilling obligations specified in a law, in an enactment adopted in accordance with the law or a contract concluded between the data subject and the controller, and for the purpose of preparing the conclusion of a contract and in other instances specified in the Act to achieve a prevailing justified interest of the subject, controller or user.

261 Under Article 13 of the Personal Data Protection Act, a state authority may process personal data without the consent of the data subject if such processing is necessary to perform the legally-defined duties within its purview laid down in the law or another regulation with the aim of achieving the interests of national or public security, state defence, prevention, detection, investigation and prosecution of criminal offences, economic or financial interests of the state, protection of health and morals, protection of rights and freedoms and other public interests, and in other cases with the written consent of the data subject.

262 More on the deficiencies in the enforcement of data protection regulations in the *2014 Report*, III.7.1.

263 The Final Draft is available at <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023%20Third%20draft%20-%20final1.pdf>.

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 (whilst taking into account the limitations imposed by fiscal consolidation), as well as an analysis of the needs to strengthen the Office's staffing capacities in view of its new competences under the new PDPA. The Final Draft of the Chapter 23 Action Plan, however, makes no mention of the preparation of an Action Plan for the implementation of the 2010 Personal Data Protection Strategy although the Commissioner has been alerting to the need for this document for years now.

The Chapter 23 Action Plan also specifies how much funding will be needed to implement the activities in the field of personal data protection. The Commissioner pointed out several irrational allocations in this part of the Action Plan. Namely, its authors envisage that the development of the new PDPA will cost 71,136 EUR although the Commissioner has already drafted the Model Act. The costs of the analysis of the needs to strengthen the staffing capacities of the Commissioner's Office are estimated at 8,600 EUR although, in the Commissioner's view, such an analysis is unnecessary as the valid staffing and internal organisation rulebook addresses this issue adequately. In the Commissioner's view, the 880,000 EUR allocation for raising the Office staff's capacities by employing new staff warrants particular attention. The Commissioner wondered on what legal grounds did the Ministry of Justice involve itself in the dynamic of recruitment of an independent regulatory authority and questioned the seriousness of such recruitment planning given that most of the funds would be spent in the 3rd and 4th years of the implementation of this activity.²⁶⁴

The Ministry of Justice formed a working group charged with drafting a new Personal Data Protection Act back in 2013, but it was not until mid-2015 that news of its establishment were made public.²⁶⁵ The Draft Personal Data Protection Act (hereinafter: Draft PDPA) was published on the Ministry of Justice website in early October²⁶⁶ and everyone has been able to comment it. A broader and longer public debate, involving representatives of civil society, professional associations and personal data controllers, should have been, but was not, organised on this very important law that can greatly impact on the realisation of one of the most significant rights of all Serbian citizens. Furthermore, the Draft PDPA on the Ministry's website substantively differs from the Model Personal Data Protection Act (hereinafter: Model Act)²⁶⁷ prepared by the Commissioner in 2014, although the Chapter 23 Action Plan envisages that the new PDPA will be developed in accordance with the Model Act. The Model Act was published on the Commissioner's website in

264 See: <http://www.poverenik.org.rs/en/press-releases-and-publications/2181-akcioni-plan-za-poglavlje-23-ispod-ocekivanog-i-potrebno-nivoa.html>

265 See the Share Foundation's comment of the Draft Personal Data Protection Act.

266 A link to the draft is available at <http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>.

267 The Model Act is available at <http://www.poverenik.org.rs/en/model-zakona-o-zastiti-podataka-o-licnosti.html>

May 2014 and after the public and experts commented on the text, it was forwarded to the Ministry of Justice. It comprehensively governs personal data protection and introduces new personal data protection institutes and is in accordance with Council of Europe and European Union documents.²⁶⁸

The Personal Data Protection Act is a corollary act and has to cover all types of personal data processing. Major problems in personal data protection have arisen in practice due to lack of regulations on specific areas, such as video surveillance and direct marketing that are included in the Commissioner's Model Act but missing from the Draft PDPA, which lays down that they will be governed by separate laws. Furthermore, the Draft PDPA does not even mention some types of personal data processing, such as the processing of biometric data or of personal identification numbers, etc.

The Model Act lays down a number of data processing principles, notably: lawfulness and fairness: purpose limitation; proportionality; data accuracy; data security; and, prohibition of discrimination. The Draft PDPA, for its part, lays down only the principles of data security and prohibition of discrimination.

As per the consent of the data subjects as legal grounds for processing personal data, the Draft PDPA does not envisage demonstration of consent by any clear affirmative action, thus excluding the possibility of the data subjects expressing their consent in numerous situations. What particularly needs to be borne in mind is that the use of information technologies provides for numerous situations in which consent to data processing can be expressed in other ways as well, not just orally or in writing.

Under Article 45 of the Draft PDPA, the Commissioner shall take decisions in accordance with the provisions of the General Administrative Procedure Act, while the Commissioner's rulings shall be enforced in accordance with the Enforcement and Security Act. It is unclear why the Working Group that developed the Draft PDPA opted for the enforcement of rulings issued in administrative proceedings in accordance with the Enforcement and Security Act, which governs enforcement and security of claims pursuant to enforceable documents. Under Article 13(1(2)) of the Enforcement and Security Act, legally binding decisions rendered in administrative proceedings shall constitute enforceable documents in the event they refer to the settlement of a pecuniary obligation. For example, if a controller issues a ruling dismissing the request of a data subject to gain insight in his personal data, the data subject may appeal the controller's ruling with the Commissioner as a second-instance authority. In the event the Commissioner upholds the complaint, he shall issue a ruling ordering the controller to fulfil the data subject's request. The Enforcement and Security Act cannot apply to such a situation as the Commissioner's ruling does not regard a pecuniary obligation and orders the controller to provide the data subject insight in his personal data. The General Administrative

268 More on the Model Act in the *2014 Report*, III.7.1.

Procedure Act²⁶⁹, on the other hand, governs administrative enforcement i.e. enforcement implemented in order to settle non-pecuniary obligations. Paragraph 2 of Article 44 of the Draft PDPA also warrants attention: under that paragraph, the initiation of an administrative dispute shall stay the enforcement of a Commissioner's ruling. If one bears in mind that the Commissioner's rulings are binding, final and enforceable and that Article 23(1) of the Administrative Disputes Act²⁷⁰ lays down that, as a rule, the filing of lawsuit shall not stay the enforcement of the administrative enactment it concerns, the question arises whether this is yet another of many attempts to undermine the independence of the institute of Commissioner.

As per the public authorities' processing of personal data without the consent of the data subjects, the Draft PDPA not only disregards the constitutional guarantee laying down that use of personal data for any the purpose other than the one they were collected for shall be prohibited and punishable unless such use is necessary to conduct criminal proceedings or protect the security of the Republic of Serbia, but it extends the discretionary powers of the public authorities as well. Under the Draft PDPA, public authorities may process the personal data of a data subject without his consent if such processing is necessary for them to perform the duties within their remit for the following reasons: protection of national or public security, defence of the Republic of Serbia, prevention, detection, investigation or prosecution of crimes, protection of major economic or financial state interests, health, public morals or ethical rules. The introduction of undefined concepts, such as public morals and ethical rules, in a legal provision is particularly problematic, as it allows the state authorities to render arbitrary decisions on processing the data subjects' personal data without their consent.

Attention also needs to be drawn to the way in which the Draft PDPA governs the transfer of personal data to other countries and international organisations. It permits transfers of personal data or personal data files to other countries if such transfers are prescribed by law or ratified international treaties with the recipient states or international organisations and to states and international organisations that are parties to ratified international treaties on data protection or exchange. The Draft PDPA, however, does not specify what happens when data are transferred to countries other than those adequately protecting personal data (i.e. other than EU member states and international organisations which, in the opinion of the EU, properly protect personal data). Both the valid PDPA and the Model Act envisage that the transfer of personal data to other countries shall be subject to the Commissioner's prior consent. This provision is, unfortunately, missing from the Draft PDPA.

Some data controllers in authorities, which are in possession of specific personal data and under the obligation to grant access to information of public impor-

269 *Sl. list SRJ*, 33/97 and 31/01 and *Sl. glasnik RS*, 30/10.

270 *Sl. glasnik RS*, 111/09.

tance, have provided access to such information without adequately protecting the personal data beforehand (i.e. anonymising them).²⁷¹

6.2. Other Provisions Relevant to Personal Data Protection

Provisions relevant to personal data protection can also be found in other laws and regulations, notably those governing labour, tax procedures and the tax administration, health, the banking sector, education, advertising, etc. The PDPA is the main law governing personal data protection and it sets out the relevant principles. These principles should be elaborated by all the other laws governing various fields (security, education, health, labour, economy...). Few, however, do.

Furthermore, some issues, such as video surveillance, direct marketing, security checks and biometric data, which have major impact on personal data protection, remain unregulated, wherefore there is still a lot of room for abuse and violations of the right to privacy.

In May 2015, the National Assembly adopted the amendments to the Private Security Act,²⁷² moving to 1 January 2017 the deadline by which legal persons and sole proprietors extending private security services must bring their work into compliance with the Act. The deadline by which private security service providers must fulfil the requirements prescribed by this law was also moved to 1 January 2017. The law had to be amended because the Government had failed to adopt the by-laws prescribed in the Act by the set deadlines and thus precluded legal persons and entrepreneurs extending private security services from bringing their work into compliance with this law.

The Classified Information Act²⁷³, adopted in 2009, was to have fully regulated the issue of classified information in Serbia. It is a corollary law that replaced the normative “dispersion” which characterised the situation in this field. The Act, *inter alia*, defines classified information, defines different degrees of confidentiality and specifies the authorities charged with enforcing this Act and overseeing its enforcement.²⁷⁴ However, numerous problems in this field persist although five years have passed since it came into force.

Although the Classified Information Act envisages the adoption of a number of decrees, prerequisite for its enforcement, within six months from the day it enters

271 This is often the case with respect to court decisions, in which the personal data of the parties to the proceedings are not anonymised before they are forwarded to applicants requesting access to them. Some courts do not even have rulebooks stipulating the anonymisation of personal data in the court decisions; the existing rulebooks are not uniform.

272 *Sl. glasnik RS*, 104/13 and 42/15. More on the Act in the *2013 Report*, II.7.2, and the *2014 Report*, III.7.2.

273 *Sl. glasnik RS*, 104/09.

274 Notably, the National Security and Classified Information Protection Council and the Ministry of Justice.

into force, only the Decree on Security Questionnaire Forms²⁷⁵, was adopted by that deadline. A number of other Decrees²⁷⁶ were adopted with a years-long delay. The deadline by which the other laws and by-laws were to have been aligned with the Classified Information Act has been exceeded a long time ago as well, wherefore “new” and “old” provisions governing this area are still valid in Serbia, often leading to absurd situations. For instance, the Criminal Code, which has been amended several times since the Classified Information Act came into force, still includes the crimes of disclosure of official and military secrets, although the Act provides for the following degrees of confidentiality: state secret, confidential, strictly confidential and for internal use.²⁷⁷

The confusion caused by the new degrees of confidentiality, i.e. the competent authorities’ failure to align the provisions of some laws with the Classified Information Act, is visible also in the Civil Servants Act,²⁷⁸ which has also been amended a number of times since the Classified Information Act was adopted. Under Article 23 of the Civil Servants Act, civil servants and employees are under the duty to maintain the confidentiality of state, military, official and trade secrets in accordance with separate regulations. Although the Classified Information Act lays down the obligation of state authorities to process and review data and documents classified as confidential under the previous regulations within two years from the day of its adoption, “there is still a large number of documents that were given in a certain period or moment the designation of confidentiality for which the need

275 *Sl. glasnik RS*, 30/10.

276 Decree on the Content, Form and Communication of Classified Information Clearance Certificates, *Sl. glasnik RS*, 54/10; Decree on Increases in Salaries of Civil Servants and Employees Performing Classified Information Protection Related Duties in the Office of the National Security and Classified Information Protection Council and the Ministry of Justice, *Sl. glasnik RS*, 79/10; Decree on the Content, Form and Keeping of Records on Access to Classified Information, *Sl. glasnik RS*, 89/10; Decree on Classification of Classified Information and Documents, *Sl. glasnik RS*, 8/11; Decree on Special Measures for the Protection of Classified Information in Information and Telecommunication Systems, *Sl. glasnik RS*, 53/11; Decree on Special Measures for Overseeing Management of Classified Information, *Sl. glasnik RS*, 90/11; Decree on Special Measures for the Physical and Technical Protection of Classified Information, *Sl. glasnik RS*, 97/11; Decree on Detailed Criteria for Designating Information as “State Secrets” and “Strictly Confidential” *Sl. glasnik RS*, 46/13; Decree on Special Measures for Protecting Classified Information on Establishing the Fulfilment of Contract-Related Organisation and Technical Requirements, *Sl. glasnik RS*, 63/13; Decree on Detailed Criteria for Designating Information as “Confidential” and “For Internal Use” in the Security Intelligence Agency, *Sl. glasnik RS*, 70/13; Decree on Detailed Criteria for Designating Information as “Confidential” and “For Internal Use” in the Office of the National Security and Classified Information Protection Council, *Sl. glasnik RS*, 86/13; Decree on Detailed Criteria for Designating Information as “Confidential” and “For Internal Use” in the Ministry of Internal Affairs, *Sl. glasnik RS*, 66/14; Decree on Detailed Criteria for Designating Information as “Confidential” and “For Internal Use” in the Ministry of Defence, *Sl. glasnik RS*, 66/14.

277 Article 8 of the Classified Information Act.

278 *Sl. glasnik RS*, 79/05, 81/05 – corr., 83/05 – corr., 64/07, 67/07 – corr., 116/08, 104/09 and 99/14.

existed at that point of time, but which was never reviewed later or abolished once the reasons for this had ceased to exist.”²⁷⁹

One of the many dilemmas has also arisen with respect to Article 23 of the Security Information Agency Act, under which SIA staff are under the duty to maintain the confidentiality of SIA data constituting a state, military, official or trade secret, methods, measures and actions representing or comprising such secrets, as well as other data the disclosure of which would incur damage to the interests of natural or legal persons or hinder the successful performance of SIA duties. The question as to why trade secrets²⁸⁰ have been classified as state secrets arises if one bears in mind the definition of classified information in the Classified Information Act, as data or documents in the possession of public authorities regarding the territorial integrity and sovereignty of Serbia, the protection of its constitutional order, human and minority rights and freedoms, national and public security, defence, internal and foreign affairs.

The media have over the past few years been in the habit of publishing the personal data of citizens, mostly for daily politicking reasons, even data the PDPA qualifies as particularly sensitive. The trend continued in 2015.²⁸¹ Article 42 of the Constitution prohibits the use of personal data for purposes other than the one they were collected for. The Criminal Code, on the other hand, lays down that whoever obtains, discloses or uses without authorisation the personal data collected, processed and used pursuant to the law for a reason other than the one they were collected for shall be punished by a fine or up to one-year imprisonment, while officials who commit this offence shall be sentenced to maximum three years' imprisonment. Given that most personal data controllers are employed in the state bodies and institutions, it is evident that civil servants are liable for the disclosure of personal data. However, the information BCHR obtained from courts in response to its requests for access to information of public importance shows that they have not found any civil servants guilty of this offence incriminated in Article 146 of the Criminal Code.

Although it would be unrealistic to expect that this practice will soon change amidst the overall tabloidisation of life in Serbia, the media have to reform as soon as possible and the journalists need to win their fight for the impartiality and account-

279 Center for Euro-Atlantic Studies Analysis of the Classified Information Act, available at: http://ceas-serbia.org/root/images/CEAS_analiza_-_Zakon_o_tajnosti_podataka_-maj_2015_eng.pdf.

280 The Trade Secrets Act (*Sl. glasnik RS*, 72/11) defines a trade secret as information of commercial value, because it is not generally known or available to third parties who could gain economic benefits from its use or disclosure, which the holder of such information protects by adequate measures, in accordance with the law, business policy, contractual obligations or relevant standards with a view to preserving its confidentiality, and the disclosure of which to third parties could incur damages to the holder of the trade secret.

281 See the Commissioner's statement on data leaked from a Belgrade mental health hospital, available in Serbian at *NI TV*: <http://rs.n1info.com/a113694/Vesti/Sabic-o-curenju-podataka-iz-Laze-Lazarevic.html>.

ability of their profession. The right to be informed is not absolute and definitely may not be in contravention of the right to personal data protection the Constitution guarantees everyone. The Ethical Code of Journalists of Serbia, too, states in the chapter entitled “Respect for Privacy” that “even when the competent authorities disclose information falling within the domain of privacy of the perpetrators or the victims, the media shall not convey it. Errors made by the state authorities do not give the media “permission” to violate the ethical principles of the profession.”²⁸²

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

The Commissioner for Information of Public Importance and Personal Data Protection²⁸³ (hereinafter: Commissioner) is an autonomous and independent state authority charged with the protection of personal data. The Commissioner is, *inter alia*, tasked with overseeing the process of personal data processing and reviewing complaints regarding violations of the right to personal data protection. The Commissioner is also entitled to unlimited access to and insight in the collected data, as well as to the documentation, enactments and offices of persons authorised to collect personal data.²⁸⁴ Furthermore, the Commissioner keeps a nationwide Central Register of data files and data file catalogues all controllers²⁸⁵ processing personal data are under the obligation²⁸⁶ to establish in the manner set out in a Government Decree.²⁸⁷ The Central Register is electronic, public and available on the Internet;²⁸⁸ it allows the citizens access to the personal data being processed and simultaneously

282 The Code is available in English at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/89463/102787/F-1749326294/Code%20of%20Journalists%20of%20Serbia.pdf>.

283 The Commissioner was established as an authority charged with the protection of access to information of public importance under the Free Access to Information of Public Importance Act (*Sl. glasnik RS*, 20/04, 54/07, 104/09 and 36/10). The Commissioner’s mandate was expanded to include personal data protection when the Personal Data Protection Act was adopted (*Sl. glasnik RS*, 97/08 and 104/09) and he is now the Commissioner for Information of Public Importance and Personal Data Protection Commissioner.

284 The restrictions of the Commissioner’s oversight powers in Article 45 (2–4) of the Personal Data Protection Act, limiting the Commissioner’s access to data if such access would seriously undermine the interests of national or public security, defence of the country or actions aimed at the prevention, detection, investigation or prosecution of criminal offences, were abolished by the Classified Information Act (*Sl. glasnik RS*, 104/09, Art. 109) and the Commissioner is now entitled to conduct full oversight.

285 Under Article 3(1(5)), a data controller shall denote a natural or legal person or public authority that processes personal data.

286 Article 48, Personal Data Protection Act.

287 Decree on the Form and Manner of Keeping Records of Personal Data Processing (*Sl. glasnik RS*, 50/09), available at: <http://www.poverenik.org.rs/en/legal-framework/bylaws-zp/781-2009-07-23-07-33-26.html>.

288 The Central Register is accessible via: <http://www.poverenik.rs/registar/index.php/en/home.html>.

ensures oversight over the work of the data collectors. Insight in the records on individual files may be denied only in the instances set out in the Act.²⁸⁹ The Commissioner, whose work is characterised by a high degree of transparency,²⁹⁰ has been continuously conducting activities and alerting to the need to respect and improve the valid regulations in this field and to adopt new ones to ensure abidance by the constitutional guarantees.

In July 2015, the Commissioner presented his Report on Oversight of the Implementation and Enforcement of the Personal Data Protection Act by the Electronic Communication Operators Extending Internet Access Services and Internet Services, which he launched in 2013.²⁹¹ In the initial stage, the Commissioner reviewed the work of 184 operators, which were sent questionnaires, asking them how they kept and processed the data on their users and whether they adopted rules on the privacy and security of personal data. The Commissioner then proceeded to review the work of 26 operators selected against the following criteria: market share, number and type of services and the quality of their replies to the questions in the questionnaire. The oversight confirmed that personal data protection in the field of electronic communications, especially Internet services, was extremely concerning and that the state was mainly responsible for the situation. The Commissioner forwarded draft recommendations to the Government and the National Assembly on the improvement of the situation in this field: the adoption of a new Personal Data Protection Strategy and Action Plan for its implementation; the adoption of a new Personal Data Protection Act; the adoption of a new or the amendment of the valid Electronic Communications Act; the establishment of an effective inspectorial system that will oversee the enforcement of the Electronic Communications Act, etc.²⁹²

The Commissioner launched the oversight of the enforcement and implementation of the PDPA by seven joint stock companies that had published the names, addresses and personal identification numbers of their stock holders and the number of their votes and stocks.²⁹³ Their actions are all the more concerning since the Commissioner had already, back in 2013, established that a number of joint stock

289 At the request of the collector, the Commissioner shall deny access if necessary to achieve a prevailing interest of preserving national or public security, state defence, the work of public authorities, the state's financial interests or in the event a law, another regulation or enactment based on the law specifies that the records on the data collection shall be confidential – Article 52(7), Personal Data Protection Act.

290 The Commissioner's press releases and other information of relevance to the work of this authority are available at www.poverenik.rs.

291 The Report is available in Serbian at <http://www.poverenik.rs/images/stories/dokumentacijanova/razno/izvestajisp.doc>.

292 The link to the recommendations is available at: <http://www.poverenik.org.rs/en/press-releases-and-publications/2131-nuzno-unapredjenje-zastite-podataka-o-licnosti-u-sferi-interneta.html>.

293 The Commissioner's press release of 9 November 2015 is available at: <http://www.poverenik.rs/en/press-releases-and-publications/2222-nezakonita-obrada-licnih-podataka-akcionara.html>.

companies had published records of all their stockholders and all their personal data and issued the following warning: that single records of stockholders comprise personal data and may not be published online or used for purposes other than those specified by the law. This warning is still an integral part of every stockholders' register submitted by the Central Securities Registry Depository and Clearing House on request of the joint stock companies.

In addition to the noted provisions in the Draft PDPA jeopardising the independence of the Commissioner, there were quite a few attempts by senior state officials and representatives of the ruling parties to publicly discredit the independent regulatory authorities, including the Commissioner in 2015.²⁹⁴

7. Freedom of Thought, Conscience and Religion

7.1. *General*

The right to freedom of thought, conscience and religion is enshrined in Article 9 of the ECHR and Article 18 of the ICCPR. Under these Articles, everyone shall freely manifest the belief or religion of his choice whilst the freedom to manifest one's beliefs or religion may be subject only to such limitations as are prescribed by law.

The Constitution of Serbia states that Serbia is a secular state and treats the separation of the church and state at the level of constitutional principles, i.e. prohibits the establishment of a state or mandatory religion (Art. 11). The Constitution also enshrines the right to freedom of thought, conscience and religion, i.e. guarantees the right to stand by or change one's religion or belief by choice (Art. 43).

Although the freedom of religion is unlimited per se, the Constitution lays down when the manifestation of religious beliefs may be restricted. Freedom of manifesting a religion or a belief may be restricted by law only if that is necessary in a democratic society to protect the lives and health of people, morals of a democratic society, freedoms and rights guaranteed by the Constitution, public safety and order, or to prevent incitement of religious, national, and racial hatred. The Constitution also lays down that no-one is obliged to declare his religion or beliefs and guarantees parents the right to freely decide on their children's religious education and upbringing. The freedom of religious organisation is governed in the provisions

294 See the following reports by *RTS*, *B92* and *RTV* of 29 September 2015, 5 August 2015 and 15 October 2015 respectively, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/9/Politika/2053928/Joksimovi%C4%87eva%3A+Poverenik+se+zbunio.html>, http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=08&dd=05&nav_category=11&nav_id=1023662, and http://www.rtv.rs/rs_lat/ekonomija/aktuelno/sertic-nije-problem-da-sabic-vidi-ugovor-zelezare_649037.html.

of the Constitution on the status of church and religion, i.e. the equality of churches and religious communities (Art. 44).

The administrative duties regarding the state's cooperation with churches and religious communities are performed by the Ministry of Justice Directorate for Cooperation with Churches and Religious Communities.

7.2. Legislative Framework, Status of Religious Communities and Exercise of the Right to Freedom of Thought, Conscience and Religion

The Act on Churches and Religious Communities²⁹⁵ governs in detail the issues related to the exercise of the right to the freedom of thought, conscience and religion. It distinguishes between the following four categories of churches and religious communities: traditional, confessional and new religious organisations, whilst the fourth category, unregistered religious communities, is implicitly rather than explicitly established by the Act.²⁹⁶ Under the Act, churches and religious communities are under the obligation to register. The registration procedure is governed in detail by the Rulebook on the Register of Churches and Religious Communities.²⁹⁷ Both the Act and the Rulebook provoked harsh criticisms as soon as they were adopted and several initiatives and motions had been submitted to the Constitutional Court of Serbia to review the constitutionality of their provisions. The Court in the meantime rejected and dismissed these motions and initiatives as inadmissible.²⁹⁸

In the section on freedom of thought, conscience and religion of its 2015 Progress Report,²⁹⁹ the European Commission said that these constitutionally guaranteed rights were generally respected. It said that several religious organisations have been registered and that incidents related to religion have continued to decline. It noted that the lack of transparency and consistency in the registration process continued to be one of the main obstacles preventing some religious groups from exercising their rights. It also said that the contested provisions of the Rulebook on the Register of Churches and Religious Communities have not been changed and that access to church services in some minority languages were not fully guaranteed across Serbia.

The Chapter 23 Action Plan envisages the implementation of a detailed comparative law analysis of the status of churches and religious communities. The

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

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

297 *Sl. glasnik RS*, 64/06.

298 More in the *2014 Report*, II.8.2.

299 *2015 Progress Report*, 5.23.

planned analysis will focus on states bordering the Republic of Serbia that have fulfilled EU accession criteria. The Action Plan also envisages the launch of a dialogue with the Serbian Orthodox Church to encourage the use of minority languages in religious services.

With a view to identifying the Action Plan obligations, the Directorate for Cooperation with Churches and Religious Communities conducted an analysis of the state of religious rights, in which it concluded that the recommendation in the Screening Report – to ensure state neutrality towards the internal affairs of religious communities and further ensure that the right of persons belonging to a national minority to equal access to religious institutions, organisations and associations is consistently guaranteed in both legislation and its implementation in line with independent bodies recommendations – has been fulfilled within the reform process and during the preparation of the Action Plan.

However, the *Expert Report on the situation of minority rights in the Republic of Serbia*, prepared by two independent experts from EU Member States, EU staff from the Commission (DG NEAR) and from the EU Delegation in Belgrade³⁰⁰ referred to the report prepared by the 2012 Expert Mission, in which the latter recommended that the Serbian authorities consider revising the Act on Churches and Religious Communities and noted that there had been no significant changes to the legal situation concerning religious affairs and that this applied in particular to the status of the seven traditional churches and religious communities and the regulation of religious education. The Mission observed that the Serbian authorities continued to pursue a policy of strict “non-intervention” into the internal affairs of the various churches and religious communities, and the relations between them. Although it welcomed the respect for the separation of the state and religion, it emphasised that there were convincing arguments to hold that states were responsible for ensuring that individuals may exercise their fundamental human right to attend religious services in their mother tongue if they so wished and that this assessment was of particular relevance for the situation in East Serbia concerning religious services in the Romanian and Vlach languages.

The experts concluded that the interrelationship between the various religious communities in Vojvodina remained stable and without any significant tensions. They recommended to the Serbian authorities to consider revising the Act on Churches and Religious Communities, and/or its implementation, in ways that ensure that members of minority groups may exercise their fundamental human right to attend religious services in their mother tongue if they so wish and to consider intensifying dialogue with the Serbian Orthodox Church with a view to encouraging the use of minority languages in the services.

300 Anastasia Crickley and Rainer Hofmann, *Expert Report on the situation of minority rights in the Republic of Serbia*, 24 September 2015, p. 10. Available at: http://www.ljudskaprava.gov.rs/images/pdf/nacionalne_manjine/expert_mission_report_on_minorities.pdf.

As the BCHR noted in its previous annual Human Rights Reports, the above-mentioned Rulebook sets an excessively high threshold of founders needed to register a religious community in the Register. Namely, all religious communities except traditional ones, need to supplement the decision on their establishment with a list of the signatures of the founders accounting for at least 0.001% of Serbia's adult citizens residing in Serbia according to the official census of the population, or of foreign nationals permanently residing in the territory of the Republic of Serbia. Furthermore, they must submit overviews of their main religious teachings, religious rites and religious goals, whereby they are practically forced to declare their religious beliefs.³⁰¹ Precisely the impugned provision in Article 18 of the Act on Churches and Religious Communities provides the executive authorities with the opportunity to assess the quality of the religious teachings, rites and goals during the registration procedure, which is absolutely inadmissible from the viewpoint of the freedom of thought and religion and has a restrictive effect on the freedom of religious organisation.

7.3. Activities of Religious Communities in Serbia

In addition to the traditional churches, another 19 religious organisations officially exist in Serbia. The last to register, in 2011, was Christ's Evangelical Church. Numerous other small religious communities, estimated at as many as 100, also exist in Serbia. Small religious communities have often complained of discrimination and of being equated with sects. They are also critical of the obligation that they have to declare their religious beliefs on registration and quote this as the reason why most of them have not officially been registered.

Two Islamic Communities have existed in Serbia since 2007. One of them is headed by Mufti Zukorlić and is spiritually linked to the Islamic Community Riyaset in Bosnia-Herzegovina, and the other is headed by Reis-ul-Ulema Adem Zilkić and has limited its activities to Serbia. The rift between the two communities continued in 2015, although there had been indications in 2013 that they may overcome it.³⁰²

A total of 1.023 billion RSD were earmarked for churches and religious communities in the 2015 Serbian state budget, i.e. more than in 2014, to cover the pension/disability and health insurance contributions of priests and religious officials that had not been paid since 2012. The projected 2016 budget envisaged a 30% cut of the allocation. Religious communities are allocated funding in proportion to the

301 More in the *2012 Report*, II.7.2.

302 "I Will Do My Utmost to Reunite the Two Islamic Communities", *Danas*, 17 February 2014, available in Serbian at: http://www.danas.rs/danasrs/drustvo/ucinicu_sve_da_dodje_do_ujedinjenja_dve_iz_55.html?news_id=276441.

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 budget funding is used to cover all the needs of the religious communities and activities regarding the preservation of identity. Their spending is audited by the State Audit Institution.³⁰³

The first church-led TV station, *TV Hram* (Temple) started broadcasting its programme on Serbian (Orthodox) Christmas in January 2015. Protopresbyter Stojadin Pavlović is the Editor of this station, launched by the Serbian Orthodox Church, to broadcast not only programmes on religious topics, but to report on events in Belgrade as well. Its founders said it would cooperate with similar stations in Russia.³⁰⁴

The Serbian Genuinely Orthodox Church (SGOC, so-called zealots) again organised a Youth Camp in early May, where children dressed in military uniforms underwent firearm training.³⁰⁵ Although many institutions condemned the holding of the camp in 2014, it was not prohibited. The Minister of Internal Affairs explained that such a ban could be issued only by the public prosecutors, while the Bor Public Prosecution Service claimed that the prohibition of the camp was under the jurisdiction of the Ministry of Internal Affairs and that the investigation showed that there were no elements of crime in holding it.³⁰⁶

In May 2015, the media extensively reported on the dismissal of two SOC Bishops, Grigorije (charged with the Canada Diocese) and Filaret (charged with the Mileševo Diocese). Bishop Grigorije was relieved of duty in a secret vote because, as explained, of the poor shape the Diocese under his charge was in.³⁰⁷ He accepted the decision but claimed there was no evidence substantiating his dismissal and that he planned to continue living in Canada.³⁰⁸ Bishop Filaret was accused of abusing church funds, harassing the clergy, debauchery and perverse conduct.³⁰⁹ The SOC Holy Synod first suspended Bishop Filaret and then dismissed him, although the Patriarch himself had appealed he be given a second chance.³¹⁰ Metropolitan Amfilohije was the most vociferous campaigner against Bishop Filaret within the Church. The latter accused the US Embassy of being behind his dismissal.³¹¹ Af-

303 See the *RTS* report “Billion RSD for Churches and Religious Communities” of 2 March 2015, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1845336/Milijardu+dinara+za+crkve+i+verske+zajednice.html>

304 See the *Blic* report of 6 January 2015, available in Serbian at: <http://www.blic.rs/Vesti/Društvo/524623/TV-HRAM-Pocinje-sa-radom-prva-crkvena-televizija>.

305 See the *Blic* report of 3 May 2015, p. 11.

306 See the *Blic* report of 5 May 2015, p. 8.

307 See the *Blic* report of 3 May 2015, p. 11.

308 See *Danas*, 23–24 May 2015, p. 5.

309 See the *Blic* report of 23 May 2015, p. 9.

310 See *Politika*, 24 May 2015, p. 5.

311 See *Večernje novosti*, 24 May 2015, p. 5

ter he was suspended, Filaret was ordered to retreat to the St. Vračı Monastery at Vodena poljana, on Mt. Zlatar, inhabited by only one monk.³¹²

SOC officials have often been making political statements, although the church is separated from the state under the Serbian Constitution. The decision by UNESCO's Executive Council to include in its session agenda Albania's initiative to admit Kosovo to this organisation provoked numerous reactions by the public authorities, political parties and individuals, including the SOC Holy Synod, which wrote a letter to the UNESCO Director-General.³¹³ SOC Patriarch Irinej said that the SOC was fighting against Kosovo's admission to UNESCO, adding: "Serbia is, indeed, part of Europe, and EU accession is the road we are taking, but it cannot be accompanied by blackmail. So – yes to the EU, but not at the price of Kosovo".³¹⁴

The Serbian Orthodox Church reacted vehemently to Education Minister Srđan Verbić's initiative to merge religious instruction and civic education, two elective subjects introduced in the 2001/2002 school year, because, as he argued, the existence of subjects distinguishing between the pupils not by their interests but on the basis of their parents' religious affiliation was an issue that concerned all citizens of Serbia and it had to be discussed.³¹⁵ Just a few months before that, Patriarch Irinej voiced the view that religious instruction should be a mandatory rather than an elective school subject. Bač Bishop Irinej noted the contribution of the assassinated Serbian Prime Minister, Zoran Đinđić, to the introduction of religious instruction in schools, claiming that society has seen only benefits from this subject.³¹⁶

Clashes between the two Islamic Communities (the Islamic Community in Serbia and the Islamic Community of Serbia) continued in 2015. Both Islamic Communities in May condemned the construction of a number of mosques in Sjenica, Tutin, and the Novi Pazar settlements of Varevo, Pobrđe, Barakovac and Osoje. According to their builders, these "neutral mosques", as they dubbed them, are to provide all Moslems (of both Islamic Communities) with places of worship. The Islamic Community in Serbia Chief Mufti condemned the construction of such mosques, claiming their builders were abusing donations and that the mosques were staffed by incompetent and dubious people.³¹⁷

312 See *Večernje novosti*, 25 May 2015, p. 5.

313 See the *Vreme* report, available in Serbian at: <http://www.vreme.com/cms/view.php?id=1334536>.

314 See the *Blic* report of 15 October 2015, available in Serbian at <http://www.blic.rs/Vesti/Politika/598586/Patrijarh-za-Blic-Hocemo-u-EU-ali-ne-po-cenu-Kosova>.

315 See the *Informer* report, available in Serbian at: <http://www.informer.rs/vesti/drustvo/47869/MINISTAR-PROSVETE-NASAO-SOLOMONSKO-RESENJE-Veronauka-i-gradjansko-ubuduće-jedan-predmet>.

316 See the *Vesti online* report of 2 November 2015, available in Serbian at: <http://www.vesti-online.com/Vesti/Srbija/529791/Vracanje-veronauke-veliki-dogadjaj-Jos-da-ga-uvedu-kaobavezni-predmet>.

317 See the *Večernje novosti* report of 26 May 2015, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:549871-U-Sandzaku-peru-pare-pravecizamije>.

8. Freedom of Expression

8.1. *General*

Freedom of expression is enshrined in Article 19 of the ICCPR and Article 10 of the ECHR. Both of these international treaties allow restrictions of this freedom, provided that they are in accordance with law and necessary in a democratic society.

The Constitution of Serbia guarantees right to freedom of expression of opinion. It prescribes that freedom of expression may be restricted by law. Restriction could be imposed only if necessary to protect the rights and reputation of others, uphold the authority and impartiality of the courts and protect public health, morals of a democratic society and the national security of the Republic of Serbia (Art. 46 (2)). It is unclear what is exactly implied by “morals of a democratic society”, a coinage introduced by the Constitution as grounds for restricting specific rights.

The Constitution guarantees the freedom of the press – publication of newspapers is possible without prior authorisation and subject to registration, while television and radio stations shall be established in accordance with law (Art. 50).

Censorship of the press and other media is prohibited by the same article. Only competent court may prevent the dissemination of information. This preventive measure could be imposed only if that is “necessary in a democratic society to prevent incitement to the violent change of the constitutional order or the violation of the territorial integrity of the Republic of Serbia, to prevent propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” (Art. 50 (3)). The right to correction is guaranteed by the Constitution (Art. 50 (4)), which leaves its detailed regulation to the law. Criminal Code incriminate insult but warrant only fines (Art. 170).

8.2. *Implementation of Media Legislation*

The National Assembly on 2 August 2014 adopted a set of media laws – the Public Information and Media Act,³¹⁸ the Electronic Media Act³¹⁹ and the Public Media Services Act³²⁰. The state thus fulfilled most of the obligations it assumed under the Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 (hereinafter: Media Strategy) adopted back in 2011.³²¹

The numerous problems that have already surfaced during the almost 16-month-long implementation of the media laws can be ascribed to the lack of po-

318 *Sl. glasnik RS*, 83/14.

319 *Ibid.*

320 *Ibid.*

321 More about Media Strategy in *2014 Report*, II.9.2.

litical will to implement them in practice, to the fact that they fail to fully elaborate some of the key areas and to the absence of adequate oversight mechanisms and penalties for violations of their provisions. This is evident in nearly all areas of relevance to the achievement of the Media Strategy goals, from project co-funding and transparency of data on media outlets, prohibited concentration of media ownership and independence of the EMRA, to the financial sustainability of the public media services. The National Assembly in 2015 already amended two of the newly adopted laws: the Public Information and Media Act (hereinafter: PIMA) –extending the deadline by which the media had to be privatised, and the Public Media Services Act – extending the budget funding of the public service broadcasters’ core activities. The National Assembly also adopted a *lex specialis* – the Act on the Temporary Regulation of Public Media Service Licence Fee Collection³²².

Non-transparent government advertising, one of the main tools for exerting pressure on the editorial independence of the media, remains totally unregulated. The new Draft Advertising Act³²³, presented at a public debate in January, which was negligibly changed before it was submitted to parliament for adoption on 6 November 2015,³²⁴ even explicitly lays down that it shall not apply to advertising (public informing) by public entities funded from public funds (the national, provincial and local authorities, public companies – their non-commercial activities, institutions and other public entities).

In its 2015 Progress Report, the European Commission found that Serbia had made no progress overall in the previous year concerning the right to freedom of expression. The Report said that it remained to be seen whether media privatisation would increase transparency of media ownership and funding, emphasising that it was still unclear what the effects would be of introducing project-based financing of content of public interest. In addition to the lack of implementation of media legislation, the EC said opaque ownership, unregulated financing and covert and open political and economic influence on the media and money channelled to favoured media from various state sources continued to be the features of the media environment.

As per the public service broadcasters (RTS and RTV), the Report stated that they have adopted statutes in line with the Public Media Services Act, but that a method of monitoring revenue and expenditure allowing separate bookkeeping for public and commercial activities was yet to be introduced and that the two public service broadcasters were yet to prepare consolidated records of licence fee payers. The EC also mentioned that the Electronic Media Regulatory Authority (hereinafter: EMRA) faced delays in preparing all the by-laws needed to implement the

322 *Sl. glasnik RS*, 112/15.

323 Available in Serbian at: http://mtt.gov.rs/download/Nacrtna_Zakona%20o%20oglasavanju%202014%20JR.pdf.

324 Available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2926-15%20LAT.pdf.

Electronic Media Act and that it needed to be fully independent when monitoring the fulfilment of programming obligations of broadcasters. The Report further said that threats and violence against journalists still characterised the Serbian media stage and that criminal charges and final convictions for such offences were rare, as well as that journalists had little job security and low salaries and were thus prone to pressure and influence from economic and political quarters. It also noted that there had been no progress in investigating a series of cases of actions against websites that occurred in 2014.

In this area, the EC expects of Serbia to, *inter alia*, create an enabling environment in which freedom of expression can be exercised without hindrance, threats, physical assaults and incitement to violence against journalists and bloggers, which should be reacted to and publicly condemned; to complete the process of privatising state- and municipally owned media; to ensure the independence of the EMRA; to design an adequate model for funding public service broadcasters (to ensure their editorial independence); and, to elaborate and ensure comprehensive regulation of advertising.

All the problems enumerated by the European Commission as barriers to the full realisation of media freedoms are the consequences of the delay in implementing the media reform, lack of political will to halt the practice of using media for the political promotion of the authorities and, in general, the absence of rule of law, a constitutionally proclaimed value and principle.

8.2.1. Project Co-Funding – Continuation of Direct Subsidising in another Form

One of the main goals of the authors of the Public Information and Media Act (PIMA) was to establish an adequate legal model for the public authorities' participation in the funding of media that would, on the one hand, preclude the direct subsidising of the media by the public authorities, and, on the other, ensure the achievement of public interest in the area of public information. This is also a consequence of the character of the public authorities' obligation with respect to media freedoms, because they must both refrain from all actions stifling such freedoms and create an environment enabling their development.

The state's financial involvement thus has to be based on the principles of transparency, impartiality and non-discrimination. As opposed to direct subsidies to the media, project co-funding does not aim at ensuring the economic functioning of the media, but, rather, the realisation of public interest in the field of public information, as specified in the PIMA. The lack of will of the authorities, particularly those at the local level, to relinquish the mechanisms for exerting economic pressure on the media through public funding, has surfaced during the first year of implementation of the PIMA provisions on project co-funding. In other words, the implementation of the law in this field has boiled down to finding a way of funding "suitable media" whilst abiding by the law. Another problem arises from the

fact that the PIMA does not regulate the main elements of project co-funding that would prevent numerous abuses. Notably, it does not lay down penalties for public authorities disregarding their legal obligations; nor does it envisage mechanisms for overseeing the fulfilment of the legal obligations or for monitoring the achievement of public interest in the field of public information.

It hence comes as no surprise that: some local self-governments failed to fulfil their legal obligation to publish calls for media project co-funding proposals because the PIMA does not lay down any penalties for those who default on this obligation;³²⁵ many of the media project co-funding calls for proposals published by the local self-governments were not in compliance with the law, particularly with respect to the composition of the commissions reviewing the project proposals; the likelihood of the media projects achieving public interest has been arbitrarily interpreted because the PIMA's definition of public interest is insufficient; the by-laws and the calls for proposals usually only copy-paste the provisions of this law; the decision-making process is essentially non-transparent, as it precludes public insight in the criteria against which the commissions endorsed the project proposals; the practice of funding erstwhile publicly-owned media has continued and they have been granted excessively high amounts from the local budgets.

The scope for abuse of project co-funding is huge, ranging from flagrant violations of the law to its perfidious abuse with a view to continuing with the deleterious practices.

The Kragujevac City Assembly, for instance, rendered a decision in October 2015 amending the Operational Programme of the *Radio Television of Kragujevac* (RTK) Public Company and increasing its budget from 44,553,000 RSD to 74,545,899 RSD, after the public auction for the sale of that public company had already been completed. RTK was no longer a public company at the time its budget was amended, but, since the contract on its sale had not been formally signed yet, the city authorities used the interregnum to provide a subsidy of nearly 30 million RSD to this outlet bought by Radojica Milosavljević, an SPS member and former Deputy Mayor of Kragujevac. The interim funding of media undergoing privatisation is not regulated well in the PIMA as its authors did not make provision for any delays in the privatisation process. They laid down that all media were to be privatised by 1 July 2015, which is why the local self-governments earmarked funding for such media in their budgets only for the first six months of the year. The substandard implementation of the privatisation process by all the stakeholders (the relevant ministry, the Privatisation Agency, the local self-governments and the senior managements of the public companies) resulted in the amendment of the PIMA and the movement of the privatisation deadline to 31 October, wherefore the local

325 According to the data of press and media associations of October 2015, as many as one-third of the municipalities had not published calls inviting media to submit co-funding project proposals, see the ANEM report available in Serbian at <http://anem.rs/sr/aktivnostiAnema/aktuelno/story/17788/Tre%C4%87ina+op%C5%A1tina+u+Srbiji+nije+raspisala+konkurse.html>.

self-governments were tacitly allowed to continue directly subsidising these media, despite the prohibition in the PIMA. That abuse of the interregnum in the case of RTK led to an absurd situation, in which an already privatised outlet received a subsidy from the rebalanced budget. Interestingly, just before the Kragujevac authorities rendered the decision, they published a call for media project co-funding proposals; the amounts of funds to be granted led the media associations to insist that the commission reviewing the project proposals comprise five rather than three members. The Kragujevac authorities rejected the initiative and the Mayor ultimately annulled the public call, blaming the press and media associations for refusing to take part in the procedure.

The Kruševac city authorities rendered a decision granting project co-funding in the amount of 2.1 million RSD (17,000 EUR) to the erstwhile public company *RTV Kruševac*, which was also bought by Radojica Milosavljević, while the other three applicants were granted only 500,000 RSD each. Similarly, the Belgrade city authorities granted 23 out of 45 million RSD earmarked for project co-funding to *RTV Studio B*, formerly a publicly-owned outlet, bought in 2015 by a company with links to the Krdžić family, which is actively involved in the radio business. According to publicly available documents, *Studio B* was granted the funding for its *Good Day Belgrade* show, which has already been broadcast on Studio B TV every day. The commission, charged with reviewing the project proposals against the criteria in the call, was not appointed in accordance with the PIMA. On the other hand, both cases are characterised by non-transparent decision-making on the project proposals. The fact that a commission endorses the allocation of a large amount of funding to a specific outlet does not necessarily amount to a violation of the law, but the fact that the commissions in the instant cases endorsed disproportionately large funds to two former public media companies, under vague criteria and in a non-transparent decision-making procedure, gives rise to suspicions that the project co-funding model has been abused.

The public calls implemented in the first half of 2015 were apparently conducted in accordance with the PIMA and were characterised by fewer irregularities, which were addressed by the relevant Ministry of Culture and Information, the Standing Conference of Towns and Municipalities and the press and media associations as they arose. However, the numerous irregularities noted after the privatisation of the remaining publicly-owned media rendered senseless the main idea underlying project co-funding and gave rise to doubts that it was used to continue subsidising politically suitable media. Project co-funding thus clearly did not achieve its purpose in the first year of implementation of the PIMA, as the local authorities have shown they either do not understand how to implement the new regulations or do not want to (which is more likely), which has resulted in the total vitiation of a generally good intention of the legislator – that funding be granted for programme material (rather than the outlet's entire activity) achieving public interest in the field of public information (rather than praising the authorities) – and in the transformation of project co-funding into yet another tool for manipulating and

controlling the media more easily. Hence the general assessment that this field has remained unregulated despite the existence of the legal framework.

8.2.2. Government Advertising

As opposed to project co-funding, the field of government advertising is not regulated even at the level of principle, despite the need to regulate the entire process of media revenues earned from publishing advertisements placed and paid by the public authorities (national, provincial and local authorities, public companies, institutions and other entities funded from public funds). Although there is a recognised need for imparting information about the work of public authorities and promoting their activities, the government advertising procedure must be based on the actual needs of the public authorities and it must be transparent and equally accessible to all the media. Otherwise, government advertising also becomes an efficient tool for “buying media influence” and disciplining the media, especially those critical of the authorities. This problem has been recognised also in two reports by the Anti-Corruption Council,³²⁶ the European Commission’s Progress Reports,³²⁷ as well as by experts.³²⁸ Notwithstanding, the new Draft Advertising Act does not regulate government advertising at all and focuses on advertising by commercial entities.

The value of commercial advertising in the 2011–2014 period ranged between 150 and 160 million EUR per annum, while, according to the Anti-Corruption Council’s projections, the value of government advertising in that period exceeded 800 million EUR in total.³²⁹ Government advertising is not regulated by the PIMA either. Judging by everything, the Advertising Act will not apply to government advertising, while the Public Procurement Act,³³⁰ the general law applying to all goods and services procured by the public authorities, is incapable of recognising the specificities of the media field. Hence the necessity to adopt a new law governing this problematic area. This will be an extremely challenging task as this law is to cover both public information, advertising, public finance, competition and state aid control, and, due to the major “corruptive” potential of government advertising, anti-corruption measures as well.

326 *Report on the Ownership Structure and Control over Media in Serbia*, of February 2015, and *Report on the Potential Influence of Public Sector Institutions on the Media via Advertising and Marketing Service Payments*, of December 2015. An overview of the former report is available in English at <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2751/presentation-of-report-on-ownership-structure-and-control-over-media-in-serbia>.

327 See, e.g., the European Commission’s 2014 and 2015 Progress Reports.

328 See, e.g., the Association of Independent Electronic Media (ANEM) paper for the public debate on the Draft Advertising Act, available in Serbian at : <http://www.anem.rs/sr/aktivnostiAnema/AktivnostiAnema/story/17164/PRILOG+ANEMA+ZA+JAVNU+RASPRAVU+O+NACRTU+ZAKONA+O+OGLA%C5%A0AVANJU+.html>

329 See page 21 of the Anti-Corruption Council’s *Report on the Potential Influence of Public Sector Institutions on the Media via Advertising and Marketing Service Payments*, of December 2015.

330 *Sl. glasnik RS*, 124/12, 14/15 and 68/15.

8.2.3. Privatisation of the Remaining Publicly Owned Media

The process of privatisation of erstwhile publicly owned media (most of which had been founded by the local self-governments) was completed by the end of October 2015. The elimination of state (co-) ownership of any media was defined as one of the main goals in the Media Strategy, *inter alia*, with a view to eliminating the possibility of the authorities influencing the editorial policies of the outlets they owned and funded and to ensure a level-playing field for all the media. This goal is complementary with the change in the way media are funded, the switch from subsidies to solely project co-funding.

Unfortunately, both processes have been compromised to a significant degree due to the lack of political will, insufficiently elaborated legal provisions and voluntarism, which were particularly apparent in the privatisation process. Media privatisation is governed by Articles 142 and 143 of the PIMA, under which all publicly owned outlets were to have been privatised first by 1 July and then by 31 October 2015 (under the amendment to the PIMA). Privatised outlets must continue performing media activities for at least five years (buyers of other privatised undertakings have been under the obligation to continue their core activities for two years). The Privatisation Act³³¹ applied to all issues not governed by the PIMA.

Two media privatisation models were selected: sale at public auctions and, in case the outlets were not sold at auction, the distribution of the shares to the workers free of charge. The entire process entails a number of procedural steps that must be performed before the auction; many of them were to have been taken by the founders of the outlets (local self-governments, provincial authorities or the Serbian Government), others by the senior managements of the public companies that were the formal media publishers, and the third by the Privatisation Agency, the body charged with implementing the privatisation procedure. The supervisory role was played by the Ministry of Culture and Information, the state administration body overseeing the enforcement of the PIMA. It was clear from the start that the stakeholders in the privatisation process had not fully understood their roles, wherefore the initial deadline was moved to end October. The privatisation process was ultimately completed but in a way giving rise to doubts that their buyers were not by market logic and the wish to pursue media activities, but to ensure that politicians still influenced the outlets through the new owners, despite the change in the ownership structure of the media.

This is best corroborated by the fact that eight outlets were bought by Radujica Milosavljević, who had not been involved in the media business at all, but has been actively involved in politics as the Kruševac Deputy Mayor and SPS member. Some media linked him to the then Defence Minister Bratislav Gašić as well. Milosavljević spent 300,000 EUR on these eight outlets, which include major regional stations, such as RTV Kragujevac, RTV Pančevo and RTV Kruševac.

331 *Sl. glasnik RS*, 83/14, 46/15 and 112/15.

Kopernikus Cable Network's purchase of media did not pass without controversy either. The local Radio Šid station was sold to Kopernikus at a price almost 76 times higher than the initial price. The senior managers of this company claimed that their decision to (over) pay the station was exclusively based on market logic, as the station included a cable operator with three thousand users. Kopernikus Cable Network operates three TV channels TV K::CN, TV K::CN Music 2 and TV K::CN Svet Plus 3, and had twice applied for a national broadcasting licence, albeit unsuccessfully.

TV K::CN Svet Plus 3, was qualified as extremely partial to the SNS, then an opposition party, during the 2012 election campaign, as the then Republican Broadcasting Agency (RBA) also remarked in its report.³³² RTV Studio B was bought by a company affiliated with the companies owned by the Krdžić family, which is also active in the media sector (it owns several radio stations across Serbia). To recall, TV Studio B was one of the stations (in addition to TV Pink and TV Hepi) that aired the entire SNS solemn session in 2015, which apparently amounts to a violation of the prohibition of political advertising during non-election periods in Article 47 of the Electronic Media Act. The broadcast prompted the Independent Journalists Association of Serbia (IJAS) to file a complaint with the Electronic Media Regulatory Authority (hereinafter: ERMA, which replaced the RBA), which found no grounds to initiate proceedings on the complaint.

Suspicious that political influence buying was at issue deepened when the Kragujevac city authorities earmarked 30 million RSD in their rebalanced 2015 budget for the already privatised RTK, when RTV Kruševac, bought for 14,000 EUR, was granted 17,000 EUR for project co-funding, and when RTV Studio B was granted 23 million EUR from the Belgrade city budget. The close ties of their new owners with the ruling party is obvious as they have either evidently favoured it over others (e.g. Kopernikus) or broadcast its entire solemn party session live (e.g. RTV Studio B). All this corroborates that privatisation has not led to the elimination of the practice of exerting influence on the outlets' editorial policies through the owners' links with the ruling parties. Truth be told, this is not a feature only of the current government as there had been cases of "buying political influence" in the prior privatisation cycles as well.

The competent authorities, including the Anti-Money Laundering Directorate and the EMRA, endorsed all of the above privatisations, wherefore all the suspicions remained at the level of speculation because no-one had formally found anything controversial in these sales of state capital.

The privatisation of the news agency Tanjug also caused many dilemmas in the public. This state news agency, recognised as a state propaganda tool and "loyal servant" of all governments since it was founded in the 1940s, is one of

332 *Final RBA Report on Oversight of Programmes Broadcast during the 2012 Presidential, Parliamentary, Provincial and Local Election Campaign*, p. 110, available in Serbian at: http://www.rra.org.rs/uploads/useruploads/izvestaji-o-nadzoru/1zbori_2012_final.pdf

the 37 outlets the privatisation of which failed. Shares in the agency were to have been distributed to its staff free of charge since no-one wanted to buy it in the two public auction cycles held by 31 October. The Government, however, skipped this privatisation stage and on 3 November issued a Decision on the Legal Consequences of the Closure of the Public Company News Agency Tanjug,³³³ stating that Tanjug ceased to operate on 31 October, that its assets would be taken over by the Republican Property Agency, that its archives would be taken over by the Archives of Yugoslavia, that it would pay all its arrears to the staff and that, once the arrears were paid, its Director would apply for Tanjug's deletion from the Business Entities Register. Tanjug continued operating into 2016 although it no longer exists formally. It has not been deleted from the Media Register or the Business Entities Register either.

The privatisation of RTV Vranje was also disputable. According to initial media reports, this outlet was bought by its workers fulfilling the requirements decreed by the Government. The representatives of the relevant Ministry of Culture and Information and the Privatisation Agency claimed from the very start of the privatisation process that the sale of RTV Vranje under the free distribution of shares model would be effected by the sale of all 100% of the shares. However, the Privatisation Agency "changed its mind" just before the outlet was sold to its staff and noted that, under the Act on the Right to Free Shares and Financial Compensation Exercised by Citizens in the Privatisation Process³³⁴, the workers were entitled to only 200 EUR worth of shares per year of service, wherefore they became owners of only 33% of the shares, while the remaining 67% were taken over by the Shareholders Fund. Not only do the workers appear to have been duped; the PIMA seems to have been violated as well, as it stipulates the withdrawal of the state from the media upon the expiry of the legal deadlines and the Shareholders Fund is also a public body effectively under state control.

Two of the most influential news companies, which publish the dailies *Politika* and *Večernje novosti*, had not been privatised before the expiry of the privatisation deadline. The *Politika* Shareholding Public Liability Company (PLC), which publishes the daily *Politika*, was exempted from privatisation under a Serbian Government Decision on the Privatisation of Entities of Strategic Importance of 29 May 2015, in which it was designated as such an entity and its privatisation deadline was postponed until 1 June 2016. Various public entities own shares in the *Politika* PLC, including the Republic of Serbia (around 31% of the shares, the state Shareholders Fund (around 24%), the electricity public companies *Elektroprivreda* and *Elektrodistribucija*, the Serbian Postal Services, the Pension and Disability Insurance Fund, et al. The daily *Večernje novosti* is published by the *Novosti* PLC Belgrade, in which the state has a minority stake (29% of the shares directly and another 7% of the shares owned by the Pension and Disability Insurance Fund). In

333 *Sl. glasnik RS*, 91/15.

334 *Sl. glasnik RS*, 123/07, 30/10, 115/14 and 112/15.

2011, the Securities Commission revoked the right to vote of businessman Milan Beko, who owned over 62% of the shares in Novosti PLC at the time, because he did not make a public offer to buy all the other shares, and limited his ownership of shares to 25%. This is why the state, although a minority shareholder, has practically continued exercising its managerial rights, while the majority shareholder cannot exercise his voting rights or affect the company's decisions. Večernje novosti is among the 24 controversial privatisations, the re-examination of which was sought by the European Commission.³³⁵ The case of this company was mentioned in the Anti-Corruption Council's reports on the media as well.³³⁶

8.2.4. Concentration of Media Ownership

Concentration of media ownership entails ownership of a number of media outlets or of media outlets and companies involved in related activities (e.g. newspaper distribution, telecommunication operators or marketing agencies) Specific provisions of the media laws limit horizontal integration (of two media outlets performing the same activity, e.g. two radio or two TV stations), vertical integration (e.g., of a media outlet and an operator) and cross-ownership (of outlets providing different types of media services, e.g. a radio station and a newspaper). Not all media convergences amount to prohibited media concentration, only those in contravention of the legal restrictions. The restrictions under the 2014 media laws are much more liberal than the ones laid down in their predecessors.

The fact that the media laws did not lay down media programme concentration restrictions is another problem that arises with respect to media concentration, especially in the context of news programme production. The main goal of laying down media concentration restrictions is precisely to ensure the diversity of sources of information and media programme to the citizens, as the media consumers, and to prevent a monopoly on the publication of information, ideas and opinions and a monopoly on the establishment and distribution of media (as prescribed in Article 6 of the PIMA). This general provision is only partly elaborated in the PIMA, notably, with respect to ownership concentration and the obligation of media distributors to perform media activities via affiliated legal persons. In addition, the Electronic Media Act includes "must carry" provisions and lays down specific obligations of operators to prevent discrimination against media during their distribution.

These provisions, however, do not suffice, because they do not take into account the qualitative (programme) aspect of media service provision at all. Serbia ranks first in Europe with 1,400 media outlets, but their number is inversely proportional to the diversity of the sources of information and of media programmes. The provisions on concentration of media ownership will only result in the convergence

335 See: <http://www.euractiv.com/serbia/police-arrested-wealthiest-serbs-analysis-516638>.

336 See the Council's Report on the Privatisation of the Novosti Company, available at: <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/Report%20on%20privatization%20of%20the%20Novosti%20company.pdf>.

of the ownership of a greater number of market players (e.g. the case of integration of ownership of TV Prva and B92)³³⁷, but qualitatively do not provide any guarantees of pluralism. In other words, it is irrelevant whether there are three or 100 owners. What is important is that ownership is separated from the editorial role and that media, regardless of who owns them, preserve their editorial concepts. The regulations have not resolved these dilemmas, because the legislator stopped halfway, wherefore there are no legal guarantees of the pluralism of media programme, except at the level of principle.

8.2.5. Transparency of Data on Media and the Establishment of the Media Register

Ensuring the transparency of all relevant data on media and their owners has been another major goal of the media sector reform. The year that has passed since the establishment of the Media Register has, unfortunately, shown that this goal has been fulfilled only formally and that the situation regarding the availability of data on media is far from ideal in practice. Like the legal provisions in other areas, those on the Media Register are insufficiently elaborated, while the body keeping the register (the Business Registers Agency, hereinafter: APR) lacks the competences to recognise and identify the specificities surrounding the establishment and operation of the Media Register.

First of all, the Media Register does not provide the average readers/members of the audience with easy and rapid access to all data on media that can help them get an idea about whether or not a particular outlet is a credible source of information. Second, the PIMA failed to lay down the obligation on the regular updating of the Media Register and left it entirely to the discretion of the APR, wherefore it cannot be ascertained how accurate and relevant the available data are. Third, the Media Register merely took over the data in the erstwhile Register of Media, wherefore it cannot be definitely determined how many of the registered outlets actually exist in practice, which again distorts the very picture of the media sector. The fact that the primary and secondary legislation only specifies which data shall be communicated to the APR, but not which data are to be made publicly available creates broad room for APR's arbitrariness, a technical authority registering nearly all legal persons.³³⁸ All this precludes media consumers from assessing whether a specific outlet is truly independent from the state and whether it is a genuinely independent source of information. This is why this field remains unregulated despite the legal framework that exists formally.

337 See the ERMA statement, available in Serbian at: <http://www.rra.org.rs/latinica/news/article/saopstenje-saveta-rem-povodom-objedinjavanja-vlasnistva-tv-prva-i-tv-b92>.

338 For instance, perusal of the Media Register shows that it lacks extremely important data on funding provided by the state and other public entities. The Funding section in the Register includes the following data: the amount of state aid, the date when it was paid and indication that state aid is at issue. There are, however, no data on which particular public authority granted the funding or on what grounds (project co-funding, public procurement, advertising, etc.).

8.2.6. Independence of the Electronic Media Regulatory Authority

As already noted in BCHR's 2014 Report, the legal status of the Electronic Media Regulatory Authority is not ideally regulated by the law. Although it, on the one hand, proclaims that the EMRA shall be independent, it, on the other hand, curtails its independence. First, the Constitution of the Republic of Serbia, as the highest law of the land, lays down restrictions for holders of public powers that are not classical state administration authorities. Second, the State Administration Act³³⁹ further undermines the EMRA's independence, because it provides state administration authorities with strong oversight mechanisms allowing them to affect the way the conferred powers are exercised (EMRA's main duties, including the adoption of by-laws, fall under conferred powers) and even to revoke those conferred powers. Furthermore, the EMRA's Financial Plans have to be voted in by the National Assembly but the law fails to specify what happens if the National Assembly votes against it or if the vote on it is delayed.

For instance, the EMRA was still funded under a temporary regime (the 2014 Financial Plan) at the end of 2015. If one also takes into account the ample opportunities political bodies have to influence EMRA Council appointments and that EMRA professional staff are treated as civil servants, one can clearly conclude that EMRA actually does not have much independence and that it is "levitating" between a state administration authority and an independent regulatory authority, which definitely affects the quality of regulation. One blatant example of the EMRA's lack of independence is its decision not to initiate proceedings to establish the accountability of media service providers (TV Pink, TV Hepi and TV Studio B)³⁴⁰, who had broadcast the entire solemn session of the ruling SNS. The EMRA thus missed the chance to ascertain whether these TV stations had violated the prohibition of political advertising during non-election periods, laid down in Article 47 of the Electronic Media Act since it failed to adopt a new by-law governing this issue within the deadline specified in the law.

8.2.7. Financial Independence of Public Media Services

Finding an adequate model for funding the public media services was one of the greatest challenges the authors of the media laws encountered during their drafting was to. They ultimately opted for a model, under which public service broadcasters will be funded from several sources (licence fees collected from citizens, revenue from commercial activities, limited budget funding of projects of public interest, etc.), which appeared as a good regulatory basis for ensuring their financial independence and sustainability. Unfortunately, the transitional and final provisions of the Public Media Services Act³⁴¹ put off the full implementation of this funding

339 *Sl. glasnik RS*, 79/05, 101/07, 95/10 and 99/14.

340 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/drustvo/rem-nema-postupka-protiv-televizija-koje-su-prenosile-proslavu-sns/0sqj608>.

341 Article 63, Public Media Services Act.

system until 1 January 2016 to provide time for introducing the necessary changes and provided for the interim funding of the public media services from the state budget.

The public media services were under the obligation to establish consolidated records of licence fee payers and set the amount of the licence fee in 2015, but they failed to fulfil these obligations in the manner and within the deadlines set out in the Public Media Services Act. In addition, Article 63 of this law was amended in order to extend the budgetary funding of their core activities until the end of 2016. The National Assembly subsequently adopted a *lex specialis*, the Act on the Temporary Regulation of Public Media Service Licence Fee Collection, which further undermined the established funding system, as it set the licence fee at 150 RSD, although, under the Public Media Services Act, the licence fee is to be set by the Management Boards of the national and Vojvodina public service broadcasters (RTS and RTV) and may not exceed 500 RSD. The adoption of this special law was preceded by an announcement by Serbian Prime Minister Aleksandar Vučić, who said that the licence fee would be 150 RSD and that four billion RSD would be allocated in the budget for co-funding RTS and RTV in 2016. Legislative activities thus served to formally “cover” such political statements. Vučić’s 2013 statement – that the then licence fee would be abolished – brought the collection rate to an all-time low and nearly paralysed the work of these two broadcasters.

The purpose of the established funding system is not to help the public broadcasters “cover” their needs that they determine as they see fit, but to ensure their editorial independence and separation from political and other power centres. The public service media are themselves partly to blame for such a legislative epilogue, due to their inactivity and failure to advocate their own financial independence. The issue boiled down to how much money was needed to keep the public services afloat, wherefore it was surrounded by an aura of dishonest horse-trading. The citizens of Serbia stand to lose the most as they will not have a truly independent public media service in the foreseeable future.

8.3. Status of Media and Journalists

The number of assaults on, threats against and obstructions of reporters on the job was on the rise in 2015, but, again, hardly any of the perpetrators were brought to justice. The increasing pressures on the media and journalists were accompanied by the further deterioration of their already huge financial difficulties, greatly compounded by the latest wave of privatisation. The Council of Europe said that the freedom of expression in Serbia faced numerous grave problems and expressed concern over the overly close ties between numerous outlets and politicians and tycoons.³⁴² The State Department said that harassment of journalists and

³⁴² See the *Blic* report of 8 July 2015, p. 4. The CoE Human Rights Commissioner Nils Mužnieks’ report following his March 2015 visit to Serbia is available at: <https://wcd.coe.int/com.instran->

pressure on them to self-censor was also a significant problem.³⁴³ Amnesty International noted that the Serbian Government stepped up pressures on the media³⁴⁴, while Reporters without Frontiers concluded that the situation in the Serbian media had deteriorated.³⁴⁵ Serbia ranked third on the Index of Censorship of European countries that violated media freedoms the most from May 2014 to April 2015.³⁴⁶

These assessments are shared by the Anti-Corruption Council, which said in its report on media ownership that the ownership and funding of outlets was not transparent and qualified as concerning the privatisation of the media. The Council alerted to censorship and self-censorship and the tabloidisation of the media, concluding that all these developments paralysed the public information system in Serbia.³⁴⁷ Similar comments were made also by the Protector of Citizens, who noted that the executive often qualified media and reporters critical of the government as mercenaries on the payroll of foreigners and tycoons, who were working against the interests of their country.³⁴⁸

The results of a survey entitled “Civic Activism in Serbia” lead to the conclusion that the public does not hold media in high esteem – only 13% of the respondents said they believed the media.³⁴⁹ Although the Bureau of Social Research poll on the situation in and integrity of public media – according to which fewer than 20% of the pollees think the media influence the decisions they take and only 25% think that they help them realise their rights and interests – would lead to the conclusion that the impact of the media on public opinion is small,³⁵⁰ it is the tabloids, which publish mostly unconfirmed information, that boast the highest circulations.

Fourteen dailies were published in Serbia in 2015 (three were regional, two focused on sports, one on economy and one was distributed free of charge). There are no precise data on their circulations, although some surveys conducted in Serbia indicate that 400,000 newspapers are sold in Serbia on a daily basis. Data have shown that the circulation of dailies has dropped by 40% in the past three years.³⁵¹

The status of journalists is disquieting. According to the 2011 Census, 53,181 people were working in the media. In late 2014, the National Employment Service said it had 1,149 journalists registered as unemployed. At least another

et.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2798638&SecMode=1&DocId=2302808&Usage=2.

343 See the *Danas* report of 27 June 2015, p. 7.

344 See the *Danas* report of 26 February 2015, p. 9.

345 See the *Danas* report of 14 October 2015, p. 7.

346 See the *Danas* report of 4 May 2015, p. 5.

347 See the *NIN* report of 26 February 2015, p. 18, the *Politika* report of 7 May 2015, p. 8, the *Vreme* report of 14 May 2015, p. 38.

348 See the *Danas* report of 16 April 2015, p. 7.

349 See the *Danas* report of 1 July 2015, p. 4.

350 See the *Danas* report of 28 May 2015, p. 8.

351 See the *Danas* report of 11 June 2015, p. 10.

870 media professionals most probably lost their jobs in media privatised in 2015, wherefore it comes as no surprise that only 4% of Serbia's citizens want to work as journalists.³⁵²

Dismissals of journalists and strikes organised by them were frequent in 2015. The public service broadcaster dismissed 239 part-timers in July. The European Federation of Journalists condemned Ringier's dismissal of around 30 journalists in April without any notice, reasons or any objective criteria for layoffs.³⁵³ *Privredni pregled* staff went on strike in April, demanding the payment of their overdue salaries.³⁵⁴ The Director of Radio Leskovac resigned in September because the city authorities had failed to pay his staff eight salaries in 2014.³⁵⁵ Half of *TANJUG*'s staff were laid off after two unsuccessful privatisation rounds and the non-distribution of the shares to the staff of the state news agency due to the expiry of the deadline.³⁵⁶

Investigations of the assassinations of journalists Milan Pantić and Dada Vujasinović were still under way at the end of the reporting period but there were no indications on whether any headway had been made in them. Only the trial of the assassins of journalist Slavko Ćuruvija (killed in April 1999) has begun, albeit at a very slow pace. The lawyers expect the trial to go on for years since only five of the circa 100 witnesses were heard during the first five months of the trial.

The frequency of attacks on journalists, the outlets and their property increased in 2015 over 2014. The media monitored for this Report registered at least 60 assaults, 32 of which were physical. The journalists were criticised by the Serbian President and his Advisor, the Prime Minister, Ministers, MPs, local politicians and senior party officials, ordinary and communal policemen, businessmen, singers and ordinary citizens. Unfortunately, neither the prosecutors nor the courts treat seriously the threats voiced against journalists almost every day, dismissing most claims of direct threats against life and body. On the other hand, numerous lawsuits have been filed against journalists, with many of the plaintiffs seeking damages for violations of their honour; even more journalists have been subjected to unjustified and sharp criticisms by public officials.³⁵⁷

It comes as no surprise that the moral standards of the journalistic profession are increasingly brought into question amidst the general dissolution of moral values. The situation is aggravated primarily by the tabloidisation of the media, as well

352 See the *Politika* and *Danas* reports of 27 February 2015, pp. 8 and 5 respectively.

353 See the *Politika* reports of 18 April, 7 June and 28 July 2015, pp. 7, 7 and 8 respectively.

354 See the Journalists Association of Serbia press release of 9 April 2015.

355 See the Journalists Association of Serbia press release of 11 September 2015.

356 See the *Večernje novosti* article of 18 November 2015, p. 7.

357 See the reports published in *Danas* (7 November, p. III), *Kurir* (8 April, p. 7) *Blic* (10 April, p. 9), Journalists Association of Serbia press releases of 31 March, 9 April, 21 May and 10 November 2015, *Danas* (9 March, p. 7), *Blic* (12 October, p. 5), *Politika* (26 June, p. 15), and the *ANEM Monitoring Reports*.

as by the increase in TV reality shows, in which even the basic professional standards are disregarded. What is particularly problematic is that such shows are broadcast by three TV stations with national coverage – *TV Pink*, *TV Hepi* and *TV B92*. The two most popular reality shows, *Couples on TV Hepi* and *Farm on TV Pink* are fraught with violence, obscene and unethical conduct of some of the participants in the shows; there have been instances of them debasing minor victims of violence, hurling insults on ethnic grounds, inciting to crime, etc.³⁵⁸ The reality show participants repeatedly said they were fulfilling all the requests of the producers, who were even offering them extra money if they took their clothes off, quarrelled with or cursed each other, although they admitted that they resorted to such actions to boost their own popularity as well.³⁵⁹ Some dailies, above all *Kurir* and *Blic*, have been publishing detailed reports on the reality show goings-on on an everyday basis. The Electronic Media Regulatory Authority (EMRA) reacted only once in 2015, prohibiting the broadcast of *Couples on TV Hepi* for 24 hours.

All this and many other instances of the journalists' non-professional attitude towards the mission and role the media should play in protecting and promoting public interests have posed major temptations to the profession. It remains to be seen whether the journalists will succeed in defending their profession and winning for themselves a better status in society and greater respect of the public officials. Those journalists, who have resisted all types of pressures and courageously continued playing their worthy role and informing the public of important topics and different opinions and opening public debates on highly-charged social issues, give rise to hope that they will succeed. So does the perseverance with which the press associations organised protests insisting on the dismissal of Defence Minister Bratislav Gašić, who insulted a B92 reporter. The protests, which led the Prime Minister to bow under public pressure and sack Gašić, continued in early 2016. Some media started reporting more freely, but it is ultimately up to the readers and viewers to choose what they will read, listen to or watch.

9. Freedom of Peaceful Assembly

9.1. *International Standards and the Constitution of the Republic of Serbia*

The freedom of peaceful assembly is guaranteed by the leading international human rights documents that are binding on Serbia as well. This right is enshrined in general terms in Article 20 of the Universal Declaration of Human Rights.

358 See the reports published in *Kurir* (15 June, p. 2), *Blic* (14 May, p. 12), *Kurir* (13 November, p. 22), *Kurir* (16 May, p. 20), and *Politika* (9 October, p. 14).

359 See the *Blic* report of 27 March 2015, p. 20.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Art. 11) and the International Covenant on Civil and Political Rights (ICCPR) govern this right in greater detail (Art. 21).

The right to freedom of peaceful assembly is enshrined in Article 54 of the Constitution, under which citizens are free to assemble peacefully and indoor assemblies shall not be subject to approval or notification. Outdoor rallies, demonstrations and other forms of assembly shall be notified to the state authorities in accordance with the law. The Constitution guarantees only the freedom of *peaceful* assembly, which is in accordance with international standards. The Constitution, however, states that *citizens* may assemble freely, i.e. it does not guarantee this right to aliens or stateless persons. The ECHR guarantees the right to freedom of peaceful assembly to “everyone”, while the ICCPR “recognises” this right generally, without limiting it to specific categories of people. The ECHR includes a separate article allowing restrictions of the activity of aliens,³⁶⁰ but only with respect to political activity, wherefore this provision could justify the ban on political assemblies organised by aliens. Assemblies are not necessarily always political and the general exclusion of aliens from the exercise of the right to freedom of assembly, like the one in the Constitution, is unwarranted. Furthermore, the ECHR does not mention restrictions of rights of stateless persons.

Although the Constitutional Court has not reviewed any cases alleging violations of the right to freedom of assembly of aliens, it has consistently noted that there were no substantive differences between Article 11 of the ECHR and Article 54 of the Constitution, wherefore it may be assumed that it would recognise the freedom of assembly of aliens as well, as long as the assemblies are not political in character.

In January 2015, the Protector of Citizens issued a Recommendation³⁶¹ on the numerous irregularities it established in the work of the MIA with respect to the procedure for the forced removal of aliens, notably, the members of the Falun Gong organisation (whose rallies were prohibited in 2014) and their referral to the Aliens Shelter pending their deportation.³⁶² The identified irregularities concerned, in particular, the insufficiently reasoned rulings ordering them to leave Serbia and referring them to the Aliens Shelter pending deportation. The Protector of Citizens in January 2015 also found specific shortcomings in the procedure in which the Belgrade Stari grad Police Station, within the Belgrade City Police Directorate, prohibited the rally, organised in reaction to the prohibition of the Falun Gong rally, in which the aliens were to take part and which were notified by the Serbian-Chinese Friendship Society (FDH) on 9 December 2014, notably that, in the reasoning of its

360 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.

361 Protector of Citizens Recommendation No. 61–2378/14 of 15 January 2015.

362 More on the ban of Falun Gong rallies in the *2014 Report*, III 10.1.

ruling, it had failed to specify the decisive facts and circumstances on which it had based its decision, the regulation under which an appeal shall not stay the enforcement of the ruling and the reasons it was guided by when it rendered its decision.³⁶³

Given that the ruling prohibiting the rallies merely set out that the police established during the procedure that the grounds for banning them under the relevant Article of the Act existed, it remains unclear whether the ruling had limited the aliens' freedom of assembly also because they were not Serbian nationals. Furthermore, the conclusion that there is a degree of restrictive treatment of aliens organising public rallies can be drawn from the cited views of the Protector of Citizens.

Under the Constitution, the authorities need not be notified of indoor assemblies. On the other hand, the Constitution sets out that the state authorities shall be notified of outdoor assemblies in accordance with the law. It is unclear from this provision whether each outdoor assembly must be reported or whether the law may specify in which cases such an obligation does not exist. The latter interpretation is definitely preferable.

Article 54 of the Constitution explicitly lays down that the freedom of assembly may be restricted by the law only if necessary, while Article 20 prescribes that human rights may be restricted only "to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right". Article 54 lists four grounds on which the freedom of assembly may be restricted: to protect public health, morals, rights of others or the security of the Republic of Serbia. Therefore, no other grounds except these can justify restrictions of the freedom of assembly, 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.

9.2. Right to Freedom of Peaceful Assembly in the Republic of Serbia

In the Republic of Serbia, the right to freedom of peaceful assembly is governed by the Public Assembly Act,³⁶⁴ adopted back in 1992. Under the final version of the Chapter 23 Action Plan, a new Public Assembly Act is to be adopted in the last quarter of 2016.³⁶⁵ The Action Plan also envisages the alignment of the law with Article 11 of the ECHR and Article 12 of the Charter of Fundamental Rights of the European Union, in particular as regards the right to freedom of peaceful assembly, locations for holding a public assembly, responsibilities of the organiser of

363 Protector of Citizens Recommendation No. 62–2496/14 of 15 January 2015.

364 *Sl. glasnik RS*, 51/92, 53/93, 67/93 and 48/94, *Sl. list SRJ*, 21/01 – Federal Constitutional Court Decision and *Sl. glasnik RS*, 101/05 – other law.

365 Chapter 23 Action Plan, September 2015, Point 3.6.1. 24.

a public assembly and reasons for banning and suspension of a public assembly, as the EC recommended in its Chapter 23 Screening Report.³⁶⁶ It, however, remains unclear why the Chapter 23 Action Plan leaves the adoption of the new law on public assemblies for the last quarter of 2016, given that, at the time this Report was drafted, there were no regulations governing this matter after the Constitutional Court of Serbia rendered a decision in April 2015 declaring the 1992 Public Assembly Act unconstitutional in its entirety and that the Second Draft of the Chapter 23 Action Plan envisaged the adoption of the new law in the second quarter of 2015.³⁶⁷

The Ministry of Internal Affairs had drafted two new public assembly laws (the first in 2012 and another in 2014), but they were never put up for a serious public debate or submitted to parliament for adoption.³⁶⁸ The 1992 Public Assembly Act was finally declared unconstitutional by the Constitutional Court of Serbia in its decision of April 2015, in which it noted the numerous shortcomings of the Act.³⁶⁹

Notably, the Constitutional Court declared the provisions on grounds for prohibiting public assemblies unconstitutional because they reflected those for restricting the freedom of assembly under the prior, 1990 Constitution, and did not correspond to those laid down in the valid Constitution. The Constitutional Court observed that the different formulations need not automatically mean that the legal provisions in the Act were substantively incompatible with the Constitution, as long as they did not lead to the expansion of the constitutional grounds allowing restrictions of the freedom of assembly. The Constitutional Court also underlined that the fact that the Constitution allowed for a restriction did not suffice for the legal restriction of the guaranteed freedom, and that this restriction had to serve the purpose for which the Constitution allowed it, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. In its view, the legal grounds for the restrictions in the 1992 Act did not satisfy these criteria.

Furthermore, in the view of the Constitutional Court, there was no legitimate or reasonable justification or constitutional basis for the different procedures for the temporary and permanent prohibitions of public assemblies in the Public Assembly Act, which have led to different forms of legal protection of the freedom of assembly. The Constitutional Court assessed that the Public Assembly Act was not in compliance with Article 36 of the Constitution guaranteeing the right to a legal remedy, because that right entailed not only the existence of the prescribed legal remedies in a legal system, but their effectiveness as well. The Constitutional Court said that the manner in which the entire procedure for the realisation of the freedom of assembly was regulated in the Public Assembly Act fell short of the effective legal remedy criterion, because the final deadlines for notifying assemblies and issuing

366 Chapter 23 Screening Report – Judiciary and Human Rights, p. 34.

367 Second Draft of the Chapter 23 Action Plan, Point 3.6.1.21.

368 More in the *2012 Report*, II.9 and the *2014 Report*, II.9.

369 Constitutional Court Decision IUz 204/2013 of 9 April 2015.

rulings prohibiting them in the Act did not allow for the implementation and conclusion of proceedings on all envisaged legal remedies before the day the assembly was to be held. The Constitutional Court opined that the realisation of the freedom of assembly entailed the holding of a public assembly precisely at the time specified in the notice, wherefore any grounds for restricting the freedom of assembly had to be established before that time. In its opinion, the Act did not offer such certainty.

As per the general power conferred by the Act to local self-government units to adopt enactments specifying venues where public assemblies may be held, the Constitutional Court took the view that there was no constitutional basis for such a power, given that the Constitution expressly laid down the grounds for restricting the freedom of assembly and that the local self-governments could, perhaps, adopt enactments specifying which locations were not adequate for assemblies, solely with a view to protecting the values specified as grounds for limiting the freedom of assembly in the Constitution. Judge Dragan Stojanović dissented with this decision of the Constitutional Court. Namely, he opposed the full cassation of the Public Assembly Act, as, in his view, the Constitutional Court's role is not to apply the full cassation measure to annul "anachronous" laws, but only laws it finds unconstitutional in their entirety. This judge said that, with this decision, the Constitutional Court was taking over the implementation of the legislative policy.

It, however, remains unclear why the Constitutional Court declared the entire Public Assembly Act unconstitutional, given that the conclusion that all the articles of the Act are unconstitutional cannot be inferred from its reasoning. The reasoning merely states that the Constitutional Court found that the Public Assembly Act was incompatible with the Constitution in its entirety, wherefore it did not proceed with the further analysis of the individual provisions, which would have also supported its assessment.

The publication of this Constitutional Court decision had been suspended for six months to give the Ministry of Internal Affairs (MIA) time to draft a new Public Assembly Act, organise a public debate on it and submit it to the National Assembly for adoption. Given that the MIA failed to act on the Constitutional Court's decision within the specified deadline, the Public Assembly Act ceased to be valid on 23 October 2015, when the Constitutional Court decision was published in the Official Gazette.

A group of NGOs called on the relevant authorities to address this issue as soon as possible, warning that the absence of positive regulations governing the exercise of the freedom of assembly could give rise to situations potentially endangering public law and order and the realisation of the freedom of assembly.³⁷⁰ The Protector of Citizens also noted the MIA's failure to draft the new public assembly act in accordance with the Constitutional Court decision on time. The Ministry of Justice Legal System and State Authorities Committee subsequently adopted a

370 The NGO statement is available in Serbian at <http://www.paragraf.rs/dnevne-vesti/121015/121015-vest14.html>

Conclusion³⁷¹ on the holding of a public debate on the Draft Public Assembly Act (hereinafter: Draft), which the Ministry of Internal Affairs published on its website. The public debates were held from 20 to 30 October 2015 period in Novi Sad, Niš, Kragujevac and Belgrade. The public debates provided the judicial bodies and NGOs with the opportunity to comment the Draft and suggest any improvements to the text. Some of their suggestions were taken on board.³⁷² The National Assembly Human and Minority Rights and Gender Equality Committee and Defence and Internal Affairs Committee held a session on 15 December 2015 to discuss the Draft. All the participants in the session, which was attended also by representatives of the independent regulatory authorities and civil society, had the opportunity to comment the new text of the Draft, which is definitely an example of good practice of involving civil society organisations and independent regulatory authorities in the legislative process. Their representatives mostly achieved consensus on the deficiencies of the Draft analysed in this Report.

A total of 59,229 public assemblies were held across Serbia from January to November 2015.³⁷³ The first Roma Parade was held in Belgrade in September 2015 as well. It, *inter alia*, aimed at alerting to the problems the Roma community was facing in Serbia. The Roma Parade was organised as a procession from the Serbian Government building to the Mixer House club in downtown Belgrade. Only several policemen safeguarded this Parade, which passed without incident.

9.3. Draft Public Assembly Act

The 1992 Public Assembly Act, which is no longer valid, did not give a precise definition of an assembly and merely specified that a public assembly denoted the convening and holding of a rally or another event at an appropriate venue. Under the Draft, 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. The legislator was, however, wrong to specify the number of participants required for an event to be deemed a public assembly, and to include sports, cultural, religious and entertainment events under the concept, given that the freedom of assembly (which falls in the category of political rights) protects, above all, fundamental democratic values, which is not the purpose of e.g. a football match. The text of the Draft could be substantially

371 The Conclusion is available at <http://www.mup.gov.rs/cms/resursi.nsf/161015-PREDLOG%20ZAKLJUČKA.pdf>.

372 The revised text of the Draft Public Assembly Act is available in Serbian at <http://www.mup.gov.rs/cms/resursi.nsf/NACRT-ZAKONA-O%20JAVNOM-OKUPLJANJU-17112015-cir.pdf>.

373 Ministry of Internal Affairs reply to a request for access to information of public importance Ref. No. 12590/14-4 of 21 December 2015.

improved by including definitions of the concepts at the beginning, as the NGOs stressed at the public debate held in Belgrade on 30 October 2015. As suggested by the NGOs, the legislator introduced the peaceful assembly concept in the Draft, given that the Constitution guarantees freedom of assembly only with respect to peaceful assemblies. The name of the draft law, however, remained unchanged and does not include the *peaceful assembly* concept.

In its decision declaring the Public Assembly Act unconstitutional, the Constitutional Court of Serbia qualified as particularly problematic (and unconstitutional) its provisions defining appropriate public assembly venues, which was one of the reasons it itself initiated the procedure for reviewing the constitutionality of this law in 2013. The now defunct Public Assembly Act did not allow assemblies at venues causing “the disruption of public traffic” or in the vicinity of the National Assembly immediately before or during its sessions. It also laid down that the local self-government units would designate appropriate assembly venues.³⁷⁴ Such restrictive determination of public assembly venues is not in compliance with the grounds for restricting the freedom of assembly under the Constitution and the ECHR.

In its April 2015 decision declaring the Public Assembly Act unconstitutional in its entirety, the Constitutional Court stressed that the individual grounds for restricting the freedom of assembly could be defined in greater detail in the Act, but that these grounds had to be directly linked to the constitutional grounds for the restrictions and that it followed from the Constitution that public assemblies could be held anywhere, wherefore there were no constitutional grounds for designating venues at which public assemblies were allowed.

Under Article 6 of the Draft, assemblies may not be held at venues next to dangerous sites, the specific features of which render them a potential threat to the safety of humans and property, public health, morals, rights of others or the security of the Republic of Serbia, or at venues at which the holding of an assembly would be in breach of human and minority rights, freedoms of other citizens, undermine morals or at venues off limits to the public. Article 6 of the Draft also prohibits public assemblies at locations which would disrupt public traffic, in the vicinity of hospitals, kindergartens, schools and protected facilities. This determination of venues adequate for public assemblies does not correspond with the restrictions of the freedom of assembly laid down in the Constitution. The 2015 Draft allows local self-government units to draw up lists of these *dangerous sites*. It, however, does not lay down the obligation of local self-governments to reason their decisions and merely states that they shall issue them within 60 days from the day of adoption of the law; this may result in arbitrary restrictions of the freedom of assembly.

Under the Draft, the organisers need not pre-notify indoor public assemblies but they may notify the Ministry of Internal Affairs of them if they deem it necessary or if the police need to take special measures to secure the rally. This is

374 The BCHR criticised the designation of assembly venues under the 1992 Public Assembly Act in its prior annual reports.

definitely a welcome solution as it provides the organisers with the opportunity to ask the police to secure their events, which is also a positive obligation the state has with respect to the realisation of the freedom of assembly. The Draft also lays down that organisers may pre-notify mobile public assemblies in specific areas, i.e. it guarantees public processions. It is, however, wrong to prohibit the participants in processions from stopping at any points along the way.

Whereas the 1992 Act did not include provisions defining when public assemblies may be held, the Draft includes an entirely unjustified restriction in Article 7, which stipulates that public assemblies shall be held between 8 am and 10 pm.

Organisers of assemblies have until now been under the obligation to notify the authorities of their assemblies, but did not need to wait for their approval, which meant that assemblies only needed to be pre-notified on time, which was in accordance with international standards. However, the deadlines for notification should be set so as to ensure the efficiency of the legal remedies, i.e. that the decisions on the legal remedies can be issued before the day the assembly is scheduled for.

The Draft endeavours to eliminate the weaknesses of the prior law with respect to the efficiency of the legal remedies. Article 12 lays down that the organiser shall notify in writing the MIA unit with the territorial jurisdiction over the venue of the planned static assembly at least eight days before the scheduled date of the assembly. Under the Draft, a notice shall include information about the organiser, the leader of the assembly (a responsible person category introduced by the Draft and designated by the organiser), the person responsible for the stewards, the venue, time, programme, goal and expected duration of the assembly, information on measures undertaken by the organiser to maintain law and order at the public assembly, an estimate of the expected number of participants, *data of interest to the safe and unobstructed holding of the assembly* and data on the route of the procession in case of a mobile assembly.

An organiser, who filed an incomplete notice, shall be given a deadline by the competent authority to supplement the notice. An incomplete notice shall be rejected within 24 hours from the expiry of the deadline by which the organiser was to have supplemented it. A public assembly shall be deemed notified upon the timely submission of a complete notice. It would have been more logical if the assembly were deemed notified as of the day the notice is filed, not as of the day it is supplemented given that the organiser may need more time to obtain the missing information and thus fail to supplement the notice eight days before the assembly and, consequently, to file it in due time. Although the Draft envisages that public assemblies shall be pre-notified rather than subject to approval, it nevertheless imposes excessive obligations on the organisers with respect to the filing of notices, which may be interpreted as amounting to a *de facto* approval system. It especially remains unclear how the organiser is to submit information regarding the safe and unobstructed holding of the assembly. The notices should be filed in a simple form not imposing on the organiser such a great responsibility for the security of the

event, because the purpose of the notice is precisely to notify the relevant authority of the event to be held so that it can safeguard it.

Under the now defunct Public Assembly Act, the organiser was under the obligation to file an advance notice of an assembly with the Ministry of Internal Affairs and a copy of the notice to the competent city or municipal authority charged with public utility services related to the holding of an assembly. The law did not specify which local government departments the organiser should contact and with respect to which issues, or how a negative response from these departments affected the holding of an assembly. The collection of the requisite documentation was liable to incur considerable costs, thus restricting the right to freedom of peaceful assembly. The organisers of the Belgrade Pride Parade have been regularly collecting the extensive documentation they needed for holding their assemblies, which involved a lot of organisation, time and considerable costs.³⁷⁵ The situation was the same in 2015 as well.

Although the Public Assembly Act did not require of the organisers to obtain various consents and approvals from the public utility authorities, they were in practice required to do so under the local self-government regulations, wherefore it was occasionally ultimately up to the public utility authorities whether an assembly would be held.

Under Article 14 of the 1992 Act, the police were authorised to prevent the holding of an assembly they had not been notified of. A total of 155 unreported rallies were held from January to November 2015; 31 of them were interrupted and nine prohibited.³⁷⁶ The 2014 draft included a provision on spontaneous assemblies³⁷⁷, but the initial 2015 Draft expressly prohibited the holding of assemblies that have not been pre-notified, which precluded the possibility of rapid public response to social events. However, the legislator took the suggestions of NGOs on board and re-introduced spontaneous assemblies. (Art. 22, imposing fines also on organisers of un-notified assemblies, should be amended accordingly.) The MIA's hitherto practice allowed for the organisation of spontaneous public assemblies.³⁷⁸

In its April 2015 decision, the Constitutional Court held that the Public Assembly Act reflected those grounds for restricting the freedom of assembly under the prior, 1990 Constitution, rather than those laid down in Article 54 of the valid Constitution. The Draft does not include a provision specifying that a public assembly may be subject to a restriction only in the event it is necessary and to the extent

375 For example: consent of the Savski venac Municipality to organise an assembly in the territory of the municipality; consent of the City Traffic Secretariat to hold a procession; consent of the Green Spaces PUC to hold the assembly on a city green space; request to the City Garbage PUC to dislocate the garbage containers and application to the Parking Services PUC to dislocate parked vehicles, etc. More in the *2013 Report*, II.10.2.2.

376 Ministry of Internal Affairs reply to a request for access to information of public importance Ref. No. 12590/14-4 of 21 December 2015.

377 See the *2014 Report*, II.10.2.2.

378 BCHR associates took part in several spontaneous assemblies in 2014 and 2015.

necessary to meet the purpose of the restriction; furthermore, the grounds for limiting this freedom in the Draft do not correspond to international and constitutional standards. The Constitutional Court took the view that the fact that the Constitution allowed for a restriction did not suffice for the legal restriction of the guaranteed freedom, and that this restriction had to serve only the purpose for which the Constitution allowed it and to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. The Draft also fails to provide the possibility of applying a less restrictive measure, such as, e.g. a change in time or place of an assembly, and envisages only the prohibition of an assembly.

Under the Draft, public assemblies shall not be permitted, in the event of a risk 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 risk 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. These grounds existed also in the 1992 Act that was annulled by the Constitutional Court; moreover, they do not correspond fully to the legitimate grounds for restricting the freedom of assembly under the Constitution and the ECHR.

Furthermore, the Draft only provides for permanent bans of public assemblies but fails to specify the deadline by which the Ministry of Internal Affairs is to issue a ruling prohibiting a public assembly. The Draft, however, includes a provision, the sense of which is totally unclear – organisers shall notify the public that their assemblies have been banned or be fined if they disregard their obligation. Police officers are authorised to prevent or interrupt an ongoing public assembly in the event circumstances constituting grounds for prohibiting it occur before or during the assembly. The police shall notify the organiser or leader of the assembly of the order to interrupt the public assembly, and the latter is under the duty to immediately inform the participants that the assembly has been interrupted and call on them to disperse peacefully. If the organiser or leader of the assembly fail to do so, the police may take legal and proportionate measures to disperse the participants and establish public law and order (Art. 19). The Draft, thus, envisages the undertaking of proportionate measures when the freedom of assembly is restricted, but does not lay down proportionality as a general requirement for banning public assemblies.

Local self-government units considerably restricted the freedom of assembly by applying their powers under the Public Assembly Act. For instance, the Zaječar city authorities adopted a decision in which it designated the public assembly venues, but its list does not include the main square. Furthermore, the designated venues are several kilometres away from the centre of the city,³⁷⁹ precluding other

379 *Sl. list grada Zaječara*, 10/15.

members of the public from hearing the messages of the participants in the public assemblies held at these remote sites.

There have also been instances in which the freedom of assembly was restricted due to the local self-governments' misinterpretation of their powers and positive regulations, such as the Advertising Act,³⁸⁰ which lays down a number of legal requirements. On 19 March 2015, five people handing out a publication of the initiative "Let's Not Give/Drown Belgrade" opposing the Belgrade Waterfront project in front of the Belgrade City Assembly were asked by the communal police to show them their IDs and the city communal inspectors later said they had filed misdemeanour reports against them for "distributing advertising material" although the assembly had been pre-notified in due time and in accordance with the Act.³⁸¹ Six rallies were prohibited in the Belgrade, two in the Novi Pazar and one in the Sremska Mitrovica police jurisdictions from January to November 2015. The one complaint filed with the Ministry of Internal Affairs in the period was rejected.³⁸²

9.3.1. Legal Remedies

Under the 1992 Public Assembly Act, the police were to notify the organisers that their assemblies have been prohibited at least 12 hours before they were to begin. The Constitutional Court declared the Act unconstitutional, *inter alia*, because of the ineffective legal remedies it had provided for, noting that the entire procedure of realising the freedom of assembly as governed by the Public Assembly Act fell short of the effective legal remedy criterion. Regardless of the reason for prohibiting an assembly, the deadline by which it had to be pre-notified and by which a decision on its prohibition had to be rendered in the 1992 Act actually precluded the implementation and completion of the legal remedy review procedure before the scheduled date of the assembly. Furthermore, the Constitutional Court held that the dualism of procedures for prohibiting public assemblies and legal remedies allowed in these procedures under the 1992 Act (organisers of permanently prohibited assemblies were entitled to file appeals to administrative courts and those, whose assemblies were temporarily prohibited, could challenge such decisions before courts of general jurisdiction) was incompatible with Article 54 of the Constitution, enshrining the freedom of peaceful assembly, and Article 22(1) of the Constitution, guaranteeing everyone the right to judicial protection.

The legislator endeavoured to eliminate these deficiencies, i.e. attempted to ensure that decisions on appeals of rulings prohibiting assemblies are rendered before the date of the assembly. The Draft lays down short deadlines for reviewing appeals, as well as for submitting them. Under Article 16, an appeal of a ruling

380 *Sl. glasnik RS*, 79/05 and 83/14 – other law

381 See <http://balkanist.net/activists-distributing-publication-critical-belgrade-waterfront-project-detained-police>

382 Ministry of Internal Affairs reply to a request for access to information of public importance Ref. No. 12590/14-4 of 21 December 2015.

prohibiting an assembly shall be filed with the Ministry of Internal Affairs within 24 hours from the moment of receipt; the competent MIA body shall rule on the appeal within the following 24 hours. An appeal shall not stay the enforcement of the ruling and a negative decision on an appeal may be challenged in an administrative dispute. The Administrative Court shall rule on the matter within 48 hours. Such short deadlines should provide for the effectiveness of the legal remedies. The prior version of the Draft, which failed to specify the deadline by which the MIA was to serve its rulings banning assemblies on the organisers, has been improved to an extent. It now lays down that the MIA shall issue a ruling prohibiting an assembly within 72 hours, but fails to lay down the MIA's obligation to serve it on the organiser within that deadline.

Six constitutional appeals claiming violations of the right to freedom of peaceful assembly were filed with the Constitutional Court in the first eleven months of 2015. The Constitutional Court dismissed one appeal in that period and did not deliver any decisions on the other constitutional appeals in which it found a violation of the right to freedom of peaceful assembly.³⁸³

9.3.2. Responsibilities of the Organisers and Counter-Demonstrations

The now defunct Act prescribed extremely rigorous penalties, including imprisonment, for assembly organisers who violated the law, even the obligation to pre-notify their assemblies. The new Draft does not envisage the imprisonment penalty but lays down extremely high fines for organisers in violation of their obligations under the law. The organisers are under the obligation to ensure the safety of their assemblies, engage orderlies, while the organiser and the leader of the assembly shall manage and oversee the assembly and ensure free passage to paramedics, police, fire-fighters and public transportation vehicles.

In the January-October 2015 period, 83 misdemeanour reports were filed against organisers of public assemblies, who had failed to take the necessary measures to maintain public law and order during their events.³⁸⁴

Like the 1992 Act, the Draft does not govern the issue of counter-demonstrations at all. At the public debate in Belgrade, the MIA said that it was of the view that counter-demonstrations should not be allowed, notably that the assembly that was first pre-notified should be allowed to proceed and that all other events subsequently scheduled at the same time and the same place should be prohibited pursuant to the *prior tempore potior iure* principle. Although this position most probably aims to protect the participants of one assembly from the participants of the counter-protest, it should not be applied in practice, because the fact that one

383 Constitutional Court reply to a request for access to information of public importance, Su 17-105/2015 of 17 November 2015.

384 Ministry of Internal Affairs reply to a request for access to information of public importance Ref. No. 12590/14-4 of 21 December 2015.

assembly was pre-notified before another cannot constitute legitimate grounds for prohibiting the latter. Moreover, since the organisation of counter-demonstrations is very important in a democratic society, because it provides for pluralism of opinion, the law should definitely regulate this matter in greater detail.

Media have, however, reported the allegations of an organiser of a public assembly, a member of an opposition party, according to which the competent police authority had refused to receive his notice because another public assembly called to express support to the ruling party had already been scheduled at the same time and the same place. Balša Božović, a member of the Democratic Party Belgrade Committee, stated that the Savski venac Police Station had refused to receive his complete and timely notice of a rally against the “laying of the foundation stone for a shopping mall, restaurant and hotel at a site, which the ruling Serbian Progressive Party (SNS) had earlier mentioned as the site of the Belgrade Waterfront project”. The MIA denied the allegations, claiming that the notice had been incomplete and that the organiser had been informed that the police had already been notified of another event, *Belgrade for All*, scheduled at the same venue for 3–8 pm on 21 September.³⁸⁵ Božović claimed that *Belgrade for All* was organised by Belgrade City Manager Goran Vesić, which may lead to the conclusion that the notice by a member of the opposition party was rejected tendentiously.³⁸⁶

The Minister of Internal Affairs Nebojša Stefanović appears to have gotten into the habit of prohibiting all assemblies planned for the same day. For instance, he said at a news conference that the police prohibited all five rallies that had been scheduled in front of the National Assembly for the 11 July anniversary of the Srebrenica genocide after security and operational checks. Stefanović specified that these rallies had been scheduled for different times by the Serbian Patriotic Movement *Zavetnici*, the *Dveri* movement, the NGOs Women in Black and Youth Initiative for Human Rights, the Association of Families of Kidnapped and Missing Persons from 1998 to 2000 and by a private individual Nikola Aleksić. NGOs had also invited the National Assembly deputies and Government members to take part in the “Seven Thousand” drive on 11 July and thus show their compassion for the Srebrenica victims and human and civic solidarity with their families, together with other citizens of Serbia. The Serbian Radical Party had been planning to organise counter-demonstrations at which its followers would display Chetnik insignia. Minister Stefanović, however, said that a multitude of statements inciting chaos, intolerance and various divisions had been made, and that there were plenty of irresponsible people who did not have the interests of Serbia’s security and those of its citizens at their heart. He also said the Ministry of Internal Affairs had *opted for the move guaranteeing peace and security throughout Serbia*.³⁸⁷

385 “MIA: Božović Filed an Incomplete Notice”, *Blic Online* 24 September 2009.

386 “Božović: MIA Claim that Notice is Incomplete is Untrue”, *Blic Online* 24 September 2009,

387 See the *Blic* article of 10 July 2015, available in Serbian at: <http://www.blic.rs/vesti/politika/godisnjica-srebrenice-policija-zabranila-sve-sutrasnje-skupove-u-beogradu/y29j73y>.

The Minister's practice of publicly prohibiting all rallies has no basis in positive law, wherefore the conclusion may be drawn that such decisions belong to the realm of politics rather than the rule of law. The authorities are under the obligation to issue individualised and reasoned rulings on every assembly they ban.

9.4. The Role of the Police

Neither the 1992 Public Assembly Act nor the 2015 Draft make any mention of the obligation of the state, notably the police, to ensure the free holding of assemblies and the protection of their participants. The MIA has nevertheless been fulfilling this obligation, especially when assemblies provoking fierce reactions and debates, such as the Pride Parade or rallies organised by Women in Black, are organised. When securing high risk events, the police should also bear in mind that the members of the public should be able to hear and see the messages of the participants; this opportunity was again missed in 2015, as the streets were totally deserted during the Pride Parade for security reasons.

Inadequate police protection of assemblies may also prevent their participants from relaying their messages to their targets – holders of public offices. Although the protest of the “Let's Not Give/Drown Belgrade” initiative against the Belgrade Waterfront project was to have been held in front of the Waterfront HQ in downtown Belgrade on 26 April 2015, the police denied the participants access to the building and they had to protest in a nearby street. The participants were blocked by a large number of policemen and, for quite a while, by two unmoving empty trams, leading to the impression that the police detail and halt of city transportation was precisely aimed at precluding the assembly participants from relaying their messages to the public and the public officials attending the signing of the Belgrade Waterfront contract in the HQ.³⁸⁸ On the other hand, the supporters of the Belgrade Waterfront project encountered no obstacle in rallying in front of the HQ at the same time. It goes without saying that the police should not have given preference to one assembly over another depending on which of them relayed messages suiting the ruling party.

Furthermore, the 2015 Draft, like the 1992 Public Assembly Act, grants the MIA broad powers to prohibit assemblies, because it fails to lay down that the restrictions of the freedom of assembly must be proportionate to the goal and legitimate in a democratic society.

However, although the conduct of the police has been beyond reproach in most instances, the authorities should not have the leeway to act as they wish as they do now. Namely, due to the non-existence of a legal framework at the end of 2015 (and the inadequate legal provisions in the past, before the 1992 Act was annulled), the police can decide to prohibit an assembly for a formal reason not in

388 As reported by BCHR associates who attended this rally.

accordance with international standards or can *de facto* prevent the dissemination of the messages voiced by the participants in the assembly. The Chapter 23 Action Plan envisages the training of police officers in maintaining law and order at public assemblies and other large-scale events in accordance with international human rights protection instruments.³⁸⁹

10. Freedom of Association

10.1. General

The International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) guarantee everyone the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. Both of these international documents allow the States Parties to impose lawful restrictions on the exercise of these rights by members of the armed forces and the police, while the ECHR also allows them to impose such restrictions on members of the administration of the State.

The Constitution of Serbia guarantees the freedom to join and form political, trade union and all other forms of associations (Art. 55). The Constitution lays down that associations shall be formed by entry in a register, in accordance with the law, and that they shall not require prior consent. The Register of Associations of Citizens i.e. of non-government organisations (hereinafter Register) is kept by the Business Registers Agency, while the political parties are entered in the Register of Political Parties kept by the Ministry of Justice and State Administration (Register of Political Parties).

The exercise of the freedom of association is governed in greater detail by the Act on Associations³⁹⁰ and the Act on Political Parties.³⁹¹ The Preliminary Draft of the Civil Code, prepared in 2015 without any considerable input from national civil society organisations, governs the status of associations differently than the valid Act on Associations.³⁹² Section 2 of Chapter II of the Preliminary Draft of the Civil Code lays down very general provisions on the status of associations and their structure and membership. It, however, remains unclear what the relationship between it and the Act on Associations, which governs this field in detail, will be, given that some of the provisions in the Preliminary Draft are in collision with the

389 Chapter 23 Action Plan, September 2015, Point 3.6.1.24.

390 *Sl. glasnik RS*, 51/09 and 99/11.

391 *Sl. glasnik RS*, 36/09.

392 The Preliminary Draft of the Civil Code is available in Serbian at http://www.propisi.com/assets/files/gradjanski_zakonik_RS-prednact.pdf.

valid Act. Namely, the question arises as to whether the Act on Associations, as a *lex specialis*, will be able to regulate specific issues more liberally or whether its provisions will have to be aligned with the Civil Code.³⁹³

The procedure by which associations are registered is thoroughly regulated by the Business Registers Agency Registration Procedure Act.³⁹⁴

10.2. Associations of Citizens (Non-Government Organisations)

The Act on Associations regulates the establishment, legal status, registration and deregistration, membership, bodies, changes in status, dissolution and other issues of relevance to the work of associations of citizens, as well as the status and activities of foreign associations. The Act defines an association as a voluntary and non-government non-profit organisation based on the freedom of association of more than one natural or legal persons established to achieve and promote a specific common or general goal or interest not prohibited by the Constitution or the law. The Act applies subsidiarily, as a *lex generalis*, to other associations the activities of which are governed by other laws (e.g. religious communities, trade unions, political parties, etc.). Under the Preliminary Draft of the Civil Code, an association denotes a voluntary organisation of two or more natural or legal persons, established with a view to achieving a specific social or common non-economic purpose. The Preliminary Draft of the Civil Code commendably clearly distinguishes between civic associations and other forms of associations as it specifies that the legal status and activities of political organisations, trade unions, churches and religious communities, business associations and other business organisations shall be governed by other regulations.

An association of citizens may be established by at least three natural or legal persons, one of whom must have residence in the territory of the Republic of Serbia. The Preliminary Draft of the Civil Code also includes this provision, but lays down that at least half of the founders must reside or be headquartered in the Republic of Serbia (Art. 54).

Under the Act on Associations, an association shall pursue its goals freely and autonomously and have legal subjectivity from the moment it is entered in the Register. Regulations on civil partnership shall apply to associations not entered in the Register. Therefore, registration is the condition an association has to fulfil to acquire the status of a legal person but it does not have to register to work.

A Registrar's decision may be challenged with a Ministry. Neither the Act on Associations nor the Business Registers Agency Registration Procedure Act specify which ministry is charged with ruling on the complaints. An administrative dispute

393 Only the provisions of the Preliminary Draft differing from the valid positive regulations on the work and functioning of associations of citizens are analysed in this Report.

394 *Sl. glasnik RS*, 99/11.

may be initiated against a decision of the Minister. The Business Registers Agency Registration Procedure Act envisages a special legal remedy against a final Administrative Court decision – the submission of a motion for its review to the Supreme Court of Cassation. A motion for the review of a court decision is an extraordinary legal remedy envisaged by the Administrative Disputes Act (ADA)³⁹⁵. The ADA does not envisage appeals of Administrative Court decisions nor motions for the protection of legality, but specify that such motions may be filed by parties to an administrative dispute³⁹⁶ and the competent public prosecutor.

Associations may engage in economic activities but are not entitled to distribute their profits to their members and founders.³⁹⁷ The Preliminary Draft of the Civil Code excludes the possibility of associations performing economic activities. An association may use its assets only to pursue its goals. Only a local non-profit legal person founded to achieve the same or similar goal may be designated as the successor of an association's assets in its statute in the event it dissolves. An association's assets shall become the assets of the Republic of Serbia and may be used by the local self-government unit in which the association had been headquartered in the event the assets cannot be transferred in accordance with the law or with the association's statute at the time of its dissolution or in the event it was dissolved pursuant to a decision prohibiting its work or in the event its statute does not specify what will happen to its assets in the event it dissolves.

Under the Act on Associations, the status of social organisations, civic associations and their federations established under the Act on Social Organisations and Civic Associations shall be aligned with the Act on Associations. Article 80 of the Act on Associations lays down that socially-owned real estate under the usufruct of social organisations, associations or federations of associations headquartered in the Republic of Serbia shall become state property under the usufruct of the local self-governments in the territory of which they are located on the day this Act comes into effect.

An initiative challenging this Article was filed with the Constitutional Court, because, in the view of the applicants, it is incompatible with Articles 58(1) and 86 of the Constitution of the Republic of Serbia, since it allows the Republic of Serbia to acquire the right of ownership to the detriment of social organisations, associations or federations. Article 58 of the Constitution enshrines the right to peaceful

395 *Sl. glasnik RS*, 111/09.

396 An administrative dispute may be initiated by a party challenging an administrative decision on its rights and obligations; by a public prosecutor in the event an administrative enactment violated the law to the detriment of public interest; the Attorney General in the event an administrative enactment violates the law to the detriment of the property rights and interests of the Republic of Serbia, an autonomous province or a local self-government (Art. 11, ADA). The defendant in an administrative dispute denotes the authority the enactment or silence of which is disputed (Art. 12, ADA).

397 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))).

enjoyment of property and other property rights acquired under the law, while Article 86 lays down that all forms of property shall enjoy equal legal protection and that socially-owned property shall become private property under the terms of the law. The Constitutional Court in 2015 dismissed the initiative to review the constitutionality of this Article,³⁹⁸ explaining that the content of the initiative did not fulfil the requirements for review by that Court because the initiator merely formally submitted the motion for the review of its constitutionality but had failed to specify the constitutional law grounds.

The Constitutional Court also said it had already stated its view on the constitutionality of Article 80 of the Act on Associations in its ruling in the case IUz-251/2009 of 19 April 2012, in which it dismissed the initiative to review the constitutionality of that Article. The Constitutional Court said it had not found Article 80 of the Act on Associations in contravention of the Constitution, having concluded that Article 80 was a transitional provision governing the situation at the time and the switch from one property regime to another, wherefore the challenged provision was merely one of the forms of transforming the existing socially-owned property into another form of property. Furthermore, the Court found this provision applied only to originally socially-owned real estate, but not to real estate bought by or earlier owned by the associations. The Constitutional Court concluded this by interpreting Article 81 of the Act on Associations, under which social organisations shall become owners or co-owners of socially-owned real estate proportionately to their shares of financial investments in the real estate and Article 82 of the Act on Associations, under which social organisations that had property rights over socially- or state-owned real estate before they reregistered as social organisations under the law shall acquire their rights on those grounds pursuant to the law governing denationalisation. The Constitutional Court also said that Article 86(2) of the Constitution, under which socially-owned property shall be transformed into private property under the terms of the law, does not lay down the obligation of transforming socially-owned property only into private property and does not rule out the possibility of transforming socially-owned property into some form of public property, wherefore it does not constitute an imperative norm, because it does not prescribe that socially-owned property “must be transformed” but that it “shall be transformed” into private property.

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 interest³⁹⁹ or cover the funds an association lacks to implement them. These funds shall be disbursed through public calls for proposals. Autonomous provinces and

398 Constitutional Court Decision IUz 113/2015 of 8 October 2015.

399 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 protec-

local self-government units may also grant funds to associations from their budgets. Associations funded in this manner are under the obligation to publish reports on their work and funding at least once a year and to submit such reports to their donors (Art. 38). Under the Act, the Government shall specify in detail the grant criteria, the grant procedure and the procedure for reimbursing the funds not used for the purpose they had been granted for. The Office for Cooperation with Civil Society was established by a Government Decree in April 2010.⁴⁰⁰ Its main goals are: to involve civil society organisations (associations of citizens) in continuous dialogue with the Government institutions and encourage ongoing and open cooperation between the associations of citizens and the state administration authorities. In 2012, the Government enacted a Decree on funding to encourage the implementation of programmes of public interest by associations or cover the funds they lack to implement them⁴⁰¹, which should increase the transparency of budget allocations and prevent the misuses that had been possible due to existence of legal lacunae.

A total of 7,641,465,000 of the 7,708,445,000 RSD earmarked for non-government organisations under the 2014 Serbian state budget line 481 were disbursed. The AP of Vojvodina had allocated 1,117,731,000 RSD for non-government organisations in its 2014 budget; 1,074,960,000 were disbursed. The local self-governments had spent 7,713,113,000 RSD of the 6,192,299,000 RSD they had allocated for civic associations in 2014. According to the Draft 2015 Budget, 5,860,686,000 RSD⁴⁰² were allocated under budget line 481 for civic associations i.e. two million less than in 2014.

There were 27,622 civil society organisations (26,942 associations and 680 endowments and foundations) registered with the Business Registers Agency as of 2 March 2016. The other data on the activities of CSOs in 2015 were not available, as the deadline by which they must submit their 2015 financial reports to the Agency will expire on 30 June 2016. Not all the 2014 data on their activities were available either: the Business Registers Agency published the preliminary data on the revenues and staffing of the CSOs, while the Republican Pension and Disability Insurance Fund had not published data on paid taxes and contributions in 2014 by the time this Report went into print.

According to the available data,⁴⁰³ the number of people working in the civil sector increased in 2014 over 2013, from 6,246 to 6,651; 0.36% of all people in Serbia holding a job were employed by associations and 0.03% of them by endowments and foundations.

tion, consumer protection, anti-corruption, as well as humanitarian and other programmes via which an association is exclusively and directly satisfying public needs.

400 *Sl. glasnik RS*, 26/10.

401 *Sl. glasnik RS*, 8/12.

402 Data obtained from the Office for Cooperation with Civil Society by e-mail on 22 December 2015.

403 Draft Third Monitoring Matrix Country Report on the Enabling Environment for Civil Society Development, Civic Initiatives, Belgrade, March 2016.

The CSO revenue to GDP ratio in 2014 stood at 0.8%, compared to 0.7% in 2013. The most recent data, from 2013, indicate that associations paid 3,124,930.00 EUR and endowments and foundations 441.649,00 EUR worth of income tax for their full-time employees and service contractors. In 2013, the CSOs altogether paid 8,580,129.00 EUR worth of mandatory social insurance contributions for their staff (7,740,666.00 EUR were paid by associations and 839,463.00 EUR by endowments and foundations).

Some media in 2015 reported on misappropriation of budget funds allocated to associations of citizens i.e. non-government organisations. The daily *Kurir* quoted the whistle-blower website *Pištaljka* as saying that 145 million RSD had been paid to the Association of National Parks and Protected Areas of Serbia from the Serbian state budget in 2014, qualifying this association as phantom and specifying that it was not operating at its registered headquarters and that the name of its responsible person was unknown.⁴⁰⁴

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,⁴⁰⁵ 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.⁴⁰⁶ These outlays shall be recognised as expenditure only if the funds were paid to legal persons that were registered for those purposes and have been using the funding solely to pursue the above-mentioned activities. The tax laws, however, do not include provisions allowing for tax relief on these grounds yet, i.e. direct tax deductions for companies donating funds to associations of citizens. Civil society organisations have filed amendments⁴⁰⁷ to the Draft Act Amending the Corporate Profit Tax Act, which had not been adopted by the time this Report was finalised.⁴⁰⁸

10.3. Restriction and Prohibition of the Work of Associations

Freedom of association is not an absolute right, wherefore it may be restricted in the event such restrictions are prescribed by law, necessary in a democratic society in the interests of national security or public safety, for the prevention of

404 “State Transferred 223 Million Dinars in All to Phantom Company”, *Kurir*, 16 January 2015.

405 *Sl. glasnik RS*, 25/01, 80/02, 80/02 – other law, 43/03, 84/04, 18/10, 101/11 and 119/12.

406 The percent of recognised expenditure affects the amount of taxable corporate profit as the taxable profit is calculated in the tax balance by adjusting the company profit declared in accordance with the method of acknowledging, measuring and estimating revenue and expenditure.

407 Civic Initiatives, European Centre for Not-for-Profit Law and the Balkan Community Initiative Fund. See “Debate on Amendments to Laws Hindering the Work of NGOs”, available in Serbian at <http://www.gradjanske.org/page/news/sr.html?view=story&id=6027§ionId=1>.

408 Information obtained from the NGO Civic Initiatives on 31 December 2015.

disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others (Art. 11(2), ECHR). Art. 22(2) of the ICCPR lays down that freedom of association may be restricted in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Constitution specifies that the Constitutional Court may ban only associations the activities of which are aimed at the violent change of the constitutional order, violation of guaranteed human and minority rights or incitement to racial, ethnic or religious hate. The Act on Associations further prescribes that an association may be prohibited in the event its goals and activities are aimed at undermining the territorial integrity of the Republic of Serbia, incitement of inequality, hate or intolerance on grounds of race, ethnicity, religious or other affiliation or orientation, as well as of gender, sex, physical, psychological or other features or abilities.

The Act on Associations thus introduces new grounds for banning an association not recognised in international documents – undermining territorial integrity. On the other hand, it specifies what “protection of the rights and freedoms of others” as grounds for prohibiting an association entail. However, undermining territorial integrity need not necessarily fall under “the interests of national security” grounds. If the activities of an association are peaceful and if it is conducting non-violent political activities and advocating e.g. greater autonomy for cities and provinces, then “undermining territorial integrity” does not constitute legitimate and sufficient grounds for prohibiting its work. The Anti-Discrimination Act prohibits associating to commit discrimination, i.e. activities of organisations or groups aimed at violating the rights and freedoms enshrined in the Constitution, international and national law, or at inciting national, racial, religious or other forms of hate, dissent or intolerance (Art. 10), whereby it also elaborates the “protection of the rights and freedoms of others” grounds.

Under the Act on Associations, a decision to prohibit an association may also be based on the actions of the association’s members provided that there is a link between their actions and the activities or goals of the association, that the actions are based on the organised will of the members and the circumstances of the case indicate that the association tolerated the actions of its members (Art. 50(2)). Secret and paramilitary associations are prohibited by the Constitution *ex constitutio* and by the Act on Associations *ex lege*.

The Act on Associations prohibits the public use of visual symbols and insignia of prohibited associations (Art. 50(5)). The Act’s penal provisions, however, do not lay down any penalties for non-abidance by this prohibition. The Fatherland Movement *Obraz* association, which the Constitutional Court banned in 2012⁴⁰⁹, continued displaying its symbols and insignia at the public rallies it organised and on its official website. This association continued implementing its programme as an informal movement called *Srbski obraz*, which uses the visual identity of the

409 Constitutional Court Decision VII U 249/2009, *Sl. glasnik RS*, 69/12.

prohibited Fatherland Movement *Obraz. Srbski obraz* announced its plan to hold a “Protest against the EU Plan to Settle 400,000 Migrants in Serbia” on the Belgrade Main Square in August 2015, but changed its plans after the Minister of Internal Affairs said the MIA would prohibit this assembly.⁴¹⁰

The Act Prohibiting Events of Neo-Nazi or Fascist Organisations and the Use of Neo-Nazi and Fascist Symbols and Insignia⁴¹¹ further prohibits the activities of organisations reaffirming neo-Nazi and Fascist ideas in their statutes and programmes. Under the Act, a procedure may be initiated to delete from the Register a registered organisation or association advocating neo-Nazi or Fascist goals and disregarding the prohibitions in the Act (Art. 2(2)). The Act, therefore, does not introduce fresh grounds for the prohibition of an association, but grounds for initiating the procedure for deleting it from the Register. This legal sanction borders on the absurd given that most of the organisations, including Combat 18, which are advocating such ideas, are unregistered. Under the Act, a fine shall be imposed upon a registered association the member of which committed the misdemeanour of propagating neo-Nazi or Fascist ideas; the Act however, does not require that the individual acted in the capacity of a member in the specific case or that the association supported, endorsed or tolerated his actions. Such automatic punishment of associations for the activities of their members may jeopardise the freedom of association because associations cannot control or be aware of all the actions of all their members.

The Convention on the Elimination of All Forms of Racial Discrimination⁴¹² lays down that States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination and obliges them to declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and recognise participation in such organisations or activities as an offence punishable by law (Art. 4(1)). The Republic of Serbia has acted in compliance with the commitments it assumed when it ratified the Convention on the Elimination of All Forms of Racial Discrimination by adopting and applying this Act. The Act, however, needs to be elaborated in greater detail with respect to the misdemeanour penalties imposed on associations and it needs to define the concept “neo-Nazi and Fascist ideas and insignia”. Furthermore, the Act prohibits “all activities of neo-Nazi and Fascist associations” without requiring of the Constitutional Court to first qualify the associations as such and prohibit their work or of the Business Registers Agency to dismiss their registration applications, which provides a lot of room for arbitrariness of the misdemeanour courts.

410 “MIA: Prohibition of Anti-Migrant Rallies”, *Večernje novosti online*, 26 August 2015, available in Serbian at <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno,290.html:564325-MYII-Zabrana-skupova-protiv-migranata>.

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

412 *Sl. list SFRJ*, 31/67.

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. The organisation *Srbski obraz*, for instance, has suffered no consequences for staging events at public venues.

The procedure for prohibiting an association is initiated on the motion of the Government, the Chief State Prosecutor, the ministry charged with administration affairs, the ministry charged with the field in which the association is pursuing its goals or the registration authority – the Business Registers Agency. No motions seeking the prohibition of an association were filed with the Constitutional Court in the first 10 months of the year. One appeal claiming a breach of the right to freedom of association was submitted to the Constitutional Court in that period. The Constitutional Court issued two rulings dismissing constitutional appeals and did not deliver any judgments finding violations of the right to freedom of association.⁴¹³

The Preliminary Draft of the Civil Code does not include any provisions restricting the work of associations or prohibiting them, but it includes extremely restrictive provisions regarding association membership and exclusion from membership. Under the Preliminary Draft, associations may specify grounds for exclusion from membership in their Articles of Association. Exclusion from membership of an association may be conditioned by the explicit consent of the member in question. Association membership shall cease if it is *in contravention of the law or morals*. Associations may specify in their Articles of Association that no grounds need to be specified in decisions on exclusion from membership, in which case the excluded members are not entitled to initiate a dispute on the decisions to exclude them (Art. 65). The provision allowing exclusion from membership of members due to their actions in contravention of the law and morals and the provision allowing for exclusion from membership without specifying the grounds for exclusion may provide room for numerous abuses and unwarranted restriction of the members' rights.

10.4. Association of Aliens

The Act on Associations allows aliens to establish local associations provided that at least one of the founders resides or is headquartered in the territory of the Republic of Serbia. As noted above, Article 54 of the Preliminary Draft of the Civil Code is more restrictive with respect to the right of aliens to establish associations as it lays down that at least half of the founders of an association must reside or be headquartered in the Republic of Serbia. The Act on Associations also governs the status-related issues of foreign associations in Serbia. Under the Act, a foreign association shall denote an association headquartered in another state, established under that state's regulations to achieve a joint or common interest or goal, the activities

413 Constitutional Court reply to a request for access to information of public importance Ref No Su 17-105/2015 of 17 November 2015.

of which are not aimed at making profit. A foreign association may pursue activities in Serbia in the event it establishes a representative office entered in a separate register of the Business Registers Agency.

The representative office of a foreign association is entitled to operate freely in the territory of the Republic of Serbia provided that its goals and activities are not in contravention of the Constitution or laws of the Republic of Serbia, international treaties acceded to by the Republic of Serbia or other regulations. The Constitutional Court shall decide on the prohibition of a foreign association on the motion of the same authorities entitled to seek the prohibition of a national association.

10.5. Associations of Civil Servants and Security Forces

The Constitution prohibits the judges of the Constitutional Court and other courts, public prosecutors, the Protector of Citizens, members of the police and armed forces from membership in political parties. The Police Act allows police officers to organise in trade unions, professional and other organisations but prohibits their organisation in parties and political activities in the ministry (Art. 134). The Act on Judges and the Act on Public Prosecution Services allow judges, public prosecutors and their deputies to associate in professional organisations to protect their interests and take measures to protect their autonomy (public prosecutors and their deputies) and their independence and autonomy (judges). The Act on the Army of the Republic of Serbia guarantees professional army members the right to organise in trade unions (Art. 14(3)). In addition to prohibiting army members from membership of a political party, the Act also prohibits them from attending political events in uniform and from engaging in any other political activities apart from exercising their active right to vote (Art. 14(1)). Given that the Constitution of Serbia explicitly prohibits specific civil servants from membership of political organisations in Article 55(5) but does not include a ban on membership of a trade union, the interpretation according to which these categories of civil servants have the constitutionally guaranteed right to associate in trade unions is a correct one.

11. Electoral Rights and Political Participation

11.1. General

In addition to the right to vote, the ICCPR and the ECHR acknowledge the rights of citizens to be elected. These rights may be restricted. The ICCPR insists that the restrictions cannot be unreasonable.

The Constitution proclaims the sovereignty of the people, and lays down 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 Constitution specifies the principal guarantees of direct democracy and lays down that the citizens may seek the adoption of legislation and amendment of the Constitution through popular initiative.

The right to propose laws, other regulations and general acts shall be vested in every National Assembly deputy, the Government, a provincial assembly or at least 30,000 voters (Art. 107). The initiative to change the Serbian Constitution may be submitted by at least 150,000 voters.

11.2. Electoral Rights

Under the Constitution, every adult citizen of the Republic of Serbia with a working capacity shall have the right to vote and be elected. Elections shall be free and direct and voting shall be by secret ballot and in person (Art. 52). Whether a person may vote and be elected to a public office depends on whether he is entered in the voter registers. The Act on a Single Voter Register⁴¹⁴ introduces a single nationwide register of voters, 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.

The electoral procedures are governed in detail by the Act on the Election of Assembly Deputies (AEAD),⁴¹⁵ the Local Elections Act (LEA),⁴¹⁶ the Act on the Election of the President of the Republic,⁴¹⁷ and the Decision on the Election of AP Vojvodina Assembly Deputies (DEV D).⁴¹⁸

In addition to the electoral statutes, rules governing the election procedure are to be found also in the decisions of the electoral commissions. These commissions supervise the lawfulness of the election process and the uniform application of the electoral statutes, appointment of the permanent members of the electoral commissions in the election districts, the appointment of members of polling committees (bodies directly administering elections), and hand down instructions for the work of other permanent electoral commissions (if any)⁴¹⁹ and polling committees.

414 *Sl. glasnik RS*, 104/09 and 99/11.

415 *Sl. glasnik RS*, 35/00, 57/03 – Constitutional Court Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – Constitutional Court Decision, 36/11 and 104/09 – other law.

416 *Sl. glasnik RS*, 129/07, 34/10 and 54/11.

417 *Sl. glasnik RS*, 111/07 and 104/09 – other law.

418 *Sl. list AP Vojvodine*, 12/04, 20/08, 5/09, 18/09 and 23/10.

419 The Republican Election Commission and the election boards are the authorities charged with implementing republican parliamentary elections, while the local government unit election

The Republican Election Commission (REC) is also empowered in the first instance to review complaints against decisions, actions or omissions by polling committees (under Art. 95 (2)), AEAD). Pursuant to the provisions of the election laws, bodies administering elections are independent. 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.

The election boards determine the overall number of votes received by each election ticket (elections at all levels are conducted according to the proportional representation system except in Vojvodina, where a mixed system is applied) and, in proportion with the number of votes received, establish the number of mandates won by each election ticket, on the basis of D'Hondt system. Mandates are allocated only to election tickets that have won at least 5% of votes of the overall number of voters who have voted in the electoral district.⁴²⁰ Half of the deputies in the Vojvodina Assembly are elected under a proportional and half under the majority election system (Art. 5 (3), DEVD).

11.3. Terms of Office of National Deputies (Termination and Resignations)

The National Assembly of the Republic of Serbia has 250 deputies and the Assembly of the Autonomous Province of Vojvodina has 120 deputies. They are directly elected by secret ballot to four-year terms in office, under the proportional election system.

The Constitution of the Republic of Serbia states that the election, termination of office and status of national deputies shall be governed by the law, but it simultaneously entitles a national deputy to irrevocably place his mandate at the disposal of the political party on whose election ticket he ran under legally defined circumstances (Art. 102(2)). The Act on the Election of Assembly Deputies defines in detail when the term of office of a Serbian Assembly deputy shall terminate.

Under the Act on the Election of Assembly Deputies, the Republican Election Commission shall allocate all the seats a specific election ticket won to the candidates in the order in which they are listed on the ticket within ten days from

commissions and election boards are charged with implementing local elections. All three – the Republican Electoral Commission, the local government unit election commissions and election boards – are charged with the implementation of presidential elections (Art. 5, Act on the Election of the President of the Republic).

420 The election threshold of 5% does not apply to national minority political parties.

the day all election results are published. The Local Elections Act also envisages that the seats in the local parliaments shall be allocated to the candidates according to their order of presentation on the tickets. A councillor shall personally submit his resignation to the local assembly chairperson and his seat shall be allocated to the next candidate on the election ticket.

11.3.1. Legal Protection of Electoral Rights

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, LEA⁴²¹). 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 a complaint against 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 appealing the decisions of the competent electoral commissions dismissing or rejecting the complaints. Such appeals are filed with the Administrative Courts through competent electoral commissions. The laws prescribe that procedures before courts are urgent – decisions on appeals are to be taken within 48 hours from their submission.

Under the Constitutional Court Act,⁴²² 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 election procedure in its entirety or part, 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 repetition of the whole election procedure.

421 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).

422 *Sl. glasnik RS*, 109/07 and 99/11.

11.4. Establishment, Registration and Financing of Political Parties

The Act on Political Parties⁴²³ defines a political party as a free and voluntary association of citizens established for the purpose of achieving political aims by democratically shaping the political will of citizens and participating in elections (Art. 2).

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). 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.

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 and 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 of a national minority may be established by at least 1,000 adult citizens of the Republic of Serbia with a working capacity (Art. 9).

Membership in a political party is free and voluntary, with the exception of the Constitutional Court judges, 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)

A political party shall be deleted from the Register pursuant to a decision on its dissolution by the authority authorised thereto in its Articles of Association, in the event it merges with another party or its work is prohibited by the Constitutional Court. The procedure for prohibiting the work of a political party shall be initiated on the motion of the Government, Chief State Prosecutor or the relevant Ministry and the motion shall be reviewed by the Constitutional Court. (Arts. 37 and 38).

The funding of political parties is governed by the Act on the Financing of Political Activities.⁴²⁴ Under the Act, 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). The Act lays down the maximum amounts of donations by natural persons (up to 20 average monthly wages) and legal persons (up to 200 average wages) (Arts. 12 and 13).

423 *Sl. glasnik RS*, 36/09 and 61/15 – Constitutional Court Decision.

424 *Sl. glasnik RS*, 43/11 and 123/14.

Political entities must publish on their official websites all donations exceeding one average monthly wage a year (Art. 10). The Act also includes provisions prohibiting specific forms of funding and fund-raising.

Parties are under the obligation to keep accounting 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 spent in the election campaign and from which all election campaign costs must be paid.

Under the Act, 0.105% of the tax revenues of the state, Vojvodina and local self-government budgets shall be allocated for funding the regular activities (i.e. other than election campaign activities) of political entities with seats in the national, provincial and local assemblies.

Under the Act on the Financing of Political Activities, 0.07% of the tax revenues of the state, Vojvodina and local budgets shall be earmarked for funding the parties' election campaign costs in election years. Twenty percent of the total budget funds allocated for funding the campaigns is divided equally among the submitters of the proclaimed 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 Rulebook on Donation and Property Records, Annual Financial Reports and Reports on Election Campaign Costs of Political Entities⁴²⁵ governs these matters in detail. Political parties are also under the obligation to report non-pecuniary assistance they receive from international political associations.

Political entities are under the obligation to submit their annual regular funding reports and reports on their election campaign costs to the Anti-Corruption Agency. The Agency is entitled to free and direct access to their accounting records and documents and financial reports and to the documentation of legacies and foundations established by political parties. Political entities are under the obligation to forward all documents and information to the Agency at its request and within the deadline it sets. The Act also obligates the national, provincial and local authorities, banks, and legal and natural persons funding political entities to forward all the data the Agency needs at its request (Art. 32).

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.⁴²⁶

425 *Sl. glasnik RS*, 72/11, 25/12 and 31/13.

426 Chapter VII (Penal Provisions), Act on the Financing of Political Activities.

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 entity raised. The qualified form of the crime is committed in the event the value of the funds exceeds 1,500,000 dinars, 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. Under Article 42, political entities shall lose the right to funding from public source in case of a conviction for a criminal offence under Article 38 or a misdemeanour under Article 39 of the Act. 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 funds to a political entity until a decision in criminal proceedings or misdemeanour proceedings against it becomes final. 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.

11.5. Elections in 2015

The Serbian parliamentary elections were last held in 2014. The ruling coalition, headed by the Serbian Progressive Party (SNS), maintained its absolute majority in the parliament, but the year behind us was nevertheless characterised by frequent announcements of early parliamentary elections, which would be held simultaneously with the local and provincial elections. Such a possibility was voiced by the ruling party officials and media close to it, although there was no risk of the SNS-led Government falling thanks to its domination in the Assembly, wherefore the public was kept in the state of a permanent election campaign.

Although the regular parliamentary elections were to be held in the spring of 2018, Serbian Prime Minister Aleksandar Vučić said in January 2016 that early parliamentary elections would be called at the same time as the local and Vojvodina elections. Although he had qualified talk of early parliamentary elections as irresponsible just a few months earlier, in the autumn of 2015, he explained in January that he wanted to verify whether he still enjoyed support for the reforms the Government was planning on implementing.

Most political analysts opined that there were no rational reasons for calling early elections and interpreted the Prime Minister's decision by his wish to extend his mandate another four years because the SNS' rating and popularity were falling

and by his wish to help his party achieve better results at the Vojvodina elections through the parliamentary election campaign, because he was unsure it could win the absolute majority at the provincial level.⁴²⁷

On the other hand, the opposition parties and non-government organisations increasingly alerted to the irregularities at the local elections held in some local self-governments in the past few years.⁴²⁸ The opposition parties held a meeting in the National Assembly on 16 December 2015, at which they warned of the lack of prerequisites for free and fair elections and called on the SNS to discuss this issue.⁴²⁹ The New Party set up the Centre for the Suppression of Violence and Threats in the run up to the 2016 elections.⁴³⁰

The European Commission joined these warnings in 2015 for the first time. In its 2015 Progress Report, it noted that certain municipal elections and other local events had been marred by violence and claims of intimidation and irregularities.⁴³¹

Numerous irregularities and violence registered at local elections in the past characterised 2015 as well. At the very end of 2014, a grave incident occurred during the local elections in Mionica, when Milan Gavrilović, the Chairman of the Democratic Party Committee in that town, was brutally beaten up. He blamed the attack on SNS' thugs, who had come from Belgrade together with the Prime Minister's brother, Andrej Vučić.⁴³² The local media reported that people in black jeeps had come to Lučane, where local elections were also held, and intimidated the people, threatened the voters and drove SNS sympathisers to the polling stations.⁴³³ Irregularities also characterised the Šabac local community elections. Media reported pressures, the presence of black jeeps and physical assaults with pepper spray in the village of Majur and that the Prime Minister personally called up the local SNS Committee to congratulate it on its victory after the votes were counted.⁴³⁴ The elections in Nakučani in November 2015 were also characterised by physical clashes and lynch of the opposition candidates, the SNS members' organised transfer of their voters to the polling stations and distribution of wheat to them.⁴³⁵

427 More in *Vreme*, of 28 January 2016, p. 4, and *Politika*, of 20 January 2016, p. 12.

428 See: <http://www.politika.rs/scc/clanak/348442/Sumnja-u-postene-izbore-ili-alibi-za-los-izborni-rezultat>.

429 See: <http://rs.n1info.com/a118443/Vesti/Sastanak-opozicije.html>.

430 See: <http://www.novastranka.rs/vesti/osnovan-centar-za-suzbijanje-nasilja-i-pretnji-povodom-izbora-216>.

431 See: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf, p. 6.

432 See: <http://www.novimagazin.rs/vesti/ds-u-mionici-bio-i-andrej-vucic>.

433 See: <http://ozonpress.net/politika/izbori-u-lucanima-dzipovi-krstare-po-dragacevu/>.

434 See: <http://www.blic.rs/vesti/politika/ekskluzivni-video-naprednjaci-skandiraju-batinasu-zelji-posle-pobede-na-izborima-u-21knqel>.

435 See: <http://www.blic.rs/vesti/srbija/izbori-za-mz-nakucani-kod-sapca-batinanje-pretnje-i-pode-la-psenice-u-stranackim/pjf53tq>.

12. Right to Work

12.1. International Obligations of the Republic of Serbia

Serbia is a member of the International Labor Organization (ILO) and a signatory of a large number of conventions adopted under the auspices of this organisation,⁴³⁶ including Convention No. 122 Concerning Employment Policy⁴³⁷, Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation⁴³⁸ and ILO Convention No. 100 Concerning Equal Remuneration.

According to the case law of the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to work does not imply the right of a person to be provided with a job he wants, but the state's obligation to take necessary measures to achieve full employment.⁴³⁹ The right to work entails the right to employment, the right to the freedom of choice of work, i.e. prohibition of forced labour and the prohibition of arbitrary dismissal.

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 not include a provision under which the state is obliged to ensure that everyone can make a living by work, which is the main purpose of the right to work.⁴⁴⁰

The European Committee of Social Rights adopted its third periodic report⁴⁴¹ on the implementation of the Revised European Social Charter (hereinafter: Revised ESC) published in January 2015. The first two reports, published in 2013 and 2014, did not provoke much public reaction, as opposed to the third report, which elicited a lot of media attention in Serbia.⁴⁴² The previous two reports of the European Committee of Social Rights, published in January 2013 and January 2014 respectively, negatively assessed Serbia's fulfilment of some of its obligations in the scrutinised

436 Serbia has to date adopted 77 ILO Conventions.

437 *Sl. list SFRJ (International Treaties i drugi sporazumi)*, 34/71.

438 *Sl. list FNRJ (International Treaties i drugi sporazumi)*, 3/61.

439 General Comment No. 18, UN doc. E/C.12/GC/18.

440 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.

441 See: [http://hudoc.esc.coe.int/eng#{"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{)

442 See, e.g. the *Blic* report available in Serbian: <http://www.blic.rs/Vesti/Ekonomija/528527/Aktuelni-Zakon-o-radu-dobio-pozitivne-ocene-od-SE>.

areas. In its first report, covering the 2009–2012 period, the Committee said that the report submitted by the relevant ministry did not provide it with enough information to assess the fulfilment of any obligations by the Contracting Party. The Committee had reviewed Serbia's fulfilment of the following rights: the right to work, to vocational guidance and to vocational training, the right of persons with disabilities to independence, social integration and participation in the life of the community, the right to engage in gainful employment of any other Contracting Party, the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the right to protection in cases of termination of employment, and the right of all workers to protection of their claims in the event of the insolvency of their employer. The Republic of Serbia was asked to provide additional information about these issues, but it never responded to the request.

The second periodic report, published in 2014, covered the following rights: to safe and healthy working conditions, to protection of health, to social security, to social and medical assistance, to benefit from social security services, the right of the elderly to social protection, and the right to protection against poverty and social exclusion. In this report, the Committee found it did not have enough information to assess the situation with respect to 12 of the 19 obligations. It established that Serbia had fulfilled four of its obligations under the Revised ESC and violated three of them.

The third periodic report, published in January 2015, regarded Serbia's fulfilment of its obligations concerning the following rights: to fair working conditions, to a fair remuneration, to right to organise, to collective bargaining, to information and consultation, to take part in the determination and improvement of the working conditions and working environment, to dignity at work, the right of workers' representatives in undertakings to protection against acts prejudicial to them and to appropriate facilities to carry out their functions, and the right to information and consultation in collective redundancy procedures. The Committee lacked information to assess Serbia's fulfilment of 11 obligations, concluded that it had fulfilled another eight of them and violated three of its obligations under the Revised ESC.⁴⁴³

12.2. National Law

Labour law is regulated primarily by the Labour Act⁴⁴⁴ and the Employment and Unemployment Insurance Act.⁴⁴⁵ The General Collective Agreement⁴⁴⁶, which regulated relations between employers and workers in greater detail, ceased to be effective in May 2011, which essentially means that the Labour Act, particularly the

443 More at [http://hudoc.esc.coe.int/eng#{"fulltext":\["Serbia"\],"sort":\["ESCStatePartyOrder Ascending"\],"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{).

444 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

445 *Sl. glasnik RS*, 36/09 and 88/10.

446 *Sl. glasnik RS*, 50/08, 104/08 – Annex I and 8/09 – Annex II.

branch collective agreements (if concluded), general enactments (employers' collective agreements or rulebooks) or employment contracts apply to work-related rights, duties and obligations. The National Employment Strategy for the 2011–2020 Period was adopted in May 2011⁴⁴⁷.

The Employment and Social Reform Programme in the EU Accession Process (hereinafter: ESRP)⁴⁴⁸ is of particular relevance to labour and employment issues. The ESRP was drafted by the Government of Serbia at the invitation of the European Commission, pursuant to the European Commission's Enlargement Strategy and Main Challenges 2013–2014 paper covering all the accession states. Following a public debate, the draft ESCR, which defines and monitors the fulfilment of employment and social policy priorities, was submitted to the Serbian Government for adoption at the end of 2015.

The National Assembly adopted the amendments to the 2005 Labour Act under an urgent procedure in July 2014⁴⁴⁹ without organising a serious public debate on them beforehand. The Government explained that the amendments were being adopted under an urgent procedure because they governed issues of relevance to the social and economic status of workers, put in place the legal framework for boosting employment and investments in the economy, and in view of the current economic situation, especially due to the recent floods and landslides.⁴⁵⁰ 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*.⁴⁵¹ The European Commission also criticised the adoption of the Labour Act amendments under an urgent procedure in its 2014 Progress Report,⁴⁵² in which it noted the lack of a public debate and consultations with social partners. Chapter 19 of the European Commission's 2015 Progress Report⁴⁵³ on social policy and employment does not differ much from the 2014 Report. Although the 2015 Report does not focus extensively on labour law, it does note that steps have been taken to review the alignment gaps in labour legislation.

A Working Group tasked with analysing the alignment of the Labour Act and a new law on social partnership and collective bargaining with ILO conventions

447 *Sl. glasnik RS*, 37/11.

448 The fifth Draft of the ESRP is available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3313-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-peti-nact-%E2%80%93>

449 More in *Report 2014*, III.13.2.

450 Explanatory Note to the law amending the Labour Act.

451 See the *Blic* report available in Serbian at: <http://www.blic.rs/Vesti/Ekonomija/480492/Obrazlozjenje-Izmene-Zakona-o-radu-doprinese-smanjenju-rada-na-crno>.

452 Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

453 Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf

and EU directives was formed within the line Ministry. The results of the analysis, which it was to have completed in September, were not published by the end of the reporting period.

One year on, some experts and trade union representatives still have the impression that the amended provisions of the Labour Act leave room for abuse by the employers and that some provisions have aggravated the status of workers.⁴⁵⁴

The full implementation of the Labour Act calls for the further elaboration of specific provisions but the opportunity to do this during the process in which the amendments were drafted was missed. The Ministry of Labour issued opinions on how specific provisions should be applied, but, under Article 80(2) of the State Administration Act,⁴⁵⁵ the opinions of the state administration cannot be deemed legally binding.

The rights of workers were further diminished by the deletion of paragraph 3 of Article 178, under which workers who quit due to their employers' illegal conduct shall enjoy the same rights as unlawfully fired workers. The adopted amendments discourage workers from seeking protection against unlawful dismissal. The law does not lay down the criteria governing situations in which the employers may fire workers without first conducting disciplinary proceedings against them. Some of the provisions are liable to abuse because they are vague; they include, e.g. the provision on compensation of damages for unlawful dismissal, introducing "lesser" and "greater" violations of the law, the provision under which workers dismissed as redundant have only a three-month advantage over other candidates applying for a job with the same employer (they initially had a six-month advantage), the introduction of disciplinary sanctions (including termination of employment) in the law but its failure to include any provisions on the disciplinary proceedings.

The preclusive deadline for initiating a labour dispute has been reduced from 90 to 60 days, which was explained by the need to guarantee the legal certainty to the employers, i.e. that the employers do not face uncertainty about whether or not a labour dispute will be initiated.⁴⁵⁶

12.3. Employment Rates in Serbia

The unemployment rate in Serbia stood at 17.9% in the second quarter of 2015, i.e. it fell by 1.3% over the previous quarter and 2.4% year on year, as the Statistical Office of the Republic of Serbia (SORS) Labour Force Survey (LFS) re-

454 See the report of the Vojvodina Association of Autonomous Trade Unions, available in Serbian at: <http://www.pses.org.rs/aktuelno/2015/6/SSSV.pdf> and the report in Serbian at: <http://pescanik.net/paralelni-svetovi-zakona-o-radu/>.

455 *Sl. glasnik RS*, 79/05, 101/07 and 95/10.

456 See texts by Union University Law School Assistant Professor and Labour Law Legal Clinic Secretary Mario Reljanović of 28 July and 2 September 2014, available in Serbian on *Peščanik's* website (<http://pescanik.net/sve-neistine-o-izmenama-i-dopunama-zakona-o-radu/>) and <http://pescanik.net/paralelni-svetovi-zakona-o-radu/>

sults showed.⁴⁵⁷ The LFS results indicated that the employment rate stood at 51.7% in the second quarter of 2015 (among the working-age (15–64) population). The number of employed people was estimated at 2,467,273. According to National Employment Service (NES) data, this marks a 1.8% increase over the previous quarter and a 2.4% increase over the second quarter of 2014, when it stood at 49.3%.

According to the LFS, the number of employed people increased by 189,589 in the second quarter of 2015 over the same quarter in 2014. The breakdown of the unemployed population by age shows that 25.1% were under 30, 27.2% over 50, while 47.7% were between 30 and 49 years of age. The educational breakdown of the unemployed registered with the NES shows that 231,872, or nearly one-third (31.4%) of the jobless were unskilled or low-skilled workers; most of the unemployed (54.5%) had secondary education, while those with junior college or university education accounted for 14.1% of the jobless. The breakdown of the unemployed contingent by duration of unemployment shows that 495,006, or 67.1% have been looking for a job for over 12 months. The unemployment rate fell by 2.56% over the same period the previous year. The number of people in NES records, who had found jobs according to data on those registered in the mandatory social security database in the January-August 2015 period, stood at 153,851, i.e. this number increased by 7.1% over the same period the previous year, when 43,660 people registered with the NES found jobs.⁴⁵⁸

The data of the Ministry of Finance paint a somewhat different picture – they show that the employment rate was 0.9% higher in the second quarter of 2015 than in the same period the previous year, and that the unemployment rate had grown by 2.4% over the last quarter of 2014 and stood at 19.2%. The different methodologies used to calculate the numbers of employed and unemployed people have led to drastic differences in the employment-related data: the Ministry of Finance data show that 1,734,585 people are employed, while the LFS data put their number at 2,484,346.

The EC 2015 Progress Report, on the other hand, says that the employment rate grew to 42% and that both the unemployment and informal employment rates have fallen.

The gap between what the man in the street and statistics imply under the term “employed” is, however, a deep one, in view of the ILO employment/unemployment methodology applied by the Statistical Office of the Republic of Serbia. Under this methodology, everyone who worked at least one hour during the week when the survey was conducted is considered employed. Therefore, statistics take

457 See: <http://webrzs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d24000200IND01%2635%3d6%266%3d1%2c2%2c3%2c4%262%3d2015K1%2c2015K2%2640%3d15%2cL15-24%2cL15-64%26sAreaId%3d24000200%26dType%3dName%26lType%3dSerbianCyrillic>

458 The NES Monthly Statistical Bulletin on Employment and Unemployment in the RS is available at: http://www.nsz.gov.rs/live/digitalAssets/4/4465_biltен_nsz_09_2015_-_broj_157.pdf

into account everyone who worked, either formally or informally, under a contract or without one, whether or not they were paid at all, in money or in kind. The term “employed” statistically also covers people assisting at farms, workers on holiday, sick leave or unpaid leave, workers in the grey economy and workers who have not been paid for months. On the other hand, statistics do not recognise as unemployed all persons without jobs and earnings. Under the methodology, an unemployed person is a person of working age (between 15 and 65 years old), who is actively looking for a job. “Actively” means that he is registered with the NES and reports to his NES advisor at specific intervals, on a specific date every month. Such a person has to report to the NES precisely on the set date, neither earlier nor later, otherwise he is deleted from the NES records and loses the status of unemployed. Hence the perception that the unemployment rate has been falling. The picture of labour market trends painted by this methodology is much better than reality, while analyses drawing on such statistics and persistently emphasising falling unemployment and increasing employment may be interpreted as abuse of statistics for political purposes.⁴⁵⁹

12.3.1. Youth Employment

According to the 2015 Progress Report, the proportion of young people not in employment, education or training while decreasing slightly, remained high at 18.6 % and half of the unemployed were under 35 (19.7% in the 15–24 age category in the last quarter of 2014⁴⁶⁰). Long-term unemployment of youth is a particular problem – 54.03% of youth registered as unemployed have been looking for a job for over one year. Their skills thus become outdated wherefore the likelihood of them finding a job diminishes as the duration of their unemployment rises, which may result in their exclusion from the labour market.⁴⁶¹ In the section on economic criteria, the authors of the 2015 Progress Report conclude that the labour market is still characterised by skills mismatches.⁴⁶² Comparison of the data on the age breakdown of the unemployed and their qualifications leads to the conclusion that the youth category lacks the skills and knowledge the employers need.

Youth are again categorised as a vulnerable category in the labour market in terms of employability. The 15–24 age group is the only major demographic group not to have witnessed a trend of employment growth in the labour market over the

459 See the text by Union University Law School Assistant Professor and Labour Law Legal Clinic Secretary Mario Reljanović of 15 April 2015, available in Serbian at <http://pescanik.net/svi-smo-mi-pomalo-zaposleni/>.

460 See the fifth draft of the ESRP available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3313-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-peti-naact-%E2%80%93>

461 *Ibid.*

462 See the 2015 Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf/

past two years. The share of youth not looking for a job actively has grown, from 66.2% in October 2008 to 72% in 2014. In addition, many young people decide to continue their education because they are unable to find their first job. Youth inactivity is also due to the insufficient quality and relevance of their education, which does not prepare them for the world of work. Many of the inactive youth have no working experience and do not acquire practical knowledge; the longer they are unemployed, the lesser are their chances of activating themselves and finding jobs. The welfare financial benefit system does not support the activation of the beneficiaries sufficiently. Furthermore, there is a lack of flexible jobs that can be performed by workers pursuing their studies, which is further aggravated by the non-existence of a minimal mandatory base for social security contributions that would serve as an incentive to employ this category of the population.⁴⁶³

Long-term unemployment is more present among young women than young man (52 v. 41 months). Furthermore, the inactivity rate of young women stands at 42% as opposed to 27% among young men. Young women belong to the vulnerable groups that are difficult to access and they require additional attention and focus of all measures targeting unemployed youth. An integrated approach to addressing various supply and demand factors affecting the situation in the labour market is the key prerequisite for implementing an effective employment policy in the Republic of Serbia. However, the employment policy is insufficiently broadly set at the moment and is not interlinked with the more comprehensive Government economic and fiscal measures.⁴⁶⁴

The authorities have begun drafting the National Qualifications Framework in Serbia (NQFS)⁴⁶⁵ with a view to aligning the education system with the labour market needs in the Republic of Serbia. The NQF is an instrument that regulates the issues of qualifications required in the labour market and represents the basis for the implementation of the lifelong learning concept. The adoption of this document is envisaged also by the Serbian Strategy for the Development of Education until 2020⁴⁶⁶ and its Action Plan. At the end of 2015, Serbia was the only European state that did not have an NQS or an adequate nomenclature of occupations, which has further hindered the selection of occupations and subsequent acquisition of additional qualifications. The National Classification of Occupations used by the National Employment Service, which was adopted more than 25 years ago, is the only valid document for taking stock of the situation in the labour market.

463 The fifth Draft of the ESRP is available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3313-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-peti-nacrt-%E2%80%93>

464 2016 National Employment Action Plan *Sl. glasnik RS*, 82/15.

465 The draft document in the public hearing process is available at <http://www.zuov.gov.rs/wp-content/uploads/2014/02/NQFS.pdf>.

466 *Sl. glasnik RS*, 107/12, available in English at <http://erasmusplus.rs/wp-content/uploads/2015/03/Strategy-for-Education-Development-in-Serbia-2020.pdf>.

12.3.2. Labour Mobility

The adoption of a law on the employment of aliens was highlighted as one of Serbia's main obligations in the process of aligning the national legislation with the EU *acquis* under Chapter 2, which focuses on the freedom of movement for workers. The Act on the Employment of Aliens⁴⁶⁷ entered into force in December 2014. It replaced the Act on Requirements for Employing Foreign Nationals adopted back in 1978.⁴⁶⁸ Articles 5–8 of the Act on the Employment of Aliens shall apply as of the day the Republic of Serbia accedes to the European Union.

A new Rulebook on Work Permits⁴⁶⁹, adopted in accordance with the new Act, regulates in detail the issuance and extension of work permits of aliens, proof of eligibility and evidence of eligibility for the issuance and extension of their work permits, and the format and content of those work permits.⁴⁷⁰

Specific difficulties arose in the initial stages of the implementation of the new Act on the Employment of Aliens. First of all, an alien is entitled to a work permit provided s/he has a temporary residence permit, which, according to the current practice of the MIA, which issues the residence permits, cannot be obtained without a signed employment contract. On the other hand, an employment contract is not valid unless the alien has a work permit and aliens applying for these permits are submit draft employment contracts.

Employers hiring aliens have alerted to the complicated administrative procedure under which the work permits are issued. Some situations have not been regulated clearly, especially when aliens intend to work under service agreements or under other arrangements not constituting employment.⁴⁷¹

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.

As the 2014 Progress Report noted, the pre-selection of 15 future EURES (European Employment Services) counsellors has been carried out. The EC noted

467 *Sl. glasnik RS*, 128/14.

468 *Sl. list SFRJ*, 11/78 and 64/89, *Sl. list SRJ*, 42/92, 24/94 and 28/96 and *Sl. glasnik RS*, 101/05.

469 *Sl. glasnik RS*, 136/14.

470 All the requisite information, instructions for the employers and supplementary documents are available in Serbian on the NES website: nsz.gov.rs.

471 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/PKSpropisilNFO_april_2015.pdf

in that report the need for strengthening the NES vacancy database, in particular for what concerns the collection of vacancies at central/national level.

The 2015 Progress Report notes that both the Ministry of Labour 2015 Action Plan and the NES Annual Plan include provisions on the EURES and envisage the creation of a network of private employment agencies that will publish the vacancies jointly with the NES. The plan to publish all the vacancies on the NES website has not been implemented yet. It remains unknown which technical and procedural requirements need to be in place to implement this activity planned back in 2014.

12.4. Right to Assistance in Employment and in the Event of Unemployment

The Employment and Unemployment Insurance Act⁴⁷² governs the work of the National Employment Service (NES), the design and implementation of the active employment policies and unemployment benefits. The NES is under the obligation to provide its employment search services free of charge to interested unemployed persons. The definition of job seekers now includes an additional category apart from the existing categories (the unemployed) – that of persons who want to change jobs. This category covers persons who cannot be categorised as unemployed on legal grounds (high school and university students, pensioners).

The National Employment Strategy for the 2011–2020 Period, which provides the long-term framework for designing employment policies, is operationalised by the adoption and implementation of annual National Action Plans. The ongoing revision of the National Employment Strategy, with the involvement of the World Bank, ILO, the line ministry and social partners, is to be completed by February 2016. The EC 2015 Progress Report devotes particular attention to the field of employment and social policy. According to the authors of that Report, fiscal consolidation measures and restructuring of socially owned enterprises were expected to have a negative effect on overall employment in 2015. The Report notes that the Government has set up a social fund for severance payments. (the Transition Fund) and that a package of active labour market measures has been earmarked in the 2015 National Employment Action Plan to target workers affected by restructuring of state owned enterprises.

The 2016 National Employment Action Plan also envisages special measures. The effects of the implementation of the Privatisation Act will be reflected in the large-scale increase in the number of people declared redundant and registered as unemployed, which will call for additional funding. The 2015 Budget Act allocation for these measures was considerably higher than the previous year (2.8 bil-

472 *Sl. glasnik RS*, 36/09 and 88/10.

lion RSD over 600 million RSD). Around 80,000 people are working in companies undergoing restructuring and the dependent companies, as well as the state-owned companies to be privatised. Furthermore, the planned downsizing of the state administration staff will also increase the number of jobless seeking NES' services. These developments will predominantly affect older workers, wherefore the NES' activities, especially at the local level, need to be monitored carefully. 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.

The 2015 National Employment Action Plan envisaged the implementation of active employment policy measures, notably facilitation of employment; vocational guidance and career counselling; subsidies for the employment of the difficult-to-employ categories (youth under 30, workers over 50, redundant workers, Roma, persons with disabilities); support for self-employment; additional training and education; subsidies for the employment of financial aid beneficiaries; public works; active policy measures for the employment of persons with disabilities; state co-funding of active employment policy measures laid down in local action plans; and integration of welfare beneficiaries in the labour market.

According to the data published in the Employment and Social Reform Programme, funding allocated for active employment policy measures in the 2014 Budget Act was much lower than the previous years. However, the total number of people covered by active employment policy measures remained the same because focus was put on the non-financial measures, while the implementation of the financial measures (vocational internships, labour market training, training at the request of the employers, self-employment subsidies, functional primary education of adults, subsidising employers opening new jobs, public works) was quite limited – 5,924 people were covered by such measures in 2014, as opposed to 12,517 people in 2013.⁴⁷³

The effects of subsidies to foreign investors for opening new jobs have proven weak, because none of the companies that received over 7,000 EUR for every job they opened have hired as many people as they had obligated themselves. Serbia spent over 300 million EUR but succeeded in opening or preserving only around 18,000 jobs. Benetton, Johnson Electric, Bosch et al are some of the companies that did not fulfil the requirements they were set when they were granted these subsidies. In 2011, the Government pledged to pay Benetton 18 million EUR for 2,000 jobs in its Niš undertaking. According to the latest data of the Serbian Business Registers Agency, that company had only 68 people on staff in late 2013, although it had been granted subsidies for hiring a much greater number of workers;

473 Latest available NES data since this Report was finalised in December 2015.

moreover, it was making profits.⁴⁷⁴ Nevertheless, the state has vowed to continue subsidising foreign investors.

Both the 2014 and 2015 EC Progress Reports note the need to raise the administrative capacity and quality of IPA project management with respect to Serbia's preparations for the European Social Fund. When it joins the EU, Serbia will be able to apply for sizeable funding in the European Social Fund, and the administration, those who will use the funds and take part in the projects, need to be prepared on time to make best possible use of them, as the participants in a conference organised within the EC TAIEX programme in December 2014 noted.

Despite available statistics indicating that the number of unemployed people in the NES records has fallen by 117,000 and that the employment rate has increased, which the public interprets as a positive effect of the enforcement of the Labour Act, official data continue alerting to the huge number of people working in the grey economy.⁴⁷⁵ The records of the Labour Inspectorate based on its spot checks show that one out of nine workers in Serbia and one out of seven in Belgrade are undeclared.⁴⁷⁶ Most of them are young, the vast majority of them are unskilled and have primary education or less; they are not regularly paid and are beneficiaries of financial aid and social welfare. Most of them are performing high risk jobs. On the other hand, these workers are reluctant to alert the labour inspectors to their status because they fear they will lose their jobs. Most of the undeclared workers were found to be performing construction and seasonal agricultural jobs and jobs in the hospitality, commercial and craft sectors.⁴⁷⁷

The number of informally employed people is still large although the amendments to the Labour Act stipulate that employers shall keep their employment and other labour-related contracts in their headquarters or other premises, depending on where the employees at issue are working. The Inspectorial Oversight Act⁴⁷⁸, which should facilitate coordination of various inspectorates, was at long last adopted in 2015 in the wake of numerous warnings that the Labour Inspectorate was unable to combat the grey economy and informal unemployment by itself. The Act focuses primarily on unregistered natural and legal persons performing activities and unregistered activities; it is the first to introduce into Serbian legislation institutes such

474 Article published in the Belgrade weekly *NiN* on 10 September 2015, available in Serbian at <http://www.nspm.rs/hronika/petrica-djakovic-i-dragana-pejovic-subvencije-odmah-radna-mesta-malo-sutra.html?alphabet=l>.

475 SORS data show that over 350,000 are informally employed but estimates are that their number stands at 700,000. Trade union data indicate one million workers are working in the grey economy. See the *Večernje novosti* article available in Serbian at: <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:571348-Stotine-hiljada-ljudi-zaraduju-u-sivoj-zoni>.

476 See the *Večernje novosti* article available in Serbian at: <http://www.novosti.rs/vesti/beograd.74.html:540827-Svaki-deveti-radi-na-crno>.

477 The latest annual report of the Labour Inspectorate is available in Serbian at: <http://www.min-rzs.gov.rs/lat/dokumenti/inspekcija-rada/izvestaji-o-radu>.

478 *Sl. glasnik RS*, 36/15.

as inspectorial oversight based on risk assessments and the so-called check lists. As some provisions have not come into effect yet,⁴⁷⁹ it remains to be seen how the full enforcement of this law will function in practice.

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 amendments to the Labour Act do not take into account the obligation Serbia assumed when it ratified ILO Convention 183 concerning Private Employment Agencies⁴⁸⁰ –leasing of workers remains unregulated, perpetuating their legally and factually unsustainable status. A major problem has been identified with respect to the private employment agencies' practice of temporarily leasing workers to companies in the absence of clear legal grounds for such engagement or clear parameters for protecting their rights.⁴⁸¹

Most of these jobs are high-risk and require training to minimise risk of injury.⁴⁸² The law should regulate also how the leased workers' salaries are set and compensated, their working hours and their other work-related rights, to which the Labour Act does not apply as leased workers are not considered employed. The law should also specify who their employer is, because there are usually three parties involved in this form of engagement: the worker, the agency through which he is engaged, and the employer on whose behalf the employment agency is engaging him. Apart from the need to legally regulate the work of private employment agencies, the state also needs to regulate the work of limited liability companies involved in leasing unemployed people and mediating in employment.

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.⁴⁸³ 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.

479 See Article 70 of the Inspectorial Oversight Act.

480 *Sl. glasnik RS (International Treaties)*, 2/13.

481 See the *Danas* report available in Serbian at: http://www.danas.rs/danasrs/ekonomija/radnike_nezakonito_iznajmljuju_i_eksploatisu.4.html?news_id=299234

482 The reform of the public administration envisages the possibility of engaging non-teaching and non-medical staff on these grounds. However, the future legislation on private employment agencies and on the leasing of non-teaching and non-medical staff needs to limit the share of leased workers in the employer's total staff (e.g., in Slovenia, the number of leased workers may not exceed 20% of the employer's total staff complement).

483 The Directive is available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008L0104>.

12.5. Workers' Rights Concerning Termination of Employment

The provisions on termination of employment underwent changes when the Labour Act was amended. Firing has been simplified as the new provisions eliminated the prior complicated procedure.⁴⁸⁴

The amendments introduce new provisions on disciplinary measures, some of which are confusing, but do not regulate the disciplinary procedure at all, wherefore many of the problems have remained unaddressed. The provisions on disciplinary measures are in the section dealing with the termination of employment by the employers. Further confusion arises with respect to the measures for violations of the work obligations – the employer is under the obligation to implement the dismissal procedure if the reasons for dismissal specified in paragraphs 2 and 3 of Article 179 exist, but paragraph 1 of Article 179a clearly states that the employer may impose disciplinary measures against a worker if it is of the view that there are mitigating circumstances or that the violation is not so grave so as to warrant dismissal. This practically means that the employer is to initiate the dismissal procedure under Article 180, but that it may complete it by imposing a disciplinary measure against the worker, rather than by terminating his employment agreement. Such situations create greater uncertainty for the worker, who does not know whether he will be dismissed or penalised until the very end of the procedure.⁴⁸⁵

Article 191(1) of the Labour Act on the legal effects of the unlawful termination of employment, that is reinstatement, compensation of damages and payment of contributions, has been rephrased to avoid misinterpretations of this provision. Under the original provision, in the event the court rendered a legally binding decision finding that a worker had been unlawfully dismissed from his job, the worker was entitled to first prove the unlawful dismissal in court and then file a lawsuit demanding reinstatement. The proceedings typically took unreasonably long and the employers in the meantime hired other people to do those jobs. Under the new provision, the workers immediately have to specify whether they are seeking reinstatement. They are also under the obligation to sue their employers before the decision on their dismissal becomes legally binding, otherwise their lawsuits will be dismissed.⁴⁸⁶

The Labour Act also provides special protection from dismissal to specific categories of workers: pregnant workers and workers on maternity or childcare leave (Art. 187). Special protection from dismissal is also afforded to the workers' representatives during their terms in office if they acted in keeping with the law,

484 *Sl. glasnik RS*, 75/14, termination of employment is governed in Chapter XVI, Articles 175–192.

485 See texts by Union University Law School Assistant Professor and Labour Law Legal Clinic Secretary Mario Reljanović of 28 July and 2 September 2014, available in Serbian on *Peščanik's* website (<http://pescanik.net/sve-neistine-o-izmenama-i-dopunama-zakona-o-radu/>) and <http://pescanik.net/paralelni-svetovi-zakona-o-radu/>.

486 More on the protection of workers from dismissal in the *2014 Report*, III.13.5.

general enactments and their employment contracts. It is up to the employers to prove that they had not dismissed a worker because of his activities in the capacity of a workers' representative, his trade union membership or participation in union activities (Art. 188). The Labour Act originally prohibited employers only from placing workers' representatives in an unfavourable position; the ban now applies to all workers if the reason for the unfavourable treatment lies in their status or activities in the capacity of workers' representatives, their trade union membership or participation in union activities. This provision is in line with ILO Convention 135 on workers' representatives.⁴⁸⁷

The amendments to the Labour Act unfortunately abolished the provision stipulating that labour disputes shall be urgent and completed within six months from the day they are initiated; labour disputes are now conducted in accordance with the Civil Procedure Act.⁴⁸⁸ This further aggravates the workers' uncertainty about the outcome of the disputes and provides greater opportunities for massive applications claiming violations of the right to a trial within a reasonable time. The deletion of the provision on the urgency of labour disputes would, perhaps, make sense if the peaceful labour dispute settlement institute functioned adequately in practice. The capacity of the Republican Agency for the Peaceful Settlement of Labour Disputes (RAPSLS), established under the Peaceful Settlement of Labour Disputes Act⁴⁸⁹ is quite weak. This is why the European Commission, too, noted the need to further strengthen the Agency for the Peaceful Settlement of Labour Disputes in its 2014 Progress Report. As it noted in the 2015 Progress Report, initial steps were taken to revise this Act. The Strategy for Improving the Work of the RAPSLS was adopted⁴⁹⁰ and the RS Government in July issued a conclusion recommending to the public sector to resolve collective and individual disputes before the RAPSLS.

12.6. 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.⁴⁹¹

487 *Sl. list SFRJ (International Agreements)*, 14/82.

488 At the moment, labour disputes last around four years on average.

489 *Sl. glasnik RS*, 125/04 and 104/09

490 The text of the strategy is not available on the internet but its adoption is mentioned on the Agency website and in the RAPSLS Information Booklet, available in Serbian at <http://www.ramrrs.gov.rs/%D0%B8%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%82%D0%BE%D1%80/>.

491 *Sl. glasnik RS*, 125/04 and 104/09.

The International Labor Organization (ILO) set for its member states the general principles and guidelines for resolving labour disputes, which primarily promote collective bargaining and settlement of labour disputes by assisting the parties to themselves resolve their disputes or ask arbiters for help in resolving their disputes. The Republic of Serbia has not, however, ratified all the conventions and recommendations on the settlement of labour disputes in keeping with international standards. Notably, it has not ratified the Collective Bargaining Conventions 151 and 154 although their relevance is emphasised also in the Serbia Decent Work Country Programme Document 2013–2017.⁴⁹² 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 implementation of coordinated collective bargaining structures and mechanisms, whilst noting that participatory governance will add legitimacy to the decision-making process.

The need to build the capacities of the labour inspectorates was recognised by the European Commission and the UN Committee on Economic, Social and Cultural Rights.⁴⁹³ In its 2015 Progress Report, the European Commission noted that labour inspection activities have been intensified and better targeted, especially in relation to fighting undeclared work. Intensified labour oversight in the past year resulted in the reduction of the informal employment rate. The transparency of the Labour Inspectorate's work has increased since the creation of its webpage on the Ministry of Labour, Employment and Veteran and Social Affairs website. The 2015 Progress Report notes the need to improve the Labour Inspectorate's administrative capacity. The need to raise the capacities of the Inspectorate, *inter alia*, its technical and technological capacities, was highlighted in the Submission to the EU Delegation in the process of consultations with the representatives of the 17th National Convention on the EU working group charged with monitoring Chapters 2 and 19.⁴⁹⁴

A Centre for Democracy Foundation research⁴⁹⁵ shows that the interlinkage of the Labour Inspectorate IT system with the records of the other inspectorates,

492 Available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/serbia.pdf>.

493 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. Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, available at <http://www.refworld.org/type,CONCOBSERVATIONS,,,53fdbbb64,0.html>.

494 The introduction of an IT system for this institution is addressed in a recent study published within the project "Reducing Undeclared Work through Networking of Institutions and More Transparent Work of the Labour Inspection" implemented by the Centre for Democracy Foundation. The study is available in Serbian at: <http://www.centaronline.org/en/publication/1729/publikacija-informacioni-sistem-za-potrebe-inspektorata-za-rad>.

495 Centre for Democracy Foundation practical policy proposal "Serbia without Illegal Work – Enhancing the Role of Inspections in Preventing Undeclared Employment", available in Serbian at <http://www.centaronline.org/userfiles/files/publikacije/fcd-srbija-bez-rada-na-crno.pdf>.

the Central Mandatory Social Security Register, the MIA, the Business Registers Agency and the misdemeanour courts can significantly improve the work of the Labour Inspectorate, particularly in view of the fact that this is envisaged both in the Inspection Oversight Act and the Draft 2015–2018 E-Government Development Strategy.⁴⁹⁶

According to the representatives of the Ministry of Labour, Employment and Veteran and Social Affairs, the Labour Inspectorate performed 79,081 oversights in the past two years, i.e. 18% more than in the past. During these checks, the inspectors identified 17,440 undeclared workers – the employers employed 13,886 for an indefinite period of time after the checks. The Labour Inspectorate also identified a large number of unregistered legal entities; 3,854 new ones were registered since the Act was adopted.⁴⁹⁷

13. Right to Just and Favourable Conditions of Work

13.1. Fair Wages and Equal Remuneration for Work

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. This right is governed in greater detail in the Labour Act. In the view of the CESCR, this right should be interpreted as the right to a minimum wage, the amount of which is reviewed and set periodically against the real social value of the job. Such a wage should actually ensure “decent life”, entailing the right to housing, food, clothing, education, medical treatment and culture.⁴⁹⁸ This right also includes the right to compensation for overtime work.

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

496 See the Strategy Draft 2015–2018 Action Plan available in Serbian at: http://www.kombeg.org.rs/Slike/UdrInformatike/2014/decembar/18-1_Predlog%20Akcionog%20plana%20Strategije%20razvoja%20eUprave%202015_2018.pdf.

497 As highlighted at the Ministry of Labour conference “Suppressing Undeclared Work and Improving Workers’ Rights” on 17 November 2015. More on the conference available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3982-rad-na-crno-rak-rana-drustva,-neisplativ-istetan>.

498 Dimitrijević, V., Popović, D., Papić, T., Petrović, V., *International Human Rights Law*, BCHR, Belgrade, 207, p. 313.

be guaranteed equal wages for the same work or work of the same value, adding that the employment contract 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 established for the territory of the Republic of Serbia shall issue a decision setting 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. In the event the Social-Economic Council fails to reach a consensus requisite for a decision on the amount of the minimum wage in the Republic of Serbia, the decision shall be reached by the Government, as provided for by the Labour Act.

The Government had set the 2015 net minimum cost of labour in Serbia at 121 RSD per hour. This rate had not been increased since 2012, when it was raised to 115 RSD. The minimum cost of labour per hour is very low, clearly demonstrating that the decision makers were not guided by the provision in Article 112, under which the determination of the minimum wage per hour shall particularly take into account the subsistence and social needs of the workers and their families expressed in the value of the minimum consumer basket; the employment rate trends; the GDP growth rate; the consumer price trends; and the productivity and average wage trends in the Republic.⁴⁹⁹ With a minimum monthly wage of 174 EUR, Serbia is at the bottom of the list in the region; the minimum wages are lower only in the Former Yugoslav Republic of Macedonia and Albania⁵⁰⁰

The trade unions suggested that the minimum cost of labour be increased from 121 to 143.55 RSD per hour in 2016, in view of the planned increase in the prices of consumer goods, the 30% higher productivity since February 2010, the fall of the unemployment rate in the 2012–2015 period by 19.7% and the increase of the employment rate by 15.5% in the same period. The Serbian government decision to keep the minimum hourly rate at 121 RSD is another blow to the workers' living standards, as their already low earnings will further fall in real terms due to inflation. The Confederation of Autonomous Trade Unions of Serbia said it would ask the Constitutional Court of Serbia to review the constitutionality and lawfulness of

499 In its review of Serbia's Second Periodic Report, the UN Committee on Economic, Social and Cultural Rights noted with concern the way the minimum wage was established without taking into account the cost of living or the views of the social partners and without regular review and recommended to the state to take measures to ensure that the level of the minimum wage provides all workers and their families with an adequate standard of living. See Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, available at <http://www.refworld.org/type,CONCOBSERVATIONS,,,53fdbbb64,0.html>.

500 See the article in *Politika*, available in Serbian at: <http://www.politika.rs/search/searchEngine-Landing/article/Socijalno-ekonomski-savet-opet-nije-utvrdio-minimalnu-cenu-rada>.

the Government decision to keep the hourly rate at 121 RSD in 2016 because, in its view, it was in contravention of the Labour Act.⁵⁰¹

The European Committee of Social Rights said in its report that Serbia was violating its ESC obligation regarding fair remuneration, the part regarding the period of notice for termination of employment in the event the worker is underperforming or lacks the requisite skills and knowledge for performing his job. This issue is now regulated to the even greater detriment to the workers in the amendments to the Labour Act than it had been in the provisions reviewed by the Committee, the conclusions of which regard the period before the Labour Act was amended.⁵⁰²

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).

Under the Labour Act, workers working overtime shall be entitled to an increase of their wages by at least 26% of their wage base. Employers who violate these provisions shall be fined between 400,000 and 1,000,000 RSD. However, notwithstanding the legal regulation of this issue, the provisions on overtime are massively abused in Serbia, especially in the private sector. Many private sector workers work overtime on workdays, as well as weekends and holidays, their total working hours a week exceeding the maximum 48 hours by far. Furthermore, many of them are not paid for the extra hours they put in. To make things worse, the labour inspectors cannot identify these violations during their checks, because the employers are not obligated to keep records of overtime work or of increased wage payments. The high fine envisaged for the employers violating the law is imposed rarely, if ever. On the other hand, the vast majority of workers are reluctant to report this violation of the law, lest they lose their jobs, or they report it once they leave their jobs, at which point the labour inspectors no longer have the jurisdiction to penalise their erstwhile employers.

Employers in Serbia often abuse the option of rescheduling working hours provided for by the Labour Act and do not qualify their workers' work after hours as overtime, but rather as rescheduling their working hours. Under the Act, working hours may be rescheduled as long as the workers' total working hours during a six-month period do not on average exceed their working hours under their employment contracts (Art. 57). Workers, whose working hours have been rescheduled, may not seek payment for overtime because they worked longer. Employers in prac-

501 See the presentation by the Vojvodina Association of Autonomous Trade Unions marking the first anniversary since the adoption of the amendments to the Labour Act, available in Serbian at <http://www.pses.org.rs/aktuelno/2015/6/SSSV.pdf>.

502 See the entire text by Union University Law School Professor and Labour Law Legal Clinic Secretary Mario Reljanović of 23 January 2015, available in Serbian at <http://pecanik.net/evropska-socijalna-povelja-i-srpska-socijalna-tuga/>.

tice often neglect the fact that the rescheduling of working hours is limited in terms of hours and time and workers often end up working more than 60 hours a week, even when the average number of rescheduled hours exceeds 40 hours a week during a six-month period in one calendar year. Employers often disregard the working hours laid down in the employment contracts and issue oral orders to their workers to work overtime. Employers either do not keep records of overtime or they keep in-house records, which can be adjusted to conform with the legal regulations if need be.

13.1.1. Wage and Pension Cuts

In late 2014, the National Assembly adopted two laws⁵⁰³ 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.⁵⁰⁴

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.⁵⁰⁵

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 wherefore it found in its judgment that the national Pension and Disability Insurance Fund's suspended payment of pensions interfered in the right to peaceful enjoyment of possessions.⁵⁰⁶ The right to a pension is considered a pensioner's personal right and is an integral part of his possessions.

Like the ECHR, the Constitution of the Republic of Serbia (Art. 58) guarantees the peaceful enjoyment of possessions and other property rights acquired under the law, and the obligation of non-interference in the enjoyment of human rights,

503 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.

504 Pensions above 25,000 RSD were cut by 22%, while public sector wages were linearly cut by 10%. The laws came into force in November 2014 and will apply until the end of 2017. Full-time workers with net wages under 25,000 RSD are not affected. Workers, whose net wages would fall below 25,000 RSD if they were cut, are paid 25,000 RSD. The wages of part-time workers are set in proportion to their working hours and their reduction is commensurate to the cut of the wages they would suffer if they worked full time in the given month.

505 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://pecscanik.net/nema-mira-za-gradane-srbije/>.

506 See the ECtHR judgment in the case of *Grudić v. Serbia*, ECtHR, App. No. 31925/08, available at: [http://hudoc.echr.coe.int/eng#{"fulltext":\["Grudić"\],"documentcollectionid2":\["GRANDCHAMBER"\],"chamber":\["CHAMBER"\],"itemid":\["001-110378"\]}](http://hudoc.echr.coe.int/eng#{).

one of which is the right to pension insurance. Under the Pension and Disability Insurance Act, a ruling setting the amount of the pension may be amended only in the event new relevant facts or evidence regarding the insured person become known that might result in a different outcome or such facts or evidence were not presented in the original proceedings.

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 published on its website, the Constitutional Court said that the adoption of the law was justified because: it contributed to maintaining the financial sustainability of the pension system, ensuring the regular payment of pensions; most of the pensioners were not struck by the austerity measures; the Constitution does not guarantee the amounts of the pensions; and, measures temporary in character are at issue. In view of the above considerations, this Constitutional Court decision allows for the submission of applications to the ECtHR, since all the available legal remedies at the national level have been exhausted.⁵⁰⁷

Employers must pay wages to their workers within one month from the month they earned them at the latest, but many employers pay their workers neither their salaries nor the contributions. The statements of account of earnings, and/or 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).⁵⁰⁸

Trade union data indicate that around 600,000 private sector workers are paid their salaries with one- or two-month or even greater delays and that as many as 50,000 workers are not paid at all. In the first four months of 2015, the labour inspectors performed 12,368 checks regarding work-related rights, issued 1,088 rulings regarding unpaid wages and filed around 700 misdemeanour reports against offending employers.⁵⁰⁹ The employers have for years now been complaining of the high taxes and contribution rates as an excuse for defaulting on their payments. The taxes and contribution rates, amounting to as much as 64% of the net wages, are among the highest in Europe (they stand at 39% in FYROM and are lower in all the other countries in the region). This, of course, cannot absolve the defaulting employers but can explain the burden they are under.

The Electronic Industry (EI), the Niš Mechanical Industry (MIN), the construction company *Građevinar* and the Niš textile company *Niteks* are just some

507 The comment of the Constitutional Court decision by retired Supreme Court judge Prof. Dr. Zoran Ivošević is available in Serbian at <http://rs.n1info.com/a95474/Vesti/Odluka-Ustavnog-suda-o-penzijama-pravna-ili-politicka.html>.

508 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.

509 Data of the Association of Free and Independent Trade Unions of Serbia, see the *Večernje novosti* article available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:551055-Bez-plate-50000-radnika>.

of the socially-owned companies that have not operated for years; the state has not paid any wages to their workers since 2000. Some 4,500 people are employed in these companies and the state owes them around 110,000 monthly wages for the 2000–2011 period. Since 20 January 2014, no one has filled the gaps in the pensionable service of any of the workers of these companies; nor have they been paid their overdue wages.

The situation in the state company *Zastava kamioni*⁵¹⁰ is similar. The workers have been offered a social programme provided they withdraw their lawsuits against the company. They will be paid severance packages if they agree to “voluntarily” quit their jobs in the factory, but no-one will compensate them for the legal representation fees they sustained when they sued the company. Furthermore, no-one will fill the gaps in their pensionable service, caused by their employer’s failure to pay their contributions for 37 months.⁵¹¹ The same fate befell the workers of the Kragujevac factor *Metal sistemi*, the Kruševac heavy machinery factory “14. oktobar”, the Kraljevo Freight Car factory, *Generalexport*, ICG and many other companies undergoing restructuring.⁵¹² Under a Government decision, arrears will be paid only to workers who had sued their companies and in whose favour the courts ruled.⁵¹³

Such government decisions facilitate the payment of severance packages only to workers willing to abandon their lawsuits against companies undergoing restructuring. There are around 13,000 workers near the age of retirement, whose employers have not paid their contributions for years. None of those, who agree to withdraw their lawsuits, will be compensated for the court and legal fees they sustained and will have to pay them themselves. Their pensions will be lower as well, because the state will pay the gaps in their pensionable service on the basis of the minimum wage, although most of them had sued their employers demanding the payment of their full wages, which were higher. The workers of the above-mentioned companies undergoing restructuring, who do not agree to the Government’s conditions, can seek the payment of their claims in court.

510 See the *Danas* article, available in Serbian at: http://www.danas.rs/danasrs/ekonomija/kamiondzije_odlaze_iz_fabrike_bez_zarada_i_povezanog_staza.4.html?news_id=309881.

511 Under the 2013 amendments to the Pension and Disability Insurance Act, the state shall not fill the gaps in the pensionable service of workers whose pension insurance contributions were not paid by their employers. All of the workers with gaps in pensionable service will be able to retire, but will be paid only two-thirds of their pensions, while the rest will be used to pay the outstanding contributions. The Protector of Citizens qualified this arrangement as a violation of the workers’ rights. More in *Report 2014*, 14.1.4.

512 See the following articles in the Belgrade press, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:532479-Krusevac-Puna-penzija-nedostizan-san>, http://www.danas.rs/danasrs/ekonomija/vlada_brise_metal_sisteme_4.html?news_id=300020, http://www.danas.rs/danasrs/ekonomija/drzava_prevarila_radnike_geneksa.4.html?news_id=310429 and <http://www.politika.rs/scc/clanak/316332/Otpremnine-se-zagubile-na-putu-od-fabrike-do-ministarstva>.

513 See the article in *Danas*, available in Serbian at: http://www.danas.rs/danasrs/ekonomija/vlada_ne_zeli_da_resi_problem_zaoستalih_zarada.4.html?news_id=309405

In the event they do agree with the Government's conditions, under the Government Conclusion, the funds the state allocated for filling the pensionable service gaps will be repaid into the state budget (Tax Administration) by the employers. In case the companies are privatised, the obligation to pay the workers' contributions is transferred to the new owners. As regards companies that declare bankruptcy, the pensionable service gaps of all the workers will be filled and obligations to them will be defined, whether or not they have court judgments in their favour.⁵¹⁴

The 2014 amendments to the Pension and Disability Insurance Act have reduced the pension and disability insurance obligations of the farmers.⁵¹⁵

13.2. 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.

The Labour Act defines working hours as "... the period of time during which the workers are under the obligation to perform the tasks in accordance with the instructions of their employers or during which they are at the disposal of their employers to perform those tasks".⁵¹⁶ 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. The Labour Act provisions on paid leave are in keeping with minimal European and UN standards.

However, interpretation(s) of the Labour Act provisions governing annual holidays may give rise to problems in practice. Workers may not transfer their annual holidays to their new jobs – which means that they may not take the annual holiday they had not used whilst they worked for their former employers. Under the law, they shall be "indemnified" for the unused annual holiday in case of termination of employment. The legislator, however, made a "minor" mistake. The compensation of damages in the initial text of the law was prescribed as an exceptional penal measure, imposed against employers who did not provide their workers with the possibility of taking their annual holidays, rather than as a rule. Indeed, the purpose of annual holidays is to provide the workers with the chance to rest (which is exactly why the Act states that the workers may not forego their annual holidays).

514 See the article in *Danas*, available in Serbian at: http://www.danas.rs/danasrs/ekonomija/sindikatsucena_sapozicije_moci.4.html?news_id=310168.

515 *Sl. glasnik RS*, 75/14. More in the *2014 Report*, III.14.1.4.

516 More on the amendments to the Labour Act in *2014 Report*, III.14.2.

Add to that the fact that workers who change jobs often may end up unable to take their annual holiday over a longer period of time.

Additional confusion arises when Article 76(1) of the Act is read in conjunction with the provisions on annual holidays. Under that paragraph, “In case of termination of employment, the employer shall indemnify the worker who had not taken his annual holiday in entirety or in part, for every unused day of annual holiday in the amount commensurate to the average wage in the past twelve months”. In case of termination of employment for any reason. That means that even workers who e.g. commit a crime at work and incur multimillion damages to their employers and are dismissed for that reason (i.e. their employment has terminated) and sentenced to a number of years in prison, will also be entitled to indemnity. As will workers who physically assaulted their general managers, were dismissed for violating the work discipline and had criminal charges filed against them.⁵¹⁷

Another question the law does not answer is when the worker is entitled to take his entire annual holiday. Article 68(2) of the Labour Act appears clear at first glance: “Workers shall be entitled to take their annual holiday in the calendar year after having continuously worked for their employers for one month from the day they started working”. The provision in Article 72 stipulates that workers shall be entitled to one-twelfth of their annual holiday for every month of work in the calendar year in which they started or stopped working. For instance, a worker who began working on 1 January will not be entitled to take his entire annual holiday until 1 January next year.

Indeed, workers may take their annual holidays already after a month, but only a proportionate part of it, not the entire leave. On the other hand, a worker who starts working on 15 December will also be entitled to take his entire annual holiday on 1 January (when the calendar year in which he did not begin working for the employer begins). Therefore, the worker who began working on 1 January will have to work 12 months and the one who started working on 15 December will have to work 15 days (or less) before he can take his entire annual holidays.⁵¹⁸ These ambiguities have arisen because the legislator deleted the provision under which workers were entitled to take their entire annual holidays after continuously working for the employer for six months.

It needs to be noted that the European Committee of Social Rights stated in its report that Serbia fulfilled its obligation regarding paid annual holidays before the Labour Act was amended in July 2014.

According to European standards, a worker is also entitled to paid leave during public holidays (Art. 2.2 European Social Charter [ESC]) and work performed

517 See the entire text by Union University Law School Professor and Labour Law Legal Clinic Secretary Mario Reljanović of 2 September 2014, available in Serbian at <http://pescanik.net/paralelni-svetovi-zakona-o-radu/>.

518 *Ibid.*

on a public holiday should be paid at least double the usual rate.⁵¹⁹ 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.

13.3. 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 Health⁵²⁰ and Convention No. 167 on Safety and Health in Construction.⁵²¹ The ESC specifically guarantees the right to safe and healthy working conditions in Article 3.⁵²²

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.⁵²³ The Action Plan for the Implementation of the Strategy was adopted in July 2014.⁵²⁴

Major amendments to the Occupational Health and Safety Act⁵²⁵ were adopted in November 2015.⁵²⁶ Under the amendments, the Act shall not apply to the performance of specific military duties in the Army of Serbia and of police and protection and rescue duties within the remit of the relevant state authorities, where occupational health and safety issues are governed by separate laws and regulations adopted pursuant to them (Art. 1). The concept of employers is expanded and includes natural persons providing work to workers on any legal grounds, with the exception of persons providing work in the household and heads of family agricultural holdings performing work together with their family household members pursuant to regulations on agriculture, as well as natural persons performing economic or other activities together with their family household members.

Article 3 of the Act amending the Occupational Health and Safety Act aligns this law with the Employment and Unemployment Insurance Act⁵²⁷ and creates the grounds allowing the relevant ministries to lay down measures with respect to the

519 *Conclusions XVIII–I*, Croatia, p. 116.

520 *Sl. glasnik RS (International Treaties)*, 42/09.

521 *Ibid.*

522 *More in Digest of the Case Law of the European Committee of Social Rights*, pp. 35–43.

523 *More in the 2013 Report*, I.15.3.

524 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.

525 *Sl. glasnik RS*, 101/05.

526 *Sl. glasnik RS*, 91/15.

527 *Sl. glasnik RS*, 36/09, 88/10 and 38/15.

work of youth and pregnant and breast-feeding women. The employers involved in construction at temporary and mobile sites are now under the obligation to prepare proper erection site reports and submit them to the relevant labour inspectorate together with the reports on start-up of work.

Under Article 24 of the Act, employers must provide their workers with the equipment for work and personal protective equipment that is in compliance with the prescribed technical requirements, as verified in the prescribed procedure. Such equipment must be labelled pursuant to regulations and accompanied by the prescribed certificates of compliance and other prescribed documentation. Amendments to Article 27 of the Act obligate the employers to train their workers for safe operation when they are hired, assigned to another job and when they change the work equipment. Article 27 now specifies that employers shall define the training programme, the curriculum of which shall be updated and revised if necessary.

The Act now lays down a new deadline for periodic examinations of the workers' safe and healthy working practices, at least once a year with respect to workers performing high risk jobs, and at least every four years with respect to workers performing other jobs. The training in safe and healthy working practices shall be performed in the language(s) the workers understand and be tailored to workers with disabilities and those suffering from occupational diseases (Art. 28).

Workers are prohibited from arbitrarily turning off, disabling or removing safety catches on the work equipment. The amendments also obligate the employers to keep records of personal protective equipment issued to the workers and of their medical examinations.

The amendments lay down stricter requirements for health and safety at work licensees. Their licences may not be revoked also in the event they no longer fulfil the licencing requirements. The remit of the Occupational Health and Safety Directorate has also been changed and supplemented.

The 2015 Progress Report noted that alignment continued regarding health and safety at work. The UN Committee on Economic, Social and Cultural Rights noted with concern the limited effectiveness of the Labour Inspectorate, in particular in preventing occupational accidents and diseases. It recommended that Serbia empower the Labour Inspectorate to help employers prevent occupational accidents and diseases,⁵²⁸ but this recommendation has not been followed through in 2015.

The ILO Decent Work Country Programme Document 2013–2017 for Serbia noted that promotion of safe and healthy workplaces was a global agenda and that Serbia was not an exception.

The Occupational Health and Safety Directorate said that the number of accidents among construction workers and the number of fatal accidents had fallen in

528 Concluding Observations on the Second Periodic Report of Serbia, UN Committee on Economic, Cultural and Social Rights, E/C.12/SRB/CO/2, paragraph 19, available at <http://www.refworld.org/type,CONCOBSERVATIONS,,,53fdbbb64,0.html>.

the past few years. Data show that the number of fatal work accidents was halved from 2010 to 2015. Seven such accidents occurred in the first four months of 2015; two of the four fatalities were construction workers, who had fallen from heights. The gravest occupational accident in the past few years occurred in Piroć; three workers were killed and another three injured. In the first four months of the year, the labour inspectors issued 33 misdemeanour fines and filed 1,327 misdemeanour motions and 19 criminal reports against employers violating the health and safety regulations. Graver accidents also occurred in the *Milan Blagojević* factory, in which four people were injured, and the Valjevo factory *Krušik*, in which seven people were injured.⁵²⁹

The most important component of the occupational safety and health system that is currently being reviewed by the institutions of the Republic of Serbia and their social partners is the employment injury benefits system.⁵³⁰

13.4. Freedom to Associate in Trade Unions

The freedom to associate in trade unions is the only trade union freedom guaranteed by all four general human rights protection instruments ratified by the Republic of Serbia – Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and Articles 5 and 6 of the ESC. This freedom entails the right to establish a trade union and join it of one's own free will, the right to establish associations, national and international alliances of trade unions and the right of trade unions to act independently, without interference from the state. Serbia has also signed ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, ILO Convention No. 11 Concerning Right of Association (Agriculture),⁵³¹ ILO Convention No. 98 Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively⁵³² and ILO Convention No. 135 Concerning Workers' Representatives. Article 5 of the Revised European Social Charter⁵³³, 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

529 See <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:547522-Za-cetiri-mesece-poginulo-sedam-radnika>, <http://www.naslovi.net/2015-10-08/rtv/preminuo-radnik-povredjen-u-pozaru-u-lucanima/16684695> and <http://www.blic.rs/vesti/hronika/nesreca-u-krusiku-eksploziv-rala-kapisa-bombe-povredeno-7-radnika-jedan-prebacen-u-x8wfewp>.

530 More in *Report 2014*, III.14.

531 *Sl. novine Kraljevine Jugoslavije*, 44–XVI/30.

532 *Sl. list FNRJ (Addendum)*, 11/58.

533 *Sl. glasnik RS*, 42/09.

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, laws 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.⁵³⁴ Under Article 7 of the Rulebook, an organisation shall be deleted from the register, *inter alia*, pursuant to a final decision prohibiting the work of a trade union (Art 7 (item 2) of the Rulebook)⁵³⁵. Under the Act on Associations, only the Constitutional Court may render a decision to ban any association (Art. 50(1)).⁵³⁶

The European Committee of Social Rights found Serbia in violation of the ESC with respect to the right of association, specifically the threshold set for establishing an association of employers. These provisions were not changed when the Labour Act was amended in July 2014.⁵³⁷

The EC 2015 Progress Report devoted particular attention to social dialogue and the freedom of association in trade unions. It said that bipartite social dialogue remained weak and that consultation of the Socio-Economic Council (SEC) on legislative amendments remained limited. The authorities have failed to fully implement their legal obligation to forward draft laws and other enactments of relevance to the material and social status of workers and employers to the concerned parties. The need to strengthen the role of the SEC was highlighted also in the Submission to the EU Delegation of the 17th National Convention on the EU Working Group charged with Chapters 2 and 19. The National Convention said that the SEC had not reviewed the draft 2015 Budget Act or the amendments to the laws reducing pensions and public sector wages, and that the Government in 2014 failed to forward to the SEC ten laws on areas within its remit for comment.

534 *Sl. glasnik RS*, 50/05 and 10/10.

535 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.

536 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.

537 See: [http://hudoc.esc.coe.int/eng#{"fulltext":\["Serbia"\],"sort":\["ESCStatePartyOrder Ascending"\],"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{).

In 2015, the authorities forwarded the Draft Act Amending the Employment and Unemployment Insurance Act and asked it for comments ASAP as this law was to be adopted under an urgent procedure. The SEC's suggestions, that the remuneration of NES Management Board members be abolished and that the Management Board comprise equal numbers of state and social partner representatives, were not taken on board. The impression was gained that this Act, *inter alia*, aimed at diminishing the importance of workers' and employers' representatives in this field, just like the Act Amending the Pension and Disability Insurance Act that come into force in 2014, as corroborated by the lesser number of trade union representatives in the NES and Pension and Disability Insurance Fund Management Boards. The SEC was forwarded the 2016 National Employment Action Plan with the explanatory note and Draft Conclusion merely for information purposes.

The 2015 Progress Report noted little further progress in developing tri-partite social dialogue at the local level. Indeed, social dialogue at the local level is underdeveloped. The establishment of the local social economic councils has been impeded by numerous problems, including the lack of organisational, technical and human capacities of the employer associations and trade unions at the local level. Furthermore, many local self-governments are insufficiently interested in the issue. Only 19 Local Social Economic Councils have been established since 2005. Not all of them are active. The Union of Employers of Serbia has been working intensively on raising the employers' awareness and encouraging association at the local level, but its results are modest.

The authors of the 2015 Progress Report qualified as concerning the walk-outs of representative trade unions from working groups in charge of preparing important pieces of legislation and noted that several sector collective agreements remain to be concluded following the repeal of collective agreements in January 2015. No headway has been made in addressing the major problem of representativeness of social partners, noted in the 2014 Progress Report. Major economic stakeholders are not part of the SEC and they pursue their interests without participating in social dialogue (the Foreign Investors Council, for instance). These issues also need to be analysed in greater detail to address the problem of the representativeness of the trade unions and employer associations.

As of 2014, the Labour Act includes the provision, which exists in most EU member states, on the 50% representativeness within a sector to ensure the extended effect of sector collective agreements to employers not party to them. This provision, however, has not met with the support of either the employers or the workers. Its enforcement has prompted employers to walk out of the associations that had signed the sector collective agreements, hindering the ability of the latter to render decisions on signing the sector collective agreements.⁵³⁸

538 The analysis of the 2015 Progress Report conclusions by the 17th EU NC Working Group on Chapters 2 and 19 is available in Serbian at: <http://www.centaronline.org/sr/dogadjaj/11573/neznatan-napredak-u-oblastima-rada-zaposljavanja-i-socijalne-politike-u-godisnjem-izvestaju-evropske-komisije>.

Article 117 of the Act Amending the Labour Act⁵³⁹ repealed all collective agreements in force on the day this Act came into force as of 29 January 2015. By 25 February 2015, collective agreements were signed for public services (health, culture, education and social protection), the police, public companies and corporations founded by the Republic of Serbia.

13.5. 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 Act⁵⁴⁰ 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)).⁵⁴¹

The European Committee of Social Rights said in its January 2015 report that Serbia violated the right of workers and employers to collective action in cases of conflicts of interest, with respect to minimum services of public interest, because the law did not precisely define these services. Under Article 6 of the ESC, the state may prohibit the organisation of strikes only under conditions established by law.⁵⁴²

This issue is regulated to the even greater detriment of the workers in the latest draft law on strikes available in the public domain. The draft has never been submitted to parliament for adoption. The 2015 Progress Report notes that initial steps have been taken to revise the law on strikes. The 2014 Progress Report noted the need to adopt a law on strikes. The draft Strike Act, prepared back in 2011, was aligned with ILO Conventions in April 2014; although a public debate on it was organised in July 2013, it still has not entered the parliament pipeline.

Like in 2014, numerous strikes were organised in 2015, notably, by teachers, scientists, the police and former health workers. Workers of unsuccessfully privatised companies and companies undergoing restructuring staged strikes as well.

539 *Sl. glasnik RS*, 75/14.

540 *Sl. list SRJ* 29/96 and *Sl. glasnik RS*, 101/05 – other law and 103/12 – Constitutional Court Decision.

541 More on the right to strike in the *2011 Report*, I.4.17.4.3.

542 See: [http://hudoc.esc.coe.int/eng#{"ESCStateParty":\["SRB"\],"ESCDeIdentifier":\["2014/def/SRB/6/4/FR"\]}](http://hudoc.esc.coe.int/eng#{)

The workers of the three weapons factories, *Zastava oružje*, *Prvi partizan* in Užice, and *Sloboda* in Čačak, as well as the *Valjevo Krušik*, *Milan Blagojević* in Lučane and *Prva iskra* in Barič, went on strike, demanding that their wages be raised to the level they were at before the introduction of austerity measures, which affected around 80% of the workers in the weapons industry.⁵⁴³ Around 400 workers of the Rakovica motor factory IMR went on strike protesting against the bankruptcy of this company.⁵⁴⁴ Around two-thirds of the workers of the Užice company *Putevi* went on strike, demanding the payment of all the arrears although the trade unions did not support their strike.⁵⁴⁵ Some 30 former policemen protested in front of the Serbian Government building, because the MIA refused to reinstate them although the courts had acquitted them of criminal charges. The problem of dismissed policemen was recognised also by the Protector of Citizens in his 2014 Report.⁵⁴⁶

Like in 2014,⁵⁴⁷ the teachers' strike received the most public attention. After the Ministry of Education refused the mediation of the Republican Agency for the Peaceful Settlement of Labour Disputes, the trade unions adhered to their demand that talks should continue with the representative trade unions, as the legitimate partners representing the teachers and school staff. The teachers' January wages were reduced for the one day they did not hold any classes.⁵⁴⁸

The spring semester in Vojvodina began with shorter, 30-minute classes in 90% of the schools supporting the teachers' strike. The teachers continued demanding exemption from the wage cuts and calling for the introduction of pay grades in the public sector. The authorities also refused the teachers' demand that they be paid two 20,000 RSD bonuses to dampen the effects of the 10% wage cuts. After the talks failed, the trade union representatives demanded that they sign the same collective agreement as the one signed with the health workers.

As the strike continued in March, the Ministry of Education decided not to cover the Belgrade teachers' monthly public transportation passes. The Ministry issued a press release, in which it said that the wages of the teachers and members

543 "Salaries of 80% of Weapon Makers Cut", see the article in *Danas* of 8 September 2015, available in Serbian at http://www.danas.rs/danasrs/ekonomija/nize_zarade_za_80_odsto_oruzara_4.html?news_id=307602.

544 "IMR Workers Taking to the Streets", see the article in *Danas* of 28 May 2015, available in Serbian at: http://www.danas.rs/danasrs/ekonomija/radnici_imra_izlaze_na_ulice.4.html?news_id=302366.

545 "IMR Workers Demanding Payment of All Arrears", see the article in *Danas* of 8 May 2015, available in Serbian at: http://www.danas.rs/danasrs/ekonomija/strajk_dela_zaposlenih_u_preduzeću_putevi_uzice_4.html?news_id=301257.

546 "Courts Find Them Innocent, Police Consider Them Guilty", *Danas*, 20 May 2015, available in Serbian at: http://www.danas.rs/danasrs/drustvo/nevini_za_sud_krivi_za_policiju_55.html?news_id=301917.

547 More on the strike the teachers launched in 2014 in the *2014 Report*, III.14.5.

548 "Full Salaries for Workers on Strike", *Danas*, 6–7 January 2015, available in Serbian at: <http://www.naslovi.net/2015-01-06/danas/strajkacima-puna-plata/12948565>.

of the two trade unions that had not agreed to sign the agreement halting the strike would be lowered for the days they did not hold classes, specifying that this was the letter of the law, not a disciplinary measure imposed against workers violating work discipline.⁵⁴⁹

The Ministry of Education said that 10,000 school staff were redundant and that severance packages would be offered to those qualified as surplus by the schools. After two trade unions continued the strike, the authorities decided against transferring funds for wages to the schools, the principals of which had disregarded the Ministry order to cut the wages of teachers on strike.⁵⁵⁰

Apart from the 10% wage cuts under the austerity measures, the teachers' March salaries were reduced by another 2,000–2,500 RSD wherefore the salaries of primary and secondary school teachers fell under 30,000 RSD. The wages of 40,000 teachers were reduced in February.⁵⁵¹

The protest in Serbia's school ended on 24 April 2015 although most of the trade unions' demands remained unfulfilled. The teachers had to make up all the classes (around 160) they had not held if they wanted to be paid their entire wages. The trade unions and the Ministry ultimately signed an agreement on the friendly settlement of the disputed issues.⁵⁵²

Lack of social dialogue is apparently one of the chief reasons for strikes in Serbia, as the teachers' strike demonstrated: talks with the Government were slow, marked by continuous recriminations and the Government's lack of readiness to accept some reasonable suggestions made by the protesters.

14. Right to Social Security

14.1. General

Under Article 69 of the Constitution, citizens and families in need of welfare to overcome their social and existential difficulties and begin providing subsistence for themselves shall be entitled to social protection, the provision of which shall be based on the principles of social justice, humanity and respect for human dignity. In

549 "Neither Salaries, nor Classes", *Večernje novosti*, 24 March 2015, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:539902-Ni-plate-ni-casova-u-200-skola>.

550 "Minister Abolished Wages of Fiercest Teachers on Strike", *Blic*, 21 March 2015, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/544140/DRAKONSKE-KAZNE-Verbic-ukinuo-plate-najzescim-strajkacima>.

551 "Protest of 400 Teachers," *Blic*, 1 April 2015, available in Serbian at: <http://www.blic.rs/Vesti/Srbija/546964/U-Krusevcu-protestovalo-400-nastavnika-Direktori-im-smanjuju-plate-do-mini-malca>.

552 "Strike and Then Classes on Saturdays", *Večernje novosti*, 24 April 2015, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:545050-Strajk-pa-radne-subote>.

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.⁵⁵³

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.

Pension and disability insurance rights and health care are partly funded also from the budget. Most social benefits are secured at the national level. Spending on social protection and social security amounted to around 25% of the GDP in the past, with net pensions accounting for the greatest share – 13%.

Social insurance against old age and disability is regulated by the Pension and Disability Insurance Act⁵⁵⁴ and the Act on Voluntary Pension Funds and Pension Plans.⁵⁵⁵ Compulsory insurance encompasses all employees, individual entrepreneurs and farmers. This insurance ensures the rights of the insured persons in old age, or in the event of disability, death or corporal injury caused by a work-related accident or occupational disease.

The Pension and Disability Insurance Act was amended several times in the past few years. The retirement requirements are stricter and the pensionable age threshold will be progressively raised until 2023.⁵⁵⁶ The law now envisages payment of lower pensions to early retirees. The law also envisages the progressive raising of the full retirement age threshold for women to 65, to equate it with that of men.⁵⁵⁷ The law also provides for voluntary insurance for persons who are not covered by the compulsory insurance arrangements, in the manner prescribed by a separate law (Art. 16, Pension and Disability Insurance Act).

In its second report on Serbia, covering its 19 obligations under seven Articles of the European Social Charter, the European Committee of Social Rights concluded that it did not have enough information to assess the situation with respect to 12 obligations and found Serbia in violation of the ESC with respect to three of its

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

554 *Sl. glasnik RS*, 34/03, 64/04, 84/04, 85/05, 5/09, 107/09 and 101/10.

555 *Sl. glasnik RS*, 85/05 and 31/11.

556 More on the retirement requirements under the amendments is available in Serbian at the website of the Pension and Disability Insurance Fund <http://www.pio.rs/eng/>.

557 More on the full retirement age requirements in the *2014 Report*, III.15.1.

obligations. One of them regards the social security of the unemployed, with respect to which the European Committee held that the duration of the unemployment benefit was short. Serbia had not done anything in the past year to address this issue. The Committee also found Serbia in violation of the right to social and medical assistance and noted that the level of social assistance (of all kinds) was “manifestly inadequate”.⁵⁵⁸

14.2. Social Protection and Poverty Reduction

Reduction of extreme poverty and part of the social protection not covered by social insurance is realised in Serbia through social and child protection, governed by two laws: the Social Protection Act⁵⁵⁹ and the Act on Financial Support to Families with Children⁵⁶⁰. 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 to Families with Children governs the rights to financial aid to poor families with children (child benefits) and aid aimed at balancing work and parenthood and supporting childbearing (maternity and parental benefits).

The 2015 Progress Report⁵⁶¹ notes the adoption of the Second National Report on Social Inclusion and Poverty Reduction in October 2014⁵⁶² and the completion of the third wave of the Survey on Income and Living Conditions,⁵⁶³ which, in the view of the Report authors, provides an important source of indicators used at EU level to monitor poverty and social exclusion in light of the Europe 2020 strategy.⁵⁶⁴ The Progress Report notes the negative trend of the at-risk-of-poverty rate, which increased from 24.6% in 2013 to 25.6 % in 2014 and reiterates the conclusion in the 2014 Report that the availability and quality of community-based services across the country remains uneven.⁵⁶⁵ The Progress Report also notes that

558 See: [http://hudoc.esc.coe.int/eng#{"fulltext":\["Serbia"\],"sort":\["ESCStatePartyOrder Ascending"\],"ESCStateParty":\["SRB"\]}](http://hudoc.esc.coe.int/eng#{).

559 *Sl. glasnik RS*, 24/11.

560 *Sl. glasnik RS*, 16/02, 115/05 and 107/09.

561 See: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

562 See: <http://sociojalnoukljucivanje.gov.rs/wp-content/uploads/2015/10/Poverty-in-Serbia-2014..pdf>.

563 Income and Living Conditions in Serbia in 2014, see: <http://silk.stat.rs/Documents/Income%20and%20Living%20Conditions%202013.pdf>.

564 See: http://ec.europa.eu/europe2020/index_en.htm.

565 See: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf.

the provision of social services is additionally compromised by the lack of implementing regulations and ineffective distribution of budget funds and concludes that better enforcement of the regulatory framework is necessary.

A number of members of the National Convention on the European Union 17th Working Group took part in the consultations between the relevant ministry and the civil society organisations on the amendments to the Social Protection Act⁵⁶⁶. They, *inter alia*, suggested that: the enforcement of the Social Protection Act be ensured at the local level and that stricter obligations be imposed on the representatives of the local self-governments to address the uneven practices; that the services rendered by the CSOs and the social welfare centres be clearly distinguished and that advantage be given to specialised CSOs. If taken on board, these suggestions will directly improve the availability and quality of services at the local level.

Polemics between the Ministry of Labour, Employment and Veteran and Social Affairs and CSOs, which had regularly been granted funding for extending social protection services in the past, continued in 2015. Namely, the CSOs alerted to the numerous irregularities and lack of transparency in the selection of CSOs that applied with their social protection service projects in response to an open call for proposals worth 1.8 million EUR in December 2014. Sixty-one of the 122 successful applicant organisations were established in 2014, 31 of them a month before the call was published, although submission of the annual statement of accounts for the previous year had been one of the requirements the applicants had to fulfil. As many as three of the CSOs were officially established after the application deadline expired and 70% of them are not even dealing with social protection. The Minister tried to alleviate the scandal by diverting the funds to the Fund for the Medical Treatment of Children with Rare Diseases. Protector of Citizens Saša Janković issued a press release highlighting that it was the state's obligation to render social protection services and that the purpose of funding allocated for the socially vulnerable could not be changed arbitrarily.⁵⁶⁷

The Ministry of Labour, Employment and Veteran and Social Affairs never published the final list of CSOs granted funding under the latest call. Only the preliminary list is available on the website, but the criteria against which the successful applicants were selected remain unknown.

Such calls are perceived as an alternative way of channelling additional local government funding to political parties, through associations established on behalf of individuals, such as e.g. the local party leaders or chairmen of the parties' local social protection committees. This is why the establishment of such organisations has been perceived as one of the most frequent forms of corruption at the local level. In Novi Sad, for instance, seven associations have been registered at the same address; some of them have identical Articles of Association.

566 See the report available in Serbian at: <http://vesti.krstarica.com/drustvo/vulin-uskoro-izmene-zakona-o-socijalnoj-zastiti/>.

567 See the RTV report available in Serbian at: http://www.rtv.rs/sr_lat/politika/ponisteni-konkurs-za-nvo-kod-revizora_542692.html.

No steps were taken to amend or repeal the Decree on the Social Inclusion Measures for Welfare Beneficiaries⁵⁶⁸ that met with sharp criticism when it was adopted in 2014.⁵⁶⁹ Social inclusion is a process facilitating the inclusion of poor, discriminated and all other disadvantaged groups in the economic, cultural, political and social life of the community. Under this Decree, social welfare centres shall conclude agreements with welfare beneficiaries, under which the social welfare 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". These obligations may vary and the Decree does not define them precisely. The thorough definition of obligations regarding education, employment and medical treatment is left to the educational institutions, the NES and the outpatient health clinics. The only agreement obligation defined in the Decree is the one on community service, volunteering and public works to be performed by welfare beneficiaries, while the specific duties are to be determined by the local self-governments in accordance with the guidelines they receive from the social welfare centres.

Welfare beneficiaries in Serbia are individuals whose income from work, rent of property or other sources is lower than the amount of welfare laid down in the law. This amount initially stood at around 6,400 RSD and is aligned with the consumer price index twice a year, while the beneficiaries' family members are entitled to a half or a third of the amount. People who have the capacity to work but fall in the category of extremely low income earners need to fulfil additional requirements to qualify for welfare: they must be attending a school or job skills training or be registered as unemployed; they are looking after a child with developmental difficulties wherefore they cannot work; those who refused any offers of full-time, temporary, part-time or seasonal jobs or vocational training, requalification, additional qualification or primary education and terminated their employment of their own free will, with their consent or through their own fault because they committed a disciplinary or criminal offence are ineligible to apply.

These special eligibility requirements have practically excluded all those who have the capacity to work from the financial support system. Those who are still eligible are either still in school or supporting a child with developmental difficulties or are, or are actively, albeit unsuccessfully, looking for a job. The welfare system provides the last category of beneficiaries with the possibility of surviving until they find a job.⁵⁷⁰

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

568 *Sl. glasnik RS*, 112/14. More is available in Serbian at: <http://www.minrzs.gov.rs/cir/aktuelno/item/1319-uredba-o-merama-socijalne-ukljucenosti-korisnika-novcane-pomoci>.

569 More in the *2014 Report*, III.15.

570 See the paper by Sofija Mandić, available in Serbian at <http://pescanik.net/rad-oslobada/>.

the Decree regarding the obligations to undergo medical treatment or engage in community service with a view to activating the beneficiaries to overcome their economic difficulties. In his reasoning, the Protector of Citizens said that the mandatory medical treatment obligation was in contravention of the constitutionally guaranteed right of people to freely decide on anything regarding their lives or health and their right not to be subjected to medical treatment against their own will. The Protector of Citizens held that volunteering, by its legal nature, was in contravention of social inclusion measures, as it entailed work for which the volunteers were not remunerated, wherefore it did not help improve their financial situation. Furthermore, welfare beneficiaries are precluded from looking for a job and earning an income during the time they have to spend volunteering.⁵⁷¹

The Protector of Citizens also asked the Court to review the constitutionality of the provisions on the reduction of welfare and revocation of the right to welfare in case the beneficiaries breached the individual activation enactments, i.e. the agreements between the social welfare centres and beneficiaries, which may stipulate mandatory treatment and volunteering. He qualified them as compulsion and the introduction of new welfare eligibility requirements, which, in his view, was not only anti-constitutional, but also in contravention of the principle on the hierarchy of regulations, because the Decree laid down additional welfare eligibility requirements not prescribed by the Social Protection Act, as well the principle under which fundamental human rights may be regulated only by primary legislation, not by subsidiary legislation. Furthermore "... community service is not defined either in conceptual or substantive terms: nor is the period of time during which beneficiaries may be engaged in such work limited, thus giving rise to grave legal insecurity and opening room for abuse of socially destitute citizens".⁵⁷²

The Constitutional Court did not state its view on the motion to review the constitutionality of the Decree by the end of 2015. Little is publicly known about the ways in which the disputed Decree is implemented, although some civic associations have heard about some practices and that most of the beneficiaries had accepted the work they were offered because it was not very time-consuming.⁵⁷³

The Social Protection Act provides for the introduction of a social protection chamber, licensing of professionals and service providers, introduction of the public procurement of services, redesign of the oversight, supervision and inspection mechanisms.⁵⁷⁴

571 The entire explanatory note is available in Serbian at <http://www.paragraf.rs/dnevne-vesti/021214/021214-vest1.html>.

572 *Ibid.*

573 The analysis of the 2015 Progress Report conclusions by the 17th EU NC Working Group on Chapters 2 and 19 is available in Serbian at: <http://www.centaronline.org/sr/dogadjaj/11573/neznatan-napredak-u-oblastima-rada-zaposljavanja-i-socijalne-politike-u-godisnjem-izvestaju-evropske-komisije>.

574 More in the *2014 Report*, III.15.2.

14.3. Protection Accorded to Family

Apart from the ICESCR, Serbia is a signatory of the Convention on the Rights of the Child, the Optional Protocol to the Convention on Sale of Children, Child Prostitution and Pornography, and the ILO Conventions on Maternity 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).

The Republic of Serbia is already violating Article 6(3) of ILO Convention No 183 on Protection of Maternity, which explicitly lays down that the amount of cash benefits based on previous earnings and paid with respect to maternity leave, child care leave and special child care leave shall not be less than two-thirds of the woman's previous earnings. In Serbia, women on maternity leave, who have been employed less than three months, receive benefits amounting to only 30% of that amount (while women employed between three and six months receive benefits amounting to 60% of their earnings, and only women employed over six months receive cash benefits amounting to 100% of their earnings while they are on maternity, child care or special child care leave).

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.

The Labour Act does not afford special protection to employed women, except in case of pregnancy, which is in conformity with European trends to equate treatment of men and women at work, although Serbia did not denounce the relevant ILO conventions.⁵⁷⁵

575 Namely, all EU member states apart from Slovenia have denounced Convention 89 Concerning Night Work of Women Employed in Industry at ECtHR's indirect suggestion (see: *Stoeckel*

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 handicapped child may work overtime or at night only if they submit a written request to this effect (Art. 68, Labour Act).

If the condition of a child requires special care or if it suffers from a severe disability, one of the parents has the right to additional leave. One of the parents may choose between leave and working only half-time, for 5 years maximum (Art. 96, Labour Act). Under the Labour Act, one parent may take leave from work until the child's third birthday and his labour rights and duties will remain dormant during this period (Art. 100 (2), Labour Act).

The initiative of 60,000 citizens to help parents of sick children by paying their pensionable service during the time they spent caring for their children has been pending for two years now. There are many ill children who cannot feed or clothe themselves, or go to the bathroom by themselves. Both or one of their parents, usually the mothers, care for them round the clock and therefore cannot find a job to earn their pensions. As opposed to some Western countries, Serbia has not shown much understanding for these parents and does not pay them pensionable service for the years they spend looking after their children.⁵⁷⁶

Pursuant to his constitutional powers, the Protector of Citizens submitted draft amendments to two laws, the Labour Act and the Act on Financial Support to Families with Children, with a view to improving the status of families with children with disabilities and enabling them to live easier and better quality lives. Under the proposed amendments employed parents of children with disabilities or suffering from rare or grave diseases would be entitled to shorter working hours regardless of their children's age if so warranted by the children's health, unemployed parents of such children would be entitled to child care benefits, and parents eligible to work shorter working hours would be entitled to remuneration equalling the average monthly wage, in accordance with the other provisions in the law.

The Protector of Citizens filed another initiative to amend the Act on Financial Support to Families with Children, which now lays down that "mothers shall be entitled to parental benefits for their first, second, third and fourth children provided they are nationals of the Republic of Serbia, have residence in the Republic of Serbia and exercise the right to health care via the Republican Health Insurance Fund (hereinafter: RHIF)". A child's father may exercise this right exceptionally "in

C-345/89 and *Levy* C-158/91). Some European states denounced Convention 45 on hiring women to work underground in mines of all categories (UK, The Netherlands, Finland, Sweden, Ireland and Luxembourg) while Denmark, Norway, Latvia, Lithuania and Cyprus never signed it.

576 "Vulin Doesn't Want to Support Mothers of Sick Children", *Blic*, 12 March 2015, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/541654/Vulin-nece-da-podrzi-majke-bolesne-dece>.

the event the child's mother is not alive, abandoned the child or is prevented from directly caring for the child for objective reasons".

Under the Act on Financial Support to Families with Children, "the right to a child benefit shall be exercised by the parent directly caring for the child, provided he is a national of the Republic of Serbia, has residence in the Republic of Serbia and exercises the right to health care via the RHIF, for the first four children born into the family". Aliens may exercise this right if "they work in the territory of the Republic of Serbia, if so provided for in an international agreement". The right to child benefits may be exercised on condition the family's total monthly income does not exceed a specific threshold.

The Act recognises the right to child benefits to children regularly attending school or, exceptionally, until they turn 26 if they are categorised as children with disabilities. The Act raised the threshold for the right to child benefits in case of families with children categorised as children with disabilities.⁵⁷⁷

Only 15% of the population in Serbia at risk of poverty exercises its right to welfare. The data on the number of both the individuals and the children in the poorest quintile by consumption, who exercise the right to welfare and child benefits, indicate the need to expand the coverage of the vulnerable by these cash benefits.⁵⁷⁸ Such coverage may be expanded by increasing the income threshold, as well as by relaxing the property and other eligibility requirements (such as, e.g. the child benefits scheme requirement that the parents must have health insurance).⁵⁷⁹

15. Right to Education

15.1. General

Under the Constitution, everyone shall have the right to education. Article 71 sets out that primary and secondary education shall be free of charge. In addition, primary education shall be mandatory. Under the Constitution, all citizens shall have equal access to tertiary education; the state shall provide free tertiary education to successful and talented students, who are unable to pay the tuition, in accordance with the law.

577 The explanatory note to the initiative is available in Serbian at: <http://roditeljsrbija.com/roditeljski-i-deciji-dodatak-izmene-zakona/4/>

578 See: http://www.unicef.rs/files/novčana_davanja_za_decu_i_porodice_sa_decom_u_rs.pdf.

579 See the final draft of the Employment and Social Reform Programme in the EU Accession Process, available in Serbian at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3313-program-reformi-politike-zaposljavanja-i-socijalne-politike-u-procesu-pristupanja-evropskoj-uniji-petinaert-%E2%80%93>

In mid-2012, the Government of the Republic of Serbia adopted the Education Development Strategy until 2020⁵⁸⁰. 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 2014 either, wherefore education on the rights of the child is still not available to all children.⁵⁸¹

In its 2015 Progress Report,⁵⁸² the European Commission said that Serbia was at a good level of preparation in the area of education and culture and that some progress was made with the adoption of an action plan for the implementation of the education strategy, but that, in the coming year, it should, in particular, start preparations for establishment of a national Erasmus+ agency and implement the action plan with education reforms according to schedule. The EC noted that, as per education, training and youth, Serbia continued to participate successfully in Erasmus+ but that preparations for the opening of a national agency, needed for full participation in Erasmus+, have not begun yet. The EC noted that Serbia adopted an action plan for the new education strategy in January 2015.

The Action Plan for the Implementation of the Anti-Corruption Strategy recognises the need to change the legal framework for the appointment, status and powers of primary and secondary school principals and college deans. It sets out the following steps: the analysis of the laws in terms of corruption risks and introduction into the Education System Act and the Higher Education Act the legal obligation to appoint and periodically evaluate the work and performance of school principals, college deans and teaching staff in all educational institutions pursuant to objective, clear, precise and predetermined criteria. The Action Plan particularly notes that the laws should include provisions that will, *inter alia*, limit the discretionary powers of the principals, deans and teaching staff and that their discretionary decisions must be reasoned and transparent.

The EC noted that additional investment (human and infrastructure) in education should target pre-school and basic education levels. It said that preschool education benefitted about 50% of children under 6 years whereas the EU target for 2020 was 95%. It said that Serbia, at 8.7%, has already met the EU 2020 target on early school leavers (<10%), but that the reforms for the training of primary

580 *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 dropping out, defines the education policy reflecting the labour market demands and envisages comprehensive support for inclusive education and inclusion of children from marginalised groups.

581 More in the *2014 Report*, III.16.16.1.

582 See: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

and secondary school teachers should be stepped up and focused on student-centred teaching, developing basic and transversal skills in students.⁵⁸³

The EC noted that Serbia ranked 43 out of 65 in the 2012 PISA evaluation and said that some progress has been achieved in reforming the vocational education and training system to better meet the needs of the labour market, but that the National Qualifications Framework needed to be finalised and cross-referenced with the European Qualifications Framework and that the ongoing reform of higher education needed to put particular emphasis on the relevance of its study programmes, as the unemployment rate for graduates with tertiary education (aged 19–24) stood at 40% and emigration of young and skilled people was high. The EC said that the lack of an efficient system for the recognition of foreign diplomas continued to be a serious impediment to the graduates' further study and employment. A new strategy on youth 2015–2025 and action plan were adopted in February. The EC also noted that Serbia contributed to the new EU Youth report and participated very actively in the Erasmus+ Youth in Action strand.

The document entitled National Qualifications Framework in Serbia, covering the national qualifications system levels I–V, was prepared in 2015. The national qualifications framework for higher education has already been adopted. This document, dealing with primary and secondary education, has been endorsed by the national Education Improvement Institute. However, the Working Group that drafted the NQFS for levels I–V recommended the establishment of a single-integrated national qualifications framework in Serbia which would include all levels and types of qualifications, regardless of the way they are acquired (through formal or non-formal education, i.e. informal learning – life or work experience) or at what age (youth or adults). This would facilitate the integration and coordination of the existing qualifications systems in Serbia (e.g. higher education qualifications system, secondary vocational education qualifications system and other systems). In the view of the Working Group, such an approach would give the name of National Qualifications Framework in Serbia (NQFS) its true meaning.⁵⁸⁴ A law on the NQF was to have been adopted by the end of 2015 and implemented as of 2016.⁵⁸⁵

The education system in Serbia mostly boils down to formal education at the moment, while informal education and lifelong learning, despite the praiseworthy initiatives launched by the Ministry of Youth and Sports, are still insufficiently recognised or applied as an instrument for the development of human capital and skills. The development of a comprehensive vocational orientation, career counselling and guidance system is still at an early stage (the system has so far been established only in primary schools within the National Employment Service).

583 *Ibid.*

584 See: <http://www.zuov.gov.rs/wp-content/uploads/2014/02/NQFS.pdf>.

585 See: http://www.bfpe.org/en/wp-content/uploads/sites/2/2015/09/Law-on-NQFS-reaches-the-Assembly-by-the-end-of-the-year_FINAL.pdf

Education at all levels mostly concentrates on the transfer of academic knowledge and devotes hardly any attention to critical thinking. Quite a few young graduates lack developed competences on which their participation in society and the labour market, as well as in continuous lifelong learning activities, depends. The depopulation trend has hit the education system as well – the number of pupils has been declining at a rate of 2% per annum. The number of teachers, on the other hand, has been growing, undermining the efficiency of the education system. The Education Minister said 10,000 redundant teachers would be laid off.⁵⁸⁶

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.⁵⁸⁷ Enrolment in secondary and tertiary schools is based only on academic achievement during prior schooling, and the graduation and admission test results. Academic achievement is also the main criterion for awarding financial aid to pupils and students.

The percent of men and women with higher or university education is almost the same (around 16%), but there are more women than men that have not completed primary school or have no more than primary education (39% v. 29%). The educational levels of various ethnic communities are extremely divergent as well – e.g. 87% of the Roma population have incomplete primary education or only primary education and less than 1% have completed higher education. The educational breakdown of persons with disabilities is also unfavourable: 52.7% of them over 15 years of age have not completed primary school or have no more than primary education and only 6.5% have completed higher education.⁵⁸⁸

15.2. Education Law and Its Implementation in Practice

The amendments to the Education System Act adopted in late July 2015⁵⁸⁹ align this Act with the Strategy and the circumstances in the countries around Serbia, especially in the EU, which clearly demonstrate that Serbia is in need of a quality education system that will ensure the increase in the education levels of the population and the development of Serbia as a knowledge-based society, as well as improve the employment rates. The explanatory note to the amendments states that they are to be adopted, *inter alia*, to provide children, pupils and adults with dis-

586 See the report in Serbian available at <http://www.opozicionar.com/verbic-najavljuje-otpustanja-u-prosveti-10-000-zaposlenih-je-visak/>.

587 Affirmative measures have been introduced for pupils and students belonging to the Roma national minority and those with disabilities.

588 According to the 2011 Census, see: <http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Skolska%20sprema,%20pismenost%20i%20kompjuterska%20pismenost-Educational%20attainment,%20literacy%20and%20computer%20literacy%20.pdf>

589 *Sl. glasnik RS*, 72/09, 52/11, 55/13, 35/15 – authentic interpretation and 68/15.

abilities, regardless of their financial status, with the possibility to access all levels of education. It also highlights the need to reduce the rate of early school leavers, especially among vulnerable categories of the population and those living in under-developed areas, persons with disabilities and other persons with specific learning difficulties.

The adopted amendments envisage the establishment of an Education Agency that will monitor the fulfilment of the general principles and goals and the achievement of the strategic education development and overall improvement objectives. This Agency, to be established by the Government, should organise and conduct surveys on the attainment of general education outcomes and standards and on achievements at all education levels, and take part in international research, launch initiatives aimed at the development and improvement of the education system at the national level, propose and prepare development programmes and ensure the conformity of Serbia's education system with the educational and overall development policies in the neighbourhood. The enactment on the establishment of the Agency is to be adopted within two years from the day the amendments come into effect and the Agency shall become operational on 1 January 2016, to put in place the legal and financial prerequisites for its work (Art. 10 of the Act Amending the Education System Act).

Article 27 of the Act on the types of educational establishments has also been amended and now both the so-called special schools for children with disabilities and the mainstream schools that have pupils with disabilities are entitled to extend additional educational support to such pupils. This provision will improve the efficiency of inclusive education and allow for the provision of expert assistance to teachers and other professionals working with children and adults with disabilities. The amendments envisage the determination of new criteria for the extension of additional education support by the Education Minister. The criteria on the harmonisation of the secondary school network are to be aligned with the Strategy, envisaging an analysis of the network of secondary schools and the development of a programme for reforming specific vocational secondary schools and high schools and the establishment of a new network in accordance with the economic needs and demographic trends in the region and local communities. The final provisions of the Act set a one-year deadline for the adoption of the Government decree and another one-year deadline for the development a new school network.

The Education System Act now includes a provision allowing for deferred enrolment of first graders. Experience has demonstrated the need to postpone the enrolment of children due to start first grade in exceptional circumstances, above all when such delays are in the interest of the children. This in no way undermines the inclusiveness of the education system, but, rather, tailors it to the children's specific needs to a greater extent.

Article 100 of the Act has been aligned with the Council Directive 77/486/EC of 25 July 1997 on the education of the children of migrant workers and the obligation of the host state to provide them with assistance in learning the official

language spoken in that country to ensure their access to the education system as soon as possible. The prior term “children and pupils of European countries” had excluded migrants, children of non-European foreign nationals. Under the amended paragraph 2 of this Article, schools are under the obligation to organise language and/or preparatory and catch-up tuition, pursuant to instructions issued by the Education Minister, for refugees and displaced persons and children and pupils returned under readmission agreements, who do not know the language of instruction or need to master specific parts of the curricula in order to continue their education.

Paragraph 2 of Article 144 of the Act was deleted to align this law with the Labour Act⁵⁹⁰ and teaching staff shall now retire under the same conditions as others. The explanatory note to the Act Amending the Education System Act called for the urgent adoption of this law to pre-empt the negative consequences of the deleted paragraph, under which teaching staff had to retire after forty years of service whether or not they fulfilled the pensionable age requirement.

The new Textbook Act was adopted on 31 July 2015⁵⁹¹, with a view to providing quality textbooks at affordable prices that will be accessible to all pupils. The new Act specifies that the Minister shall set the maximum price of the textbooks and envisages the adoption of a new plan of textbooks. The number of textbook publishers has not been reduced and no-one is prevented from publishing textbooks. The Anti-Corruption Agency and other independent experts had been warning that the insufficient transparency in the selection of and decisions on which textbooks would be used was the main cause of corruption.

The Textbook Act makes a step towards electronic textbooks, by providing for the publication of electronic supplements to textbooks, especially those used in vocational secondary schools, which need to be updated frequently. Under the Act, the state textbooks publisher is under the obligation to prepare all textbooks in national minority languages and for children with disabilities, but will not have a monopoly in publishing them; public calls will be issued inviting bids from all companies interested in publishing these textbooks. Each publisher is under the obligation to pay 2% of their annual turnover into the Fund for Textbooks in National Minority Languages and for Children with Disabilities and to deposit a 10 million RSD promissory note as a guarantee.

The Act also prohibits the imposition of textbooks without the parents’ full consent and allows for the more equitable distribution of textbooks free of charge and textbook loans.

The Preschool Education Act⁵⁹² gives priority to enrolment of children from vulnerable groups and provides for the implementation of separate, specialised and alternative programmes.

590 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

591 *Sl. glasnik RS*, 68/15.

592 *Sl. glasnik RS*, 18/10.

Media reported in 2014 that some local self-governments set much higher kindergarten rates than the ones laid down in the law. Under the new Kindergarten Rates Rulebook, which came into force on 1 January 2015, the parents are charged up to 20% of the full kindergarten price of kindergarten (maximum 6,000 of 27,700 RSD). All local self-governments were under the obligation to bring their kindergarten rates into conformity with this by-law and abide by the Education System Act and limit the parents' fees to maximum 20% of the full price of kindergarten.

Kindergarten is free for the following categories: children whose parents are on welfare, children left without parental custody and children with disabilities. Their kindergarten costs are fully subsidised by the local self-governments, as are those of the third and subsequent children in a family. The lower rates granted single parents and for the second children in families have been abolished. Parents granted lower rates will continue paying them as long as the rulings on their lowered rates are valid, maximum one year. Belgrade parents, whose children attend private kindergartens that cost 27,700 RSD (like the state kindergartens) also pay 20%, i.e. 5,540 RSD a month and the rest is subsidised by the city. Parents of children attending more expensive private kindergartens, will have to cover the difference themselves.

15.3. Higher Education

The Constitution of Serbia explicitly guarantees the autonomy of the universities, colleges and scientific institutions (Art. 72). Under paragraph 2 of the Article, they shall decide freely on their organisation and work in accordance with the law. Article 73 of the Constitution also guarantees the freedom of scientific and artistic creation.

This area is regulated by the Higher Education Act.⁵⁹³ In its introductory provisions, the Act says that higher education is of special relevance to the Republic of Serbia and part of international, notably European education, science and arts (Art. 2). Higher education is based, *inter alia*, on the principles of academic freedoms, autonomy, respect for human rights and civil liberties, including prohibition of all forms of discrimination, participation of students in management and decision making, especially on issues of relevance to quality of instruction (Art. 4).

The Serbian National Assembly adopted amendments to the Higher Education Act in July 2015.⁵⁹⁴ Article 90 of the law now includes a provision under which tertiary institutions will themselves determine the number of exam terms and their schedules in their statutes. Article 124 of the Higher Education Act now ex-

593 *Sl. glasnik RS*, 76/05, 100/07 – authentic interpretation, 97/08, 44/10, 93/12, 89/13, 99/14, 68/15 – authentic interpretation and 68/15.

594 *Sl. glasnik RS*, 68/15. The 2014 amendments were much more relevant in terms of the changes they introduced. See the *2014 Report*, 16.3.

tends state funding of tuition for one year maximum after the expiry of the regular duration of studies also to students who enrolled in college in 2012.

In July 2015, the National Assembly debated the amendments proposed by the opposition parties in September 2014 in reaction to the increasing number of plagiarised PhD theses⁵⁹⁵. The amendments aim at introducing the institute of an honour code in the Higher Education Act.⁵⁹⁶ Unfortunately, these amendments were not voted in, as only 19 of the 152 deputies in the Assembly voted for it, although the European Parliament had 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.

16. Health Care

16.1. General

The right to physical and mental health is guaranteed by the Article 12 of the ICESCR.⁵⁹⁷

The right to health care is guaranteed by the Constitution, which 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 compulsory health insurance. The Constitution obliges the state to assist the development of health and physical culture. It also obliges the state to establish health insurance funds.

The compulsory and voluntary health insurance is regulated by the Health Insurance Act.⁵⁹⁸ The Republican Health Insurance Fund (hereinafter: RHIF) is charged with managing and ensuring compulsory health insurance, while voluntary health insurance may be provided by private insurance and special health insurance investment funds the organisation and activities are to be regulated by a separate law.

The Health Care Act⁵⁹⁹ stipulates that health care comprises curative, preventive, and rehabilitative care. It is funded from the health insurance funds, the state budget and by beneficiaries in cases specified by the law (participation). Health care may be fully covered from insurance funds or with the participation of the

595 More on plagiarised PhD theses in the *2014 Report*, III.16.3.

596 The proposed amendments are available in Serbian at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/3048-14Lat.pdf.

597 More on the standard see in General Comment No. 14, UN doc. E/C 12/2000/4.

598 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – Constitutional Court decision, 119/12, 99/14, 123/14 and 126/14 – Constitutional Court decision.

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

insured person. The Act enumerates all the cases in which the insured person must participate in the medical costs and sets the amounts in percentages (Art. 45, Health Insurance Act). Specific categories are exempted from paying the participation (war military and civilian invalids, other persons with disabilities, blood donors, et al).

Serbia's health care system formally follows the Bismarck mandatory health insurance model and its main goal is to achieve the highest possible level of preservation of health of citizens and families by implementing measures for the preservation and promotion of health, the prevention and early diagnosis of illnesses and injuries, and timely and efficient treatment and rehabilitation.

Health care is extended in Serbia at the primary, secondary and tertiary levels through a developed network of health establishments operating at all three levels. Some primary health care institutions (health stations and doctor's offices) in rural parts of Serbia struck by depopulation and rural-urban migration have been closed, hindering access of the remaining mostly elderly population to health care services. Less than a quarter of Serbia's health care staff have university degrees; 7% of them have junior college degrees and 43.7% secondary education. Serbia's health institutions employ also 24.5% non-medical staff. Their share of total staff is higher than in other European countries.

In its 2015 Progress Report, the European Commission noted that the newly-established e-Health unit within the Ministry of Health was not operational yet and that the EU-funded centralised electronic health record system was not yet fully integrated. The EC said that the poor financial situation of the public health fund put the sustainability of the sector in question and that shortages of medical and administrative staff in primary healthcare centres posed difficulties, especially in rural areas. The Report noted the need for greater human resource management and organisational capacity, and for the implementation of a national plan for human resources in the health sector, as well as for the development of new programmes of specialisation and professional development. The European Commission also said that no progress has been made in the preparation of a new strategy on tobacco control.

As per communicable diseases, the European Commission noted that surveillance and response capacity remained limited and required modernisation and that further alignment of the national legislation with the *acquis* was required. The Report said that a centralised health information and communication system had to be developed and that more attention needed to be paid to the effective, sustainable financing of disease-specific strategies, including the national HIV/AIDS strategy and awareness-raising, notably on the importance of child vaccination. The European Commission also noted the need for additional work, in particular on surveillance of antimicrobial resistance and inter-sectoral cooperation.

With regard to blood, tissue, cells and organs, the European Commission noted that alignment with the *acquis* and development of administrative capacity were still at an early stage. It said that the administrative and technical capacity of the

Directorate for Biomedicine needed strengthening and that a legislative framework outlining its competences and responsibilities in terms of oversight of the sector needed to be established. The Report said that, overall, EU based quality and safety standards and proper inspection services of the sector needed to be developed. The authors of the Report noted the adoption of a number of rulebooks in the field of pharmaceuticals, in particular the rulebook on conditions for importing medical products and devices lacking marketing authorisation. They noted that community-based mental health services still needed to be developed and that the Government office for the fight against drugs was not yet operational.

The Progress Report said that the Government adopted the strategy for drug abuse suppression (2014–2021) and an action plan (2014–2017) in December 2014 and that the Law on the Prevention and Diagnosis of Genetic Diseases, Genetic Anomalies and Rare Diseases was adopted in January but that continued efforts were needed to facilitate implementation.⁶⁰⁰

16.2. Availability of Health Care

Lack of access to health care can be attributed both to legislative deficiencies and the enforcement of the regulations. Diverse interpretations of the norms result in the violations of the rights of the patients who are prevented from accessing health services.

Many workers are unable to exercise their rights to health care and health insurance because their employers have not been paying their health contributions. One out of five residents of Serbia have mandatory health insurance pursuant to Article 22 of the Mandatory Social Insurance Act. RIHF records show that 1,317,482 people fulfil the requirements in Article 22 for the validation of their health cards – they are, notably, people who do not exercise their health insurance rights on grounds of employment, retirement, performance of independent services or engagement in agricultural activities and belong to the group of the population exposed to a greater likelihood of falling ill or socially vulnerable groups. The mandatory social insurance contributions for them are funded from the state budget. These funds are quite below the level laid down in the law governing mandatory social insurance contributions.⁶⁰¹ People over 65 in rural areas, Roma, persons with disabilities, refugees and internally displaced persons are particularly vulnerable.

The elderly in rural areas face multiple vulnerability risks (age, poverty, exclusion), resulting in their difficult access to health services – health stations and doctor's offices in remote areas have been closed due to depopulation and rural-urban migration and domiciliary care and assistance services cannot be formed due

600 See: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

601 The RIHF 2014 Annual Report is available in Serbian at: http://www.rfzo.rs/download/informator/informator_o_radu_112015.pdf.

to the small number of residents. Integrated services are being developed at the local level; they include the assistance of caregivers for the elderly, palliative care and treatment of the terminally ill. Serbia's hospital geriatric wards and institutions lack capacity to care for these people.

The Roma are also a vulnerable category, due to poverty, unemployment, low education levels, limited access to information, at-risk behaviour, exclusion and problems in exercising their fundamental civil and other rights, including to health care. Roma avail themselves of preventive services to a lesser extent than the majority population in Serbia. They are less familiar with the rules of using health services. Roma women of reproductive age visit their gynaecologists less often and are usually given advice they have trouble understanding. This is why Roma Health Mediators were introduced in 2009, pursuant to the 2009–2014 Roma Health Care Action Plan. The Health Mediators have helped some Roma obtain their personal documents. Coverage of Roma children and adults by vaccination, regular comprehensive check-ups and early diagnosis has also improved.⁶⁰²

According to the results of the Multiple Indicator Cluster Survey of Roma Settlements in Serbia, the mortality rate of Roma infants and children under five has fallen, the registration of Roma infants in the birth records has increased, and coverage by professional assistance at childbirth and pre-natal health care of the Roma and non-Roma population is almost the same.⁶⁰³

The Serbian Government in 2014 adopted a decision establishing a Budget Fund for the treatment of diseases, conditions or injuries that cannot be successfully treated in the Republic of Serbia, with a view to enabling Serbia's citizens to avail themselves of medical treatment abroad in the event it is unavailable in Serbia. Its potential beneficiaries have, however, faced problems in exercising the rights they are guaranteed as soon as the enforcement of this praiseworthy decision began.⁶⁰⁴

Lack of staff in the medical institutions also undermines access to health care. Serbia has 310 doctors per 100,000 residents, which is below the regional and EU average. Coverage of the population by medical staff is even lower – it stands at 632 per 100,000 residents (as opposed to an average of 836 per 100,000 residents in the EU). The age breakdown of the health care staff is concerning. Some outpatient health clinics do not have any doctors under 50. The situation in the hospitals and clinics is even worse, as doctors need to complete years of additional training after Medical School to earn specialist degrees. Twenty-eight percent of all doctors with specialist degrees are over 55 years of age. On the other hand, over 2000 doctors, 80 doctors with specialist degrees and over 13,000 nurses and medical technicians

602 An overview of the 2009–2014 work of the Roma Health Mediators is available in Serbian at: <http://www.zdravlje.gov.rs/showpage.php?id=73>.

603 See the UNICEF Multiple Indicator Cluster Survey, Serbia Roma Settlements 2014, available at: http://www.unicef.org/serbia/MICS5_2014_SERBIA_Key_Findings_and_Roma_Settlements.pdf.

604 More in the *2014 Report*, III.17.2.

are registered as unemployed with the National Employment Service.⁶⁰⁵ Although, according to World Bank experts, Serbia needs to enrol around 500 medical school students a year to fill in for the natural outflow of doctors, the five Serbian medical schools enrol nearly four times as many.⁶⁰⁶

The ban on hiring new staff has undercut the efficient rendering of health services. Health institutions have been unable to hire new doctors to replace those going into retirement although their personnel plans envisaged such positions. On the other hand, the health care system has a surplus of administrative and technical staff.⁶⁰⁷ Hence the fears that the coverage of Serbia's entire population by medical staff will be jeopardised.

According to the Euro Health Consumer Index for 2014 (EHCI 2014), the Republic of Serbia scored 33rd place with 473 points.⁶⁰⁸

605 See the *Danas* article, available in Serbian at: http://www.danas.rs/danasrs/drustvo/veci_broj_specijalista_tek_za_pet_godina.55.html?news_id=293943.

606 Cochrane D., Conroy M., Kampton G., Blair G., *Republic of Serbia Human Resource Strategy 2010*, (Ministry of Health and World Bank Health project).

607 *Ibid.*

608 http://www.healthpowerhouse.com/files/EHCI_2014/EHCI_2014_report.pdf.

III HIGHLIGHTS

1. Refugee Crisis in Serbia in 2015

1.1. Overview of the 2015 Developments

The number of people expressing the intent to seek asylum in Serbia started growing in May 2015. Their number stood at 13,148 in first four months of the year and then started soaring: 9,034 in May, 15,209 in June, 29,037 in July, 37,463 in August, 51,048 in September, 180,307 in October, 149,923 in November and 92,826 in December, i.e. 577,995 people expressed the intent to seek asylum in 2015. In 2014, a total of 16,490 people expressed the intent to apply for asylum in Serbia.

The character of the refugees' passage through Serbia had also changed. Although Serbia had not been perceived as a country of destination by the vast majority of refugees earlier either, they used to spend some time in the Asylum Centres, before moving on.¹ As of April 2015, the refugees on average spent two or three days in Serbia (i.e. the period coinciding with the validity of their certificates of intent to seek asylum), or even less.²

In response to the developments, the Serbian authorities in July opened a Reception Centre in Preševo, where the refugees could register and be provided with basic humanitarian aid. However, many of the refugees, who had passed through the Preševo Centre, complained that they had not been provided with enough food and that they had to wait in line for hours before they were registered.³ Apart from the Preševo Centre, the Serbian authorities opened temporary reception centres also at Miratovac (also close to the FYROM border), Kanjiža and Subotica (near the

1 As opposed to 2014, when 11,118 of the 16,460 (67.42%) people who had expressed the intent to seek asylum were accommodated in the Asylum Centres, only 10,237 of the 485,169 (2.1%) people who had expressed the intention to seek asylum by the end of November 2015 reported to the Asylum Centres.

2 BCHR's team that directly worked with the refugees in Serbia concluded that most of the registered refugees perceived the certificates of intent to seek asylum as "transit visas" and left Serbia while their certificates were still valid.

3 Information obtained in direct contact with the refugees in Serbia.

Hungarian border), and subsequently in Adaševci, Šid and Principovac (near the Croatian border), but the refugees could only register at the Preševo Centre.

Before Hungary closed its border with Serbia for the refugees in mid-September 2015, most of them travelled from Preševo to Belgrade and then took the bus, more rarely the train, to Kanjiža or Subotica. Thousands of refugees stayed in Belgrade parks and streets, in dire circumstances, because the state failed to respond to the influx in Belgrade in an organised fashion. The refugees were extended legal, psychological, medical and humanitarian aid mostly by the civil society organisations, in cooperation with the UNHCR and the local community. The number of refugees in Belgrade streets and parks plummeted after Hungary closed its border and most of them headed towards Croatia, going directly from Preševo to Šid.

A lot of the people in need of international protection, who had spent some time in Belgrade until September, appeared to be extremely vulnerable and may have been victims of gender-based violence, torture and other cruel, inhuman or degrading treatment or punishment and human trafficking. Quite a few of the refugees were unaccompanied minors.

In August 2015, the BCHR, UNHCR Belgrade Office, the Adventist Development and Relief Agency (ADRA) in Serbia, the Savski venac municipal authorities and the Klikaktiv organisation opened an Asylum Info Centre in Nemanjina Str. 3, in order to streamline efforts to assist persons in need of international protection and address the lack of quality information about their rights in the Republic of Serbia, including their right to seek asylum, identified as one of the main problems faced by the vast majority of refugees passing through or staying in Serbia. The Asylum Info Centre was opened near the Belgrade main bus and railway stations, the informal venues at which most of the refugees had been rallying, and its staff were trained to provide the refugees with accurate information. The Info Centre staff also provided the refugees with legal and psychological counselling. The Info Centre expanded its capacities and activities in September and started coordinating the humanitarian aid efforts of a number of civil society organisations and the local community in the Belgrade area. A room in the Info Centre was adapted for mothers and children and its staff facilitated the refugees' access to health care in Serbia. The Asylum Info Centre is staffed by lawyers, interpreters in a number of languages and psychologists, as well as volunteers, assisting in the implementation of the Centre activities.

A new law incriminating illegal entry into and presence in Hungary came into force in mid-September 2015.⁴ Hungary then almost sealed its border with Serbia for the refugees, and introduced an expedited procedure at the border in which it dismissed the vast majority of asylum applications because it now consid-

4 See *The Hungarian Helsinki Committee's Opinion on the Government's amendments to criminal law related to the sealed border*, Hungarian Helsinki Committee, Budapest, 16 September 2015, available at <http://helsinki.hu/wp-content/uploads/modification-of-criminal-laws-16092015.pdf>.

ers Serbia a “safe third country”.⁵ The clashes that ensued between the refugees and Hungarian police were condemned by the international community and United Nations agencies.⁶ The refugees changed their route very soon, and started heading towards Croatia. By the end of the year, the Serbian and Croatian police established a cooperation mechanism to facilitate the refugees’ onward movement to safe countries of asylum in an organised and legal fashion. They, of course, also have the possibility of seeking asylum in these “transit” countries.

The treatment of the refugees by the relevant Serbian authorities during most of the year can be qualified as appropriate in the context of the large-scale influx of refugees. The “open borders” policy led to a significant drop in the number of allegations about various forms of forced removal of people entering Serbia via the green border in 2015. However, in mid-November, Slovenia, Croatia, Serbia and the Former Yugoslav Republic of Macedonia (FYROM) decided to limit access to their territories only to refugees coming from Iraq, Syria and Afghanistan, i.e. the “war-torn areas”. As denying refugees access to state territory and the asylum procedure is in contravention of international refugee law and international human rights law, as well as of the national legislation of these countries, their Ombudspersons condemned the practice and called on the authorities to again allow access to the asylum procedure to all people who express the intent to seek asylum.⁷ The practice of limiting access to the asylum procedure depending on the country of origin of the refugees, however, continued.

1.2. *Asylum System of the Republic of Serbia*

The Republic of Serbia is a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.⁸ The right to asylum is enshrined in Article 57(1) of the Constitution of the Republic of

5 See *Building a Legal Fence*, Hungarian Helsinki Committee, Budapest, 7 August 2015, available at <http://helsinki.hu/wp-content/uploads/HHC-HU-asylum-law-amendment-2015-August-info-note.pdf>.

6 See *UN rights chief ‘appalled’ at recent treatment of refugees, migrants by Hungarian authorities*, UN News Centre, 17 September 2015, available at <http://www.un.org/apps/news/story.asp?NewsID=51902#.Vi5NLUQVhHx>.

7 The Serbian Protector of Citizens was quoted as saying that: “under international law, Serbia is under the obligation to allow all people who express the intent to seek asylum to enter the country, not just the nationals of Syria, Iraq and Afghanistan.” More in the “Statements by Serbian and Macedonian Ombudspersons after Touring the Serbian-Macedonian Border Crossings” of 7 December 2015, available in Serbian at <http://www.ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/4465-2015-12-07-14-22-40>.

8 Under Article 1 (A(2)) of the Convention, a refugee is any person who has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Serbia in accordance with the provisions of these instruments.⁹ The right to asylum is governed in detail by the 2008 Asylum Act.¹⁰ The provisions of the Aliens Act,¹¹ which apply subsidiarily, are also relevant. The Asylum Act lays down the asylum procedure and the rights of asylum seekers, refugees and people granted subsidiary protection.¹²

Aliens may access the asylum procedure by expressing the intent to seek asylum to a police officer orally or in writing at the border or within the territory of the Republic of Serbia. The aliens' intentions are registered, they are issued certificates of intent to seek asylum and referred to the Asylum Office or an Asylum Centre, which they have to report to within the following 72 hours, where they are registered and file their asylum applications. Asylum seekers are entitled to ask the Asylum Office to allow them to rent private accommodation.

Most problems in accessing the asylum procedure have arisen at Belgrade Airport Nikola Tesla, due to the inadequate regulation of the procedure for forcibly removing aliens not fulfilling the requirements for entering the Republic of Serbia as decisions on forced removal cannot be challenged. Furthermore, aliens do not have access to interpreters or legal aid at the Airport, which may result in violations of the principle of *non-refoulement*. Only 39 certificates of intent to seek asylum were issued at Airport Nikola Tesla in the first half of 2015;¹³ 520 foreign nationals were prohibited from entering the Republic of Serbia in the same period. They included, *inter alia*, 18 Syrian and 30 Iraqi nationals,¹⁴ who definitely fulfilled the criteria under Article 1(A(2)) of the Convention Relating to the Status of Refugees,¹⁵ wherefore their returns were in contravention of international refugee law norms.

9 Article 57 of the Serbian Constitution lays down somewhat broader grounds on which foreign nationals are entitled to seek asylum than those than explicitly laid down in Article 1(A(2)) of the Convention Relating to the Status of Refugees, as it also lists persecution on grounds of sex and language as an element of the definition of a refugee.

10 Asylum Act, *Sl. glasnik RS*, 109/07.

11 Aliens Act, *Sl. glasnik RS*, 97/08.

12 Subsidiary protection is a form of protection the Republic of Serbia grants aliens who do not fulfil the requirements to be granted refugee status, but who, if returned to their country of origin, would be subjected to torture, inhuman or degrading treatment, or their lives, safety or freedom would be threatened by generalised violence caused by external aggression or internal armed conflicts or massive violation of human rights, pursuant to generally accepted principles of international human rights law and Article 2 of the Asylum Act.

13 All statistical data were obtained from the UNHCR Belgrade Office and the Ministry of Internal Affairs.

14 Data obtained from the Ministry of Internal Affairs in response to a request for access to information of public importance Ref No 10-227/15 of 21 July 2015.

15 More on UNHCR's findings regarding people fleeing Syria and Iraq in *International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update III*, UNHCR, 27 October 2014, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=544e446d4>; *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*,

Aliens have encountered problems accessing the asylum procedure when they expressed the intent to seek asylum in the police directorates, most of which lack the administrative capacities to issue more than several dozen certificates a day. BCHR's associates received complaints from aliens, claiming that the Belgrade Police Directorate refused to issue them the certificates, ordering them to leave the office and come back later or the following day. Men and groups of men were mostly subjected to such treatment.

At BCHR's request, the European Court of Human Rights issued a provisional measure ordering the Republic of Serbia not to deport an asylum seeker in the first half of 2015.¹⁶ The ECtHR prevented the forced removal of the alien the Aliens Department had refused to issue a certificate of intent to seek asylum since the review of his asylum application had previously been discontinued.

As provided for by Article 31 of the UN Convention Relating to the Status of Refugees, Article 8 of the Asylum Act lays down that asylum seekers shall not be punished for illegal entry or presence in the Republic of Serbia provided that they apply for asylum without delay and offer a reasonable explanation for their illegal entry or presence. The intention of a person to seek asylum can be recognised in the proceedings before the misdemeanours judge, who can suspend the proceedings and instruct him to apply for asylum.

The Misdemeanour Courts, however, continued with their widespread practice of issuing misdemeanour penalties against aliens illegally entering or present in the Republic of Serbia. In the first half of 2015, they imposed misdemeanour fines on 10,696 aliens and issued 830 orders ordering them to leave the country. Only 489 aliens, who had expressed the intention to seek asylum during the misdemeanour proceedings, were exempted from punishment for illegal entry or presence.¹⁷

There were, however, some good practice examples. The Belgrade Misdemeanour Court dismissed the motion to initiate misdemeanour proceedings against the defendant, who had again tried to express the intent to seek asylum after the review of his initial asylum application had been discontinued. As the defendant expressed the intent to seek asylum before the Court, the judge ruled that the Asylum Act applied to him although the prior review of his application had been discontinued.¹⁸

Misdemeanour courts hearing aliens charged with illegal entry or presence in Serbia do not always engage court-sworn interpreters, wherefore the aliens are precluded from following the proceedings. This amounts to an absolutely substan-

UNHCR, 28 July 2010, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4c4fed282&page=search>.

16 European Court of Human Rights statistics on provisional measures issued in the 1 January–30 June 2015 period is available at http://www.echr.coe.int/Documents/Stats_art_39_02_ENG.pdf.

17 It needs to be borne in mind that the number of aliens imposed misdemeanour penalties includes aliens, albeit a relatively small number of them, who do not fulfil the refugee status criteria under Article 1(A(2)) of the 1951 Convention.

18 Belgrade Misdemeanour Court Ruling DS-66 Case No. 979/15 of 5 June 2015.

tive violation of the provisions governing misdemeanour proceedings that cannot be reversed since the aliens are not even aware of their right to appeal because they are not provided with an interpreter. The violation of this principle also derogates from the principle of determining the truth in proceedings.¹⁹

The Asylum Office allows the registration and submission of asylum applications only to individuals accommodated in the Asylum Centres or who have received consent to rent private accommodation – only such individuals have unhindered access to the asylum procedure.²⁰ Aliens, who are forced to live outside because the Asylum Centres lack capacities to take them in, are denied the right to access the asylum procedure.

The asylum procedure in Serbia is governed by the Asylum Act, which is a *lex specialis* vis-à-vis the General Administrative Procedure Act (GAPA). Under the provisions of the GAPA, the first-instance asylum procedure shall be completed within two months from the day the asylum application is submitted. The Asylum Office is under the obligation to issue a first-instance ruling on the application within that deadline. The Asylum Act also provides the unsuccessful asylum seekers with the possibility of filing an appeal with suspensive effect to the second-instance authority, the Asylum Commission.²¹ Appeals of first-instance decisions on asylum applications may be lodged within 15 days from the day they are served.

The Asylum Office usually gives the unsuccessful asylum seekers (i.e. individuals whose asylum applications were dismissed or rejected or in whose case the asylum procedure was suspended) three days to leave the country voluntarily. This deadline is unjustifiably short, given that the vast majority of unsuccessful asylum seekers lack either travel documents or funds or both. An unsuccessful asylum seeker, who fails to leave Serbia within the set deadline, shall be forcibly removed pursuant to the Aliens Act. That law, however, does not specify what happens to aliens, who cannot be forcibly removed after the expiry of the 180 days they may be held in the Aliens Shelter waiting for removal.

The staff of the Asylum Office, which is headquartered in Belgrade, had not been regularly receiving asylum applications from asylum seekers in the Sjenica and Tutin Asylum Centres, even at the time when significant numbers of aliens were living in them, due to the remoteness of these Centres. The arbitrary prevention of aliens from filing their asylum applications for unduly long periods of time is in contravention of Article 25(1) of the Asylum Act, under which asylum applications shall be submitted within 15 days from the day of registration.

19 More in BCHR's 2012 *Right to Asylum in the Republic of Serbia Report*, 2013, available at: http://www.azil.rs/doc/Right_to_Asylum_in_the_Republic_of_Serbia_FINAL.pdf.

20 The asylum procedure is initiated at the moment an asylum application is submitted, not at the moment the intention to seek asylum is expressed.

21 More in BCHR's 2014 *Right to Asylum in the Republic of Serbia Report*, 2015, available at: http://www.azil.rs/doc/Right_to_Asylum_in_the_Republic_of_Serbia_2014_1_.pdf.

In its response to BCHR's request for information about the number of visits to the Asylum Centres by the Asylum Office staff in the 1 January–31 August 2015 period, the Asylum Office said it "does not have data on the dates and number of visits by police officers to Asylum Centres or other state authorities or units made with a view to performing the official activities under Articles 24–26 of the Asylum Act in the given period."²² To the best of BCHR's knowledge, the Asylum Office staff visited the Sjenica and Tutin Asylum Centres only twice in 2015, once in April and once in July.

In 2015, the Asylum Office issued 577,995 of intent to seek asylum, registered 662 asylum seekers and received 583 asylum applications. In the same period, the Asylum Office interviewed 89 asylum seekers and upheld 30 applications (0.0052% of all expressed intents in the period).

As noted above, appeals of first-instance decisions on asylum applications may be lodged within 15 days from the day they are served. The Asylum Commission, which rules on appeals of Asylum Office decisions, is comprised of nine members appointed to four-year terms in office by the Government of the Republic of Serbia. The Asylum Act specifies that the Commission shall render its decisions by a majority vote (Art. 20), but does not lay down the deadline by which it is to render them.²³ An Asylum Commission decision may be challenged in an administrative dispute before the Administrative Court, which rules on the claims in three-member judicial panels.

The Administrative Court has to date mostly limited itself to reviewing whether the procedural aspects of the asylum procedure had been observed. As a rule, a claim to the Administrative Court does not stay the enforcement of the challenged administrative enactment,²⁴ wherefore this remedy is ineffective in asylum-related cases. Namely, for a remedy to be deemed effective in the meaning of ECtHR case law, the suspensive effect of an appeal must be automatic, rather than resting solely on the discretion of the domestic authority considering the individual's case.²⁵

Apart from the duty to honour the prohibition of refoulement in the Convention Relating to the Status of Refugees (Art. 33),²⁶ the competent Serbian authori-

22 Information obtained from the Ministry of Internal Affairs in response to a request for access to information of public importance Ref No 10–383/2015 of 22 October 2015.

23 The general 60-day deadline prescribed in Article 208 of the GAPA should be applied accordingly.

24 Article 23, Administrative Disputes Act, *Sl. glasnik RS*, 111/09.

25 More in N. Mole, C. Meredith, *Asylum and the European Convention on Human Rights*, Council of Europe, 2010, pp. 118–121 and the *January–June 2013* and *June–October 2013 Periodic Reports on the Right to Asylum*.

26 The prohibition of expulsion or return (non-refoulement) entails the prohibition of transferring a person to a state where he risks a real danger of serious human rights violations or of being transferred to a third state where he would be subject to such risks. Abidance by the principle of non-refoulement also entails the state's obligation to do its utmost to prevent the return of asylum seekers to their countries of origin without the substantive examination of their asylum

ties are also bound by Article 6 of the Asylum Act, which prohibits the expulsion of people against their will to a territory where their lives or freedom would be in danger on account of their race, sex, language, religion, nationality, membership of a particular social group or political opinion.

Under the Act, the state may, *inter alia*, invoke the concepts of a safe third country²⁷ and a safe country of origin²⁸ and dismiss an asylum application without reviewing whether the applicant satisfies the asylum eligibility criteria (Arts. 2 and 33). It is crucial that the state is reassured in all these cases that the protection an asylum seeker will enjoy in another state is truly effective and that it in any case provide the asylum seeker with the opportunity to dispute the allegations that the other state is safe for him.

The solution under which the Government unilaterally defines safe third countries in a decision is also problematic. The valid Decision was adopted in 2009 and has not been revised since. When it was drawing up the list of safe countries, the Government did not obtain guarantees that asylum applications were reviewed in a fair and efficient procedure in the countries it was designating as safe. In determining whether a particular country was safe, the Government only took into consideration the opinion of the Serbian Ministry of Foreign Affairs, whether the country ratified the 1951 Refugee Convention, and whether it had a visa-free regime for Serbian citizens.²⁹ The Decision listing the safe third countries should be reviewed periodically, with due account being taken of the situation in the countries and the degree of protection of rights of asylum seekers, including the views of the ECtHR,³⁰ the UNHCR and reports by the relevant international organisations, such

applications – so-called direct refoulement and the transfer of an asylum seeker to a third country that may transfer him elsewhere, to a place where he fears persecution – so-called indirect refoulement.

27 A safe third country denotes a country on the list drawn up by the Government, in accordance with the international principles pertaining to the protection of refugees in the 1951 Refugee Convention and the 1967 Refugee Protocol, which the asylum seeker had resided in or passed through, immediately before he entered the territory of the Republic of Serbia, where he had an opportunity to submit an asylum application, where he would not be subjected to persecution, torture, inhuman or degrading treatment, or sent back to a country where his life, safety or freedom would be threatened.

28 A safe country of origin denotes a country on the list drawn up by the Government, the nationality of which the asylum seeker holds, or in the event the asylum seeker is stateless, the country in which he had previously habitually resided, which has ratified and applies international treaties on human rights and fundamental freedoms and where he faces no danger of persecution for any reason constituting grounds for the recognition of the right to refuge or for granting subsidiary protection, the nationals of which have not been leaving their state for those reasons, and which allows international bodies insight in the observance of human rights.

29 *Serbia as a Safe Third Country: Revisited*, p. 7.

30 For instance, Greece is on the list of safe countries, although it has not been considered a safe third country since the ECtHR judgment in the case of *M. S. S. v. Belgium and Greece*, ECtHR, App. No. 30696/09 (2011).

as the Council of Europe³¹ and international NGOs focusing on the international protection of refugees and asylum seekers.

In August 2015, the UNHCR published its Observations on the situation of asylum-seekers and refugees in the Former Yugoslav Republic of Macedonia, in which it concluded that the FYROM did not as yet meet international standards for the protection of refugees, and did not qualify as a safe third country and advised all states to refrain from returning or sending asylum seekers to it.³² It remained unclear how the competent Serbian authorities would take this document into consideration during the implementation of the asylum procedure.

The provisions of the Asylum Act should be interpreted in the following manner: the designation of a country as safe in the Decision should be a rebuttable presumption, i.e. the authority reviewing an asylum application should not render its decision by relying merely on the presumption that the applicant will be treated in accordance with the standards of the Refugee Convention in a third country, but has to establish how the authorities of the safe third country apply their regulations.³³ The asylum authorities ought to take into account all the relevant sources, such as UNHCR Reports and NGO reports or the decisions of international human rights tribunals, above all the ECtHR.

It needs to be noted that the Asylum Office commendably abandoned the automatic application of the safe third country concept in several cases in 2015 and upheld the applications of asylum seekers although they had *in casu* transited through FYROM or another country considered safe.

Under the Ministry of Internal Affairs staffing enactment, the Asylum Office is to have 29 members of staff.³⁴ However, only 17 positions were filled at the time this Report was prepared. Under the enactment, the Asylum Office shall be staffed by the Head and Deputy Head of Office (the latter position has not been filled yet), 11 asylum application review officers (10 positions have been filled), two officers collecting and documenting information on countries of origin, six officers registering asylum seekers in the Asylum Centres (only one position has been filled), four interpreters (none have been hired yet), four officers charged with keeping special and operational records (two with junior college and two with secondary school education, one senior position remains vacant).³⁵

31 The impugned Decision, for instance, declares Belarus a safe country of origin although its CoE membership was suspended in 1997 because of its poor human rights protection standards; the situation in this country deteriorated further in the meantime. See, e.g. CoE Parliamentary Assembly, *The Situation in Belarus*, AS/Pol (2012) 29, of 3 October 2012.

32 See *The Former Yugoslav Republic of Macedonia as a country of asylum*, UNHCR, August 2015, available at <http://www.refworld.org/docid/55c9c70e4.html>.

33 See *M. S. S. v. Belgium and Greece*, judgment of 21 January 2011, App. No. 30696/09.

34 Rulebook Amending the Rulebook on the Internal Organisation and Staffing of the Ministry of Internal Affairs Pov. 01 Ref. No. 9681/14–8 of 14 January 2015.

35 Data obtained from the Ministry of Internal Affairs in response to a request for access to information of public importance Ref No of 6 April 2015.

BCHR received the information about the Asylum Office staffing on 3 November 2015, just several days before the European Commission published its Progress Report, on 10 November, in which it said that the Asylum Office had 19 members of staff.³⁶ To the best of BCHR's knowledge, the Asylum Office had not employed any new staff between 3 and 10 November. The Progress Report also said that the Asylum Office was set up as a separate civilian unit within the border police directorate,³⁷ which is incorrect, as the Asylum Office is not civilian in character.

Notwithstanding specific improvements in the Serbian asylum system, the UNHCR recommendation issued in 2012 – that Serbia should not be considered a safe third country given the current situation in the asylum system – and its call on the states parties to the Convention to refrain from sending asylum seekers back to Serbia on this basis³⁸ remained valid in 2015 as well.

1.3. *Rights and Obligations of Asylum Seekers, Refugees and People Granted Subsidiary Protection*

The Commissariat for Refugees and Migrants operated Asylum Centres in Banja Koviljača, Bogovađa, Sjenica, Tutin and Krnjača in 2015. These five Centres together can accommodate up to 810 people.³⁹ Accommodation of asylum seekers is funded from the state budget. Issues of relevance to the work of the Asylum Centres are governed in greater detail by the subsidiary legislation.⁴⁰

As opposed to 2014, when the Asylum Centres could not take in all the aliens who had expressed the intent to seek asylum, fewer and fewer refugees, who had expressed the intent to seek asylum, actually reported to the Asylum Centres in 2015, due to the change in their routes through the Republic of Serbia. Out of the 485,169 refugees registered by end of November, only 10,237 (2.1%) were accommodated in one of the Asylum Centres, which were relatively empty throughout the year. For example, on 12 October 2015, when the MIA registered 4,732 aliens, only 60 were staying at an Asylum Centre (34 in Krnjača, 10 in Banja Koviljača, nine in Tutin, seven in Sjenica, and none in Bogovađa).⁴¹

36 2015 Progress Report, European Commission, 10 November 2015, available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf, point 5.24.

37 *Ibid.*

38 *Serbia as a Country of Asylum*, paragraph 4.

39 Data obtained from the Commissariat for Refugees and Migration.

40 Rulebook on Medical Examinations of Asylum Seekers on Admission in Asylum Centres (*Sl. glasnik RS*, 93/08); Rulebook on Accommodation and Basic Living Conditions in Asylum Centres (*Sl. glasnik RS*, 31/08); Rulebook on Social Assistance to Asylum Seekers and People Granted Asylum (*Sl. glasnik RS*, 44/08); Rulebook on Records of People Accommodated in the Asylum Centres (*Sl. glasnik RS*, 31/08) and Rulebook on Asylum Centre House Rules (*Sl. glasnik RS*, 31/08).

41 Data obtained from the Commissariat for Refugees and Migration on the situation on 12 October 2015.

The Serbian authorities set up several “reception centres” for refugees and migrants in response to the massive inflow of refugees. These centres, however, cannot accommodate asylum seekers in the longer term.

Article 46 of the Asylum Act lays down a general obligation of the Republic of Serbia to, commensurate with its capacities, ensure conditions for the integration of refugees in social, cultural and economic life and facilitate the naturalisation of the refugees. The Migration Management Act⁴² entrusts the Commissariat for Refugees and Migration with the accommodation and integration of persons granted asylum or subsidiary protection (Arts. 15 and 16). The Commissariat, however, has not submitted to the Government a proposal on the steps for integrating them in the social, cultural and economic life of the country yet. Under Point 2.1.5.2 of the Chapter 24 Action Plan, Serbia was to prepare a programme for the integration of persons granted international protection by the end of 2015. Such a programme had not been prepared by the time this Report was finalised.

Aliens granted asylum in the Republic of Serbia are still unable to exercise a number of rights enshrined in the Convention Relating to the Status of Refugees and the Asylum Act (Arts. 39–50). These rights include the right to residence in the Republic of Serbia, the rights to accommodation, health care, free primary and secondary education, social welfare, family reunification, etc. However, even the negligible number of successful asylum seekers, who have stayed on in Serbia, encountered difficulties in exercising these rights, especially the right to administrative assistance and travel documents, guaranteed by Articles 25 and 28 of the Convention Relating to the Status of Refugees.⁴³

1.4. *Unaccompanied Minor Asylum Seekers*⁴⁴

A total of 10,642 unaccompanied minor asylum seekers were registered in the Republic of Serbia in 2015. The actual number of unaccompanied minor asylum seekers who had passed through Serbia was probably much higher given the difficulties the relevant authorities have faced in registering the asylum seekers, the lack of a developed procedure for identifying minors and the fact that many of the refugees and migrants lacked personal documents.

42 *Sl. glasnik RS*, 107/12.

43 As per the right to administrative assistance the competent Serbian authorities have in most cases required of asylum seekers and aliens granted asylum to address the states they are nationals of when their personal status was at issue (e.g. if they wanted to get married in Serbia), which is in contravention of Article 25 of the Convention. On the other hand, not one travel document has been issued to a refugee since the Asylum Act was adopted; in its responses to those who did apply for travel documents, the Ministry of Internal Affairs said that the “technical conditions” for issuing them have not been fulfilled yet.

44 Unaccompanied minors denote aliens under 18 years of age who arrived in the Republic of Serbia unaccompanied by their parents or guardians or were separated from them upon arrival in the Republic of Serbia (Art. 2, Asylum Act).

As provided for by international standards, the Asylum Act lays down that asylum seekers with special needs, including minors separated from their parents or guardians, shall be provided with special care (Art. 15). There are no particular norms or protocols for establishing the age of aliens seeking asylum in Serbia.⁴⁵ When an asylum seeker declares that he is a minor, the MIA contacts the local social welfare centre, which designates him a temporary guardian. The guardian escorts the minor to the Institution for Children and Youths Vasa Stajić in Belgrade or the Institution for Children and Youths in Niš, which have special high security wards looking after minor asylum seekers. The minors are appointed new guardians in the institutions and provided with the opportunity to declare whether they want to seek asylum in Serbia; if they do not, they are returned to the border of the country from which they entered the territory of Serbia. Unaccompanied minors who apply for asylum are referred to one of the Asylum Centres, in which they live until a final decision on their asylum application is rendered.

In keeping with the principle of representing unaccompanied minors (Art. 16), the social welfare centres appoint guardians for the minors before they apply for asylum. These guardians ought to be trained in working with unaccompanied minors. The obligation in the Act that the guardians attend interviews of unaccompanied minors is consistently adhered to.

1.5. Chapter 24 Action Plan

The Ministry of Internal Affairs is the lead ministry in charge of EU accession talks on Chapter 24 – Justice, freedom and security. This Chapter covers, inter alia, the field of asylum.

The preparation of the Chapter 24 Action Plan began after the European Commission forwarded the Draft Screening Report on Chapter 24 to the MIA on 15 May 2014. The Final Screening Report was communicated to the MIA on 28 July 2014.⁴⁶ The European Commission positively assessed the Final Action Plan in October 2015.⁴⁷

In its Screening Report, the European Commission recommended the necessary changes the Serbian authorities should make in both the legislation and the institutional structure of the Serbian asylum system. Among other things, the EC recommended the alignment of the legislation with the EU acquis, the adoption of comprehensive programmes for the accommodation and integration of beneficiaries of international protection, capacity building of the national asylum institutions, the

45 *Serbia as a Safe Third Country*, p. 10.

46 The Chapter 24 Screening Report is available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-24-serbia.pdf.

47 The Chapter 24 Action Plan is available at http://www.mup.gov.rs/cms_cir/oglasinsf/ap-p24.pdf.

revision of the concept and implementation of the safe third country concept and the establishment of an efficient asylum procedure.

The adequate implementation of the European Commission's recommendations would facilitate the establishment of a functional asylum system in the Republic of Serbia.

Civil society organisations rallied in the National Convention on the European Union, including the BCHR, were provided with the opportunity to attend the meetings with the representatives of the Ministry of Internal Affairs, which were held on 30 January, 3 April and 16 October 2015. The CSOs forwarded their comments on the draft Action Plan drafts to the Ministry.

In their comments on the draft Action Plan, the Convention members alerted to several potentially problematic points in the Plan. First of all, its provisions are extremely broad and insufficiently concretised, which precludes adequate monitoring of its implementation. Furthermore, specific activities, such as staff training, are planned only once the new Asylum Act is adopted (first quarter of 2016), wherefore the question arises how the asylum system will function in the meantime. The integration policy is also deficient, as the development of integration programmes is not planned before December 2015, leaving the people, who have already been granted refugee status or subsidiary protection, without such programmes in the meantime. These shortcomings were communicated to the Ministry both orally and in writing.

The European Commission published its 2015 Progress Report on Serbia in November 2015. Apart from reiterating the urgent need for a comprehensive, overarching reform to rationalise the whole asylum system and bring it into line with EU *acquis* and international standards, the Commission highlighted the urgent need for short-term measures to improve the processing of applications, including the establishment of a protection-sensitive screening mechanism within the asylum procedure aimed at distinguishing between third country nationals and persons in need of international protection and to increase accommodation capacity.⁴⁸

1.6. 17-Point Brussels Agreement of 25 October 2015

The Leaders' Meeting on refugee flows along the Western Balkans Route held in Brussels on 25 October 2015 was attended by the President of the European Commission and the heads of state or government of Albania, Austria, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Germany, Greece, Hungary, Romania, Serbia and Slovenia, the President of the European Council, the President of the European Parliament Speaker, the United Nations High Commissioner for Refugees, et al. The summit participants adopted a Leaders' statement on refugee

48 The EC 2015 Progress Report is available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

flows along the Western Balkans route⁴⁹ in which they agreed specific principles for further action.

The 17-point plan, adopted in the form of a joint statement by the leaders present at the summit, must be viewed in a broader context, particularly bearing in mind the EU-Turkey Action Plan of 15 October 2015,⁵⁰ referred to in the Leaders' statement⁵¹ as well. The two agreements may provide part of the solution to the refugee situation in Europe that the topmost officials of the EU and the states present at the summit agreed on.

The legal character of the agreement is not clear at the moment: whether or not the Leaders' statement is legally binding depends on whether its parties intended to create mutual rights and obligations under international law.⁵²

The 17-point plan lays down the principles of future action and envisages the establishment of contact points to facilitate exchange of information among the states, cooperation with the EU agencies (Frontex and EASO) and joint management of the migration flow. Points 3, 6, 11, 12, 13 and 14 – on limiting secondary movements, additional private capacities for the reception of up to 50,000 people, various forms of border checks and the readmission of persons not in need of international protection or not seeking asylum – are the most relevant to the Western Balkan countries.

No agreement had been reached by the end of 2015 on the extent to which each signatory state would increase their reception capacity up to 50,000 people. Data obtained from the Commissariat for Refugees and Migration indicate that Serbia is in principle willing to increase its reception capacity to accommodate up to 3,000 people.⁵³

From the viewpoint of civil society, the main shortcoming of the joint declaration is its insufficient concretisation, which hinders clear and full insight in the development of the asylum and migration policies in the Western Balkan countries. Furthermore, some crucial provisions may be interpreted in totally opposite ways. Point 3, for instance, regards the obligation to “discourage” the movement of refugees to the border of another country of the region without informing that country in advance. The term “discourage” may be interpreted in various ways, as can the obligation of notifying the next country on the refugee route, given that there is no mention of the need to receive prior consent from that country for allowing such movement.

Without prejudging the ultimate goals of this plan, several provisions, when read together, imply that the plan not only establishes the obligation of transit coun-

49 The Leaders' statement is available at: http://ec.europa.eu/news/2015/docs/leader_statement_final.pdf.

50 The EU-Turkey Action Plan is available at http://ec.europa.eu/priorities/migration/docs/20151016-eu-revised-draft-action-plan_en.pdf.

51 The Leaders' statement, point 13.

52 M. Shaw, “International Law”, Cambridge University Press, 2003, pp. 810–815.

53 Data obtained from a Commissariat for Refugees and Migration staff member on 1 November 2015.

tries to provide shelter to a specific number of people, but to keep a specific number of refugees from leaving their territory over a longer period of time as well. This, notably, follows from the obligation to facilitate swift profiling to ascertain who is in need of international protection.

At the moment, Western Balkan countries lack the capacity to facilitate the implementation of this plan, both in terms of the available material resources and in terms of human resources and expertise requisite to ensure the adequate protection of international refugee and human rights law. These rights would definitely be under major threat if the refugees were kept in the transit countries by force, which may amount to restricting their liberty and personal freedoms and, thus, be in contravention of the 1951 Refugee Convention, the International Covenant on Civil and Political Rights and the European Convention on Human Rights. In that sense, the statement by the President of the European Commission “No registration, no rights”,⁵⁴ gives rise to additional concern, because registration is not a requirement a person must fulfil to objectively meet the criteria under Article 1(2(A)) of the 1951 Refugee Convention.

2. Status and Reform of the Judiciary

2.1. *General*

Article 14 of the ICCPR and several articles of the ECHR (Arts. 6 and 7 and Arts 2, 3 and 4 of Protocol 7 to the ECHR) guarantee equality before the courts, which entails numerous procedural guarantees in civil and criminal proceedings and the right to have court decisions reviewed by higher courts. The requirement regarding the independence and impartiality of the judiciary shall derive also from Article 47 of the EU Charter of Fundamental Rights when Serbia joins the EU.

Articles 32–36 of the Constitution of the Republic of Serbia govern the right to a fair trial. Although the constitutional and legal guarantee of equality of everyone before the court authorities is extremely important for the exercise of these rights, the main prerequisite for the full exercise of the guaranteed rights is that the courts render decisions independently, impartially and efficiently in order to enable access to justice. The full exercise of this right, however, requires a thorough reform of the Serbian judiciary, which was launched in December 2009 with the general (re)appointment of the judges⁵⁵ and was still ongoing.

54 “Speaking Points of President Juncker – Press Conference on Western Balkans Route Leaders’ Meeting”, Brussels, 26 October 2015, available at http://europa.eu/rapid/press-release_SPEECH-15-5905_en.htm.

55 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/>.

The National Judicial Reform Strategy for the 2013–2018 Period (hereinafter: NJRS)⁵⁶ and the Action Plan for its implementation (hereinafter: NJRS Action Plan)⁵⁷ were adopted in 2013 and the Strategy Implementation Commission was established in September 2013.⁵⁸

The Ministry of Justice published the final version of the Chapter 23 Action Plan on its website in September 2015. The Action Plan activities regarding the judiciary are divided into four large groups: independence, impartiality and accountability; professionalism; competence and efficiency; and war crimes. As stated in the narrative part of the Action Plan, its authors endeavoured, in particular, to include and sublime the key activities envisaged by the NJRS Action Plan with a view to ensuring the coherence of these documents and facilitating the implementation of the reform. The NJRS Action Plan will have to be revised once the Chapter 23 Action Plan is adopted, to ensure maximum complementarity of these documents and align the deadlines in the former with those laid down in the latter. The Strategy, for instance, lays down that all the preparations for amending the constitutional provisions on the judiciary will be completed by the end of 2018, while the Chapter 23 Action Plan lays down that a new constitution will be adopted by the end of 2017.

In its 2015 Progress Report, the European Commission noted that Serbia had achieved some level of preparation for the *acquis* and European standards and some progress in the field of judiciary. It said that improved rules for evaluating judges and prosecutors had been adopted and that steps had been taken to reduce the sizeable backlog of cases, but that there was still scope for political influence over judicial appointments. The Report underlined that Serbia had to consolidate the justice reform process, addressing existing gaps in the independence, accountability and effectiveness of the judicial system and ensure its effective implementation

The National Assembly adopted numerous laws and/or amendments to valid laws governing the judiciary in 2015. In May, it adopted the Act on the Protection of the Right to Trial within a Reasonable Time that came into force on 1 January 2016.⁵⁹ In late 2015, the parliament adopted amendments to nine judicial laws, notably, the Act on the Organisation of Courts,⁶⁰ the Notaries Public Act,⁶¹ the

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

57 The Action Plan is available in Serbian at: <http://www.mpravde.gov.rs/obavestjenje/2890/akcioni-plan-za-sprovođenje-nacionalne-strategije-reforme-pravosudja-za-period-2013-2018-godine.php> and the Report on the Implementation of the Action Plan is available in English at: http://www.mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_English%20version.pdf.

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

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

60 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law, 101/11, 101/13, 106/15 and 40/15 – other law.

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

Court Fees Act,⁶² the Judicial Academy Act,⁶³ the Act on Judges,⁶⁴ the Public Prosecution Services Act,⁶⁵ the High Judicial Council Act⁶⁶, the State Prosecutorial Council Act⁶⁷ and the new Enforcement and Security of Claims Act.⁶⁸

The strategic planning of the further course of the judicial reform should definitely take into account the findings and recommendations of the World Bank team that prepared the Serbia Judicial Functional Review.⁶⁹ The Review includes numerous facts about Serbia's judicial system and recommendations on how to improve its efficiency. The Review shows that Serbia needs to develop a system to monitor judicial performance and that it needs to identify courts and prosecution services, which have the weakest performance, and take measures to address the key variations and inconsistencies. Its authors noted the need to ensure that courts use the full functionality of their (electronic) case management systems to improve the consistency of practice and support evidence-based decision-making and develop a comprehensive continuing training programme for judges, prosecutors and court staff. Apart from these general recommendations, the Functional Review also alerts to several major bottlenecks in the judicial system. First of all, Serbia needs to reform its procedural laws to simplify the service of process and eliminate the huge backlog of pending enforcement cases (standing at 1.7 million).

2.2. Organisation of Courts

Under the Act on the Seats and Jurisdictions of Courts and Public Prosecution Services, Serbia's court network is comprised of 66 Basic Courts ruling in the first instance, 25 Higher Courts ruling in the first instance and on appeal, and four Appellate Courts. The network also includes the Supreme Court of Cassation, which has contentious and non-contentious jurisdiction. Within its contentious jurisdiction, the Court shall rule on extraordinary legal remedies against decisions taken by Serbian courts and other matters envisaged by the law, on conflicts of jurisdiction between courts unless such decisions are within the jurisdiction of another court, and on transfers of jurisdiction to other courts to facilitate proceedings

62 *Sl. glasnik RS*, 28/94, 53/95, 16/97, 34/01 – other law, 9/02, 29/04, 61/05, 116/08 – other law, 31/09, 101/11, 93/12, 93/14 and 106/15.

63 *Sl. glasnik RS*, 104/09, 32/14 – Constitutional Court decision and 106/15.

64 *Sl. glasnik RS*, 116/08, 58/09 – Constitutional Court decision, 104/09, 101/10, 8/12 – Constitutional Court decision, 121/12, 124/12 – Constitutional Court decision, 101/13, 111/14 – Constitutional Court decision, 117/14, 40/15, 63/15 – Constitutional Court decision and 106/15.

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

66 *Sl. glasnik RS*, 116/08, 101/10, 88/11 and 106/15.

67 *Sl. glasnik RS*, 116/08, 101/10, 88/11 and 106/15.

68 *Sl. glasnik RS*, 106/15.

69 The Review is available at: <http://mdtfjss.org.rs/archive//file/Serbia%20Judicial%20Functional%20Review-Full%20Report.pdf>.

or for other relevant reasons. Within its non-contentious jurisdiction, the Court shall ensure uniform application of the law by the courts and the equality of arms in court proceedings, review the application of the law and other regulations and the work of courts; appoint Constitutional Court judges, render opinions on the candidates for the post of Supreme Court of Cassation President and exercise other powers envisaged by the law (Art. 31).⁷⁰

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

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

Under the Constitution, the public prosecution services shall be independent state bodies, which shall prosecute the perpetrators of criminal and other punishable offences and take measures in order to protect constitutionality and legality.⁷¹ There are 58 Basic and 25 Higher Public Prosecution Services. The duties of the public prosecution services are discharged by the public prosecutors and their deputies acting on their instructions. The public prosecution services comprise the Chief State Public Prosecution Service and the Appellate, Higher and Basic Public Prosecution Services.

The High Judicial Council (hereinafter: HJC) issued a decision on the number of judges per court in October 2015.⁷² Under this decision, the Supreme Court of Cassation shall have 37 judges and the Court President, while the Appellate Courts shall have 237 judges and Court Presidents in all. The Belgrade Appellate Court shall have the greatest number of judges – 88. The total number of judges in the 25 Higher Courts shall stand at 371, while the Basic Courts shall be staffed by 1473 judges.

The sustainability of the court network calls for continuous analyses of its efficiency and access to justice to pre-empt any problems, such as further slowdowns in the work of the courts due to the transfers of large numbers of pending cases to the courts now charged with them and changes of the trial judges.

Under the Chapter 23 Action Plan, a mid-term assessment of the new court network in terms of costs, current state of infrastructure, efficiency and access to justice is to be performed in the 2nd and 3rd quarters of 2016. Furthermore, the Ministry of Justice is under the obligation to perform an assessment of the needs for human, financial and technical resources, and the caseloads and workloads of the judges and public prosecutors in order to ascertain whether and which changes need to be made in the structure of the courts and staff recruitment and training.

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

71 Constitution, Articles 156–165.

72 *Sl. glasnik RS*, 68/15.

Justice Minister Nikola Selaković said in October 2015 he was contemplating a reform of the Appellate Courts and replacing the existing four by only one, in Belgrade. He explained his idea was motivated by the need to align case law and said “Serbia does not need four legal jurisdictions and four interpretations of the same findings of fact”.⁷³ The inconsistency of the case law has been mentioned as one of the main problems of Serbia’s judiciary in all strategic documents. The NJRS Action Plan and the Chapter 23 Action Plan both envisage a series of activities to be undertaken to address this problem. The Minister, however, did not properly explain why the establishment of only one Appellate Court would contribute to the alignment of the case law. More arguments need to be forwarded to substantiate the idea to abolish the four Appellate Courts and replace it with one Court with units in different cities, if one bears in mind that monitoring of case law should be one of the regular judicial duties and that we are living in a digital era enabling the rapid exchange of information and establishment of electronic databases.

The Belgrade Misdemeanour Court, which had operated in 14 locations across the city, moved into its own building in late 2015. The new Misdemeanour Court building has 105 courtrooms.⁷⁴

2.3. *Independence and Impartiality of Courts*

Judicial independence is the key prerequisite for exercising the right to a fair trial and one of the most critical steps Serbia has to make in the EU accession process.

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,⁷⁵ performed by the working group charged with analysing the changes of the constitutional framework, paragraph 3 of Article 4 is not in compliance with paragraph 3 of Article 145 of the Constitution, under which “[C]ourt decisions shall be binding on everyone and may not be a subject to extrajudicial control”.

The Act on the Organisation of Courts⁷⁶ includes a provision explicitly prohibiting any use of public office, media or any public appearances to affect the outcome of court proceedings or any other influence on the court (Art. 6).

73 See the *B92* report, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=10&dd=15&nav_category=12&nav_id=1051564.

74 See the *Blic* report, available in Serbian at: <http://www.blic.rs/vesti/drustvo/preksajni-sud-vise-nije-razbican-na-14-lokacija-od-danas-u-novoj-zgradi/nx10p6w>.

75 Available at: <http://www.mpravde.gov.rs/tekst/5847/radna-grupa-za-izradu-analize-izmene-us-tavnog-okvira.php>.

76 *Sl. glasnik RS*, 116/08, 104/09, 101/10, 31/11, 78/11 and 101/11.

As noted above, the Chapter 23 Action Plan lays down that a new constitution is to be adopted in the last quarter of 2017. It provides guidance on issues to be focused on in the analysis of the Constitution. As per the constitutional status of the judiciary, the Action Plan states that the system for the recruitment, selection, appointment, transfer and dismissal of judges, court presidents, public prosecutors and their deputies must be independent of political influence and that appointment to a judicial office needs to be based on merit-based objective criteria, fair selection procedures, and open to all suitably qualified candidates and transparent in terms of public scrutiny. Under the Chapter 23 Action Plan, the High Judicial Council and the State Prosecutorial Council should be empowered with leadership and the power to manage the judicial system. They should have a pluralistic composition, without the involvement of the National Assembly (unless solely declaratory), with at least 50% of members stemming from the judiciary and representing different levels of jurisdiction. Their elected members should be selected by their peers and the legislature and executive should not have the power to supervise or monitor the work of the judiciary. The Action Plan envisages the re-examination of the three-year probation period for candidate judges and deputy prosecutors and notes that the grounds for the dismissal of judges and rules for terminating the mandates of Constitutional Court judges need to be clarified.

Any changes to the Constitution will have to be followed by amendments of all laws governing the constitutional provisions in detail, such as the Act on Judges, the Act on the Organisation of Courts, the High Judicial Council and State Prosecutorial Council Acts and the Judicial Academy Act. As the authors of the Screening Report noted, it is important that all these constitutional and legal changes are widely consulted and debated so as to ensure the largest possible degree of “ownership” within the judicial system to avoid that constant legal changes create a feeling of insecurity among judges, which risks to adversely affects their independence.

2.4. Election and Appointment of Judges

The Constitution establishes the High Judicial Council charged with nominating judges to be elected on permanent tenure. Judges shall be elected to their first three-year terms in office by the National Assembly at the proposal of the High Judicial Council, while their appointments on permanent tenure shall be made by the High Judicial Council (Art. 147, Constitution).

The chief problem arises from the fact that the procedure for recruiting and promoting judges does not guarantee independence from other government branches. Serbia should ensure that when amending the Constitution and developing new rules, professionalism and integrity become the main drivers in the appointment process, while the nomination procedure should be transparent and merit based. The role of the National Assembly in the election and dismissal of judges, court presidents, the President of the Supreme Court of Cassation is a direct risk to judicial

independence. This role of the National Assembly is one of the main shortcomings identified in the Screening Report. The political influence of the National Assembly on the judiciary arises from the very composition of the HJC defined in Article 153 of the Constitution and the judicial appointment procedure laid out in Article 154 of the Constitution. The Screening Report underlines that the HJC and SPC should have at least 50% of members stemming from the judiciary and that their elected members should be selected by their peers.

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

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

The election of HJC members from among ranks of judges on permanent tenure was held at 49 polling stations on 21 December 2015;⁷⁷ 2,459 judges on permanent tenure were entitled to vote. The voting in the Niš Higher Court was suspended due to a bomb hoax and resumed after two hours.⁷⁸ The HJC forwarded the list of nominated candidates to the National Assembly, which was to issue a decision on their appointment.

Law School Professor Zoran Stojanović resigned from his office of HJC member elected from among the ranks of law school professors and the National Assembly elected Belgrade University Law School Professor Milan Škulić in his stead in October 2015.⁷⁹

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

77 See the Lawyers' Committee for Human Rights statement, available in Serbian at: <http://www.yucom.org.rs/sudije-izabrale-predstavnik-u-vss/>.

78 The following judges won the most votes of their peers: Branislava Goravac (Commercial Appellate Court), Ivana Jovičić (Belgrade Higher Court), Slavica Milošević Gazivoda (Belgrade Misdemeanour Court), Matija Radojičić (Belgrade Third Basic Court) and Savo Đurđić (Novi Sad Appellate Court).

79 The HJC decision is available in Serbian at: <http://www.vss.sud.rs>

The problems that arose during the general (re) appointment of all judges pursuant to the Constitutional Act for the Implementation of the Constitution⁸⁰ 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.⁸¹ Consequently, the judges and prosecutors, who had not been reappointed in 2009, were reinstated in 2012, although no clear criteria for their reintegration had been set.

The 2012 Act Amending the Act on Judges⁸² includes Article 100a, under which there is no need to appraise the performance of first-time judges upon the expiry of their three-year probation period although this obligation had been set out in Article 52 of the Act on Judges. That provision allowing the High Judicial Council to appoint on a permanent tenure probationary judges without appraising their performance was declared unconstitutional by the Constitutional Court in 2015. In its detailed reasoning, the Constitutional Court took the view that, although this provision of the impugned Act had been enacted to fulfil a specific purpose and although the legislator thus interfered in the domain of the judiciary, its interference was the consequence of the violation of the Constitution by the High Judicial Council.

The Court also noted that the violation of the constitutional principle of separation of powers did not imply the automatic violation of judicial independence given that the High Judicial Council was defined as an independent and autonomous authority, the main duty of which was to ensure and safeguard judicial independence. In the view of the Constitutional Court, by its failure to adopt an enactment laying down the criteria, standards and procedure for appraising the performance of first-time judges, the legislator had reacted because the HJC had substantially jeopardised the judiciary, depriving it of independence and bringing it into a situation in which 839 judges were unable to perform their duties after 31 December 2012. In this case, the judiciary had been undermined by itself, not by the legislative authorities and this is why the impugned Act had been adopted, to eliminate such a threat. Thus, although this Act *per se* constituted interference in another branch of government, it had not precluded the judiciary from being independent and independently appointing judges. Had the judiciary wanted to appoint the judges, it would have done so before the adoption of the impugned Act, but it did not.

In the view of the Constitutional Court, the fact that the HJC had failed to adopt the judicial appraisal criteria amounted to a violation of one of the main constitutional principles underpinning the rule of law, because it had not abided by the Constitution and the law. The Court also emphasised that the HJC enjoyed no discretionary rights when it came to judicial appointments and that it was entitled to appoint judges on permanent tenure pursuant to legally defined criteria and in a legally defined procedure implemented in accordance with the law, which meant

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

81 See the *2012 Report*, II.5.3.1.

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

that the HJC was entitled to appoint (or not appoint) judges by applying the criteria and procedure prescribed by law. By failing to adopt an enactment on the appraisal of first-time judges prior to the expiry of their three-year terms in office, the HJC had brought into question the appointment of these judges. Had the legislator not intervened, Serbia's judicial system (especially the misdemeanour courts) would have collapsed and the state would have been left without one branch of government. The Constitutional Court has thus raised the issue of HJC's accountability as well.

The HJC in May 2015 adopted amendments to its 2014 Rulebook on the Criteria, Standards and Procedure for Appraising the Performance of Judges and Court Presidents and the Authorities Performing the Appraisal Procedure.⁸³

A rulebook on the criteria, standards and procedure for appraising the performance of judicial assistants, ensuring a fair and transparent system for evaluating their work, was not adopted by the end of 2015, as planned by the authors of the Chapter 23 Action Plan.

The 2015 amendments to the Act on Judges and Public Prosecution Services Act afford privilege to candidates for first-time judicial and prosecutorial tenures, who have completed the initial Judicial Academy training.⁸⁴ Namely, they do not have to take the tests organised by the HJC and SPC and their competence is rated by taking into account their final Judicial Academy grades. Only a few days after these amendments were adopted, the Justice Minister held a meeting with the representatives of the Association of Judicial Advisers of Serbia and concluded that a working group should be established to improve these provisions. The situation is all the more absurd if one recalls that legal professionals had reacted promptly, while the amendments were still in draft format. The Belgrade Bar Association issued a press release expressing its concern about these provisions and recalled the Constitutional Court decisions of June 2014, in which the latter declared unconstitutional similar provisions in the Act on Judges and the Public Prosecution Services Act.⁸⁵

2.4.1. Assignment of Judges to the Belgrade Higher Court War Crimes Department

The assignment of judges to the Belgrade Higher Court War Crimes Department is governed by the Act on the Organisation and Jurisdiction of State Authorities in War Crime Proceedings.⁸⁶ Under Article 10(3) of this Act, judges shall be assigned to this Department by the Belgrade Higher Court President to six-year terms in office and with their written consent. The HJC may reassign judges from other courts to this Department for a period of six years with their written consent.

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

84 Article 45a of the Act on Judges and Article 77a of the Public Prosecution Services Act.

85 Constitutional Court decisions IUz 427/2013 and IUz 428/2013

86 *Sl. glasnik RS*, 67/03, 135/04, 61/05, 101/07, 104/09, 101/11 – other law and 6/15.

The decision of the Belgrade Higher Court President to reassign War Crimes Department judge Bojan Mišić to another department of that Court before the expiry of his six-year term in office caused confusion in the public,⁸⁷ because Court President Aleksandar Stepanović did not explain what had prompted him to take such a decision. This is not the first time the Court President has taken such a step. Judge Snežana Nikolić Garotić was reassigned to the First-Instance Criminal Department under the 2015 Annual Judicial Schedule⁸⁸, before the expiry of her six-year term in office in the War Crimes Department and without any explanation.⁸⁹ Such decisions by the Higher Court President have led to considerable prolongation of war crime trials.⁹⁰ Another decision by the Higher Court President has deepened the confusion: he assigned judge Dragan Mirković, whose six-year term in office in the War Crimes Department has expired – to continue presiding over the judicial panels and complete the trials.

2.5. Election of Public Prosecutors

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

The appointment of prosecutors is governed by Article 74 of the Public Prosecution Services Act.⁹¹ The National Assembly elects public prosecutors from among the candidates on the list proposed by the Government. This list is composed by the SPC, which forwards it to the Government for endorsement. In the event the SPC nominates only one candidate to the Government, the Government may send the list back to the SPC. First-time deputy public prosecutors are elected by the National Assembly from among the candidates nominated by the SPC; the SPC appoints deputy public prosecutors on permanent tenure (Art. 159, paras. 5–8).

87 The legal grounds for the Court President's decision remain unclear. Judge Mišić had been assigned to the War Crimes Department in 2013 and was reassigned to the First-Instance Criminal Department of the Belgrade Higher Court under the Court's 2016 Annual Judicial Schedule (decision I Su 2/15–242 of 30 November 2015, available in Serbian at <http://www.bg.vi.sud.rs/images/GODISNJI-RASPORED-POSLOVE-ZA%202016-god.pdf>).

88 Belgrade Higher Court 2015 Annual Judicial Schedule (decision I Su 2/14–315 of 27 November 2014, available in Serbian at: http://www.bg.vi.sud.rs/images/Raspored_sudija_2015.pdf).

89 See the *Radio Free Europe* report, available in Serbian at <http://www.slobodnaevropa.org/content/kako-je-sudija-garotic-premestena-sa-ratnih-zlocina/26802313.html> and the *Politika* article, available in Serbian at <http://www.politika.rs/scc/clanak/325174/Specijalni-sudija-vracena-obican-kriminal>.

90 Under Article 388(3) of the Criminal Procedure Code, the trial must start from scratch and all the evidence has to be presented again in the event the presiding judge is changed. Since judge Mišić presided over the panel in the *Lovas* case, which opened in April 2008, this long and complex case against 13 defendants will have to start anew.

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

The SPC assesses the candidates against the following three criteria: competence, qualifications and worthiness. The fulfilment of these requirements is reviewed in a procedure laid down in the Rulebook on the Criteria and Standards for Appraising the Competence, Qualifications and Worthiness of Candidates for Public Prosecutorial Offices, which was adopted on 14 May 2015.⁹² The degree in which the candidates fulfil these requirements is established by appraising their competence and qualifications, presentation of the organisation programme and improvement of the work of public prosecution services and by taking into account their results at the SPC written test. Candidates holding prosecutorial or judicial office do not need to take this test.

Zagorka Dolovac was re-elected Chief State Prosecutor by the National Assembly in July 2015. The SPC on 9 September 2015 published vacancies for the offices of Organised Crime Prosecutor, War Crimes Prosecutor and for offices in 25 Higher and 58 Basic Public Prosecution Services, i.e. 85 prosecution services in all.⁹³

After it prepared a preliminary list rating the nominees and ruled on the complaints, the SPC drafted the final lists for the 85 public prosecution services,⁹⁴ but it forwarded a list of nominees applying for office in only 55 prosecution services to the Government for endorsement. Its failure to specify any legal grounds why it had not put forward any nominees for the remaining 30 offices elicited a reaction from the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia (hereinafter: Association of Prosecutors of Serbia).⁹⁵ The SPC's final list forwarded to the Government enumerated all the nominees, who had applied for office in the 55 prosecution services,⁹⁶ but did not include the grades and points they were awarded that would explain their ranking.

Many of the prosecutors endorsed by the Government and elected by the Assembly were less well ranked than the unsuccessful candidates.⁹⁷ The Association of Prosecutors of Serbia issued a press release⁹⁸ alerting to lack of clarity about the criteria the Government had applied in its selection of candidates it proposed to the

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

93 The vacancies were published in *Sl. glasnik RS*, 77/15 of 9 September 2015.

94 The final list is available in Serbian on SPC's website: <http://www.dvt.jt.rs/izbor-javnih-tuzilaca-konacna-rang-lista.html>.

95 The letter of the Association of Prosecutors of Serbia is available in Serbian at: http://uts.org.rs/index.php?option=com_content&view=article&id=1131:dopis-dvt-u-povodom-objavljenih-konacnih-lista-kandidata-dostavljenih-vladi-republike-srbije&catid=56&Itemid=483.

96 The SPC list is available in Serbian: <http://www.dvt.jt.rs/doc/Utvrdjena-lista-kandidate-za-javne-tuzioce-2015.doc>.

97 See the report entitled "Prosecutors Selected against Political rather than Professional Criteria", available in Serbian at: <http://www.meravlade.rs/tuzioci-birani-po-politickim-a-ne-strucnim-merilima/>.

98 Available in Serbian at: http://www.uts.org.rs/index.php?option=com_content&view=article&id=1132:uts-nije-jasno-kojim-se-kriterijumima-vlada-rukovodila-prilikom-predlaganja-kandidata-za-javne-tuzioce&catid=64:saopstenja-za-javnost&Itemid=733.

National Assembly, given that their competence and qualifications apparently were not crucial in many of the cases. A number of developments during the election of prosecutors in 2015 led to reasonable suspicions that it was politically influenced. For instance, the SPC listed three nominees for the office in the Kraljevo Higher Public Prosecution Service, but the Government endorsed the candidate with the poorest results, who had headed the legal team of the Kraljevo SNS City Committee.⁹⁹ In response to the opposition deputies' criticisms of the vague criteria in the election of prosecutors in parliament, the Justice Minister said that the Government had been guided by the candidates' competence, but that neither he nor anyone else in power were such masochists that they would propose politically unsuitable candidates.¹⁰⁰

Mladen Nenadić was elected Organised Crime Prosecutor, although he ranked second on the SPC final list forwarded to the Government.¹⁰¹ He had also applied for the vacancy in the Čačak Higher Public Prosecution Service, where he was ranked 4th. The fact that the test for candidates applying for prosecutorial services with special jurisdiction has to be (much) more complex than the test for applicants for prosecutorial services of – given the particular complexities of the duties and special skills and competences required for fulfilling the job of Organised Crime Prosecutor – is not reflected in Nenadić's written test results.¹⁰² Furthermore, the fact that this candidate had taken both tests almost at the same time, on the same day, deepens doubts and corroborates allegations about irregularities during the testing.¹⁰³

The National Assembly unfortunately failed to elect the War Crimes Prosecutor in 2015.¹⁰⁴ The Chief State Prosecutor did not appoint an Acting War Crimes Prosecutor in accordance with her powers under Article 36 of the Public Prosecution Services Act as the media had expected her to.¹⁰⁵ This will hinder the work of

99 See the *Danas* and *Blic* articles, available in Serbian at: http://www.danas.rs/danasrs/dijalog/politika_pobedila_tuzioce_46.html?news_id=313528, and <http://www.blic.rs/vesti/srbija/visituzilac-postao-sa-najmanje-bodova/4v8ddb>.

100 The Minister's statement is available in Serbian at: <http://www.otvoreniparlament.rs/2015/12/21/725587/>.

101 The list is available in Serbian at: <http://www.dvt.jt.rs/doc/konacna-rang-lista-2015/Rang%20lista%20TOK.docx>.

102 Nenadić scored the maximum 50 points on the test given the applicants for the Organised Crime Prosecutor, but only 30 out of 50 points on the test for the Čačak Higher Prosecution Service.

103 See Law Prof. Vesna Rakić – Vodinelić's views published on *Peščanik*, available in Serbian at: <http://pescanik.net/pripreme-za-izbor-javnih-tuzilaca-institucionalne-i-vaninstitucionalne/>.

104 None of the candidates on the SPC's final list forwarded to the Government won the requisite majority: 109 deputies voted for Novi Sad Appellate Court judge Dejan Terzić, 75 for Deputy War Crimes Prosecutor Snežana Stanojković, seven for Deputy War Crimes Prosecutor Mioljub Vitorović, six for Deputy Chief State Prosecutor Đorđe Ostojić and five for Deputy War Crimes Prosecutor Milan Petrović.

105 See the *Politika* article, available in Serbian at: <http://www.politika.rs/sr/clanak/345881/Hronika/Tuzilastvo-za-ratne-zlocine-dobice-privremenog-sefa>.

the War Crimes Prosecution Service and adversely affect its already slow and inefficient prosecution of war crimes.

Although the law provides the relevant authority with the power to ensure that the criteria of competence, qualifications and worthiness override other criteria, one cannot shake off the impression that it had not made use of it, for lack of courage. It remains unclear why the SPC failed to exercise its power under Article 74(4) of the Public Prosecution Services Act and decided to forward to the Government a list of all applicants, rather than only the well-rated ones. It is also unclear why the SPC list enumerates only the names and current offices of the nominees, but no other information. On the other hand, the Assembly deputies were invited to the sitting on the election of prosecutors (that included 72 other items on the agenda) only two days in advance¹⁰⁶ and voted on the candidates the same day, wherefore there was absolutely no possibility of opening a reasonable and expedient parliamentary debate on the proposed candidates.

The constitutional and legal framework governing the election of prosecutors, the fact that the Government is not bound by the ranking list of the SPC (the body directly testing and appraising the candidates and the only one with genuine insight in their qualities), the election of the prosecutors by the National Assembly in the absence of a proper and substantial debate about the candidates all render senseless the entire complex process of appraising the competence, qualifications and worthiness of the applicants and the very election of the prosecutors. Hence the necessity and urgency of implementing the planned changes of the Constitution regarding the election of prosecutors and the maximum suppression of influence of the legislative and executive authorities on the prosecutorial election process.

The chief problem arises from the fact that the procedure for recruiting and promoting prosecutors 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 National Assembly's role in appointing and dismissing the Chief State Prosecutor and prosecutors directly puts at risk the independence of the prosecutors, as highlighted in the Screening Report as well. The executive authorities derive their influence on the election of SPC members and public prosecutors and their deputies from Articles 159 and 164 of the Constitution of the Republic of Serbia.

Prosecutors, who were not reappointed in 2009, were reinstated in 2012, after the Constitutional Court rendered its above-mentioned decisions. Like in the case of the reinstated judges, the criteria for their reinstatement had not been clearly set.

¹⁰⁶ The agenda of the 10th Sitting is available at <http://www.parlament.gov.rs/activities/calendar.594.html>Dnevni red.

In May 2014, the SPC enacted the rules for appraising the performance of prosecutors.¹⁰⁷ In mid-May 2015, it also enacted the Rulebook on Criteria and Standards for Appraising the Competence, Qualifications and Worthiness of Applicants for Public Prosecution Services.¹⁰⁸ The Rulebook was criticised by experts as soon as it came into force. The Association of Judicial and Prosecutorial Assistants of Serbia and the Association of Prosecutors of Serbia filed an initiative with the Constitutional Court in June, seeking a review of the constitutionality and lawfulness of the Rulebook. As they explained in their initiative,¹⁰⁹ the provisions of the Rulebook are in contravention of Article 21 (on the prohibition of discrimination) and Article 53 (guaranteeing equal access to public office) of the Constitution. Namely, under the Rulebook, applicants who worked as prosecutorial assistants for at least three years, applicants who completed the initial Judicial Academy training and applicants-judges are exempted from taking the written test all other applicants for first-time deputy prosecutorial offices are under the obligation to take, in addition to the oral test. This provision discriminates against all other applicants fulfilling the requirements to be elected deputy public prosecutors for the first time (judicial assistants, lawyers, law graduates who passed the Bar and have the requisite experience, etc.).

The 2015 amendments to the Public Prosecution Services Act afford privilege to candidates for first-time deputy prosecutorial tenures, who have completed the initial Judicial Academy.¹¹⁰ Namely, they do not have to take the test organised by the SPC and their competence is rated by taking into account their final Judicial Academy grades. An identical advantage the amendments to the Act on Judges give applicants for first-time judgeships prompted protests among experts.¹¹¹

2.6. Termination of Judicial Office and Disciplinary Proceedings

Under the Constitution, the tenure of a judge shall terminate at his own request, upon the fulfilment of the legal retirement requirements, by dismissal or non-appointment on permanent tenure (Arts. 148 (1) and 57, Act on Judges). The decision shall be taken by the High Judicial Council (Art. 57). The Constitution does not list grounds for the dismissal of judges, leaving the regulation of this issue to law, whereby it reduces the constitutional protection of judges from the legislative branch. The Act on Judges lists the following grounds for dismissal: a) in the event

107 Rulebook on Criteria and Standards for Appraising the Performance of Public Prosecutors and Deputy Public Prosecutors, *Sl. glasnik RS*, 58/14, available in Serbian at: <http://www.dvt.jt.rs/doc/Pravilnik%20o%20kriterijumima%20i%20merilima%20vrednovanja%20rada%20javnih%20tuzilaca%20i%20zamenika%20javnih%20tuzilaca.pdf>.

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

109 The initiative is available in Serbian at: <http://www.ustp.rs/resources/250615.inicijativa.pdf>

110 Art. 77a, Public Prosecution Services Act.

111 More in section 2.4.

he had been convicted to a prison sentence of minimum 6 months for a punishable offence rendering him unworthy of judgeship, b) in the event he had discharged his duties incompetently or committed a grave disciplinary offence (Art. 62). Incompetence shall denote insufficiently successful discharge of judicial duties, if a judge's performance is appraised as "unsatisfactory" in accordance with the criteria for appraising the performance of judges (Art. 63). Anyone may file an initiative for the dismissal of a judge. The dismissal procedure shall be launched at the proposal filed by the court president, the president of the next higher court, the President of the Supreme Court of Cassation, the authorities charged with appraising the performance of judges or the Disciplinary Commission. The High Judicial Council shall establish whether there are grounds for dismissal (Art. 64). Article 151 of the Constitution and Article 5 of the Act on Judges guarantee immunity to judges, wherefore they may not be held liable for opinions they voiced or their votes on a decision, unless they committed a criminal offence in violation of the law.

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

According to the HJC 2014 Annual Report¹¹² a total of 944 disciplinary reports were filed against judges and the HJC initiated 42 disciplinary proceedings that year. The HJC imposed the public reprimand penalty in five cases and the salary reduction penalty in ten cases. Four judges suspected of grave disciplinary offences were relieved of duty at their own request after the HJC upheld their requests for termination of judgeship; the HJC also relieved another five judges of duty. According to Disciplinary Prosecutor Mirjana Ilić, most disciplinary reports regard unjustified dilatoriness in conducting proceedings and the judges' failure to deliver their decisions within the deadlines prescribed by law. She stressed that the number of disciplinary reports filed against judges by court presidents has increased recently and that the HJC Chairman filed 20 disciplinary reports against judges, who had not delivered their decisions on time.

In May 2015, the HJC adopted the Rulebook on Disciplinary Proceedings for Establishing the Disciplinary Liability of Judges and Court Presidents¹¹³ in place of the prior Judicial Disciplinary Liability Rulebook. The new Rulebook defines the duties of the Disciplinary Prosecutor and his Deputies and the members of the

112 The Report is available in Serbian at: <http://www.vss.sud.rs/sr-lat/izve%C5%A1taj-o-radu>.

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

Disciplinary Commission more thoroughly and governs the disciplinary liability of court presidents, which its predecessor did not.

The media extensively reported on the case of Belgrade Appellate Court judge Slavka Mihajlović, against whom the President of that Court, Duško Milenković, filed a disciplinary report accusing her of a grave disciplinary offence – unjustified dilatoriness resulting in the expiry of the statutory deadline and the consequent acquittal of Sreten Jocić aka Joca Amsterdam,¹¹⁴ although the Basic Court had found him guilty for illegally carrying firearms. The HJC Disciplinary Prosecutor called for the dismissal of judge Mihajlović, but the Disciplinary Commission, although it found her guilty of a grave disciplinary offence, decided to cut her salary by 50% for a year and prohibit her promotion for two years. The Disciplinary Prosecutor appealed the Disciplinary Commission's decision, the case was reopened and judge Mihajlović was dismissed in early 2016.¹¹⁵

The Screening Report noted that the HJC and SPC should be empowered with leadership and the power to manage the judicial system. The Screening Report recommends, *inter alia*, that grounds for the dismissal of judges be clarified. The Report stated that the scope of application of the provisions on the functional immunity of judges and prosecutors and procedures for removing functional immunity were not fully clear and needed to be reviewed to ensure full accountability of judges and prosecutors under criminal law.

2.7. Guarantees of Judicial Independence

The Constitution guarantees the so-called principle of non-transferability of judges (Art. 150) and this principle has been consistently elaborated in the Act on Judges (Arts. 2(2) and 18). A judge may be assigned or seconded to another court only if he consents to the transfer. Exceptionally, the consent of the judge shall not be required if the court he has been appointed to or most of its jurisdiction has ceased to exist. Judicial transfers became a certainty after the changes of the court network, which is why the adopted amendments to the Act on Judges elaborate the provisions on transfers. The law now allows transfers of judges only to courts of the same instance that have assumed the jurisdiction of the abolished courts.¹¹⁶

The new court network prompted the HJC to adopt a new Rulebook on Criteria for Judicial Transfers in the event most of the jurisdiction of the courts they had been appointed to is abolished.¹¹⁷ The criteria comprise: the consent of the judge

114 See the *Blic* report of 21 September 2015, available in Serbian at <http://www.blic.rs/vesti/hronika/sudija-leti-je-je-obezbedio-oslobadajucu-presudu-joci-amsterdamu/xelqsy6>.

115 See the *Blic* report of 13 January 2016, available in Serbian at <http://www.blic.rs/vesti/hronika/pobeda-blica-razresena-sudija-mihajlovic-zbog-zastare-predmeta-joce-amsterdama/73q62ky>.

116 Article 6.

117 Rulebook on Criteria for Judicial Transfers, available in Serbian at: <http://www.vss.sud.rs/doc/premestaj/Pravilnik-o-premestaju-28-11-2013.pdf>.

at issue, his place of residence and the number of years he has been a judge. These criteria also apply to transfers of all other court staff.

Judicial impartiality is guaranteed by Serbian law in the provisions, which specify a number of reasons when a judge may be recused from a proceeding. Recusal may be sought by the judges themselves or by the parties to the proceedings. The court presidents rule on the motions for recusal. Grounds for recusal mostly regard conflict of interests and are laid down in the procedural laws. However, in addition to the specific grounds for recusal, Article 37(2) of the Civil Procedure Act (CPA) also allows for the recusal of a judges or lay judge in a particular case if circumstances give rise to doubts about his impartiality. This provision, however, may be abused given that the CPA does not specify which circumstances are at issue.¹¹⁸ For instance, the Belgrade Commercial Court President recused judge Mirjana Jovanović from ruling on the lawsuit filed by the Prime Minister's brother Andrej Vučić to declare null and void the establishment of the company Asomakum. The motion for recusal had been filed by Vučić's lawyer Zoran Jakovljević, and the case was assigned to another judge.¹¹⁹ The grounds quoted by Jakovljević for the judge's recusal are disputable. Namely, he accused her of "dilatoriness and lack of impartiality". The following issues need to be borne in mind. First, dilatoriness is a disciplinary offence under the Act on Judges, and any judicial liability for it needs to be reviewed in a disciplinary proceeding before the Disciplinary Commission. The second issue regards the above-mentioned failure of the legislator to elaborate the "circumstances" giving rise to doubts about the impartiality of a judge. The risk of arbitrariness and abuse of the recusal institute is, indeed, real if one bears in mind that court presidents rule on motions for recusal pursuant to a provision not specifying any criteria on which their decisions should be based.

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

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

118 See the *Politika* article of 2 November 2015, available in Serbian at: <http://www.politika.rs/sr/clanak/342611/Hronika/Da-li-se-zloupotrebljava-mogucnost-izuzeca-sudije>

119 See the *B92* report of 21 September 2015, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=09&dd=21&nav_id=1041900.

Not all courts in Serbia use the automated random case allocation system. Some of them allocate cases to judges in alphabetical order and pursuant to the annual schedules adopted by the court presidents. This approach is particularly problematic in courts with very small numbers of judges, where it is extremely easy to predict which judge will rule on which case. This particularly applies to situations in which the court presidents exercise their power to assign cases to judicial officials other than those other assigned by the automated system. The Chapter 23 Action Plan envisages a series of activities aimed at improving the court electronic case management systems and software, including the establishment of a working group (in 2016), which is to design a programme for weighting of cases by degree of complexity in order to introduce the weighting system as one of the allocation criteria and the amendment of the Act on Judges provisions on random case allocation to facilitate the implementation of the case weighting programme.

Financial dependence on other branches of government definitely affects judicial independence. Under the Chapter 23 Action Plan, the Ministry of Justice is to transfer full responsibility for the management of the judicial budget to the HJC and SPC in the second quarter of 2016. The Plan also envisages raising the analytical, statistical and management capacities of the HJC and SPC administrative staff to enable them to fulfil their new duties. Transparency and institutional accountability are the main principles they are to be guided by in their work.

2.8. Pressures on the Judiciary

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

In its 2015 Progress Report, the European Commission said that there was still scope in the legislative and constitutional framework for political influence over judicial appointments, especially with respect to the appointment and dismissal of misdemeanour judges. The EC emphasised that the representatives of the government still publicly commented ongoing trials and investigations, which undermined the independence of the judiciary. The Chapter 23 Screening Report stresses that the full respect of the independence of the judiciary also implies abstaining from commenting court decisions and that criticising judicial decisions, in particular by politicians, puts independence of the judiciary at risk. The deadline in the Chapter 23 Action Plan, by which codes of conduct governing comments of court decisions and proceedings by Assembly deputies and Government members were to have been adopted – the last quarter of 2015 – has been missed.

The Screening Report said that the HJC and SPC needed to react to political interferences in the work of the judges. Under the Chapter 23 Action Plan, the HJC

and SPC were to have amended their Rules of Procedure and laid down a clear public response procedure in cases of political influence on the judiciary. This deadline was missed as well.

In early October 2015, the HJC sent a letter to the Electronic Media Regulatory Authority (ERMA) condemning Hepi TV's reports that the President of the Pančevo Commercial Court and her husband "were continuously engaged in organised acts of crime" and its calls on the citizens to share any information with that station. The HJC said that Hepi TV had thus undermined the independence and integrity of the said judge and Court President and required of the ERMA to take measures within its remit. On 12 October, ERMA issued a ruling issuing a public reprimand to Hepi TV and ordering it to broadcast its announcement on the public reprimand.¹²⁰

The strong influence the executive authorities and politicians have been exerting on judges is illustrated by the case of Vladimir Vučinić, a judge of the Special Organised Crime Department of the Belgrade Higher Court. This judge was exposed to huge pressures after he decided to temporarily return the seized passport to Miroslav Mišković, a Serbian tycoon on trial for organised crime. The Court President insisted he amend his decision and, when he refused, the media started alleging he was on Mišković's payroll. As these allegations were not denied either by the Higher Court President or Spokesperson, Vučinić wrote an article in the daily *Politika* in which he explained his decision. First, the Organised Crime Department judges held a plenary session at which they dismissed him from the post of Head of Department.¹²¹ Higher Court President Aleksandar Stepanović then filed a disciplinary report against Vučinić for his "unauthorised comment" of his decision in the media. The Disciplinary Commission found that Vučinić had not committed a disciplinary offence. The HJC Disciplinary Prosecutor appealed the Commission's decision. Its appeal was reviewed by the HJC Disciplinary Offences Council, which found Vučinić guilty of the offence and issued him a reprimand.¹²²

Interestingly, the HJC decision was reported on by many media, but not served on Vučinić's legal counsel or published on HJC's website.¹²³ In the meantime, the Organised Crime Department panel decided to join the criminal proceedings against Mišković and the owner of Nibens Group, Milo Đurašković, which resulted in the assignment of a new judge to try this case.¹²⁴ The Higher Court

120 The HJC ruling is available in Serbian at: <http://www.vss.sud.rs/sites/default/files/attachments/Resenje%20REMA%2012.10.2015.pdf>.

121 See the *Blic* article of 26 December 2015, available in Serbian at: <http://www.blic.rs/vesti/politika/smenjen-predsednik-specijalnog-suda-vladimir-vucinic/t135sd5>.

122 See the *Informer* article of 24 June 2015, available in Serbian at: <http://informer.rs/vesti/drustvo/19844/VSS-Sudija-Vucinic-kriv-zbog-price-o-Miskovicu>.

123 See the *Danas* article of 25 June 2015, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/sudija_vucinic_kriv_samo_jos_uvek_to_ne_zna_.1118.html?news_id=303851

124 See the *Kurir* article of 12 December 2014, available in Serbian at: <http://www.kurir.rs/crna-hronika/specijalni-sud-spojenci-postupci-protiv-miskovica-i-duraskovica-clanak-1635726>

President transferred judge Vučinić to the Court's Criminal Department in the 2016 Annual Judicial Schedule he drew up.¹²⁵ This decision would appear all right on its face because Vučinić's six-year term in office in the Organised Crime Department expired on 1 January 2016. However, there was no restriction on extending his term in office, particularly since he presided over the panels trying alleged drug boss Darko Šarić and the Red Beret officers charged with rebellion. These trials will have to start over now that the composition of the panels has changed.¹²⁶

3. Independent Regulatory Authorities

3.1. *General*

The work of the Serbian independent regulatory authorities in 2015 continued to be subjected to various forms of pressure by the executive, indicating that the country still has not completed its transition to a mature democracy. The problem that needs to be singled out concerns the executive authorities' reactions to the reports by the independent regulatory authorities, as the former have, more so than in the past, not only rejected any criticism in those reports as groundless, but qualified it as "an attack on the state" at the behest of "foreign paymasters" as well. Since reports by international human rights NGOs dealing with various aspects of the respect of human rights in Serbia elicited similar reactions, the executive's treatment of the Serbian independent regulatory authorities illustrates its response to professional criticism in general, which contributes to perceptions that it is untouchable and that the independent regulatory authorities are in the service of other states and organisations.

The phenomenon dubbed "tabloidisation" especially undermined the work of the independent regulatory authorities, as their reputation and independence were often brought into question by some media, which published ad hominem arguments, blatant disinformation, and even insults that had almost faded from the public scene after the democratic changes in Serbia.¹²⁷ The future of the "fourth branch of government" was brought into question in 2015, more seriously than earlier,

125 See the *NI* report of 4 December, available in Serbian at: <http://rs.n1info.com/a115348/Vesti/Sudija-Vucinic-sklonjen-iz-Specijalnog-suda.html>.

126 See the *Politika* article of 19 December 2015, available in Serbian at: <http://www.politika.rs/sr/clanak/345577/Smene-sudija-drzavu-ce-skupo-kostati>.

127 See the *Informer* article of 6 May, in which the Defence Minister was quoted as saying that the Protector of Citizens was a manipulator and scandal monger, available in Serbian at <http://informer.rs/vesti/politika/13259/GASIC-O-JANKOVICU-On-je-manipulator-i-skandal-majstor>; See also the *Informer* article of 29 April entitled "The Prime Minister Revealed the Real Truth: Saša Janković is Protected by Someone Very Powerful!", available in Serbian at <http://informer.rs/vesti/politika/12427/PREMIJER-OTKRIO-PRAVU-ISTINU-Sasu-Jankovica-stitit-neko-mnogo-mocan>.

given the series of negative assessments of the independent regulatory authorities voiced mostly by the MPs of the ruling coalition¹²⁸ despite the fact that the independent regulatory authorities should, in principle, enjoy the National Assembly's support for their oversight of the executive.

The independent regulatory authorities' reports are not accorded due attention in the Assembly. The parliament delayed reviews of these reports on a number of occasions and did not review some of them at all.¹²⁹ This problem can be ascribed to the lack of political culture among the national deputies. It, however, needs to be noted that some independent regulatory authorities faced much greater pressures than others, which can above all be ascribed to the executive's perceptions of them as a threat.

This section of the report does not focus on all the independent regulatory authorities, the representatives of which are elected by the National Assembly, but limits its analysis to those directly or indirectly relevant to the respect of human rights in the Republic of Serbia.

3.2. *Protector of Citizens of the Republic of Serbia*

Under the Constitution of the Republic of Serbia and the Protector of Citizens Act,¹³⁰ the Protector of Citizens is mandated with protecting and advancing the realisation of the citizens' rights through the oversight of the work of the executive and administrative authorities. Saša Janković was elected Protector of Citizens in 2007 and re-elected to that office in 2012.

In addition to the Belgrade Office, the Protector of Citizens operates offices in Preševo, Bujanovac and Medveđa. Citizens unable to draft their complaints by themselves or with someone's assistance or visit an office of the Protector of Citizens are entitled to seek the assistance of the Office professional staff, who respond to their queries, write down and forward their complaints. The Protector of Citizens' network of on-call legal practitioners covers 15 municipalities in Serbia.¹³¹

The Protector of Citizens publishes annual reports in which he rates the respect of human, minority and civil rights, notes the shortcomings in the work

128 See the *Politika* article of 30 January 2015 "Saša Janković Will Not be Ousted", p. 6; the *Blic* article of 19 May 2015 entitled "Commissioner's Report not Adopted because SNS Deputies Walked out of Committee Session" available in Serbian at <http://www.blic.rs/Vesti/Politika/559994/Izvestaj-Poverenika-nije-usvojen-jer-su-naprednjaci-napustili-sednicu-odbora>; See also the *Blic* article quoting SNS Executive Committee Deputy Chairman Jovičić qualifying Saša Janković as a disgrace, of 16 April 2015, available in Serbian at <http://www.blic.rs/vesti/politika/jovicic-sasa-jankovic-je-sramota-a-ne-zastita-za-gradane/zth8lcp>.

129 See the European Movement in Serbia policy brief "The Independent Bodies and the National Assembly of the Republic of Serbia: Collaboration or Ignorance" of October 2015, available at: <http://www.emins.org/uploads/useruploads/forum-it/06PB---The-Independent-Bodies-NET.pdf>.

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

131 Bačka Palanka, Novi Pazar, Prijepolje, Užice, Bor, Dimitrovgrad, Leskovac, Sombor, Vršac, Požarevac, Valjevo, Jagodina, Zaječar, Čačak, and Kragujevac.

of the authorities, issues proposals on how the authorities can improve their work to the benefit of the citizens, and provides data on the activities and costs of his office.¹³²

By December 2015, this authority was contacted by 14,169 citizens and received 5,890 complaints, an increase over 2014, when it received 4,866 complaints. In that period, it issued 382 recommendations, 266 of which were implemented.

The Protector of Citizens submitted a number of legal initiatives and draft amendments to valid laws in 2015 (notably, draft amendments to the Notaries Public Act and the Draft Maximum Number of Public Sector Staff Act), as well as a number of initiatives for the review of the constitutionality of individual laws.

The status of the Protector of Citizens authority is particularly delicate given its mandate. It was exposed to huge pressures by the executive authorities in 2015.

The campaign the executive authorities launched against the Protector of Citizens began in 2014,¹³³ but culminated when he presented his 2014 report, in which he qualified the state of human rights in Serbia as “concerning”.¹³⁴ He was accused of dealing with issues not within his remit,¹³⁵ attacking state institutions,¹³⁶ and was soon the victim of a defamation campaign over a 1993 suicide committed with a handgun which he had allegedly owned illegally. This campaign was supported and front-paged by the regime tabloids, which dubbed it the “Pistol Scandal”.¹³⁷ An SNS deputy qualified the Protector’s annual report as a “political pamphlet” at a session of the parliamentary Committee for the Judiciary.¹³⁸ The state officials disputed the independence of the Protector of Citizens in their accusations. The Minister of Internal Affairs said that “there is no doubt in my mind that, all this time, he has been acting as an impassioned member of the former regime and the party that had nominated him for the post of Protector of Citizens I hope I won’t be

132 The 2014 Annual Report of the Protector of Citizens, published on 14 March 2015, available at <http://www.ombudsman.rs/attachments/Annual%20Report%202014.pdf>.

133 More in the Helsinki Committee for Human Rights in Serbia Bulletin No. 114 “Brutal Attacks on Independent Agencies”, April 2015, available at: <http://www.helsinki.org.rs/doc/HB-No114.pdf>.

134 The 2014 Annual Report of the Protector of Citizens, p. 1.

135 See the *Večernje novosti* report on the statement by the Minister of Interior of 18 March, available in Serbian at <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:539224-Stefanovic-Jankovic-nije-nadlezan-kada-mu-odgovora>.

136 See the *Telegraf* article of 11 May quoting the Minister of Interior as saying that Janković is attacking the police and the army, available in Serbian at <http://www.telegraf.rs/vesti/politika/1561991-stefanovic-sasa-jankovic-napada-policiju-i-vojsku>.

137 Numerous articles on this topic were published by *Informer*, starting with “JANKOVIĆ’S DARKEST SECRET! He doesn’t want you to know this!”, *Informer*, 18 April 2015, available in Serbian at: <http://www.informer.rs/vesti/politika/10981/NAJMRACNIJA-TAJNA-SASE-JANKOVICA-On-ne-zeli-da-ovo-znate>.

138 Helsinki Committee for Human Rights in Serbia Bulletin No. 114, p. 3.

sent before a firing squad for expressing my personal opinion, for daring to criticise Saša Janković.¹³⁹

Various print and electronic media discussed the salaries of the staff of the Protector of Citizens. So did the deputies of the ruling coalition in the National Assembly.¹⁴⁰

Such treatment of the Protector of Citizens elicited international reactions. The OSCE Mission to Serbia expressed concern “about the ongoing campaign against the Serbian Ombudsman institution and Ombudsman Saša Janković,”¹⁴¹ while the spokesperson of the EU Commissioner for Neighbourhood Policy and Enlargement expressed the EU’s concern over allegations that Janković was threatening national security.¹⁴² After it reviewed the EC 2014 Progress Report on Serbia, the European Parliament criticised the executive authorities’ treatment of this independent authority and said that it: “[C]ondemns the ungrounded public denunciation of the Ombudsman by government ministers, stresses that the role of the Ombudsman is central to the system of checks and balances of the government and calls on the authorities to ensure that the independence and integrity of the Ombudsman are preserved; calls on the authorities to provide the Ombudsman with full political and administrative support for his work and to safeguard his right to request official documents in line with the Law on Public Information.”¹⁴³

The role of the Protector of Citizens is crucial for the functioning of a democratic society. This independent regulatory authority was not involved in any political action that would have brought its independence or the quality of the mandate it performs in into question in any way in 2015. The executive’s endeavours to refute the criticisms and recommendations voiced by the Protector of Citizens, whose findings almost always coincide with those of reputable international and government and non-government organisations, testify to the fragile democracy in Serbia and the essential lack of understanding of the key role independent bodies play in contemporary society.

139 See the *NI* report of 18 March, titled “Minister Stefanović Criticises Ombudsman”, available in Serbian at <http://rs.n1info.com/a44219/Vesti/Stefanovic-kritikuje-ombudsmana.html>.

140 More in the *Informer* article “Protectors of Citizens Cost Us 18.9 Million RSD Plus Taxes Every Year!” of 28 January, available in Serbian at [http://www.telegraf.rs/vesti/politika/1413321-da-li-je-normalno-da-zastitnik-gradjana-ima-vecu-platu-od-vucica-i-nikolica](http://www.informer.rs/vesti/politika/856/SASA-JANKOVIC-MOJA-PLATA-JE-OKO-340-000-DINARA-i-utvrđjena-je-Zakonom; “Is it NORMAL that the Protector of Citizens Has a Higher Salary than Vučić and Nikolić?”, <i>Telegraf</i>, 30 January, available in Serbian at <a href=).

141 “Independence of institutions must be respected, says OSCE Mission to Serbia Acting Head Uyehara”, OSCE Mission to Serbia, 21 April, available at <http://www.osce.org/serbia/152396>.

142 See the *NI* report of 31 January, available in Serbian at: <http://rs.n1info.com/a31789/Vesti/Zabrinutost-EU-Sve-institucije-da-saradjuju-sa-ombudsmanom.html>.

143 European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia, available at [297](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2015-0065%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN, para. 20.</p></div><div data-bbox=)

3.3. *Commissioner for Information of Public Importance and Personal Data Protection*

The Commissioner for Information of Public Importance and Personal Data Protection is an independent regulatory authority performing its mandate in accordance with the Free Access to Information of Public Importance Act¹⁴⁴ and the Personal Data Protection Act.¹⁴⁵ The Commissioner for Information of Public Importance and Personal Data Protection oversees the enforcement of these laws, rules on individual complaints under them and issues recommendations to government authorities on how to improve their work. Rodoljub Šabić was first elected Commissioner for Information of Public Importance and Personal Data Protection in 2009 and re-elected to it in 2011.

The Commissioner received 5,198 cases regarding free access to information and 2,200 cases regarding personal data protection in the January-November 2015 period. He ruled on 4,948 of the former and 2,073 of the latter. These numbers testify to the trust this authority enjoys in the public, on the one hand, and the continuous deficiencies in the work of the state authorities, on the other, primarily with regard to their respect of the rights guaranteed under the Free Access to Information of Public Importance Act, although it has been in force for a decade now. According to the Commissioner's 2014 Report, published in March 2015, his office found violations of the right of free access to information of public importance in over 90% of the complaints reviewed in 2014.¹⁴⁶ It identified major problems with respect to personal data protection as well.¹⁴⁷

The Commissioner repeatedly alerted to the existing and potential shortcomings in the work of the state authorities in 2015 and filed misdemeanour motions against individual civil servants after performing checks of the state authorities. It is also noteworthy that the Commissioner in 2015 again called for the adoption of a Decree on the Archiving and Special Measures for the Protection of Particularly Sensitive Data, which was to have adopted by May 2009.¹⁴⁸

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

145 *Sl. glasnik RS*, 97/08, 104/09 – other law, 68/12 – Constitutional Court decision and 107/12.

146 The Commissioner's 2014 Annual Report is available at <http://www.poverenik.rs/en/o-nama/annual-reports/2048-izvestaj-poverenika-za-2014-godinu.html>.

147 This is how the Commissioner described the general state of personal data protection in Serbia in his press release on the submission of a motion to initiate misdemeanour proceedings against the psychiatric clinic Dr Laza Lazarević and its Director: "This is just another one in a succession of cases which demonstrate the poor state of affairs in the field of personal data protection and, even worse, the unwillingness of those with the power to change this situation to actually change it." The Commissioner's press release of 23 December, entitled "Unacceptable and Irresponsible Treatment of Particularly Sensitive Personal Data" is available at <http://www.poverenik.rs/en/press-releases-and-publications/2255-neprihvatljiv-neodgovoran-odnos-premanarocito-osteljivim-podacima-o-licnosti.html>.

148 See the Commissioner's press release of 27 August, available at <http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/2164-nebriga-drzave-za-narocito-osetljive-podatke-o-licnosti.html>.

The Commissioner in 2015 analysed the Information Booklets of the Government, National Assembly, the President of Serbia, the Chief State Prosecution Service, the Constitutional Court and the Supreme Court of Cassation, the decisions of which cannot be contested with the Commissioner under Article 22(2) of the Free Access to Information of Public Importance Act, and found that the “highest public authorities neglected the legal obligation of proactive disclosure of information about their work to an unexpected extent”.¹⁴⁹

Although the Commissioner was not lambasted by the executive authorities in the same way the Protector of Citizens was in 2015, some state officials publicly criticised his activity and status, demonstrating not only their lack of understanding of the Commissioner’s role, but the requisite transparency of the public authorities in a democratic state. Commenting the Commissioner’s and Transparency Serbia’s request to make public the contract on the provision of management and consultancy services to the Smederevo Ironworks, the Minister of Economy said he had no problem with showing that contract to the Commissioner but was against “disclosing it being disclosed to Transparency Serbia or someone else”,¹⁵⁰ i.e. making it public. Representatives of numerous state companies demonstrated their lack of understanding of the Free Access to Information of Public Importance Act; the national telecommunications company Telekom Srbija continued with its practice of filing claims against the Commissioner.¹⁵¹

The adoption of the Commissioner’s 2014 Report by the National Assembly was delayed in May 2015, after the SNS members of the Culture and Information Committee walked out of the session at which a conclusion on the Report was to have been adopted, because they had not been consulted about it in advance.¹⁵² The conclusion, adopted at a subsequent session of the Committee, was qualified as lacking real substance.¹⁵³

The Commissioner expressed concern about the available 2016 state budget projections, envisaging a nearly 30% cut in the allocation for the wages of the Commissioner’s staff compared to 2015, which would significantly hinder the work of

149 See the Commissioner’s press release of 1 December 2015, available at <http://www.poverenik.rs/en/press-releases-and-publications/2241-nezadovoljavajuce-stanje-informatora-o-radunavvisih-organa.html>.

150 See the *Radio Television of Vojvodina* report of 15 October 2015, available in Serbian at: http://www.rtv.rs/sr_lat/ekonomija/aktuelno/seric-nije-problem-da-sabic-vidi-ugovor-zelezare_649037.html.

151 See the *Danas* article of 19 March 2015 on the 35 lawsuits Telekom filed against the Commissioner, 30 of which were dismissed by court, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/telekom_tuzi_poverenika_sud_odbacuje_1118.html?news_id=299051.

152 See the *Blic* article of 18 May 2015, available in Serbian at <http://www.blic.rs/vesti/politika/izvestaj-poverenika-nije-usvojen-jer-su-naprednjaci-napustili-sednicu-odbora/s9pgt10>.

153 See Transparency Serbia’s press release of 3 June 2015, available at: <http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-issues/7637-parliamentary-committee-vague-on-access-to-information-absence-of-will-to-perform-proper-supervision-over-executive-authority>.

the office. The Commissioner said that “such budget planning is driven by dishonest motivation, to put it mildly”.¹⁵⁴

Some state authorities took on board the Commissioner’s views in 2015. For instance, in December 2015, the Ministry of Internal Affairs acted on the Commissioner’s warning and destroyed records with data on people who had purchased tickets for “high risk” sports events.¹⁵⁵

3.4. Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality, established as an independent authority under the 2009 Anti-Discrimination Act,¹⁵⁶ is charged with overseeing the enforcement of anti-discrimination regulations, preventing all forms of discrimination and improving the realisation and protection of equality. The Commissioner is also entitled to receive and review complaints about the violations of the law, extend information to the complainants and, if necessary, file civil, misdemeanour and criminal reports with the consent of the persons concerned.

The term in office of the first Commissioner, Nevena Petrušić, expired in May 2015 and Brankica Janković was elected in her stead.

In 2015, the Commissioner for the Protection of Equality filed a motion for the review of the constitutionality of the Maximum Number of Public Sector Staff Act with the Constitutional Court, rendered a number of opinions on draft laws and issued recommendations to state administration authorities. The Commissioner received 666 complaints in 2014; she issued 109 opinions on them and found 66 of the complaints of discrimination well-founded.¹⁵⁷ In mid-November 2015, the Commissioner said that the number of complaints filed with her office in 2015 was on the rise and that she had received 898 of them by 1 November, most of which claimed discrimination on grounds of sex and national affiliation.¹⁵⁸

The Commissioner actively and publicly fought against discrimination in Serbia in the year behind us, and, although her findings of discrimination on various grounds were frequently extremely critical of the situation in this area, this body did not highlight any major problems in its dealings with the executive authorities. It, however, needs to be noted that the election of the new Commissioner, who had been

154 See the Commissioner’s press release of 24 November 2015, available at <http://www.poverenik.rs/en/press-releases-and-publications/2230-kreatori-budzeta-neprincipijelno-a-radikalno-pogorsavaju-uslove-za-funkcionisanje-poverenika.html>.

155 See the Commissioner’s press release of 21 December 2015, available at <http://www.poverenik.rs/en/press-releases-and-publications/2251-mup-postupio-u-skladu-sa-upozorenjem-poverenika.html>.

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

157 See the 2014 Report by the Commissioner for the Protection of Equality of March 2015, available at <http://www.ravnopravnost.gov.rs/en/reports/annual-report>.

158 See the *Blic* article of 15 November, available in Serbian at <http://www.blic.rs/vesti/drustvo/poverenica-porast-prituzbi-gradana-najvise-diskriminisani-zbog-pola/gfbv8p9>.

a State Secretary in the Ministry of Labour, had not passed without controversy: she was nominated by the ruling coalition but the opposition parties opposed her election, emphasising that her CV showed she obviously did not fulfil the legal requirements to hold the office.¹⁵⁹ Civil society organisations were also against her election, noting both the shortcomings in her CV and the violation of the National Assembly Rules of Procedure, because they had not been consulted in the nomination process.¹⁶⁰

3.5. *Anti-Corruption Agency*

The Anti-Corruption Agency is an independent and autonomous state authority established under the Anti-Corruption Agency Act,¹⁶¹ and inter alia charged with the implementation of the National Anti-Corruption Strategy¹⁶² and its Action Plan,¹⁶³ issuing recommendations and opinions on the enforcement of this law, and instituting proceedings and imposing penalties for its violation. The Agency is managed by its Board and Director. Tatjana Babić was appointed Director in 2013 by the Agency Board, whose nine members are nominated by various nominators and elected by the National Assembly.

Although the Anti-Corruption Agency issued numerous recommendations and alerted to various problems in 2015, the general impression is that the state authorities, both at the local and the national levels, have failed to act on its findings sufficiently.¹⁶⁴ This is why the Agency continued calling for broader powers, which would enable it to perform its activities more efficiently.¹⁶⁵

The Agency nevertheless reviewed several high profile cases in 2015 and found violations of the Anti-Corruption Agency Act. In the case concerning the Defence Minister, it found that he had violated the regulations on conflict of interests when he was the Mayor of Kruševac, because he concluded contracts with the companies owned/co-owned by his wife and son.¹⁶⁶ The Agency also opened proceedings to establish whether the Belgrade Mayor had violated the regulations on conflict of

159 See the *Blic* article of 29 April, available in Serbian at <http://www.blic.rs/vesti/politika/ds-povuci-predlog-za-izbor-brankice-jankovic-za-poverenicu/eg90ds3>.

160 See the *B92* article of 4 May entitled “NGOs Nominate Commissioner” available in Serbian at http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=05&dd=04&nav_id=988065.

161 *Sl. glasnik RS*, 97/08, 53/10, 66/11 – Constitutional Court decision, 67/13 – Constitutional Court decision, 112/13 and 8/15 – Constitutional Court decision.

162 The 2013–2018 National Anti-Corruption Strategy is available <http://mpravde.gov.rs/tekst/38/protiv-korupcije.php>.

163 *Ibid.*

164 See the *Radio Free Europe* report of 2 October, available in Serbian at <http://www.slobodnaevropa.org/content/agencija-prigovara-korupcija-ostaje/27283005.html>.

165 See the *Beta* report of 30 September, available in Serbian at <http://beta.rs/vesti/drustvo-vesti-srbija/14353-agencija-za-borbu-protiv-korupcije-trazi-veca-ovlasenja>.

166 The measure of publication of the decision on the violation of the Anti-Corruption Agency Act Ref. No. 014-07-00-0238/2015-11 is available in Serbian at <http://www.acas.rs/wp-content/uploads/2015/09/Gasic.pdf>.

interests after allegations surfaced that he was the Director of two offshore companies headquartered in the Virgin Islands and whether his income statement was accurate in view of indications that he possessed real estate of significant value in Bulgaria.¹⁶⁷

3.6. State Audit Institution

The State Audit Institution (hereinafter: SAI) was established in 2005 under the State Audit Institution Act¹⁶⁸ as the supreme authority charged with auditing spending of public funding in Serbia. The SAI is tasked with planning and performing audits, adopting by-laws, issuing opinions, giving advice and extending professional assistance regarding the implementation of the law. The SAI audits direct and indirect beneficiaries of national, provincial and local budget funds and legal persons they established, mandatory social security organisations, public companies, etc. The SAI is headed by Radoslav Sretenović, whom the National Assembly elected Chairman in 2007 and re-elected him to that post in 2012.

Only 19 of the 128 opinions on financial reports of the audited entities SAI issued in 2014 were positive. Only 3 of its 128 opinions on the compliance of the audited entities' operations with the law issued in 2014 were positive.¹⁶⁹ Whilst noting that the budget beneficiaries had spent one-seventh of the budget funds in contravention of the regulations, the SAI Chairman nevertheless underlined that visible progress has been made.¹⁷⁰

Although not all budget beneficiaries submitted full reports to the SAI, this institution did not face major problems in its work, i.e. pressures by the executive authorities or others.

4. National Minorities and Minority Rights

4.1. Status and Rights of National Minorities under Serbian Law

Serbia's legal framework guarantees a satisfactory level of national minority rights. It has ratified the leading international documents protecting the rights of national minorities, including the International Covenant on Civil and Political Rights,

167 See the *Krik* report available at <https://www.krik.rs/en/the-mayors-hidden-property/> and the *Radio Free Europe* report of 28 October, available in Serbian at <http://www.slobodnaevropa.org/content/tatjana-babic-proveravamo-sinisu-malog/27331153.html>.

168 *Sl. glasnik RS*, 101/05, 54/07 and 36/10.

169 The SAI 2014 Report of March 2015 is available in Serbian at <http://www.dri.rs/dokumenti/godisnji-izvestaji-o-radu.93.html>.

170 See the *RTS* report of 24 December, available in Serbian at <http://www.rts.rs/page/stories/sr/story/9/Politika/2152110/DRI%3A+Svaki+sedmi+dinar+iz+bud%C5%Beeta+potro%C5%A1e+n+mimo+propisa.html>.

the Council of Europe Framework Convention for the Protection of National Minorities (hereinafter: CoE Framework Convention) and the European Charter for Regional and Minority Rights. International law does not govern the rights of national minorities comprehensively and thoroughly, but, rather, provides guidelines and lays down the main principles, leaving the regulation of this issue to the states.

Under Article 75 of the Constitution of the Republic of Serbia, persons belonging to national minorities shall be guaranteed special individual and collective rights in addition to the rights guaranteed to all citizens by the Constitution, which they may exercise individually and together with others. The Constitution further lays down that persons belonging to national minorities shall take part in decisions or decide on certain issues related to their culture, education, information and official use of languages and scripts themselves or via their representatives. Persons belonging to national minorities may elect their national councils in accordance with the law in order to exercise the right to self-governance in these four areas. In addition to the general anti-discrimination provision (in Art. 21), the Constitution underlines that any discrimination on the grounds of affiliation to a national minority shall be prohibited (Art. 76), that persons belonging to national minorities are entitled to participate in the administration of public affairs and hold public offices on an equal footing with other citizens, and that the ethnic breakdown of the population and adequate representation of persons belonging to national minorities shall be taken into consideration when employing staff of state, provincial and local self-government authorities and public services (Art. 77). Articles 78 and 79 of the Constitution prohibit the forced assimilation of persons belonging to national minorities and guarantee their rights to preserve their specificities and associate and cooperate with their compatriots.

Some issues regarding the constitutional status of national minorities are, however, disputable or unregulated.

The Constitution defines the Republic of Serbia as the state of Serbian people and all citizens who live in it (Art. 1), whereby it gives the majority population precedence over the national minorities. On the other hand, the Constitution somewhat rectifies the ethnic definition of the state, by laying down that sovereignty shall be vested in the citizens (Art. 2(1)).

The Constitution should have mentioned multiculturalism as a value characterising Serbia as a political community in view of the fact that the 2011 Census¹⁷¹ confirmed that over 20 ethnic groups live in Serbia.

The words “take part in decisions or decide ... themselves” in Article 75 of the Constitution on the essence of the right to minority self-governance need to be defined more precisely as the issue of the substance and quality of these rights re-

171 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>.

mains open due to their vagueness and the failure of the authors of the Constitution to specify that they will be regulated by law.

Under Article 77(2) of the Constitution, the ethnic breakdown of the population and adequate representation of persons belonging to national minorities shall be taken into consideration in employment of staff of state, provincial and local self-government authorities and public services. Laws¹⁷² including norms on the adequate representation of persons belonging to national minorities in the public authorities also use this formulation but fail to lay down detailed criteria or the penalties for violating this constitutional provision. Given that this provision does not specify that the formulation will be further defined by law and that the Acts do not elaborate it in greater detail, the question arises in which procedure is the ethnic breakdown of the population “taken into consideration” and what happens if it is “not taken into consideration”. The absence of a clear definition of this concept and adequate penalties has rendered this constitutional norm inapplicable and had adverse consequences in practice. The problem regarding the under-representation of persons belonging to national minorities among staff of public authorities was noted both in the Third Opinion on Serbia of the Advisory Committee on the Framework Convention¹⁷³ and in the European Commission’s 2015 Progress Report.¹⁷⁴

In addition to the Constitution, the status and rights of national minorities are mainly governed by the following three laws: the Act on the Protection of Rights and Freedoms of National Minorities (hereinafter: Minority Protection Act),¹⁷⁵ the National Councils of National Minorities Act (hereinafter: NCNMA)¹⁷⁶ and the Official Use of Languages and Scripts Act.¹⁷⁷

The Minority Protection Act provides a definition of national minorities and affords protection to all groups of *nationals* sufficiently representative but constituting a minority in the territory of the Republic of Serbia, belonging to population groups with long-standing and firm bond with the territory and possessing distinctive features, such as language, culture, national or ethnic affiliation, origin or religion, distinguishing them from the majority of the population, and the members of which are characterised by their concern for the preservation of their common identity, including culture, tradition, language or religion.

The Minority Protection Act also lays down the main principles regarding the rights and obligations of national minorities, notably: the prohibition of discrimination, the implementation of affirmative measures to ensure full and effec-

172 The Act on the Protection of Rights and Freedoms of National Minorities, the Civil Servants Act, etc.

173 Available at: <http://www.coe.int/en/web/minorities/country-specific-monitoring#Serbia>.

174 Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

175 *Sl. glasnik SRJ* 11/02.

176 *Sl. glasnik RS*, 72/09, 20/14 – Constitutional Court decision and 55/14.

177 *Sl. glasnik RS*, 45/91, 53/93, 67/93, 48/94, 101/05 and 30/10.

tive equality of the national minorities and the majority population, the freedom to declare and express one's ethnicity; the right to cooperate with compatriots in Serbia and abroad; the obligation to respect the constitutional order and the protection of acquired rights. This Act also includes general provisions on the individual and collective rights of persons belonging to national minorities: the right to choose their name; the right to use their native languages and to officially use their scripts and languages; rights related to culture and education; the right to use their national symbols; and the right to public information in minority languages.

Discussions and analyses of the Minority Protection Act need to bear in mind the context in which it was adopted. It had been conceived as a law that would govern the status and rights of national minorities at a very high level of generality, mainly because it was adopted as a law of the Federal Republic of Yugoslavia. The erstwhile federal authorities lacked broad jurisdiction to regulate these issues and the thorough elaboration of the provisions of this Act had been left to the federal units (Serbia and Montenegro). After Montenegro declared independence, the Republic of Serbia integrated the Act in its legal system and it is still the main law governing the status of national minorities. The spirit of this law and its provisions evidently do not respond to present-day requirements, wherefore Serbia must adopt a new law that will regulate the status and rights of national minorities in detail.

4.2. *National Minority Councils*

National Minority Councils are bodies conferred public powers in the fields of culture, education, information, and official use of minority scripts and languages. They are a form of non-territorial autonomy¹⁷⁸ and their main duty is to preserve the identities of the national minorities by preserving and developing the cultures of the people they represent.

The National Minority Councils were first mentioned in the Minority Protection Act and became a constitutional category in 2006, when the new Constitution was adopted. The powers and election of the National Minority Councils are regulated by the National Councils of National Minorities Act,¹⁷⁹ which was adopted in 2009. None of these laws, however, provided an answer to the question what National Minority Councils actually are. Their legal character was defined by the Constitutional Court of Serbia in its decision on the lawfulness of the NCNMA: National Minority Councils are non-state entities elected by persons belonging to national minorities and vested with public powers conferred to them by the NCNMA.

National Minority Councils are legal persons that represent national minorities. They take part in the drafting of regulations and propose amendments to regu-

178 Vladimir Đurić, *The Legal Grounds and Framework of Ethnicity-Based Non-Territorial Autonomy*, available in Serbian at <http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z65/02z65.pdf>.

179 *Sl. glasnik RS*, 72/09, 20/14 – Constitutional Court decision and 55/14.

lations regarding the status of national minorities in the fields in which they are conferred public powers. The Councils have their own assets and are entitled to establish institutions, associations, foundations and companies in the fields of culture, education, public information and the official use of scripts and languages. National Minority Councils may appoint their representatives to managerial boards and thus take part in the management of educational and cultural institutions established by the republican, provincial and local authorities.

Other laws, including the Culture Act, the Education System Act, etc., include provisions governing the individual rights of national minorities as well. The *Expert Report on the situation of minority rights in the Republic of Serbia*¹⁸⁰ noted that, while the legal framework applicable to national minorities in Serbia remained above the European average, the complexity of this framework and its lack of full clarity had been further increased by the Serbian Constitutional Court decision in which it had struck down 10 essential articles of the NCNMA.¹⁸¹ The inconsistency of legal norms governing the rights and status of national minorities, the vagueness of individual provisions, the non-regulation of specific issues and the arbitrary enforcement of the legal provisions, mostly by local self-government authorities, have all created a state of complete legal uncertainty.¹⁸² The legislator thus needs to redefine or align the existing legal framework governing the status and rights of national minorities and put in place an efficient and effective mechanism for protecting them.

The inconsistency of some laws testifies to the legal uncertainty in this area. Namely, the provision entitling a National Minority Council to nominate members of management/school boards or vote for principals of educational institutions, in which most classes are held in the relevant minority language or which have been designated as educational institutions of particular importance to that national minority, was struck out after the Constitutional Court issued its decision declaring it unconstitutional. However, the provisions in the Education System Act providing National Minority Councils with identical powers and entitling them to nominate management board members and vote for the principals have remained intact, wherefore the view the Constitutional Court took in its decision on the NCNMA is not actually effective and resulting in the continued application of provisions, the sense of which is in contravention of the Constitution.

The rights of national minorities are also covered by the bilateral agreements the Republic of Serbia (which was part of the then Serbia and Montenegro State Union) signed with the Former Yugoslav Republic of Macedonia,¹⁸³ Croatia,¹⁸⁴

180 Anastasia Crickley and Rainer Hofmann, *Expert Report on the situation of minority rights in the Republic of Serbia*, 24 September 2015. Available at: http://www.ljudskaprava.gov.rs/images/pdf/nacionalne_manjine/expert_mission_report_on_minorities.pdf.

181 More on the Constitutional Court decision (IUz 882/2010) in the *2014 Report*, IV.3.6.

182 More in the *2014 Report*. IV.3.6.2.

183 *Sl. list SCG (International Treaties)*, 6/05.

184 *Sl. list SCG (International Treaties)*, 3/05.

Romania¹⁸⁵ and Hungary.¹⁸⁶ These documents, declarative in character, reaffirm the constitutional and legal obligations the Republic of Serbia has towards national minorities. The agreement with Hungary, in particular, lays down that the States Parties shall invest maximum efforts in returning to the national minorities and their religious communities and organisations confiscated or otherwise seized property. The parties to the bilateral agreements also envisage the establishment of inter-governmental mixed commissions charged with monitoring the enforcement of these treaties.

4.3. National Minority Rights in 2015

A number of processes that are expected to result in the formulation of a (new) minority policy and regulate the realisation and protection of national minority rights were launched in 2015.

Point 3.8 of the final version of the Chapter 23 Action Plan¹⁸⁷, published in September 2015, defines the activities related to the status of national minorities.

As envisaged in the Chapter 23 Screening Report, the first activity the Action Plan provides for is the establishment of a working group that will draft an Action Plan on the Realisation of National Minority Rights, i.e. specify activities for implementing the normative framework in this field, taking into account the recommendations in the Third Opinion on Serbia of the CoE Advisory Committee on the Framework Convention. This activity aims at ensuring the full implementation of the Framework Convention and will focus on a number of issues, including, in particular: establishment of a mechanism for collecting personal data whilst abiding by the principle of free self-identification; intensification of efforts to guarantee the enforcement of the constitutional principle of “adequate representation” in the public sector at large; improvement of the legislative framework for the protection of national minorities and revision of the NCNMA: rapid and complete follow-up on the findings and recommendations of independent regulatory authorities focusing on human and minority rights; improvement of interaction between various ethnic groups by establishing mechanisms for advancing coordination and cooperation among the National Minority Councils; improvement of the legislative framework on education and intensification of efforts to ensure the availability of textbooks in minority languages and elimination of all other barriers to the exercise of the right to education in minority languages; promotion of the establishment and effective functioning of inter-ethnic councils in local self-government units; ensuring the sustainability of media with programmes in minority languages through the effective

185 *Sl. list SCG (International Treaties)*, 14/04.

186 *Ibid.*

187 The Final Draft is available at <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023%20Third%20draft%20-%20final1.pdf>.

enforcement of the new media laws; establishment of a budget fund for national minorities; and, the elimination of the national minorities' difficulties in accessing religious services in their languages.

The Action Plan also defines the activities in each of the areas facilitating the improvement of the status and rights of national minorities, including in the fight against discrimination, and in the fields of media, culture, education, official use of scripts and languages, the representation of national minorities in state authorities, etc.

Both the Chapter 23 Action Plan and the Chapter 23 Screening Report envisage the design of a separate Action Plan on the Realisation of National Minority Rights. In late March 2015, the Ministry of State Administration and Local Self-Governments issued a ruling¹⁸⁸ establishing a multi-sectoral working group to draft this Action Plan. The Ministry of Justice is charged with coordinating the work of the working group. Although this group is multi-sectoral and includes the representatives of state authorities, National Minority Councils, civil society and international organisations, it remains unclear under which criteria the National Minority Councils and CSOs were selected as the ruling provides for the participation of the representatives of only six (out of 21) National Minority Councils and four CSOs. The National Minority Councils Coordination Body subsequently selected the Councils that would be involved in the work of the working group. The Ministry of State Administration and Local Self-Governments held a public debate of the Action Plan on the Realisation of National Minority Rights from 3 to 23 December. The final version of the Action Plan was not published by the end of the reporting period.

A working group, formed by the Ministry of State Administration and Local Self-Governments and charged with drafting amendments to the Minority Protection Act, started working in early December 2015.¹⁸⁹ This working group comprises representatives of that ministry and the Ministries of Culture and Information, Justice, Education, Science and Technological Development and of Internal Affairs, the National Minority Councils, the government Human and Minority Rights Office and Coordination Body for Bujanovac, Preševo and Medveđa, and the Council of Europe Office in Belgrade. Under the Draft Action Plan for the Realisation of National Minority Rights, the amendments are to be adopted in the second quarter of 2016. It is unclear why civil society organisations were not invited to take part in the drafting of these amendments.

The Ministry of State Administration and Local Self-Governments also established a working group charged with drafting the amendments to the NCNMA. It comprises representatives of the state institutions and the National Minority Councils Coordination Body but no representatives of CSOs, which will be consulted on individual issues if necessary.

188 Ruling No: 119-01-00068/2015-17 of 23 March 2015.

189 See (in Serbian) at <http://www.paragraf.rs/dnevne-vesti/071215/071215-vest22.html>.

In view of the fact that the Minority Protection Act and the NCNMA are main laws governing the status of national minorities, the state has apparently excluded CSOs from formulating the new minority policy.

In early April 2015, the Serbian Government rendered a Decision on the Establishment of the Republican National Minority Council.¹⁹⁰ The Council is tasked with: monitoring and reviewing the realisation of national minority rights and inter-ethnic relations in the Republic of Serbia; proposing measures to advance the full and effective equality of persons belonging to national minorities; monitoring the realisation of cooperation between the National Minority Councils and the state, provincial and local authorities; reviewing the working conditions of the National Minority Councils and proposing measures to improve them; monitoring the realisation of Serbia's international obligations with respect to the exercise of national minority rights; reviewing international agreements on the status of national minorities and the protection of their rights before they are concluded; reviewing drafts of laws and other regulations relevant to the realisation of national minority rights and communicating its opinions on them to the Government; and, endorsing the symbols, emblems and holidays of national minorities at the proposal of the National Minority Councils.

The Council is chaired by the Prime Minister, and the Deputy Prime Minister deputises for him. The Council consists of the Ministers of Foreign Affairs, Justice, Education, Science and Technological Development, Culture and Information, the Director of the Ministry of Justice Directorate for Cooperation with Churches and Religious Communities, the Director of the Human and Minority Rights Office, and the Chairmen of the National Minority Councils.

The establishment of the Republican National Minority Council is provided for by the Minority Protection Act, with a view to facilitating direct communication between the topmost state officials and representatives of national minorities. However, the Council met only several times since the Act was adopted in 2002. The Council held three sessions in 2015, but no conclusions can yet be drawn about the concrete effects of its work, i.e. whether it helped improve the status of national minorities and the authorities' communication with the representatives of national minorities.

In its 2015 Progress Report, the European Commission said that the legislation on the status and rights of national minorities needed to be implemented consistently throughout Serbia, particularly in education, the use of languages, and access to media and religious services in minority languages and that this should not affect learning of the official language, which was an important factor in the social inclusion of minorities. The European Commission, among other things, noted that the State Fund for National Minorities was not operational yet and that effective functioning of local councils for inter-ethnic relations needed to be ensured.

190 *Sl. glasnik RS*, 32/15.

Warnings about the strong influence of (both minority and other) parties on the work of the National Minority Councils have been publicly voiced for years. This influence was noted also during the first election of the members of the National Minority Councils in 2010, both by the Protector of Citizens and the Commissioner for Information of Public Importance and Personal Data Protection.¹⁹¹ The Chairwoman of the Slovak National Minority Council alerted the public to a grave incident that occurred in Kovačica in 2015.¹⁹² The Mayor of this municipality, a member of the Serbian Progressive Party, resorted to blackmail, threats and promises to persuade the members of the Slovak National Minority Council to sign documents forming a new majority in the Council that would oust its current Chairwoman, Ana Tomanova Makanova. The National Minority Councils Coordination Body condemned the pressures in its press release of 18 November 2015.¹⁹³ The state authorities must investigate the allegations in the press release and, if it transpires they are true, react to ensure that such pressures do not recur in the future.

This is yet another example corroborating that the National Minority Councils are under the strong influence of political parties, that their work is largely guided by the political views of one or more parties crucially influencing them and that therein lies the main reason for their inability to adequately deal with the preservation of national, cultural and linguistic identity, for which they are empowered by the Constitution and the NCNMA. Consequently, persons belonging to minority ethnic communities are unable to exercise all the rights they are guaranteed. Furthermore, the inertia of the state regarding this problem is concerning, especially when one bears in mind that it was noted also by the CoE Advisory Committee on the Framework Convention in its Third Opinion on Serbia.

The Roma Party in early September 2015 issued a press release stating that Vitomir Mihajlović was relieved of duty of Chairman by a two-thirds majority of the Council and that Srđan Šajin was appointed in his stead. The Ministry of State Administration and Local Self-Governments, however, found that the request to register the change of Chairman was ill-founded because the session at which the ouster occurred had not been scheduled and held in accordance with the NCNMA and the Statute of the Roma National Minority Council.¹⁹⁴ Vitomir Mihajlović was re-elected Chairman at the Council session held on 17 October.¹⁹⁵

An initiative to form a National Minority Council of the Turkish national minority was launched in late July 2015. The Association of Ethnic Turks in Ser-

191 More on the irregularities and deficiencies of the 2010 National Minority Council elections in the *Report 2010*, II.2.2.5.1.

192 More is available on the website of the Slovak National Minority Council <http://www.rada.org.rs/sr/aktivnosti/aktivnosti-nssnm/item/1135-reakcija>.

193 The press release was e-mailed to the BCHR on 23 November 2015.

194 See the *RTS* report, available in Serbian at: http://www.rtv.rs/sr_ci/drustvo/mihajlovic-ostaje-predsednik-saveta-roma_649044.html.

195 See the *Telegraf* report, available in Serbian at: <http://www.naslovi.net/2015-10-17/telegraf/vitomir-mihajlovic-ponovo-izabran-za-predsednika-nacionalnog-saveta-roma/16841266>.

bia called on Novi Pazar's residents to register with that Association and declare themselves as ethnic Turks so that it could file a request for the establishment of a separate election roll. This initiative was sharply condemned by the representatives of the Bosniaks and qualified as an attempt to "Turkify Bosniaks".¹⁹⁶

4.4. *Role of Independent Regulatory Authorities in Protecting the Rights of National Minorities*

The Protector of Citizens and the Commissioner for the Protection of Equality play a major role in the protection of the rights of national minorities. The Vojvodina Ombudsman's role and activities are also of great importance for the realisation of national minority rights given the multi-ethnic character of the population living in the Autonomous Province.

Out of the recommendations and opinions of the independent regulatory authorities, particular attention needs to be devoted to an Opinion¹⁹⁷ the Protector of Citizens issued with respect to a complaint by the Bosniak National Minority Council.

This Council had sought protection of the rights of Bosniak pupils to education in their native language. The Ministry of Education, Science and Technological Development rendered a decision on bilingual instruction in the city of Novi Pazar and the Tutin, Sjenica and Prijepolje municipalities,¹⁹⁸ although the polled pupils had chosen instruction in Bosniak.

After performing a check of the Ministry's work, the Protector of Citizens found that there were legal grounds for bilingual instruction, but that the Ministry had failed to adopt a by-law detailing the requirements and criteria for the implementation of bilingual schooling, and its monitoring and evaluation in the 2014/2015 school-year before it rendered its decision. Furthermore, bilingual instruction did not exist as an option in the poll on which language the pupils wanted to be schooled in.

The Protector of Citizens issued a recommendation to the Ministry of Education, Science and Technological Development, in which he emphasised the necessity of aligning the relevant provisions of the law. He called on the Ministry to precisely regulate bilingual instruction, as a model of education of persons belonging to national minorities in their native languages, and specify whether it would be organised in schools as an exception or as a rule, and against which criteria. He also advised the Ministry to ensure that the pupils (or their parents) are provided also

196 See the *Blic* report, available in Serbian at: http://www.blic.rs/vesti/politika/poziv-da-se-izjasne-kao-turci-za-bosnjake-provokacija/29cgmce._

197 Ref. No. 26961 of 13 July 2015.

198 Bilingual instruction in Serbian and Bosniak has been introduced in nine primary schools (258 pupils), two high schools (86 pupils) and three vocational secondary schools (488 pupils).

with the option of bilingual instruction, in Serbian and the minority language, when they are polled on the language of instruction.

Statistical data¹⁹⁹ on the number of complaints filed with the Commissioner for the Protection of Equality and the number of cases in which she found discrimination have for years now indicated that discrimination on grounds of ethnic or national affiliation accounts for the most widespread form of discrimination in Serbia. Although the public has recognised the Commissioner for the Protection of Equality as an institution they can turn to and seek protection from discrimination, the same cannot be said of the National Minority Councils. The NCNMA entitles the Councils to file discrimination complaints with the Commissioner for the Protection of Equality on behalf of individuals or groups of persons belonging to the national minorities, but the only one that has availed itself of that opportunity is the Bosniak National Minority Council. One of the reasons lies in the Council members' lack of awareness of the anti-discrimination mechanisms. In order to remedy the situation, the Commissioner for the Protection of Equality organised training in discrimination and domestic anti-discrimination mechanisms for the members of all the National Minority Councils within the project entitled "Let Equality become Reality".²⁰⁰

In 2015, the Vojvodina Ombudsman conducted a survey²⁰¹ on the knowledge of national minority languages among the staff of the provincial secretariats, on whether knowledge of languages officially used in the Vojvodina provincial administration was set as a requirement for the recruitment of staff performing specific jobs and how the staff proved their knowledge of specific languages.

The survey showed that only five of the 13 provincial administrative authorities had laid down, in their general enactments, knowledge of a national minority language as a special requirement for the performance of specific jobs. (The five authorities lay down knowledge of a foreign language as an alternative.) They have not, however, defined which level of knowledge of a minority language was requisite for performing a specific job or specified how knowledge of minority languages is proven.

According to the data presented in the survey, persons belonging to the Croatian, Hungarian, Romanian and Slovak national minorities were under-represented in the provincial authorities considering their shares in Vojvodina's population.

The Provincial Ombudsman recommended to the provincial administrative authorities to perform an analysis of the jobs in their rulebooks on jobs, identify those entailing regular communication with the public, and impose knowledge of

199 The Commissioner's annual reports are available at: <http://www.ravnopravnost.gov.rs/en/reports/annual-report>.

200 See the Commissioner's 2014 Annual Report, available at: http://www.ravnopravnost.gov.rs/jdownloads/files/regular_annual_report_of_the_cpe_2014_spojeno.pdf.

201 The report on the survey is available in Serbian at http://www.ombudsmanapv.org/riv/attachments/article/1589/Istrazivanje_sluz_upotreba_jezika_2015.pdf/.

minority languages as a requirement in the job descriptions. The authorities should also specify the required levels of knowledge for all these jobs and regulate the way in which such knowledge is proven. The Vojvodina Ombudsman took into consideration a recommendation the Advisory Committee on the Framework Convention made in its Third Opinion on Serbia and recommended to the provincial authorities to devote particular attention to ensuring adequate representation of persons belonging to national minorities in the administrative authorities.

5. Status of Roma

5.1. General

According to the last Census, conducted by the Statistical Office of the Republic of Serbia in 2011, 147,604 (2%) of Serbia's nationals declared themselves as Roma.²⁰² Roma are one of the most vulnerable categories of the population in Serbia.

The first draft of the strategic document on the improvement of the status of Roma in Serbia was the 2002 Draft Strategy for the Integration and Empowerment of Roma. The National Action Plans in the four Decade of Roma Inclusion priority areas were the first documents the Serbian Government adopted, on 27 January 2005. Serbia joined the Decade of Roma Inclusion on 2 February 2005. During Serbia's chairmanship of the Roma Decade in 2009, the Serbian government adopted the national Strategy for the Improvement of the Status of Roma in the Republic of Serbia²⁰³ 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.²⁰⁴

The 2015–2025 Strategy for the Improvement of the Status of Roma in the Republic of Serbia and its Action Plan were to have been adopted by the end of 2015. A multi-sectoral working group was charged with designing the new strategy and it based its activities on the operational conclusions of the Roma Inclusion Seminar. A public debate on the 2015–2025 Draft Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia opened in December 2015.²⁰⁵

202 See the Statistical Office of the Republic of Serbia publication <http://media.popis2011.stat.rs/2012/Nacionalna%20pripadnost-Ethnicity.pdf>.

203 The English translation of the Strategy (*Sl. glasnik RS*, 27/09) is available at: <http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-web-FINAL.pdf>.

204 Platform for the Improvement of the Status of Roma in the Republic of Serbia, Roma National Minority Council, available in Serbian at: http://www.romskinacionalnisavet.org.rs/files/1_platforma_2003.doc.

205 Invitation to the Public Debate on the Draft Strategy for the Social Inclusion of Roma Men and Women in the Republic of Serbia (2015–2025), Social Inclusion and Poverty Reduction

The Draft Strategy focuses on the following issues: issuance of personal documents, comprehensive anti-discrimination measures, compliance with international standards on forced evictions, access to health care and social protection, education and the labour market, and improvement of housing conditions. The Draft Strategy provides for the establishment of a central body that will monitor and coordinate the implementation of the Strategy activities and the human rights based approach to issues of strategic relevance to improving the status of Roma in the Republic of Serbia.

In its Chapter 23 Screening Report²⁰⁶ the European Commission underlined that Serbia should dedicate additional financial assistance to implement the current and future Roma strategy in particular regarding education and health measures. The Chapter 23 Action Plan section on fundamental rights envisages the adoption of a new strategy and action plan for improving the living conditions of Roma, continuous monitoring of the fulfilment of the new strategy by the Council for the Improvement of the Status of Roma and implementation of the Decade of Roma Inclusion, strengthening the network of Roma coordinators, activities for informing Roma of their rights related to the regulation of their personal status and a continuous activity aimed at strengthening their access to free legal aid pursuant to the Legal Aid Act.

In its Analysis of the Late Birth Registration Procedures,²⁰⁷ the Serbian non-government organisation Praxis found that significant headway has been made in addressing the problems of legally invisible people, but that the Instructions on Vital Records and Vital Records Forms and the Rulebook on the Procedure for the Health Institutions' Issuance of Reports of Birth and Report of Birth Forms both laid down that the registration in the birth register shall be performed on the basis of the report of birth, and that the parents' data s shall be entered in the birth register and the report of birth on the basis of their registration in birth or marriage registers. Under this rule, new-borns whose mothers do not have their IDs or birth certificates on them during childbirth cannot be registered. Such provisions are in contravention of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and Article 64 of the Serbian Constitution.

In its 2015 Progress Report, the European Commission underlined that Roma continued to face difficult living conditions and discrimination in access to social protection, health, employment and adequate housing. It noted that the third Roma seminar, held in June, concluded that good progress had been made with regard to civil registration, but that progress was slow and uneven in all other areas and that

Unit, available at: <http://sociojalnoukljucivanje.gov.rs/en/call-for-public-discussion-of-the-draft-strategy-for-social-inclusion-of-roma-in-republic-of-serbia-2015-2025/>.

206 The Chapter 23 Screening Report is available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.

207 Published in June 2015, available at http://www.praxis.rs/images/praxis_downloads/OSCE_-_Final_Report.pdf.

the subsequent registration of undocumented citizens had led to a fall in the number of ‘legally invisible persons’ thanks to the new systemic solutions. It said that compliance with international standards on forced eviction and relocation still needed to be ensured.

In his report on his visit to Serbia, the Council of Europe Commissioner for Human Rights²⁰⁸ also specified some reasons for concern regarding Roma rights. These problems, above all, regard their exercise of the right to adequate housing and the right to access quality education. The Commissioner for Human Rights also qualified as concerning the status of internally displaced Roma, most of whom do not have adequate access to fundamental human rights.

The Expert Report on the situation of minority rights in the Republic of Serbia, prepared by two independent experts from EU Member States, EU staff from the Commission (DG NEAR) and from the EU Delegation in Belgrade, did not cover Roma, because, as its authors explained, “their legal and factual situation is the subject of specific monitoring and other activities conducted by the EU and other international actors”.²⁰⁹

The Roma National Minority Council adopted its Platform for Improving the Status of Roma in the Republic of Serbia, which is to serve as the basis for the full integration and inclusion of Roma in the social, economic, cultural and political life in the Republic of Serbia.²¹⁰ The Platform is in line with the Europe 2020 Strategy and the strategic goals of the Decade of Roma for the 2015–2025 period and focuses on four strategic fields: education, employment and economic empowerment, housing and health. It sets out a number of measures, including inclusive education for all Roma children, policy promoting greater employment of Roma in the public sector, provision of preventive health care and social protection services under the same conditions as those applying to the rest of the population, mapping of micro-regions and settlements in which the Roma community is the most deprived, pursuant to the existing indicators, etc.²¹¹

In November 2015, the Vojvodina Ombudsman recommended the inclusion of an article in the Local Self-Government Act²¹² on the mandatory recruitment of coordinators of Roma issues in local self-governments where Roma account for

208 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Serbia, from 16 to 20 March 2015, available at [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2015\)14&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2015)14&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).

209 Anastasia Crickley and Rainer Hofmann, *Expert Report on the situation of minority rights in the Republic of Serbia*, 24 September 2015. Available at: http://www.ljudskaprava.gov.rs/images/pdf/nacionalne_manjine/expert_mission_report_on_minorities.pdf.

210 Platform for Improving the Status of Roma in the Republic of Serbia of 15 April 2015, Roma National Minority Council, available in Serbian at <http://www.romskinacionalnisavet.org.rs/index.php/en/dokumenta/item/970-platforma-za-unapredenje-polozaja-roma-u-republici-srbiji>.

211 *Ibid.*

212 *Sl. glasnik RS*, 129/07 and 83/14.

more than 5% of the population. The coordinators would extend expert and technical assistance with a view to advancing the status of the Roma minority. Some local self-governments already have such coordinators, but this institute is not regulated either by primary or subsidiary legislation. The Vojvodina Ombudsman said in her analysis that Roma were not only victims of prejudice, but also subject to both direct, indirect, systemic, individual and collective discrimination.²¹³

5.2. Discrimination

The Progress Report noted that Roma were the group subjected to discrimination the most and that the National Council on the Rights of the Child restarted work but that administrative data still were not disaggregated to enable the monitoring of the status of vulnerable groups, particularly with regard to Roma children. The EC stated that Serbia should, in particular, implement the anti-discrimination framework more effectively, promote equality and ensure the integration of persons belonging to the most vulnerable groups, which include the Roma.²¹⁴

The 2013–2018 Strategy for the Prevention of and Protection from Discrimination²¹⁵ reiterates that the Roma community in Serbia, especially its most vulnerable categories – women, children, IDPs, legally invisible people – are exposed to various forms of discrimination, above all verbal and physical assaults, destruction of their homes and segregation. In the section on national minorities, the Strategy devotes particular attention to the status of Roma (Section 4.2.2.3) and sets out special measures (Measures 4.2.4, paragraphs 10–13) and objectives (Section 4.2.5.4) regarding the Roma national minority.

The Office of the Commissioner for the Protection of Equality has continued greatly contributing to the prevention of and protection from discrimination in 2015 as well. The Commissioner *inter alia* admonished media that published discriminatory reports, notably *Večernje novosti* and the weekly *Het nap*. She issued an opinion in which she recommended to the *Večernje novosti* Chief Editor not to publish texts that amounted to harassment and humiliation of the Roma ethnic community and to make sure that he did not violate the legal regulations on the prohibition of discrimination in the course of his regular duties.²¹⁶ In her opinion on the weekly *Het Nap*, published in October 2015, the Commissioner said that the views and ideas expressed in the article entitled “Egg-Throwing: Roma Craze – Throwing Eggs at Older Citizens” amounted to harassment and humiliating treatment, violating

213 See the *Blic* report of 2 November 2015, available in Serbian at <http://www.blic.rs/vesti/drustvo/pokrajinski-ombudsman-uvesti-koordinatora-za-romska-pitanja/d58x8rt>.

214 Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

215 *Sl. glasnik RS*, 60/13.

216 See the *Blic* report of 21 October 2015, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/599990/Poverenica-Vecernje-novosti-prekrsile-Zakon-o-zabrani-diskriminacije>.

both the law and the dignity of persons belonging to the Roma national minority. The article was published in June and the Chief Editor and author of the article issued an apology in the following issue of the weekly after fierce public reactions.²¹⁷

The Protector of Citizens is of the view that Roma are the most vulnerable minority group in Serbia and that the hitherto activities implemented to improve their status have not eliminated the key obstacles to their integration, because affirmative education measures are insufficiently applied. He also warned that the ethnic distance towards the Roma had not been reduced.²¹⁸

The June 2015 Seminar on the Social Inclusion of Roma Men and Women in the Republic of Serbia was attended by the representatives of the Serbian National Assembly and Government, the Roma National Minority Council, independent regulatory authorities, civil society and international organisations. The Seminar resulted in the joint preparation of Operational Conclusions for the 2015–2017 period, by the Serbian Government and the European Commission.²¹⁹ The Operational Conclusions deal with inter-sectoral issues, civil registration, education, employment, social protection and health care, housing and freedom of movement.²²⁰

The City of Kragujevac was commended for its endeavours to promote Roma inclusion. It won one of the prizes of the Council of Europe Congress of Local and Regional Authorities awarded to four towns for their projects promoting Roma integration. The Kragujevac authorities and the Roma educational-cultural community *Romanipen* partnered on the implementation of the “Strong from the Start” project with its designer, the Belgrade based NGO CIP-Center for Interactive Pedagogy. The project aims at advancing parenting skills and homes as enabling environments for early childhood learning and development.²²¹

5.3. Education and Employment

Not only do Roma have difficulties accessing education; they face discrimination throughout their schooling as well. One of the reasons why staff in educational institutions and administration, above all the school inspectors, do not have the capacity to themselves recognise and penalise discrimination arises from the fact that the Ministry of Education, Science and Technological Development in

217 See the *Blic* report of 7 April 2015, available in Serbian at <http://www.blic.rs/vesti/drustvo/poverenica-za-zastitu-ravnopravnosti-nedeljnik-na-madarskom-jeziku-vredao-rome-i/7rt1v5x>.

218 See the *Blic* report of 2 October 2015, available in Serbian at <http://www.blic.rs/vesti/drustvo/zastitnik-gradana-romi-i-dalje-najugrozenija-manjinska-grupa/efc0ymf>.

219 The Operational Conclusions of 14 September 2015 are available at: <http://sociojalnoukljucivanje.gov.rs/en/operational-conclusions-of-the-seminar-on-social-inclusion-and-poverty-reduction-in-the-republic-of-serbia/>.

220 *Ibid.*

221 See: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2856052&SecMode=1&DocId=2336466&Usage=2>.

2015 again failed to prescribe the detailed criteria for recognising forms of discrimination by the staff, pupils or third parties in the educational institutions envisaged under Article 44(4) of the Education System Act,²²² although six years have passed since its adoption.²²³

The adoption of these criteria was one of the recommendations issued by the Commissioner for the Protection of Equality in 2014.²²⁴ In March 2015, the Ministry forwarded a draft rulebook on criteria for recognising forms of discrimination to the Commissioner for her consideration. She stated that the definition of discrimination and forms of discrimination in the draft rulebook were not in accordance with the relevant definitions in the Anti-Discrimination Act.²²⁵ She qualified as particularly problematic the provisions defining indirect discrimination and on violations of the principles of equal rights and obligations and harassment and humiliating treatment. The Commissioner commended the provisions defining potentially discriminatory conduct and situations in educational institutions, saying they were a good basis for the elaboration of the future rulebook.²²⁶

As far as (violations of) equality and access to quality education are concerned, the Republic of Serbia undoubtedly launched major and critical systemic changes when it adopted the corollary Education System Act. The commitment to inclusive education has, however, remained unfulfilled for most Roma children still attending the so-called special schools for pupils with developmental difficulties. The number of Roma pupils has fallen, but is still too high. The drop-out rate of Roma children remains high as well.²²⁷

The Serbian NGO Praxis conducted a research on the access of Roma women to social and economic rights in Serbia,²²⁸ in which it found that 17% of its respondents had never gone to school, mostly because of poverty, because they got married and had children, had not been registered at birth, lived far away from school, had to look after their younger siblings and because their families opposed

222 *Sl. glasnik RS*, 72/09, 52/11 and 55/13.

223 Under Article 171 of the Education System Act, the requisite by-laws were to have been adopted within three years from the day the Act came into effect.

224 See the Commissioner's 2014 Report, available at: <http://www.ravnopravnost.gov.rs/en/reports>.

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

226 See the Commissioner's opinion on the draft rulebook of 27 March 2017, available in Serbian at <http://www.ravnopravnost.gov.rs/sr/zakonodavne-inicijative-i-mi%C5%A1ljenje-o-propisima/mi%C5%A1ljenje-na-nacrt-pravilnika-o-bli%C5%BEim-kriterijumima-za-prepoznavanje-oblika-diskrimi>.

227 According to UNICEF's 2014 Multiple Indicator Cluster Survey, the percentage of Roma settlement children of secondary school age currently attending secondary school or higher stands at 21.6% while the share of children of that age attending school in the rest of the population stands at 89.1% See: The 2014 Serbia Multiple Indicator Cluster Survey and 2014 Serbia Roma Settlements Multiple Indicator Cluster Survey, available at http://www.unicef.org/ceecis/MICS_5_-_Key_Findings.pdf.

228 The report on the research of October 2015 is available at http://www.praxis.rs/images/praxis_downloads/Access%20to%20Socioeconomic%20Rights%20for%20Roma%20Women.pdf.

it. Poverty and migration were the reasons cited the most often by the respondents who had started primary school but dropped out.

The introduction of additional assistants and health mediators has been proposed to deal with the high shares of early school leavers and poor access to health care, identified as major problems plaguing the Roma community. As per social inclusion, the 2015 Progress Report noted the need to improve the implementation of the regulatory framework, stating that only 17.8% of Roma registered as unemployed have been covered by active employment measures. It said that Roma were still excluded from a series of social services and that their participation in the formal labour market was still very low.

A major problem has arisen with respect to Roma children, who had been enrolled in school but emigrated abroad with their parents, who applied for asylum there. As most of these applications are rejected, many of the families are returned to Serbia under readmission agreements but their children have trouble catching up with the school curriculum they had missed. There have been cases of 14- and 15-year-old children who had to enrol in lower grades when they returned with their families after having spent several years abroad.²²⁹

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.

The decision of the Belgrade University School of Languages to establish a Roma Language Group is definitely a step towards putting in place the prerequisites for preserving and nurturing Roma Language because it finally provides teachers with degrees with the opportunity to obtain Roma Language certificates and start holding class in this language. Furthermore, the decision to establish this Group finally equated Roma with other national minority languages taught at the Belgrade University School of Languages.²³⁰

The Action Plan envisages the holding of courses in minority languages, including in Roma, for the students of the Main Police Training Centre, coming from communities in which greater shares of national minorities live. A rulebook on the recognition of discrimination in education is to be adopted to facilitate the fight against discrimination against and segregation of national minorities.

229 See the *Blic* article of 27 January 2015, available in Serbian at <http://www.blic.rs/vesti/drustvo/oeps-problem-skolovanja-dece-iz-porodica-koje-traze-azil/r258p0>.

230 See the Social Inclusion and Poverty Reduction Unit press release available in Serbian at <http://sociojalnoukljucivanje.gov.rs/rs/ustanovljen-lektorat-za-romski-jezik-na-filoloskom-fakultetu-univerziteta-u-beogradu/>.

5.4. Living Conditions and Realisation of the Right to Adequate Housing

The living conditions of the Roma are still difficult. Those living in the numerous informal settlements are subject to a high degree of discrimination in accessing welfare, health care, employment and adequate housing, including the basic hygienic living conditions, water and electricity.

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.²³¹

Particular note needs to be made of the observations about the right of Roma to adequate housing made by the UN Special Rapporteur on adequate housing after her visit to Serbia in May 2015. She, notably said that “[T]he authorities in Serbia provide virtually no services to the informal Roma settlements” and that “[T]he disproportionate number of evictions of Roma combined with the failure of the authorities to provide even the most basic services to those living in informal settlements or to guarantee legal security of tenure for residents in such settlements suggests a highly charged discriminatory policy resulting from stigma and racism against Roma.”²³²

The European Union earmarked 3.6 million Euro for the “Livelihood Enhancement for the Most Vulnerable Roma Families in Belgrade” (Let’s Build a Home Together) project, which is to provide durable and adequate housing solutions for up to 200 Roma families resettled from the Belgrade Belvil informal settlement and living in the Belgrade container settlements in Makiš, Jabučki rit, Resnik and Kijevo. The Project is implemented in partnership with the City of Belgrade, the United Nations Office of High Commissioner for Human Rights (UN OHCHR) through the UN Human Rights Adviser (HRA) in Serbia, the Danish Refugee Council, the Housing Development Centre for Socially Vulnerable Groups, the OSCE and the UN Serbia Team.²³³ The implementation of the project began in February 2013 and was subsequently extended to May 2016. By the end of July 2015,

231 See: “Analysis of the Main Obstacles and Problems in Access of Roma to the Right to Adequate Housing”, Praxis, 2013, available at http://www.praxis.org.rs/images/praxis_downloads/Report_right_to_adequate_housing.pdf.

232 Press Statement of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms Leilani Farha, Visit to Serbia, including Kosovo, Belgrade, 25 May 2015, p. 4, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>.

233 The First Intermediary Report, “Let’s Build a Home Together”, 8 February–31 July 2013, UNOPS Serbia, 18 August 2013, available at http://www.sagradimodom.org/dokumenti/en/27_542934_first-intermediary-report-feb-july-2013.pdf.

61 families (306 people) had moved into their new homes equipped with the basic household appliances. Twelve families (58 people) moved into apartments in Orlovsko Naselje in May 2015, and 15 apartments were built in Jabučki Rit – 15 families (62 people) moved in on 25 September. Thirty-two more housing units in Mislodin were constructed in December and the beneficiaries will move in once the city authorities complete the infrastructural works. The provision of housing for another 51 families was pending, primarily due to the slow responsiveness of the Belgrade city authorities, which have been unable to identify appropriate locations with sufficient capacity for the construction of the social housing units. In the meantime, 41 Roma families (205 people), which had opted for moving to farm households, have moved into their new homes, and 10 Roma families (47 people) were provided with aid in construction material they needed to renovate their homes. With UNOPS' assistance, the Belgrade city authorities adopted the Rulebook on Criteria for the Selection of the Social Housing Beneficiary Families. The Rulebook envisages two social housing models – social housing and social housing in protected environment, ensuring the beneficiaries' protection from further evictions from the social housing units. The Rulebook provides guidance on the rent scheme, provision and payment of utilities and for the city subsidies to the Roma families. The social housing in protected environment was introduced for the first time as a model of social housing for the Roma population in the City of Belgrade for all the families who fulfil the criteria.²³⁴

The Chapter 23 Action Plan envisages the resolution of the issue of the informal Roma settlements by the legalisation of all sustainable settlements. Absolutely necessary relocations must be implemented in accordance with the future law on forced evictions and the accompanying manual. The Commissariat for Refugees and Migration is to address the situation of internally displaced Roma not planning on returning to Kosovo by funding programmes improving their living conditions. One of the activities involves the establishment of a Geographic Information System for the informal Roma settlements, which will include data on the number of informal settlements.

The living conditions in the informal settlements are below the threshold of human dignity. Most of them lack electricity and running water and the hygiene in them is appalling. Fires often break out in them in autumn and winter because their residents build fires and light candles to warm themselves. The living conditions in these settlements have not been addressed after the 2014 fires, which took the lives of several children. The measures taken by the national or local governments to improve the living conditions in them, especially in the winter months, have been ineffective as well.

234 According to the information obtained from Project Manager Dragana Milošević in a telephone conversation and the Third Intermediate Report (February- July 2015) of the UNOPS Serbia Project Centre of 31 August 2015, available at http://www.sagradimodom.org/dokumenti/en/27_576677_lbht-third-intermediate-report-feb-jul-2015.pdf.

Attempts were made to evict Roma from their informal settlements again in 2015. The Zemun municipal authorities, for instance, launched the eviction of the informal Roma settlement Grmeč, in which over 50 Roma families, most of them displaced from Kosovo, are living. The authorities served the settlement residents rulings ordering the demolition of their homes within one day, in violation of international standards on eviction, the provision of alternative accommodation and consultations with the residents to be evicted.

The Commissioner for the Protection of Equality issued a warning about the eviction of Roma from their informal settlements in Zemun and New Belgrade, in which she stated that humane treatment of people respecting their dignity was not a matter of good will but of fundamental human rights.²³⁵ The Lawyers' Committee for Human Rights filed an application with the European Court of Human Rights, asking it to issue an interim measure pursuant to Rule 39 of the Court Rules of Procedure. The ECtHR initiated the procedure for issuing the interim measure against the Republic of Serbia due to the risks of grave violations of the human rights of internally displaced Roma living in this settlement. The Zemun authorities reacted and issued new rulings, in which they directly applied the International Covenant on Economic, Social and Cultural Rights and quashed the initial rulings pending the provision of adequate alternative accommodation for the residents of this settlement.²³⁶ To the best of BCHR's knowledge, this is the first time an administrative authority in Serbia directly applied an international human rights treaty and its practice is expected to affect the new regulations governing this field.

Amnesty International alerted to the risk of forced evictions of Roma families living in informal settlements in Belgrade and called on the city authorities to halt such actions and guarantee Roma the right to adequate housing.²³⁷

In 2015, the Serbian Government started drafting new regulations to improve the eviction procedure and align it with human rights standards binding on Serbia. It, however, remains to be seen what the effects of these regulations will be and whether they will be adopted in consultation with all the relevant stakeholders. The above-mentioned issue of legalising informal Roma settlements is not covered by the new housing regulations under preparation.

In its research on access of Roma women to social and economic rights in Serbia,²³⁸ the NGO Praxis found that as many as 8% of its respondents lived in structures made of cardboard and tin, while 88% of them lived in structures with electricity, which they are probably illegally hooked up to. The electricity company

235 The Commissioner's warning of 27 July 2015 is available in Serbian at <http://www.ravnopravnost.gov.rs/st/upozorenja/upozorenje-povodom-raseljavanja-roma>.

236 See the YUCON press release of 3 September 2015, available in Serbian at: <http://www.yucom.org.rs/opstina-zemun-obustavila-prinudno-iseljenje-neformalnog-romskog-naselja-grmec/>.

237 See: <https://www.amnesty.org/en/documents/eur70/2132/2015/en/>.

238 See: http://www.praxis.rs/images/praxis_downloads/Access%20to%20Socioeconomic%20Rights%20for%20Roma%20Women.pdf.

often disconnects all households hooked up to the same electricity meter because some of them had not paid their electricity bills. Seventy-two percent of the respondents have access to potable water, but some of them have to draw it from the common outdoor fountains. Access to the sewage system appears to be the gravest problem; 45% of the female respondents confirmed that the facilities in which they lived was not hooked up to the sewage system, which may give rise to grave health issues. Women account for only 8% of the respondents holding tenancy rights.

6. People of Different Sexual Orientation or Gender Identity

6.1. General

The prohibition of discrimination on grounds of sexual orientation and gender identity (against lesbian, gay, bisexual or transgender [LGBT] persons) is based on the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other UN human rights documents, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).²³⁹

The Serbian legislative framework protecting the equality of the LGBT population is largely satisfactory, but the provisions of the valid laws, strategies and by-laws prohibiting their discrimination are not enforced consistently. The Constitution of the Republic of Serbia does not explicitly list sexual orientation among the personal features that constitute prohibited discrimination grounds,²⁴⁰ but both gender identity and sexual orientation are mentioned as prohibited grounds of discrimination in Article 2 of the Anti-Discrimination Act. 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. The BCHR was unable to obtain reliable data on the number of discrimination trials due to the different statistical criteria courts apply in their records.

239 See Yogyakarta Principles – Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, International Commission of Jurists, 2007, available at <http://www.unhcr.org/refworld/docid/48244e602.html>. See the Council of Europe standards on non-discriminatory treatment of LGBT persons in *Combating discrimination on grounds of sexual orientation or gender identity – Council of Europe standards*, 2011, available at: http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2590.

240 Although the Constitution does not explicitly mention discrimination on grounds of sexual orientation, it prohibits discrimination on any grounds and on grounds of personal traits, which include sexual orientation, as the Constitutional Court confirmed, see its decision in the case UŽ–1918/2009, of 22 December 2011.

The vulnerability of this category of the population is substantiated by the fact that 77 of the 144 recommendations the UN Human Rights Council issued in response to the UPR Serbia submitted in January 2013 regard the rights of LGBT persons. These recommendations are to be followed up by 2016.

In its 2015 Progress Report, the European Commission concluded that the authorities had taken steps to strengthen the protection of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and again facilitated a Pride Parade in Belgrade in 2015. It, however, noted that greater political commitment to promoting a culture of respect for LGBTI persons was still needed.²⁴¹ The EC also qualified LGBTI persons as one of the most discriminated against categories of the population in Serbia.²⁴²

The Serbian Government in October 2014 adopted the Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period (hereinafter: Anti-Discrimination Strategy Action Plan), comprising 19 measures referring specifically to the LGBT population.²⁴³

6.2. Discrimination and Hate Speech

The NGO Labris in 2014 filed a complaint joined by numerous organisations and individuals against Ivica Dačić, who was Serbia's Prime Minister at the time, over a statement²⁴⁴ he made two days before the 2013 Pride Parade was to have been held. The Commissioner for the Protection of Equality rendered an opinion that the Prime Minister's statement, which had been widely reported by the media in Serbia, included views that were disturbing and humiliating and violated the dignity of persons of same-sex orientation. She also noted that the topmost state officials and holders of public office should be aware of their responsibility and of the weight their statements carry. She recommended to Dačić to invite a delegation of the lesbian human rights NGO Labris to a meeting in order to hear from them what problems persons of same-sex orientation faced on an everyday basis.²⁴⁵

Minister Dačić acted on the Commissioner's recommendation and met in her offices with a Labris delegation, which had filed a complaint against him. The

241 2015 Progress Report, point 1.2.

242 *Ibid.*, pp. 2.4.

243 The Action Plan for the Implementation of the Anti-Discrimination Strategy for the 2014–2018 Period, adopted by a Government Conclusion No. 05 Ref. No. 90–11489/2014, od 2.10.2014, available at http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_engleski.pdf.

244 See e.g. *Kurir Online*, "Dačić: Being a Homosexual is not Normal!", 25 September 2014, available in Serbian at <http://www.kurir-info.rs/dacic-nije-normalno-biti-homoseksualac-clanak-1001325>.

245 Opinion of the Commissioner for the Protection of Equality Ref. No. 07–00–695/2013–02, of 3 March 2014.

delegation familiarised the Minister with the problems LGBTI persons in Serbia faced.²⁴⁶

A complaint was filed with the Commissioner for the Protection of Equality against SNS deputy Aleksandar Martinović, who had made numerous discriminatory remarks about LGBT persons during the parliament debate on the election of the new Commissioner for the Protection of Equality.²⁴⁷ The Commissioner, however, issued a conclusion discontinuing the review of the complaint against Martinović because he has parliamentary immunity.²⁴⁸ In her statement on her decision, she appealed to MPs and other public officials to bear in mind the role they were to play in promoting equality and tolerance. She also recommended to the National Assembly Chairwoman to make sure that the National Assembly Rules of Procedure and Code of Conduct of the People's Deputies be amended to ensure compliance with the non-discrimination principle and include disciplinary liability for its violations.²⁴⁹

No headway was made in the treatment of LGBT persons in the education system in 2015 either. Namely, Activity 4.1.3 of the Anti-Discrimination Strategy Action Plan envisages the drafting of amendments to the Education System Act that will include the introduction of sexual and gender identity as specific grounds of discrimination. However, the draft, produced by the Ministry of Education, Science and Technological Development²⁵⁰ and publicly debated in July 2015,²⁵¹ does not extend the grounds of discrimination to sexual and gender identity and leaves the phrases "other personal traits" and "on other grounds prescribed by the anti-discrimination law" in Articles 6 and 44 of the Act.

There has been no change in the treatment of same-sex orientation in the high-school textbooks in 2015. Discriminatory content is evident in the presentation of same-sex orientation as pathological and support of negative prejudices in biology, psychology and medical textbooks.²⁵²

One of the goals of the Anti-Discrimination Strategy is to raise awareness among youths through the education system that all people, including LGBT per-

246 The Commissioner's press release of 21 February 2015 is available in Serbian at: <http://www.ravnopravnost.gov.rs/sr/saop%C5%A1tenja/ministar-da%C4%8Di%C4%87-postupio-po-preporuci-poverenice>.

247 See the Gay Straight Alliance press release of 26 May 2015, available at: <http://en.gsa.org.rs/2015/05/exposure-of-mp-aleksandar-martinovic-in-the-serbian-parliament-is-not-in-the-spirit-of-law-and-equality-of-all-citizens/>.

248 See the Commissioner's press release of 21 September 2015 at: <http://www.ravnopravnost.gov.rs/en/news/announcement-regarding-the-suspension-of-proceeding-on-complaint-against-mp-zoran-martinovic>.

249 *Ibid.*

250 Available in Serbian at <http://www.mpn.gov.rs/dokumenta-i-propisi/zakonski-okvir/>

251 *Ibid.*

252 "Same-sex Orientation in High School Textbooks", *Labris*, 2014, available in Serbian at: <http://labris.org.rs/wp-content/uploads/2014/07/Analiza-diskriminatornog-sadrzaja-srednjoskolskih-udzbenika.pdf>.

sons, are equal, and provide objective information on sexual orientation and gender identity in the school curricula and textbook materials.²⁵³

6.3. Violence and Hate Crimes

The Criminal Code was amended in 2012 and now includes Article 54a, under which courts shall consider as an aggravating circumstance the commission of a crime out of hate of another on grounds of his race, religion, national or ethnic affiliation, sexual orientation or gender identity. The adoption of this Article could contribute to the efficient prosecution of those suspected of violence and other crimes against LGBT persons and facilitate their stricter punishment. There are, however, no centralised official data on the number of crimes motivated by hate of LGBT persons.²⁵⁴ LGBT persons rarely report hate crimes due to their fear of stigmatisation and further violence, as well as due to their lack of trust in the institutions. LGBT persons are victims of violence both in larger and smaller communities, but the assaults in the smaller communities are under-reported.²⁵⁵

The European Commission is of the view that the LGBTI population is one of the most discriminated categories in Serbia.²⁵⁶

Threats were voiced in 2015 also against the Pride Parade organisations. The MIA High Technology Crime Department found that 30 people had threatened the organisers of the 2015 Pride Parade and spread hate speech on social networks.²⁵⁷

Several incidents, involving assaults on LGBT activists, occurred in the run-up to the 2015 Pride Parade. In September 2015, LGBT activist Predrag Azdejković was verbally and physically attacked by two young men in a Belgrade city bus.²⁵⁸ The Commissioner for the Protection of Equality issued a statement condemning the attack.²⁵⁹

The next assaults on LGBT activists occurred on the night of 26/27 September, when Labris activist Dragoslava Barzut and three other young women were

253 The Anti-Discrimination Strategy, point 4.4, available at http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

254 Statistics are kept only by type of crime. The authorities need to introduce new methods for keeping official statistics and keep records of judgments in which the courts found aggravating circumstances under Article 54a.

255 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>.

256 *2015 Progress Report*, point 5.23.

257 As BCHR was told on 30 November 2015 by representatives of the civic associations that organised the Belgrade Pride Parade.

258 See the Radio Free Europe report of 5 September 2015, available in Serbian at <http://www.slobodnaevropa.org/content/novi-napad-na-lgbt-aktiviste-u-srbiji/27228485.html>.

259 The Commissioner's press release of 4 September 2015 is available at: <http://www.ravnopravnost.gov.rs/en/news/warning-to-the-public-regarding-the-attack-on-lgbt-activist>.

physically assaulted,²⁶⁰ twice the same night. They were first physically attacked by a young man, who was shouting “Lesbians, Lesbians”, and then by another young man. The competent public prosecution service is expected to qualify this criminal offence as a hate crime,²⁶¹ given that the young women did not know their assailants, who had clearly demonstrated during the assaults that their physical violence had been motivated by the women’s sexual orientation.²⁶² The Commissioner for the Protection of Equality issued a press release in which she fiercely condemned the assaults and called on the relevant authorities to find the perpetrators and take steps to prevent acts of physical violence inspired by homophobia.²⁶³

6.4. *Pride Parade and Trans Pride in Belgrade in 2015*

The Pride Parade was held in Belgrade for the second year in a row under extremely heavy police security on 20 September 2015. Like in 2014, the organisers were again required to submit extensive documentation before the event,²⁶⁴ as well as fulfil a new requirement, submit a certificate of consent of the Belgrade Institute for the Protection of Cultural Monuments. Furthermore, they had to pay the fee charged by the Belgrade Public Utility Company *Zelenilo* (Green Areas). All these requirements were set by the Belgrade city authorities and, consequently, the police. The Pride Parade organisers also had to organise private security detail for the event, which cost 5000 EUR. The greatest problem they faced was that the various departments issued their certificates of consent the day before the Parade, when the organisers were unable to pick them all up, although they had applied for them several months earlier. The Pride Parade organisers said that the presence of a large police force protecting the Parade participants hindered the latter’s access to the event venue. They nevertheless qualified the 2015 Pride Parade as successful, given that it was the second Parade held in the row, the professional conduct of the Ministry of Internal Affairs and their good communication with the police. Thirty criminal reports were filed against people who had threatened the Pride Parade organisers.²⁶⁵

The Pride Parade, in which around 1,000 people took part, was safeguarded by a large number of police and gendarmerie officers. Strong police forces with anti-riot gear blocked the centre of Belgrade. The Pride Parade participants rallied

260 See the *B92* report of 29 September 2015, available in Serbian at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=09&dd=29&nav_category=12&nav_id=1045229

261 Article 54a, Criminal Code.

262 See the Labris statement on the investigation into the assaults of 26 October 2015, available in Serbian at: <http://labris.org.rs/saopstenje-povodom-napada-na-lezbejke-u-kafani-srfj/>.

263 See the Commissioner’s press release of 29 September 2015, available at <http://www.ravnopravnost.gov.rs/en/news/warning-to-the-public-regarding-the-attack-on-labris-activist>

264 See the *2014 Report*, III.10.3.1.

265 As a member of the Parade Organisation Committee told BCHR on 22 December 2015.

in front of the Serbian Government building at noon and proceeded to the Belgrade City Assembly, where they held their rally at around 13:00. The police hauled in eight people suspected of planning to attack the participants.²⁶⁶ No violence erupted during the Pride Parade, although a counter-protest was organised nearby, at St. Mark's Church at the same time. Some 70 people, led by clerics, took part in the counter-protest. When the participants in the Pride Parade came close to the counter-protesters, the clerics started thurifying the centre of Belgrade. The counter-protesters' chants clearly amounted to hate speech against people of non-heterosexual orientation.²⁶⁷ A metal fence was put up in front of the counter-protesters and guarded by a police cordon. No incidents occurred during the protest. The counter-protesters handed out leaflets with messages against the Pride Parade, specifying that the counter-demonstration had been initiated by the "Genuine Serbian Orthodox Church".²⁶⁸ Mladen Obradović (leader of the *Obraz* movement and president of the prohibited *Obraz* association) had also notified an assembly, which was to have been held in front of the Serbian Government building, i.e. the same place where the Pride Parade was held, on the same day, 20 September. His rally was prohibited by a ruling issued by the Savski venac Police Station.²⁶⁹ Although this ruling had most probably been issued to protect the participants in the Pride Parade, it suffers from the same shortcomings as the ones alerted to by the Protector of Citizens with regard to the ruling prohibiting the rallies of the Serbian-Chinese Friendship Society FDH. It merely said that the review established that the grounds have been met for banning the rally in Article 11(1) of the Public Assembly Act, i.e. that the rally risked to disrupt public traffic, and risked to endanger the health, public morals or safety of people and property.

The strong police forces safeguarding the Pride Parade at the same time precluded people from taking part in it, as access to the rallying point was restricted to only several "entry points" and at a specific time, after rigorous police control. The rigorous police control prevented other citizens from moving about Belgrade, wherefore the visibility of the Pride Parade messages was insufficient, except in the print and electronic media.

The Trans Pride parade was held in a nearby park on the same day. Its participants called for the amendment of the Vital Registers Act that would allow them to have their chosen names and photographs of "how they feel, make up and dress"

266 "Pride Parade, Belgrade in Rainbow Colours, Participants Please: This is the first real parade", *Blic Online*, 20 September 2015, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/591966/PARADA-PONOSA-Beograd-u-duginim-bojama-ucesnici-zadovoljni-Ovo-je-prva-prava-parada>.

267 "Priests Thurifying and Sprinkling Holy Water along Pride Parade Route", *Blic Online*, 20 September 2015, available in Serbian at <http://www.blic.rs/Vesti/Drustvo/592010/PROTIVNICI-PRAJDA-Svestenici-kade-i-posipaju-svetom-vodicom-put-kojim-se-kretala-Parada-ponosa>.

268 "Another Successful Pride, First Trans Pride", *Tanjug*, 20 September 2015, available in Serbian at <http://www.tanjug.rs/full-view.aspx?izb=200046>.

269 Savski venac Police Station Ruling 03/31/26 Ref. No. 212–645/15 of 18 September 2015.

in their identity documents.²⁷⁰ The Trans Pride was also safeguarded by a strong police force and a hovering police helicopter. No incidents occurred. Its organisers said they had no problem pre-notifying the rally or with discussing and logistically planning it with the police. They said the police told them they kept on changing the entry points during the event for security reasons, wherefore many people were unable to pass through the police cordons and join in.²⁷¹

6.5. *Rights of Same-Sex Partners*

Same-sex partners are not recognised the right to marry²⁷² or the right to form extramarital unions,²⁷³ 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). LGBT persons are discriminated against also with respect to access to health care, which is why they are reluctant to reveal their sexual orientation even when such information is of medical relevance. Partners of LGBT persons cannot visit them in hospital or access their medical data.²⁷⁴

In its decision on the initiative to review the constitutional provision under which extramarital unions entail partnerships between men and women, the Constitutional Court took the view that stable same-sex partnerships, just like heterosexual ones, were covered by the concept of 'family life' and constituted grounds for the creation of mutual rights and duties, such as the rights to inheritance and alimony or to protection from domestic violence, wherefore they needed to be regulated by law.²⁷⁵

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 and public debates on these drafts in the last quarter of 2017.²⁷⁶ The Centre for Advanced Legal Studies has already drafted a model law on registered same-sex partnerships.²⁷⁷

270 "Another Successful Pride, First Trans Pride", Tanjug, 20 September 2015, available in Serbian at <http://www.tanjug.rs/full-view.aspx?izb=200046>.

271 As BCHR was told by the organiser of the event on 10 November 2015.

272 The Constitution defines marriage as a union of a man and a woman (Art. 62 (2)).

273 Constitutional Court decision in case No. IU-347/2005 of 22 July 2010.

274 Council of Europe, Labris, Forum for Ethnic Relations, "Support to the development of public policies in the field of rights protection and improving the quality of life of LGBT people", Draft Initial Public Policy Proposal," 2014 available in Serbian at <http://www.fer.org.rs/en/articles/activities/lgbt/>.

275 See, e.g. the ECtHR judgments in the cases of *Karner v. Austria*, App. No. 40016/98, judgment of 24 July 2003, and *Schalk and Kopf v. Austria*, App. No. 30141/04, judgment of 24 June 2010.

276 Anti-Discrimination Strategy Action Plan, points 4.3.2. and 4.3.3.

277 See: <http://cups.rs/wp-content/uploads/2010/03/Model-zakona-o-registrovanim-istopolnim-zajednicama.pdf>.

Article 4 of the Preliminary Draft of the Civil Code laid down that same-sex partnerships would be governed by a separate law.²⁷⁸ However, the working version put up for public debate in May 2015²⁷⁹ does not include this provision. The title of Article 2214 includes a footnote in which the legislator stated that the possibility of regulating same-sex-unions by law needed to be reviewed.²⁸⁰

The European Court of Human Rights judgment in the case of *Oliari and Others v. Italy* of July 2015 is in line with the trend of legalising same-sex partnerships.²⁸¹ In this case, the ECtHR found Italy in violation of Article 8 of the ECHR because it did not provide any legal recognition of same-sex partnerships. Although this judgment is legally binding only on Italy, its relevance lies in the effect it will have on the ECtHR's future reasoning on the right to enter into same-sex partnerships and its case law on the issue.

6.6. Discrimination against Trans²⁸² People

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. Apart from the need to legally regulate the procedures for changing the names and sex of persons who have undergone sex change in their personal documents, a number of laws need to be amended, specifically the Vital Records Act, the Family Act, the Pension and Disability Insurance Act, the Education System Act, the Labour Act, etc.²⁸³

Rather than amending a number of laws and bylaws, the requisite changes can also be introduced by the adoption of one law comprehensively regulating the legal status of these persons.

In its decision on a constitutional appeal by a transgender person²⁸⁴, who was precluded from obtaining personal documents reflecting her post-operative

278 *Preliminary Draft of the Civil Code of the Republic of Serbia*, Volume III – Family Relations, June 2011.

279 *Preliminary Draft of the Civil Code of the Republic of Serbia – Working Version Prepared for the Public Debate, with Alternatives*, 29 May 2015.

280 The possibility of governing same-sex partnerships needs to be thoroughly examined during the public debate and particular regard needs to be paid to different views, opinions and arguments of legal relevance during the possible design of a separate law.

281 *Oliari and Others v. Italy*, App No. 18766/11 and 36030/11, judgment of 21 July 2015.

282 Trans covers all persons whose gender identity, expression or behaviour is different from those typically associated with their assigned sex at birth, including transgender, transsexual, gender-queer and genderfluid persons, transvestites/cross-dressers, bigender and agender persons, etc.

283 The Anti-Discrimination Strategy, pp. 43 and 45.

284 Constitutional Appeal UŽ–3238/2011, the Constitutional Court decision on the appeal is available in Serbian at <http://www.ustavni.sud.rs/Storage/Global/Documents/UstavneZalbe/%D0%A3%D0%B6–3238–2011.pdf>.

identity, the Constitutional Court stated it had decided to send a letter to the Protector of Citizens alerting to the lack of legal regulations governing the legal effects in cases of post-operative transsexuals given that the Protector of Citizens was entitled to initiate or propose the legal regulation of these issues.²⁸⁵ The Protector of Citizens and the Commissioner for the Protection of Equality in 2013 drafted the “Recommendations for Amending Regulations of Relevance to the Legal Status of Transgender Persons”.²⁸⁶

The Anti-Discrimination Strategy Action Plan envisages two more measures addressing this issue: 1) the drafting of a law on gender identity to improve the status of transgender persons until mid-2016²⁸⁷ and 2) the implementation of the Constitutional Court’s above-mentioned decision, i.e. the preparation of a draft sex change law, which would subsequently serve as grounds for amending other relevant laws; the latter measure, however, does not need to be implemented until the last quarter of 2017.²⁸⁸ The relevant regulations need to be adopted as soon as possible to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way.²⁸⁹ Rather than amending a number of laws and bylaws, the requisite changes can also be introduced by the adoption of one law comprehensively regulating the legal status of these persons.

The Commissioner for the Protection of Equality recommended to universities in Serbia “to undertake all the necessary measures forthwith to ensure that the University colleges issue new diplomas and other public college documents to persons who changed their names after undergoing a sex change (transgender persons) at their request in a rapid, transparent and accessible procedure, in compliance with national and international standards on protecting transgender persons from all forms of discrimination.”²⁹⁰ The Action Plan envisages the drafting of a rulebook on the legal recognition of gender reassignment in school and university certificates and diplomas; this measure, also recommended by the Commissioner for the Protection of Equality, was to have been implemented in the first quarter of 2015.²⁹¹

285 Article 18 of the Protector of Citizens Act.

286 Available in Serbian at: <http://www.ombudsman.rodnaravnopravnost.rs/images/stories/preporuke%20transpolne%20osobe.doc>.

287 Anti-Discrimination Strategy Action Plan, point 3.1.6(4).

288 *Ibid.*, point 3.1.14.

289 Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, para. 21.

290 Commissioner for the Protection of Equality, Recommendation of Measures to Achieve Equality, Ref. No. 335 of 16 March 2012.

291 Anti-Discrimination Strategy Action Plan, point 4.1.4.

7. Human Rights of Persons with Disabilities

7.1. General

The status of persons with disabilities is governed by numerous international documents Serbia acceded to, as well as by its national legislation. The Constitution of the Republic of Serbia prohibits all forms of discrimination, especially discrimination on grounds of physical or mental disability.

By ratifying the UN Convention on the Rights of Persons with Disabilities (hereinafter: CRPD)²⁹² 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”.²⁹³ The CRPD is the first legally binding international document protecting the human rights of persons with disabilities signed by all European Union member states.

Another important international instrument for the protection of the human rights of persons with disabilities is the Revised European Social Charter (hereinafter: ESC), which Serbia ratified in 2009.²⁹⁴ Under Article 15 of the ESC, persons with disabilities are entitled to independence, social integration and participation in the life of the community. With a view to achieving the full economic and social inclusion of persons with disabilities, the European Union member states adopted the European Disability Strategy (2010–2020), the goal of which is to empower people with disabilities so that they can fully enjoy their rights and participate in society and the economy on an equal basis with others.

The universal standards laid down in the CRPD and the ILO Convention No. 159 concerning vocational rehabilitation and employment of persons with disabilities²⁹⁵ were integrated in Serbian law by the adoption of the Act on the Prevention of Discrimination against Persons with Disabilities²⁹⁶ and the Act on the Vocational Rehabilitation and Employment of Persons with Disabilities.²⁹⁷ 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.

According to 2011 Census in Serbia, 7.96% of Serbia’s citizens (571,780) declared they were persons with disabilities. Most of them said they had problems

292 *Sl. glasnik RS (International Treaties)*, 42/09.

293 Article 1 of the CRPD, the Act Ratifying the CRPD was published in *Sl. glasnik RS (International Treaties)*, 42/09.

294 *Sl. glasnik RS (International Treaties)*, 42/09.

295 *Sl. glasnik SFRJ (International Treaties)*, 3/87 and *Sl. glasnik RS*, 36/09 and 32/13.

296 *Sl. glasnik RS*, 33/06.

297 *Sl. glasnik RS*, 36/09 and 32/13.

walking and the fewest reported communication problems. Women account for more persons with disabilities than men (58.2% v. 41.8%). Women with disabilities are 69 and men with disabilities are 64 years of age on average.

The Convention on the Rights of Persons with Disabilities states that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.²⁹⁸

7.2. Accessibility

Accessibility is one of the principles underlying the CRPD. In their daily activities, persons with 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. Accessibility is prerequisite for the active participation of persons with disabilities in social and economic activities and their social inclusion. 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.

The 2006 amendments to Planning and Construction Act²⁹⁹ lay down the obligation of builders to observe the standards of accessibility of persons with disabilities. This obligation is governed in greater detail in the Technical Accessibility Standards Rulebook,³⁰⁰ which deals with the necessary elements of accessibility of both the new facilities and those under reconstruction (height, movement and stay in the buildings, access to public transportation). The Rulebook, however, does not govern oversight of the fulfilment of all the legal requirements. Most of the post offices, social welfare centres, courts and police stations are still inaccessible to persons with disabilities.

Under the Air Transportation Act,³⁰¹ 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. The laws on railway and road transportation, on the other hand, do not include any particular provisions on the accessibility of public transportation to persons with disabilities. Belgrade is the only city with public transportation accessible to persons with disabilities.

298 Preamble to the CRPD, Article 1(e).

299 *Sl. glasnik RS*, 72/09, 81/09 – corr., 64/10 – Constitutional Court decision, 21/11, 121/12, 42/13 – Constitutional Court decision, 50/13 – Constitutional Court decision, 98/13 – Constitutional Court decision, 132/14 and 145/14.

300 *Sl. glasnik RS*, 46/13.

301 *Sl. glasnik RS*, 73/10, 57/11, 93/12 and 45/15.

The National Assembly adopted the Act on Independent Movement with the Assistance of Guide Dogs³⁰² in March 2015. The Union of the Blind in Serbia data show that there are over 12,000 blind and visually impaired people in Serbia. The adoption of this law put in place conditions for ensuring that blind and visually impaired people can move around freely and access public and commercial areas and facilities and public transportation on an equal footing with the rest of the population. A centre for the training of guide dogs is planned to be established to avoid the high costs of importing guide dogs from other countries.

Although sign language was officially recognised by the Sign Language Act,³⁰³ state institutions lack sign language interpreters, wherefore persons with disabilities are forced to themselves engage interpreters via the Sign Language Interpretation Services Office.³⁰⁴ There are only 30 sign language interpreters in Serbia and lack of funding precludes the engagement of more interpreters. Persons with disabilities are entitled to court-sworn sign language interpreters, but many of them are unable to avail themselves of their services in practice as the Serbian courts altogether have eight sign language interpreters: five in Belgrade, one in Niš, one in Novi Pazar and one in Kragujevac.³⁰⁵ There is no formal training of court-sworn sign language interpreters; most of them were born to deaf parents or work as teachers in schools for deaf children.

In addition to physical access to the environment and means of transportation, persons with disabilities have to be provided with access to information and communication systems and technologies as well. Such access is regulated by the Electronic Media Act, the Public Media Services Act and the Public Information and Media Act. Under Article 12 of the Public Information and Media Act,³⁰⁶ “[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 Province 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 media are under the legal obligation to produce and broadcast programmes designated for specific social groups, the number of broad-

302 *Sl. glasnik RS*, 38/15.

303 *Ibid.*

304 See the *Večernje novosti* article, available in Serbian at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:539266-Znakovni-jezik-kao-profesija>.

305 Initial Report on the Implementation of the Convention on the Rights of Persons with Disabilities, 2012, available at: <http://drpi.research.yorku.ca/wp-content/uploads/2015/01/InitialSerbianRepEn.pdf>.

306 *Sl. glasnik RS*, 83/14.

casts tailored to persons with disabilities is very small. Access to information and communication can be considered prerequisite for the enjoyment of the freedom of opinion and expression, enshrined both in international treaties and the Serbian Constitution. Persons with disabilities have, however, encountered huge barriers in these areas and problems in contacting the police, emergency and fire departments, the vast majority of which do not provide the callers with the possibility of reaching them by texting them from their mobile phones in emergencies, although this obligation is laid down in the Electronic Communications Act.³⁰⁷

Persons with disabilities unable to sign themselves have encountered problems in using facsimiles because printed facsimiles of contracts they concluded and financial transactions they engaged in had not been recognised without their signatures. The amendments to the Act on the Prevention of Discrimination against Persons with Disabilities, adopted in November 2015, introduce the obligation of the public authorities to allow persons with permanent physical disabilities or sensory impairments unable to sign themselves to sign documents by stamping their seals including their personal identity data or their seals with their inscribed signatures (Art. 34).

7.3. Education

The right to education is one of the fundamental human rights to be enjoyed by all children without discrimination. The discriminatory practice of excluding children with disabilities from the formal mainstream education system was applied in Serbia until 2009, when the long-term reform of the education system was launched. The reform envisages individualised teaching and learning methods, affirmative preschool and school enrolment measures, the provision of additional support, the development of services supporting education, the introduction of assistive technologies, etc. The textbooks not tailored to the needs of pupils/students with disabilities, the physical inaccessibility and lack of transportation to the educational institutions are just some of the problems persons with disabilities face every day in their pursuit of education.

The Education System Act³⁰⁸ defines the principles and mechanisms for developing and implementing inclusive education, which incorporates equal rights to and accessibility of education to every child without discrimination while ensuring additional support in accordance with the child's individual functioning. Under Article 64 of the Education System Act, "[S]chools shall ensure the elimination of physical and communication obstacles and, if necessary, adopt individual education plans in accordance with the law for children in need of additional educational support because of their physical or intellectual disabilities, specific learning

307 *Sl. glasnik RS*, 44/10, 60/13 – Constitutional Court decision and 62/14.

308 *Sl. glasnik RS*, 72/09 52/11 and 55/13, 35/15 – authentic interpretation and 68/15.

difficulties, and social deprivation or for other reasons". An Individual Education Plan (IEP), an instrument introduced to tailor the education process to children with disabilities, is designed by the child's parents, teachers and the professional team (pedagogue, special needs teacher and psychologist). Independent institutions and civil society organisations criticised as discriminatory the provision in the Textbook Act³⁰⁹ on the publication of special textbooks for children with disabilities, because it did not ensure their full inclusion and equality with the other children in the education system.³¹⁰ The enforcement of the education laws and the inclusive practices are extremely underdeveloped and there is still a tendency to exclude pupils with disabilities from the mainstream education system.

There are no precise data on the number of children with disabilities excluded from the education system, but estimates are that many such children are not covered by any form of social care or activities. The right to education of children with disabilities in social protection institutions is particularly jeopardised. According to the Republican Social Protection Institute, two-thirds of the children with disabilities living in residential homes are fully excluded from the education system.³¹¹ However, there are numerous obstacles in implementing the reformed laws, such as lack of resources, difficulties in planning additional services for educating children with disabilities, the functioning of the municipal multi-sectoral commissions, lack of professional competencies of teachers. In addition, the awareness of the citizens in Serbia about the educational needs of children with disabilities is still very low. Nearly 80% of Serbia's citizens believe that children with sensory and physical disabilities attending mainstream schools have negative impact on other children, while 65.2% believe the same applies to children with intellectual disabilities.³¹² Fewer than 500 youth with disabilities study at universities; fewer than five of them have autism or intellectual disorders and fewer than 20 of them have hearing impairments.³¹³

The caseload of the Commissioner for the Protection of Equality indicates that there is still some resistance to inclusive education among teachers and professional associations, which greatly hinders the realisation of the right of children with disabilities to quality education.³¹⁴ In March 2015, the Protector of Citizens

309 *Sl. glasnik RS*, 68/15.

310 See the *Danas* report, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/ostaju_posebni_udzbenici_za_decu_sa_smetnjama_u_razvoju_1118.html?news_id=300359.

311 Children in the Social Protection System, Republican Social Protection Institute, 2015, available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2015/DECA%20U%20SISTEMU%20SOCIJALNE%20ZASTITE.pdf>.

312 The Second National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia for the 2011–2014 Period, October 2014.

313 Alternative Report on the Implementation of the Convention on the Rights of Persons with Disabilities in the Republic of Serbia, submitted by the National Organization of Persons with Disabilities of Serbia (NOOIS), Centre For Independent Living of Persons with Disabilities Serbia (CIL Serbia), Centre for Society Orientation (COD) – Disability Rights Promotion, 2015.

314 See the 2014 Annual Report by the Commissioner for the Protection of Equality, 2015.

found that a school principal terminated the schooling of four pupils with special needs and referred them to a day care centre, where they were unable to continue their education. In his Recommendation,³¹⁵ the Protector of Citizens called for the pupils' readmission and recommended they be extended additional support in keeping with their abilities and capacities, through the design of their IEPs.

The inter-sectoral commissions assessing the needs for additional educational, health and social support to children and pupils³¹⁶ are an important mechanism for improving inclusive education, but significant improvements are needed in the legal framework regulating their work. Resources need to be ensured for their planning and extension of additional support and to build their capacities for child-centred assessments in order to put in place conditions for the children's development, learning and equal participation in the local community.

7.4. Employment

The practice of employing persons with disabilities still has a long way to go. The data of the Ministry of Labour, Employment and Veteran and Social Affairs show that there are around 300,000 people with disabilities of working age but that only 13% have jobs. In late 2014, the National Employment Service had 20,780 people with disabilities, 6,981 of whom were women, in its registers.

The Act on the Vocational Rehabilitation and Employment of Persons with Disabilities³¹⁷ governs the employment of persons with disabilities in a comprehensive manner. Under this Act, employers with between 20 and 49 workers must hire at least one person with disabilities. The more workers they have on staff, the more persons with disabilities they must hire. Employers ignoring this obligation must pay fines amounting to triple the minimum wage. A budget fund for the vocational rehabilitation and encouragement of employment of persons with disabilities established under the Act is managed by the competent ministry.

Despite the headway made thanks to the adoption of this law, persons with disabilities are still discriminated against in the labour market. The following obstacles to their recruitment have been identified: lack of access to the physical environment, public transportation, information and communication, workplaces, and the underdeveloped support system and services. In addition, the ministry in charge of social affairs still has not enacted a by-law on the architectural and technical requirements and other working conditions and the vocational skills of workers with disabilities.

315 See the Recommendation, available in Serbian at: http://www.osobesainvaliditetom.rs/attachments/159_3747_Grupa%20roditelja%20-%20PREPORUKA%20SKOLI.doc.

316 Rulebook on Additional Educational, Health and Social Support to Children and Pupils, *Sl. glasnik RS*, 63/10.

317 *Sl. glasnik RS*, 36/09 and 32/13.

The rulebook on monitoring the employers' fulfilment of the obligation to hire persons with disabilities and on proof of fulfilment of the obligation³¹⁸ undermines the employment of persons with disabilities to an extent, because it says that the direct and indirect beneficiaries of state funding are under the obligation to employ persons with disabilities on the basis of a different quota system than the one that applies to other employers. The Republic of Serbia fulfils its obligation by allocating the requisite financial resources in the budget for each year. The state missed the opportunity to promote the employment of persons with disabilities and set a positive example to other employers by cancelling the factual obligation of the state authorities to employ persons with disabilities in accordance with the quota system.

According to the data of the Ministry of Labour, Employment and Social and Veteran Issues, the employment rate of persons with disabilities has increased by 39% in the first eight months of 2015.³¹⁹ People with disabilities have priority when applying for active employment measures laid down in the 2016 National Employment Action Plan, in accordance with their needs, assessed vocational abilities and capacity to work and the identified labour market needs.³²⁰ The National Employment Service implemented programmes and measures for the vocational rehabilitation and employment of persons with disabilities in 2015.³²¹ One such active employment measure entailed subsidies to employers hiring people in the difficult-to-employ categories, including persons with disabilities. Plans are to grant one-off subsidies for the self-employment of persons with disabilities, subsidies for the employment of first-time job seekers with disabilities, and to cover the employers' costs of adapting their offices to ensure access to workers with disabilities. In 2016, Serbia will have at its disposal technical assistance to improve support for the unemployed and the vocational rehabilitation and employment of persons with disabilities within the activities funded via the 2013 EU IPA.

However, given the high unemployment rate in Serbia, as well as the low education levels of most persons with disabilities, which can be ascribed to their structural discrimination and years-long denial of their right to education and social inclusion, some additional measures for the employment of this marginalised group should be introduced, because the so-called 'quota system' proved to be insufficient.

7.5. Community Living

Low shares of persons with disabilities attending school and working have resulted in their lower incomes and poverty, as well as their exclusion from society, wherefore they have been unable to take part in economic activities and contribute

318 *Sl. glasnik RS*, 33/10 and 48/10 – corr.

319 See the *RTS* report, available in Serbian at: www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/2051035/Zaposleno+vi%C5%A1e+od+2.000+osoba+sa+invaliditetom.html

320 2016 National Employment Action Plan, *Sl. glasnik*, 82/15.

321 See: http://www.nsz.gov.rs/live/trazite-posao/dok-trazite-posao/programi/podr_ka_u_zapo_ljava_nju_osoba_sa_invaliditetom.cid225

to the development of society. Although the Social Protection Act³²² brought important modern and comprehensive changes facilitating social inclusion and deinstitutionalisation, it has not done away with institutionalisation. Under this Act, the institutions for children cannot look after more than 50 wards,³²³ while the institutions for adults cannot look after more than 100 wards, wherefore this approach still provides for care in large residential institutions.

The high shares of children with disabilities among the wards of residential institutions for children and youth can be ascribed to the fact that specialised foster care and the system of community services supporting children with disabilities and their parents are undeveloped.³²⁴ According to the Republican Social Protection Institute data, the predominant reasons for institutionalisation include the families' lack of will to look after the wards (28.6%) and the fact that the wards have no next of kin; only 1.6% of the wards have decided to live in an institution of their own free will. The wards still spend a long time in the institutions, due to lack of alternative support to persons with disabilities. Most of the wards (71%) have been institutionalised over six years, half of them over 10 years, while nearly a quarter of them have lived for over 20 years in institutions for adults. In its 2015 Progress Report, the European Commission expressed concern over the institutionalisation of children with disabilities and said that family and parenting support services should be prioritised to prevent placement in institutional care.³²⁵

The conditions in the residential homes must be viewed in light of Serbia's human rights obligations which it assumed when it ratified the CRPD and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The conditions in some institutions for children and adults have been characterised as inhuman and degrading treatment that can amount to torture.³²⁶ Other features of life in residential homes include over-medication of the wards, their lack of access to medical treatment that should be provided by the health care system, lack of privacy and the possibility of making decisions about basic life issues, abuse and neglect, and the practice of isolation and physical restraint.³²⁷ UN Special Rapporteur on Adequate Housing Leilani Farha prepared a preliminary report on the situation in Serbia, in which she said that Serbia needed to accelerate the process of deinstitutionalisation albeit at a pace ensuring that no one who was deinstitutionalised was rendered homeless, inadequately housed or without support and adequate

322 *Sl. glasnik RS*, 24/11.

323 Article 54, Social Protection Act, *Sl. glasnik RS*, 24/11.

324 2014 Report on the Work of Institutions for Children and Youth, Republican Social Protection Institute, 2015.

325 Progress Report, point 5.23.

326 Report on the visit to institution "Veternik", National Preventive Mechanism for Torture, Monitoring institutions for persons deprived of liberty, Protector of Citizens and MDRI-S, 12 March 2014.

327 Hidden and forgotten: segregation and neglect of children and adults with disabilities in Serbia, Mental Disability Rights Initiative of Serbia MDRI-S, Belgrade, 2012.

care; to develop alternative community-based support services to reduce the number of institutionalised persons with mental and psycho-social disabilities, with a view to enabling persons with disabilities to live independently in their own homes; to strengthen accessibility in practice in order to ensure universal access and design, in conformity with the CRPD; and, to improve the conditions of detention and treatment of persons with mental and psycho-social disabilities currently in psychiatric institutions and other centres.³²⁸

The Act on the Protection of Persons with Mental Disabilities³²⁹ envisages the improvement of the rights of these patients and a change in the approach to their treatment. Under this law, outpatient health centres shall be primarily charged with prevention, care, treatment and rehabilitation of persons with mental disabilities, who shall be referred to psychiatric institutions for treatment only if such treatment is the only option or is in their best interest. One of the deficiencies of this law, noted also by the Protector of Citizens, is the isolation measure it envisages. The CAT is explicitly against isolation of people with severe or acute mental disorders and considers that such practices amount to cruel, inhuman or degrading treatment. The European Commission said that treatment of persons with mental disabilities in Serbia's institutions still was not regulated in accordance with international standards.

The right to treatment in the least restrictive environment is not elaborated in the Act except in the provision laying down that restrictive measures shall be used only in the absence of other efficient methods of treatment. Prevention, rehabilitation and inclusion are not dealt with in this Act. Oversight boils down to the psychiatric institutions' obligation to submit to courts regular reports on the state of health of people with mental disabilities institutionalised against their will every three months (or more often, on the order of the court), but the law does not provide for mechanisms of professional checks and balances to protect patients from abuse during their institutionalisation.

The Mental Health Protection Strategy³³⁰ was adopted with a view to humanising treatment and ensuring the more efficient prevention and improvement of mental health. Under the Strategy, mental health departments are to provide modern and comprehensive treatment, involving the bio-psycho-social approach, which is to take place in the community, as close as possible to the family of the patient. The inconsistent implementation of this principle has been criticised by professional organisations and the Protector of Citizens.³³¹

328 See: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16005&LangID=E>.

329 *Sl. glasnik RS*, 45/13.

330 *Sl. glasnik RS*, 8/07.

331 See the *Danas* report, available in Serbian at: http://www.danas.rs/danasrs/drustvo/pravo_danas/sta_treba_menjati_u_zakonu_o_zastiti_lica_sa_mentalnim_smetnjama.1118.html?news_id=278631

The successful process of deinstitutionalisation has to be accompanied by comprehensive changes in the systems of education, social policy, health protection, employment, accessibility, participation and the overall development of local support services.

The provision of social services is regulated by the Social Protection Act³³² and the relevant subsidiary legislation. The Rulebook on Social Service Standards and Requirements³³³ governs the system for the admission of wards, the determination of the level of support they need, planning, internal evaluation, staff capacity building and the availability of community services and programmes. The Rulebook on the Licencing of Social Service Professionals³³⁴ and the Rulebook on the Licencing of Social Protection Organisations³³⁵, which were adopted in 2013, are relevant to the improvement of the entire field of social services.

7.6. *Legal Capacity of Persons with Disabilities*

Legal capacity is the main prerequisite for exercising other rights. A significant number of persons with disabilities in Serbia are deprived of legal capacity, which results in “civic death” and deprives them of their fundamental human rights. The Family Act³³⁶ and the Non-Contentious Procedure Act³³⁷ regulate guardianship and deprivation of legal capacity. Under the Family Act, the deprivation of legal capacity entails two procedures: the deprivation of legal capacity by the court, in accordance with the Non-Contentious Procedure Act, and the appointment of a guardian by the guardianship authority in an administrative procedure pursuant to the General Administrative Procedure Act.³³⁸

The European Court of Human Rights has on several occasions reaffirmed the relevance of legal capacity in terms of the protection of human rights and found that full deprivation of legal capacity amounted to a violation of Article 8 of the ECHR. In its Recommendation No. R (99) 4 on principles concerning the legal protection of incapable adults, the Council of Europe Committee of Ministers called for the protection of the personal and economic interests of incapable adults and for the avoidance of the permanent limitation or deprivation of these persons of their legal capacity.³³⁹

332 *Sl. glasnik RS*, 24/11.

333 *Sl. glasnik RS*, 42/13.

334 *Ibid.*

335 *Ibid.*

336 *Sl. glasnik RS*, 18/05, 72/11 – other law.

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

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

339 The Recommendation is available at [http://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec\(99\)4E.pdf](http://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec(99)4E.pdf). See also the ECtHR judgment in the case of *Shtukaturov v. Russia*, ECtHR, App. No. 44009/05, (2008), paras. 59 and 95.

Persons deprived of legal capacity cannot marry, exercise parental rights, take actions in court proceedings, be admitted to Serbian citizenship, registered as voters, vote or be elected, decide to have an abortion or on their medical treatments, or where and with whom they will live³⁴⁰, etc. People fully deprived of their legal capacity cannot sign employment agreements, engage as volunteers or be remunerated for volunteering. The regulation of this area is outdated and not in compliance with the international legal framework and standards, namely it is in contravention of the obligations Serbia undertook when it ratified international human rights treaties.³⁴¹ The facts that the number of incapable adults under guardianship has hardly changed since 2012, that hardly any of them have been deinstitutionalised and that 79% of them have died in these institutions are disquieting.³⁴²

The number of adults deprived of their legal capacity in Serbia stood at 10,590 in 2014, i.e. it had increased by as much as 20% over 2013; only 5.7% of them were partially deprived of legal capacity.³⁴³ The consequences of full and partial deprivation of legal capacity are different. In decisions on partial deprivation, the court determines the type of actions a person can take. On the other hand, full deprivation of legal capacity means that a person cannot independently take legal actions, which also includes the right to make decisions and enjoy his rights.

Under Article 12 of the CRPD, States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law and they shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Under the amendments to the Non-Contentious Procedure Act, courts are under the obligation to review the status of people deprived of their legal capacity. The years-long discriminatory practice in this area, based on prejudices, specific legal and terminology dilemmas and attitudes towards persons with disabilities, have all indicated the need to additionally clarify these provisions. This is why Committee on the Rights of Persons with Disabilities devoted its first General Comment, adopted in April 2014, to clarifying Article 12 of the Convention.³⁴⁴ The Committee underlined that Article 12 did not permit discriminatory denial of legal capacity, but, rather, required that support be provided in the exercise of legal capacity.

7.7. Health Protection

There is a major gap in Serbia between the legal provisions and possibilities they provide and their enforcement by health institutions. A survey conducted by the Centre for Society Orientation showed that 85% of the respondents listed health

340 Beker, K., "Deprivation of legal capacity: legislation and practice in the Republic of Serbia", November 2014, Mental Disability Rights Initiative of Serbia MDRI-S.

341 *Ibid.*

342 Synthetic Report on the Work of Social Welfare Centres in Serbia in 2014, Republican Social Protection Institute, Belgrade, 2015.

343 *Ibid.*

344 The General Comment is available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>.

care as the greatest problem they faced, that 28% of the respondents had experienced direct discrimination in medical institutions and that medical professionals and staff treated 45% of them with disrespect and showed lack of understanding for them.³⁴⁵

The Health Insurance Act³⁴⁶ does not regulate specifically the health insurance of persons with disabilities, but covers them in provisions entitling all citizens to health care and the respect of the highest human rights standards and the right to physical and psychological integrity (Art. 25). Apart from the right to health care, health insurance rights also include the right to sick leave cash benefits and the right to compensation of health-related travel costs. Persons with disabilities are guaranteed health insurance rights even if they do not fulfil the requirements for obtaining health insurance on account of employment.

The right to health care also includes medical rehabilitation in case of illness or injury, and the right to walking and moving aids, sight, hearing, and speech aids (hereinafter: medical-technical aids). The Rulebook on Medical Rehabilitation in Specialised Rehabilitation Institutions³⁴⁷ regulates the types of indications, duration and manner of and procedures for referral to medical rehabilitation. The Republican Health Insurance Fund (hereinafter: RHIF) covers between 60 and 100 percent of the costs of the medical-technical aids and the procurement procedure and requirements are laid down in the Rulebook on Medical-Technical Aids Covered by Mandatory Health Insurance.³⁴⁸ The RHIF covers the costs of maintaining and servicing specific aids, from the expiry of their warranties to their expiry dates, provided that their functionality had previously been checked. The procedure for the procurement of medical-technical aids at the expense of the RHIF is extremely restrictive and the deadlines for replacing and repairing the aids have been extended. Due to the lack of funds allocated for the aids, the procured medical-technical aids are of substandard quality and usually cannot be used for the full period envisaged under the regulations.

The Patients' Rights Act³⁴⁹ governs the health care rights of patients and their protection and other issues of relevance to the patients' rights and duties. The Act guarantees all patients equal rights to quality and continuous health care, in accordance with their state of health, generally accepted professional standards and ethical principles, in their best interests, whilst respecting their personal views (Art. 3).

The Act on the Protection of Persons with Mental Disabilities³⁵⁰ governs in greater detail the main principles, organisation and implementation of mental

345 Holistic Report "Monitor Your Rights: Monitoring of the Rights of Persons with Disabilities in the Republic of Serbia" Centre for Society Orientation, Novi Sad 2013, available at http://www.cod.rs/wp-content/uploads/2013/12/Holistic_report_web1.pdf.

346 *Sl. glasnik RS*, 107/05, 109/05 – correction, 57/11, 110/12 – Constitutional Court decision and 119/12.

347 *Sl. glasnik RS*, 47/08, 69/08, 81/10, 103/10, 15/11 and 48/12, 55/12 – corr., 64/13 and 68/13 – corr.

348 *Sl. glasnik RS*, 52/12, 62/12 – corr., 73/12 – corr., 1/13, 7/13 – corr., 112/14, 114/14 – corr. and 18/15.

349 *Sl. glasnik RS*, 45/13.

350 *Ibid.*

health care, and the medical treatment and involuntary hospitalisation of persons with mental disabilities.

8. Gender Equality and Special Protection of Women

8.1. General

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³⁵¹ is the most comprehensive international mechanism for the protection of women's rights. Discrimination against women is defined in Article 1 of the CEDAW as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

The 1995 Beijing Declaration and Platform for Action constitutes the most progressive and comprehensive political framework for advancing gender equality at the global level. It defines 12 critical areas of concern in which national policies for achieving gender equality are to be enforced, notably poverty, education, health, violence, armed conflict, economy, power and decision making, institutional mechanisms for the advancement of women, human rights of women, the girl child, media and environment.

Under Article 15 of the Constitution of the Republic of Serbia, the state shall guarantee the equality of women and men and develop equal opportunity policies.

This constitutional provision has been further elaborated in the Gender Equality Act and the Anti-Discrimination Act. Issues of relevance to gender equality are also governed by numerous laws and by-laws on, *inter alia*, health, family, education, labour and employment, etc.

The Gender Equality Act³⁵² regulates areas of particular importance for ensuring gender equality and explicitly prohibits discrimination on grounds of sex or gender. Under this law, civil proceedings initiated to protect against discrimination on grounds of sex shall be especially urgent and courts must rule on motions for interim protection orders within three days from submission (Art. 47). The valid Act is not aligned with international standards or the subsequently adopted by-laws, does not envisage instruments for its implementation and fails to elaborate thoroughly the establishment and enforcement of a mechanism for the protection of gender equality.

351 *Sl. list SFRJ (International Treaties)*, 11/81.

352 *Sl. glasnik RS*, 104/09.

A new gender equality law was not adopted by the end of 2015 as planned. The Protector of Citizens alerted to the shortcomings in the enforcement of the Gender Equality Act and the need to align the national legislation with Serbia's international obligations in the field of gender equality and prepared a model of a new gender equality law, which includes new chapters, governing, *inter alia*, equal opportunity policies, protection from gender-based violence and judicial protection. The model law comprises precise provisions on equal opportunities in the fields of employment, social and health care, protection from gender-based and sexual violence and the obligation to extend support to victims of such violence, as well as on the obligation to integrate gender equality in the school curricula.³⁵³

The UN report "Progress of World's Women 2015/2016", presented in October 2015, shows that women in Serbia are less likely than men to live in poor households but also that the labour force participation of women is lower than that of men and that they spend twice as much time doing unpaid care and domestic work. The 44.5% employment rate of women is below the global average and has not changed since 1990. The Report says that stereotypes about suitable occupations for women and men persist in Serbia, and that only 8.5% of the women pursue university studies in engineering, manufacturing and construction (compared to 23.3% of the men), while more women than men study humanities and arts.³⁵⁴

Serbia ranked 45th on the list of 145 states in the World Economic Forum Global Gender Gap Index.³⁵⁵ The 2015 Index included nine more states than in 2014, when Serbia was ranked 54th. Serbia ranked 74th on economic participation and opportunity, 52nd on educational attainment, 79th on health and survival and 43rd on political empowerment. Compared to 2014, it made headway in the educational attainment and political empowerment areas, but scored more poorly in the areas of educational attainment and health and survival.

8.2. *Institutional Gender Equality Protection Mechanisms*

Serbia established specific institutional mechanisms to advance gender equality. The Gender Equality Council was founded in 2004 as a professional and advisory body of the Government of the Republic of Serbia and includes representatives of civil society and the academia. The Council reviews and proposes measures to improve gender equality through inter-sectoral cooperation.

The Gender Equality Directorate, an executive body charged with gender equality issues that was set up in 2008, was unfortunately abolished in 2014. The Directorate had been tasked with monitoring the situation and proposing measures

353 The model law is available in Serbian at: http://www.ombudsman.rodnaravnopravnost.rs/attachments/129_druga%20verzija%201.pdf.

354 The Report is available at: http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf.

355 More at: <http://www3.weforum.org/docs/GGGR2015/The%20Global%20Gender%20Gap%20Index%202015.pdf>.

for advancing gender equality, participating in the preparation of the legislative framework and the promotion of constitutionally guaranteed principle of gender equality and equal opportunity policies. Six months after the Gender Equality Directorate was abolished, the Government established the Gender Equality Coordination Body, charged with coordinating the work of state administration authorities with a view to advancing gender equality. In addition, a Gender Equality Sector was set up within the Ministry of Labour, Employment and Veteran and Social Affairs.

The National Assembly Committee for Human and Minority Rights and Gender Equality reviews and assesses draft laws and by-laws and suggests their improvement to achieve gender equality. The Committee has 17 members.

The Protector of Citizens has a Deputy charged with gender equality, the rights of the child and of persons with disabilities. The Commissioner for the Protection of Equality is another independent authority conducting activities aimed at raising awareness of discrimination and promoting mechanisms for protection from discrimination.

Gender equality mechanisms are also in place at the provincial and local levels. In Vojvodina, they comprise the Vojvodina Provincial Secretariat for Labour, Employment and Gender Equality, the Provincial Ombudsman, the Provincial Gender Equality Council, the Vojvodina Assembly Gender Equality Committee and the Provincial Gender Equality Institute. At the local level, cities and municipalities have begun forming Gender Equality Commissions as stipulated by the Gender Equality Act (Art. 39); 109 gender equality mechanisms³⁵⁶ have been operating across Serbia with a view to advancing and protecting gender equality at the local level and have been implementing specific projects fostering the equal opportunities policy at the local level and 38 local self-governments have signed the European Charter for equality of women and men in local life.

8.3. Women's Labour Rights and Special Protection of Maternity

The Labour Act³⁵⁷ prohibits sex-based discrimination against workers and job seekers. The Act was amended to align it with the EU *acquis*. The provisions of the ILO Convention No. 111 concerning discrimination in respect of employment and occupation (1968) have also been incorporated in the Labour Act. Article 23 of the Labour Act allows workers and job seekers to claim damages in court in case they were subjected to discriminatory conduct.

The results of the regional survey "Gender Pay Gap in the Western Balkans" show that women in Serbia are on average paid 11% less than men doing the same

356 The list of local gender equality mechanisms is available in Serbian at: http://www.gendernet.rs/files/Mehanizmi/Lokal/Lokalni_mehanizmi.pdf

357 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

jobs.³⁵⁸ Women have a harder time getting a promotion, if they succeed in finding a job in the first place, since their prospective employers ask them about their marital status and family plans at the job interviews (thus grossly violating the legal provisions aimed at protecting gender equality). Furthermore, pregnancy or maternity leave may not be grounds hindering the women's promotion to a higher rank or position or attendance of advanced professional training or for assigning women to inappropriate jobs or terminating their employment.³⁵⁹ Of all complaints filed with the Commissioner in 2015, 17.7% regarded discrimination on grounds of sex.³⁶⁰

Conclusion of fixed-term employment contracts is the most widespread form of discrimination employers resort to when they hire young women. A survey commissioned by the Ministry of Labour, Employment and Veteran and Social Affairs shows that 79% of the companies would actively conduct measures aimed at reconciling their workers' private and professional lives if the state implemented policies additionally encouraging and supporting such measures.³⁶¹ Women rarely decide to seek their rights in court, due to high court fees, fear that they will lose their jobs and because they are insufficiently aware of their rights. The European Commission said in its 2015 Progress Report that the legislation on the dismissal of pregnant women and women on maternity leave, sexual harassment, the gender pay gap and inequality in promotion, salaries and pensions had to be fully implemented. It had stated identical views in its 2014 Progress Report.

Serbia in 2010 ratified ILO Convention No. 183³⁶² on maternity protection, under which states are to adopt a series of measures ensuring the protection of health of pregnant workers and working mothers, maternity leave, leave in case of illness and complications and protection from discrimination. Under this Convention, cash benefits during maternity 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.

The 2014 Amendments to the Labour Act³⁶³ put in place the legal framework for empowering working women, reconciling the family and professional lives of working mothers and enhancing the protecting of pregnant workers. The amendments are in line with ILO Maternity Protection Convention (No. 183) and the ILO Maternity Protection Recommendation (No. 191).³⁶⁴ The enforcement of the rel-

358 Available at: <http://www.fren.org.rs/sites/default/files/Gender%20pay%20gap%20in%20the%20Western%20balkan%20countries.pdf>.

359 Article 16, Gender Equality Act.

360 See the report on RTS, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/2105478/Poverenica%3A+Naj%C4%8De%C5%A1%C4%87e+su+polna+i+etni%C4%8Dka+diskriminacija.html>.

361 The survey is available in Serbian at http://www.gendernet.rs/files/Istrazivanje/Fin_Studija_M_Batak.pdf.

362 *Sl. glasnik RS (International Treaties)*, 1/10.

363 *Sl. glasnik RS*, 24/05, 61/05, 54/09, 32/13 and 75/14.

364 The Recommendation is available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R191.

evant legal provisions calls for the consolidation of the Labour Inspectorate's oversight role and more efficient judicial protection.

Under the 2014 amendments to the Health Insurance Act, 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.³⁶⁵ Until the Act was amended, only women in Belgrade, Novi Sad, Zrenjanin, Jagodina and Bela Crkva had received their full pregnancy leave cash benefits (the remaining 35% were covered by these local self-governments). Under the new provision, the amounts paid out of the RHIF are paid into the employers' accounts, who are under the obligation to pay them into the pregnant women's accounts, while the 35% out of the republican budget are transferred into the account of the RHIF, which pays them directly into the women's accounts. These benefits may not be lower than the minimum wage set in accordance with the positive norms.³⁶⁶ Employers are under the obligation to pay the pregnancy leave cash benefits only during the first month of their workers' leave and, thereupon, to submit documentation on the extension of pregnancy leave for the benefits to be paid out of the RHIF. Employers may also continue paying the benefits out of their own accounts and then seek reimbursements from the state.

There have been problems in practice caused by delays in refunding the employers paying the pregnancy leave cash benefits. Under the draft Health Insurance Act, the employers shall not be refunded for the cash benefits they pay during the first two months of pregnancy leave, which will definitely exacerbate their reluctance to hire young women, i.e. result in discrimination against women job seekers. The payment of the 35% of the pregnancy cash benefits paid out of the state budget was temporarily suspended in February 2015. Furthermore, there were delays in the payment of the 65% of the benefits by the RHIF, prompting over 300 pregnant women to file complaints with the Protector of Citizens.³⁶⁷ In his opinion addressed to the Ministry of Health,³⁶⁸ the Protector of Citizens emphasised that the current method of calculating and paying the benefits was undermining the rationality and cost-effectiveness of the Fund's operations and that it should be fully in charge of paying them. In its reply,³⁶⁹ the Ministry of Health said that it had recognised the problem and was working on resolving it.

365 Article 96, Health Insurance Act.

366 Article 97, Health Insurance Act.

367 See the *Danas* article of 12 March 2015, available in Serbian at: http://www.danas.rs/danasrs/drustvo/drzava_ne_brine_o_trudnicama.55.html?news_id=298662.

368 Protector of Citizens Opinion No. 5-3-1442/15, Ref. No. 22632, of 10 June 2015, available in Serbian at: http://www.ombudsman.rs/attachments/4170_misljenje%20%20trudnicko%20bo-lovanje.pdf.

369 Protector of Citizens Ref No 011-00-00145/2015-15 of 22 June 2015, available in Serbian at: http://www.ombudsman.rs/attachments/4170_Ministarstvo%20zdravlja.pdf.

Working women are also entitled to maternity leave, which is reckoned from maximum 45 and minimum 28 days before the date they are due. Maternity leave may last up to three months from the day they give birth. Under the Rulebook on the Requirements and Procedure for Exercising the Right of Families with Children to Financial Support,³⁷⁰ after the expiry of maternity leave, working women are entitled to child care leave until the expiry of 12 months and, in some cases, until the expiry of 24 months from the day they went on pregnancy leave. Unfortunately, one of the austerity measures adopted by the Government involved the reduction of one-off benefits to young mothers by over 50% and the abolition of cash benefits for their third, fourth and fifth children in 2015.

8.4. Gender-Based Violence

Violence against women is the most widespread form of violation of women's human rights. Serbia does not ensure efficient protection of women from domestic violence. Since the Convention on the Elimination of All Forms of Discrimination against Women does not explicitly mention violence against women, the UN Committee on the Elimination of Discrimination against Women expressly said in its General Recommendation No. 19³⁷¹ that the definition of discrimination included gender-based violence and that the Convention applied also to this form of violation of women's rights. Gender-based violence is defined in Article 10 of the Gender Equality Act as "conduct jeopardising physical integrity, mental health or tranquillity, or causing material damage to a person, as well as a serious threat of resorting to such conduct, preventing or jeopardising the person's enjoyment of rights and freedoms based on the principle of gender equality".

In October 2013, Serbia ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence,³⁷² the so-called Istanbul Convention, which is the first and only binding document governing violence against women at the European level. The Convention provides for the establishment of an independent mechanism, a group of experts on action against violence against women and domestic violence, which will oversee and monitor the implementation of the Convention by the Parties (the GREVIO Committee).³⁷³ When it ratified the Convention, Serbia reserved the right not to apply the provisions on compensation to the victims, issues of territorial jurisdiction in situations when the perpetrators have habitual residence in the territory of Serbia and jurisdiction over sexual violence cases until it aligns its criminal legislation with the relevant provisions of the Convention. The legislator therefore needs to amend Serbia's Criminal Code, introduce new criminal offences and redefine the existing

370 *Sl. glasnik RS*, 29/02, 80/04, 123/04, 17/06, 107/06, 51/10, 73/10 and 27/11 – Constitutional Court Decision.

371 See: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

372 *Sl. glasnik RS (International Treaties)*, 12/13.

373 Article 66 of the Convention.

ones, and establish a more efficient mechanism of assistance to victims of all forms of violence covered by the Convention.

Serbia adopted its National Strategy on the Prevention and Suppression of Domestic Violence against Women in 2011.³⁷⁴ The Strategy's main goals include the establishment of a prevention system, the improvement of the normative framework for protecting women from violence, the improvement of multi-sectoral cooperation and raising the capacities of authorities and services, and the improvement of the system of protection and support to victims of violence. The 2010–2015 Action Plan lays down the following six goals: increase the participation of women in decision-making, improve the women's economic status, ensure gender equality in education, improve the health of women, prevent and suppress all types of gender-based violence and eliminate gender stereotypes in the media.

Although the amendments to the Criminal Code lay down stricter penalties for perpetrators of domestic violence, cases of such violence are rarely reported in practice, and even more rarely end up in court. Estimates are that every other woman in Serbia is subjected to some form of violence. As many as 34 women were killed in domestic violence incidents in 2015³⁷⁵, i.e. 26% more than in 2014. Unemployed and economically dependent women, 56% of all Serbia's women according to the 2011 Census, are at greater risk of abuse. The Serbian Government acted on a recommendation by the Protector of Citizens and, in 2014, adopted a Special Protocol for the Judiciary in Cases of Domestic Violence against Women³⁷⁶, wherefore all special protocols enacted by the various ministries to facilitate cooperation in combatting violence against women are now in place. The coordination between the police, prosecutors and social services, however, leaves a lot to be desired in practice, as corroborated by the fact that most of the women killed by their partners in 2015 had previously reported domestic violence.³⁷⁷

In its 2015 Progress Report, the European Commission expressed concern about the increasing number of women killed by their partners, the lack of protection measures, shelters and a state-run centre for victims of sexual violence.

8.5. *Participation of Women in Political and Public Life*

The Act on the Election of Assembly Deputies³⁷⁸ 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

374 *Sl. glasnik RS*, 27/11.

375 See the *Blic* report available in Serbian at: <http://www.blic.rs/vesti/hronika/od-pocetka-godine-34-zene-ubijene-u-porodicnim-svadama-zastitimozene/zz4nek2>.

376 Protocol No. 119-01-00130/2013-05 of 14 January 2014.

377 See the *Al Jazeera* report of 25 November 2015, available in Serbian at: <http://balkans.aljazeera.net/vijesti/mihajlovic-vecina-ubijenih-zena-prethodno-prijavljivala-porodicno-nasilje>.

378 *Sl. glasnik* 35/00, 57/03 – Constitutional Court Decision, 72/03 – other law, 75/03 – corr. of other law, 18/04, 101/05 – other law, 85/05 – other law, 28/11 – Constitutional Court Decision, 36/11 and 104/09 – other law.

at least 30% of the candidates of the less represented gender (Art. 40a). Women are, however, seriously underrepresented in positions that have actual impact on decision-making, a problem noted by the European Commission as well.³⁷⁹

Women account for 84 of the 250 deputies (34%) of the deputies in the National Assembly. Although the number of women engaged in politics has been increasing, only a few of them are in decision-making positions. The Women's Parliamentary Network was established in 2013 as an informal group of women deputies regardless of their political affiliation to strengthen the status of women and advance gender equality. The members of the Women's Parliamentary Network submit amendments to laws and initiate debates on issues of relevance to promoting gender equality and the development of the equal opportunities policies. Women deputies are underrepresented in senior Assembly offices – only one party caucus and eight of the 20 parliamentary committees are headed by a woman. Gender segregation is also demonstrated by the following facts: women deputies account for most members of committees charged with human rights and the protection of particularly vulnerable groups, but the committee charged with oversight of the security services does not include any women deputies and there are hardly any women sitting on the committees tasked with financial and internal affairs. A survey conducted by the Open Parliament showed that as many as 22% of the women deputies had been the subject of discriminatory comments, jokes and indecent offers of their male colleagues and that none of them had applied any of the official mechanisms to complain about discrimination³⁸⁰ Such an atmosphere undoubtedly exacerbates negative stereotyping in the state legislature and the sex-based discrimination against women deputies. The discriminatory comment Defence Minister Bratislav Gašić made about a B92 female journalist³⁸¹ in December 2015 led to protests by journalists and the public and calls for his ouster. The protests of the journalists continued into January 2016 and the Minister was ultimately dismissed in February 2016.

Not many women are appointed to senior offices either. Only four of the 18 Government ministers are women and two of them simultaneously hold the office of Deputy Prime Minister. Only 15% of Serbia's ambassadors are women,³⁸² but no women head Serbia's permanent missions in international organisations. The 2014 survey "Women and Men in Serbia" showed that only 7.3% of the municipalities were run by women and that Smederevo was the only city with a mayoress. No women have been appointed to run any state companies or chair their management boards. Only one of the eight state universities in Serbia – the University of Arts

379 See the 2015 Progress Report, available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

380 Available in Serbian at: <http://www.otvoreniparlament.rs/wp-content/uploads/2014/03/ovde1.pdf>.

381 See the Balkan Insight report of 7 December 2015, available at <http://www.balkaninsight.com/en/article/serbian-journalists-demand-sexist-minister-resigns-12-07-2015>.

382 Serbia has women ambassadors in Belgium, Argentina, Denmark, Italy, Cuba, FYROM, Norway, the Czech Republic, Switzerland and Croatia.

– has a female rector. The Serbian Academy of Arts and Sciences, established 128 years ago, has never been headed by a woman.³⁸³

The Army of Serbia has slightly more than 200 women officers, but none of them hold the highest rank of general. Only three women hold the rank of colonel.³⁸⁴ Women applying for the Military Academy have had to fulfil the same requirements as the male applicants since 2007. As of 2014, girls, too, can apply for enrolment in the Military High School.

9. Status of the Elderly

9.1. General

According to the 2011 Census, 17.40% of Serbia's population is over 65 years of age.³⁸⁵ Around 145,000 people are over 80 years of age, i.e. account for 3.59% of the total population. The Census registered 430,000 elderly households; over half of them were single elderly households.³⁸⁶ However, despite the significant share of this age group in the total population, the rights of the elderly and their potential to contribute to the development of society are rarely discussed topics.

In its publication devoted to persons with disabilities based on the 2011 Census results, the Statistical Office of the Republic of Serbia said that persons with disabilities, who accounted for eight percent of Serbia's total population, were 67 years old on average.³⁸⁷

9.2. International Standards

The Republic of Serbia has signed and ratified numerous international instruments guaranteeing the same rights to everyone, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights with Protocols thereto and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

383 See *Tanjug's* report, available in Serbian at: <http://www.tanjug.rs/full-view.aspx?izb=212953>.

384 See *Beta's* report, available in Serbian at: <http://beta.rs/vesti/drustvo-vesti-srbija/16657-zene-u-vojsci-gospode-u-uniformi>.

385 2013–2018 Strategy for the Prevention of and Protection from Discrimination, point 4.6, available in English at: http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

386 Petrušić in Petrušić et al, Introduction to Ageing and Human Rights of Older Persons (Red Cross of Serbia, 2015). Available in Serbian at: http://www.redcross.org.rs/slika_3989_Uvod%20u%20starenje%20i%20ljudska%20prava%20starijih.pdf.

387 More is available in Serbian at: <http://webrzs.stat.gov.rs/WebSite/Public/PublicationView.aspx?pKey=41&pLevel=1&pubType=2&pubKey=2710>.

The Revised European Social Charter,³⁸⁸ as a regional mechanism protecting social and economic rights, devotes Article 23 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 2011.³⁸⁹

Serbia has also ratified conventions governing rights of social groups, which include the elderly. Under Article 16(2) of the Convention on the Rights of Persons with Disabilities³⁹⁰ 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.³⁹¹ 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.³⁹²

The international legal framework includes also the following three documents focusing exclusively on older persons, the Vienna International Plan of Action on Aging,³⁹³ United Nations Principles for Older Persons³⁹⁴ and the Political Declaration and Madrid International Plan of Action on Ageing.³⁹⁵ As opposed to the above-mentioned Conventions and Charter, they belong to the category of “soft law” and are not binding in character:

These documents do not define older persons. The Guide on the National Implementation of the Madrid International Plan of Action on Ageing³⁹⁶ (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

388 *Sl. glasnik RS (International Treaties)*, 42/09.

389 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.

390 *Sl. glasnik RS (International Treaties)*, 42/09.

391 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.

392 *Sl. list SFRJ (International Treaties)*, 11/81.

393 Adopted by the UN General Assembly in Resolution 37/51.

394 Adopted by the UN General Assembly in Resolution 46/91.

395 Adopted by the UN General Assembly in Resolution 57/167.

396 More at: <http://www.un.org/esa/socdev/ageing/documents/papers/guide.pdf>.

persons". This definition is, however, oversimplified given the different lifespans in various countries and the specific features of life after 60 in various societies.³⁹⁷

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.³⁹⁸

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.³⁹⁹

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.⁴⁰⁰ 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.⁴⁰¹ 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.⁴⁰²

Its authors qualify it as a resource for policymaking, suggesting ways for Governments to link questions of ageing to other frameworks for social and economic development and human rights, to enable older people to enjoy rights in accordance with the specific features of their age.⁴⁰³ The document recognises the importance of eliminating violence and gender-based discrimination.⁴⁰⁴

397 *Ibid*, p.11.

398 More at: <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>.

399 More at: <http://www.un.org/documents/ga/res/46/a46r091.htm>.

400 More at: http://www.un.org/en/events/pastevents/pdfs/Madrid_plan.pdf.

401 Maggie Murphy, *International human rights law and older people: Gaps, fragments and loop-holes*, Help Age International, 2012. Available at: <http://social.un.org/ageing-working-group/documents/GapsinprotectionofolderpeoplesrightsAugust2012.pdf>.

402 Political Declaration and Madrid International Plan of Action on Ageing.

403 *Ibid*.

404 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.

9.3. National Legal Framework

The Constitution of Serbia does not recognise the elderly as a social group. In Article 21, it guarantees the equality of all citizens and prohibits discrimination on any grounds, including age. The Constitution also mentions the elderly in Article 68, notably their right to “health care ... provided from public revenues”.

Article 4 of the Anti-Discrimination Act⁴⁰⁵ lays down that all persons shall be equal, enjoy equal status and equal legal protection, regardless of their personal features. Article 23 of this law prohibits discrimination on grounds of age and guarantees older people the right to decent living conditions and access to public services.

Specific provisions of the Social Protection Act,⁴⁰⁶ the Pension and Disability Insurance Act,⁴⁰⁷ the Act on the Prevention of Discrimination against Persons with Disabilities,⁴⁰⁸ the Health Care Act,⁴⁰⁹ the Health Insurance Act,⁴¹⁰ and the Act on the Protection of Persons with Mental Disorders⁴¹¹ are also relevant to the realisation of the rights of older people.

The 2006–2015 National Strategy on Ageing departs from the Madrid Plan recommendations and the regional strategy for its implementation adopted by the UN Economic Commission for Europe.⁴¹² The Action Plan for the implementation of the Strategy has never been adopted, however, wherefore it is impossible to monitor its implementation or the impacts of the measures laid down in it. The work and results of the Council for Ageing and Old Age Issues, charged with monitoring the implementation of the Strategy, have remained invisible.⁴¹³ In late November 2015, the Republican Social Protection Fund began the evaluation of the Strategy and planning the development of a new one, with the support of the UN Population Fund (UNFPA).⁴¹⁴

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

406 *Sl. glasnik RS*, 24/11.

407 *Sl. glasnik RS*, 34/03, 64/04 – Constitutional Court decision, 84/04 – other law, 85/05, 101/05 – other law, 63/06 – Constitutional Court decision, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14.

408 *Sl. glasnik RS*, 33/06.

409 *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.

410 *Sl. glasnik RS*, 107/05, 109/05 – corr., 57/11, 110/12 – Constitutional Court decision, 119/12, 99/14, 123/14 and 126/14 – Constitutional Court decision.

411 *Sl. glasnik RS*, 45/13.

412 See: <http://www.globalaging.org/elderrights/world/2007/BGSerbia.pdf>.

413 Information obtained from representatives of Amity on 1 December 2015, Belgrade. The absence of concrete results in the implementation of the Strategy on Aging was also highlighted in the conclusions of the Eighth Gerontological Congress organised by the Gerontological Society of Serbia. The Congress concluded at its plenary session that the Strategy was in conformity with international documents but that it was not applied. More is available in Serbian at: <http://www.gds.org.rs/images/dokumenta/zakljucikongresa.pdf>.

414 More is available in Serbian at: http://www.zavodsz.gov.rs/index.php?option=com_content&task=blogcategory&id=1&Itemid=176

One of the goals of the above-mentioned Anti-Discrimination Strategy is to ensure observance of the constitutional principle prohibiting discrimination of people based on their personal features. Older people are recognised as a group particularly vulnerable to discrimination. The Strategy objectives on the status of older people include the adoption of a law that will comprehensively regulate the rights of the elderly, whilst taking into account the needs of this vulnerable group and the challenges they face in enjoying their rights in the Republic of Serbia.⁴¹⁵

The Action Plan for the implementation of this Strategy accordingly envisages the adoption of a “corollary law” on older persons and the legal definition of the concept of an older person.⁴¹⁶ This activity was to have been completed in the last quarter of 2015.⁴¹⁷ However, the latest report on the monitoring of this Action Plan published by the Human and Minority Rights Office,⁴¹⁸ covering the last quarter of 2014 and the first quarter of 2015, makes no mention of whether any headway has been made in implementing this measure.

It only mentions the fulfilment of one measure regarding elderly people: the implementation of an affirmative media and public advocacy campaign to improve positive attitudes towards this group.⁴¹⁹

9.4. Elder Abuse

Abuse of older people was defined by the Action on Elder Abuse. This definition, according to which elder abuse is “a single or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person”, was subsequently adopted also by the World Health Organization.⁴²⁰

Surveys on domestic violence in Serbia show that women, children and the elderly are groups that are the most vulnerable to domestic violence.⁴²¹ Violence

415 See: http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

416 There is no single definition of the concept of older people either in international or Serbian law.

417 See: http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_engleski.pdf.

418 Report on the Monitoring of the Implementation of the Action Plan for the Implementation of the 2014–2018 Anti-Discrimination Strategy (in the 4th quarter of 2014 and the 1st quarter of 2015), available at <http://www.ljudskaprava.gov.rs/index.php/you/component/content/article/74-strategija-za-borbu-protiv-diskriminacije/114-strategija-prevencije-i-zastite-od-diskriminacije>.

419 This measure is to be implemented continuously. The Ministry of Culture and Information is in charge of implementing it. More at: http://www.ljudskaprava.gov.rs/images/pdf/AD_STRATEGY_ENG_UT.pdf.

420 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%20porodica%20tajna%20e-knjiga.pdf, p. 16.

421 Petrušić in Petrušić et al, *Introduction to Ageing and Human Rights of Older Persons* (Red Cross of Serbia, 2015). Available in Serbian at: http://www.redcross.org.rs/slika_3989_Uvod%20u%20starenje%20i%20ljudska%20prava%20starijih.pdf.

against the elderly, like the all-pervasive violence in society, remained side-lined in public debates in Serbia 2015 as well. The statistical data published by the Women against Violence Network show that three of the 34 women killed in domestic violence incidents in 2015 were between 56 and 65 years of age and that nine were over 65 years old.⁴²²

The Action Plan for the Implementation of the Anti-Discrimination Strategy lists the following measure to be continuously implemented as of the 4th quarter of 2015: the drafting of an amendment to the Criminal Code to define violence against older and/or helpless people as an aggravated form of the crime of domestic violence.⁴²³ This type of domestic violence is hardly visible, due to, *inter alia*, society's generally higher tolerance to violence, the dependence of the elderly on their abusers and their unfamiliarity with their rights.

The widespread abuse of older people in Serbia has been registered also in a survey of elder abuse conducted by the Commissioner for the Protection of Equality, the Red Cross of Serbia and the UN Population Fund in August and September 2015.⁴²⁴ According to the survey results, 19.8% of the respondents (68.6% of them women and 31.4% of them men), aged 73 on average, had experienced some form of abuse in their life (financial, physical, psychological, verbal or sexual abuse or neglect) and 5.5% of them had been subjected to multiple forms of abuse. The 2015 results show that 11% of the respondents said they had been abused in the previous year.⁴²⁵

Since the poll was conducted by phone, the authors noted the possibility that some of the elderly respondents had replied to the questions in the presence of their abusers or that the latter had prevented them from participating in the poll, wherefore it is quite likely that the abuse and neglect of older persons both in their homes and in the institutions where they are living or undergoing medical treatment are even more widespread than the results indicate. Financial abuse is the most frequent form of abuse: 11.5% of the respondents said they had been subjected to it; 13.5% said they did not dispose of their funds freely.⁴²⁶ The fact that many respondents had not even been aware that they were subjected to financial abuse is concerning. As many as 50% of the respondents refused to even discuss sexual abuse, which corroborates the need to raise the awareness of the elderly of their rights and institutional protection mechanisms.⁴²⁷

Abuse and neglect of older people and their insufficient awareness of their rights is also reflected in the small number of complaints on these grounds submit-

422 More is available in Serbian at: <http://sigurnakuca.net/vesti.774.html>.

423 See: http://www.ljudskaprava.gov.rs/images/pdf/propisi_i_strategije/Akcioni_plan_-_engleski.pdf.

424 Brankica Janković et al, *Well Kept Family Secret – Abuse of Older Persons* (Red Cross of Serbia, Belgrade, 2015).

425 *Ibid.*

426 *Ibid.* p. 61.

427 *Ibid.* p. 67.

ted to the specialised department of the Protector of Citizens charged with the protection of the rights of persons with disabilities and older persons.⁴²⁸

9.5. *Elderly in the Social Protection System – Residential Homes*

Under Article 69 of the Constitution, all citizens and families in need of welfare to satisfy their basic subsistence needs shall be entitled to social protection. The principle of the best interests of the beneficiaries laid down in Article 26 of the Social Protection Act⁴²⁹ 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.⁴³⁰ Article 41 of this law defines adult beneficiaries of rights and social protection services as persons between 26 and 65 years of age and elderly beneficiaries as persons over 65, whose satisfaction of basic needs, safety or productive life are jeopardised due to old age, a disability, illness, or family or other circumstances.

The Government is in charge of establishing a system of social protection institutions extending accommodation services⁴³¹ to adult and elderly beneficiaries (Art. 63). The determination of residential homes as institutions for both adult (between 26 and 65 years of age) and elderly (over 65) beneficiaries has in practice led to the placement of people of various ages and states of mental health in the same institutions (persons with intellectual disabilities are also placed in residential homes for adult and elderly beneficiaries), despite their diverse needs for care and support.⁴³²

According to a Republican Social Protection Institute 2014 report on adult beneficiaries, 60.6% of the beneficiaries in the residential homes for adults and the elderly are fully dependent on others, 20.2% are partly dependent on others and 19.2% are independent, while 46.7% of them have been diagnosed with pathological changes in their mental health.⁴³³ Furthermore, older people in rural areas do not enjoy equal access to social welfare services, including accommodation in residential homes; nor does the law devote any particular attention to them.

428 See the statement on the Protector of Citizens website, available in Serbian at: <http://www.ombudsman.osobesainvaliditetom.rs/index.php?lang=sr>.

429 *Sl. glasnik RS*, 24/11.

430 As well as their sex, ethnic and cultural origin, language, religion and living habits.

431 Under the Social Protection Act, social welfare services are divided into five categories: assessment and planning services; daily services in the community; independent living support services; counselling-therapeutic and social-educational services; and accommodation services.

432 The data were obtained on 1 December 2015 from Amity – Strength of Friendship, which monitored the situation in the residential homes.

433 Adult Beneficiaries in the Social Protection System 2014, Republican Social Protection Institute, Belgrade, 2015. Available in Serbian at: <http://www.zavodsz.gov.rs/PDF/izvestaj2015/PUNOLETNI%20KORISNICI%20U%20SISTEMU%20SOCIJALNE%20ZASTITE.pdf>.

The Social Protection Act and the Rulebook on Detailed Standards and Requirements for Extending Social Protection Services⁴³⁴ lay down identical requirements that must be satisfied by state and private residential homes for adults and the elderly. The licence applications are submitted to the Ministry of Labour, Employment and Social and Veteran Affairs, which issues the licences after its inspectors check whether the applicants fulfil the legal criteria and requirements.⁴³⁵ However, the Ministry has only ten social protection inspectors covering the entire territory of Serbia, wherefore the question arises as to whether they are able to efficiently control the fulfilment of the standards and requirements of all state and private residential homes.⁴³⁶

The manner in which the Social Protection Act regulates the work and oversight of state and private residential institutions made the limelight in April 2015, when a salmonella epidemic broke out in a private nursing home in the Čačak settlement of Vranići. The Čačak Hospital Infectious Diseases Department doctors notified the Public Health Institute in Čačak of the outbreak and the latter and the sanitary inspectors visited the establishment and found numerous irregularities during their oversight.⁴³⁷ Social protection inspectors soon performed an extraordinary check of the nursing home and found it was understaffed. Seven residents of the nursing home died and over forty other residents and staff were infected by salmonella. On 28 April, the Ministry of Labour, Employment and Veteran and Social Affairs suspended the home's operating licence. Criminal charges were filed against the owner and cook of the Vranići nursing home in July 2015.⁴³⁸

434 *Sl. glasnik RS*, 42/13.

435 The licence issuance, renewal, suspension and revocation procedures are laid down in the Rulebook on the Licencing of Social Protection Organisations, available in Serbian at: <http://www.minrzs.gov.rs/lat/component/k2/item/253-uspostavljanje-i-primena-sistema-licenciranja-pruzalaca-usluga-socijalne-zastite-u-srbiji?highlight=WyJkb2lza2kiLCJzbWVzdGFqIiwib2RyYXNsaWgiLCJkb2lza2kvc21lXHUwMTYxdGFqIiwiZG9tc2tpIHNTZVx1MDE2MxRhaiBvZHJhc2xpaCJd>.

436 See the *RTS* report of 21 April 2015, available in Serbian at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1895238/Stara%C4%8Dke+domove+kontrolni%C5%A1e+svega+d eset+inspektora.html>.

During the salmonella epidemic in Vranići, the Head of the Labour Ministry Inspectorial Oversight Department Biljana Zekavica said that the inspectors had performed 172 checks in 2014 and 46 in 2015 and had prohibited the work of 60 illegal nursing homes. She also said there were no semi-legal nursing homes in Serbia and that 132 were licenced to operate. See the *Blic* report, available in Serbian at: <http://www.blic.rs/Vesti/Drustvo/552133/Inspektori-zbog-karantina-nisu-sproveli-potpunu-istragu-salmonele-u-domu-za-stare>.

437 *Politika*, 19 April 2015, p. 8.

438 See: <http://www.blic.rs/Vesti/Hronika/575301/CACAK-Krivicne-prijave-za-direktora-i-kuvaricu-Doma-za-stare-u-Vrancima>.

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